UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

FUSION ELITE ALL STARS, et al.,

Plaintiffs,

v.

VARSITY BRANDS, LLC, et al.,

Defendants.

Civ. Action No. 2:20-cv-02600

DIRECT PURCHASER PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT, PROVISIONAL CERTIFICATION OF PROPOSED SETTLEMENT CLASSES, APPROVAL OF NOTICE PLAN, AND APPROVAL OF THE PROPOSED SCHEDULE FOR COMPLETING THE SETTLEMENT PROCESS

Direct Purchaser Plaintiffs Fusion Elite All Stars, Spirit Factor LLC d/b/a Fuel Athletics, Stars and Stripes Gymnastics Academy Inc. d/b/a Stars and Stripes Kids Activity Center, Kathryn Anne Radek, Lauren Hayes, and Janine Cherasaro, by and through Interim Co-Lead Class Counsel, hereby move for an order pursuant to Fed. R. Civ. P. 23:

1. Granting preliminary approval of a settlement between Direct Purchaser Plaintiffs and Defendants Varsity Brands, LLC, Varsity Spirit, LLC, Varsity Spirit Fashion & Supplies, LLC (collectively, "Varsity"), and U.S. All Star Federation, Inc. ("USASF") (Varsity and USASF together, "Defendants"), and finding that the Settlement encompassed by the Settlement Agreement (attached as Exhibit 1 to the Memorandum of Law in Support of Direct Purchaser Plaintiffs' Motion for Preliminary Approval of Settlement, Provisional Certification of Proposed Settlement Classes, Approval of Notice Plan, and Approval of the Proposed Schedule for Completing the Settlement Process ("Preliminary Approval Brief")) is preliminary determined to

be fair, reasonable, adequate, and in the best interests of the Settlement Classes, raises no obvious reasons to doubt its fairness, and raises a reasonable basis for presuming that the Settlement and its terms satisfy the requirements of Fed. R. Civ. P. 23(c)(2) and 23(e).

2. Finding that Court will likely find that the requirements of Federal Rules of Civil Procedure 23(a) and 23(b)(3) will be satisfied for settlement and judgment purposes only, and thus that the Court will likely be able to certify the Settlement Classes as proposed in the Settlement Agreement.

3. Appointing Fusion Elite All Stars, Spirit Factor LLC d/b/a Fuel Athletics, Stars and Stripes Gymnastics Academy Inc. d/b/a Stars and Stripes Kids Activity Center as representatives of the Gym Class and Kathryn Anne Radek, Lauren Hayes, and Janine Cherasaro as representatives of the Spectator Class.

4. Appointing Berger Montague PC, DiCello Levitt LLC, and Cuneo Gilbert & LaDuca, LLP as Settlement Class Counsel pursuant to Fed R. Civ. P. 23(c)(1)(B) and 23(g);

5. Approving the Notice Plan and authorizing dissemination of notice to the Settlement Classes;

6. Appointing Angeion Group LLC as Settlement Claims Administrator;

7. Appointing The Huntington National Bank as Escrow Agent; and

8. Authorizing a proposed schedule for completing the approval process.

WHEREFORE, for the reasons set forth in the accompanying memorandum of law and exhibits, Direct Purchaser Plaintiffs respectfully request that the Court grant this motion and enter the Preliminary Approval Order filed herewith. Defendants do not oppose this motion.

Dated: March 24, 2023

Respectfully submitted,

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CERTIFICATE OF CONSULTATION

I hereby certify that on March 22, 2023, I consulted with the following counsel via email regarding the requested relief:

Steven J. Kaiser for the Varsity Defendants

Nicole Berkowitz Riccio for Defendant U.S. All Star Federation.

No party opposed the relief sought.

/s/ Eric L. Cramer
Eric L. Cramer

CERTIFICATE OF SERVICE

I, Eric L. Cramer, hereby certify that on March 24, 2023, I served the foregoing on all counsel of record by electronically filing this document with the Clerk of Court using the CM/ECF system.

/s/ Eric L. Cramer
Eric L. Cramer

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MEMORANDUM OF LAW IN SUPPORT OF DIRECT PURCHASER PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT, PROVISIONAL CERTIFICATION OF PROPOSED SETTLEMENT CLASSES, APPROVAL OF NOTICE PLAN, AND APPROVAL OF THE PROPOSED SCHEDULE FOR COMPLETING THE SETTLEMENT PROCESS

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INTRODUCTION

Under the terms of a settlement agreement dated March 15, 2023 (the "SA"),[1] Defendants Varsity Brands, LLC, Varsity Spirit, LLC, and Varsity Spirit Fashion & Supplies, LLC (collectively, "Varsity") have agreed to make aggregate cash payments totaling $43,500,000.00. In addition, Varsity and U.S. All Star Federation, Inc. ("USASF") (Varsity and USASF together, "Defendants") have agreed to institute significant prospective relief that unwinds some of the key allegedly anticompetitive conduct at issue in this case. In exchange for this valuable relief, Direct Purchaser Plaintiffs ("DPPs"),[2] including three All Star Gyms (on behalf of a proposed Gym Class) and three spectators of All Star Events (on behalf of a proposed Spectator Class)[3] have agreed to dismiss this litigation with prejudice and release Defendants and related parties ("the Settlement").

This Settlement comes after more than two-and-half years of hard-fought litigation, the completion of all fact discovery, including 40 party depositions, the exchange of four lengthy

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[1] Capitalized terms have the same meanings set forth in the March 15, 2023 SA attached as Exhibit 1.

[2] Fusion Elite All Stars; Spirit Factor LLC d/b/a Fuel Athletics; Stars and Stripes Gymnastics Academy Inc. d/b/a Stars and Stripes Kids Activity Center; Kathryn Anne Radek; Lauren Hayes, and Janine Cherasaro.

[3] The Settlement Classes consist of:

Gym Class: All entities that paid registration or related fees and expenses directly to Varsity to participate in Varsity All Star Events from May 26, 2016 through March 15, 2023 (the "Class Period").

Spectator Class: All persons who paid entrance (admission) or other fees and expenses directly to Varsity to observe Varsity All Star Events during the Class Period.

Excluded from the Classes are Defendants, their parent companies, subsidiaries, affiliates, franchisees, officers, executives, and employees; any entity that is or has been partially or wholly owned by one or more Defendants or their respective subsidiaries; States and their subdivisions, agencies and instrumentalities; and any judicial officer presiding over this matter and his or her staff, except that officers of USASF who are not employees of any of Defendants, their parent companies, subsidiaries, affiliates, or franchisees shall not be excluded from the Classes.

expert reports, depositions of each expert, a full-day, in-person mediation before an experienced mediator, and extensive arm's length negotiations following the mediation.[4]

The Settlement is fair and reasonable and satisfies the requirements of Fed. R. Civ. P. 23(e). Counsel for both sides are highly experienced in antitrust litigation and well-positioned to assess the risks and merits of the case. As detailed below and in the supporting documents, this case—which did not follow a government investigation or action—involves a series of allegedly anticompetitive acts extending back more than two decades and legal claims arising out of that conduct. In the face of material risks of an adverse outcome or the potential for lengthy delays and appeals, the Settlement represents a meaningful recovery for the Settlement Classes in no small part because it includes significant structural changes to the sport of All Star Cheer—an unusual achievement in private litigation.

DPPs therefore ask—and Defendants do not oppose—that the Court enter the accompanying proposed Preliminary Approval Order that will: (i) preliminarily approve the Settlement; (ii) provisionally certify the Settlement Classes under Fed. R. Civ. P. 23 for settlement purposes only; (iii) appoint the six named plaintiffs as Class Representatives and designate Berger Montague PC, DiCello Levitt LLC, and Cuneo Gilbert & LaDuca, LLP as Settlement Class Counsel;[5] (iv) approve the notice plan for the Settlement Classes; (v) appoint

[4] The parties participated in a full-day mediation before the Hon. Layn Phillips of Phillips ADR on January 10, 2023 (having initially participated in an early mediation before Judge Phillips in January 2021). The parties continued to negotiate in the weeks after the full-day mediation with the assistance of Miles N. Ruthberg, Esq. of Phillips ADR, resulting in an agreement-in-principle that led to the SA currently being presented to the Court.

[5] On September 18, 2020, the Court appointed Berger Montague PC, Labaton Sucharow LLP, and Cuneo Gilbert & LaDuca, LLP as Interim Co-Lead Class Counsel and Branstetter, Stranch & Jennings, PLLC as Interim Liaison Class Counsel for the proposed Direct Purchaser Plaintiff Classes. *See* ECF No. 37. On March 7, 2022, the Court granted DPPs' Motion to Amend the leadership appointment to substitute DiCello Levitt LLC for Labaton Sucharow LLP when the attorneys principally working on the case switched law firms. *See* ECF No. 206.

Angeion Group LLC ("Angeion") as Settlement Claims Administrator; (vi) appoint The Huntington National Bank ("Huntington") as the escrow agent; and (vii) approve the proposed schedule for completing the settlement process and set a date for a final Fairness Hearing.

FACTUAL AND PROCEDURAL BACKGROUND

A. PLAINTIFFS' ALLEGATIONS

DPPs are All Star Gyms and Spectators. All Star Gyms are privately owned and operated businesses that field cheerleading teams that compete in All Star Cheer Events.[6] This case involves allegations that Varsity, in conspiracy with USASF, acquired, enhanced, and maintained monopoly power in the All Star Cheer Events Market in the United States through an unlawful scheme in violation of Section 2 of the Sherman Act, 15 U.S.C. § 2. *See* Consolidated Amended Class Action Complaint, filed October 2, 2020 (ECF No. 56) ("CAC").

Varsity is the leading producer of All Star Cheer Events in the United States. USASF is a governing and standard-setting body for All Star Cheer. DPPs allege that since 2005, Varsity used an exclusionary scheme, facilitated by USASF, to acquire, maintain, and enhance monopoly power in the market for All Star Events, including, *inter alia*, (a) Varsity's systematic acquisition of All Star Competition rivals; (b) Varsity's use of its alleged monopoly power to impose exclusionary contracts and anticompetitive loyalty programs on All Star Gyms; and (c) Varsity's alleged collusion with USASF to allow Varsity to control the bids to the key national championship in All Star Cheer (known as "Worlds"). *Id.*, ¶¶ 242-261.

DPPs claim that, as a result of the alleged scheme, Varsity was able to artificially inflate the prices it charged (i) All Star Gyms to register at Varsity Events, and (ii) Spectators to view

[6] All Star Cheer is a discipline of cheer that involves athletes performing a two-and-a-half-minute routine composed of tumbling, stunting, pyramids, and dance.

Varsity Events. DPPs sought to recover the overcharges they allegedly paid to Varsity during the Class Period, as well as prospective relief to make the All Star Cheer Events Market more competitive. *Id.*

B. THE RISKS POSED BY DEFENDANTS' DEFENSES

Defendants asserted multiple challenges to the merits of DPPs' claims. *See* USASF and Varsity's Answers to Plaintiffs' Consolidated Amended Class Action Complaint ("Answers"), ECF Nos. 148 and 149. Defendants have asserted, among other arguments, that (a) the statute of limitations purportedly precludes consideration of a large portion of the challenged conduct, which occurred more than four years prior to the filing of the claims, (b) the relevant market was not national, as DPPs allege, but regional, (c) the challenged acquisitions were procompetitive, (d) the loyalty programs that DPPs challenge as anticompetitive purportedly involved discounts that benefitted Gyms, and (e) Varsity and USASF acted independently and in procompetitive ways. Defendants retained expert economists who opined that the challenged conduct was procompetitive, not anticompetitive, and that DPPs' methods of proving impact and damages to the proposed classes were unreliable and thus that (i) the proposed classes could not be certified for litigation purposes, and (ii) DPPs could not prove they or Class Members suffered any harm from the challenged conduct. DPPs have disputed each and every argument raised by Defendants, but understand that risks of adverse outcomes on these and other issues, and the possibility of lengthy delays (including appeals) remained.

C. LITIGATION AND PROCEDURAL HISTORY

DPPs initiated this action on in the Northern District of California on May 26, 2020, and it was re-filed before this Court on August 13, 2020. *See* Joint Declaration of Eric L. Cramer, Karin E. Garvey and Victoria Sims in Support of Direct Purchaser Plaintiffs' Unopposed Motion for Preliminary Approval of Settlement, Provisional Certification of Proposed Settlement

Classes, Approval of Notice Plan, and Approval of the Proposed Schedule for Completing the Settlement Process, ¶ 7 ("Joint Decl."), attached hereto as Exhibit 2. For the next two-and-a half years, DPPs aggressively pursued their claims on behalf of the proposed Gym and Spectator Classes in this Court. Joint Decl. ¶¶ 8-13.

Defendants filed a motion to dismiss under Fed. R. Civ. P. 12(b)(6) on December 1, 2020, arguing that DPPs failed to plausibly allege their Section 2 claims, and also asserting that the statute of limitations barred consideration of certain of the challenged conduct. ECF Nos. 83 and 84. On August 26, 2021, the Court denied the motion in most, but not all, respects. *See* ECF No. 141.[7]

Thereafter, the parties began fact discovery. At the outset, at DPPs' urging, the Court imposed a discovery coordination committee including the DPPs and two other plaintiff groups proceeding with similar antitrust claims on behalf of different types of claimants against Defendants (and other parties) in this Court. ECF No. 37. The DPPs coordinated with the other plaintiff groups to ensure efficient discovery and deposition scheduling. As part of discovery, DPPs secured the production of approximately 1,629,324 documents from Defendants and another 89,754 documents from third parties, produced 4,575 documents from DPPs' files, took 32 fact depositions and defended eight plaintiff-witness depositions. Joint Decl. ¶ 15. The parties also engaged in extensive motion practice concerning numerous discovery disputes. *See, e.g.*, ECF Nos. 102, 105, 116, 120, 125, 126, 129, 199, 203, 204. Subsequently, the parties conducted expert discovery, with each side submitting lengthy reports (including opening and rebuttal reports from each of the DPPs' experts), and each of the four experts being deposed. Joint Decl.

[7] Defendants also filed a motion to strike DPPs' class allegations, ECF No. 82, which the parties fully briefed. The Court recently denied that Motion as moot, given the parties' agreement to settle the case. ECF No. 326.

¶¶ 20-21. DPPs were set to file papers in support of class certification when the parties reached an agreement to settle. A trial was scheduled for January 16, 2024. ECF No. 314.

D. THE SETTLEMENT AGREEMENT

The SA contains the following key terms:

1. Monetary Relief.

Varsity agreed to pay cash in the amount of $43,500,000.00 in three installments to create a Settlement Fund for the benefit of the Settlement Classes. SA § 26. The first installment of $2 million is to be paid within 30 days of preliminary approval. *Id*. The second installment of $28 million shall be paid on or before December 1, 2023. *Id*. The third and final installment of $13.5 million shall be paid on or before December 1, 2024. *Id*.

All members of both Settlement Classes will receive payments from the Settlement Fund, *pro rata*, in proportion to the damages they allegedly suffered as computed by DPPs' economist (Dr. Hal Singer) in his expert reports submitted during the expert discovery period. *See infra*, § D(3) Summary of Proposed Plan of Allocation. The Settlement Fund will also pay for the expenses of the Settlement Claims Administrator and the costs of notice to the Settlement Classes, any service awards the Court awards to the Class Representatives, attorneys' fees and expenses, and any other administrative fees or costs that may be approved by the Court. SA §§ 37-38. If the Settlement is approved, Defendants have no reversionary interest in any of the Settlement Funds. *Id.*[8]

[8] The parties have executed a confidential "Supplemental Agreement" setting forth certain conditions under which this Settlement Amount may be reduced if Class members comprising a certain share of the purchases made by the Settlement Classes during the Class Period timely exclude themselves from the Settlement Classes. Any potential reduction in the Settlement Amount due to Settlement Class Member exclusions will be brought to the Court's attention at the final Fairness Hearing. The parties will provide this Supplemental Agreement to the Court for inspection *in camera* upon request.

2. Prospective Relief.

The Settlement contains significant prospective relief, effective from the date of Final Approval through December 31, 2028. The relief unwinds some of the key conduct that the DPPs challenged as anticompetitive in the matter. In DPPs' view, these changes have the potential to facilitate vigorous competition in the All Star Cheer Events Market.

First, DPPs alleged that a key aspect of the challenged anticompetitive scheme involved Varsity's loyalty programs. The DPPs claimed these were effectively exclusive deals because they required, according to DPPs, that Gyms devote virtually their entire All Star Cheer season to Varsity (*i.e.*, attending at least six Varsity Events) to receive rebates associated with the fees they paid to compete in Varsity's Cheer competitions. *See* Plaintiffs' Consolidated Memorandum of Law in Opposition to Defendants' Motions to Dismiss. ECF No. 91, pp. 20-24. The Settlement rolls back that requirement, barring Varsity from requiring "attendance at more than three All Star Events during a single regular season as a condition of receiving Varsity's lowest tier of rebates or discounts." SA § 30(a)(2). In DPPs' view, this change would transform Varsity's rebate program from an anticompetitive exclusive deal to a program that is far less likely to foreclose competition from Varsity's All Star Event producing rivals.

Second, DPPs charged that Varsity's control over, and collusion with, USASF—including by controlling the majority of USASF's board and key committees and by paying USASF's top executives—facilitated Varsity's monopolization of the All Star Cheer Events Market. The SA would untangle the two organizations and allow for a truly independent governing body. For instance, it provides that: (1) "No person shall simultaneously serve on the boards of Varsity (or any other Varsity entity) and USASF;" (2) "Varsity may not, directly or

indirectly, pay the salaries of any USASF employees or executives;" (3) "No more than 1/3 of the voting board seats on USASF's Board of Directors may be occupied by any single Event Producer;" (4) "No more than 40% of the seats on USASF's Sanctioning Committee may be occupied by any single Event Producer;" and (5) "After implementing the changes set forth above with respect to USASF's Board of Directors and Sanctioning Committee, USASF commits to continuing to evaluate proposals from its membership that are properly brought to its Board of Directors or an appropriate committee, in accordance with its policies and procedures." SA § 30(b)-(f).

3. Summary of Proposed Plan of Allocation.

The Net Settlement Fund—which is the Settlement Amount less all Court awarded attorneys' fees, service awards, and costs—shall be disbursed in accordance with a plan of allocation to be approved by the Court at the Final Approval Hearing. That plan, in summary, would divide the Net Settlement Fund into two tranches: one for the Gym Class ("Gym Class Tranche") and one for the Spectator Class ("Spectator Class Tranche"), roughly in proportion to the alleged damages each Settlement Class suffered as computed by DPPs' expert economist (Dr. Hal Singer) in his merits expert reports. The Gym Class will receive 85% of the Net Settlement Fund and the Spectator Class will receive 15% of the Net Settlement Fund. The Gym Class Tranche would then be allocated to individual members in that Class in proportion to the amount of money each Gym directly paid to Varsity during the Class Period. Gym Class members will have the ability to rely upon a pre-printed form containing data reflecting each Gym's payments to Varsity in submitting claims.

Because DPPs do not have records of all or most Spectator Class ticket expenditures, the Spectator Class Tranche will be allocated, for each Spectator Class member who submits a claim form, by providing a flat amount per Spectator per Event ($10) with a cap for each Spectator

Class member ($200). To combat fraud, the plan will require claimants to submit information about the Event attended, including one or more of the following criteria, among others: name of the athlete Spectator came to see, method of payment (and receipt if available), date and location of Event, etc.

4. Notice and Settlement Administration Costs.

DPPs have retained Angeion, a highly experienced, well-regarded, third-party administrator to provide notice to the Settlement Classes and to handle the administration of the claims. The proposed Notice Plan is described in the Declaration of Steven Weisbrot, Esq. of Angeion ("Weisbrot Decl.") (attached hereto as Exhibit 3). The proposed forms of the notices ("Proposed Notices") include: (1) a long form that will be mailed to all members of the Gym Class for whom Varsity has current addresses, and (2) a publication notice to be published in periodicals widely read by members of the Settlement Classes. Each communicates members of the Settlement Classes' rights and options under the Settlement in plain, easily understood language, are attached as exhibits B and C to the Weisbrot Decl. (Exh. 3 hereto).[9]

5. Release.

In exchange for the monetary and prospective relief, Defendants and certain related parties identified in the SA will receive a release of all claims Gym and Spectator Class members brought or could have brought arising out of the nucleus of operative facts set out in the CAC through the Execution Date of the SA. The release is narrowly tailored to the claims and allegations arising out of this Action and takes care not to release (a) certain unrelated claims that

[9] All Notice and Administrative Costs will be paid from the Settlement Fund. SA § 35. Settlement Class Counsel may withdraw money from the Settlement Fund to pay for expenses associated with providing notice of the Settlement to the Classes. *Id*.

might arise between the parties in the "ordinary course," SA § 23, and (b) claims being asserted based on indirect purchases from Varsity (*i.e.*, the *Jones* plaintiffs) under state law. *Id*.

6. Attorneys' Fees and Costs for Class Counsel and Service Awards for Class Representatives.

Settlement Class Counsel intends to make an application to the Court for a reasonable attorneys' fee award in an amount not to exceed one-third of the gross Settlement Fund (*i.e.*, 1/3 of $43.5 million or $14.5 million), plus one-third of any accrued interest, plus reasonable expenses incurred during the litigation of this case not to exceed $2.25 million.

DPPs will also seek service awards for Class Representatives to be paid from the Settlement Fund, in an amount up to $20,000 for each of the three Gym Class Representatives and $5,000 for each of the three Spectator Class Representatives ($75,000 total).[10] Each class representative produced documents and sat for a deposition, and each devoted substantial time and energy to the matter. Joint Decl. ¶ 16. The Gym Class representatives, in particular, took significant risks on behalf of the Settlement Classes. But for the service of the Class Representatives, significant structural changes to the sport of All Star Cheer would not have been achieved, and members of the Settlement Classes would be uncompensated. *See In re Linerboard Antitrust Litig.*, 2004 WL 1221350, at *18 (E.D. Pa. June 2, 2004) (noting that service awards were "particularly appropriate in this case because there was no preceding governmental action alleging a conspiracy").

[10] Recent service awards for class representatives in other antitrust cases in this Circuit have ranged from $10,000 to $200,000. *See, e.g.*, *In re Southeastern Milk Antitrust Litig.*, 2013 WL 2155387, at *8 (E.D. Tenn. May 17, 2013) (awarding $10,000 to each of the 16 class representatives); *In re Skelaxin (Metaxalone) Antitrust Litig.*, 2014 WL 2946459, at *4 (E.D. Tenn. June 30, 2014) (awarding $50,000 each to the class representatives); *The Hospital Authority of Metropolitan Government of Nashville v. Momenta Pharmaceuticals, Inc.*, 2020 WL 3053468, at *2 (M.D. Tenn. May 29, 2020) (awarding $200,000 each to the class representatives).

ARGUMENT

A. THE PROPOSED SETTLEMENT MEETS THE SIXTH CIRCUIT'S STANDARDS FOR APPROVAL

This Court should preliminarily approve the Settlement. Sixth Circuit law favors and encourages settlements—particularly in class actions and other complex matters where the inherent costs, delays, and risks of protracted litigation might otherwise overwhelm any potential benefit the class could hope to obtain. *See, e.g.*, *Int'l Union, United Auto., Aerospace, & Agr. Implement Workers of Am. v. Gen. Motors Corp*., 497 F.3d 615, 632 (6th Cir. 2007) ("*UAW*") (noting "the federal policy favoring settlement of class actions").

Approval of this proposed class action settlement proceeds in two steps. First, the court grants preliminary approval to the settlement and provisionally certifies a settlement class. Second, after notice of the settlement is provided to the class and the court conducts a fairness hearing, the court may grant final approval of the settlement. *See* The Manual For Complex Litigation (Fourth) § 21.63 ("Manual"); *see also Bobbitt v. Acad. of Reporting Inc.*, 2009 WL 2168833, at *1 (E.D. Mich. Jul. 21, 2009) (citing authorities).[11]

Rule 23(e)(1)(B)(i) directs a court to determine, at the preliminary approval stage, whether it "will likely be able to ... approve the proposal under Rule 23(e)(2)." *Busby v. Bonner*, 2021 WL 4127775, at *2 (W.D. Tenn. Jan. 28, 2021) (Lipman, J.). Under Rule 23(e)(2), a court must review whether the proposed settlement is "fair, reasonable, and adequate after considering" four factors: (i) the class representatives and class counsel have adequately

[11] At the final Fairness Hearing, the Court will determine whether the proposed Settlement satisfies Fed. R. Civ. P. 23(e), providing that a court may approve a proposed class settlement "on finding that it is fair, reasonable, and adequate." *See* Fed. R. Civ. P. 23(e)(2); *see also In re Skechers Toning Shoe Prods. Liab. Litig*., 2012 WL 3312668, at *8 (W.D. Ky. Aug. 13, 2012); *In re Inter-Op Hip Prosthesis Liab. Litig*., 204 F.R.D. 330, 352 (N.D. Ohio 2001).

represented the class; (ii) the proposal was negotiated at arm's length; (iii) the relief provided for the class is adequate; and (iv) the proposal treats class members equitably relative to each other. Fed. R. Civ. P. 23(e)(2)(A)-(D); *Fitzgerald v. P.L. Mktg., Inc*., 2020 WL 7764969, at *11 (W.D. Tenn. Feb. 13, 2020) (explaining that, effective December 1, 2018, Rule 23(e) sets out "a new rubric" of four factors to consider when determining whether to grant preliminary approval of a class action settlement).

The Rule 23(e) factors overlap with the Sixth Circuit's factors for considering a settlement's fairness, reasonableness, and adequacy: (1) the risk of fraud or collusion; (2) the complexity, expense and likely duration of the litigation; (3) the amount of discovery engaged in by the parties; (4) the likelihood of success on the merits; (5) the opinions of class counsel and class representatives; (6) the reaction of absent class members; and (7) the public interest. *UAW*, 497 F.3d at 631.

Here, the SA: (1) was entered into after adequate representation and arm's-length negotiation before an experienced mediator, extensive factual and legal investigation, and more than 2.5 years of hard-fought litigation; (2) provides significant relief for the Settlement Classes in light of the risks, costs, and length of continued litigation; and (3) in the opinion of experienced proposed Settlement Class Counsel, has no deficiencies and treats Class Members equitably. Accordingly, proposed Settlement Class Counsel believe that the SA is in the best interests of the Settlement Classes and should be preliminarily approved.

1. The Settlement Was Reached after Adequate Representation and Arm's-Length Negotiation.

The first two Rule 23(e)(2) factors support preliminary approval. The SA here is the result of lengthy and hard-fought litigation over two-and-a-half years, and intense negotiations, with the assistance of a preeminent mediator, between counsel experienced in complex antitrust

class action litigation. Joint Decl. ¶¶ 22-26. With extensive fact discovery and expert depositions complete, proposed Settlement Class Counsel were well-informed about the facts and strengths of the claims asserted when the most recent negotiations began. These negotiations included a full-day in-person mediation on January 10, 2023, before Hon. Layn Phillips of Phillips ADR, and follow-up discussions for weeks afterwards overseen by Miles N. Ruthberg, Esq. also of Phillips ADR. Joint Decl. ¶¶ 22-23.

These negotiations were adversarial and conducted in the utmost good faith. "Courts presume the absence of fraud or collusion in class action settlements unless there is evidence to the contrary." *Leonhardt v. ArvinMeritor, Inc.*, 581 F. Supp. 2d 818, 838 (E.D. Mich. 2008); *Bowers v. Windstream Ky. East, LLC*, 2013 WL 5934019, at *2 (W.D. Ky. Nov. 1, 2013). Because the Settlement "arose out of arms-length, non-collusive negotiations[,]" the primary procedural factor is met and the Court may presume the settlement to be fair, adequate, and reasonable. Wm. B. Rubinstein, *Newberg and Rubenstein on Class Actions* § 13.14 (6th ed. 2022).

2. The Proposed Settlement Provides Adequate Relief in Light of the Risks, Costs, and Length of Continued Litigation.

Rule 23(e)(2)(C) requires a court to consider whether "the relief provided for the class is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3)." Each of these factors supports preliminarily approving the Settlement.

The Settlement is meaningful and substantial and will result in cash payments totaling $43.5 million for the benefit of the Settlement Classes. Standing alone, the monetary recovery—

which constitutes a significant portion of the maximum potential damages recovery as computed by DPPs' economist (Dr. Singer)—is sufficient. Joint Decl. ¶ 24. But the Settlement also provides additional value to the Settlement Classes in the form of significant prospective relief involving important changes to Defendants' business practices that unwind some of the key conduct that DPPs had challenged as anticompetitive. In DPPs' view, the prospective relief has the potential to facilitate competition for the entire All Star Cheer Event industry benefitting all members of the Settlement Classes. *Id.*, ¶ 26.

Further, the substantial relief obtained was achieved without the benefit of a governmental investigation or intervention, but instead proceeded solely through the initiative, investigation, and resources of private parties and counsel. Rather than risking an adverse verdict at trial, and years of uncertain appeals, DPPs took advantage of a unique opportunity—after fact discovery closed, expert reports were exchanged, and experts were deposed—to negotiate a Settlement that provides immediate, certain, and meaningful relief to all members of the Settlement Classes. Accordingly, this factor weighs in favor of preliminary approval.[12]

Continued litigation would be risky, costly, and lengthy. Antitrust class actions are "arguably the most complex action[s] to prosecute. The legal and factual issues involved are always numerous and uncertain in outcome." *In re Packaged Ice Antitrust Litig.*, 2011 WL 6209188, at *19 (E.D. Mich. Dec. 13, 2011) ("*Packaged Ice II*") (quoting *In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d 631, 639 (E.D. Pa. 2003)); *see also In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508, 533 (E.D. Mich. 2003) ("*Cardizem II*") ("Antitrust class actions are inherently complex").

[12] *See Borcea v. Carnival Corp.*, 238 F.R.D. 664, 674 (S.D. Fla. 2006) (noting that "[i]t has been held proper to take the bird in the hand instead of a prospective flock in the bush") (internal quotation marks omitted).

Here, class certification was expected to be aggressively fought by Defendants (including with a potential interlocutory appeal to the Sixth Circuit). Further, while DPPs were confident of their ability to prevail in front of a Memphis jury, a trial on the issues in the case would have exposed the Classes to significant risk.

Defendants would likely have asserted various arguments and defenses at trial, and a jury trial might well turn on questions of proof, many of which would be the subject of dueling expert testimony, particularly regarding causation and damages, making the outcome of such trial uncertain for both parties. *See, e.g.*, *Cardizem II*, 218 F.R.D. at 523 ("[t]he prospect of a trial necessarily involves the risk that Plaintiffs would obtain little or no recovery" and that "no matter how confident trial counsel may be, they cannot predict with 100% accuracy a jury's favorable verdict, particularly in complex antitrust litigation"); *Packaged Ice II*, 2011 WL 6209188, at *12 (noting "undeniable inherent risks" in antitrust class actions, including "whether the class will be certified and upheld on appeal, whether the conspiracy as alleged in the Complaint can be established, whether Plaintiffs will be able to demonstrate class wide antitrust impact and ultimately whether Plaintiffs will be able to prove damages").[13]

Finally, the passage of time would introduce still more risks in terms of appeals and possible changes in the law that would, in light of the time value of money, make future recoveries less valuable than recovery today.[14] Hence, "the certain and immediate benefits to the

[13] Moreover, given the stakes involved, an appeal would have been nearly certain to follow regardless of the outcome at trial. This creates additional risk, as judgments following trial may be overturned on appeal. *See, e.g.*, *In re Farmers Ins. Exchange, Claims Representatives' Overtime Pay Litig.*, 481 F.3d 1119 (9th Cir. 2007) ($52.5 million class action judgment following trial reversed on appeal); *Robbins v. Koger Props., Inc.*, 116 F.3d 1441 (11th Cir. 1997) (jury verdict of $81 million for plaintiffs reversed and judgment entered for defendant).

[14] *See In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 536 (3d Cir. 2004) ("[I]t was inevitable that post-trial motions and appeals would not only further prolong the litigation but

Class represented by the Settlement outweigh the possibility of obtaining a better result at trial, particularly when factoring in the additional expense and long delay inherent in prosecuting this complex litigation through trial and appeal." *Cardizem II*, 218 F.R.D. at 525.

3. The Proposed Settlement Has No Obvious Deficiencies and Treats Class Members Equitably.

The Settlement "has no obvious deficiencies [and] does not improperly grant preferential treatment to Class Representatives[.]" *In re Packaged Ice Antitrust Litig.*, 2010 WL 5638219, at *1 (E.D. Mich. Sept. 2, 2010) ("*Packaged Ice I*"). As discussed above, the recovery constitutes a significant and certain benefit for members of the Settlement Classes. All members of the Settlement Classes, including Class Representatives, will be treated fairly and in a similar manner, each recovering their *pro rata* share of the Net Settlement Fund according to a Court-approved Plan of Allocation. Nothing during the negotiations or the terms of the Settlement itself presents any grounds to doubt the fairness of the Settlement. Rather, the substantial relief, the arm's-length nature of the negotiations, and the participation of sophisticated proposed Settlement Class Counsel and their experts throughout the litigation, support a finding that the proposed Settlement has no obvious deficiencies and fairly treats all members of the Settlement Classes.

B. THE COURT SHOULD PROVISIONALLY CERTIFY THE PROPOSED SETTLEMENT CLASSES

To preliminarily approve the Settlement, the Court must also find that it will likely be able to certify the class for purposes of judgment on the proposal. Fed. R. Civ. P. 23(e)(1)(B)(i–

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also reduce the value of any recovery to the class."); *In re Rent-Way Sec. Litig.*, 305 F. Supp. 2d 491, 501 (W.D. Pa. 2003) ("[A] future recovery, even one in excess of the proposed Settlement, may ultimately prove less valuable to the Class than receiving the benefits of the proposed Settlement at this time").

ii). Under Rule 23, class actions may be certified for settlement purposes only. *See, e.g.*, *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997). A court may grant certification in light of settlement where, as here, the proposed settlement classes satisfy the four prerequisites of Rule 23(a) (numerosity, commonality, typicality and adequacy), as well as one of the three subsections of Rule 23(b). *See Packaged Ice I*, 2010 WL 5638219, at *1.

1. The Requirements of Rule 23(a) Are Satisfied.

a. Numerosity.

Fed. R. Civ. P. 23(a)(1) requires that the class be so numerous as to make joinder of its members "impracticable." Based on discovery in the case and the investigation of their experts, proposed Settlement Class Counsel believe that the proposed Gym Class contains more than two thousand Gyms, and the proposed Spectator Class consists of tens of thousands of individuals. Joint Decl. ¶ 24. "While no strict numerical test exists, 'substantial' numbers of affected consumers are sufficient to satisfy this requirement." *Young v. Nationwide Mut. Ins. Co.*, 693 F.3d 532, 541 (6th Cir. 2012) (internal citations omitted). As a result of the large number of members of the Settlement Classes and their geographic distribution throughout the United States, joinder is impracticable.

b. Commons Questions of Law and Fact.

Commonality under Fed. R. Civ. P. 23(a)(2) requires only a single factual or legal issue common to all class members. *Hicks v. State Farm Fire and Casualty Co*., 965 F.3d 452, 458 (6th Cir. 2020); *In re Whirlpool Corp. Front-Loading Washer Products Liab. Litig.*, 722 F.3d 838, 853 (6th Cir. 2013) ("*Whirlpool")*. Many factual and legal issues are common, including whether Varsity had market power, whether the Defendants conspired, and whether the challenged conduct violated the antitrust laws. *See J.B.D.L. Corp. v. Wyeth–Ayerst Labs., Inc.,* 225 F.R.D. 208, 213 (S.D. Ohio 2003) ("at a minimum it appears that whether [defendant]

acquired and/or maintained a monopoly through anticompetitive means is an issue common to all members of the class"). Commonality has been satisfied here.

c. Typicality.

Proposed class representatives' claims are typical under Fed. R. Civ. P. 23(a)(3) if those claims are based on the same course of conduct as those of other class members and the same legal theory. *Yost v. First Horizon Nat. Corp*., 2011 WL 2182262, at *8 (W.D. Tenn. June 3, 2011) (citing *In re Am. Med. Sys., Inc*., 75 F.3d 1069, 1082 (6th Cir. 1996)). Here, the claims of the members of each Settlement Class are based on the same challenged conduct and the same antitrust theories, and the Class Representatives for each Settlement Class seek the same overcharge damages as the absent Settlement Class Members. *Cason-Merenda v. VHS of Mich., Inc.*, 296 F.R.D. 528, 537 (E.D. Mich. 2013) ("In the antitrust context, typicality is established when the named plaintiffs and all class members allege[] the same antitrust violation by defendants.") (internal citation omitted). Typicality is satisfied.

d. Adequacy.

Adequacy under Fed. R. Civ. P. 23(a)(4) requires that class counsel and the class representatives vigorously pursue the interests of the absent class members and share common interests. *Busby v. Bonner*, 466 F. Supp. 3d 821, 833 (W.D. Tenn. 2020) (citing *In re Am. Med. Sys*., 75 F.3d at 1083). The Sixth Circuit "looks to two criteria for determining whether the representation of the class will be adequate: (1) [t]he representative must have common interests with unnamed members of the class, and (2) it must appear that the representatives will vigorously prosecute the interests of the class through qualified counsel." *Senter v. Gen. Motors Corp.*, 532 F.2d 511, 524-25 (6th Cir. 1976). Courts "review[] the adequacy of class representation to determine whether class counsel are qualified, experienced and generally able to conduct the litigation." *Nationwide*, 693 F.3d at 543. Here, proposed Settlement Class Counsel

are experienced and capable at prosecuting antitrust class actions and have dedicated millions of dollars of their time and millions of dollars in hard costs litigating on behalf of the proposed Settlement Classes for nearly three years. Similarly, the proposed Class Representatives have fulfilled their duties throughout the litigation and carried the burden of their discovery and other obligations.

Proposed Settlement Class Counsel and Class Representatives of each of the Settlement Classes also have no conflicts of interest with absent members of the Settlement Classes they seek to represent. To render counsel or a class representative inadequate, a conflict must be fundamental, central to the lawsuit, and nonspeculative. *See In re Polyurethane Foam Antitrust Litig.*, 314 F.R.D. 226, 238-41 (N.D. Ohio 2014) ("to forestall class certification the intra-class conflict must be so substantial as to overbalance the common interests of the class members as a whole"); *Int'l Union v. Ford Motor Co.*, 2006 WL 1984363, at *20 (E.D. Mich. July 13, 2006) ("[O]nly a conflict that goes to the very subject matter of the [claims] will defeat a party's claim to representative status"); *In re Corrugated Container Antitrust Litig.*, 643 F.2d 195, 208 (5th Cir. 1981) (certifying settlement class and holding that "so long as all class members are united in asserting a common right, such as achieving the maximum possible recovery for the class, the class interests are not antagonistic for representation purposes" (internal quotation marks and citation omitted)).

Fed. R. Civ. P. 23(g) also requires the Court to examine the capabilities and resources of class counsel to determine whether they will provide adequate representation to the class. The proposed Settlement Classes are represented by counsel with extensive experience in antitrust and class action litigation. *See Marcus v. Kan., Dep't of Revenue*, 206 F.R.D. 509, 512 (D. Kan. 2002) ("In absence of evidence to the contrary, courts will presume the proposed class counsel is

adequately competent to conduct the proposed litigation"). Proposed Settlement Class Counsel have vigorously prosecuted the class claims for almost three years through completion of fact discovery and the taking of expert depositions. The Court should appoint them Settlement Class Counsel.

2. The Proposed Settlement Classes Satisfy Rule 23(b)(3).

DPPs also show that the proposed Settlement Classes qualify for certification under Rule 23(b)(3), because the Settlement Classes each meets two requirements beyond the Rule 23(a) prerequisites: common questions predominate over any questions affecting only individual members; and class resolution is superior to other available methods for the fair and efficient adjudication of the controversy. *Amchem*, 521 U.S. at 615; *see also In re Scrap Metal Antitrust Litig.*, 527 F.3d 517, 535 (6th Cir. 2008) ("*Scrap Metal*").

a. Common Questions of Law and Fact Predominate.

Predominance of common questions is satisfied here, especially in light of settlement. "Rule 23(b)(3) does not mandate that a plaintiff seeking class certification prove that each element of the claim is susceptible to classwide proof." *Whirlpool*, 722 F.3d at 859. Instead, "a claim will meet the predominance requirement when there exists generalized evidence which proves or disproves an element on a simultaneous, class-wide basis, since such proof obviates the need to examine each class member's individual position." *In re Cardizem CD Antitrust Litig.*, 200 F.R.D. 297, 307 (E.D. Mich. 2001) ("*Cardizem I*"). Common questions need only predominate; they need not be dispositive of the litigation. *Id.* (citing *In re Potash Antitrust Litig.*, 159 F.R.D. 682, 693 (D. Minn. 1995)); *cf. Scrap Metal*, 527 F.3d at 535-36 (holding issues regarding the amount of damages do not destroy predominance). "[T]he 'mere fact that questions peculiar to each individual member of the class action remain after the common questions of the defendant's liability have been resolved does not dictate the conclusion that a

class action is impermissible.'" *Cason-Merenda v. VHS of Mich., Inc.*, 296 F.R.D., at 535 (quoting *Powers v. Hamilton Cnty. Public Defender Comm.*, 501 F.3d 595, 619 (6th Cir. 2007)). Further, the Supreme Court has instructed that "Rule 23(b)(3) requires a showing that *questions* common to the class predominate, not that those questions will be answered, on the merits, in favor of the class." *Amgen, Inc. v. Conn. Retirement Plans and Trust Funds*, 568 U.S. 455, 459 (2013).

The litigation here focused overwhelmingly on common issues. DPPs' claim for monopolization requires that "(1) Defendants have monopoly power in a certain market (2) obtained or maintained through willful anticompetitive conduct (3) that caused rising prices or lowering of output." *Order Denying the Defendants Varsity Brands, LLC, Varsity Spirit, LLC, Varsity Spirit Fashion & Supplies, LLC, and U.S. All Star Federal, Inc.'s Motions to Dismiss*, Aug. 26, 2021, ECF 141 (citing *Conwood Co., L.P. v. U.S. Tobacco Co.*, 290 F.3d 768, 782 (6th Cir. 2002)). The conspiracy to monopolize claim also requires proof of coordination between the Defendants. *Id*. at 19. As with most antitrust class actions, each element turns on evidence common to the Settlement Classes as a whole: either Varsity had monopoly power or it didn't as to all Settlement Class Members; either Defendants engaged in conduct in violation of the antitrust laws or they did not; whether Defendants' conduct led to anticompetitive effects or it did not as to all. *Scrap Metal*, 527 F.3d at 535 (quoting *Amchem*, 521 U.S. at 625) ("[p]redominance is a test readily met in certain cases alleging . . . violations of the antitrust laws, because proof of the *conspiracy* is a common question that is thought to predominate over the other issues of the case").

This Court's inquiry in the context of settlement class certification is even easier. In *Amchem*, the Supreme Court recognized that the fact of a "[s]ettlement is relevant to a class

certification[,]" 521 U.S. at 619, and specifically instructed that the portion of the predominance analysis that typically focuses on the management of the trial becomes unnecessary and irrelevant when a class is being certified in light of settlement. *Id*. at 620. *See also Sullivan v. DB Investments, Inc.*, 667 F.3d 273, 306 (3d Cir. 2011) (court need not "consider the available evidence and the method or methods by which plaintiffs propose to use the evidence to prove the disputed element at trial") (quotation omitted). As the Supreme Court has observed, even in a litigation class context, "[p]redominance is a test readily met in certain cases alleging . . . violations of the antitrust laws," *Amchem*, 521 U.S. at 625, because they present issues that are capable of proof by generalized evidence that "are more substantial than the issues subject only to individualized proof." *Roach v. T.L. Cannon Corp.*, 778 F.3d 401, 405 (2d Cir. 2015) (quotation omitted). Members of the Settlement Classes' claims all focus on the same operative set of facts and legal theories. They allege that they were all harmed by Defendants' same conduct, and the evidence of conspiracy would be entirely common if presented in a litigation posture—which, again, is not at issue here, because the proposal is there would be no trial, and in turn, no evidence. In sum, the predominance requirement for a settlement class is met here as "[a]ll claims arise out of the same course of defendants' conduct; [and] all share a common nucleus of operative fact, supplying the necessary cohesion." *In re Am. Int'l Grp., Inc. Sec. Litig.*, 689 F.3d 229, 240 (2d Cir. 2012) (quotation omitted).

b. A Class Action Is the Superior Method to Adjudicate These Claims.

Rule 23(b)(3) also requires that a class action be superior to other available methods of fairly adjudicating the controversy. The superiority of class certification is measured by consideration of certain factors, including: the class members' interests in controlling the prosecution of individual actions; the extent and nature of any litigation concerning the controversy already begun by or against class members; the desirability of concentrating the

litigation of various claims in the particular forum; and the likely difficulties in managing a class action. *See Dillworth v. Case Farms Processing, Inc.*, 2010 WL 776933, at *4 (N.D. Ohio Mar. 8, 2010).

Courts consistently hold that class actions are a superior method of resolving antitrust claims like those alleged here. *See, e.g.*, *In re Southeastern Milk Antitrust Litig.*, 2010 WL 3521747, at *12 (E.D. Tenn. Sept. 7, 2010) (noting that litigation of antitrust claims "is complex, its prosecution is costly, and the members with smaller damages claims likely have fewer resources with which to fund individual litigation"). Here, the interests of the members of the proposed Settlement Classes in individually controlling the prosecution of separate claims are outweighed by the efficiency of the class mechanism. *See Cardizem I*, 200 F.R.D. at 325-26 (finding that class action is superior because it ensures fair and efficient adjudication). Settling this case as a class action will conserve both judicial and private resources and would hasten the members of the Settlement Classes' recoveries.

C. THE COURT SHOULD AUTHORIZE DISSEMINATION OF NOTICE TO THE SETTLEMENT CLASSES

Rule 23(c)(2)(B) requires a certified class to receive "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Similarly, Rule 23(e)(1) requires a court to "direct notice in a reasonable manner to all class members who would be bound by the proposal." *See also Gooch v. Life Inv. Ins. Co. of Am.*, 672 F.3d 402, 423 (6th Cir. 2012) (All that notice must do "is fairly apprise … prospective members of the class of the terms of the proposed settlement so that class members may come to their own conclusions about whether the settlement serves their interests") (internal quotation marks and citation omitted). The notice may be provided by

"United States mail, electronic means, or other appropriate means." Fed. R. Civ. P. 23(c)(2). The Notice and dissemination plan readily meets these standards.[15]

As explained in the Weisbrot Decl., Angeion, in consultation with proposed Settlement Class Counsel, has designed a proposed Notice Program that will use direct notice via U.S Mail to all reasonably identifiable members of the Gym Class from the records of Varsity produced in the litigation and pursuant to the SA. Weisbrot Decl., ¶¶ 14-26. The Spectator Class will have a multi-tiered, robust media campaign strategically designed to provide notice to the Spectator Class. *Id*., ¶¶ 27-41. The media campaign includes (i) using an interest-based approach for Facebook and Instagram users, (ii) a search campaign on Google to drive members of the Settlement Classes who are actively searching for information about the Settlement to the dedicated Settlement Website (www.AllStarCheerAntitrustSettlement.com), and (iii) publication of notice in cheerleading magazines and digital banner ads and notice via Inside Cheerleading's e-newsletter. *Id.*, ¶¶ 26; 37-41. Additionally, there will be a toll-free telephone line where members of the Settlement Classes can learn more about their rights and options pursuant to the terms of the Settlement. *Id.*, ¶ 43.

The Notice Plan will also implement the creation of a case-specific Settlement Website, where members of the Settlement Classes can easily view general information about this Settlement, review relevant Court documents, and view important dates and deadlines pertinent to the Settlement. *Id.*, ¶ 42. The Settlement Website will be user-friendly and make it easy for members of the Settlement Classes to find information about this case. The Settlement Website will also have a "Contact Us" page whereby members of the Settlement Classes can send an email with any additional questions to a dedicated email address. Likewise, members of the

[15] Proposed drafts of the Class Notices are attached as Exhibits to the Weisbrot Decl.

Settlement Classes will also be able to submit a claim form online via the Settlement Website and securely upload documentation. *Id.*

D. THE COURT SHOULD APPOINT ANGEION AS SETTLEMENT ADMINISTRATOR

DPPs ask the Court to appoint Angeion to oversee the administration of the Settlement, including disseminating notice to the Settlement Classes, calculating each Settlement Class Member's *pro rata* share of the Settlement Fund, and distributing the funds. Angeion is an experienced settlement and claims administration firm with sophisticated technological capabilities and is staffed by personnel well-versed in antitrust issues and class action litigation. DPPs will also involve Econ One in the computation of *pro rata* shares. Econ One is the economic consulting firm with which their primary economist, Dr. Hal Singer, is associated. Angeion, with oversight from proposed Settlement Class Counsel and Econ One, will handle all aspects of providing notice to potential members of the Settlement Classes and administering their claims, including mailing and publishing the notice, managing a call center and website to handle all questions regarding completion and submission of the claim forms, physically processing the claims and inputting the data on computers, reviewing claims, informing members of the Settlement Classes about the completeness or possible deficiency of their claims, and ultimately distributing the Settlement Fund, subject to Court approval.

E. THE COURT SHOULD APPOINT HUNTINGTON AS ESCROW AGENT

DPPs ask that Huntington be appointed as the Escrow Agent. Huntington is a highly respected bank providing consumers, corporations, and others with a broad range of financial services. Huntington has served as escrow agent in many other antitrust class actions and should also be appointed as Escrow Agent here. *See, e.g.*, *In re EpiPen (Epinephrine Injection, USP) Marketing, Sales Practice and Antitrust Litig.*, No. 17-md-2785, ECF No. 2594 (D. Kan. Mar.

11, 2022); (order granting preliminary approval motion and appointing Huntington Bank as an escrow agent); *In re Opana ER Antitrust Litig.*, No. 14-cv-10150, ECF No. 1069 (N.D. Ill. Aug. 24, 2022) (same).

F. THE COURT SHOULD SCHEDULE A FAIRNESS HEARING TO APPROVE THE SETTLEMENT

The last step in the settlement approval process is the final approval hearing at which the Court may hear all evidence necessary to evaluate the proposed Settlement. At that hearing, proponents of the Settlement may explain and describe their terms and conditions and offer argument in support of the Settlement's approval, and members of the Settlement Classes or their counsel may be heard regarding the proposed Settlement if they choose. DPPs propose the following schedule of events necessary for a hearing on final approval of the Settlement:

DATE	EVENT
Within 30 days after preliminary approval	Settlement Administrator to (i) provide direct mail notice to the Gym Class and (ii) commence the multi-tiered, robust media campaign publication notice plan to the Spectator Class.
Within 75 days after preliminary approval	Settlement Class Counsel shall file a motion for attorneys' fees, unreimbursed litigation costs and expenses, and service awards for the Class Representatives, pursuant to the terms of the Settlement Agreement.
Within 100 days after preliminary approval	Class Members may request exclusion from the Settlement Classes or submit any objection to the proposed Settlement or to Settlement Class Counsel's request for attorneys' fees, unreimbursed litigation costs and expenses, and service awards to the Class Representatives. All requests for objection must include the following: (1) the name of the case (*Fusion Elite All Stars, et al. v. Varsity Brands, LLC, et al.*, Case No. 2:20-cv-02600-SHL-tmp); (2) the individual or entity name and address and if represented by counsel, the name, address, and telephone number of counsel; (3) proof of membership in the proposed Gym Class or a sworn statement with supporting details indicating that the individual is a member

	of the proposed Spectator Class; (4) a statement detailing all objections to the Settlement; and (5) a statement of whether the individual or entity will appear at the Fairness Hearing, either with or without counsel. All requests for exclusion from the Classes should also include (a) the name of the case (*Fusion Elite All Stars, et al. v. Varsity Brands, LLC, et al.*, Case No. 2:20-cv-02600-SHL-tmp); (b) the individual or entity name, address, and telephone number; and (c) proof of membership in the proposed Gym Class or Spectator Class, which for the latter would include a sworn statement with supporting details indicating that the individual is a member of the proposed Spectator Class.
Within 21 days after the exclusion / objection deadline	No later than 21 days after the expiration of deadline for Class Members to request exclusion or object to the proposed Settlement and/or attorneys' fees, expenses, and service awards, Settlement Class Counsel will file all briefs and materials in support of final approval of the Settlement.
At least 30 days after the exclusion / objection deadline[16]	Final Settlement Fairness Hearing

CONCLUSION

For the foregoing reasons, DPPs respectfully request that the Court grant this motion in its entirety and enter an order: (i) granting preliminary approval of the Settlement Agreement; (ii) provisionally certifying the proposed Settlement Classes under Fed. R. Civ. P. 23; (iii) appointing the six named plaintiffs as Class Representatives and Berger Montague PC, DiCello Levitt LLC, and Cuneo Gilbert & LaDuca, LLP as Settlement Class Counsel; (iv) approving the notice plan for the Settlement Classes; (v) appointing Angeion as Settlement Claims Administrator, (vi) appointing Huntington as Escrow Agent; and (vii) approving the proposed schedule or completing the settlement process and setting a date for a final Fairness Hearing.

[16] Under the proposed schedule, the earliest date a Fairness Hearing could likely take place is August 14, 2023.

Dated: March 24, 2023

Respectfully submitted,

/s/ Eric L. Cramer

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EXHIBIT 1

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

FUSION ELITE ALL STARS, et al.,

Plaintiffs,

v.

VARSITY BRANDS, LLC, et al.,

Defendants.

Civ. Action No. 2:20-cv-02600

SETTLEMENT AGREEMENT

This Agreement is made and entered into this 15th day of March, 2023 ("Execution Date") by and between Defendants and Direct Purchaser Plaintiffs, both individually and on behalf of the Settlement Classes specified herein.

WHEREAS, Direct Purchaser Plaintiffs are prosecuting the Action on their own behalf and on behalf of the Settlement Classes;

WHEREAS, Direct Purchaser Plaintiffs allege that they were injured as a result of certain conduct of Defendants as set out in the consolidated complaint in the Action;

WHEREAS, Defendants deny Direct Purchaser Plaintiffs' allegations and have asserted defenses to Direct Purchaser Plaintiffs' claims in the Action;

WHEREAS, arm's-length settlement negotiations have taken place between Settlement Class Counsel and counsel for Defendants, with the assistance of experienced mediators, and this Agreement has been reached as a result of those negotiations;

WHEREAS, Direct Purchaser Plaintiffs, through Interim Co-Lead Class Counsel, have conducted an investigation into the facts and the law regarding the Action and have concluded

that resolving the claims against Defendants according to the terms set forth herein is in the best interest of Direct Purchaser Plaintiffs and the Settlement Classes;

WHEREAS, this Agreement, if it receives Final Approval, will resolve the Action;

WHEREAS, Defendants, despite their belief that they are not liable for the claims asserted and their belief that they have good defenses thereto, have nevertheless agreed to enter into this Agreement to avoid further expense, inconvenience, and the distraction of burdensome and protracted litigation, and to obtain the releases, orders, and judgment contemplated by this Agreement, and to put to rest with finality all claims arising out of the nucleus of operative facts in the consolidated complaint in the Action that have been or could have been asserted against Defendants in the Action (defined below as "Released Claims");

NOW, THEREFORE, in consideration of the covenants, agreements, and releases set forth herein and for other good and valuable consideration, and intending to be legally bound, it is agreed by and between Defendants and Direct Purchaser Plaintiffs, both individually and on behalf of the Settlement Classes, that the Action be settled, compromised, and dismissed on the merits with prejudice as to the Releasees and, except as hereinafter provided, without costs as to Direct Purchaser Plaintiffs, the Settlement Classes, or Defendants, subject to the approval of the Court, on the following terms and conditions:

1. This Agreement shall be construed and interpreted to effectuate the intent of the Parties, which is to provide, through this Agreement, for a complete resolution of the Released Claims with respect to each Releasee as provided in this Agreement in exchange for the payment of the Settlement Amount by Defendants and other consideration and commitments set forth herein.

A. Definitions.

2. The definitions in this section apply throughout the Agreement wherever the defined terms are used, including in the preamble. Other definitions are contained in the text of the Agreement and indicated as such.

3. "Agreement" means this settlement agreement.

4. "Action" means the case captioned *Fusion Elite All Stars, et al. v. Varsity Brands, LLC, et al.*, pending in the United States District Court for the Western District of Tennessee, Civil Action No. 2:20-cv-02600.

5. "Defendants" means Defendants in the Action, in particular Varsity Brands, LLC, Varsity Spirit, LLC, Varsity Spirit Fashions & Supplies, LLC (collectively, "Varsity"), and the U.S. All Star Federation, Inc. (the "USASF").

6. "Direct Purchaser Plaintiffs" means those members of the Settlement Classes who are Plaintiffs in the Action, namely: Fusion Elite All Stars; Spirit Factor LLC d/b/a Fuel Athletics; Stars and Stripes Gymnastics Academy Inc. d/b/a Stars and Stripes Kids Activity Center; Kathryn Anne Radek; Lauren Hayes; and Janine Cherasaro.

7. "Parties" means Defendants and Direct Purchaser Plaintiffs and "Party" shall mean any one of the Parties.

8. "Releasees" shall refer jointly and severally, individually and collectively, to Defendants, their respective past and present, direct and indirect, parents, subsidiaries, affiliates, divisions, predecessors, successors, and insurers, and their respective past and present officers, directors and employees. "Releasees" shall also include any direct or indirect majority or minority investor in any Releasee, as well as their respective past and present, direct and indirect, parents, subsidiaries, affiliates, divisions, predecessors, successors, indemnitors, and insurers,

and their respective past and present officers, directors, advisors, independent consultants, partners, and employees, and any entity that managed, manages, advised, or advises any fund or managed account that made a direct or indirect investment in any Releasee at any time and, as to each such entity, its past and present, direct and indirect, parents, subsidiaries, affiliates, divisions, predecessors, successors, indemnitors, and insurers, and their respective past and present officers, directors , advisors, independent consultants, partners, and employees. Without in any way limiting the foregoing, Releasees shall include all of the entities listed in Appendix A as well as their respective past and present, direct and indirect, parents, subsidiaries, affiliates, divisions, predecessors, successors, and insurers, and their respective past and present officers, directors, advisors, independent consultants, partners, and employees.

9. "Releasors" shall refer to Settlement Class Members, as well as each of their respective past and present parents, subsidiaries, affiliates, divisions, predecessors, successors, and their respective past and present officers, directors, and employees.

10. "Settlement Amount" means forty-three million, five hundred thousand United States dollars ($43,500,000).

11. "Settlement Classes" shall refer to the following:

> "Gym Class": All entities that paid registration or related fees and expenses directly to Varsity to participate in Varsity All Star Events from May 26, 2016 through the Execution Date (the "Class Period"). Excluded from the Class are Defendants, their parent companies, subsidiaries, affiliates, franchisees, officers, executives, and employees; any entity that is or has been partially or wholly owned by one or more Defendants or their respective subsidiaries; States and their subdivisions, agencies and instrumentalities; and any judicial officer presiding over this matter and his or her staff, except that officers of USASF, who are not employees of any of Defendants, their parent companies, subsidiaries, affiliates, or franchisees shall not be excluded from the Class.
>
> "Spectator Class": All persons who paid entrance (admission) or other fees and expenses directly to Varsity to observe Varsity All Star Events during the Class Period. Excluded from the Class are Defendants, their parent companies, subsidiaries, affiliates, franchisees, officers, executives, and employees; any entity

that is or has been partially or wholly owned by one or more Defendants or their respective subsidiaries; States and their subdivisions, agencies and instrumentalities; and any judicial officer presiding over this matter and his or her staff, except that officers of USASF who are not employees of any of Defendants, their parent companies, subsidiaries, affiliates, or franchisees shall not be excluded from the Class.

12. "Settlement Class Counsel" and "Interim Co-Lead Class Counsel" mean the following law firms: Berger Montague PC; DiCello Levitt LLC; and Cuneo Gilbert & Laduca, LLP.[1]

13. "Settlement Class Member" means each member of the Settlement Classes who/that has not timely and validly elected to be excluded from one of the Settlement Classes.

14. "Settlement Fund" means the Settlement Amount plus accrued interest as set forth in Paragraph 25.

B. Approval of this Agreement and Dismissal of Claims Against Defendants.

15. Except as otherwise provided herein, on the Execution Date, Direct Purchaser Plaintiffs and Defendants shall be bound by this Agreement, and this Agreement shall not be rescinded except in accordance with Paragraph 39 of this Agreement.

16. Direct Purchaser Plaintiffs and Defendants shall use their best efforts to effectuate this Agreement, including cooperating in seeking the Court's approval for the establishment of procedures (including the giving of class notice under Federal Rules of Civil Procedure 23) to secure the complete and final dismissal with prejudice of the Action.

17. Direct Purchaser Plaintiffs shall submit to the Court, on the docket of the Action, a motion seeking preliminary approval of this Agreement (the "Preliminary Approval Motion").

[1] "Interim Liaison Class Counsel" means Branstetter, Stranch & Jennings, PLLC. "Interim Class Counsel" or "Class Counsel" means Interim Liaison Class Counsel and Interim Co-Lead Class Counsel.

The Preliminary Approval Motion shall include the proposed form of an order preliminarily approving this Agreement. No fewer than seven (7) business days before filing, Direct Purchaser Plaintiffs shall submit a draft of the Preliminary Approval Motion to Defendants for their review and approval, which approval shall not be unreasonably withheld.

18. Direct Purchaser Plaintiffs shall submit to the Court, on the docket of the Action, a motion for authorization to disseminate notice of the settlement and final judgment contemplated by this Agreement to the Settlement Classes (the "Notice Motion"). The Notice Motion shall include a proposed form of, method for, and proposed dates of dissemination of notice. No fewer than seven (7) business days before filing, Direct Purchaser Plaintiffs shall submit a draft Notice Motion to Defendants for their review. Direct Purchaser Plaintiffs shall reasonably consider Defendants' comments on the Notice Motion. Direct Purchaser Plaintiffs may combine the Preliminary Approval Motion and Notice Motion into a single motion at their discretion.

19. Within ten (10) days of receiving any request for exclusion from the Settlement Classes, Settlement Class Counsel shall cause copies of requests for exclusion from the Settlement Classes to be provided to counsel for Defendants. With respect to any potential Settlement Class Member who requests exclusion from one or both of the Settlement Classes, Defendants reserve all of their legal rights and defenses. Direct Purchaser Plaintiffs, by and through Interim Co-Lead Class Counsel, and Defendants are executing a "Supplemental Agreement" setting forth certain conditions under which (and the terms regarding which), this Settlement Amount may be reduced if a sufficient number of potential Settlement Class Members, collectively representing a certain share of the total relevant sales, timely exclude themselves from the Settlement Classes. The Supplemental Agreement shall not be filed with

the Court except that the substantive contents of the Supplemental Agreement may be brought to the attention of the Court, *in camera*, if so requested by the Court or as otherwise ordered by the Court. The Parties will keep the terms of the Supplemental Agreement confidential, except if compelled by judicial process to disclose the Supplemental Agreement.

20. Direct Purchaser Plaintiffs shall seek, and Defendants will not object unreasonably to, the entry of a final judgment order in the Action, the text of which Direct Purchaser Plaintiffs and Defendants shall agree on, and such agreement will not be unreasonably withheld. The terms of that proposed final judgment order will include, at a minimum, the substance of the following provisions:

(a) certifying the Settlement Classes described in Paragraph 11 pursuant to Rule 23 of the Federal Rules of Civil Procedure, solely for purposes of this settlement, as settlement classes;

(b) finding, solely for the purposes of this settlement, that Direct Purchaser Plaintiffs are adequate class representatives and satisfy all of the other provisions of Rule 23(a) of the Federal Rules of Civil Procedure, and any other provisions of Rule 23 required by law to secure certification of the Settlement Classes;

(c) approving finally this settlement and its terms as being fair, reasonable and adequate as to the Settlement Class Members within the meaning of applicable law, including Rule 23 of the Federal Rules of Civil Procedure, and directing the settlement's consummation according to the terms of this Agreement;

(d) finding that notice provided to the Settlement Classes satisfied the requirements of Rule 23 and the due process clause of the U.S. Constitution;

(e) as to Defendants, directing that the Action be dismissed with prejudice and, except as provided for in this Agreement, without costs;

(f) reserving exclusive jurisdiction over the settlement and this Agreement, including the interpretation, administration, and consummation of the settlement, to the United States District Court for the Western District of Tennessee;

(g) determining under Federal Rule of Civil Procedure 54(b) that there is no just reason for delay and directing that the judgment of dismissal as to Defendants shall be final;

(h) providing that (i) the Court's certification of the Settlement Classes is without prejudice to, or waiver of, the rights of any person or entity, including Defendants, to contest certification of any other class proposed in any other case, including *Jones, et al. v. Varsity Brands, LLC, et al.*, No. 2:20-cv-02892 (W.D. Tenn.) and *American Spirit and Cheer Essentials, Inc. et al. v. Varsity Brands, LLC, et al.*, No. 2:20-CV-02782 (W.D. Tenn.) (the "Related Cases"); (ii) the Court's findings in the final judgment order shall have no effect on the Court's ruling on any motion to certify any class in the Related Cases or on the Court's rulings concerning any other motion; and (iii) no Party may cite or refer to the Court's approval of the Settlement Class as persuasive or binding authority in support of any motion to certify any such class; and

(i) precluding all Settlement Class Members from asserting or prosecuting any of the Released Claims against any Releasee.

21. This Agreement shall become final when (i) the Court has entered a final order certifying the Settlement Classes and approving this Agreement under Federal Rule of Civil Procedure 23(e) and a final judgment order has been entered dismissing the Action with prejudice as to Defendants and without costs other than those provided for in this Agreement, and (ii) the time for appeal or to seek permission to appeal from the Court's approval of this Agreement and entry of a final judgment as to Defendants described in (i) hereof has expired or,

if appealed, approval of this Agreement and the final judgment as to Defendants have been affirmed in their entirety by the Court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review.

22. Neither this Agreement (whether or not it becomes final), the final judgment, nor any negotiations, documents and discussions associated with them shall be deemed or construed to be: (a) an admission by Defendants, Direct Purchaser Plaintiffs, or Settlement Class Members, or (b) evidence of any violation of any statute or law or of any liability or wrongdoing whatsoever by Defendants, or used against Defendants as evidence of the truth of any of the claims or allegations contained in any complaint in the Action or in the Related Cases or other proceeding, and evidence thereof shall not be discoverable or used in any way, whether in the Related Cases, arbitration, or other proceeding, against Defendants, or (c) evidence of exoneration for any violation of any statute or law or of the absence of any liability or wrongdoing whatsoever by Defendants. Neither this Agreement, any of its terms and provisions, any of the negotiations or proceedings connected with it, nor any other action taken to carry out this Agreement by Defendants, Direct Purchaser Plaintiffs, or Settlement Class Members, shall be discoverable if not public, referred to, offered as evidence, or received in evidence in any pending or future civil, criminal, or administrative action, arbitration, or proceedings, except in a proceeding to enforce this Agreement, or to defend against the assertion of Released Claims, or as otherwise required by law.

C. Release, Discharge, and Covenant Not to Sue.

23. In addition to the effect of any final judgment order entered in accordance with this Agreement, upon this Agreement becoming final as set out in Paragraph 21, and in consideration of payment of the Settlement Amount, as specified in Paragraph 26, and for other

valuable consideration, including as specified in this Agreement, the Releasees shall be completely released, acquitted, and forever discharged from any and all claims, demands, actions, suits, causes of action, whether class, individual, or otherwise in nature (whether or not any Settlement Class Member has objected to the settlement or makes a claim upon or participates in distribution of the Settlement Fund, whether directly, representatively, derivatively or in any other capacity) under any federal, state or local law of any jurisdiction in the United States, that Releasors, or each of them, ever had, now have, or hereafter can, shall, or may ever have, that now exist or may exist in the future, on account of, or in any way arising out of, any and all known and unknown, foreseen and unforeseen, suspected or unsuspected, actual or contingent, liquidated or unliquidated claims, injuries, damages, and the consequences thereof relating in any way to the nucleus of operative facts alleged in the complaint in the Action prior to the Execution Date that were made or could have been made in the Action by Direct Purchaser Plaintiffs or Settlement Class Members against the Releasees, including all direct purchaser claims relating to Varsity and/or USASF's involvement in the cheerleading industry based in any way on conduct or events arising out of the nucleus of operative facts alleged in the consolidated complaint in the Action, that occurred through the Execution Date. Notwithstanding the foregoing, any claims based on indirect purchases by Settlement Class Members or Releasors that may exist under the law of one or more U.S. states will not be released. In addition, and notwithstanding the foregoing, claims arising in the ordinary course between (a) any of the Releasees, on the one hand, and (b) Direct Purchaser Plaintiffs, Settlement Class Members or Releasors, on the other, and arising under Article 2 of the Uniform Commercial Code (pertaining to sales) or similar state laws, the laws of negligence or product liability, strict liability, or implied warranty, breach of contract, breach of express warranty, or personal injury, will also not

be released. The claims described as being released in this paragraph are referred to herein as the "Released Claims."

24. After the Execution Date, Releasors shall not seek to establish liability against any Releasee as to, in whole or in part, any of the Released Claims unless the Agreement, for any reason, does not become final, or is rescinded or otherwise fails to become effective. Further, unless the Agreement is rescinded or otherwise fails to become effective, Class Counsel and Direct Purchaser Plaintiffs shall likewise not voluntarily assist counsel or plaintiffs in the Related Cases or counsel or counter-plaintiffs in Case No. 6:21-cv-0135-WWB-DCI, *U.S. All Star Federation, Inc. v. Open Cheer & Dance Championship Series, LLC* (M.D. Fla.) in pursuing their claims. Notwithstanding the above, nothing in this Paragraph 24 shall prevent anyone from complying with a court order or subpoena issued by a court of competent jurisdiction.

25. In addition to the provisions of Paragraphs 23 and 24 of this Agreement, Releasors hereby expressly waive and release, solely with respect to the Released Claims, upon this Agreement becoming final, any and all provisions, rights, and benefits conferred by § 1542 of the California Civil Code, which states:

> **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY;**

or by any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code. Each Releasor may hereafter discover facts other than or different from those which he, she, or it knows or believes to be true with respect to the claims that are released pursuant to the

provisions of this Agreement, but each Releasor hereby expressly waives and fully, finally, and forever settles and releases, upon this Agreement becoming final, any known or unknown, suspected or unsuspected, contingent or non-contingent claim that Direct Purchaser Plaintiffs have agreed to release, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

D. Settlement Amount.

26. Subject to the provisions of Paragraph 19, Varsity shall pay the Settlement Amount by wire transfer into an escrow account in United States Dollars to be administered in accordance with the provisions of Paragraphs 31 to 34 (the "Escrow Account") on the following schedule: First installment of $2 million, which may be used for purposes of class administration (including class notice), shall be paid within 30 days of preliminary approval of the settlement by the Court. The second installment of $28 million shall be paid on or before December 1, 2023. The third and final installment of $13.5 million shall be paid on or before December 1, 2024. Under no circumstances shall Defendants be required to pay more than the Settlement Amount as part of this Agreement.

27. In light of the monetary settlement with Varsity, Plaintiffs will not look to USASF for any monetary compensation of any kind.

28. Releasors shall look solely to the Settlement Fund for settlement and satisfaction, as provided herein, of all Released Claims against the Releasees, and shall have no other monetary recovery against Defendants or any other Releasee for the Released Claims.

E. Prospective Relief.

29. For purposes of this Section E of this Agreement only, the term "All Star Gym" means a person or entity that organizes one or more cheerleading teams to compete in "All Star

Events," which are events at which several All Star Teams compete against each other in the choreographed performance of routines comprised of combinations of stunts, pyramids, dismounts, tosses, and/or tumbling. "Event Producer" and "All Star Event Producer" means a person or entity that produces one or more All Star Events. A "Worlds Bid" is the opportunity to participate in Worlds, a particular All Star Event organized by USASF.

30. From the date of Final Approval through and including December 31, 2028:

(a) Varsity will not offer contracts or programs with All Star Gyms relating in whole or part to fees or payments associated with registering for, or attending, All Star Events that:

1) If a contract, have a term longer than one year (except that existing contracts and programs will be permitted to run to their term); or

2) Require attendance at more than three All Star Events during a single regular season as a condition of receiving Varsity's lowest tier of rebates or discounts.

3) Notwithstanding the foregoing, if one or more All Star Event Producers propose rebate or discount programs regarding which Varsity would be prohibited from engaging by the terms of this Agreement ("Prohibited Programs"), Varsity shall be permitted to respond by matching the rebate and/or discount offerings of such competitors but only so long and insofar as one or more such competitors maintain(s) such Prohibited Programs.

(b) No person shall simultaneously serve on the boards of Varsity (or any other Varsity entity) and USASF. The phrase "other Varsity entity" as used herein refers to any parent or subsidiary of Varsity or any entity under common ownership with Varsity.

(c) Varsity may not, directly or indirectly, pay the salaries of any USASF employees or executives or provide other benefits to USASF employees or executives. For the

avoidance of doubt, this provision does not preclude payments to USASF for services provided by USASF employees in the ordinary course of business, which are also available to other Event Producers, such as for roster verification or judge training, nor does it preclude payments to USASF employees to the extent they provide services as judges or legality officials as independent contractors.

(d) No more than 1/3 of the voting board seats on USASF's Board of Directors may be occupied by any single Event Producer (whether through one entity or multiple affiliated entities with common/overlapping ownership or management). In the event that one or more voting seats on USASF's Board of Directors becomes empty for any reason (including, *e.g.*, death, resignation, termination, etc.), and as a result, a single Event Producer holds more than 1/3 of the voting board seats then filled, USASF shall take all reasonable measures to fill the empty voting board seat(s) such that the 1/3 limitation is satisfied within four (4) months of the event causing the vacancy. USASF may not, consistent with this Agreement, intentionally distort its rules or procedures to cause a USASF board seat to become empty as a means to allow a single Event Producer to control more than 1/3 of the seats.

(e) No more than 40% of the seats on USASF's Sanctioning Committee may be occupied by any single Event Producer (whether through one entity or multiple affiliated entities with common/overlapping ownership or management). The calculation shall take place on August 1 of each year, and if this limitation is satisfied as of that date, it shall be deemed satisfied for the next 12 months. In other words, in the event that, after August 1 during a calendar year, an Event Producer terminates its USASF membership or loses its Worlds Bid, either of which would result in the Event Producer losing its seat on the Sanctioning

Committee under currently existing USASF rules, USASF shall not be required to re-allocate seats on its Sanctioning Committee or remove other members of the Sanctioning Committee prior to August 1 of the following year. USASF may not, consistent with this Agreement, intentionally distort its rules or procedures to cause a Sanctioning Committee seat to become empty as a means to allow a single Event Producer to control more than 40% of the seats.

(f) After implementing the changes set forth above with respect to USASF's Board of Directors and Sanctioning Committee, USASF commits to continuing to evaluate proposals from its membership that are properly brought to its Board of Directors or an appropriate committee, in accordance with its policies and procedures. USASF may not, consistent with this Agreement, adopt rules or procedures that would have the effect of prohibiting or deterring USASF members from making any proposals for consideration by the USASF board or appropriate USASF committees.

F. Escrow Account and Settlement Fund.

31. An Escrow Account shall be maintained at Huntington National Bank to hold the Settlement Fund. Such escrow shall be administered subject to the provisions of this Agreement, including Paragraph 34, below.

32. The Escrow Account is intended by the parties hereto to be treated as a "qualified settlement fund" within the meaning of Treas. Reg. § 1.468B-1, and to that end the parties hereto shall cooperate with each other and shall not take a position in any filing or before any tax authority that is inconsistent with such treatment. At the request of Defendants, a "relation back election" as described in Treas. Reg. § 1.468B-1(j) shall be made so as to enable the Escrow Account to be treated as a qualified settlement fund from the earliest date possible, and the

parties shall take all actions as may be necessary or appropriate to this end. At the direction of Settlement Class Counsel, taxes or estimated taxes shall be paid on any income earned on the funds in the Escrow Account, whether or not final approval has occurred, as provided in Paragraph 21, above. In the event federal or state income tax liability is finally assessed against and paid by Defendants as a result of any income earned on the funds in the Escrow Account, Defendants shall be entitled to reimbursement of such payment from the funds in the Escrow Account after approval of the Court and whether or not final approval has occurred. Except as set forth in this Paragraph, Defendants and any Releasee, and their respective counsel, shall have no responsibility to make any tax filings related to the Settlement Fund or to pay any taxes or tax expenses with respect thereto, and neither Defendants nor any Releasee nor their respective counsel shall have any liability or responsibility for the taxes or expenses incurred in connection with taxation matters.

33. All payments into the Escrow Account, including any income earned thereon, shall, at the direction of Settlement Class Counsel, be invested in instruments or accounts backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, including U.S. Treasury Bills, U.S. Treasury Money Market Funds or a bank account insured by the Federal Deposit Insurance Corporation ("FDIC") up to the guaranteed FDIC limit. Any interest earned on any of the foregoing shall become part of the Settlement Fund. Defendants shall have no responsibility for, or liability in connection with, the Settlement Fund or the Escrow Account, including, without limitation, the investment, administration, maintenance, or distribution thereof.

34. All funds held in the Escrow Account shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such

time as the Settlement Fund shall be distributed pursuant to this Agreement and/or order(s) of the Court.

G. Expenses, Settlement Class Counsel's Attorneys' Fees, and Service Awards for Class Representatives.

35. Reasonable disbursements for (a) expenses associated with providing notice of the settlement to the Settlement Class, (b) reasonable expenses for maintaining and administering the Settlement Fund, (c) reasonable expenses associated with developing and preparing an allocation plan for distributing the proceeds of the net Settlement Fund to members of the Settlement Classes, and (d) taxes and reasonable expenses incurred in connection with taxation matters may be paid without approval from the Court and shall not be refundable to Defendants in the event the Agreement is disapproved, rescinded, or otherwise fails to become effective or final, to the extent such expenses have actually been expended or incurred. No other disbursement from or distribution of the Settlement Fund shall be made without prior approval of the Court.

36. If this Agreement does not become final within the meaning of Paragraph 21, then all amounts paid by Defendants into the Settlement Fund (other than costs expended or incurred in accordance with Paragraph 35) shall be returned to Defendants from the Escrow Account along with any interest accrued thereon within thirty (30) calendar days of the Court's denial of final approval of the Agreement and/or the Settlement Classes.

37. If this Agreement becomes final within the meaning of Paragraph 21: (1) the Settlement Fund shall be distributed in accordance with a plan to be submitted to the Court at the appropriate time by Settlement Class Counsel, subject to approval by the Court; (2) no Releasee shall have any responsibility, financial obligation, or liability whatsoever with respect to the investment, distribution, or administration of the Settlement Fund, including, but not limited to, the costs and expenses of such investment, distribution or administration; and (3) Defendants

shall have no reversionary interest in any of the Settlement Funds or interest thereon, which interest shall be for the benefit of the Settlement Classes and Class Counsel. Subject to Court approval, Class Counsel shall be reimbursed and paid solely out of the Settlement Fund for all past, current, or future litigation costs and expenses and any award of attorneys' fees. Service awards to the Direct Purchaser Plaintiffs, if approved by the Court, will be paid solely out of the Settlement Fund. Defendants shall not oppose any reasonable requests for service awards for Direct Purchaser Plaintiffs.

38. Subject to the posting of appropriate security for any funds paid under this paragraph and Court approval, attorneys' fees and costs and expenses awarded by the Court shall be payable from the Settlement Fund upon being awarded by order of the Court, notwithstanding the existence of any timely-filed objections thereto, or potential appeal therefrom, or collateral attack on the settlement or any part thereof, including on the award of attorneys' fees and costs, subject to Settlement Class Counsel's obligation to make appropriate refunds or repayments to the Settlement Fund, if and when, as a result of any appeal or further proceedings on remand, or successful collateral attack, the fee or award of costs and expenses is reduced or reversed, or in the event the settlement does not become final or is rescinded or otherwise fails to become effective. Settlement Class Counsel shall provide an assurance from a financial institution that is approved by Varsity, which approval shall not be unreasonably withheld by Varsity, that such refunds to the Settlement Fund will be made in the event that Settlement Class Counsel defaults on any obligation under this paragraph. If the provisions of this paragraph are followed, Defendants shall not object to such disbursements.

39. The procedure for and the allowance or disallowance by the Court of the application by Settlement Class Counsel for attorneys' fees, costs and expenses, and service

awards for class representatives to be paid out of the Settlement Fund are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness and adequacy of the settlement, and any order or proceeding relating to a request for attorneys' fees and reimbursement of costs and expenses, or service awards, or any appeal from any such order shall not in itself operate to terminate or cancel this Agreement.

H. Rescission.

40. If the Court refuses to approve this Agreement or any part hereof, including if the Court does not certify the Settlement Classes in accordance with the specific Settlement Class definitions set forth in this Agreement, or if such approval is modified or set aside on appeal, or if the Court does not enter the final judgment provided for in Paragraph 21 of this Agreement, or if the Court enters the final judgment and appellate review is sought, and on such review, such final judgment is not affirmed in its entirety, then each of Defendants and Direct Purchaser Plaintiffs shall, in its/his/her sole discretion, have the option to rescind this Agreement in its entirety within thirty (30) calendar days of the entry into the docket of the court of the relevant court decision. Written notice of the exercise of any such right to rescind shall be made according to the terms of Paragraph 49.

41. In the event that this Agreement does not become final as set forth in Paragraph 21, or this Agreement otherwise is terminated, then this Agreement shall be of no force or effect and any and all parts of the Settlement Fund in the Escrow Account (including interest earned thereon) plus any disbursements made from the Settlement Fund under Paragraph 38, shall be returned to Defendants within thirty (30) calendar days. For the avoidance of doubt, the full portion of the Settlement Amount that Varsity has paid, less only disbursements made in accordance with Paragraph 35, shall be so returnable. Defendants and Direct Purchaser Plaintiffs

expressly reserve all their respective claims, rights, and defenses if this Agreement does not become final.

I. Class Action Fairness Act

42. Defendants shall comply with the requirements of the Class Action Fairness Act of 2005, 28 U.S.C. § 1715(b) ("CAFA"), including providing any notices required thereby.

J. Miscellaneous.

43. This Agreement shall be governed by and interpreted according to the substantive laws of the state of Tennessee without regard to its choice of law or conflict of laws principles. Defendants will not object to complying with any of the provisions outlined in this Agreement on the basis of jurisdiction.

44. The United States District Court for the Western District of Tennessee shall retain jurisdiction over the implementation, interpretation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to the Agreement or the applicability of the Agreement that cannot be resolved by negotiation and agreement by Direct Purchaser Plaintiffs and the Settlement Classes and Defendants, including challenges to the reasonableness of any Party's actions.

45. This Agreement constitutes the entire, complete, and integrated agreement among Direct Purchaser Plaintiffs and the Settlement Classes and Defendants pertaining to the settlement of the Action against Defendants, and supersedes all prior and contemporaneous undertakings, communications, representations, understandings, negotiations, and discussions, either oral or written, between Direct Purchaser Plaintiffs and Defendants in connection herewith. This Agreement may not be modified or amended except in writing executed by Direct Purchaser Plaintiffs and Defendants, by their respective counsel, and approved by the

Court.

46. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of Direct Purchaser Plaintiffs and Defendants. Without limiting the generality of the foregoing, upon final approval of this Agreement, each and every covenant and agreement made herein by Direct Purchaser Plaintiffs or Settlement Class Counsel shall be binding upon all Settlement Classes Members and all Releasors. To the extent not parties to this Agreement, the Releasees are intended by the Parties to be third-party beneficiaries of this Agreement and are authorized to enforce its terms as applicable to them.

47. This Agreement may be executed in counterparts, and a facsimile or other electronic signature shall be deemed an original signature for purposes of executing this Agreement.

48. No Party shall be considered to be the drafter of the Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of the Agreement.

49. Where the Agreement requires any Party to provide notice or any other communication or document to another party, such notice shall be in writing, and such notice, communication or document shall be provided by electronic mail to the undersigned counsel of record for the party to whom notice is being provided.

50. Each of the undersigned attorneys represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, the Agreement subject to Court approval, on behalf of the indicated parties.

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Interim Co-Lead Class Counsel for Direct Purchaser Plaintiffs and the Settlement Classes

APPENDIX A

Varsity Brands, LLC
Varsity Spirit LLC
Varsity Spirit Fashions & Supplies, LLC
BCPE Hercules Holdings, LP (Delaware)
BCPE Hercules VB Topco, Inc. (Delaware)
BCPE Hercules Achievement Topco, Inc. (Delaware)
U.S. All Star Federation, Inc.
Bain Capital, LP
Bain Capital Private Equity
Bain Capital Fund XII, L.P.
BCIP Associates V, LP
Bain Capital Fund (Lux) XII, SCSp
Bain Capital Fund (DE) XII, L.P.
BCIP Associates V-B, LP
Randolph Street Ventures, L.P. 2018-88
Charlesbank Capital Partners, LLC
Charlesbank Associates Fund IX, Limited Partnership
Charlesbank Equity Fund VIII, Limited Partnership
Charlesbank Equity Fund VII, Limited Partnership
CB Offshore Equity Fund VIII, L.P.
CB Offshore Equity Fund VII, L.P.
CB Parallel Fund VII, Limited Partnership
Charlesbank Equity Coinvestment Fund VIII, Limited Partnership
Charlesbank Equity Coinvestment Fund VII, Limited Partnership
CB Associates Fund VIII, Limited Partnership
Charlesbank Equity Fund IX, Limited Partnership
CB Offshore Equity Fund IX, Limited Partnership
Charlesbank Executives Fund IX, Limited Partnership
CB Hercules Holdings, LLC

EXHIBIT 2

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

FUSION ELITE ALL STARS, et al.,

Plaintiffs,

v.

VARSITY BRANDS, LLC, et al.,

Defendants.

Civ. Action No. 2:20-cv-02600

JOINT DECLARATION OF ERIC L. CRAMER, KARIN E. GARVEY, AND VICTORIA SIMS IN SUPPORT OF DIRECT PURCHASER PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT, PROVISIONAL CERTIFICATION OF PROPOSED SETTLEMENT CLASSES, APPROVAL OF NOTICE PLAN, AND APPROVAL OF THE PROPOSED SCHEDULE FOR COMPLETING THE SETTLEMENT PROCESS

Pursuant to 28 U.S.C. §1746, we, Eric L. Cramer, Karin E. Garvey, and Victoria Sims, declare:

1. We are, respectively, partners or shareholders of the law firms of Berger Montague PC ("Berger Montague"), DiCello Levitt LLC ("DiCello Levitt"), and Cuneo Gilbert & LaDuca, LLP ("Cuneo Gilbert") (together, "Settlement Class Counsel"). On September 18, 2020, the Court appointed Berger Montague, Labaton Sucharow LLP ("Labaton"), and Cuneo Gilbert as Interim Co-Lead Class Counsel and Branstetter, Stranch & Jennings, PLLC as Interim Liaison Class Counsel for the proposed Direct Purchaser Plaintiffs ("DPPs") in the above-captioned action (the "Action"). *See* ECF No. 37.[1] We have been actively involved in prosecuting and resolving this Action, are familiar with its proceedings, and have personal knowledge of the matters set forth herein. If called upon and sworn as witnesses, we would be competent to testify thereto.

2. Unless otherwise defined herein, all capitalized terms have the same meanings set forth in the March 15, 2023 Settlement Agreement ("Settlement Agreement") attached as Exhibit 1 to the Memorandum of Law in Support of Direct Purchaser Plaintiffs' Unopposed Motion for Preliminary Approval of Settlement, Provisional Certification of Proposed Settlement Classes, Approval of Notice Plan, and Approval of the Proposed Schedule for Completing the Settlement Process (the "Memorandum of Law").

3. We respectfully submit this Declaration in Support of the Motion for preliminary approval of the Settlement between Plaintiffs Fusion Elite All Stars ("Fusion Elite"); Spirit Factor LLC d/b/a Fuel Athletics ("Spirit Factor"); Stars and Stripes Gymnastics Academy Inc.

[1] On March 7, 2022, the Court granted DPPs' Motion to Amend the leadership appointment to substitute DiCello Levitt for Labaton when the attorneys principally working on the case switched law firms. *See* ECF No. 206.

d/b/a Stars and Stripes Kids Activity Center ("Stars and Stripes"); Kathryn Anne Radek ("Radek"); Lauren Hayes ("Hayes"), and Janine Cherasaro ("Cherasaro"), on the one hand, and Defendants Varsity Brands, LLC, Varsity Spirit, LLC, Varsity Spirit Fashion & Supplies, LLC (collectively, "Varsity"), and U.S. All Star Federation, Inc. ("USASF") (Varsity and USASF together, "Defendants"), on the other.

4. The Settlement Agreement provides for cash payments totaling $43,500,000.00 into a Settlement Fund as well as significant prospective relief that would unwind some of the key conduct DPPs challenged as anticompetitive in this Action. As described below, the Settlement is fair, reasonable, and adequate.

5. We believe that the Settlement is an excellent result for the Settlement Classes in light of the substantial litigation risks in the Action, including significant risks associated with delay. Accordingly, we respectfully submit that pursuant to Federal Rule of Civil Procedure 23(e), the Settlement should be preliminarily approved.

SETTLEMENT CLASS COUNSEL'S PROSECUTION OF THE ACTION

6. At the outset of 2020, Settlement Class Counsel began to investigate allegations regarding Defendants' anticompetitive conduct in the All Star Cheer Events Market. As part of that investigation, all three firms conducted research into All Star Gyms and Spectators, analyzed the markets for All Star Cheer Events and apparel, and analyzed Defendants' business models. Settlement Class Counsel did not have the benefit of a governmental investigation or intervention but instead proceeded solely through their and their clients' own initiative, investigation, and resources.

7. Plaintiff Fusion Elite All Stars filed the initial class action on behalf of DPPs on May 26, 2020. *See Fusion Elite All Stars v. Varsity Brands, LLC*, *et al.*, No. 5:20-cv-03521 (N.D.

Cal.), ECF No. 1. After having been transferred to this Court, Plaintiffs Fusion Elite, Spirit Factor, and Stars and Stripes filed the first class action in this District, on August 13, 2020, on behalf of DPPs relating to Defendants' alleged anticompetitive conduct, *Fusion Elite All Stars, et al. v. Varsity Brands, LLC, et al.*, 2:20-cv-02600 (W.D. Tenn.), in what would become this consolidated Action.

8. On August 25, 2020, Plaintiffs Radek, Hayes, and Cherasaro filed another class action on behalf of DPPs in this District relating to Defendants' alleged anticompetitive conduct. *See Kathryn Radek, et al. v. Varsity Brands, LLC*, *et al*., 2:20-cv-02649, (W.D. Tenn.) (the "*Radek* Action"). On September 8, 2020, plaintiffs' counsel in the two cases jointly moved to consolidate and for appointment of interim co-lead class counsel. *See* ECF No. 23.

9. On September 18, 2020, the Court consolidated the two actions as well as all subsequent direct purchaser actions against Defendants in the Western District of Tennessee and administratively closed the *Radek* Action. *See* ECF No. 37. The Court also appointed Berger Montague, Labaton, and Cuneo Gilbert as Interim Co-Lead Class Counsel and set a schedule in the Action. *See id*.; *see also* ECF No. 206 (replacing Labaton with DiCello Levitt).

10. On October 2, 2020, DPPs filed a Consolidated Class Action Complaint against Defendants, alleging claims under Section 2 of the Sherman Act, 15 U.S.C. § 2. *See* ECF No. 56. DPPs are All Star Gyms that directly paid Varsity registration and other fees for attendance and participation by their teams and athletes at Varsity's All Star Cheer Events, and Spectators who directly paid Varsity to view All Star Cheer Events.

11. On December 1, 2020, Varsity and USASF each filed Motions to Dismiss the Action pursuant to Fed. R. Civ. P. 12(b)(6). *See*, respectively, ECF Nos. 83, 84. On the same day, Defendants jointly filed a Motion to Strike Class Allegations and Spurious Allegations

Regarding Sexual Abuse pursuant to Fed. R. Civ. P. 12(f) and 23. *See* ECF No. 82. On January 15, 2021, DPPs filed responses to Defendants' Motions to Dismiss and Motion to Strike. *See*, respectively, ECF Nos. 91, 90. On February 15, 2021, Defendants filed replies in support of their Motions to Dismiss and Motion to Strike. *See*, respectively, ECF Nos. 96, 95.

12. On August 26, 2021, the Court issued an Order denying, in significant part, Defendants' Motions to Dismiss. *See* ECF No. 141.[2] The Court analyzed DPPs' claims of monopolization and conspiracy to monopolize against Defendants and found that DPPs had plausibly alleged, *inter alia*, that: (1) Varsity had monopoly power in the All Star Cheer Event Market; (2) that Varsity obtained or maintained that monopoly power through willful anticompetitive conduct; (3) that Defendants' anticompetitive conduct caused rising prices or lowering of output; and (4) that Varsity and USASF had conspired to maintain and enhance Varsity's monopoly power in the All Star Cheer Event Market. *See id*.

13. Over the next one-and-a-half years, Settlement Class Counsel, along with a small number of additional firms working under our direction, aggressively litigated the case including with regard to fact and expert discovery. Both pursuits would be critical to establishing liability, to establishing the foundations for class certification, to opposing Defendants' anticipated summary judgment and *Daubert* motions, to preparing for any jury trial in this matter, and to defending any judgment on appeal.

14. At the outset of discovery, working in conjunction with counsel for the plaintiffs in the related *American Spirit* Action and *Jones* Action, Settlement Class Counsel negotiated a Discovery Coordination Order that enhanced judicial efficiency, avoided undue burden on

[2] The Court did not rule on the Motion to Strike. *See* Docket Text, ECF No. 326 ("Given the Parties' [324] Notice of Settlement, the Court denies the Motion to Strike without prejudice as moot.").

parties and third parties, and promoted the just resolution of all cases. *See* ECF No. 93. Settlement Class Counsel negotiated a comprehensive protocol for electronically stored information produced by all parties. *See* ECF No. 72. Additionally, Settlement Class Counsel negotiated and drafted a Stipulated Protective Order governing confidential information. *See* ECF No. 77 (granting motion for Protective Order).

15. Settlement Class Counsel secured the production of approximately 1,629,324 documents from Defendants and another 89,754 documents from non-parties. In addition, hundreds of thousands of lines of transactional data were produced reflecting direct payments by Gyms and Spectators to Varsity for registration at Varsity Events.

16. Settlement Class Counsel also identified, collected, reviewed, and produced thousands of documents, as well as transactional data from the Class Representatives. This involved numerous calls and meetings (including in-person meetings) to identify and collect documents and identify electronic data sources subsequently collected by a retained vendor. Once Settlement Class Counsel responded to Defendants' document requests on behalf of the Class Representatives and negotiated search terms with Defendants, Settlement Class Counsel reviewed the universe of collected documents to locate those appropriate for production. Settlement Class Counsel also produced multiple rounds of Interrogatory Responses on behalf of the Class Representatives, as well as Initial Disclosures.

17. Settlement Class Counsel felt it necessary to file numerous motions to compel compliance with document requests, interrogatories, and deposition requests served on Defendants. *See, e.g.*, ECF Nos. 102, 105, 118, 120 (motions to compel Defendants to produce documents); 199 (motion to compel Defendants to produce documents and written responses to the requests for production and interrogatories). Settlement Class Counsel also filed motions to

compel compliance with subpoenas *duces tecum* served on non-parties. *See, e.g.*, *Fusion Elite All Stars, et al. v. Rebel Athletic Inc.*, 2:21-mc-00028 (W.D. Tenn.) (motion to compel against Rebel Athletic Inc., a rival apparel manufacturer), ECF No. 1; *Fusion Elite All Stars, et al. v. Nfinity Athletic LLC*, 2:22-cv-02226 (W.D. Tenn.), ECF No. 1 (motion to compel against Nfinity Athletic LLC, a rival shoe and apparel manufacturer).

18. While depositions are always an important aspect of an antitrust case, many witnesses in this matter were not within the Court's power to compel testimony at trial. Therefore, the only evidence such witnesses would provide for trial was obtained through video deposition testimony that would ultimately be played for the jury if the case were to go to trial. Given the importance of this evidence, Settlement Class Counsel took responsibility for defending in all Class Representative depositions as well as taking Defendant and non-party depositions.

19. In preparation for the many important fact depositions in this case, Settlement Class Counsel (a) identified key documents to be used at each deposition, (b) prepared extensive deposition outlines, (c) coordinated deposition strategy and questioning with plaintiffs in the related *American Spirit* Action and *Jones* Action (as well as logistics with Defendants in this case and additional parties in the *American Spirit* Action and *Jones* Action), and (d) participated in forty fact depositions. This included eight depositions of witnesses who were the Class Representatives or were from the Class Representatives.

20. Given the importance of expert issues, including economic issues in this case, Settlement Class Counsel spent significant time strategizing during discovery and briefing, including working with their retained economic expert, Hal J. Singer, Ph.D. (and consultants working with Dr. Singer), to assess whether economic analyses and evidence common to each of

the Settlement Classes would be capable of addressing (i) monopoly power, (ii) substantial foreclosure, (iii) common impact, (iv) aggregate damages, and (v) anticompetitive effects. Additionally, Settlement Class Counsel worked with their other retained expert, sports economist Stefan Szymanski, Ph.D., in developing their case against Defendants.

21. DPPs participated in extensive expert discovery, with each side submitting lengthy expert reports,[3] and each expert being deposed. The need for extensive expert discovery illustrates the complexities of this case, which required Settlement Class Counsel to grapple with and overcome numerous obstacles, including proving:

a. that Varsity had monopoly power over All Star Cheer Events;

b. that the challenged conduct foreclosed a substantial amount of competition in the All Star Cheer Events Market;

c. that the challenged conduct elevated All Star Event prices above competitive levels;

d. aggregate damages suffered by each Class as a whole; and

e. that the challenged conduct had significant anticompetitive effects.

THE SETTLEMENT

22. On January 20, 2023, a few days prior to the initial deadline for filing the class certification motion and *Daubert* motions, the parties participated in a full-day mediation before the Hon. Layn Phillips of Phillips ADR (having initially participated in an early mediation before Judge Phillips in January 2021). By the time this mediation occurred, more than two-and-half years of hard-fought litigation had passed and extensive fact and expert discovery was complete.

[3] Dr. Singer's opening report totaled 188 pages and his rebuttal report was 114 pages. Dr. Szymanki's opening report totaled 50 pages and his rebuttal report was 41 pages. Defense experts Kevin M. Murphy, Ph.D. and Mr. Jonathan Orszag submitted expert reports totaling 272 and 58 pages, respectively.

The parties did not settle at the in-person mediation, but they did make progress toward a settlement.

23. The parties continued to negotiate in the weeks after the full-day mediation with the assistance of Miles N. Ruthberg, Esq. of Phillips ADR. After extensive arm's-length negotiations between experienced counsel over the course of several weeks, the parties reached an agreement-in-principle that led to the Settlement Agreement currently being presented to the Court.

24. On March 15, 2023, Settlement Class Counsel and Defendants executed the Settlement Agreement (attached as Ex. 1). The Settlement provides for Defendants to pay $43,500,000 in cash for the benefit of members of both Settlement Classes (a Gym Class and a Spectator Class), and to institute significant prospective relief that unwinds some of the key conduct challenged as allegedly anticompetitive in this case for the benefit of the Settlement Classes. Based on DPPs' experts' evaluation of the data, both Settlement Classes number in the thousands of persons or entities. Even without considering the substantial prospective relief, the settlement amount reflects a significant portion of the damages computed by DPPs' expert economist (Dr. Singer) in his report that was submitted during the expert discovery period. The DPPs and Varsity also, on March 15, 2023, reached a confidential Supplemental Settlement Agreement, providing that Varsity would be entitled to a reduction of the settlement amount if class members comprising a certain significant share of the relevant sales during the Class Period timely and validly opted out of the Settlement. The parties would provide that supplemental agreement to the Court *in camera* for its review at the Court's request.

25. We know of no separate agreements or conflicts that would affect the settlement amount, the eligibility of Class Members to participate in the Settlement, or the treatment of Class Members' claims.

26. We have collectively prosecuted numerous antitrust class actions as lead counsel or in other leadership positions. One of us has also defended antitrust class actions. We have each personally negotiated many class and non-class litigation settlements. In our opinion, the Settlement Agreement with Defendants in this case is fair, reasonable, and adequate. The Settlement avoids the delay and uncertainly of continued protracted litigation against Defendants. It provides substantial benefits to members of the Settlement Classes through compensation and the unwinding of some of the key conduct that the DPPs had challenged as anticompetitive, and thus, in our considered view, has the potential to facilitate vigorous competition in the All Star Cheer Events Market.

CONCLUSION

27. For the reasons set forth above and in the accompanying Memorandum of Law, we respectfully submit that under Rule 23(e), the Settlement's terms are fair, reasonable, and adequate in all respects and should be approved.

I certify under penalty of perjury that the foregoing is true and correct. Executed on March 24, 2023, in Philadelphia, PA.

/s/ Eric L. Cramer

Eric L. Cramer*
BERGER MONTAGUE PC
1818 Market Street, Suite 3600
Philadelphia, PA 19106
Tel: (215) 875-3000
ecramer@bm.net

I certify under penalty of perjury that the foregoing is true and correct. Executed on March 24, 2023, in New York, NY.

/s/ Karin E. Garvey
Karin E. Garvey*
DICELLO LEVITT LLC
485 Lexington Ave., 10th Fl.
New York, NY 10017
Tel: (646) 933-1000
kgarvey@dicellolevitt.com

I certify under penalty of perjury that the foregoing is true and correct. Executed on March 24, 2023, in Washington, DC.

/s/ Victoria Sims
Victoria Sims*
CUNEO GILBERT & LADUCA, LLP
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*Admitted *pro hac vice*

EXHIBIT 3

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

FUSION ELITE ALL STARS, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 2:20-cv-02600-SHL-tmp
	)	
VARSITY BRANDS, LLC, et al.,	)	
	)	
Defendants.	)	

DECLARATION OF STEVEN WEISBROT, ESQ. OF ANGEION GROUP LLC
RE: THE PROPOSED NOTICE PLAN

I, Steven Weisbrot, Esq., declare under penalty of perjury as follows:

1. I am the President and Chief Executive Officer at the class action notice and claims administration firm Angeion Group, LLC ("Angeion"). Angeion specializes in designing, developing, analyzing, and implementing large-scale, unbiased, legal notification plans.

2. I have personal knowledge of the matters stated herein. In forming my opinions regarding notice in this action, I have drawn from my extensive class action experience, as described below.

3. I have been responsible in whole or in part for the design and implementation of hundreds of court-approved notice and administration programs, including some of the largest and most complex notice plans in recent history. I have taught numerous accredited Continuing Legal Education courses on the Ethics of Legal Notification in Class Action Settlements, using Digital Media in Due Process Notice Programs, as well as Claims Administration, generally. I am the author of multiple articles on Class Action Notice, Claims Administration, and Notice Design in publications such as Bloomberg, BNA Class Action Litigation Report, Law360, the ABA Class

Action and Derivative Section Newsletter, and I am a frequent speaker on notice issues at conferences throughout the United States and internationally.

4. I was certified as a professional in digital media sales by the Interactive Advertising Bureau ("IAB"), and I am co-author of the Digital Media section of Duke Law's *Guidelines and Best Practices—Implementing 2018 Amendments to Rule 23* and the soon to be published George Washington Law School Best Practices Guide to Class Action Litigation.

5. I have given public comment and written guidance to the Judicial Conference Committee on Rules of Practice and Procedure on the role of direct mail, email, broadcast media, digital media, and print publication, in effecting Due Process notice, and I have met with representatives of the Federal Judicial Center to discuss the 2018 amendments to Rule 23 and offered an educational curriculum for the judiciary concerning notice procedures.

6. Prior to joining Angeion's executive team, I was employed as Director of Class Action services at Kurtzman Carson Consultants, an experienced notice and settlement administrator. Prior to my notice and claims administration experience, I was employed in private law practice.

7. My notice work comprises a wide range of class actions that include antitrust, data breach, mass disasters, product defect, false advertising, employment discrimination, tobacco, banking, firearm, insurance, and bankruptcy cases.

8. I have been at the forefront of infusing digital media, as well as big data and advanced targeting, into class action notice programs. Courts have repeatedly recognized my work in the design of class action notice programs. A comprehensive summary of judicial recognition Angeion has received is attached hereto as **Exhibit A**.

9. Angeion is an experienced class action notice and claims administration company formed by a team of executives that have had extensive tenures at five other nationally recognized claims

administration companies. Collectively, the management team at Angeion has overseen more than 2,000 class action settlements and distributed over $15 billion to settlement class members. The executive profiles as well as the company overview are available at https://www.angeiongroup.com/our_team.php.

10. As a class action administrator, Angeion has regularly been approved by both federal and state courts throughout the United States and abroad to provide notice of class actions and claims processing services.

11. This declaration will describe the Notice Plan that, if approved by the Court, Angeion will implement in this matter, including the considerations that informed the development of the plan and why it will provide due process to the Settlement Classes.

SUMMARY OF THE NOTICE PLAN

12. The proposed Notice Plan provides for strategically designed notice to following two groups of entities or persons ("Settlement Classes"):

> **Gym Class**. All entities that paid registration or related fees and expenses directly to Varsity to participate in Varsity All Star Events from May 26, 2016 through March 15, 2023.
>
> **Spectator Class**. All persons who paid entrance (admission) or other fees and expenses directly to Varsity to observe Varsity All Star Events May 26, 2016 through March 15, 2023.
>
> Excluded from the Settlement Classes are Defendants, their parent companies, subsidiaries, affiliates, franchisees, officers, executives, and employees; any entity that is or has been partially or wholly owned by one or more Defendants or their respective subsidiaries; States and their subdivisions, agencies and instrumentalities; and any judicial officer presiding over this matter and his or her staff, except that officers of USASF who are not employees of any of Defendants, their parent companies, subsidiaries, affiliates, or franchisees shall not be excluded from the Settlement Classes.

13. The Notice Plan also provides for the implementation of a dedicated Settlement Website

and a toll-free telephone line where members of the Settlement Classes can learn more about their rights and options pursuant to the terms of the Settlement.

GYM CLASS NOTICE

Mailed Notice

14. As part of the Notice Plan, Angeion will send direct notice to Gym Class Members with contact information identified on the Class List. The Class List will be developed, in conjunction with Econ One, the economic consulting firm working with Plaintiffs in the matter, based on location information contained in a database produced by Defendant Varsity in this litigation. Further, I understand from Class Counsel that the Class List will be updated based on data and information Varsity has promised to provide reflecting transactions by Gym Class Members through the execution date of the Settlement Agreement. As we understand it, because the Gym Class Members are all business customers of Varsity, Varsity is likely to have accurate contact information for the vast majority of such entities.

15. The Notice Plan provides for sending the Long Form Notice (attached hereto as **Exhibit B**) via first class U.S. mail, postage pre-paid, to Gym Class Members identified on the Class List.

16. In administering the Notice Plan in this action, Angeion will employ best practices to increase the deliverability rate of the mailed Notices. Angeion will cause the mailing address information for members of the Class to be updated utilizing the United States Postal Service's ("USPS") National Change of Address database, which provides updated address information for individuals or entities who have moved during the previous four years and filed a change of address with the USPS.

17. Notices returned to Angeion by the USPS with a forwarding address will be re-mailed to the new address provided by the USPS and the class member database will be updated accordingly.

Notices returned to Angeion by the USPS without forwarding addresses will be subjected to an address verification search (commonly referred to as "skip tracing") utilizing a wide variety of data sources, including public records, real estate records, electronic directory assistance listings, etc., to locate updated addresses. Notices will be re-mailed to Class Members for whom updated addresses were obtained via the skip tracing process.

18. In addition, the Long Form Notice will be emailed to anyone who requests one via the toll-free number or by email or mail. The Long Form Notice will also be available for downloading or printing at the Case Website.

19. In the event that email addresses are provided to Angeion, Notice will also send notice via email. The email notice would contain the text from the proposed Publication Notice (attached hereto as **Exhibit C**) formatted into the body of the email.

20. Angeion designs the email notice to avoid many common "red flags" that might otherwise cause a Gym Class Members' spam filter to block or identify the email notice as spam. For example, Angeion does not include attachments like the Long Form Notice to the email notice, because attachments are often interpreted by various Internet Service Providers ("ISP") as spam.

21. Angeion also accounts for the real-world reality that some emails will inevitably fail to be delivered during the initial delivery attempt. Therefore, after the initial noticing campaign is complete, Angeion, after an approximate 24- to 72-hour rest period (which allows any temporary block at the ISP level to expire) causes a second round of email noticing to continue to any email addresses that were previously identified as soft bounces and not delivered. In our experience, this minimizes emails that may have erroneously failed to deliver due to sensitive servers and optimizes delivery.

Programmatic Display Advertising

22. Angeion will also utilize a form of internet advertising known as Programmatic Display Advertising, which is the leading method of buying digital advertisements in the United States to

provide notice of the Settlement to members of the Settlement Classes.[1] The media notice outlined below is strategically designed to provide notice of the Settlement to members of the Gym and Spectator Classes by driving them to the dedicated Settlement Website where they can learn more about the Settlement, including their rights and options. The text for the media notice and the Settlement Website will be drawn from the Court-approved Notices.

23. The digital advertising plan to reach members of the Gym Class will be geo-fenced to deliver advertisements within a 1-3 block radius of the Gym Class Members' physical locations. The programmatic advertising will also utilize data segments dedicated to targeting businesses to display advertisements to gym owners across various platforms and sites. We will build a persona based on relevant job titles, company names, industries, and verticals.

Message Boards & Reddit Notice

24. To engage directly with potential Gym Class Members, we are recommending a campaign on message boards including Reddit. This will allow us to surround relative content with an engaged audience.

25. A full list of subreddits and message boards will be developed at the time of campaign launch and can include r/Cheerleading, r/allstarcheerleading fierce board cheerleading community, chalk bucket.

Publication

26. Publication of notice of the Settlement (using the form attached hereto as **Exhibit C**) will further target both the Spectator and Gym Classes via a one-half page insertion in a cheerleading magazine such as *Inside Cheerleading*.[2] In addition to the printed notice, digital banner ads and

[1] Programmatic Display Advertising is a trusted method specifically utilized to reach defined target audiences. It has been reported that U.S. advertisers spent nearly $123.22 billion on programmatic display advertising in 2022, and it is estimated that approximately $141.96 billion will be spent on programmatic display advertising 2023. *See* https://content-na1.emarketer.com/us-programmatic-digital-display-ad-spending-2022#page-report. In laypeople's terms, programmatic display advertising is a method of advertising where an algorithm identifies and examines demographic profiles and uses advanced technology to place advertisements on the websites where members of the audience are most likely to visit (these websites are accessible on computers, mobile phones and tablets.

[2] Alternative, similar magazine(s) may be utilized based on timing and availability.

notice via *Inside Cheerleading*'s e-newsletter will promote the Settlement.

SPECTATOR CLASS NOTICE

27. As detailed below, the Spectator Class media campaign component of the Notice Plan is designed to deliver an approximate 92.83% reach to the Target Audience (*i.e.*, a group likely to comprise the members of the Spectator Settlement Class), which is defined below, with an average frequency of 5.86 times per person. This number is calculated using objective syndicated advertising data relied upon by most advertising agencies and brand advertisers. It is further verified by sophisticated media software and calculation engines that cross reference which media is being purchased with the media habits of our specific Target Audience (defined below).

28. What this means in practice is that 92.83% of our Target Audience will see a digital advertisement concerning the Settlement an average of 5.86 times each. The 92.83% reach is independent from the notice efforts for the Gym Class, the publication notice, the dedicated Settlement Website, and toll-free telephone line.

29. The Federal Judicial Center states that a publication notice plan that reaches 70% of class members is one that reaches a "high percentage" and is within the "norm." Barbara J. Rothstein & Thomas E. Willging, Federal Judicial Center, "Managing Class Action Litigation: A Pocket Guide or Judges," at 27 (3d Ed. 2010).

Programmatic Display Advertising

30. To develop the media notice campaign and to verify its effectiveness, our media team analyzed data from 2022 comScore Multi-Platform/MRI Simmons USA Fusion[3] to profile the

[3] GfK MediaMark Research and Intelligence LLC ("GfK MRI") provides demographic, brand preference and media-use habits, and captures in-depth information on consumer media choices, attitudes, and consumption of products and services in nearly 600 categories. comSCORE, Inc. ("comSCORE") is a leading cross-platform measurement and analytics company that precisely measures audiences, brands, and consumer behavior, capturing 1.9 trillion global interactions monthly. comSCORE's proprietary digital

Spectator Settlement Class and arrive at an appropriate Target Audience based on criteria pertinent to this Settlement. Specifically, the following syndicated research definition was used to profile potential members of the Spectator Settlement Class: "Leisure activities- How Often Engaged In: Attend/Coach youth sports event Participated in the last 12 months" **AND** "Who is the Parent of Children under 18 Living in the HH: Respondent." Based on this syndicated research definition, the Target Audience includes anyone that has attended at least one youth sporting event (which includes competitive cheerleading) and is a parent (highly likely to be a spectator to a competitive cheerleading event). As discussed in greater detail below, multiple targeting layers are utilized to further ensure delivery to the most appropriate users.

31. Based on the Target Audience definition, the size of the Target Audience is approximately 7,626,000 individuals in the United States. It is important to note that the Target Audience is distinct from the class definition, as is commonplace in class action notice plans. Utilizing an overinclusive proxy audience maximizes the efficacy of the Notice Plan and is considered a best practice among media planners and class action notice experts alike. Using proxy audiences is also commonplace in both class action litigation and advertising generally.[4]

32. Additionally, the Target Audience is based on objective syndicated data, which is routinely used by advertising agencies and experts to understand the demographics, shopping habits and

audience measurement methodology allows marketers to calculate audience reach in a manner not affected by variables such as cookie deletion and cookie blocking/rejection, allowing these audiences to be reach more effectively. comSCORE operates in more than 75 countries, including the United States, serving over 3,200 clients worldwide.

[4] If the total population base (or number of class members) is unknown, it is accepted advertising and communication practice to use a proxy-media definition, which is based on accepted media research tools and methods that will allow the notice expert to establish that number. The percentage of the population reached by supporting media can then be established. Duke Law School, GUIDELINES AND BEST PRACTICES IMPLEMENTING 2018 AMENDMENTS TO RULE 23 CLASS ACTION SETTLEMENT PROVISIONS, at 56.

attitudes of the consumers that they are seeking to reach.[5] Using this form of objective data will allow the Parties to report the reach and frequency to the Court with confidence that the reach percentage and the number of exposure opportunities comply with due process and exceed the Federal Judicial Center's threshold as to reasonableness in notification programs. Virtually all professional advertising agencies and commercial media departments use objective syndicated data tools, like the ones described above, to quantify net reach. Sources like these guarantee that advertising placements can be measured against an objective basis and confirm that the reporting statistics are not overstated. Objective syndicated data tools are ubiquitous tools in a media planner's arsenal and are regularly accepted by courts in evaluating the efficacy of a media plan or its component parts. Understanding the socioeconomic characteristics, interests and practices of a target group aids in the proper selection of media to reach that target. Here, the Target Audience has been reported to have the following characteristics:

- 93.52% are ages 25-54, with a median age of 40.7 years old;
- 56.80% are female;
- 80.49% are married;
- 100% have children;
- 47.10% have received a bachelor's or post-graduate degree;
- 68.54% are currently employed full time;
- The average household income is $121,280; and
- 91.43% have used social media in the last 30 days.

[5] The notice plan should include an analysis of the makeup of the class or classes. The target audience should be defined and quantified. This can be established through using a known group of customers, or it can be based on a proxy-media definition. Both methods have been accepted by the courts and, more generally, by the advertising industry, to determine a population base. *Id.* at 56.

33. To identify the best vehicles to deliver messaging to the Target Audience, media quintiles, which measure the degree to which an audience uses media relative to the general population, were reviewed.[6] Here, the objective syndicated data shows that members of the Target Audience spend an average of approximately 26.5 hours per week on the internet.

34. Given the strength of digital advertising, as well as our Target Audience's consistent internet use, we recommend using a robust internet advertising campaign to reach Settlement Class Members. This media schedule will allow us to deliver an effective reach level and frequency, which will provide due and proper notice to the Settlement Classes.

35. Multiple targeting layers will be implemented into the programmatic campaign to help ensure delivery to the most appropriate users, inclusive of the following tactics:

- Look-a-like Modeling: This technique uses data methods to build a look-a-like audience against known Settlement Class Members.
- Predictive Targeting: This technique allows technology to "predict" which users will be served by the advertisements about the Settlement.
- Audience Targeting: This technique uses technology and data to serve the impressions to the intended audience based on demographics, purchase behaviors and interests.
- Site Retargeting: This technique is a targeting method used to reach potential Settlement Class Members who have already visited the dedicated Settlement Website while they browsed other pages. This allows Angeion to provide a potential Settlement Class Member sufficient exposure to an advertisement about the Settlement.
- Geotargeting: The campaign will be targeted nationally. If sufficient data is available, the

[6] This review is based on the Target Audience definition and objective data from 2022 comScore Multi-Platform/MRI Simmons USA Fusion to compare the Target Audience's media consumption relative to the general population.

campaign will leverage a weighted delivery based on the geographic spread of the Target Audience throughout the country.

36. To combat the possibility of non-human viewership of the digital advertisements and to verify effective unique placements, Angeion employs Oracle's BlueKai, Adobe's Audience Manger and/or Lotame, which are demand management platforms ("DMP"). DMPs allow Angeion to learn more about the online audiences that are being reached. Further, online ad verification and security providers such as Comscore Content Activation, DoubleVerify, Grapeshot, Peer39 and Moat will be deployed to provide a higher quality of service to ad performance.

Social Media

37. The Notice Plan also includes a social media campaign using Facebook and Instagram, two of the leading social media platforms[7] in the United States, leveraging our Target Audience's consistent social media usage (91.43% used social media in the last 30 days). The social media campaign uses an interest-based approach which focuses on the interests that users exhibit while on these social media platforms.

38. The social media campaign will engage with the Target Audience desktop sites, mobile sites, and mobile apps. Additionally, specific tactics will be implemented to further qualify and deliver impressions to the Target Audience. *Look-a-like modeling* allows the use of consumer characteristics to serve ads. Based on these characteristics, we can build different consumer profile segments to ensure the Notice Plan messaging is delivered to the proper audience. *Conquesting* allows ads to be served in relevant placements to further alert potential Settlement Class Members. The social media ads will be targeted nationally. If sufficient data is available, the campaign will

[7] In the United States in 2021, Facebook had approximately 302.28 million users; Instagram had approximately 118.9 million users; See:
https://www.statista.com/statistics/408971/number-of-us-facebook-users/
https://www.statista.com/statistics/293771/number-of-us-instagram-users/

leverage a weighted delivery based on the geographic spread of the Target Audience throughout the country.

39. The social media campaign will coincide with the programmatic display advertising portion of the Notice Plan. Combined, the media notice efforts are designed to deliver approximately forty-one (41) million impressions. To track campaign success, we will implement conversion pixels throughout the Settlement Website to understand audience behavior better and identify those most likely to convert. Conversion pixels are pieces of code put in the background of a website that allow us to see how the advertising is performing. The programmatic algorithm will change based on success and failure to generate conversions throughout the process in order to provide the most effective messaging.

40. Further, Angeion continually monitors the media results and real-time adjustments are made throughout the campaign to ensure that the notice is being delivered to the desired audience. Angeion adjusts for which website types, times of day, banner ad locations, and banner ad sizes are most effective. As we continue to intake data and adjust for those variables, the program continues to be optimized for effective performance.

Paid Search Campaign

41. The Notice Plan also includes a paid search campaign on Google to help drive Settlement Class Members who are actively searching for information about the Settlement to the dedicated Settlement Website. Paid search ads will complement the programmatic and social media campaigns, as search engines are frequently used to locate a specific website, rather than a person typing in the URL. Search terms would relate to not only the Settlement itself but also the subject matter of the litigation. In other words, the paid search ads are driven by the individual user's search activity, such that if that individual searches for (or has recently searched for) the Settlement,

litigation or other terms related to the Settlement, that individual could be served with an advertisement directing them to the Settlement Website.

SETTLEMENT WEBSITE & TOLL-FREE TELEPHONE SUPPORT

42. The Notice Plan will also implement the creation of a case-specific Settlement Website, AllStarCheerAntitrustSettlement.com, where members of the Settlement Classes can easily view general information about this Settlement, review relevant Court documents, and view important dates and deadlines pertinent to the Settlement. The Settlement Website will be designed to be user-friendly and make it easy for members of the Settlement Classes to find information about this case. The Settlement Website will also have a "Contact Us" page whereby members of the Settlement Classes can send an email with any additional questions to a dedicated email address. Likewise, members of the Settlement Classes will also be able to submit a claim form online via the Settlement Website and securely upload documentation.

43. A toll-free hotline devoted to this case will be implemented to further apprise members of the Settlement Classes of their rights and options pursuant to the terms of the Settlement. The toll-free hotline will use an interactive voice response ("IVR") system to provide members of the Settlement Classes with responses to frequently asked questions and provide essential information regarding the Settlement. This hotline will be accessible 24 hours a day, 7 days a week. Additionally, members of the Settlement Classes will be able to request a copy of the Long Form Notice and/or claim form be mailed to them via the toll-free hotline.

REACH AND FREQUENCY

44. This declaration describes the reach and frequency evidence which courts systemically rely upon in reviewing class action publication notice programs for adequacy. The reach percentage exceeds the guidelines as set forth in the Federal Judicial Center's Judges' Class Action Notice and

Claims Process Checklist and Plain Language Guide to effectuate a notice program which reaches a high degree of the members of the Settlement Classes.

45. Specifically, the comprehensive Spectator Class media campaign is designed to deliver an approximate 92.83% reach with an average frequency of 5.86 times each. It should be noted that the 92.83% reach approximation is separate and apart from the Gym Class notice efforts, publication notice, the Settlement Website, and toll-free telephone support.

PLAIN LANGUAGE NOTICE DESIGN

46. The proposed Notice forms used in this matter are designed to be "noticed," reviewed, and by presenting the information in plain language, understood by members of the Settlement Classes. The design of the notices follows the principles embodied in the Federal Judicial Center's illustrative "model" notices posted at www.fjc.gov. The Notice forms contain plain-language summaries of key information about the rights and options of members of the Settlement Classes pursuant to the Settlement. Consistent with normal practice, prior to being delivered and published, all notice documents will undergo a final edit for accuracy.

47. The Publication Notice will feature a prominent headline in bold text. Design elements alert recipients and readers that the Notice is an important document authorized by a court ("*A federal court directed this Notice*.") and that the content may affect them, thereby supplying reasons to read the Notice. The Long-Form Notice provides substantial information to members of the Settlement Classes. The Long-Form Notice begins with a summary page providing a concise overview of the important information highlighting key options available to members of the Settlement Classes. A question-and-answer format makes it easy to find answers to common questions by breaking the information into simple headings.

48. Rule 23(c)(2) of the Federal Rules of Civil Procedure requires class action notices to be

written in "plain, easily understood language." Angeion Group maintains a strong commitment to adhering to this requirement, drawing on its experience and expertise to craft notices that effectively convey the necessary information to Settlement Class Members in plain language.

CONCLUSION

49. The Notice Plan outlined herein provides for direct notice to all reasonably identifiable Gym Class Members, combined with targeted digital notice advertising on websites and message boards, and print publication. The Notice Plan also provides for a robust, multi-faceted media campaign that strategically targets members of the Spectator Class. The Notice Plan includes the implementation of a dedicated Settlement Website and toll-free hotline to further inform members of the Settlement Classes of their rights and options in the Settlement.

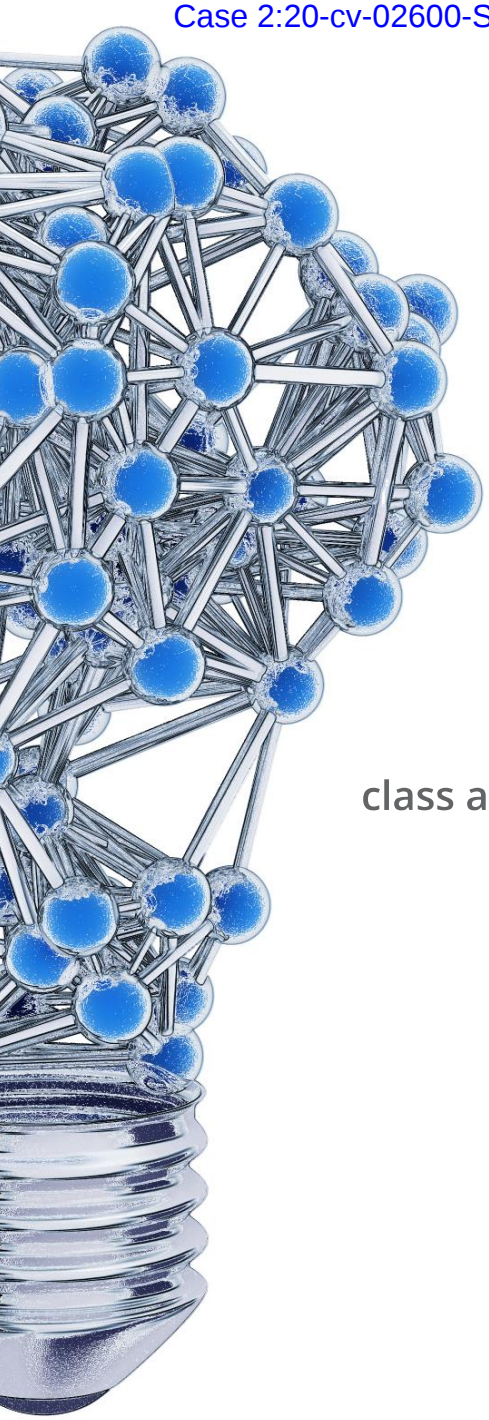
50. In my professional opinion, the Notice Plan described herein will provide full and proper notice to Settlement Class Members before the claims, opt-out, and objection deadlines. Moreover, it is my opinion that the Notice Plan is the best notice that is practicable under the circumstances and fully comports with due process, and Fed. R. Civ. P. 23. After the Notice Plan has been executed, Angeion will provide a final report verifying its effective implementation to this Court.

I hereby declare under penalty of perjury that the foregoing is true and correct.

Dated: March 23, 2023

STEVEN WEISBROT

Exhibit A



INNOVATION
IT'S PART OF OUR DNA

class action | mass tort | legal noticing | litigation support

ANGEION GROUP
Changing the Rules

Judicial Recognition

IN RE: APPLE INC. DEVICE PERFORMANCE LITIGATION

Case No. 5:18-md-02827

The Honorable Edward J. Davila, United States District Court, Northern District of California (March 17, 2021): Angeion undertook a comprehensive notice campaign…The notice program was well executed, far-reaching, and exceeded both Federal Rule of Civil Procedure 23(c)(2)(B)'s requirement to provide the "best notice that is practicable under the circumstances" and Rule 23(e)(1)(B)'s requirement to provide "direct notice in a reasonable manner."

IN RE: TIKTOK, INC., CONSUMER PRIVACY LITIGATION

Case No. 1:20-cv-04699

The Honorable John Z. Lee, United States District Court, Northern District of Illinois (October 1, 2021): The Court approves, as to form and content, the proposed Class Notices submitted to the Court. The Court finds that the Settlement Class Notice Program outlined in the Declaration of Steven Weisbrot on Settlement Notices and Notice Plan (i) is the best practicable notice; (ii) is reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of the Action and of their right to object to or to exclude themselves from the proposed settlement; (iii) is reasonable and constitutes due, adequate and sufficient notice to all persons entitled to receive notice; and (iv) meets all requirements of applicable law, Federal Rule of Civil Procedure 23, and due process.

IN RE: GOOGLE PLUS PROFILE LITIGATION

Case No. 5:18-cv-06164

The Honorable Edward J. Davila, United States District Court, Northern District of California (January 25, 2021): The Court further finds that the program for disseminating notice to Settlement Class Members provided for in the Settlement, and previously approved and directed by the Court (hereinafter, the "Notice Program"), has been implemented by the Settlement Administrator and the Parties, and such Notice Program, including the approved forms of notice, is reasonable and appropriate and satisfies all applicable due process and other requirements, and constitutes best notice reasonably calculated under the circumstances to apprise Settlement Class Members…

IN RE: FACEBOOK INTERNET TRACKING LITIGATION

Case No. 5:12-md-02314

The Honorable Edward J. Davila, United States District Court, Northern District of California (March 31, 2022): The Court approves the Notice Plan, Notice of Proposed Class Action Settlement, Claim Form, and Opt-Out Form, which are attached to the Settlement Agreement as Exhibits B-E, and finds that their dissemination substantially in the manner and form set forth in the Settlement Agreement meets the requirements of Federal Rule of Civil Procedure 23 and due process, constitutes the best notice practicable under the circumstances, and is reasonably calculated, under the circumstances, to apprise members of the Settlement Class of the pendency of the Actions, the effect of the proposed Settlement (including the releases contained therein), the anticipated Motion for a Fee and Expense Award and for Service Awards, and their rights to participate in, opt out of, or object to any aspect of the proposed Settlement.

CITY OF LONG BEACH v. MONSANTO COMPANY

Case No. 2:16-cv-03493

The Honorable Fernando M. Olguin, United States District Court, Central District of California (March 14, 2022): The court approves the form, substance, and requirements of the class Notice, (Dkt.278-2, Settlement Agreement, Exh. I). The proposed manner of notice of the settlement set forth in the Settlement Agreement constitutes the best notice practicable under the circumstances and complies with the requirements of due process.

STEWART v. LEXISNEXIS RISK DATA RETRIEVAL SERVICES, LLC

Case No. 3:20-cv-00903

The Honorable John A. Gibney Jr., United States District Court, Eastern District of Virginia (February 25, 2022): The proposed forms and methods for notifying the proposed Settlement Class Members of the Settlement and its terms and conditions meet the requirements of Fed. R. Civ. P. 23(c)(2)(B) and due process, constitute the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons and entities entitled to notice…Based on the foregoing, the Court hereby approves the notice plans developed by the Parties and the Settlement Administrator and directs that they be implemented according to the Agreement and the notice plans attached as exhibits.

WILLIAMS v. APPLE INC.

Case No. 3:19-cv-0400

The Honorable Laurel Beeler, United States District Court, Northern District of California (February 24, 2022): The Court finds the Email Notice and Website Notice (attached to the Agreement as Exhibits 1 and 4, respectively), and their manner of transmission, implemented pursuant to the Agreement (a) are the best practicable notice, (b) are reasonably calculated, under the circumstances, to apprise the Subscriber Class of the pendency of the Action and of their right to object to or to exclude themselves from the proposed settlement, (c) are reasonable and constitute due, adequate and sufficient notice to all persons entitled to receive notice, and (d) meet all requirements of applicable law.

CLEVELAND v. WHIRLPOOL CORPORATION

Case No. 0:20-cv-01906

The Honorable Wilhelmina M. Wright, United States District Court, District of Minnesota (December 16, 2021): It appears to the Court that the proposed Notice Plan described herein, and detailed in the Settlement Agreement, comports with due process, Rule 23, and all other applicable law. Class Notice consists of email notice and postcard notice when email addresses are unavailable, which is the best practicable notice under the circumstances…The proposed Notice Plan complies with the requirements of Rule 23, Fed. R. Civ. P., and due process, and Class Notice is to be sent to the Settlement Class Members as set forth in the Settlement Agreement and pursuant to the deadlines above.

RASMUSSEN v. TESLA, INC. d/b/a TESLA MOTORS, INC.

Case No. 5:19-cv-04596

The Honorable Beth Labson Freeman, United States District Court, Northern District of California (December 10, 2021): The Court has carefully considered the forms and methods of notice to the Settlement Class set forth in the Settlement Agreement ("Notice Plan"). The Court finds that the Notice Plan constitutes the best notice practicable under the circumstances and fully satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure, the requirements of due process, and the requirements of any other applicable law, such that the terms of the Settlement Agreement, the releases provided for therein, and this Court's final judgment will be binding on all Settlement Class Members.

CAMERON v. APPLE INC.

Case No. 4:19-cv-03074

The Honorable Yvonne Gonzalez Rogers, United States District Court, Northern District of California (November 16, 2021): The parties' proposed notice plan appears to be constitutionally sound in that plaintiffs have made a sufficient showing that it is: (i) the best notice practicable; (ii) reasonably calculated, under the circumstances, to apprise the Class members of the proposed settlement and of their right to object or to exclude themselves as provided in the settlement agreement; (iii) reasonable and constitute due, adequate, and sufficient notice to all persons entitled to receive notice; and (iv) meet all applicable requirements of due process and any other applicable requirements under federal law.

RISTO v. SCREEN ACTORS GUILD-AMERICAN FEDERATION OF TELEVISION AND RADIO ARTISTS

Case No. 2:18-cv-07241

The Honorable Christina A. Snyder, United States District Court, Central District of California (November 12, 2021): The Court approves the publication notice plan presented to this Court as it will provide notice to potential class members through a combination of traditional and digital media that will consist of publication of notice via press release, programmatic display digital advertising, and targeted social media, all of which will direct Class Members to the Settlement website…The notice plan satisfies any due process concerns as this Court certified the class under Federal Rule of Civil Procedure 23(b)(1)…

JENKINS v. NATIONAL GRID USA SERVICE COMPANY, INC.

Case No. 2:15-cv-01219

The Honorable Joanna Seybert, United States District Court, Eastern District of New York (November 8, 2021): Pursuant to Fed. R. Civ. P. 23(e)(1) and 23(c)(2)(B), the Court approves the proposed Notice Plan and procedures set forth at Section 8 of the Settlement, including the form and content of the proposed forms of notice to the Settlement Class attached as Exhibits C-G to the Settlement and the proposed procedures for Settlement Class Members to exclude themselves from the Settlement Class or object. The Court finds that the proposed Notice Plan meets the requirements of due process under the United States Constitution and Rule 23, and that such Notice Plan—which includes direct notice to Settlement Class Members sent via first class U.S. Mail and email; the establishment of a Settlement Website (at the URL, www.nationalgridtcpasettlement.com) where Settlement Class Members can view the full settlement agreement, the detailed long-form notice (in English and Spanish),

and other key case documents; publication notice in forms attached as Exhibits E and F to the Settlement sent via social media (Facebook and Instagram) and streaming radio (e.g., Pandora and iHeart Radio). The Notice Plan shall also include a paid search campaign on search engine(s) chosen by Angeion (e.g., Google) in the form attached as Exhibits G and the establishment of a toll-free telephone number where Settlement Class Members can get additional information—is the best notice practicable under the circumstances and shall constitute due and sufficient notice to all persons entitled thereto.

NELLIS v. VIVID SEATS, LLC

Case No. 1:20-cv-02486

The Honorable Robert M. Dow, Jr., United States District Court, Northern District of Illinois (November 1, 2021): The Notice Program, together with all included and ancillary documents thereto, (a) constituted reasonable notice; (b) constituted notice that was reasonably calculated under the circumstances to apprise members of the Settlement Class of the pendency of the Litigation…(c) constituted reasonable, due, adequate and sufficient notice to all Persons entitled to receive notice; and (d) met all applicable requirements of due process and any other applicable law. The Court finds that Settlement Class Members have been provided the best notice practicable of the Settlement and that such notice fully satisfies all requirements of law as well as all requirements of due process.

PELLETIER v. ENDO INTERNATIONAL PLC

Case No. 2:17-cv-05114

The Honorable Michael M. Baylson, United States District Court, Eastern District of Pennsylvania (October 25, 2021): The Court approves, as to form and content, the Notice of Pendency and Proposed Settlement of Class Action (the "Notice"), the Proof of Claim and Release form (the "Proof of Claim"), and the Summary Notice, annexed hereto as Exhibits A-1, A-2, and A-3, respectively, and finds that the mailing and distribution of the Notice and publishing of the Summary Notice, substantially in the manner and form set forth in ¶¶7-10 of this Order, meet the requirements of Rule 23 and due process, and is the best notice practicable under the circumstances and shall constitute due and sufficient notice to all Persons entitled thereto.

BIEGEL v. BLUE DIAMOND GROWERS

Case No. 7:20-cv-03032

The Honorable Cathy Seibel, United States District Court, Southern District of New York (October 25, 2021): The Court finds that the Notice Plan, set forth in the Settlement Agreement and effectuated pursuant to the Preliminary Approval Order: (i) was the best notice practicable under the circumstances; (ii) was reasonably calculated to provide, and did provide, due and sufficient notice to the Settlement Class regarding the existence and nature of the Action…and (iii) satisfied the requirements of the Federal Rules of Civil Procedure, the United States Constitution, and all other applicable law.

QUINTERO v. SAN DIEGO ASSOCIATION OF GOVERNMENTS

Case No. 37-2019-00017834-CU-NP-CTL

The Honorable Eddie C. Sturgeon, Superior Court of the State of California, County of San Diego (September 27, 2021): The Court has reviewed the class notices for the Settlement Class and the methods for providing notice and has determined that the parties will employ forms and methods of notice that constitute the best notice practicable under the circumstances; are reasonably calculated to apprise class members of the terms of the Settlement and of their right to participate in it, object, or opt-out; are reasonable and constitute due, adequate, and sufficient notice to all persons entitled to receive notice; and meet all constitutional and statutory requirements, including all due process requirements and the California Rules of Court.

HOLVE v. MCCORMICK & COMPANY, INC.

Case No. 6:16-cv-06702

The Honorable Mark W. Pedersen, United States District Court for the Western District of New York (September 23, 2021): The Court finds that the form, content and method of giving notice to the Class as described in the Settlement Agreement and the Declaration of the Settlement Administrator: (a) will constitute the best practicable notice; (b) are reasonably calculated, under the circumstances, to apprise the Settlement Class Members of the pendency of the Action…(c) are reasonable and constitute due, adequate, and sufficient notice to all Settlement Class Members and other persons entitled to receive notice; and (d) meet all applicable requirements of law, including but not limited to 28 U.S.C. § 1715, Rule 23(c) and (e), and the Due Process Clause(s) of the United States Constitution.

CULBERTSON T AL. v. DELOITTE CONSULTING LLP

Case No. 1:20-cv-03962

The Honorable Lewis J. Liman, United States District Court, Southern District of New York (August 27, 2021): The notice procedures described in the Notice Plan are hereby found to be the best means of providing notice under the circumstances and, when completed, shall constitute due and sufficient notice of the proposed Settlement Agreement and the Final Approval Hearing to all persons affected by and/or entitled to participate in the Settlement Agreement, in full compliance with the notice requirements of Rule 23 of the Federal Rules of Civil Procedure and due process of law.

PULMONARY ASSOCIATES OF CHARLESTON PLLC v. GREENWAY HEALTH, LLC

Case No. 3:19-cv-00167

The Honorable Timothy C. Batten, Sr., United States District Court, Northern District of Georgia (August 24, 2021): Under Rule 23(c)(2), the Court finds that the content, format, and method of disseminating Notice, as set forth in the Motion, the Declaration of Steven Weisbrot filed on July 2, 2021, and the Settlement Agreement and Release, including notice by First Class U.S. Mail and email to all known Class Members, is the best notice practicable under the circumstances and satisfies all requirements provided in Rule 23(c)(2)(B) and due process.

IN RE: BROILER CHICKEN GROWER ANTITRUST LITIGATION (NO II)

Case No. 6:20-md-02977

The Honorable Robert J. Shelby, United States District Court, Eastern District of Oklahoma (August 23, 2021): The Court approves the method of notice to be provided to the Settlement Class as set forth in Plaintiffs' Motion and Memorandum of Law in Support of Motion for Approval of the Form and Manner of Class Notice and Appointment of Settlement Administrator and Request for Expedited Treatment and the Declaration of Steven Weisbrot on Angeion Group Qualifications and Proposed Notice Plan…The Court finds and concludes that such notice: (a) is the best notice that is practicable under the circumstances, and is reasonably calculated to reach the members of the Settlement Class and to apprise them of the Action, the terms and conditions of the Settlement, their right to opt out and be excluded from the Settlement Class, and to object to the Settlement; and (b) meets the requirements of Federal Rule of Civil Procedure 23 and due process.

ROBERT ET AL. v. AT&T MOBILITY, LLC

Case No. 3:15-cv-03418

The Honorable Edward M. Chen, United States District Court, Northern District of California (August 20, 2021): The Court finds that such Notice program, including the approved forms of notice: (a) constituted the best notice that is practicable under the circumstances; (b) included direct individual notice to all Settlement Class Members who could be identified through reasonable effort, as well as supplemental notice via a social media notice campaign and reminder email and SMS notices; (c) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of the nature of this Action …(d) constituted due, adequate and sufficient notice to all persons entitled to notice; and (e) met all applicable requirements of Federal Rule of Civil Procedure 23, Due Process under the U.S. Constitution, and any other applicable law.

PYGIN v. BOMBAS, LLC

Case No. 4:20-cv-04412

The Honorable Jeffrey S. White, United States District Court, Northern District of California (July 12, 2021): The Court also concludes that the Class Notice and Notice Program set forth in the Settlement Agreement satisfy the requirements of due process and Rule 23 and provide the best notice practicable under the circumstances. The Class Notice and Notice Program are reasonably calculated to apprise Settlement Class Members of the nature of this Litigation, the Scope of the Settlement Class, the terms of the Settlement Agreement, the right of Settlement Class Members to object to the Settlement Agreement or exclude themselves from the Settlement Class and the process for doing so, and of the Final Approval Hearing. Accordingly, the Court approves the Class Notice and Notice Program and the Claim Form.

WILLIAMS ET AL. v. RECKITT BENCKISER LLC ET AL.

Case No. 1:20-cv-23564

The Honorable Jonathan Goodman, United States District Court, Southern District of Florida (April 23, 2021): The Court approves, as to form and content, the Class Notice and Internet Notice submitted by the parties (Exhibits B and D to the Settlement Agreement or Notices

substantially similar thereto) and finds that the procedures described therein meet the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process, and provide the best notice practicable under the circumstances. The proposed Class Notice Plan -- consisting of (i) internet and social media notice; and (ii) notice via an established a Settlement Website -- is reasonably calculated to reach no less than 80% of the Settlement Class Members.

NELSON ET AL. v. IDAHO CENTRAL CREDIT UNION

Case No. CV03-20-00831, CV03-20-03221

The Honorable Robert C. Naftz, Sixth Judicial District, State of Idaho, Bannock County (January 19, 2021): The Court finds that the Proposed Notice here is tailored to this Class and designed to ensure broad and effective reach to it…The Parties represent that the operative notice plan is the best notice practicable and is reasonably designed to reach the settlement class members. The Court agrees.

IN RE: HANNA ANDERSSON AND SALESFORCE.COM DATA BREACH LITIGATION

Case No. 3:20-cv-00812

The Honorable Edward M. Chen, United States District Court, Northern District of California (December 29, 2020): The Court finds that the Class Notice and Notice Program satisfy the requirements of due process and Rule 23 of the Federal Rules of Civil Procedure and provide the best notice practicable under the circumstances.

IN RE: PEANUT FARMERS ANTITRUST LITIGATION

Case No. 2:19-cv-00463

The Honorable Raymond A. Jackson, United States District Court, Eastern District of Virginia (December 23, 2020): The Court finds that the Notice Program…constitutes the best notice that is practicable under the circumstances and is valid, due and sufficient notice to all persons entitled thereto and complies fully with the requirements of Rule 23(c)(2) and the due process requirements of the Constitution of the United States.

BENTLEY ET AL. v. LG ELECTRONICS U.S.A., INC.

Case No. 2:19-cv-13554

The Honorable Madeline Cox Arleo, United States District Court, District of New Jersey (December 18, 2020): The Court finds that notice of this Settlement was given to Settlement Class Members in accordance with the Preliminary Approval Order and constituted the best notice practicable of the proceedings and matters set forth therein, including the Litigation, the Settlement, and the Settlement Class Members' rights to object to the Settlement or opt out of the Settlement Class, to all Persons entitled to such notice, and that this notice satisfied the requirements of Federal Rule of Civil Procedure 23 and of due process.

IN RE: ALLURA FIBER CEMENT SIDING PRODUCTS LIABILITY LITIGATION

Case No. 2:19-mn-02886

The Honorable David C. Norton, United States District Court, District of South Carolina (December 18, 2020): The proposed Notice provides the best notice practicable under the

circumstances. It allows Settlement Class Members a full and fair opportunity to consider the proposed settlement. The proposed plan for distributing the Notice likewise is a reasonable method calculated to reach all members of the Settlement Class who would be bound by the settlement. There is no additional method of distribution that would be reasonably likely to notify Settlement Class Members who may not receive notice pursuant to the proposed distribution plan.

ADKINS ET AL. v. FACEBOOK, INC.

Case No. 3:18-cv-05982

The Honorable William Alsup, United States District Court, Northern District of California (November 15, 2020): Notice to the class is "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Tr. Co., 399 U.S. 306, 314 (1650).*

IN RE: 21ST CENTURY ONCOLOGY CUSTOMER DATA SECURITY BREACH LITIGATION

Case No. 8:16-md-02737

The Honorable Mary S. Scriven, United States District Court, Middle District of Florida (November 2, 2020): The Court finds and determines that mailing the Summary Notice and publication of the Settlement Agreement, Long Form Notice, Summary Notice, and Claim Form on the Settlement Website, all pursuant to this Order, constitute the best notice practicable under the circumstances, constitute due and sufficient notice of the matters set forth in the notices to all persons entitled to receive such notices, and fully satisfies the of due process, Rule 23 of the Federal Rules of Civil Procedure, 28 U.S.C. § 1715, and all other applicable laws and rules. The Court further finds that all of the notices are written in plain language and are readily understandable by Class Members.

MARINO ET AL. v. COACH INC.

Case No. 1:16-cv-01122

The Honorable Valerie Caproni, United States District Court, Southern District of New York (August 24, 2020): The Court finds that the form, content, and method of giving notice to the Settlement Class as described in paragraph 8 of this Order: (a) will constitute the best practicable notice; (b) are reasonably calculated, under the circumstances, to apprise the Settlement Class Members of the pendency of the Action, the terms of the proposed Settlement, and their rights under the proposed Settlement, including but not limited to their rights to object to or exclude themselves from the proposed Settlement and other rights under the terms of the Settlement Agreement; (c) are reasonable and constitute due, adequate, and sufficient notice to all Settlement Class Members and other persons entitled to receive notice; and (d) meet all applicable requirements of law, including but not limited to 28 U.S.C. § 1715, Rule 23(c) and (e), and the Due Process Clause(s) of the United States Constitution. The Court further finds that all of the notices are written in plain language, are readily understandable by Settlement Class Members, and are materially consistent with the Federal Judicial Center's illustrative class action notices.

BROWN v. DIRECTV, LLC

Case No. 2:13-cv-01170

The Honorable Dolly M. Gee, United States District Court, Central District of California (July 23, 2020): Given the nature and size of the class, the fact that the class has no geographical limitations, and the sheer number of calls at issue, the Court determines that these methods constitute the best and most reasonable form of notice under the circumstances.

IN RE: SSA BONDS ANTITRUST LITIGATION

Case No. 1:16-cv-03711

The Honorable Edgardo Ramos, United States District Court, Southern District of New York (July 15, 2020): The Court finds that the mailing and distribution of the Notice and the publication of the Summary Notice substantially in the manner set forth below meet the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process and constitute the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all Persons entitled to notice.

KJESSLER ET AL. v. ZAAPPAAZ, INC. ET AL.

Case No. 4:18-cv-00430

The Honorable Nancy F. Atlas, United States District Court, Southern District of Texas (July 14, 2020): The Court also preliminarily approves the proposed manner of communicating the Notice and Summary Notice to the putative Settlement Class, as set out below, and finds it is the best notice practicable under the circumstances, constitutes due and sufficient notice to all persons and entities entitled to receive such notice, and fully satisfies the requirements of applicable laws, including due process and Federal Rule of Civil Procedure 23.

HESTER ET AL. v. WALMART, INC.

Case No. 5:18-cv-05225

The Honorable Timothy L. Brooks, United States District Court, Western District of Arkansas (July 9, 2020): The Court finds that the Notice and Notice Plan substantially in the manner and form set forth in this Order and the Agreement meet the requirements of Federal Rule of Civil Procedure 23 and due process, is the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all Persons entitled thereto.

CLAY ET AL. v. CYTOSPORT INC.

Case No. 3:15-cv-00165

The Honorable M. James Lorenz, United States District Court, Southern District of California (June 17, 2020): The Court approves the proposed Notice Plan for giving notice to the Settlement Class through publication, both print and digital, and through the establishment of a Settlement Website, as more fully described in the Agreement and the Claims Administrator's affidavits (docs. no. 222-9, 224, 224-1, and 232-3 through 232-6). The Notice Plan, in form, method, and content, complies with the requirements of Rule 23 and due process, and constitutes the best notice practicable under the circumstances.

GROGAN v. AARON'S INC.

Case No. 1:18-cv-02821

The Honorable J.P. Boulee, United States District Court, Northern District of Georgia (May 1, 2020): The Court finds that the Notice Plan as set forth in the Settlement Agreement meets the requirements of Fed. R. Civ. P. 23 and constitutes the best notice practicable under the circumstances, including direct individual notice by mail and email to Settlement Class Members where feasible and a nationwide publication website-based notice program, as well as establishing a Settlement Website at the web address of www.AaronsTCPASettlement.com, and satisfies fully the requirements the Federal Rules of Civil Procedure, the U.S. Constitution, and any other applicable law, such that the Settlement Agreement and Final Order and Judgment will be binding on all Settlement Class Members.

CUMMINGS v. BOARD OF REGENTS OF THE UNIVERSITY OF NEW MEXICO, ET AL.

Case No. D-202-CV-2001-00579

The Honorable Carl Butkus, Second Judicial District Court, County of Bernalillo, State of New Mexico (March 30, 2020): The Court has reviewed the Class Notice, the Plan of Allocation and Distribution and Claim Form, each of which it approves in form and substance. The Court finds that the form and methods of notice set forth in the Agreement: (i) are reasonable and the best practicable notice under the circumstances; (ii) are reasonably calculated to apprise Settlement Class Members of the pendency of the Lawsuit, of their rights to object to or opt-out of the Settlement, and of the Final Approval Hearing; (iii) constitute due, adequate, and sufficient notice to all persons entitled to receive notice; and (iv) meet the requirements of the New Mexico Rules of Civil Procedure, the requirements of due process under the New Mexico and United States Constitutions, and the requirements of any other applicable rules or laws.

SCHNEIDER, ET AL. v. CHIPOTLE MEXICAN GRILL, INC.

Case No. 4:16-cv-02200

The Honorable Haywood S. Gilliam, Jr., United States District Court, Northern District of California (January 31, 2020): Given that direct notice appears to be infeasible, the third-party settlement administrator will implement a digital media campaign and provide for publication notice in People magazine, a nationwide publication, and the East Bay Times. SA § IV.A, C; Dkt. No. 205-12 at ¶¶ 13–23. The publication notices will run for four consecutive weeks. Dkt. No. 205 at ¶ 23. The digital media campaign includes an internet banner notice implemented using a 60-day desktop and mobile campaign. Dkt. No. 205-12 at ¶ 18. It will rely on "Programmatic Display Advertising" to reach the "Target Audience," Dkt. No. 216-1 at ¶ 6, which is estimated to include 30,100,000 people and identified using the target definition of "Fast Food & Drive-In Restaurants Total Restaurants Last 6 Months [Chipotle Mexican Grill]," Dkt. No. 205-12 at ¶ 13. Programmatic display advertising utilizes "search targeting," "category contextual targeting," "keyword contextual targeting," and "site targeting," to place ads. Dkt. No. 216-1 at ¶¶ 9–12. And through "learning" technology, it continues placing ads on websites where the ad is performing well. Id. ¶ 7. Put simply, prospective Class Members will see a banner ad notifying them of the settlement when they search for terms or websites that are similar to or related to Chipotle, when they browse websites that are categorically relevant to Chipotle (for example, a website related to fast casual dining or Mexican food), and when they browse websites that include a relevant keyword (for example, a fitness

website with ads comparing fast casual choices). Id. ¶¶ 9–12. By using this technology, the banner notice is "designed to result in serving approximately 59,598,000 impressions." Dkt. No. 205-12 at ¶ 18.

The Court finds that the proposed notice process is "'reasonably calculated, under all the circumstances,' to apprise all class members of the proposed settlement." Roes, 944 F.3d at 1045 (citation omitted).

HANLEY v. TAMPA BAY SPORTS AND ENTERTAINMENT LLC

Case No. 8:19-cv-00550

The Honorable Charlene Edwards Honeywell, United States District Court, Middle District of Florida (January 7, 2020): The Court approves the form and content of the Class notices and claim forms substantially in the forms attached as Exhibits A-D to the Settlement. The Court further finds that the Class Notice program described in the Settlement is the best practicable under the circumstances. The Class Notice program is reasonably calculated under the circumstances to inform the Settlement Class of the pendency of the Action, certification of a Settlement Class, the terms of the Settlement, Class Counsel's attorney's fees application and the request for a service award for Plaintiff, and their rights to opt-out of the Settlement Class or object to the Settlement. The Class notices and Class Notice program constitute sufficient notice to all persons entitled to notice. The Class notices and Class Notice program satisfy all applicable requirements of law, including, but not limited to, Federal Rule of Civil Procedure 23 and the Constitutional requirement of Due Process.

CORCORAN, ET AL. v. CVS HEALTH, ET AL.

Case No. 4:15-cv-03504

The Honorable Yvonne Gonzalez Rogers, United States District Court, Northern District of California (November 22, 2019): Having reviewed the parties' briefings, plaintiffs' declarations regarding the selection process for a notice provider in this matter and regarding Angeion Group LLC's experience and qualifications, and in light of defendants' non-opposition, the Court APPROVES Angeion Group LLC as the notice provider. Thus, the Court GRANTS the motion for approval of class notice provider and class notice program on this basis.

Having considered the parties' revised proposed notice program, the Court agrees that the parties' proposed notice program is the "best notice that is practicable under the circumstances." The Court is satisfied with the representations made regarding Angeion Group LLC's methods for ascertaining email addresses from existing information in the possession of defendants. Rule 23 further contemplates and permits electronic notice to class members in certain situations. See Fed. R. Civ. P. 23(c)(2)(B). The Court finds, in light of the representations made by the parties, that this is a situation that permits electronic notification via email, in addition to notice via United States Postal Service. Thus, the Court APPROVES the parties' revised proposed class notice program, and GRANTS the motion for approval of class notice provider and class notice program as to notification via email and United States Postal Service mail.

PATORA v. TARTE, INC.

Case No. 7:18-cv-11760

The Honorable Kenneth M. Karas, United States District Court, Southern District of New York (October 2, 2019): The Court finds that the form, content, and method of giving notice to the Class as described in Paragraph 9 of this Order: (a) will constitute the best practicable notice; (b) are reasonably calculated, under the circumstances, to apprise the Settlement Class Members of the pendency of the Action, the terms of the Proposed Settlement, and their rights under the Proposed Settlement, including but not limited to their rights to object to or exclude themselves from the Proposed Settlement and other rights under the terms of the Settlement Agreement; (c) are reasonable and constitute due, adequate, and sufficient notice to all Settlement Class Members and other persons entitled to receive notice; and (d) meet all applicable requirements of law, including but not limited to 28 U.S.C. § 1715, Rule 23(c) and (e), and the Due Process Clauses of the United States Constitution. The Court further finds that all of the notices are written in simple terminology, are readily understandable by Settlement Class Members, and are materially consistent with the Federal Judicial Center's illustrative class action notices.

CARTER, ET AL. v. GENERAL NUTRITION CENTERS, INC., and GNC HOLDINGS, INC.

Case No. 2:16-cv-00633

The Honorable Mark R. Hornak, United States District Court, Western District of Pennsylvania (September 9, 2019): The Court finds that the Class Notice and the manner of its dissemination described in Paragraph 7 above and Section VII of the Agreement constitutes the best practicable notice under the circumstances and is reasonably calculated, under all the circumstances, to apprise proposed Settlement Class Members of the pendency of this action, the terms of the Agreement, and their right to object to or exclude themselves from the proposed Settlement Class. The Court finds that the notice is reasonable, that it constitutes due, adequate and sufficient notice to all persons entitled to receive notice, and that it meets the requirements of due process, Rule 23 of the Federal Rules of Ci vii Procedure, and any other applicable laws.

CORZINE v. MAYTAG CORPORATION, ET AL.

Case No. 5:15-cv-05764

The Honorable Beth L. Freeman, United States District Court, Northern District of California (August 21, 2019): The Court, having reviewed the proposed Summary Notice, the proposed FAQ, the proposed Publication Notice, the proposed Claim Form, and the proposed plan for distributing and disseminating each of them, finds and concludes that the proposed plan will provide the best notice practicable under the circumstances and satisfies all requirements of federal and state laws and due process.

MEDNICK v. PRECOR, INC.

Case No. 1:14-cv-03624

The Honorable Harry D. Leinenweber, United States District Court, Northern District of Illinois (June 12, 2019): Notice provided to Class Members pursuant to the Preliminary Class Settlement Approval Order constitutes the best notice practicable under the circumstances, including individual email and mail notice to all Class Members who could be identified

through reasonable effort, including information provided by authorized third-party retailers of Precor. Said notice provided full and adequate notice of these proceedings and of the matter set forth therein, including the proposed Settlement set forth in the Agreement, to all persons entitled to such notice, and said notice fully satisfied the requirements of F.R.C.P. Rule 23 (e) and (h) and the requirements of due process under the United States and California Constitutions.

GONZALEZ v. TCR SPORTS BROADCASTING HOLDING LLP, ET AL.

Case No. 1:18-cv-20048

The Honorable Darrin P. Gayles, United States District Court, Southern District of Florida (May 24, 2019): The Court finds that notice to the class was reasonable and the best notice practicable under the circumstances, consistent with Rule 23(e)(1) and Rule 23(c)(2)(B).

ANDREWS ET AL. v. THE GAP, INC., ET AL.

Case No. CGC-18-567237

The Honorable Richard B. Ulmer Jr., Superior Court of the State of California, County of San Francisco (May 10, 2019): The Court finds that (a) the Full Notice, Email Notice, and Publication constitute the best notice practicable under the circumstances, (b) they constitute valid, due, and sufficient notice to all members of the Class, and (c) they comply fully with the requirements of California Code of Civil Procedure section 382, California Rules of Court 3.766 and 3.769, the California and United States Constitutions, and other applicable law.

COLE, ET AL. v. NIBCO, INC.

Case No. 3:13-cv-07871

The Honorable Freda L. Wolfson, United States District Court, District of New Jersey (April 11, 2019): The record shows, and the Court finds, that the Notice Plan has been implemented in the manner approved by the Court in its Preliminary Approval Order. The Court finds that the Notice Plan constitutes: (i) the best notice practicable to the Settlement Class under the circumstances; (ii) was reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of this..., (iii) due, adequate, and sufficient notice to all Persons entitled to receive notice; and (iv) notice that fully satisfies the requirements of the United States Constitution (including the Due Process Clause), Fed. R. Civ. P. 23, and any other applicable law.

DIFRANCESCO, ET AL. v. UTZ QUALITY FOODS, INC.

Case No. 1:14-cv-14744

The Honorable Douglas P. Woodlock, United States District Court, District of Massachusetts (March 15, 2019): The Court finds that the Notice plan and all forms of Notice to the Class as set forth in the Settlement Agreement and Exhibits 2 and 6 thereto, as amended (the "Notice Program"), is reasonably calculated to, under all circumstances, apprise the members of the Settlement Class of the pendency of this action, the certification of the Settlement Class, the terms of the Settlement Agreement, and the right of members to object to the settlement or to exclude themselves from the Class. The Notice Program is consistent with the

requirements of Rule 23 and due process, and constitutes the best notice practicable under the circumstances.

IN RE: CHRYSLER-DODGE-JEEP ECODIESEL MARKETING, SALES PRACTICES, AND PRODUCTS LIABILITY LITIGATION

Case No. 3:17-md-02777

The Honorable Edward M. Chen, United States District Court, Northern District of California (February 11, 2019): Also, the parties went through a sufficiently rigorous selection process to select a settlement administrator. See Proc. Guidance for Class Action Sett. ¶ 2; see also Cabraser Decl. ¶¶ 9-10. While the settlement administration costs are significant – an estimated $1.5 million – they are adequately justified given the size of the class and the relief being provided.

In addition, the Court finds that the language of the class notices (short and long-form) is appropriate and that the means of notice – which includes mail notice, electronic notice, publication notice, and social media "marketing" – is the "best notice…practicable under the circumstances." Fed. R. Civ. P. 23(c)(2)(B); see also Proc. Guidance for Class Action Sett. ¶¶ 3-5, 9 (addressing class notice, opt-outs, and objections). The Court notes that the means of notice has changed somewhat, as explained in the Supplemental Weisbrot Declaration filed on February 8, 2019, so that notice will be more targeted and effective. See generally Docket No. 525 (Supp. Weisbrot Decl.) (addressing, inter alia, press release to be distributed via national newswire service, digital and social media marketing designed to enhance notice, and "reminder" first-class mail notice when AEM becomes available).

Finally, the parties have noted that the proposed settlement bears similarity to the settlement in the Volkswagen MDL. See Proc. Guidance for Class Action Sett. ¶ 11.

RYSEWYK, ET AL. v. SEARS HOLDINGS CORPORATION and SEARS, ROEBUCK AND COMPANY

Case No. 1:15-cv-04519

The Honorable Manish S. Shah, United States District Court, Northern District of Illinois (January 29, 2019): The Court holds that the Notice and notice plan as carried out satisfy the requirements of Rule 23(e) and due process. This Court has previously held the Notice and notice plan to be reasonable and the best practicable under the circumstances in its Preliminary Approval Order dated August 6, 2018. (Dkt. 191) Based on the declaration of Steven Weisbrot, Esq. of Angeion Group (Dkt. No. 209-2), which sets forth compliance with the Notice Plan and related matters, the Court finds that the multi-pronged notice strategy as implemented has successfully reached the putative Settlement Class, thus constituting the best practicable notice and satisfying due process.

MAYHEW, ET AL. v. KAS DIRECT, LLC, and S.C. JOHNSON & SON, INC.

Case No. 7:16-cv-06981

The Honorable Vincent J. Briccetti, United States District Court, Southern District of New York (June 26, 2018): In connection with their motion, plaintiffs provide the declaration of Steven Weisbrot, Esq., a principal at the firm Angeion Group, LLC, which will serve as the notice and settlement administrator in this case. (Doc. #101, Ex. F: Weisbrot Decl.) According to Mr.

Weisbrot, he has been responsible for the design and implementation of hundreds of class action administration plans, has taught courses on class action claims administration, and has given testimony to the Judicial Conference Committee on Rules of Practice and Procedure on the role of direct mail, email, and digital media in due process notice. Mr. Weisbrot states that the internet banner advertisement campaign will be responsive to search terms relevant to "baby wipes, baby products, baby care products, detergents, sanitizers, baby lotion, [and] diapers," and will target users who are currently browsing or recently browsed categories "such as parenting, toddlers, baby care, [and] organic products." (Weisbrot Decl. ¶ 18). According to Mr. Weisbrot, the internet banner advertising campaign will reach seventy percent of the proposed class members at least three times each. (Id. ¶ 9). Accordingly, the Court approves of the manner of notice proposed by the parties as it is reasonable and the best practicable option for confirming the class members receive notice.

IN RE: OUTER BANKS POWER OUTAGE LITIGATION

Case No. 4:17-cv-00141

The Honorable James C. Dever III, United States District Court, Eastern District of North Carolina (May 2, 2018): The court has reviewed the proposed notice plan and finds that the notice plan provides the best practicable notice under the circumstances and, when completed, shall constitute fair, reasonable, and adequate notice of the settlement to all persons and entities affected by or entitled to participate in the settlement, in full compliance with the notice requirements of Fed. R. Civ. P. 23(c)(2)(B) and due process. Thus, the court approves the proposed notice plan.

GOLDEMBERG, ET AL. v. JOHNSON & JOHNSON CONSUMER COMPANIES, INC.

Case No. 7:13-cv-03073

The Honorable Nelson S. Roman, United States District Court, Southern District of New York (November 1, 2017): Notice of the pendency of the Action as a class action and of the proposed Settlement, as set forth in the Settlement Notices, was given to all Class Members who could be identified with reasonable effort, consistent with the terms of the Preliminary Approval Order. The form and method of notifying the Class of the pendency of the Action as a class action and of the terms and conditions of the proposed Settlement met the requirements of Rule 23 of the Federal Rules of Civil Procedure, due process, and any other applicable law in the United States. Such notice constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

HALVORSON v. TALENTBIN, INC.

Case No. 3:15-cv-05166

The Honorable Joseph C. Spero, United States District Court, Northern District of California (July 25, 2017): The Court finds that the Notice provided for in the Order of Preliminary Approval of Settlement has been provided to the Settlement Class, and the Notice provided to the Settlement Class constituted the best notice practicable under the circumstances, and was in full compliance with the notice requirements of Rule 23 of the Federal Rules of Civil Procedure, due process, the United States Constitution, and any other applicable law. The Notice apprised the members of the Settlement Class of the pendency of the litigation;

of all material elements of the proposed settlement, including but not limited to the relief afforded the Settlement Class under the Settlement Agreement; of the res judicata effect on members of the Settlement Class and of their opportunity to object to, comment on, or opt-out of, the Settlement; of the identity of Settlement Class Counsel and of information necessary to contact Settlement Class Counsel; and of the right to appear at the Fairness Hearing. Full opportunity has been afforded to members of the Settlement Class to participate in the Fairness Hearing. Accordingly, the Court determines that all Final Settlement Class Members are bound by this Final Judgment in accordance with the terms provided herein.

IN RE: ASHLEY MADISON CUSTOMER DATA SECURITY BREACH LITIGATION

MDL No. 2669/Case No. 4:15-md-02669

The Honorable John A. Ross, United States District Court, Eastern District of Missouri (July 21, 2017): The Court further finds that the method of disseminating Notice, as set forth in the Motion, the Declaration of Steven Weisbrot, Esq. on Adequacy of Notice Program, dated July 13, 2017, and the Parties' Stipulation—including an extensive and targeted publication campaign composed of both consumer magazine publications in People and Sports Illustrated, as well as serving 11,484,000 highly targeted digital banner ads to reach the prospective class members that will deliver approximately 75.3% reach with an average frequency of 3.04 —is the best method of notice practicable under the circumstances and satisfies all requirements provided in Rule 23(c)(2)(B) and all Constitutional requirements including those of due process.

The Court further finds that the Notice fully satisfies Rule 23 of the Federal Rules of Civil Procedure and the requirements of due process; provided, that the Parties, by agreement, may revise the Notice, the Claim Form, and other exhibits to the Stipulation, in ways that are not material or ways that are appropriate to update those documents for purposes of accuracy.

TRAXLER, ET AL. v. PPG INDUSTRIES INC., ET AL.

Case No. 1:15-cv-00912

The Honorable Dan Aaron Polster, United States District Court, Northern District of Ohio (April 27, 2017): The Court hereby approves the form and procedure for disseminating notice of the proposed settlement to the Settlement Class as set forth in the Agreement. The Court finds that the proposed Notice Plan contemplated constitutes the best notice practicable under the circumstances and is reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action and their right to object to the proposed settlement or opt out of the Settlement Class in full compliance with the requirements of applicable law, including the Due Process Clause of the United States Constitution and Rules 23(c) and (e). In addition, Class Notice clearly and concisely states in plain, easily understood language: (i) the nature of the action; (ii) the definition of the certified Settlement Class; (iii) the claims and issues of the Settlement Class; (iv) that a Settlement Class Member may enter an appearance through an attorney if the member so desires; (v) that the Court will exclude from the Settlement Class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3).

IN RE: THE HOME DEPOT, INC., CUSTOMER DATA SECURITY BREACH LITIGATION

Case No. 1:14-md-02583

The Honorable Thomas W. Thrash Jr., United States District Court, Northern District of Georgia (March 10, 2017): The Court finds that the form, content, and method of giving notice to the settlement class as described in the settlement agreement and exhibits: (a) constitute the best practicable notice to the settlement class; (b) are reasonably calculated, under the circumstances, to apprise settlement class members of the pendency of the action, the terms of the proposed settlement, and their rights under the proposed settlement; (c) are reasonable and constitute due, adequate, and sufficient notice to those persons entitled to receive notice; and (d) satisfy the requirements of Federal Rule of Civil Procedure 23, the constitutional requirement of due process, and any other legal requirements. The Court further finds that the notice is written in plain language, uses simple terminology, and is designed to be readily understandable by settlement class members.

ROY v. TITEFLEX CORPORATION t/a GASTITE and WARD MANUFACTURING, LLC

Case No. 384003V

The Honorable Ronald B. Rubin, Circuit Court for Montgomery County, Maryland (February 24, 2017): What is impressive to me about this settlement is in addition to all the usual recitation of road racing litanies is that there is going to be a) public notice of a real nature and b) about a matter concerning not just money but public safety and then folks will have the knowledge to decide for themselves whether to take steps to protect themselves or not. And that's probably the best thing a government can do is to arm their citizens with knowledge and then the citizens can make decision. To me that is a key piece of this deal. ***I think the notice provisions are exquisite*** [emphasis added].

IN RE: LG FRONT LOADING WASHING MACHINE CLASS ACTION LITIGATION

Case No. 2:08-cv-00051

The Honorable Madeline Cox Arleo, United States District Court, District of New Jersey (June 17, 2016): This Court further approves the proposed methods for giving notice of the Settlement to the Members of the Settlement Class, as reflected in the Settlement Agreement and the joint motion for preliminary approval. The Court has reviewed the notices attached as exhibits to the Settlement, the plan for distributing the Summary Notices to the Settlement Class, and the plan for the Publication Notice's publication in print periodicals and on the internet, and finds that the Members of the Settlement Class will receive the best notice practicable under the circumstances. The Court specifically approves the Parties' proposal to use reasonable diligence to identify potential class members and an associated mailing and/or email address in the Company's records, and their proposal to direct the ICA to use this information to send absent class members notice both via first class mail and email. The Court further approves the plan for the Publication Notice's publication in two national print magazines and on the internet. The Court also approves payment of notice costs as provided in the Settlement. The Court finds that these procedures, carried out with reasonable diligence, will constitute the best notice practicable under the circumstances and will satisfy.

FENLEY v. APPLIED CONSULTANTS, INC.

Case No. 2:15-cv-00259

The Honorable Mark R. Hornak, United States District Court, Western District of Pennsylvania (June 16, 2016): The Court would note that it approved notice provisions of the settlement agreement in the proceedings today. That was all handled by the settlement and administrator Angeion. The notices were sent. The class list utilized the Postal Service's national change of address database along with using certain proprietary and other public resources to verify addresses. the requirements of Fed.R.Civ.P. 23(c)(2), Fed.R.Civ.P. 23(e) (l), and Due Process....

The Court finds and concludes that the mechanisms and methods of notice to the class as identified were reasonably calculated to provide all notice required by the due process clause, the applicable rules and statutory provisions, and that the results of ***the efforts of Angeion were highly successful and fulfilled all of those requirements*** [emphasis added].

FUENTES, ET AL. v. UNIRUSH, LLC d/b/a UNIRUSH FINANCIAL SERVICES, ET AL.

Case No. 1:15-cv-08372

The Honorable J. Paul Oetken, United States District Court, Southern District of New York (May 16, 2016): The Court approves, as to form, content, and distribution, the Claim Form attached to the Settlement Agreement as Exhibit A, the Notice Plan, and all forms of Notice to the Settlement Class as set forth in the Settlement Agreement and Exhibits B-D, thereto, and finds that such Notice is the best notice practicable under the circumstances, and that the Notice complies fully with the requirements of the Federal Rules of Civil Procedure. The Court also finds that the Notice constitutes valid, due and sufficient notice to all persons entitled thereto, and meets the requirements of Due Process. The Court further finds that the Notice is reasonably calculated to, under all circumstances, reasonably apprise members of the Settlement Class of the pendency of the Actions, the terms of the Settlement Agreement, and the right to object to the settlement and to exclude themselves from the Settlement Class. The Parties, by agreement, may revise the Notices and Claim Form in ways that are not material, or in ways that are appropriate to update those documents for purposes of accuracy or formatting for publication.

IN RE: WHIRLPOOL CORP. FRONTLOADING WASHER PRODUCTS LIABILITY LITIGATION

MDL No. 2001/Case No. 1:08-wp-65000

The Honorable Christopher A. Boyko, United States District Court, Northern District of Ohio (May 12, 2016): The Court, having reviewed the proposed Summary Notices, the proposed FAQ, the proposed Publication Notice, the proposed Claim Form, and the proposed plan for distributing and disseminating each of them, finds and concludes that the proposed plan for distributing and disseminating each of them will provide the best notice practicable under the circumstances and satisfies all requirements of federal and state laws and due process.

SATERIALE, ET AL. v. R.J. REYNOLDS TOBACCO CO.

Case No. 2:09-cv-08394

The Honorable Christina A. Snyder, United States District Court, Central District of California (May 3, 2016): The Court finds that the Notice provided to the Settlement Class pursuant to

the Settlement Agreement and the Preliminary Approval Order has been successful, was the best notice practicable under the circumstances and (1) constituted notice that was reasonably calculated, under the circumstances, to apprise members of the Settlement Class of the pendency of the Action, their right to object to the Settlement, and their right to appear at the Final Approval Hearing; (2) was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to receive notice; and (3) met all applicable requirements of the Federal Rules of Civil Procedure, Due Process, and the rules of the Court.

FERRERA, ET AL. v. SNYDER'S-LANCE, INC.

Case No. 0:13-cv-62496

The Honorable Joan A. Lenard, United States District Court, Southern District of Florida (February 12, 2016): The Court approves, as to form and content, the Long-Form Notice and Short- Form Publication Notice attached to the Memorandum in Support of Motion for Preliminary Approval of Class Action Settlement as Exhibits 1 and 2 to the Stipulation of Settlement. The Court also approves the procedure for disseminating notice of the proposed settlement to the Settlement Class and the Claim Form, as set forth in the Notice and Media Plan attached to the Memorandum in Support of Motion for Preliminary Approval of Class Action Settlement as Exhibits G. The Court finds that the notice to be given constitutes the best notice practicable under the circumstances, and constitutes valid, due, and sufficient notice to the Settlement Class in full compliance with the requirements of applicable law, including the Due Process Clause of the United States Constitution.

IN RE: POOL PRODUCTS DISTRIBUTION MARKET ANTITRUST LITIGATION

MDL No. 2328/Case No. 2:12-md-02328

The Honorable Sarah S. Vance, United States District Court, Eastern District of Louisiana (December 31, 2014): To make up for the lack of individual notice to the remainder of the class, the parties propose a print and web-based plan for publicizing notice. The Court welcomes the inclusion of web- based forms of communication in the plan. The Court finds that the proposed method of notice satisfies the requirements of Rule 23(c)(2)(B) and due process. The direct emailing of notice to those potential class members for whom Hayward and Zodiac have a valid email address, along with publication of notice in print and on the web, is reasonably calculated to apprise class members of the settlement. Moreover, the plan to combine notice for the Zodiac and Hayward settlements should streamline the process and avoid confusion that might otherwise be caused by a proliferation of notices for different settlements. Therefore, the Court approves the proposed notice forms and the plan of notice.

SOTO, ET AL. v. THE GALLUP ORGANIZATION, INC.

Case No. 0:13-cv-61747

The Honorable Marcia G. Cooke, United States District Court, Southern District of Florida (June 16, 2015): The Court approves the form and substance of the notice of class action settlement described in ¶ 8 of the Agreement and attached to the Agreement as Exhibits A, C and D. The proposed form and method for notifying the Settlement Class Members of the settlement and its terms and conditions meet the requirements of Fed. R. Civ. P. 23(c)(2)(B) and due process, constitute the best notice practicable under the circumstances, and shall

constitute due and sufficient notice to all persons and entities entitled to the notice. The Court finds that the proposed notice is clearly designed to advise the Settlement Class Members of their rights.

OTT v. MORTGAGE INVESTORS CORPORATION OF OHIO, INC.

Case No. 3:14-cv-00645

The Honorable Janice M. Stewart, United States District Court, District of Oregon (July 20, 2015): The Notice Plan, in form, method, and content, fully complies with the requirements of Rule 23 and due process, constitutes the best notice practicable under the circumstances, and is due and sufficient notice to all persons entitled thereto. The Court finds that the Notice Plan is reasonably calculated to, under all circumstances, reasonably apprise the persons in the Settlement Class of the pendency of this action, the terms of the Settlement Agreement, and the right to object to the Settlement and to exclude themselves from the Settlement Class.

Exhibit B

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE

FUSION ELITE ALL STARS, et al., Plaintiffs, v. VARSITY BRANDS, LLC, et al., Defendants.	Case No. 2:20-cv-02600-SHL-tmp

Notice of Class Action Settlement
Authorized by the U.S. District Court for the Western District of Tennessee

A settlement of $43.5 million will provide payments to (a) All Star Gyms that paid registration fees directly to Varsity to participate in Varsity All Star Events and (b) people who paid admissions fees directly to Varsity to watch Varsity All Star Events. The settlement also provides for Varsity and USASF to change certain conduct.

A federal court directed this Notice. This is not a solicitation from a lawyer.

- The Court has preliminarily approved a proposed settlement ("Settlement") involving payment of $43,500,000.00 (over a two-year period) to classes of All Star Gyms and Spectators of Varsity All Star Events and also provides for changes in conduct to resolve a class action lawsuit called *Fusion Elite All Stars, et al. v. Varsity Brands, LLC, et al.*, Case No. 2:20-cv-02600-SHL-tmp, pending in the United States District Court for the Western District of Tennessee ("Action").

- This Action was brought by certain All Star Gyms and Spectators of All Star Events ("Plaintiffs"). The Action alleges that Defendants, Varsity Brands, LLC; Varsity Spirit, LLC; Varsity Spirit Fashions & Supplies, LLC (collectively, "Varsity") obtained and maintained control over the All Star Cheerleading ("All Star Cheer" or "All Star") events marketplace (*i.e.*, "All Star Events" or "Events"), through acquisitions of rivals, purported exclusive dealing agreements, and purported collusion with U.S. All Star Federation, Inc. ("USASF") (Varsity and USASF together, "Defendants") in violation of the antitrust laws. The Action further alleges that this anticompetitive conduct caused Varsity to (a) overcharge Gyms for participation in Varsity All Star Events, and (b) overcharge Spectators to watch Varsity All Star Events. Defendants believe that Plaintiffs' claims lack merit, that their conduct was pro-competitive, not anticompetitive,

that Defendants have valid defenses to Plaintiffs' allegations, and that Plaintiffs' claims would have been rejected prior to trial, at trial, or on appeal.

- The Settlement is for the benefit of the following two groups of entities or persons ("Settlement Classes"):

  Gym Class. All entities that paid registration or related fees and expenses directly to Varsity to participate in Varsity All Star Events from May 26, 2016 through March 15, 2023 (the "Class Period").

  Spectator Class. All persons who paid entrance (admission) or other fees and expenses directly to Varsity to observe Varsity All Star Events during the Class Period.

  Excluded from the Settlement Classes are Defendants, their parent companies, subsidiaries, affiliates, franchisees, officers, executives, and employees; any entity that is or has been partially or wholly owned by one or more Defendants or their respective subsidiaries; States and their subdivisions, agencies and instrumentalities; and any judicial officer presiding over this matter and his or her staff, except that officers of USASF who are not employees of any of Defendants, their parent companies, subsidiaries, affiliates, or franchisees shall not be excluded from the Settlement Classes.

  The Court has approved as lawyers for the Settlement Classes ("Settlement Class Counsel") the following:

  Eric L. Cramer
  BERGER MONTAGUE PC
  1818 Market Street, Suite 3600
  Philadelphia, PA 19106
  Telephone: (215) 875-3000

  Karin E. Garvey
  DICELLO LEVITT LLC
  485 Lexington Avenue, Suite 1001
  New York, NY 10017
  Telephone: (646) 933-1000

  Victoria Sims
  CUNEO GILBERT & LADUCA, LLP
  4725 Wisconsin Avenue NW, Suite 200
  Washington, DC 20016
  Telephone: (202) 789-3960

- The Settlement offers cash payments to members of the Gym Class and Spectator Class who file or approve valid timely claim forms later in the process.

- This Notice has important information. It explains the Settlement, and the rights and options of members of the Settlement Classes in this class action lawsuit.
- For the full terms of the Settlement, you should look at the Settlement Agreement available at www.AllStarCheerAntitrustSettlement.com.
- Please check www.AllStarCheerAntitrustSettlement.com for any updates relating to the Settlement or the Settlement approval process.

LEGAL RIGHTS and OPTIONS

If you are a member of the Gym Class or the Spectator Class, your legal rights and options are described in this section. You may:

Exclude Yourself: You may request to be excluded from the Gym Class or Spectator Class. This is the only way you can be part of another lawsuit that asks for money for claims arising out of the facts alleged in this Action. If you timely request exclusion ("opt out"), you will no longer be part of any of the Settlement Classes, and you will *not* be able to get any money from this Settlement. If you would like to opt out, you must mail your exclusion request by [DD, MM, 2023]. *See* Question 12 for more information.

Object: If you do not agree with any part of this Settlement, or you do not agree with the requested award of attorneys' fees, expenses and/or service awards for the representative Plaintiffs you may:

- Write to the Court to explain why (*see* Question 16), and
- Ask to speak at the Court hearing about either the fairness of this Settlement or about the requested attorneys' fees, expenses, or service awards. (*see* Question 22).

File a Claim: This is the only way to get money from the Settlement. You must file a timely and valid claim ***at a later point in the process***. *See* Question 9 for more information.

Do Nothing: To remain in either Settlement Class, ***you need do nothing now***. However, at a later time, if the Settlement is approved, in order to receive money from the lawsuit, You will need to file a claim form. *See* Question 23 for more information.

Deadlines: *See* Questions 12 and 16 for more information about rights and options and all deadlines.

BASIC INFORMATION

1. Purpose of this Notice?

This notice explains the proposed Settlement in a class action lawsuit called *Fusion Elite All Stars, et al. v. Varsity Brands, LLC, et al.*, Case No. 2:20-cv-02600-SHL-tmp, and the legal rights and options of the members of the Settlement Classes to participate in it, or not, before the Court decides whether to give final approval to the Settlement. This notice explains the Action, the proposed Settlement, your legal rights, the benefits available, eligibility for those benefits, and how to get them. The Honorable Sheryl H. Lipman in the United States District Court for the Western District of Tennessee is overseeing this Action.

The persons or entities who started this case are called the "Plaintiffs." The Plaintiffs are Fusion Elite All Stars, Spirit Factor LLC d/b/a Fuel Athletics, Stars and Stripes Gymnastics Academy Inc. d/b/a Stars, Stripes Kids Activity Center, Janine Cherasaro, Lauren Hayes, and Kathryn Anne Radek.

The Court has certified the Gym Class and the Spectator Class for purposes of this Settlement. The Court has also approved Fusion Elite All Stars, Spirit Factor LLC d/b/a Fuel Athletics, and Stars and Stripes Gymnastics Academy Inc. d/b/a Stars and Stripes Kids Activity Center to act as Class Representatives on behalf of the Gym Class for purposes of this Settlement only. The Court has approved Janine Cherasaro, Lauren Hayes, and Kathryn Anne Radek to act as Class Representatives on behalf of the Spectator Class for purposes of this Settlement only.

The companies Plaintiffs sued and settled with in this Action are the "Defendants." Defendants are Varsity and USASF.

2. What is this lawsuit about?

Generally, Plaintiffs allege that Defendants engaged in an anticompetitive scheme in violation of the Sherman Antitrust Act, 15 U.S.C. Section 2. Specifically, Plaintiffs allege that Varsity engaged in a series of acts as a means to obtain and maintain monopoly power in the alleged market for All Star Cheer Events, including: (1) acquisitions of multiple rival All Star Event producers ("Event Producers" or "EPs"); (2) use of loyalty programs allegedly to impose penalty prices on All Star Gyms ("Gyms") unless they competed almost exclusively in Varsity Events; and (3) collusion with the USASF allegedly to facilitate Varsity's control of the All Star Events market. Plaintiffs allege that these acts, when taken together, injured members of the proposed Gym Class in the form of overcharges Gyms allegedly paid directly to Varsity to participate in Varsity All Star Events, and injured members of the proposed Spectator Class in the form of overcharges Spectators allegedly paid directly to Varsity to watch Varsity All Star Events during the Class Period.

Defendants believe that Plaintiffs' claims lack merit, that Defendants conduct helped and did not harm competition, that Defendants have valid defenses to Plaintiffs' claims, and that Plaintiffs' claims would have been rejected prior to trial, at trial, or on appeal.

You may obtain more information regarding the specific allegations of the Action by reviewing the Consolidated Complaint, which is available at www.AllStarCheerAntitrustSettlement.com.

3. Why is this lawsuit a class action?

In a class action, people or businesses sue not only for themselves but also on behalf of other people or businesses with similar legal claims and interests. Together all people or businesses with similar claims and interests form a specifically defined class and are class members.

For purposes of this Settlement, the Court has certified the Gym Class and the Spectator Class (discussed further below in Question 5). This means that if the Court approves this Settlement, it is applicable to all members of both Settlement Classes (except class members who exclude themselves).

4. Why is there a Settlement?

Plaintiffs and Settlement Class Counsel believe that the members of the Gym and Spectator Classes have been damaged by Defendants' conduct, as described in the Consolidated Complaint. Defendants believe that Plaintiffs' claims lack merit and would have been rejected prior to trial, at trial, or on appeal. The Court has not decided which side was right or wrong or if any laws were violated. Instead, both sides agreed to settle the case and avoid the delays, cost, and risk of trial and appeals that would follow a trial.

This Settlement is the product of extensive negotiations, including mediation before an experienced mediator, chosen by the parties. Settling this case allows members of the Gym and Spectator Classes to receive cash payments (*see* Question 6 below). In addition, under the Settlement, the Defendants have agreed to certain changes in their conduct beginning on the date of final approval of the Settlement through and including December 31, 2028 (*see* Question 6 below).

The parties agreed to settle this case only after several years of extensive litigation and after the close of fact and expert discovery. During discovery, Plaintiffs reviewed and analyzed tens of thousands of pages of documents and conducted numerous fact witness depositions. The parties also completed expert discovery, which included the exchange of multiple expert reports and the depositions of all experts.

The Settlement allows members of the Gym Class and Spectator Class who submit valid and timely claims to receive some compensation, rather than risk ultimately receiving nothing. The Settlement also provides for Defendants to change some of their conduct that Plaintiffs alleged had injured them. Plaintiffs and Settlement Class Counsel believe the Settlement is best for all members of the Gym Class and Spectator Class.

If the Settlement is approved, Plaintiffs and the Gym Class and Spectator Class will dismiss and release their claims against Defendants and certain other Released Parties (identified in the Settlement Agreement).

5. Am I part of this Settlement?

In the Court's Preliminary Approval Order of [DD, MM, 2023], the Court defined the following Settlement Classes:

> **Gym Class**. All entities that paid registration or related fees and expenses directly to Varsity to participate in Varsity All Star Events from May 26, 2016 through March 15, 2023.
>
> **Spectator Class**. All persons who paid entrance (admission) or other fees and expenses directly to Varsity to observe Varsity All Star Events May 26, 2016 through March 15, 2023.
>
> Excluded from the Settlement Classes are Defendants, their parent companies, subsidiaries, affiliates, franchisees, officers, executives, and employees; any entity that is or has been partially or wholly owned by one or more Defendants or their respective subsidiaries; States and their subdivisions, agencies and instrumentalities; and any judicial officer presiding over this matter and his or her staff, except that officers of USASF who are not employees of any of Defendants, their parent companies, subsidiaries, affiliates, or franchisees shall not be excluded from the Settlement Classes.

If you are not sure whether you are part of one of these Settlement Classes, contact the Claims Administrator at:

Call the toll-free number, 1-(888)-610-6050

Visit www.AllStarCheerAntitrustSettlement.com

Write to: All Star Cheer Antitrust, c/o Claim Administrator, 1650 Arch Street, Suite 2210, Philadelphia, PA 19103

Email: Info@AllStarCheerAntitrustSettlement.com

SETTLEMENT BENEFITS

6. What does this Settlement provide?

Varsity has agreed to provide $43,500,000 in cash to be paid over two years. The Settlement also provides that if members of the Gym Class and Spectator Class, collectively comprising more than a threshold share of the Settlement Classes' direct purchasers from Varsity during the Class Period, exclude themselves, Varsity would be entitled to reimbursement of some of the Settlement Amount.

Every member of the Gym Class and Spectator Class that (a) does not exclude himself, herself, or itself from either Settlement Class by the deadline described below and (b) files a valid and timely claim during a process that will occur later ("Authorized Claimant") will be paid from the monies provided by Varsity in this Settlement (the "Settlement Fund"). The money in this Settlement Fund (after any reduction for opt-outs) will be also used to pay:

- The cost of settlement administration and notice, and applicable taxes on the Settlement Fund and any other related tax expenses, as approved by the Court,

- Money awards for Representative Plaintiffs for their service on behalf of the Gym Class and Spectator Class, as approved by the Court, and

- Attorneys' fees and reimbursement of expenses for Settlement Class Counsel, as approved by the Court (*see* Question 19 below for more information relating to attorneys' fees and other costs).

The money in this Settlement Fund less the three categories of costs described just above is the Net Settlement Fund. The Net Settlement Fund will only be distributed to members of the Settlement Classes if the Court finally approves the Settlement and the plan for allocating the monies in the Settlement Fund to members of the Settlement Classes.

In addition, under the Settlement, the Defendants have agreed to the following business changes to begin on the date of final approval of the Settlement by the Court and run through December 31, 2028:

- Varsity will not offer contracts or programs with All Star Gyms relating in whole or part to fees or payments associated with registering for, or attending, All Star Events that:
    - If a contract, have a term longer than one year (except that existing contracts and programs will be permitted to run to their term); or
    - Require attendance at more than three cheerleading events during a single regular season as a condition of receiving Varsity's lowest tier of rebates or discounts.
    - Notwithstanding the foregoing, if one or more All Star Event rivals propose rebate or discount programs regarding which Varsity would be prohibited from engaging by the terms of this Agreement ("Prohibited Programs"), Varsity shall be permitted to respond by matching the rebate and/or discount offerings of such competitors by only so long and insofar as one or more such competitors maintain(s) such Prohibited Programs.
- No person shall simultaneously serve on the boards of Varsity (or any Varsity entity) and USASF.
- Varsity may not, directly or indirectly, pay the salaries of any USASF employees or executives or provide other benefits to USASF employees or executives. For the avoidance of doubt, this would not include payments to USASF for services provided by USASF employees in the ordinary course of business, which are also available to other event producers, such as for roster verification or judge training, nor would it include payments to USASF employees to the extent they provide services as judges or legality officials as independent contractors.

- No more than 1/3 of the voting board seats on USASF's Board of Directors may be occupied by any single Event Producer (whether through one entity or multiple affiliated entities with common/overlapping ownership or management). In the event that one or more voting seats on USASF's Board becomes empty for any reason (including, e.g., death, resignation, termination, etc.), and as a result, a single Event Producer holds more than 1/3 of the voting board seats then filled, USASF shall take all reasonable measures to fill the empty voting board seat(s) such that the 1/3 limitation is satisfied within four (4) months of the event causing the vacancy. USASF may not, consistent with this agreement, intentionally distort its rules or procedures to cause a USASF board seat to become empty as a means to allow a single Event Producer to control more than 1/3 of the seats.

- No more than 40% of the seats on USASF's Sanctioning Committee may be occupied by any single Event Producer (whether through one entity or multiple affiliated entities with common/overlapping ownership or management). The calculation shall take place on August 1 of each year, and if this limitation is satisfied as of that date, it shall be deemed satisfied for the next 12 months. In other words, in the event that after August 1 during a calendar year, an Event Producer terminates its USASF membership or loses its Worlds Bid, either of which would result in the Event Producer losing its seat on the Sanctioning Committee under currently existing USASF rules, USASF shall not be required to re-allocate seats on its Sanctioning Committee or remove other members of the Sanctioning Committee prior to August 1 of the following year. USASF may not, consistent with this agreement, intentionally distort its rules or procedures to cause a Sanctioning Committee seat to become empty as a means to allow a single Event Producer to control more than 40% of the seats.

- After implementing the changes set forth above with respect to USASF's Board of Directors and Sanctioning Committee, USASF commits to continuing to evaluate proposals from its membership that are properly brought to its Board of Directors or an appropriate committee, in accordance with its policies and procedures. USASF may not, consistent with this agreement, adopt rules or procedures that would have the effect of prohibiting or deterring USASF members from making any proposals for consideration by the USASF board or appropriate USASF committees.

7. How do I ask for money from this Settlement?

If you are a member of one of the Settlement Classes, you must submit a valid and timely claim to get money from the Settlement Fund during a process that will begin several months from now. If the Court finally approves the Settlement, as part of the Court approved distribution and allocation process, the Claims Administrator will distribute to all Gym Class members, who do not exclude themselves from the Gym Class, and for which there are valid addresses, a pre-populated Claim Form with all the relevant data. A Gym Class member making a claim will have the option of accepting the amounts on the pre-populated form or submitting its own data

reflecting the monies it paid directly to Varsity to attend All Star Cheer Events. If you are a member of the Spectator Class, and do not exclude yourself from the Spectator Class, you will not be mailed or emailed a Claim Form and must get a Claim Form by visiting www.AllStarCheerAntitrustSettlement.com (settlement website) or by contacting the Claims Administrator toll-free number: 1-(888)-610-6050. Members of the Gym Class may also contact the Claims Administrator or visit the Settlement Website if they do not receive a Claim Form in the mail or by email. The Claim Form will include the deadline for timely submission and instructions on how to submit or approve the Claim Form. The Court will approve the plan of allocating the Settlement Fund amongst members of the Settlement Classes, and will set the schedule for that process, at the time that it decides whether or not to approve the Settlement.

8. How much money will I get?

At this time, it is not known precisely how much each member of the Gym Class and Spectator Class will receive from the net Settlement Fund or when payments will be made. The amount of your payment, if any, will be determined by the Plan of Allocation to be approved by the Court. The Plan of Allocation can be summarized as follows:

First, the Net Settlement Fund will be broken into two tranches: one for the Gym Class ("Gym Class Tranche") and one for the Spectator Class ("Spectator Class Tranche") proportional to the alleged damages each Class suffered as determined by Plaintiffs' expert economist. As such, the Gym Class will receive 85% of the Net Settlement Fund and the Spectator Class will receive 15% of the Net Settlement Fund.

Second, as to the Gym Class Tranche, the monies will be distributed to Gym Class members who make timely and valid claims in proportion to each such Gym Class member's payments of registration or related fees and expenses directly to Varsity to participate in Varsity All Star Events during the Class Period. Distributions from the Gym Class Tranche to each such Gym Class member will be on a *pro rata* basis, dividing each such Gym Class member's qualifying spending by the total qualifying spending of all Gym Class Members who submit valid and timely claims and multiplying that ratio by the total funds in the Gym Class Tranche. The Claims Administrator will distribute to all Gym Class members for which there are valid addresses a pre-populated Claim Form with all the relevant data and information. A Gym Class member making a claim will have the option of accepting the amounts on the pre-populated form or submitting its own data and information.

Third, as to the Spectator Class Tranche, each Spectator Class member who timely submits a valid claim will receive monies from the Spectator Class Tranche as follows: (a) $10 for each admission ticket to attend a Varsity All Star Event a Spectator Class member claimant ("Spectator Claimant") directly paid Varsity (on behalf of herself, himself or others) during the Class Period, (b) with a cap of $200 total per Spectator Class member claimant. Each Spectator Claimant must submit a declaration affirming under penalty of perjury that she or he paid for each ticket for which such Spectator Claimant is seeking recompense, and for each such ticket, provide as much information as possible to verify attendance and payment, including one or more of the following: the name of the Event, date of the Event, location of the Event, name of

the athlete the Spectator was paying to see, the Gym with which the athlete was associated at the time of the Event, the method of payment, the amount paid per Spectator, and (if available) any receipts or documentation proof of payment. Should there be monies left over from the Spectator Class Tranche after all timely and valid claims are paid, the remaining funds will be added to the Gym Class Tranche. Should there be insufficient funds in the Spectator Class Tranche to pay all timely and valid claims, each claim will be reduced pro rata.

The Claims Administrator will make decisions regarding claim submissions, including regarding their validity and amounts, with input from Settlement Class Counsel and Settlement Class Counsel's consulting economic expert.

The complete Plan of Allocation will be available on the Settlement website, www.AllStarCheerAntitrustSettlement.com.

HOW TO FILE A CLAIM

9. How do I file a claim?

If the Court approves the Settlement (*see* "The Court's Fairness Hearing" below), the Court will at that time approve a Claim Form and set a deadline for members of the Settlement Classes to submit or approve claims. At that time, to receive a payment, you must submit or approve a Claim Form. The Claim Form for Gym Class members and Spectator Class members will be posted on the Settlement website and available by calling the toll-free number 1-(888)-610-6050. Members of the Settlement Classes will be able to submit or approve claims electronically using the settlement website or by email or through the mail. A Claim Form will also be mailed or emailed to members of the Gym Class for which the Claims Administrator has valid and current addresses, but not members of the Spectator Class.

10. Who decides the value of my claim?

After receiving your timely-submitted Claim Form, the Court-appointed Claims Administrator, will make decisions about the value and validity of claims with input from Settlement Class Counsel and Settlement Class Counsel's consulting economic expert.

For the Gym Class, the Claims Administrator will have data from Varsity setting forth payments you made directly to Varsity to register your All Star Teams for Varsity All Star Events during the Class Period. Your payment amount will be used to determine your pro rata share of the Gym Class Tranche of the Net Settlement Fund.

For the Spectator Class, you must submit a declaration affirming under penalty of perjury that she or he paid for each ticket for which such Spectator Claimant is seeking recompense, and for each such ticket, provide as much information as possible to verify attendance and payment, including one or more of the following: the name of the Event, date of the Event, location of the Event, name of the athlete the Spectator was paying to see, the Gym with which the athlete was associated at the time of the Event, the method of payment, the amount paid per Spectator, and (if available) any receipts or documentation proof of payment.

Some companies may offer to help you file your Claim Form in exchange for a portion of your recovery from the Settlement. While you may choose to use such companies, you should know that you can file with the Claims Administrator on your own, free of charge. Additionally, you are entitled to contact the Claims Administrator or Settlement Class Counsel for assistance with understanding and filing your Claim Form—again, at no cost to you.

11. Am I giving anything up by filing a claim or not filing a claim?

If you are a member of either the Gym Class or Spectator Class and do not exclude yourself, you cannot sue, continue to sue, or be part of any other lawsuit seeking recover for the claims asserted in the Action against any of the Defendants or Releasees (defined below), even if you do not file a Claim Form. More specifically, staying in the Settlement Classes means you have agreed to be bound by the Settlement Agreement and its terms including the release of claims contained therein. The Settlement Agreement is available on the Settlement website, www.AllStarCheerAntitrustSettlement.com. The claims released in the Settlement are described below.

Specifically, the Settlement Agreement provides that the Releasees shall be completely released, acquitted, and forever discharged from any and all claims, demands, actions, suits, causes of action, whether class, individual, or otherwise in nature (whether or not any Settlement Class Member has objected to the settlement or makes a claim upon or participates in distribution of the Settlement Fund, whether directly, representatively, derivatively or in any other capacity) under any federal, state or local law of any jurisdiction in the United States, that Releasors, or each of them, ever had, now have, or hereafter can, shall, or may ever have, that now exist or may exist in the future, on account of, or in any way arising out of, any and all known and unknown, foreseen and unforeseen, suspected or unsuspected, actual or contingent, liquidated or unliquidated claims, injuries, damages, and the consequences thereof relating in any way to the nucleus of operative facts alleged in the complaint in the Action prior to the Execution Date that were made or could have been made in the Action by Direct Purchaser Plaintiffs or Settlement Class Members against the Releasees, including all direct purchaser claims relating to Varsity and/or USASF's involvement in the cheerleading industry based in any way on conduct or events arising out of the nucleus of operative facts alleged in the consolidated complaint in the Action, that occurred through the Execution Date. Notwithstanding the foregoing, any claims based on indirect purchases by Settlement Class Members or Releasors that may exist under the law of one or more U.S. states will not be released. In addition, and notwithstanding the foregoing, claims arising in the ordinary course between (a) any of the Releasees, on the one hand, and (b) Direct Purchaser Plaintiffs, Settlement Class Members or Releasors, on the other, and arising under Article 2 of the Uniform Commercial Code (pertaining to sales) or similar state laws, the laws of negligence or product liability, strict liability, or implied warranty, breach of contract, breach of express warranty, or personal injury, will also not be released. The claims described as being released in this paragraph are referred to herein as the "Released Claims."

Releasors hereby expressly waive and release, solely with respect to the Released Claims, upon this Agreement becoming final, any and all provisions, rights, and benefits conferred by § 1542 of the California Civil Code, which states:

> **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY;**

or by any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code. Each Releasor may hereafter discover facts other than or different from those which he, she, or it knows or believes to be true with respect to the claims that are released pursuant to the provisions of this Agreement, but each Releasor hereby expressly waives and fully, finally, and forever settles and releases, upon this Agreement becoming final, any known or unknown, suspected or unsuspected, contingent or non-contingent claim that Direct Purchaser Plaintiffs have agreed to release, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

"Releasees" shall refer jointly and severally, individually and collectively, to Defendants, their respective past and present, direct and indirect, parents, subsidiaries, affiliates, divisions, predecessors, successors, and insurers, and their respective past and present officers, directors and employees. "Releasees" shall also include any direct or indirect majority or minority investor in any Releasee, as well as their respective past and present, direct and indirect, parents, subsidiaries, affiliates, divisions, predecessors, successors, indemnitors, and insurers, and their respective past and present officers, directors, advisors, independent consultants, partners, and employees, and any entity that managed, manages, advised, or advises any fund or managed account that made a direct or indirect investment in any Releasee at any time and, as to each such entity, its past and present, direct and indirect, parents, subsidiaries, affiliates, divisions, predecessors, successors, indemnitors, and insurers, and their respective past and present officers, directors , advisors, independent consultants, partners, and employees. Without in any way limiting the foregoing, Releasees shall include all of the entities listed in Appendix A to the Settlement Agreement as well as their respective past and present, direct and indirect, parents, subsidiaries, affiliates, divisions, predecessors, successors, and insurers, and their respective past and present officers, directors, advisors, independent consultants, partners, and employees.

"Releasors" shall refer to Settlement Class Members, as well as each of their respective past and present parents, subsidiaries, affiliates, divisions, predecessors, successors, and their respective past and present officers, directors, and employees.

The Scope and Effect of the Release: Upon the Effective Date of the Settlement, members of the Gym Class and Spectator Class who do not exclude themselves from the Settlement: (1) shall be deemed to have, and by operation of the Final Judgment and Order of Dismissal, shall have,

fully, finally, and forever waived, released, relinquished, and discharged (a) all Released Claims against the Releasees, regardless of whether such Releasor executes and delivers a proof of claim and release from, and (b) any rights to the protections afforded under California Civil Code § 1542 and/or any other similar, comparable, or equivalent laws; (2) shall forever be enjoined from prosecuting in any forum any Released Claim against any of the Releasees; (3) agrees and covenants not to sue, either directly, representatively, or in any other capacity, any of the Releasees on the basis of any Released Claims; and (4) agrees not to assist any third party in commencing or maintaining any suit against any Releasee related in any way to any Released Claims, except to the extent required to comply with a court order or subpoena issued by a court of competent jurisdiction.

12. How do I exclude myself from one of the Settlement Classes?

If you are a member of either the Gym Class or the Spectator Class, do not want to remain in either class, and do not want a payment from the Settlement, then you must take steps to exclude yourself from the Settlement. This is sometimes referred to as "opting out" of a class. The Court will exclude from the Settlement all members of the Gym Class and the Spectator Class who submit valid and timely requests for exclusion.

If you exclude yourself, you will *not* be able to receive any payments from this Settlement. However, this is the only way you will retain your rights to sue the Defendants and the Releasees on your own based on the claims asserted in this Action.

You can exclude yourself by sending a written "Request for Exclusion" to the Claims Administrator. To be valid, your Request for Exclusion must be received by the Claims Administrator no later than MM/DD/2023 to: All Star Cheer Antitrust, c/o Claim Administrator, 1650 Arch Street, Suite 2210, Philadelphia, PA 19103.

Your Request for Exclusion must: (i) be in writing by mail (you cannot exclude yourself by telephone or email); (ii) be signed by the person or entity holding the claim or by his, her or its authorized representative; (iii) for Gym Class members, state the full name, address, and phone number of the Gym; (iv) for Spectator Class members, your full name, address, and phone number; (v) include proof of membership in either the Gym Class or Spectator Class; and (vi) include a signed statement that "I/we hereby request I/we be excluded from the Settlement in *Fusion Elite All Stars, et al. v. Varsity Brands, LLC, et al.*, Case No. 2:20-cv-02600-SHL-tmp."

13. If I don't exclude myself, can I sue Defendants and the other Releasees for the same thing later?

No. Unless you exclude yourself, you give up any right to sue Defendants and the Releasees for the claims that the Settlements resolve. If you decide to exclude yourself, your decision will apply only to Defendants and the other Releasees.

14. If I exclude myself from either of the Settlement Classes, can I get money from the Settlement?

No. You will not get any money from the Settlement if you exclude yourself.

15. If I exclude myself from the Settlement, can I still object?

No. If you exclude yourself, you are no longer a member of a Settlement Class and may not object to any aspect of the Settlement.

OBJECTING TO THE SETTLEMENT

16. How do I tell the Court if I don't like any aspect of the Settlement?

If you are a member of either the Gym Class or Spectator Class (and don't exclude yourself from that class), you can object to any part of the Settlement, the summary of the Plan of Allocation, and/or the request for attorneys' fees and litigation costs and expenses and/or the service awards request.

To object, you must timely submit a letter that includes the following: (1) the name of the case (*Fusion Elite All Stars, et al. v. Varsity Brands, LLC, et al.*, Case No. 2:20-cv-02600-SHL-tmp); (2) your name and address and if represented by counsel, the name, address, and telephone number of your counsel; (3) proof that you are a member of either the Gym Class or Spectator Class; (4) a statement detailing all your objections to the Settlement with specificity and including your legal and factual bases for each objection; and (5) a statement of whether you intend to appear at the Fairness Hearing, either with or without counsel, and if with counsel, the name of your counsel who will attend.

You cannot make an objection by telephone or email. You must do so in writing and file your objection with the Clerk of Court and mail your objection to each of the following addresses postmarked by [MM/DD/2023].

Court

United States District Court for the Western District of Tennessee
Clerk of Court
167 N. Main Street
Memphis, TN 38103

You must also send a copy of your Statement of Objections to Settlement Class Counsel and Counsel for the Defendants at the following addresses:

Settlement Class Counsel
Eric L. Cramer
Berger Montague PC
1818 Market St., Suite 3600
Philadelphia, PA 19103

Defendant Varsity
Steven J. Kaiser

CLEARY GOTTLIEB STEEN & HAMILTON LLP
2112 Pennsylvania Avenue, NW
Washington, DC 20037

Defendant USASF
Nicole Berkowitz Riccio
BAKER DONELSON
165 Madison Avenue
Suite 2000
Memphis, TN 38103

If you don't timely and validly submit your objection, your view will not be considered by the Court or any court on appeal.

17. What is the difference between objecting and excluding?

Objecting is simply telling the Court that you don't like something about the Settlement. You can object to the Settlement only if you don't exclude yourself from the Gym Class or Spectator Class. Objecting does not change your ability to claim money from the Net Settlement Fund if the Court approves the Settlement. If you exclude yourself, you cannot object because the Settlement no longer affects your rights, and you cannot claim money from the Net Settlement Fund.

THE LAWYERS REPRESENTING YOU

18. Do I have a lawyer in this lawsuit?

The Court has appointed the lawyers listed below to represent you. These lawyers are called Settlement Class Counsel. Other lawyers have also worked with Settlement Class Counsel to represent you in this case. Because you are a class member, you do not have to pay any of these lawyers. They will be paid from the Settlement Fund upon making an application to the Court.

Eric L. Cramer
BERGER MONTAGUE PC
1818 Market Street, Suite 3600
Philadelphia, PA 19106
Telephone: (215) 875-3000

Karin E. Garvey
DICELLO LEVITT LLC
485 Lexington Avenue, Suite 1001
New York, NY 10017
Telephone: (646) 933-1000

Victoria Sims
CUNEO GILBERT & LADUCA, LLP

4725 Wisconsin Avenue NW, Suite 200
Washington, DC 20016
Telephone: (202) 789-3960

If you have any questions about the notice or the Action, you can contact the above-listed Settlement Class Counsel.

Should I hire my own lawyer?

You do not have to hire your own lawyer. But you can if you want to, at your own cost.

If you hire your own lawyer to appear in this case, you must tell the Court and send a copy of your notice to Settlement Class Counsel at any of the addresses above.

19. How will the lawyers for the Plaintiffs and Settlement Classes be paid?

To date, Settlement Class Counsel have not been paid any attorneys' fees or reimbursed for any out-of-pocket costs or expenses that Settlement Class Counsel expended to litigate this case. Any attorneys' fees and costs and expenses will be awarded only as approved by the Court in amounts determined to be fair and reasonable. By [MM/DD/2023], Settlement Class Counsel will move for an award of attorneys' fees not to exceed 1/3 of the Settlement Fund, plus any accrued interest, reimbursement of litigation costs and expenses not to exceed $2,250,000, and service awards of up to $20,000 for each of the 3 Gym Class Representatives and up to $5,000 for each of the 3 Spectator Class Representatives ($75,000 total) to be paid out of the Settlement Fund. If the Court grants Settlement Class Counsel's requests, these amounts would be deducted from the Settlement Fund. You will not have to pay these fees, expenses, and costs out of your own pocket.

Any motions in support of the above requests will be available on the Settlement Website after they are filed on MM/DD/2023. After that time, if you wish to review the motion papers, you may do so by viewing them at www.AllStarCheerAntitrustSettlement.com.

The Court will consider the motion for attorneys' fees and litigation costs and expenses, service awards at or after the Fairness Hearing.

THE COURT'S FAIRNESS HEARING

20. When and where will the Court decide whether to approve this Settlement, including the attorneys' fees and costs motion and the Plan of Allocation?

There will be a Fairness Hearing at **[TIME]** on **[MONTH, DAY, YEAR (on a date to be determined by the Court)].** The hearing will take place at the United States District Court for the Western District of Tennessee, Odell Horton Federal Building, Courtroom 1, 11th Floor, 167 North Main Street, Memphis, TN 38103.

Important! The time and date of the Fairness Hearing may change without additional mailed or published notice. For updated information on the hearing, visit: www.AllStarCheerAntitrustSettlement.com.

At the Fairness Hearing the Court will consider whether the Settlement is fair, adequate, and reasonable and should be approved. The Court will also decide whether it should give its final approval of the Plaintiffs' requests for attorneys' fees and expenses, service awards to the Class Plaintiffs, and other costs. The Court will consider any objections and listen to members of the Gym Class and Spectator Class who have asked to speak at the Fairness Hearing.

21. Do I have to come to the Fairness Hearing to get my money?

No. You do not have to go to the Fairness Hearing, even if you sent the Court an objection. But you can go to the hearing or hire a lawyer to go the Fairness Hearing if you want to, at your own expense.

22. What if I want to speak at the Fairness Hearing?

You must file a Notice of Intention to Appear with the Court at this address:

United States District Court for the Western District of Tennessee
Clerk of Court
167 N. Main Street
Memphis, TN 38103

Your Notice of Intention to Appear must be filed by [MM/DD/2023]. You must also mail a copy of your letter to Settlement Class Counsel and Counsel for the Defendants at the addresses listed in question 16.

Your Notice of Intention to Appear must be signed and: (i) state the name, address, and phone number of the Gym/Person and if applicable, the name, address, and telephone number of you attorney (who must file a Notice of Appearance with the Court); and (ii) state that you (or if applicable, your lawyer) intends to appear at the Fairness Hearing for the Settlement in *Fusion Elite All Stars, et al. v. Varsity Brands, LLC, et al.*, Case No. 2:20-cv-02600-SHL-tmp.

IF YOU DO NOTHING

23. What happens if I do nothing?

If you do nothing, and if you fit either Settlement Class description, you will be automatically a member of either the Gym Class or Spectator Class. However, if you do not timely file a Claim Form, you will not receive any payment from the Settlement. You will be bound by past and future rulings, including rulings on the Settlement, Released Claims, and Releasees.

GETTING MORE INFORMATION

24. How do I get more information?

This Notice summarizes the Action, the terms of the Settlement, and your rights and options in connection with the Settlement. More details are in the Settlement Agreement, which are available for your review at www.AllStarCheerAntitrustSettlement.com. The Settlement Website also has the Consolidated Complaint and other documents relating to the Settlement. You may

also call toll-free 1-(888)-610-6050 or write the Claim Administrator at: All Star Cheer Antitrust, c/o Claim Administrator, 1650 Arch Street, Suite 2210, Philadelphia, PA 19103.

Please Do Not Attempt to Contact Judge Lipman or the Clerk of Court with Any Questions

Exhibit C

Legal Notice

To All Star Gyms that paid registration fees directly to Varsity to participate in Varsity All Star Events and people that paid admissions fees directly to Varsity to watch Varsity All Star Events from May 26, 2016 to March 15, 2023. Notice of a Class Action Settlement of $43.5 million.

Notice of a class action settlement authorized by the U.S. District Court for the Western District of Tennessee.

This notice is only a summary. Please visit www.AllStarCheerAntitrustSettlement.com for further information.

This notice is authorized by the Court to inform you about an agreement to settle a class action lawsuit ("Settlement") that may affect you. The lawsuit alleges that Varsity obtained and maintained control over the All Star Cheerleading ("All Star Cheer" or "All Star") events marketplace (*i.e.,* "All Star Events" or "Events"), through acquisitions of rivals, purported exclusive dealing agreements, and purported collusion with U.S. All Star Federation, Inc. ("USASF") (Varsity and USASF together, "Defendants") in violation of the antitrust laws of the United States. The Court has not decided who is right because the parties agreed to a settlement. The Court has given preliminary approval to this Settlement.

The Settlement

Under the Settlement, Varsity has agreed to provide **$43,500,000** in cash ("Settlement Fund") to be paid over two years. The Settlement Fund will be used to pay valid claims of Gyms that paid fees directly to Varsity to register All Star Teams to participate in Varsity All Star Events ("Gym Class") and people who paid admissions fees directly to Varsity to watch Varsity All Star Events ("Spectator Class") at any time between May 26, 2016 and March 15, 2023.

In addition, under the Settlement, the Defendants have agreed to make certain changes to their practices. Please visit the settlement website www.AllStarCheerAntitrustSettlement.com to read about the business changes.

Attorneys' fees and expenses and service awards for the Class Plaintiffs

Settlement Class counsel, together with other plaintiffs' counsel, have been prosecuting the Action on a contingent basis and have not been paid for any of their work. If the Court approves the Settlement, Settlement Class Counsel will ask the Court to make deductions from the Settlement Fund for (i) attorneys' fees in an amount not to exceed 1/3 of the Settlement Fund plus any accrued interest, (ii) an award of their litigation expenses not to exceed $2,250,000, and (iii) service awards of up to $20,000 for each of the 3 Gym Class Representatives and $5,000 for each of the 3 Spectator Class Representatives ($75,000 total).

Legal Rights and Options

Members of the Gym Class and Spectator Class have the legal rights and options summarized below. You may:

Exclude Yourself: You may request to be excluded from either the Gym Class or Spectator Class. This is the only way you can be part of another lawsuit that asks for money for claims in this Action. If you exclude yourself, you will *not* get money from this Settlement. If you wish to exclude yourself, you must make a written request and mail it with postage prepaid and postmarked no later than [MM, DD, 2023].

Object: You can tell the Court that you do not agree with any part of the Settlement or Settlement Class Counsel's request for (a) attorneys' fees and reimbursement of expenses, (b) service awards for the Class Representatives, or (c) the Plan of Allocation, by filing an objection. The deadline to object is: [MM DD, 2023].

At a Later Time, File a Claim: If the Court approves the Settlement, to receive a cash award, You would need at a later time to submit a timely claim via email or mail, or you may file it online at www.AllStarCheerAntitrustSettlement.com.

For complete information about these rights and options, visit: www.AllStarCheerAntitrustSettlement.com.

The Court Hearing about this Settlement

On [MM, DD, 2023], there will be a Court hearing to decide whether to approve the proposed settlement. The hearing also will address Settlement Class Counsel's requests for attorneys' fees and expenses, and service awards for the Class Plaintiffs. The hearing will take place at: United States District Court for the Western District of Tennessee, Odell Horton Federal Building, Courtroom 1, 11th Floor, 167 North Main Street, Memphis, Tennessee. You do not have to go to the Court hearing or hire an attorney. But you can if you want to, at your own cost. The Court has appointed the law firms of Berger Montague PC, DiCello Levitt LLC, and Cuneo Gilbert & LaDuca, LLP as Settlement Class Counsel to represent the Gym Class and Spectator Class.

For more information about this case Call toll-free: 1-(888)-610-6050 or Visit: www.AllStarCheerAntitrustSettlement.com.