

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

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

Plaintiff,

Case No.: 1:20-cv-20836-BB

v.

SPARTAN RACE INC., a Delaware Corporation

Defendant.

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**STIPULATION OF SETTLEMENT**

This Stipulation of Settlement is entered into by Plaintiff Aaron Fruitstone, on behalf of himself and each of the Class Members, and Defendant Spartan Race, Inc.

**I. RECITALS**

**A.** In February 2020, Plaintiff filed a class action complaint in the Southern District of Florida against Spartan. Plaintiff filed an amended complaint in April 2020, alleging that Spartan’s “Racer Insurance Fee” was misleading and an “unfair and deceptive self-enrichment scheme” in violation of the Florida Deceptive and Unfair Trade Practices Act and the Massachusetts Consumer Protection Law and a basis for a cause of action for unjust enrichment.

**B.** The Action proceeded amidst the ongoing COVID-19 pandemic. A considerable amount of discovery occurred in a relatively short period of time. Both parties served and answered interrogatories, sent requests for production of documents and produced documents in response, and deposed various witnesses. Discovery confirmed approximately one million Class Members and a total of approximately two million registrations.

**C.** In September 2020, Plaintiff filed a motion for class certification, and the Parties filed briefs and evidence in connection with that motion. On December 29, 2020, the Court held a hearing on the motion for class certification, but has not issued a ruling.

**D.** Starting on December 1, 2020, the Parties participated in mediation with Mediator Michael Young. The mediation process continued for more than a month with, almost daily telephone/Zoom calls and emails.

**E.** Spartan has denied and continues to deny each and all of the claims and contentions alleged by Plaintiff and any liability or wrongdoing with respect thereto.

**II. DEFINITIONS**

**A.** As used in this Stipulation and all Exhibits hereto, the following capitalized terms

have the meanings specified below:

1. “Action” means the case captioned *Aaron Fruitstone v. Spartan Race Inc.*, filed February 26, 2020, in the United States District Court for the Southern District of Florida, and assigned Case No. 1:20-cv-20836-BB.
2. “Chubb” means ACE American Insurance Company, which issued Policy No. C28216610 004 to Spartan.
3. “Class” or “Class Members” means all individuals in the United States who during the Class Period, based on Spartan’s records, paid a \$14 “Racer Insurance Fee” or “Insurance Fee” in connection with any race organized and sponsored by Spartan. Excluded from the Class are (a) Defendant’s board members and executive level officers; (b) the District and Magistrate judges assigned to this Action and their court staff; and (c) individuals who submit a valid, timely exclusion/opt-out request.
4. “Class Counsel” means:

Adam M. Moskowitz Howard M. Bushman Joseph M. Kaye The Moskowitz Law Firm 2 Alhambra Plaza #601 Miami, FL 33134	Andrew S. Friedman Francis Balint Bonnett, Fairbourn, Friedman & Balint, P.C. 2325 E. Camelback Road, Suite 300 Phoenix, AZ 85016
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5. “Class Notice” means the “Notice of Class Action Settlement” discussed in Section IV of this Stipulation and substantially in the form attached as Exhibit A.
6. “Class Period” means the time period from February 26, 2016 to December 31, 2020 (inclusive of both dates).
7. “Court” means the United States District Court for the Southern District of Florida, Miami Division, in which this Action is pending.
8. “Defendant” or “Spartan” means Spartan Race, Inc.

9. “Defendant’s Counsel” means:

Evan S. Nadel  
Victor Mustelier  
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.  
44 Montgomery Street, 36th Floor  
San Francisco, CA 94104

10. “Effective Date” means the date on which all conditions of the Settlement have been satisfied, as provided in Section VII.

11. “Final Approval Hearing” means the hearing to be held by the Court to consider and determine whether the proposed settlement of the Action, as contained in this Stipulation, should be approved as fair, reasonable, and adequate, and whether the Final Order and Judgment approving the Settlement should be entered. The Final Approval Hearing shall be held no earlier than ninety (90) days after the date of entry of the Preliminary Approval Order

12. “Final Order and Judgment” means the order and judgment entered by the Court:

- i. giving final approval to the terms of this Stipulation as fair, adequate and reasonable;
- ii. providing for the orderly performance and enforcement of the terms and conditions of the Stipulation;
- iii. discharging the Released Parties of and from all further liability for the Released Claims to the Releasing Parties;
- iv. permanently barring and enjoining the Releasing Parties from instituting, filing, commencing, prosecuting, maintaining, continuing to prosecute, directly or indirectly, as an individual or collectively, representatively, derivatively, or on behalf of them, or in any other capacity of any kind

whatsoever, any action in any state court, any federal court, or in any other tribunal, forum, or proceeding of any kind, against the Released Parties that asserts any Released Claims; and

v. entering a Final Order and Judgment that is consistent with this Stipulation and substantially in the form attached as Exhibit B.

13. “Insurers” means Chubb and Travelers.
14. “Objection/Exclusion Deadline” means the date by which any written objection to this Settlement must be filed with the Court and any request for exclusion by a Potential Settlement Class Member must be received by Spartan, which shall be designated as a date twenty-one (21) days before the originally scheduled date of the Final Approval Hearing (if the Final Approval Hearing is continued, the deadline runs from the first scheduled Final Approval Hearing), or on such other date as may be ordered by the Court.
15. “Parties” means Plaintiff and Defendant, and “Party” means either Plaintiff or Defendant.
16. “Plaintiff” means Aaron Fruitstone.
17. “Potential Settlement Class Members” mean Persons who fall within this Stipulation’s definition of the Class.
18. “Preliminary Approval Order” means the proposed order preliminarily approving the Settlement and substantially in the form attached as Exhibit C.
19. “Program” means Spartan’s Spartan+ Membership Program that will be available to consumers in 2021 for the anticipated regular price of \$85.00 per year.
20. “Release” means the release set forth in §VI of this Stipulation.

21. “Released Claims” means any and all actions, claims, demands, rights, suits, debts, and causes of action of whatever kind or nature against the Released Parties, including damages, costs, expenses, penalties, equitable relief, injunctions, and attorneys’ fees, known or unknown, suspected or unsuspected, in law or in equity that arise out of or relate to the factual allegations and claims asserted in this case individually and/or on a class wide basis.
22. “Released Party” or “Released Parties” means Defendant, including its predecessors and successors in interest, and each of the foregoing’s subsidiaries, divisions, departments, affiliates, parents, partners, members, managers and affiliated individuals and entities, any and all of its past and present officers, directors, stockholders, agents, employees, attorneys, insurers, representatives, legal predecessors, successors, heirs, and assigns.
23. “Releasing Parties” means Plaintiff and the Class Members.
24. “Settlement Class Members” mean Persons who fall within the definition of the Class, who do not timely and properly exclude themselves from the Settlement Class as provided in this Stipulation, and who otherwise are not excluded by specific order of the Court from the Class.
25. “Stipulation of Settlement,” “Settlement” and/or “Stipulation” means this executed Stipulation of Settlement.
26. “Travelers” means Travelers Casualty and Surety Company of America, which issued Policy No. 106681097 to Spartan.
27. “Voucher” means a \$5.00 credit towards the purchase of non-discounted merchandise on Spartan’s website.

**B.** All references herein to sections, paragraphs, and exhibits refer to sections, paragraphs and exhibits of and to this Stipulation, unless expressly stated otherwise.

**III. SETTLEMENT RELIEF: The Membership/Voucher/Injunction Program**

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

**A. The Spartan+ Membership Program**

Spartan currently offers, at a price of \$79.99 per year, access to its SpartanFit™ application. Prior to this lawsuit being settled, Spartan intended to create and offer for sale a Spartan+ Membership Program (the “Program”), which would provide access to an enhanced version of all of the video, audio, and digital content that is currently available via the SpartanFit Application, plus updated and advanced content, such as on-line classes, videos and other tools to assist with Spartan’s programs and lifestyle. Independent of this Settlement, Spartan intends to charge consumers \$85.00 per year for the Program. Spartan intends to make the Program available to the public by March 2021.

Through this Stipulation of Settlement, each Class member who elects to receive the Program will be provided with a free four-month subscription to the Program. This Program subscription will include: (1) the “highest” level of access to all available video, audio, and other digital content; (2) a 20% discount and free shipping and handling for any merchandise ordered by the Class Member from Spartan’s website; and (3) free event photo downloads and access to other “members only” premium content on Spartan’s website.

Class Members will not be required to provide a credit card to initiate their Program subscriptions but will need to activate their subscriptions after the Effective Date. Subscriptions will automatically terminate at the end of four months, unless the Class Member chooses affirmatively to extend their subscription beyond the complementary four-month period.

**B. Vouchers for Spartan Merchandise**

As an alternative to the four-month free subscription to the Program, each Class Member may elect to receive a \$5.00 Voucher. Should the Class Member elect to receive a Voucher, they will receive one Voucher per each event for which they paid a “Racer Insurance Fee” or “Insurance Fee” during the Class Period, up to a total of four (4) Vouchers maximum (for a combined value of \$20.00). No Class Member or other person may receive or redeem more than four (4) Vouchers. Each Voucher shall entitle the owner to a \$5.00 credit towards the purchase of any non-discounted merchandise on Spartan’s website. There are currently many non-discounted merchandise items available for sale on the Spartan website, and Spartan has no intention of removing said items as a result of this Settlement. Vouchers cannot be combined with any promotion, discount, or coupon.

Up to four (4) Vouchers may be “stacked” (*i.e.*, combined for use in a single transaction) towards the purchase of any such non-discounted merchandise. Vouchers are transferable. However, the non-discounted merchandise and four-Voucher stacking limitations also apply to recipients of transferred Vouchers. Each Voucher will be valid for two (2) years from the date of issuance, at which time the Voucher will expire.

**C. Injunctive Relief to the Settlement Class**

Plaintiff in the Action seeks injunctive relief requiring Spartan to provide all consumers with full and accurate information regarding the “Racer Insurance Fee”, namely that it also includes other administrative costs (as explained by Spartan in other sections of the Spartan

website) and that Spartan may make a profit regarding such charges. In addition to providing all Class Members the relief described in Sections III. A and B, Spartan also agrees to the following, starting on the Effective Date, that will directly benefit all current and future Spartan consumers:

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

**D. Class Notice Costs, and Attorney’s Fees and Expenses**

As part of the settlement relief, Spartan will provide Class Notice to the Class Members pursuant to Section IV. The Insurers, on behalf of Spartan, will pay any reasonable attorneys’ fees

and expenses and Plaintiff Service Award that are awarded by the Court in this Action, as further described in Section VIII below.

#### **IV. NOTICE TO THE CLASS AND APPROPRIATE FEDERAL AND STATE OFFICIALS**

##### **A. Notice to Appropriate Federal and State Officials**

Pursuant to the notice provisions of the Class Action Fairness Act, 28 U.S.C. § 1715, within ten (10) days after this Stipulation is deemed filed with the Court, Spartan will provide notice of this Action and this Stipulation to the Attorney General of the United States; the Federal Trade Commission; and the Attorneys General of the States, Districts, Commonwealths and Territories in which Class Members are determined to reside based on the Class Members' mailing addresses as reflected in Spartan's business records.

##### **B. Individual Notice to the Class**

Subject to the requirements of the Preliminary Approval Order, no later than twenty-eight (28) days after entry of the Preliminary Approval Order, Spartan will send a Class Notice to each Class Member. The Class Notice in a form identical or similar to Exhibit A will be sent exclusively by email and will:

1. contain a short, plain statement of the background of the Action and the Settlement;
2. describe the settlement relief outlined in this Stipulation;
3. state that any relief to Class Members is contingent on the Court's final approval of the Settlement;
4. inform Class Members that attorneys' fees and expenses, and a service award for the named plaintiff, will be requested and, if approved by the Court, will be paid by

Spartan in addition to the relief described above in Section III (A)-(B);

5. inform Class Members that they may opt out of the Class by submitting a written opt out request by email to Spartan, which must be received by Spartan no later than the Objection/Exclusion Deadline;
6. inform Class Members that, if he or she desires, Class Members may object to the proposed Settlement by filing and serving a written statement of objections, which must be received no later than the Objection/Exclusion Deadline;
7. inform Class Members that any Class Member who has filed and served written objections to the proposed Settlement may, if he or she so requests, enter an appearance at the Final Approval Hearing either personally or through counsel;
8. inform Class Members that any Final Order and Judgment entered in the Action, whether favorable or unfavorable to the Class, shall include, and be binding on, all Class Members, even if they have objected to the proposed Settlement and even if they have any other claim, lawsuit or proceeding pending against Spartan;
9. describe the terms of the Release; and
10. contain reference and a hyperlink to a dedicated webpage housed on The Moskowitz Law Firm, PLLC website, which will include relevant documents and information regarding this Action.

The Class Notice email also will contain a link through which each Class Member can make a selection, subject to Court approval, of either (a) a free four-month subscription to the Program, or (b) one or more Vouchers, with a maximum of four (4) Vouchers per Class Member, as described above. The Class Notice will further inform each Class Member that they shall have sixty (60) days from the date the Class Notice email is sent to make their selection and if they do

not make a selection within that time period they shall be deemed to have selected the Program as their benefit. Class Members will also be informed that if they choose the Voucher(s), they will have two years to use the Voucher(s).

Not later than ten (10) days from the Effective Date, Spartan will send a second email to all Class Members informing them that, depending on the Class Member's selection, the Voucher(s) will be deposited into their account shortly or their membership in the Program will be activated once they complete the online Program enrollment on the Spartan website within thirty (30) days.

Spartan represents that, apart from a relatively small number of possible exceptions, at the time that each Class Member registered for a Spartan event, such Class Member provided Spartan with his or her name, email address, and billing address, and that Spartan currently has this information in its possession. Spartan cannot and does not guarantee that such user-provided data is the currently accurate contact information for each Class Member. Spartan will use this information to compile the list of Class Members to whom Class Notice will be sent and the email addresses to which Class Notice will be sent. Spartan will appoint at least one employee to oversee the process of compiling the list of Class Members. At least ten (10) days prior to the Final Approval Hearing, Spartan shall provide to Class Counsel a declaration confirming that the Notice program has been completed along with a list of persons who submitted timely valid requests for exclusion from the Class.

**V. APPROVAL PROCEDURES AND RELATED PROVISIONS**

**A. Preliminary Approval**

Promptly after execution of this Stipulation, the Parties shall submit this Stipulation to the Court and shall move for entry of a Preliminary Approval Order preliminarily approving this Stipulation and approving the form and manner of providing notice to the Class.

**B. Objections, Notices to Appear, and Opt Outs**

**Opting Out of the Settlement.** Any members of the Settlement Class who wish to exclude themselves from the Settlement Class shall advise Spartan on or before the Objection/Exclusion Deadline. The Class Notice shall contain information concerning how a person in the Settlement Class may opt-out of the Settlement (i.e., a request to be excluded from the Settlement Class) by mailing a Request for Exclusion by first-class mail, postage prepaid, and postmarked to the address of Spartan as specified in the Class Notice.

a. Such Request for Exclusion shall clearly indicate the name, address, email address, and telephone number of the Person seeking exclusion, the name and case number of the Action, a statement that the Person wishes to be excluded from the Class, and the date and signature of such Person or, in the case of a Person in the Settlement Class who is deceased or incapacitated, the signature of the legally authorized representative of such Person.

b. Any member of the Settlement Class who submits a valid and timely Request for Exclusion will not be a Class Member, will not receive any compensation under this Agreement, and will not be bound by the terms of this Agreement.

c. Any Class Member who wishes to appear at the Final Approval Hearing, either personally or through counsel, must file with the Court and serve on the Parties a Notice of Intent

to Appear. The Notice of Intent to Appear must include the Class Member's name and current address or other contact information, and state whether he or she will appear through his or her own counsel. The Notice of Intent to Appear must be filed with the Court and served on Class Counsel and Defendant's Counsel such that the Notice of Intent to Appear is actually received by counsel no later than the Objection/Exclusion Deadline.

**C. Validity of Exclusion.** The Request for Exclusion shall not be effective unless it is postmarked no later than the Objection/Exclusion Deadline, which date shall be stated in the Class Notice. No Person in the Settlement Class may submit a Request for Exclusion of or on behalf of any other Person in the Settlement Class. Requests for Exclusion that do not comply with this Section of this Agreement are invalid. Spartan shall share with Class Counsel copies of Requests for Exclusion and a report of the names and addresses of Persons whose Requests for Exclusion have been timely mailed. Plaintiff shall file the Requests for Exclusion with the Court in connection with Plaintiff's motion for a Final Approval Order and Judgment.

Spartan will also provide to Class Counsel a list of each Person who timely and validly opted out of the Settlement to be filed with the Court by Class Counsel twenty-one days prior to Final Approval. Any Person in the Settlement Class who does not properly and timely submit a Request for Exclusion of this Settlement Agreement on or before the Objection/Exclusion Deadline will be bound by all subsequent proceedings, orders and the Final Order and Judgment in this Action relating to this Settlement Agreement, even if he or she has pending, or subsequently initiates, litigation, arbitration or any other proceeding against Spartan relating to the Released Claims. Any Person in the Settlement Class who submits a valid and timely Request for Exclusion shall not be a Settlement Class Member, bound by this Agreement or the Final Approval Order

and Judgment, entitled to any Settlement Class Recovery, or otherwise gain any rights by virtue of this Agreement.

**D. Objections.** Any Settlement Class member who intends to object to the fairness of the Settlement must file a timely written objection with the Court by the Objection/Exclusion Deadline at his or her own expense, with a copy served on Class Counsel and Defendant's Counsel at the addresses provided in the Class Notice, which written objection must contain the following:

(a) the full name, address, telephone number, the signature of the objecting Class Member (the objector's counsel's signature is not sufficient) and a statement under penalty of perjury that the Class Member is a member of the Class and the information provided on the claim form is true and correct;

(b) the specific reasons for the objecting Class Member's objection to the Settlement, and a detailed statement of the legal basis for such objections;

(c) the identity of all witnesses, including the witnesses' name and address, and a summary of such witnesses' proposed testimony who the objecting Class Member may call to testify at the Final Approval Hearing;

(d) documents sufficient to demonstrate the objecting Class Member's standing (that they are, in fact, a member of the proposed class) must be attached to the Objection;

(e) the number of times in which the objector has objected to a class action settlement within the five years preceding the date that the objector files the objection, the caption of each case in which the objector has made such objection, and a copy of any orders related to or ruling upon the objector's prior such objections that were issued by the trial and appellate courts in each listed case; and

(f) a statement whether the objecting Class Member and/or his/her attorney(s) intend to appear at the Final Approval Hearing. Any attorney of an objecting Class Member who intends to appear at the Final Approval Hearing must enter a written Notice of Appearance of Counsel with the Clerk of the Court no later than the date set by the Court in its Preliminary Approval Order and shall include the full caption and case number of each previous class action case in which such counsel has represented an objector.

**Waiver of Objection.** Any Class Member who does not file a timely written objection to the Settlement shall waive the right to object or to be heard at the Final Approval Hearing and shall be forever barred from making any objection to the Settlement or seeking review of the Settlement by appeal or other means. Any Class Member who does not file a timely written Objection to the Settlement will be bound by this Agreement and the Final Approval Order and Judgment, including the Release described in Section VI of this Agreement.

The Parties shall file responses to any objections to the Stipulation ten (10) days before the Final Approval Hearing.

## **VI. RELEASE AND WAIVER**

### **A. Release**

As of the Effective Date, Plaintiff and every Class Member, for his or herself, and for every Class Member's beneficiaries, executors, conservators, personal representatives, wards, heirs, predecessors, successors, and affiliates in consideration of the benefit set forth in this Stipulation, fully, finally, and forever release the Released Parties from all Released Claims.

### **B. Waiver**

The Parties acknowledge that it is possible that unknown losses or claims exist or might exist or that present losses may have been underestimated in amount. As of the Effective Date,

Plaintiff and every Class Member are deemed to finally, fully, and forever expressly waive and relinquish any and all provisions, rights, and benefits with respect to the Released Claims.

Because the Class includes California citizens, the Parties expressly agree to waive any and all provisions, rights, and benefits of Section 1542 of the California Civil Code, and any and all similar provisions, rights, and benefits conferred by any law of any state or territory of the United States or principle of common law that is similar, comparable, or equivalent to Section 1542 of the California Civil Code, which provides:

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.

Plaintiff and the Class Members are deemed to agree that the above waiver is an essential term of this Stipulation. Plaintiff and Class Members are also deemed to acknowledge and understand that they may later discover claims presently unknown or unsuspected, or facts in addition to or different from those which they now believe to be true with respect to the matters released in this Stipulation. Nevertheless, it is the intention of Plaintiff and Class Members to fully, finally, and forever settle and release the Released Claims with the Released Parties that exist, hereafter may exist, or might have existed.

**VII. CONDITIONS OF SETTLEMENT, EFFECT OF DISAPPROVAL, CANCELLATION, OR TERMINATION**

The Effective Date of this Stipulation shall be the first date after which all of the following events and conditions have been met or have occurred:

1. The Court has preliminarily approved this Stipulation;
2. The Court has entered the Final Order and Judgment; and

3. Unless the Parties otherwise agree in writing to waive all or any portion of the following provision, there has occurred: (i) in the event there is a properly and timely filed objection to entry of the Final Order and Judgment, the expiration (without the filing or noticing of an appeal) of the time to appeal from the Final Order and Judgment; (ii) the final dismissal of an appeal from the Final Order and Judgment; (iii) affirmance on appeal of the Final Order and Judgment in substantial form; (iv) if a ruling or decision is entered by an appellate court with respect to affirmance of the Final Order and Judgment, the time to petition for a writ of certiorari or review with respect to such ruling or decision has expired (without such petition being filed); or (v) if a petition for a writ of certiorari or review with respect to the Final Order and Judgment is filed, the petition has been denied or dismissed or, if granted, has resulted in affirmance of the Final Order and Judgment in substantial form.

If all of the conditions specified in this Section VII of the Stipulation are not met, then this Stipulation shall be cancelled and terminated unless Class Counsel and Defendant's Counsel mutually agree in writing to proceed with this Stipulation. If all of the conditions specified in Section VII of this Stipulation are met, but the number of Class Members requesting and obtaining exclusion under Section V(B) exceeds 15% of all Class Members, then any Party can cancel and terminate this Stipulation upon providing written notice of such election to all Parties.

In the event that this Stipulation is not approved by the Court, or the Settlement set forth in this Stipulation is terminated as described above or fails to become effective in accordance with the terms, the Parties shall be restored to their respective pre-settlement positions in the Action and this entire Stipulation shall become null and void. Further, all negotiations, proceedings, and documents prepared and statements made in connection with the Settlement shall be without prejudice to any Party and shall not be deemed or construed to be an admission or confession by

any Party or any fact, matter, or proposition of law, and if this Stipulation is not approved by the Court or the Settlement set forth in this Stipulation is terminated as set forth above in this Section or fails to become effective in accordance with its terms, no Party will subsequently refer to or attempt to offer into evidence such statements.

## **VIII. ATTORNEYS FEES AND EXPENSES, AND SERVICE AWARDS**

### **A. Attorneys' Fees and Expenses**

The Parties agree that Class Counsel may apply for an award of reasonable attorneys' fees and reimbursement of expenses to be paid by Spartan. Specifically, Class Counsel intends to request approval of attorneys' fees and costs not to exceed \$2.3 million. Spartan will not oppose the request for attorneys' fees and expenses up to this amount, *provided* that Class Counsel comply with this Stipulation and *provided* that the total of all payments sought from or made by or on behalf of Spartan and the Insurers under this Stipulation (including but not limited to payments for attorneys' fees, costs and expenses of Class Counsel, and the Plaintiff's service award) does not exceed \$2.3 million. Spartan acknowledges that the approximate maximum monetary value of the relief to the Class exceeds \$28 million—calculated as one million Class Members multiplied by \$28.00 (four (4) months of Program subscription times one-third of the planned annual subscription rate for other Spartan customers of \$85.00 per year). Class Counsel shall file its Motion for an Attorneys' Fees and Expenses award no later than fourteen (14) days before the Objection/Exclusion Deadline.

The Settlement is not contingent on the Court's approval of the attorneys' fees and expenses requested by Class Counsel. Class Counsel shall allocate and distribute the award of attorneys' fees and expenses among Class Counsel.

Subject to the terms and conditions of this Stipulation and any order of the Court, the amount of Class Counsel's attorneys' fees and expenses approved by the Court shall be paid in full by the Insurers into an interest bearing escrow account at Class Counsel's direction, within fourteen (14) days of the Court granting Final Approval of the Settlement, irrespective of any appeals to Final Approval *provided that* Class Counsel have provided the Insurers with the information required below no later than fourteen (14) days before the Effective Date. The approved costs and fees will be wired to an interest bearing account selected by Class Counsel, and agreed to by the Parties and Spartan's Insurers, but none of such Funds will be released to any Party, only until and after the Effective Date. Class Counsel will provide the Insurers a W-9 prior to requesting any payment, and payments will be made by ACH deposit or wire transfer using the instructions provided by Class Counsel. For the avoidance of doubt, Spartan assumes no responsibility, as guarantor or otherwise, for the Insurers' payment of Class Counsel's attorneys' fees and expenses, which responsibility rests entirely with the Insurers, and Plaintiff and Class Counsel waive any claim against Spartan in the event of non-payment by the Insurers.

**Plaintiff's Service Award**

The Parties agree that Plaintiff may apply for a service award to be paid by Insurers for Spartan. Specifically, Plaintiff intends to request approval of a service award in the amount of \$10,000.00 in accordance with the applicable Eleventh Circuit law. Spartan will not oppose the request for a service award in this amount, *provided that* the total of all payments sought from or made by Spartan and the Insurers cumulatively under this Stipulation (including but not limited to payments for attorneys' fees, costs and expenses of Class Counsel, and the Plaintiff's service award) does not exceed \$2.3 million. The Settlement is not contingent on the Court's approval of any Plaintiff's service award requested by Class Counsel.

**IX. MISCELLANEOUS PROVISIONS**

**A. Cooperation**

The Parties hereto and their undersigned counsel agree to undertake their best efforts and mutually cooperate to promptly effectuate this Stipulation, and the terms of the Stipulation set forth herein, including taking all steps and efforts contemplated by this Stipulation and any other steps and efforts which may become necessary by order of the Court or otherwise. The Parties, their successors and assigns, and their attorneys also agree to implement the terms of this Stipulation in good faith and to use good faith in resolving any disputes that may arise in the implementation of the terms of this Stipulation.

**B. Authorization**

The undersigned counsel represent that they are fully authorized to execute and enter into the terms and conditions of this Stipulation on behalf of their respective clients.

**C. Confidentiality and Non-Disparagement**

The Parties, Class Counsel, and Defense Counsel each agree not to disclose the existence or terms of the Stipulation to any other person until such a time as this Stipulation is filed in the Action, absent the prior written consent of the other Parties. Plaintiff and Class Counsel agree that neither will publish or cause to be published, directly or indirectly, any press release or advertising or marketing materials regarding this Settlement, at any time. Plaintiff and Class Counsel further agree not to directly, or indirectly through third persons, entities and/or any other means, disparage Spartan or its officers, directors, shareholders, employees, independent contractors, agents, affiliates, subsidiaries or related entities, to any person, entity, or to the press. For purposes of this Section IX.C, “disparage” shall mean any negative statement, whether written or oral, which does

affect or which could be reasonably expected to adversely affect Spartan's business, income, or reputation, or the business, income or reputation of the its affiliates, subsidiaries, or related entities.

**D. Entire Agreement**

This Stipulation contains the entire agreement among the Parties hereto and supersedes any prior agreements, representations, communications, or understandings between them. No covenant, obligation, condition, representation, warranty, inducement, negotiation, or undertaking concerning any part or all of the subject matter of this agreement has been made or relied upon except as set forth expressly herein. Except for Section I, all terms of this Stipulation are contractual and not mere recitals and shall be construed as if drafted by all Parties. The terms of this Stipulation are and shall be binding upon each of the Parties, their agents, attorneys, employees, successors and assigns, and upon all other persons claiming any interest in the subject matter through any of the Parties, including any Class Member. Notwithstanding the above, the Parties contemplate that the exhibits to the Stipulation may be modified in nonmaterial ways as needed for settlement implementation by subsequent agreement of the Parties, or by the Court.

**E. Computation of Time**

All time periods set forth herein shall be computed in calendar days, unless otherwise provided. In computing any period of time prescribed or allowed by this Stipulation or by order of the Court, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal holiday, or, when the act to be done is the filing of a paper in Court, a day in which weather or other conditions have made the Office of the Clerk of the Court inaccessible, in which event the period shall run until the end of the next day that is not one of the aforementioned days. As used in this subsection, "legal holiday" includes New Year's Day, Martin

Luther King, Jr.'s Birthday, President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, Christmas Day and any other day appointed as a holiday by the President or the Congress of the United States or the State of Florida.

**F. Amendments in Writing**

This Stipulation may not be changed, modified, or amended except in a writing signed by Class Counsel and Defendant's Counsel and, if required, approved by the Court. Amendments and modifications may be made without additional notice to the Class Members unless such notice is required by the Court.

**G. No Admission of Liability**

Neither this Stipulation, nor any act performed or document executed pursuant to or in furtherance of this Stipulation: (1) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claim, or of any wrongdoing or liability of the Defendant; or (2) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of the Defendant in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal, except that Defendant may file this Stipulation or the Final Order and Judgment in any action that may be brought against any Released Party in order to enforce the terms of the Stipulation or Final Order and Judgment.

**H. No Drafting Party**

The Parties agree that the drafting of this Stipulation has been a mutual undertaking. The determination of the terms and conditions contained herein and the drafting of the provisions of the Stipulation have been by mutual understanding after negotiation, with consideration by, and participation of, the Parties hereto and their counsel.

**I. Return or Destruction of Confidential Information**

Within one year after the Effective Date or after cancellation or termination of this Stipulation pursuant to Section VII – or for some reasonable additional period of time based on a mutually agreed good cause – all Parties shall either destroy or return to the providing Party all documents, materials and other information marked Confidential or Highly Confidential by the providing Party that were received or exchanged in connection with this Stipulation, including lists of Class Members or any other materials reflecting or incorporating information that would reasonably be considered sensitive or private (including but not limited to names, physical and mailing addresses, phone numbers, e-mail addresses, and credit card information). The Parties and their counsel further agree that no information they receive pursuant to this Stipulation will be used for any purpose other than the administration and enforcement of the Stipulation.

**J. Retain Jurisdiction**

The Court shall retain jurisdiction with respect to the implementation and enforcement of the terms of this Stipulation, and the Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in this Stipulation. The Stipulation shall be governed by the laws of the State of Florida.

**K. Reasonable Extensions**

Without further order of the Court, Plaintiff and Defendant may agree to reasonable extensions of time to carry out any provisions of this Stipulation, provided that such extensions are in a writing reflecting the consent of the Parties.

**L. Execution Date**

This Stipulation shall be deemed to have been executed upon the last date of execution by all of the undersigned.

**M. Counterparts**

This Stipulation may be executed in counterparts, each of which shall constitute an original. Facsimile signatures or signatures sent by email shall be treated as original signatures and shall be binding.

**IN WITNESS THEREOF**, the Parties hereto have caused this Stipulation to be executed by their duly authorized representatives.

**SPARTAN RACE, INC.**

Dated: January 27, 2021

By its authorized representative,

DocuSigned by:  
  
BCD6B55F38DB440...  
David Piperno, CFO

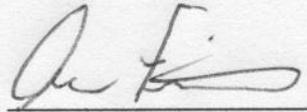
**APPROVED AS TO FORM:**

Dated: January 27, 2021

DocuSigned by:  
  
1A5AE225B4D1436...  
Evan S. Nadel  
Florida Bar No. 165409  
MINTZ LEVIN COHN FERRIS  
GLOVSKY AND POPEO P.C.  
44 Montgomery Street, 36th Floor  
San Francisco, CA 94104  
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[enadel@mintz.com](mailto:enadel@mintz.com)  
Attorneys for Defendant Spartan Race, Inc.

**PLAINTIFF AARON FRUITSTONE**

Dated: January 28, 2021

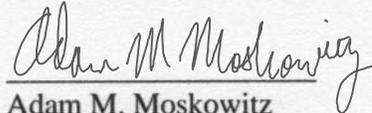


Aaron Fruitstone

**AARON FRUITSTONE AND THE CLASS**

Dated: January 28, 2021

By his attorneys,



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