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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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ATTORNEYS FOR DEFENDANT

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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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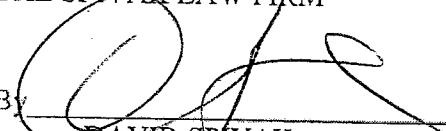
1 Amendment. It is also an inexpensive method of notice designed to keep costs down so further
2 diminution in class member awards is not necessary. There is no need to provide notice of the
3 Amendment to those class members who opted out or chose not to make a claim on the
4 Settlement originally because 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.**

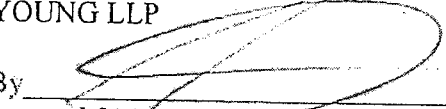
10 THE SPIVAK LAW FIRM

11 Dated: 7/20, 2016

12 By 
13 DAVID SPIVAK
14 Attorneys for Plaintiff,
15 AARON ALAFA

16 HAWKINS PARNELL THACKSON &
17 YOUNG LLP

18 Dated: July 5, 2016

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

24 ~~PROPOSED~~ ORDER

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

IT IS SO ORDERED.

Dated: AUG 05 2016

David C. Mathias

HON. DAVID MATHIAS
Tulare County Superior Court Judge

