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

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

19 Plaintiff,

20 v.

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

23 Defendant.

CASE NO. BC509363

STIPULATION AND [REDACTED] ORDER  
REGARDING PROPOSED CY PRES  
RECIPIENT, CLASS NOTICE, OPT-OUT  
FORM, AND CLAIM FORM FOR CLASS  
SETTLEMENT; PROOF OF SERVICE

Assigned to Hon. William F. Highberger

Place: Department 322



CONFORMED COPY  
ORIGINAL FILED  
Superior Court of California  
County of Los Angeles

JUL 15 2015

Sherri R. Carter, Executive Officer/Clerk  
By: Roxanne Arraiga, Deputy

**STIPULATION**

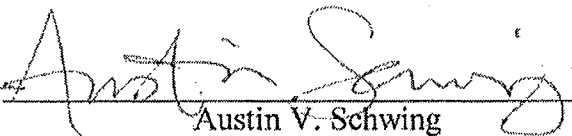

NOW, THEREFORE, the Parties, through their respective counsel of record, hereby stipulate and respectfully request as follows:

1. that the Court preliminarily approve the National Alliance for Youth Sports as the cy pres recipient for the residue of claimed but uncashed settlement checks that expire one year after issuance;
2. that the Court approve the class settlement notices, opt-out form, and claim form attached as exhibits A-E hereto;
3. that the Court change the Notice Deadline from July 17, 2015 to July 24, 2015; and
4. that the Court change the Opt-Out Deadline from September 15, 2015 to September 22, 2015.

**STIPULATED AND AGREED TO BY:**

DATED: July 7, 2015.

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Austin V. Schwing  
Brandon J. Stoker

By:   
Austin V. Schwing 

Attorneys for Defendants Nike, Inc. and Apple Inc.

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DATED: July 7, 2015

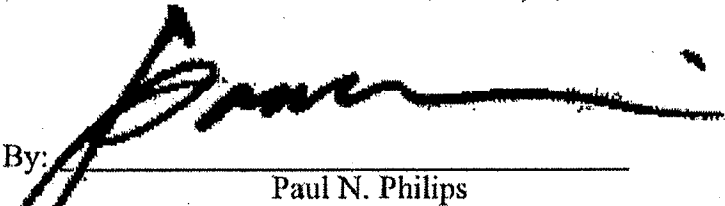
GIRARDI | KEESE  
Thomas V. Girardi  
Keith Griffin

By:   
Keith Griffin

Attorneys for Plaintiff Carolyn Levin

DATED: July 7, 2015

LAW OFFICES OF PAUL N. PHILIPS, APLC

By:   
Paul N. Philips

Attorneys for Plaintiff Carolyn Levin

1  
2 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
3 FOR THE COUNTY OF LOS ANGELES  
4

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

8 Plaintiff,

9 v.

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

13 Defendant.

CASE NO. BC509363

**[REDACTED] ORDER REGARDING  
PROPOSED CY PRES RECIPIENT, CLASS  
NOTICES, AND CLAIM FORM FOR CLASS  
SETTLEMENT; PROOF OF SERVICE**

Hon. William F. Highberger  
Department 322

14 Good cause having been shown in the Parties' stipulation, the Court hereby GRANTS the  
15 Stipulation and ORDERS AS FOLLOWS:

- 16 1. The National Alliance for Youth Sports is preliminarily approved as the cy pres  
17 recipient for the residue of claimed but uncashed settlement checks that expire one year after  
18 issuance;
- 19 2. The parties shall use the class settlement notices, opt-out form, and claim form  
20 attached as Exhibits A-E to the Parties' Stipulation dated July 7, 2015;
- 21 3. The Notice Deadline is changed from July 17, 2015 to July 24, 2015; and  
22 4. The Opt-Out Deadline is changed from September 15, 2015 to September 22, 2015.

23  
24 **IT IS SO ORDERED.**

25  
26 DATED: \_\_\_\_\_

JUL 15 2015

WILLIAM F. HIGHBERGER, JUDGE

\_\_\_\_\_  
The Honorable William F. Highberger

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28

# **EXHIBIT A**

## **LEGAL NOTICE BY ORDER OF THE COURT**

**IF, AT ANY TIME BETWEEN JANUARY 19, 2012 AND JUNE 17, 2015, YOU PURCHASED A NIKE+ FUEL BAND, THIS NOTICE DESCRIBES YOUR RIGHTS IN CONNECTION WITH THE SETTLEMENT OF A LAWSUIT**

**You May be Eligible for a Payment from a Class Action Settlement.**

*A California state court authorized this Notice.*

*This is not a solicitation from a lawyer.*

*This is not a legal action against you.*

This notice describes a proposed settlement in a class action lawsuit brought against Nike, Inc. and Apple Inc. regarding the Nike+ FuelBand.

If you purchased a Nike+ FuelBand and you fit the description of the settlement class:

- You can make a claim for either a Fifteen Dollar (\$15) payment or a Twenty-Five Dollar (\$25) gift card redeemable at Nike-owned stores in the U.S. or Puerto Rico, and online at Nike.com. The \$25 gift card is freely transferable and will not expire. The number of claims that you may submit depends on the number of Nike+ FuelBands that you purchased. To receive a Settlement payment or gift card, you must complete and submit a claim form, as described in part 4 below, by January 4, 2016;
- You can exclude yourself from the Settlement (and receive no money from the Settlement but retain your right to bring a lawsuit). Your request to exclude yourself must be submitted no later than September 22, 2015. You must follow the process described in part 8 below. If the Settlement is approved and you do not exclude yourself, you will be bound by the Settlement and will release certain claims described below.
- You can object to the Settlement. The deadline for objecting to the Settlement is October 5, 2015. All objections must be mailed to Nike FuelBand Settlement Administrator at P.O. Box 6002, Larkspur, CA 94977-6002. See part 7 below for details.

Please read this notice carefully. It describes your rights and options under the Settlement, which are affected whether or not you act.

**NOTE: DO NOT CALL OR WRITE THE COURT, THE COURT CLERK'S OFFICE, NIKE, APPLE, OR NIKE'S OR APPLE'S COUNSEL FOR MORE INFORMATION.**

## BASIC INFORMATION

In a class action case known as *Levin v. Nike, Inc. et al.*, Case No. BC509363 (L.A. Super. Ct.), the Plaintiff alleged that Nike, Inc. (“Nike”) and Apple Inc. (“Apple”) engaged in violations of consumer protection laws and warranty obligations in connection with the Nike+ FuelBand. Nike and Apple deny Plaintiff’s allegations and deny that they did anything wrong. The Court has not decided who is right.

A settlement of this lawsuit (“Settlement”) has been negotiated which, if approved by the Court, may entitle you to a payment. By entering into the Settlement, Nike and Apple have not admitted the truth or validity of any of the claims against them. Your rights and options under the Settlement—and the deadlines to exercise them—are explained below.

### YOUR LEGAL RIGHTS AND OPTIONS

|                                       |  |
|---------------------------------------|--|
| <b>SUBMIT A CLAIM</b>                 | Class members who properly submit a claim form by the deadline of January 4, 2016 will receive a payment and will give up certain rights to sue Releasees as described in parts 4 and 6 below.   |
| <b>DO NOTHING</b>                     | If you do nothing, you will receive no money from the Settlement, but <i>you will still give up your rights to sue Releasees</i> as described in parts 6 and 10 below.   |
| <b>EXCLUDE YOURSELF FROM THE CASE</b> | This is the only option that allows you to sue Nike or Apple on your own regarding the Nike+ FuelBand, but you will not receive a payment from the Settlement. The deadline for excluding yourself is: September 22, 2015. See part 8 below. |
| <b>OBJECT</b>                         | Write to the Court if you do not like the Settlement. The deadline to object to the settlement is October 5, 2015. See part 7 below.   |
| <b>GO TO A HEARING</b>                | Ask to speak in Court about the fairness of the Settlement. The Court has set a hearing for November 4, 2015 at 1:30 p.m., subject to change. See part 11 below.   |

These rights and options—and the deadlines to exercise them—are explained in this notice.

The Court in charge of this case still has to decide whether to approve the Settlement. If it does and any appeals are resolved, benefits will be distributed to those who qualify. Please be patient.

## WHAT THIS NOTICE CONTAINS

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## **1. WHO IS IN THE SETTLEMENT CLASS?**

The Superior Court of the State of California for the County of Los Angeles has certified, for settlement purposes only, a class action in *Levin v. Nike, Inc. et al.*, Case No. BC509363 (L.A. Super. Ct.).

If you received notice of the Settlement by an email addressed to you, then you may be a member of the Settlement Class. But even if you did not receive an e-mail, you may be a member of the Settlement Class.

The "Settlement Class" is defined as:

All people and entities in the United States who purchased a Nike+ FuelBand from the time period from and including January 19, 2012, through June 17, 2015.

Nike+ FuelBand refers to the wristband offered by Nike and Apple that utilizes an accelerometer to track steps taken, calories burned, NikeFuel, and the time of day.

If you are not sure whether you are in the Settlement Class, or have any other questions about the Settlement, visit the Settlement website at [www.nikefuelbandsettlement.com](http://www.nikefuelbandsettlement.com) or call the toll free number (877) 231-8644.

## **2. WHAT IS THIS LAWSUIT ABOUT?**

This case was brought as a class action alleging that Nike and Apple engaged in violations of consumer protection laws and warranty obligations in connection with the Nike+ FuelBand. More specifically, the lawsuit alleges, among other things, that false and/or misleading statements were made regarding the Nike+ FuelBand's ability to accurately track steps, calories, and NikeFuel, and that there was a failure to honor the warranty terms of the Nike+ FuelBand. This is just a summary of the allegations. The complaint in the lawsuit is posted at [www.nikefuelbandsettlement.com](http://www.nikefuelbandsettlement.com), and contains all of the allegations and claims asserted. Nike and Apple deny these allegations; however, in order to avoid the expense, inconvenience, and distraction of continued litigation, Nike and Apple have agreed to the settlement described herein.

## **3. WHO REPRESENTS ME?**

In a class action, one or more people or entities called class representatives sue on behalf of people and entities who have similar claims. In this case, Carolyn Levin sued Nike and Apple in a representative capacity, and the Court has appointed her the Settlement Class Representative for all class members, including you, in this case.

The Court also approved the law firms of Girardi|Keese and the Law Offices of Paul N. Philips, APLC, to represent you and the other Settlement Class Members. If you want to be represented by your own lawyer, you may hire one at your own expense.

#### 4. WHAT BENEFITS CAN I RECEIVE FROM THE SETTLEMENT?

Under the Settlement, Nike has agreed to provide either a Fifteen Dollar (\$15) payment or a Twenty-Five Dollar (\$25) gift card redeemable at Nike-owned stores in the U.S. and Puerto Rico, and online at Nike.com, for each Nike+ FuelBand purchased by members of the Settlement Class during the class period for which a valid claim is timely submitted. Each class member who timely submits a valid claim may choose between the monetary payment or the gift card. The gift card is freely transferable and does not expire. **You cannot receive a payment unless you submit a claim form.** Claim forms are available at [www.nikefuelbandsettlement.com](http://www.nikefuelbandsettlement.com). Claim forms may be submitted online at [www.nikefuelbandsettlement.com](http://www.nikefuelbandsettlement.com) or mailed to Nike FuelBand Settlement Administrator P.O. Box 808020 Petaluma, CA 94975-8020. You may also fax your claim form to (415) 256-9756.

If you timely submit a claim form, your claim will be paid by a check mailed to you or gift card e-mailed to you. Claims will only be paid after the Court grants Final Approval of the Settlement and after any appeals are resolved (see part 11 below). If there are appeals, resolving them can take time. Please be patient.

Note that if you opt for the \$15 monetary payment, you will have one year to cash the check sent to you. If you do not cash the check within one year, the check will be void and the funds will be donated to charity. The parties to the settlement will request the Court to approve the National Alliance For Youth Sports as the recipient of those funds. The Court will decide whether to approve that charity or disperse the funds differently.

#### 5. DO I HAVE TO PAY THE LAWYERS REPRESENTING ME?

No. Class Counsel will apply to the Court for an award of attorneys' fees and costs in an amount not greater than Two Million, Four Hundred Thousand Dollars (\$2,400,000.00). To date, Class Counsel have not received any payment for their services in conducting this Litigation on behalf of the Settlement Class Representatives and the Members of the Settlement Class; nor have Class Counsel been reimbursed for their costs and expenses directly relating to their representation of the Settlement Class. Class Counsel are also moving the Court to award a service award of \$1,000.00 to the Settlement Class Representative in recognition of her service to the Settlement Class. The amount of any fee or service award will be determined by the Court.

#### 6. WHAT AM I AGREEING TO BY REMAINING IN THE SETTLEMENT CLASS IN THIS CASE?

Unless you exclude yourself, you will be part of the Settlement Class, and you will be bound by the release of claims in the Settlement. This means that if the Settlement is approved, you cannot sue, continue to sue, or be party of any lawsuit against Nike, Apple or Releasees asserting a "Released claim," as defined below. It also means that the Court's Order approving the settlement and the judgment in this case will apply to you and legally bind you.

The Released Claims that you will not be able to assert against Nike, Apple, or Releasees if you remain a part of the Settlement Class are as follows: Except as specifically provided for below, "Released Claims" shall mean any and all claims against Releasees whatsoever arising out of, related to, or connected with the design, manufacturing, pricing, advertising, describing, representing, marketing, offering, promoting, facilitating, providing, warranting, replacing, repairing, or selling of the Nike+ FuelBand in the United States that relate to the Nike+ FuelBand. "Released Claims" include all claims that were or could have been asserted in the Litigation, regardless of whether such claims are known or unknown, filed or unfiled, asserted or as yet unasserted, existing or contingent, and regardless of the legal theory or theories of damages involved.

“Released Claims” expressly excludes any warranty claims that are in no way related to the Nike+ FuelBand’s ability to monitor, track, record, display, calculate, estimate, compute and/or report a user’s activity or calories burned.

“Released Claims” expressly excludes any claims and/or damages for personal injuries in any way related to the Nike+ FuelBand.

If you remain a part of the Settlement Class, you will not be able to assert these claims against Nike, Apple, or Releasees. Releasees shall refer jointly and severally, and individually and collectively, to Nike and Apple, their past and present parents, predecessors, successors, affiliates, holding companies, subsidiaries, employees, agents, assigns, contractors, joint venturers, third-party agents with which they have or have had contracts or their affiliates relating to the Nike+ FuelBand, and any resellers of the Nike+ FuelBand.

## 7. WHAT IF I DO NOT AGREE WITH THE SETTLEMENT?

If you are a Settlement Class Member, you may object to the Settlement or any part of the Settlement that you think the Court should reject, and the Court will consider your views. To object, send a letter setting forth:

- (1) the name and case number of this lawsuit (*Levin et al. v. Nike, Inc. et al.*, Case No. BC509363 (L.A. Super. Ct.)),
- (2) your full name, current address and phone number;
- (3) proof of purchase of a Nike+ FuelBand;
- (4) the reasons why you object to the Settlement along with any supporting materials;
- (5) Information about other objections you or your lawyer have made in other class action cases in the last four years, including the case name, case number, and jurisdiction of the other class action cases; and
- (6) your signature.

**Your objection must be postmarked no later than October 5, 2015.** Objections should be mailed to:

Nike FuelBand Settlement Administrator  
P.O. Box 6002, Larkspur, CA 94977-6002.

## 8. HOW DO I EXCLUDE MYSELF FROM THE SETTLEMENT CLASS?

If you want to keep the right to sue or continue to sue Nike, Apple or Releasees on your own about any of the Released Claims, you must exclude yourself from the Settlement Class, sometimes referred to as “opting-out.” If you exclude yourself, you will not be eligible to recover any benefits as a result of this Settlement.

To exclude yourself from the Settlement Class, you must fill out an Exclusion Form available at [www.nikefuelbandsettlement.com](http://www.nikefuelbandsettlement.com), which requires:

- (1) the name and case number of this lawsuit (*Levin et al. v. Nike, Inc. et al.*, Case No. BC509363 (L.A. Super. Ct.));
- (2) your full name, current address, and telephone number;
- (3) a statement that you wish to exclude yourself from the Settlement Class; and

(4) your signature.

If you wish to exclude yourself, you must submit your Exclusion Form to the following address so that it is postmarked no later than September 22, 2015:

Nike FuelBand Settlement Administrator: Nike FuelBand Settlement Administrator at P.O. Box 6002, Larkspur, CA 94977-6002.

**REQUESTS FOR EXCLUSION FROM THE CLASS THAT ARE NOT POSTMARKED ON OR BEFORE SEPTEMBER 22, 2015 WILL NOT BE HONORED.**

You cannot exclude yourself from the Settlement Class by telephone, by email, or at the website. You cannot exclude yourself by mailing a request to any other location or after the deadline. Your Exclusion Form must be signed by you. You cannot exclude yourself by having an actual or purported agent or attorney acting on your behalf of you or a group of Settlement Class members sign the letter. **You must personally sign the Exclusion Form to exclude yourself from the Settlement Class.**

**9. WHAT IS THE DIFFERENCE BETWEEN OBJECTING AND ASKING TO BE EXCLUDED?**

Objecting is simply telling the Court that you do not like something about the Settlement. You can object to the Settlement only if you do not exclude yourself. Excluding yourself is telling the Court that you do not want to be part of the Settlement. If you exclude yourself, you have no basis to object to the Settlement because it no longer affects you.

**10. WHAT IF I DO NOTHING AT ALL?**

You will remain a member of the Settlement Class. *However, you must file a claim form in order to receive a benefit in this Settlement.* See part 4, above.

**11. WHAT WILL BE DECIDED AT THE FAIRNESS HEARING?**

The Court will hold a hearing to decide whether to approve the Settlement and any requests for fees, service awards, and expenses ("Fairness Hearing"). The Fairness Hearing is currently set for November 4, 2015 at 1:30 p.m., at the Superior Court of the State of California for the County of Los Angeles, located in Department 322, Central Civil West Courthouse, 600 South Commonwealth Ave., Los Angeles, CA 90005. The hearing may be moved to a different date or time without additional notice, so it is a good idea to check [www.nikefuelbandsettlement.com](http://www.nikefuelbandsettlement.com) for updates.

At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The Court will also consider the request by Class Counsel for attorneys' fees and expenses and for the class representative's service award. If there are objections, the Court will consider them at that time. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take.

You may attend the hearing, but you do not have to do so. If you choose to attend, it will be at your own expense.

You may ask the Court for permission to speak at the hearing. To do so, you must send a letter saying that you intend to appear and wish to be heard. Your notice of intention to appear must include the following:

- (1) your full name, current address and telephone number;
- (2) proof of purchase of a Nike+ FuelBand;

- (3) A statement that this is your “Notice of Intention to Appear” at the Fairness Hearing for this lawsuit (*Levin et al. v. Nike, Inc. et al.*, Case No. BC509363 (L.A. Super. Ct.)), along with copies of any papers, exhibits, or other evidence or information that you will present to the Court;
- (4) The reasons you want to be heard; and
- (5) your signature.

You must send copies of your notice of intention to appear, postmarked by October 5, 2015, to:

Clerk of the Court  
Central Civil West Courthouse  
600 South Commonwealth Ave.  
Los Angeles, CA 90005

Thomas V. Girardi  
Girardi | Keese  
1126 Wilshire Blvd.  
Los Angeles, CA 90071

Paul N. Philips  
Law Offices of Paul N. Philips, APLC  
9255 West Sunset Boulevard, Suite 920  
West Hollywood, California 90069

Austin V. Schwing  
Gibson, Dunn & Crutcher LLP  
555 Mission Street San Francisco, CA 94105

. You cannot speak at the hearing if you exclude yourself from the Settlement.

## **12. DOES THIS NOTICE CONTAIN THE ENTIRE SETTLEMENT AGREEMENT?**

No. This is only a summary of the Settlement. If the Settlement is approved and you do not exclude yourself from the Settlement Class, you will be bound by the release contained in the Settlement Agreement, and not just by the terms of this Notice. Capitalized terms in this Notice are defined in the Settlement Agreement. You can view the full Settlement (including the Settlement Agreement) online at [www.nikefuelbandsettlement.com](http://www.nikefuelbandsettlement.com), or you can write to the address below for more information.

## **13. WHERE CAN I GET MORE INFORMATION?**