

FILED
Superior Court of California
County of Los Angeles

JUN 17 2015

Sherri R. Carter, Executive Officer/Clerk
By [Signature], Deputy
Aldwin Lim

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

CAROLYN LEVIN, in Her Individual and
Representative Capacity on Behalf of a Class
of All Persons Similarly-Situated,

Plaintiff,

v.

NIKE, INC., an Oregon Corporation; APPLE
INC., a California Corporation; and DOES 1
through 10, inclusive,

Defendant.

CASE NO. BC509363

~~PROPOSED~~ ORDER PRELIMINARILY
APPROVING CLASS ACTION
SETTLEMENT AGREEMENT,
CONDITIONALLY CERTIFYING
SETTLEMENT CLASS, DIRECTING
NOTICE OF PROPOSED CLASS
SETTLEMENT, AND SCHEDULING A
FAIRNESS HEARING DATE

Assigned to Hon. William F. Highberger

Place: Department 322

WHEREAS, Carolyn Levin and Defendants Nike, Inc. and Apple Inc. have reached a
proposed settlement and compromise of the claims in the above-captioned matter, which arise from
the Nike+ FuelBand, as embodied in the Settlement Agreement filed with the Court; and

WHEREAS, the parties have applied to the Court for preliminary approval of the proposed
Settlement, the terms and conditions of which are set forth in the Settlement Agreement;

WHEREAS, the Capitalized Terms herein shall have the same meaning as in the Settlement
Agreement;

1 NOW, THEREFORE, the Court, having read and considered the Settlement Agreement and
2 accompanying documents, as well as the Motion for Preliminary Settlement Approval and supporting
3 papers, and the parties to the Settlement Agreement having consented to the entry of this order, AND
4 GOOD CAUSE APPEARING,

5 IT IS HEREBY ORDERED AS FOLLOWS:

6 1. Subject to further consideration by the Court at the time of the Fairness Hearing, the
7 Court preliminarily approves the Settlement as fair, reasonable, and adequate to the Settlement Class,
8 as falling within the range of possible final approval, and as meriting submission to the Settlement
9 Class for its consideration.

10 2. For purposes of the Settlement only, the Court conditionally certifies the Settlement
11 Class, which means: All people and entities in the United States who purchased a Nike+ FuelBand
12 from the time period from and including January 19, 2012, through the date of this Order granting
13 preliminary approval of the settlement. Excluded from the class are all persons who elect to exclude
14 themselves from the class, the Court and staff to whom this case is assigned, and any member of the
15 Court's or Court staff's immediate family.

16 3. The Court preliminarily finds, solely for purposes of considering this Settlement, that
17 the requirements of California Code of Civil Procedure sections 382 and 1781 appear to be satisfied,
18 including requirements for the existence of an ascertainable class, a community of interest, and
19 manageability of a settlement class, that common issues of law and fact predominate, and that a
20 settlement class is superior to alternative means of resolving the claims and disputes at issue in this
21 Action.

22 4. Carolyn Levin shall serve as class representative of the Settlement Class.

23 5. The Court appoints the following counsel as Class Counsel for purposes of this
24 settlement:

25 Thomas V. Girardi
26 GIRARDI | KEESE
27 1126 Wilshire Blvd.
28 Los Angeles, CA 90071; and

Paul N. Philips
LAW OFFICES OF PAUL N. PHILIPS, APLC,

1 9255 W. Sunset Blvd., Suite 920
2 Los Angeles, CA 90069.

3 The Court preliminarily finds that the Class Representative and Class Counsel fairly and
4 adequately represent and protect the interests of the absent Settlement Class Members in accordance
5 with California Code of Civil Procedure section 382.

6 6. The Court approves the nomination of Gilardi & Co. to administer the Settlement.

7 7. A Fairness Hearing shall be held before this Court at 1:30pm on Nov. 4,
8 2015 in Department 322 of the Los Angeles Superior Court at 600 South Commonwealth Ave., Los
9 Angeles, CA 90005, to address: (a) whether the proposed Settlement should be finally approved as
10 fair, reasonable and adequate; (b) whether the Final Approval Order and Judgment should be entered;
11 (c) whether Class Counsel's application for attorney's fees, expenses, and Class Representative's
12 service award should be approved; and (d) any other matters that the Court deems appropriate.

13 8. With the exception of such proceedings as are necessary to implement, effectuate and
14 grant final approval to the terms of the Settlement Agreement, all proceedings with respect to the
15 claims in this Action are stayed and all Settlement Class Members are enjoined from commencing or
16 continuing any action or proceeding in any court or tribunal asserting any claims encompassed by the
17 Settlement Agreement, unless the Settlement Class Member timely files a valid Request for
18 Exclusion as defined in the Settlement Agreement.

19 9. The Court has reviewed and approves, as to form and content, the Long Form Notice
20 to be e-mailed to Class Members where possible, the Post Card Notice to be mailed to Class
21 Members where e-mail is not possible, and the Publication Notice, attached as Exhibits 4-6 to the
22 Settlement Agreement, respectively. On or before 60 days after the date of this Order, the
23 Publication Notice shall be posted on the Settlement Administrator's website and published in the
24 Legal Section of USA Today in at least an 1/8 page ad. At the time of the filing of the motion for
25 final approval of this settlement, Plaintiff's counsel shall file with the Court declarations attesting to
26 compliance with this Order.

27 10. The Court finds that the Parties' plan for providing notice to the Settlement Class
28 described in Section VIII of the Settlement Agreement constitutes the best notice practicable under

1 the circumstances and shall constitute due and sufficient notice to the Settlement Class of the
2 pendency of the Action, certification of the Settlement Class, the terms of the Settlement Agreement,
3 and the Fairness Hearing, and complies fully with the requirements of the California Rules of Court,
4 the California Code of Civil Procedure, the Constitution of the State of California, and the United
5 States Constitution, and any other applicable law.

6 11. The Court further finds that the notice plan described in Sections VIII and IX of the
7 Settlement Agreement will adequately inform members of the Settlement Class of their right to
8 exclude themselves from the Settlement Class so as not to be bound by the terms of the Settlement
9 Agreement. Any member of the Settlement Class who desires to be excluded from the Settlement
10 Class, and therefore not be bound by the terms of the Settlement Agreement, must submit to the
11 Settlement Administrator, pursuant to the instructions set forth in the Notice, a timely and valid
12 written Request for Exclusion within 90 days of the date of this Order consistent with the Opt-Out
13 form at Exhibit 7 to the Settlement Agreement.

14 12. Any member of the Settlement Class who elects to be excluded shall not be entitled to
15 receive any of the benefits of the Settlement, shall not be bound by the release of any claims pursuant
16 to the Settlement Agreement, and shall not be entitled to object to the Settlement or appear at the
17 Fairness Hearing. The names of all Persons timely submitting valid Requests for Exclusion shall be
18 provided to the Court at the time that the motion for final approval of the settlement is filed.

19 13. Any Settlement Class Member who does not submit a valid and timely Request for
20 Exclusion may object to the Settlement Agreement, to Class Counsel's application for attorney's fees
21 and costs, to the Class Representative's service award, or to the proposed Order and Judgment. All
22 objections must be postmarked by the Objection Deadline. All objections must be filed with the
23 Court 30 days before the Fairness Hearing. No Class Member shall have the right to appear and be
24 heard at the Fairness Hearing, either personally or through an attorney, unless written notice of the
25 Class Member's objection and any brief in support of the objection have been filed with the Court
26 and served upon Class Counsel and Nike's and Apple's Counsel in conformance with the procedure
27 set out in the Long Form Notice, which is Exhibit 4 to the Settlement Agreement.
28

1 14. Service of all papers on counsel for the Parties shall be made as follows: for Class
2 Counsel to the counsel listed in paragraph 6 above, and for Nike's and Apple's Counsel, to Austin V.
3 Schwing, Gibson Dunn & Crutcher LLP, 555 Mission Street, San Francisco, CA 94105.

4 15. Any Settlement Class Member who does not make an objection in the time and
5 manner provided in the Long Form Notice, which is Exhibit 4 to the Settlement Agreement, shall be
6 deemed to have waived such objection and be forever foreclosed from making any objection to the
7 fairness or adequacy of the proposed settlement as incorporated in the Settlement Agreement, the
8 payment of attorney's fees and costs, the Class Representative's service award, the Settlement, or the
9 Final Approval Order and Judgment.

10 16. In the event that the proposed Settlement is not approved by the Court, or in the event
11 that the Settlement Agreement becomes null and void pursuant to its terms, this Order and all orders
12 entered in connection therewith shall become null and void, shall be of no further force and effect,
13 and shall not be used or referred to for any purposes whatsoever in this Action or in any other case or
14 controversy; in such event the Settlement Agreement and all negotiations and proceedings directly
15 related thereto shall be deemed to be without prejudice to the rights of any and all of the Parties, who
16 shall be restored to their respective positions as of the date and time immediately preceding the
17 execution of the Settlement Agreement.

18 17. The Court may, for good cause, extend any of the deadlines set forth in this Order
19 without further notice to the Settlement Class Members. The Fairness Hearing may, from time to
20 time and without further notice to the Settlement Class, be continued by order of the Court.

21 **IT IS SO ORDERED.**

22
23 Dated:

6/17/15



Honorable William F. Highberger
Judge of the Superior Court