

IN THE DISTRICT COURT IN AND FOR OKLAHOMA COUNTY
STATE OF OKLAHOMA

MAY 22 2026

RICK WARREN
COURT CLERK

109

SEYCHELLE KESSLER and REGINALD
LIPFORD, individually and on behalf of all
similarly situated persons,

Plaintiffs,

vs.

EXCEL FITNESS CONSOLIDATOR,
LLC, d/b/a Excel Fitness Management,
LLC

Defendant.

Case No. CJ-2026-1077

PRELIMINARY APPROVAL ORDER

WHEREAS, this Action¹ is a putative class action before this Court;

WHEREAS, Plaintiff, individually, and on behalf of the proposed Settlement Class, and Excel Fitness Consolidator, LLC, ("Excel" or "Defendant") have entered into the Settlement Agreement, which is subject to review and approval by the Court under 12 O.S. § 2023, and which, together with its exhibits, provides for a complete dismissal with prejudice of the claims asserted in the Action against Excel should the Court grant Final Approval of the Settlement;

WHEREAS, Plaintiff filed an unopposed motion requesting entry of an order to: (1) conditionally certify the Settlement Class; (2) granting preliminary approval of the Settlement Agreement; (3) appoint Plaintiff as Class Representative; (4) appoint William B. Federman of Federman & Sherwood as Class Counsel; (5) approve the method and form of Notice to be sent to the Settlement Class members; (6) approve the Claim Form and claims process; (7) order the

¹ The capitalized terms used herein are defined and have the same meaning as used in the Settlement Agreement unless otherwise stated.

Settlement's opt out and objection procedures; (8) appoint the Claims Administrator; (9) stay all deadlines in the Action pending Final Approval of the Settlement; (10) enjoin and bar all members of the Settlement Class from initiating or continuing in any litigation or asserting any claims against Excel and the Released Parties arising out of, relating to, or in connection with the Released Claims prior to the Court's decision to grant Final Approval of the Settlement; and (11) set a date for the Final Fairness Hearing; and

WHEREAS, the Court having reviewed the Motion along with the Settlement Agreement and its exhibits finds that substantial and efficient grounds exist for entering this Preliminary Approval Order granting the relief requested.

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. **Settlement Class Certification:** Pursuant to 12 O.S. § 2023(C)(1), the Action is hereby preliminarily certified as a class action on behalf of the following Settlement Class:

all current and former employees residing in the United States whose Personal Information was potentially accessible in the Data Incident discovered by Defendant in January 2025, including all those individuals who received notice of the Data Incident.

The Settlement Class specifically excludes: (1) the judges presiding over this Action and their staff, and members of their direct families; (2) Defendant; and (3) Settlement Class Members who submit a valid Request for Exclusion prior to the Opt-Out Deadline.

2. **Class Representative:** The Court approves Plaintiff Seychelle Kessler as Class Representative having found Kessler as an adequate class representative.

3. **Class Counsel:** The Court appoints William B. Federman of Federman & Sherwood as Class Counsel to serve as Class Counsel. In appointing class counsel, 12 O. S. § 2023(F) requires the Court to consider (1) the work counsel has done in identifying or investigating potential claims in the action; (2) counsel's experience in handling class actions, other complex

litigation, and other types of claims asserted in the action; (3) counsel's knowledge of the applicable law; and (4) the resources that counsel will commit to representing the class. The Court may also consider other matters pertinent to counsel's ability to fairly and adequately represent the interest of the class. 12 O.S. § 2023(F). The Court finds that proposed Class Counsel have expended a reasonable amount of time, effort, and expense investigating the Data Incident and that Class Counsel are highly skilled and knowledgeable concerning class action practice.

4. **Settlement Class Findings:** The Court finds, for purposes of settlement only, that the Settlement Class meets the requirements of 12 O.S. §§ 2023(A) and (B). Joinder of all Class Members in a single proceeding would be impracticable, if not impossible, because of their numbers and dispersion. Common issues exist among Class Members and predominate over questions affecting individual Class Members only: in particular, whether Excel was negligent regarding its handling of Plaintiff's personal information. The Class Representative's claims are typical of those of the Class, as the Class Representative had or may have had her private information accessed or acquired in the Data Incident. The Class Representative and her counsel will fairly and adequately protect the interests of the Class as the Class Representative has no interests antagonistic to the Class and have retained counsel who are experienced and competent to prosecute this matter on behalf of the Class. Finally, a class settlement is superior to other methods available for a fair resolution of the controversy.

5. **Preliminary Approval of Settlement:** The Court hereby preliminarily approves the settlement, as embodied in the Settlement Agreement, as being fair, reasonable, and adequate and in the best interest of the named Plaintiff and the Settlement Class, subject to further consideration at the Final Approval Hearing to be conducted as described herein. The Court finds the Settlement meets the considerations set for in 12 O.S. § 2023.

6. **Claims Administrator:** The Parties are authorized to use Simpluris as the Claims Administrator to supervise and administer the Notice, as well as to administer the Settlement should the Court grant Final Approval.

7. **Approval of Notice Program and Notices:** The Court approves the form and procedure for disseminating notice of the proposed settlement to the Class as set forth in the Settlement Agreement. The Court finds that the Notice Program: (a) is the best notice practicable under the circumstances; (b) constitutes notice that is reasonably calculated, under the circumstances, to apprise Settlement Class members of the pendency of the Action, the terms of the Settlement, the effect of the proposed Settlement (including the Releases contained therein), and their right to opt-out of or to object to the proposed Settlement and appear at the Final Approval Hearing; (c) constitutes due, adequate, and sufficient notice to all persons entitled to receive notice of the proposed Settlement; and (d) satisfies the requirements of 12 O.S. § 2023, including the Due Process Clause of the United States Constitution, the rules of this Court and all other applicable law and rules. The date and time of the Final Approval Hearing shall be posted on the Settlement Website and included in the Long Form Notice, Postcard Notice, and Publication Notice, respectively, before they are mailed or published.

8. **Claim Form and Claims Process:** The Court approves the Claim Form as set forth in the Settlement and the Claims process to be implemented by the Claims Administrator. The Claim Form is straightforward and easy to complete, allowing each Settlement Class Member to elect the alternative Settlement Class Member Benefits. Should the Court grant Final Approval to the Settlement, Settlement Class Members who do not opt-out of the Settlement shall be bound by its terms even if they do not submit Claims.

9. As set forth in the Settlement Agreement, Excel shall bear all costs and expenses

associated with providing notice to the Class and administering the proposed settlement.

10. **Dissemination of Notice and Claim Forms:** The Court directs the Claims Administrator to disseminate the Notices and Claim Form as approved herein. Class Counsel and Excel's Counsel are hereby authorized to use all reasonable procedures in connection with approval and administration of the Settlement that are not materially inconsistent with this order or the Settlement, including making, without the Court's further approval, minor form or content changes to the Notices and Claim Form they jointly agree are reasonable or necessary.

11. **Objections to the Settlement:** Any member of the Class who intends to object or comment on the request for final approval of the Settlement Agreement or on the Fee Application must, no later than sixty (60) days after the Notice Deadline, submit his or her written objection to the Settlement Administrator. The written objection must include: (i) the name of the proceedings; (ii) the Settlement Class Member's full name, current mailing address, and telephone number; (iii) a statement that states with specificity the grounds for the objection, as well as any documents supporting the objection; (iv) a statement as to whether the objection applies only to the objector, to a specific subset of the class, or to the entire class; (v) the identity of any attorneys representing the objector; (vi) a statement regarding whether the Settlement Class Member (or his/her attorney) intends to appear at the Final Approval Hearing; (vii) a list of all other matters in which the objecting Settlement Class Member and/or his/her attorney has lodged an objection to a class action settlement; and (viii) the signature (or electronic equivalent) of the Settlement Class Member or the Settlement Class Member's attorney.

12. Any objecting Class Member may appear, in person or by counsel, at the Final Fairness Hearing to show cause why the proposed Settlement should not be approved as fair, adequate and reasonable, or to object to any application of attorneys' fees, Service Awards, and

reimbursement of litigation costs and expenses, but only if the Class Member has first filed written objections to the proposed settlement by the deadline set forth in this Order. The objecting Class Member must file and serve on all counsel designated in the Class Notice, a notice of intention to appear at the Final Fairness Hearing ("Notice of Intention to Appear") by the Objection Deadline. The Notice of Intention to Appear must include copies of all papers, exhibits, or other evidence that the objecting Class Members (or his/her counsel) will present to the Court in connection with the Final Fairness Hearing. Any Class Member who does not provide a Notice of Intention to Appear by the deadline set forth in this Order, and who does not file an objection that complies with the requirements set forth in this Order and the Class Notice, will be deemed to have waived any objections to the Settlement and will be barred from speaking or otherwise presenting views at the Final Fairness Hearing.

13. If a Class Member files an objection to the Settlement, Class Counsel or Excel's Counsel may depose the objector consistent with the Oklahoma Statutes at an agreed upon location and seek to have the objector produce documentary evidence or other tangible things relevant to the objection. An objector's failure to make him or herself available for deposition or to comply with expedited discovery requests may result in the Court striking the objector's objection or otherwise affecting that person's substantive rights. The Court reserves the right to tax the costs of such discovery to the objector or the objector's counsel should it determine that the objection was frivolous and was made for improper purposes.

14. **Opt-Outs from the Settlement Class:** Any Class Member shall have the right to opt out of the Class and the Settlement by sending a written request for exclusion from the Class to the addresses listed in the Notices, postmarked or delivered no later than sixty (60) days after the Notice Deadline. To be effective, The Request for Exclusion must include the name of the

proceeding, the individual's full name, current address, personal signature, and the words "Request for Exclusion" or a comparable statement that the individual does not wish to participate in the Settlement at the top of the communication. No person shall purport to exercise any exclusion rights of any other person, or purport to (a) opt-out Settlement Class Members as a group, in the aggregate, or as a class; or (b) opt-out more than one Settlement Class Member on a single Request for Exclusion, or as an agent or representative. Any such purported Request(s) for Exclusion shall be void, and the Settlement Class Member(s) who is or are the subject of such purported Request(s) for Exclusion shall be treated as a Participating Settlement Class Member and be bound by this Settlement Agreement, including the Release contained herein, and Judgment entered thereon, unless he or she submits a valid and timely Request for Exclusion. Any Class Member who does not submit a timely and valid opt-out shall be subject to and bound by the Settlement Agreement and every order or judgment entered concerning the Settlement Agreement.

15. **Termination**: If the Settlement is terminated, not approved, canceled, fails to become effective for any reason, or the Effective Date does not occur, this order shall become null and void and shall be without prejudice to the rights of Plaintiff, the Settlement Class members, and Excel, all of whom shall be restored to their respective positions in the Action as provided in the Agreement.

16. **Stay**: All pretrial proceedings in this Action are stayed and suspended until further order of this Court, except such actions as may be necessary to implement the Settlement and this Preliminary Approval Order.

17. Upon the entry of this order, with the exception of Class Counsel, Excel's Counsel, Excel, and the Class Representative implementation of the Settlement and the approval process in this Action, all members of the Settlement Class shall be provisionally enjoined and barred from

asserting any claims or continuing any litigation against Excel and the Released Parties arising out of, relating to, or in connection with the Released Claims prior to the Court's decision as to whether to grant Final Approval of the Settlement.

18. **Jurisdiction:** For the benefit of the Settlement Class and to protect this Court's jurisdiction, this Court retains continuing jurisdiction over the Settlement proceedings to ensure the effectuation thereof in accordance with the Settlement preliminarily approved herein and the related orders of this Court.

19. **Final Fairness Hearing:** A hearing on final approval of the Settlement Agreement, an award of fees and expenses to Class Counsel, and a Service Award to the Class Representative (the "Final Fairness Hearing") shall be held on the 4th day of February, 2026 at 1:30 P.M. CST before the undersigned in Courtroom _____ of the District Court of Oklahoma County, 321 Park Ave., Oklahoma City, OK 73102. At the Final Fairness Hearing, the Court will consider (a) whether the Settlement should be approved as fair, reasonable, and adequate for the class; (b) whether a judgment granting approval of the Settlement and dismissing the lawsuit with prejudice should be entered; and (c) whether Class Counsel's application for attorneys' fees and expenses and Service Award for the Class Representative should be granted.

20. **Fee Application:** Class Counsel shall file an application for attorneys' fees and costs and Service Award to the Class Representative ("Fee Application") within forty-five (45) days after the Notice Deadline.

21. **Final Approval:** Counsel for the respective parties shall file memoranda, declarations, and other statements and materials in support of the request for final approval of the parties' Settlement Agreement no later than two (2) weeks before the Final Approval Hearing.

22. The procedures and requirements for filing objections in connection with the Final

Fairness Hearing are intended to ensure the efficient administration of justice and the orderly presentation of any Class Member's objection to the Settlement Agreement so as to protect the due process rights of all Class Members.

23. No later than five (5) days before the Final Approval Hearing, the Parties shall have the option to file any reply in support of the final approval of the Settlement Agreement and Class Counsel shall have the option to file any reply in support of the Fee Application, if necessary.

24. The Court reserves the right to adjust the date of the Final Fairness Hearing and related deadlines. If dates are altered, the revised hearing date and deadlines shall be posted on the settlement website referenced in the Class Notice. The parties will not be required to re-send or re-publish class notice,

25. **Schedule:** The Court hereby sets the following schedule of events:

Event	Date
Defendant to Provide Class Member Information to Claims Administrator	10 days after Preliminary Approval
Notice Deadline	30 days after Preliminary Approval
Deadline to File Motion for Attorneys' Fees, Costs, and Service Award	45 days after the Notice Deadline
Opt Out Deadline	60 days after the Notice Deadline
Objection Deadline	60 days after the Notice Deadline
Deadline to Respond to Objections	14 days before Final Approval Hearing
Deadline to Submit Claim Forms	90 days after the Notice Deadline
Deadline to File Motion for Final Approval	14 days before Final Approval Hearing
Final Approval Hearing	<u>2/4/27</u>, 2026 at <u>1:30</u> a.m./<u>3</u> p.m. CT <i>*To be scheduled by the Court at least 120 days after the Order Granting Preliminary Approval is entered.</i>

SO ORDERED this 19 day of May, 2026.

HONORABLE Rick Warren

SIGNED AND AGREED BY:

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AS FILED OF RECORD
IN DISTRICT COURT

MAY 22 2026

RICK WARREN COURT CLERK
Oklahoma County

Rick Warren