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Attorneys for Plaintiff,  
AARON ALAFA

FILED  
TULARE COUNTY SUPERIOR COURT  
TULARE DIVISION

AUG 03 2016

LARAYNE CLEEK, CLERK

BY: \_\_\_\_\_  
[Signature]

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF TULARE  
(UNLIMITED JURISDICTION)

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

*Plaintiff,*

vs.

CUSTOM BUILT PERSONAL TRAINING,  
INC., a California corporation; and DOES 1-  
50, inclusive,

*Defendants.*

Case no.: VCU245496

STIPULATION TO AMEND ORDER  
GRANTING FINAL APPROVAL OF  
CLASS ACTION SETTLEMENT;  
~~PROPOSED~~ ORDER

Action Filed: December 30, 2011  
Dept: 2, Hon. David Mathias



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1 Civil Penalties will decrease by 50% from \$10,000 to \$5,000 (with a payment to the State of  
2 California decreasing accordingly from \$7,500 to \$3,750). Claims Administration Costs will  
3 increase by 15% from \$12,500 to \$14,348. Litigation Expenses and Named Plaintiff's  
4 Enhancement Award will remain the same. A true and correct copy of this Amendment of the  
5 Settlement Agreement is attached as **Exhibit 1** to this stipulation.

6 6. As explained above, the decrease in the payment to the participating class  
7 members is fair, adequate, and reasonable because of the change in Defendant's financial  
8 condition. Any further increase in the money allocated for distribution to participating class  
9 members would lead to reductions in attorney's fees, costs, administration costs, class  
10 representative enhancement award, and payment to the State that would be unreasonable, even  
11 under the circumstances of this change in the Settlement.

12 7. The decrease in the payment to the State of California is fair, adequate, and  
13 reasonable because it approximately tracks the reduction in value of class member shares.

14 8. The decrease in the payment to Class Counsel is fair, adequate, and reasonable  
15 because the reduction is about ten percent (10%) greater than the reduction of Defendant's  
16 minimum payout from \$596,666.67 to \$304,977.11, and twelve percent (12%) greater than the  
17 reduction in amount distributable to participating class members from \$253,333.34 to  
18 \$131,340.00. Class Counsel's attorney's fees at the time of the Plaintiff's Motion for Final  
19 Approval totaled \$113,081.49. As a result of Class Counsel's work on this case since the  
20 Motion for Final Approval, their fees have risen to over \$128,000.00 under the lodestar  
21 method. A true and correct copy of the declaration of David Spivak ("DS") which shows this  
22 increase is attached as **Exhibit 2** to this stipulation. *See* DS ¶ 6.

23 9. It is fair, adequate and reasonable that Class Counsel's litigation costs under the  
24 Amendment should remain the same. To date, Class Counsel's litigation costs are over  
25 \$15,000.00, the amount the Court approved as fair, adequate, and reasonable in the original  
26 Final Approval Order. A true and correct copy of the declaration of David Spivak which  
27 shows this increase is attached as Exhibit 2 to this stipulation. *See* DS ¶ 7, Exhibit A.

28 10. It is fair, adequate and reasonable that the Class Representative Enhancement



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1 Award under the Amendment should remain the same because the Court already approved this  
2 amount, and Plaintiff had dedicated further time and energy to the administration and  
3 restructuring of this Settlement for the benefit of the Participating Class Members and because  
4 he must wait three more years to receive the same amount that Defendant offered him settle  
5 his claims (at the expense of the Class's claims) at the mediation of this matter in January of  
6 2013.

7 11. The increase in the Claims Administration costs is fair, adequate, and  
8 reasonable because it accounts for actual increased costs to Simpluris, Inc. attendant to  
9 distribution of notice of the Amendment to participating class members by means of a  
10 postcard and webpage that will make the Amendment, the new Class Notice, and the  
11 Amended Final Order and Judgment available for download and review by participating class  
12 members. *See* DS ¶ 8, Exhibit B regarding Simpluris, Inc.'s bid in the amount of \$14,348.00.  
13 The increase is also fair, adequate and reasonable because it is within the amount the Court  
14 preliminarily approved for Claims Administration, \$20,000.00. *See* DS ¶ 8, Exhibit C.

15 12. Within 10 days of the Order on this Stipulation, the Claims Administrator will  
16 notify the participating class members in writing of this change to the Settlement by means of  
17 a postcard. *See* DS ¶ 11, Exhibit D. The postcard will expressly advise each participating class  
18 member of the change in his Settlement Award and of the address of a webpage that will  
19 provide class members with the Notice of Amendment to Settlement Agreement and the Final  
20 Order Approving the Amendment (should it be issued). *See* DS ¶ 11, Exhibit D (postcard) and  
21 Exhibit E (Notice of Amendment to Settlement Agreement). The class members will have 45  
22 days to object or opt out of the settlement in the same manner that they could have previously  
23 under the settlement. However, they may only object or opt out based upon this change in the  
24 Settlement Amount. They may not opt out of the original Settlement if they did not timely do  
25 so before.

26 13. This method of notifying participating class members of the Amendment is fair,  
27 adequate and reasonable because it advises them of the changes to the Settlement and provides  
28 them with means to stay informed of this Court's future orders on this stipulation and the



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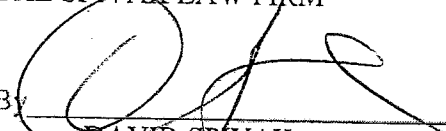
1 Amendment. It is also an inexpensive method of notice designed to keep costs down so further  
2 diminution in class member awards is not necessary. There is no need to provide notice of the  
3 Amendment to those class members who opted out or chose not to make a claim on the  
4 Settlement originally because their rights will not be affected by the Amendment. The only  
5 circumstances that have changed are the financial condition of the Defendant for the worse.

6 14. The Court will conduct a hearing on whether to give final approval to this  
7 amendment on August 25, 2016 at 8:30 a.m., or any subsequent date as may be convenient to  
8 the Court.

9 **IT IS SO STIPULATED.**

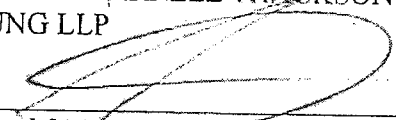
10 THE SPIVAK LAW FIRM

11  
12 Dated: 7/20, 2016

13 By   
14 DAVID SPIVAK  
Attorneys for Plaintiff,  
AARON ALAFA

15 HAWKINS PARNELL THACKSON &  
16 YOUNG LLP

17 Dated: July 5, 2016

18 By   
19 MATTHEW A. BOYD  
20 MIRNA J. SCHEFFY  
Attorneys for Defendant, CUSTOM  
BUILT PERSONAL TRAINING, INC.

21 ~~PROPOSED~~ ORDER

22 Based upon the agreement of the parties as set forth in the foregoing stipulation, and  
23 good cause having been shown, a hearing is set for August 25, 2016  
24 at 8:30 a.m. in Department 2 regarding whether to give final approval to this amendment. The  
25 parties may appear by Courtcall for the hearing.

26 **IT IS SO ORDERED.**

27 Dated: AUG 05 2016

28 **David C. Mathias**

HON. DAVID MATHIAS  
Tulare County Superior Court Judge

