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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

THOMAS JAMES RASMUSSEN, an
individual and on behalf of all others similarly
situated,

Plaintiff,

v.

OCEANGATE FITNESS, LLC dba CRUNCH
FITNESS, a California Limited Liability
Company; and DOES 1 through 100, inclusive,

Defendant.

CASE NO.: 23STCV05889

[Assigned for all purposes to Hon. Carolyn B.
Kuhl in Dept. 12]

~~[PROPOSED]~~ **ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT
AND CERTIFYING CLASS FOR
SETTLEMENT PURPOSES ONLY**

1 This Court, having considered the Motion of Plaintiff Thomas James Rasmussen (“Plaintiff”)
2 for Preliminary Approval of the Class Action and PAGA Settlement and Provisional Class
3 Certification for Settlement Purposes Only (“Motion for Preliminary Approval”), the Declarations
4 of Megan R. Lazar, David D. Bibiyan, Thomas James Rasmussen, and Sean Hartranft, the Class and
5 PAGA Settlement Agreement (the “Settlement,” “Settlement Agreement,” or “Agreement”), the
6 proposed Notice of Class Action Settlement (“Class Notice”), and other documents submitted in
7 support of the Motion for Preliminary Approval, hereby **ORDERS, ADJUDGES AND DECREES**
8 **THAT:**

9 1. The definitions set out in the Settlement Agreement are incorporated by reference
10 into this Order; all terms defined therein shall have the same meaning in this Order.

11 2. The Court conditionally certifies the following settlement class (“Settlement Class,”
12 “Settlement Class Members,” or “Class Members”) for the purpose of settlement only: all persons
13 employed by Defendant Oceangate Fitness, LLC (“Defendant”) in California and classified as non-
14 exempt, hourly-paid employees who worked for Defendant during the period from March 16, 2019
15 through April 11, 2025 (the “Class Period”).

16 3. The Court preliminarily appoints Plaintiff Thomas James Rasmussen as Class
17 Representative. The Court also preliminarily appoints David D. Bibiyan, Vedang J. Patel, and
18 Megan R. Lazar of Bibiyan Law Group, P.C. as Class Counsel.

19 4. The Court preliminarily approves the proposed class and PAGA settlement upon the
20 terms and conditions set forth in the Settlement Agreement. The Court finds, on a preliminary basis,
21 that the Settlement appears to be within the range of reasonableness and may ultimately be given
22 final approval by the Court. It appears to the Court on a preliminary basis that the Settlement amount
23 is fair, adequate, and reasonable as to all potential Class Members and Aggrieved Employees when
24 balanced against the probable outcome of further litigation relating to liability and damages issues.
25 It further appears that extensive investigation and research have been conducted such that counsel
26 for the Parties at this time are reasonably able to evaluate their respective positions. It further appears
27 to the Court that the Settlement at this time will avoid substantial additional costs to all Parties, as
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1 well as the delay and risks that would be presented by the further prosecution of the Action. It further
2 appears that the Settlement has been reached as the result of intensive, non-collusive, and arm's-
3 length negotiations utilizing an experienced third-party neutral.

4 5. The Court approves, as to form and content, the Class Notice that has been submitted
5 herewith as Exhibit A to the Settlement Agreement.

6 6. The Court directs the mailing of the Class Notice by first-class regular U.S. mail to
7 the Class Members in accordance with the procedures set forth in the Settlement Agreement. The
8 Court finds that dissemination of the Class Notice set forth in the Settlement Agreement complies
9 with the requirements of law and appears to be the best notice practicable under the circumstances.
10 The form and method of giving notice complies fully with the requirements of Code of Civil
11 Procedure section 382, California Civil Code section 1787, California Rules of Court 3.766 and
12 3.769, and the California and United States Constitution.

13 7. The Court hereby preliminarily approves the definition and disposition of the Gross
14 Settlement Amount of \$300,000.00, which is inclusive of: attorneys' fees of not more than thirty-
15 five percent (35%) of the Gross Settlement Amount, which amounts to \$105,000.00; actual costs
16 incurred of up to \$40,000.00; a service award to Plaintiff of not more than \$7,500.00; costs of
17 settlement administration of no more than \$7,500.00; and Private Attorneys General Act of 2004
18 ("PAGA") penalties in the amount of \$30,000.00, of which \$22,500.00 (75%) will be paid to the
19 Labor and Workforce Development Agency ("LWDA") and \$7,500.00 (25%) will be distributed to
20 "Aggrieved Employees" defined as a person employed by Defendant in California and classified as
21 a non-exempt, hourly-paid employee who worked for Defendant during the period from March 16,
22 2022 through April 11, 2025 (the "PAGA Period").

23 8. The Gross Settlement Amount expressly excludes employer payroll taxes owed on
24 the Wage Portions of the Individual Class Payments, which shall be paid separately by Defendant.

25 9. Class Member's "Workweek" shall any week during which a Class Member worked
26 for Defendant, for at least one day during the Class Period, based on hire dates, re-hire dates (as
27 applicable), and termination dates (as applicable).

1 10. The Settlement was negotiated based on Defendant's estimate that, as of the date of
2 the Settlement Agreement, there are 242 Class Members who collectively worked 9,849 Workweeks
3 during the Class Period, and 112 Aggrieved Employees who worked 2,067 PAGA Pay Periods
4 during the PAGA Period. In the event the number of Workweeks worked by Class Members during
5 the Class Period increases by more than 10%, or 985 Workweeks, then Defendant shall have the
6 option to either: (1) end the Class and PAGA Period as of the date when the total number of
7 Workweeks exceeded 10,834; or (2) permit the Gross Settlement Amount to be increased
8 proportionally by the Workweeks in excess of 10,834 multiplied by the workweek value (the
9 "Escalator Clause"). The Workweek Value shall be calculated by dividing the originally agreed-
10 upon Gross Settlement Amount (\$300,000.00) by 9,849, which amounts to a Workweek Value of
11 \$30.46. Thus, for example, should there be 12,000 Workweeks in the Class Period, then the Gross
12 Settlement Amount shall be increased by \$35,516 ((12,000 Workweeks – 10,834 Workweeks) x
13 \$30.46 per Workweek.). Defendant shall provide the Class Data to the administrator no later than
14 30 days after full execution of the long form agreement. Defendant shall make its election regarding
15 the above no later than 7 days after receiving information from the administrator regarding the
16 workweek count. Should Defendant fail to make its election within the above timeframe, then option
17 (2) shall automatically apply.

18 11. The Court appoints Apex Class Action Administration as Settlement Administrator
19 and preliminarily approves payment of administration costs not to exceed \$7,500.00 from the Gross
20 Settlement Amount, except upon a showing of good cause and Court approval.

21 12. Not later than 30 days after execution of the settlement agreement, Defendant will
22 deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. "Class
23 Data" means Class Member identifying information in Defendant's custody, possession, or control,
24 including the Class Member's (1) name; (2) last known address(es); (3) last known telephone
25 number(s); (4) last known Social Security Number(s); and (5) the dates of employment (i.e., hire
26 dates, and, if applicable, re-hire date(s) and/or separation date(s)).

27 13. To protect Class Members' privacy rights, the Administrator must maintain the Class
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1 Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose,
2 and restrict access to the Class Data to Administrator employees who need access to the Class Data
3 to effectuate and perform under the Agreement.

4 14. Using best efforts to perform as soon as possible, and in no event later than 14 days
5 after Preliminary Approval, the Administrator will send to all Class Members identified in the Class
6 Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice, substantially in
7 the form attached to this Agreement as Exhibit A. The first page of the Class Notice shall prominently
8 estimate the dollar amounts of the Class Member’s share of any Individual Class Payment and/or the
9 Aggrieved Employee’s share of any Individual PAGA Payment payable to the Class Member/Aggrieved
10 Employee, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these
11 amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using
12 the National Change of Address database.

13 15. The Administrator will establish, maintain, and use a website to post information of
14 interest to Class Members including the date, time and location for the Final Approval Hearing and
15 copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval,
16 the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class
17 Counsel Litigation Expenses Payment, and Class Representative Service Payment, the Final
18 Approval and the Judgment.

19 16. Not later than three (3) business days after the Administrator’s receipt of any Class
20 Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using
21 any forwarding address provided by the USPS. If the USPS does not provide a forwarding address,
22 the Administrator shall conduct a Class Member Address Search and re-mail the Class Notice to the
23 most current address obtained.

24 17. “Response Deadline” means forty-five (45) days after the Administrator mails the
25 Class Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class
26 Members may: (a) mail his, her, or their Request for Exclusion from the Settlement, or (b) mail his,
27 her, or their objection to the Settlement. Class Members to whom a Class Notice is resent after
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1 having been returned undeliverable to the Administrator shall have an additional 15 days beyond
2 the Response Deadline has expired.

3 18. Class Members who wish to exclude themselves (opt-out of) the Class Settlement
4 must send the Administrator, by mail, a signed written Request for Exclusion not later than the
5 Response Deadline (plus an additional 15 days for Class Members whose Class Notice is re-mailed).
6 A Request for Exclusion is a letter from a Class Member or the Class Member's representative that
7 reasonably communicates the Class Member's election to be excluded from the Settlement and
8 includes the Class Member's name, address and email address or telephone number. To be valid, a
9 Request for Exclusion must be timely postmarked by the Response Deadline.

10 19. Every Class Member who does not submit a timely and valid Request for Exclusion
11 is deemed to be a Participating Class Member under the Agreement, entitled to all benefits and
12 bound by all terms and conditions of the Settlement, including the Participating Class Members'
13 Releases, regardless whether the Participating Class Member actually receives the Class Notice or
14 objects to the Settlement.

15 20. Each Class Member shall have forty-five (45) days after the Administrator mails the
16 Class Notice (plus an additional fifteen (15) days for Class Members whose Class Notice is re-
17 mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to
18 the Class Member in the Class Notice. The Class Member may challenge the allocation by
19 communicating with the Administrator via mail.

20 21. Only Participating Class Members may object to the class action components of the
21 Settlement, including contesting the fairness of the Settlement and/or the amounts requested for the
22 Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and/or Class
23 Representative Service Payment.

24 22. Participating Class Members may send written objections to the Administrator, by
25 mail no later than the Response Deadline (plus an additional 15 days for Class Members whose
26 Class Notice was re-mailed). Participating Class Members may appear in Court (or hire an attorney
27 to appear in Court) to present verbal objections at the Final Approval Hearing.

1 23. Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts
2 necessary to fully pay Defendant's share of payroll taxes, by transmitting the funds to the
3 Administrator no later than fourteen (14) days after the Effective Date.

4 24. For any Class Member whose Individual Class Payment check or Individual PAGA
5 Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the
6 funds represented by such checks to the California State Controller's Office, Unclaimed Property
7 Division in the name of the Aggrieved Employee thereby leaving no unpaid residue pursuant to the
8 requirements of Code of Civil Procedure section 384.

9 25. Before the date by which Plaintiff is required to file the Motion for Final Approval
10 of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a
11 declaration suitable for filing in Court attesting to its due diligence and compliance with all of its
12 obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class
13 Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members,
14 the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the
15 number of written objections and attach the Exclusion List. The Administrator will supplement its
16 declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for
17 filing the Administrator's declaration(s) in Court.

18 26. In the event the Settlement does not become effective in accordance with the terms
19 of the Settlement Agreement, or the Settlement is not finally approved, or is terminated, cancelled,
20 or fails to become effective for any reason, this Order shall be rendered null and void, shall be
21 vacated, and the parties shall revert back to their respective positions as of before entering into the
22 Settlement Agreement.

23 27. All papers filed in support of final approval, including supporting documents for
24 attorneys' fees and costs, shall be filed by 16 court days prior to the final approval hearing.

25 28. A Final Approval Hearing shall be held on March 2, 2027 at 10:30 am, at
26 _____ .m. in Department 12 of the above-entitled Court to determine: (1) whether the
27 proposed Settlement is fair, reasonable, and adequate and should be finally approved by the Court;

1 (2) the amount of attorneys' fees and costs to be awarded to Class Counsel; (3) the amount of the
2 Class Representative Service Payment to Plaintiff; (4) the amount to be paid to the Settlement
3 Administrator; and (5) the amount to be apportioned to PAGA and/or paid to the LWDA and
4 Aggrieved Employees.

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6 **IT IS SO ORDERED.**

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08/26/2026

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Dated: _____

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Carolyn B. Kuhl

Carolyn B. Kuhl / Judge

Judge of the Superior Court