

SETTLEMENT AND RELEASE AGREEMENT

This Settlement, Release and Waiver Agreement (“Agreement”) is entered into between Plaintiff-Intervenor CHRISTYNNNE LILI WRENE WOOD (hereinafter “Plaintiff-Intervenor” or “Ms. Wood”) and Defendants CFG JAMACHA, LLC dba CRUNCH FITNESS and JOHN ROMEO (hereinafter collectively “Defendants”). Plaintiff-Intervenor and Defendants are sometimes referred to collectively hereinafter as the “Parties.”

1. INTRODUCTION

On April 17, 2018, the Department of Fair Employment and Housing (hereinafter “DFEH”) initiated a lawsuit against Defendants in the Superior Court of the State of California, County of San Diego, entitled *Department of Fair Employment and Housing, et al. v. CFG Jamacha, LLC, et al.*, and identified by Case No. 37-2018-00019066-CU-CR-CTL (hereinafter “the Action”). Thereafter, on June 18, 2018, Plaintiff-Intervenor filed a complaint-in-intervention in the Action. Both DFEH and Plaintiff-Intervenor alleged Defendants violated the Unruh Act. Plaintiff-Intervenor also asserted causes of action for general negligence and negligent supervision, hiring, training and/or retention. All claims asserted against Defendants arise out of Plaintiff-Intervenor’s membership with CFG Jamacha, LLC, and use of the gym facilities located at 522 Jamacha Road, El Cajon, California 92020. DFEH and Plaintiff-Intervenor sought statutory damages and injunctive relief for Defendants’ alleged Unruh Act violation. Plaintiff-Intervenor also claimed she suffered emotional distress damages as a result of the alleged conduct. The details of DFEH and Plaintiff-Intervenor’s claims are more fully set forth in the operative complaint and complaint-in-intervention on file in the Action.

The Parties desire to settle this lawsuit by resolving their differences not through continued litigation and trial but rather through settlement of the Action, including all claims and liabilities connected with the claims asserted in the Action, or which could have been raised in the Action, or which arise from or relate to the Action, and to avoid incurring additional costs and expenses arising out of the Action.

The Parties enter into this Agreement to fully settle and discharge all disputed civil claims and actions upon the terms and conditions set forth herein.

2. NO ADMISSION OF LIABILITY

It is expressly understood, acknowledged and agreed to by the Parties, that by reason of entering into this Agreement, the Parties do not admit, expressly or impliedly, any fact or liability of any type or nature with respect to the Action other than the undisputed facts set forth in paragraph 10(G) below, or the sufficiency of any claims, allegations, assertions, or the positions made or taken or that could have been raised or taken by any party in the Action. This Agreement is entered into solely by way of compromise and settlement.

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3. SETTLEMENT TERMS

The Parties agree that Defendants' insurance carrier will pay the total sum of [REDACTED]. This payment is made as a final and complete settlement of the claims against Defendants, as well as full, final, and complete settlement of the Action and any and all civil claims Plaintiff-Intervenor may have against Defendants, whether known or unknown, present or future, that arise from the subject matter of the Action, as more particularly described below in Paragraph 4. The Parties' agreement concerning the injunctive relief sought is set forth in a separate agreement with DFEH (hereinafter "Injunctive Relief SAR"). The payment by Defendants' insurance carrier shall be in the form of a check made payable to the American Civil Liberties Foundation of Southern California), Tax ID Number 95-2673361.

In exchange for the above-described payment, Plaintiff-Intervenor agrees to dismiss, with prejudice, her Complaint-in-Intervention in the Action against Defendants.

All parties are to bear their own attorneys' fees and costs.

4. RELEASE

A. In consideration of the payment referred to herein, Plaintiff-Intervenor does hereby fully and forever completely release, acquit, and discharge Defendants, together with any and all past and present employees, agents (whether ostensible or actual), officers and directors, partners, owners, representatives, insurance carriers, additional insured parties, and their respective owners, partners, representatives and successors (collectively "Releasees") from any and all civil claims, demands, damages, wages, costs, attorneys' fees, rights or causes of action, whether known or unknown, past, present or future which Plaintiff-Intervenor may have against the Releasees, or any of them, that arise from, or are directly or indirectly related to, or are connected with, any of the facts or circumstances alleged in the Action or in any way connected with the subject matter of the Action, including claims for violations of any federal, state or local statute, ordinance, public policy or common law stemming from acts or omissions of the Defendants that allegedly occurred on or before the Effective Date of this Agreement.

B. The releases contained in paragraph (4)(A) are given contingent upon receipt of the payment from Defendants' insurance company. They shall take effect, if, and only if, the payment from Defendants' insurance company is delivered no later than 7 days following Ms. Wood's execution of this Agreement.

5. LIENS

Plaintiff-Intervenor agrees that she is solely responsible for all liens regarding the alleged incident and the Action, including but not limited to, any Medicare or Medi-Cal liens, and any workers' compensation lien that may exist.

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6. DISMISSAL

Plaintiff-Intervenor shall cause her attorneys to execute a request for dismissal with prejudice of the Complaint-in-Intervention filed in the Action as to all Defendants upon receipt of settlement funds. Plaintiff-Intervenor agrees her counsel shall execute the request for dismissal and this Agreement and return to counsel for Defendants for filing. Defendants' counsel will file the dismissal and provide Plaintiff-Intervenor's counsel with a conformed copy of the dismissal upon receipt.

7. WAIVER OF SECTION 1542

As to the matters released by this Agreement, the Parties expressly waive all rights under section 1542 of the California Civil Code and of any comparable principle of law, whether by statute or decision. Section 1542 provides as follows:

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.

This Agreement expressly includes a discharge of all unknown and unsuspected claims. Plaintiff-Intervenor understands and acknowledges the consequences of such a specific waiver.

8. NO PRIOR ASSIGNMENT OR TRANSFER

Each Party to this Agreement represents and warrants that there has been no assignment or other transfer of any claims or causes of action which they are releasing pursuant to the terms of this Agreement.

9. NO ENTRY OF JUDGMENT

None of the Parties hereto has nor shall they prepare and enter a judgment in this matter.

10. MISCELLANEOUS PROVISIONS

A. Entire Agreement

This Agreement constitutes the full and entire Agreement regarding the civil claims between the Parties hereto, and such Parties acknowledge that there is no other civil claim Agreement, oral and/or written, between the Parties hereto, except the Injunctive Relief SAR among DFEH, Plaintiff-Intervenor and Defendants.

B. Authority to Enter Agreement

This Agreement is the result of arms-length negotiations. Each Party to this Agreement represents and warrants to the others that the persons executing this Agreement on behalf of such Party are duly and fully authorized to do so, and that each

such Party is acting pursuant to the power and authority granted by their respective principals, and that no further approvals are required to be obtained from any persons or entities.

C. Taxes

No representation is hereby made concerning tax liability. If the settlement sum is deemed taxable, Plaintiff-Intervenor shall be solely responsible for the payment of any such taxes, including any interest or penalties, and indemnify Defendants against same.

D. Final Agreement

The Parties to this Agreement, and each of them, acknowledge that (1) this Agreement and its reduction to final form is the result of extensive good faith negotiations; (2) counsel for the Parties has carefully reviewed and examined this Agreement before execution by said Parties, or any of them; and (3) any statute or rule of construction that ambiguities are to be resolved against the drafting Party should not be employed in the interpretation of this Agreement.

E. Binding Agreement

This Agreement is and shall be binding upon and shall inure to the benefit of the predecessors, affiliates, subsidiaries, successors, insurance carriers, assigns, parties, agents, officers, employees, shareholders, associates, legal representatives, heirs, executives and/or administrators of each of the Parties hereto.

F. Confidentiality

The Parties agree to keep confidential the monetary amount Defendants have agreed to pay as part of this Settlement, as listed above at Paragraph 3. No party will disclose the monetary amount to any person except as needed to their financial or tax advisers or accountants, in Ms. Wood's case to her immediate family, or to the extent necessary to satisfy the California Code of Civil Procedure and the San Diego County Superior Court Local Rules. No party shall share the amount of monetary compensation associated with this settlement in any press release, media interview, or public or private message or post on social media.

G. Undisputed Facts

The parties agree that

- (i) the ownership and management of the Jamacha gym changed after the events giving rise to this case occurred;
- (ii) Ms. Wood had been a member of the gym for approximately nine years when she came out as transgender;
- (iii) Ms. Wood was granted access to the platinum men's locker room at the gym free of charge beginning in approximately October 2016;

- (iv) Ms. Wood was granted access to the women's locker rooms in September 2017, prior to the filing of the lawsuit in 2018; and
- (v) Ms. Wood continues to be a member and user of the gym and its facilities. Plaintiff-Intervenor further agrees that any press release or media advisory she or any part of her legal team (consisting of the ACLU of San Diego and Imperial Counties, the ACLU of Southern California, and Nixon Peabody LLP) issues regarding this settlement will include all five of the undisputed facts listed in this section.

H. Governing Law

This Agreement is made and entered into in the State of California and shall in all respects be interpreted, enforced, and governed by and under the laws of the State of California. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable for whatever reason, the remaining provisions not so declared shall nonetheless continue in full force and effect without being impaired in any manner whatsoever.

I. Modifications

This Agreement may be amended or modified only by a writing signed by all Parties to this Agreement.

J. Paragraph Headings

Paragraph headings are for reference only and shall not affect the interpretation of any paragraph hereto.

K. No Inducement

Each of the Parties to this Agreement acknowledges for itself that it has read this Agreement and fully understands its contents and consequences and has voluntarily executed it. Each of the Parties also warrants that no promise or inducement has been made or offered by any of the Parties, except as set forth herein, and that this Agreement is not executed in reliance upon any statement or representation of any of the Parties or their representatives, concerning the nature and extent of the injuries, damages or legal liability thereof. The Parties further represent that they have been represented by legal counsel during the course of the negotiations leading to the signing of this Agreement, and that they have been advised by legal counsel with respect to the meaning of this Agreement and its legal effect.

L. Counterparts/Original Signature

This Agreement may be executed in counterparts with the same effect as if all original signatures were placed on one document and all of which together shall be one and the same Agreement. Also, signatures received via facsimile or email shall have the same force and effect as an original.

M. Additional Documents

All Parties agree to cooperate fully to take any and all steps, perform any acts, and execute any documents consistent with the terms and conditions of this Agreement, which may be needed or required to effectuate the terms, intent, conditions, covenants, and provisions hereof.

N. Enforcement and Venue

The Parties agree that the court in which the Action is venued will retain jurisdiction over this Agreement for a period of five years. In the event of a dispute about compliance with the terms of this Agreement, the parties will make a good-faith effort to meet and confer to resolve the dispute, before seeking court intervention.

O. Drafter

No provision, principle, or other concept of law or equity wherein the terms and conditions of the Agreement are interpreted against the party who drafted the Agreement shall have any application to this Agreement.

P. Good Faith

The Agreement described herein was made "in good faith" within the meaning of Code of Civil Procedure section 877.6.

Q. Effective Date

The Parties deem this Agreement effective as of the date when all Parties have signed the Agreement and their respective counsel, and payment by Defendants' insurance carrier for the benefit of Plaintiff-Intervenor is made

WE HEREBY CERTIFY THAT WE HAVE READ ALL OF THIS SETTLEMENT AND RELEASE AGREEMENT AND FULLY UNDERSTAND THE SAME, AND IN WITNESS WHEREOF WE HAVE EXECUTED THIS AGREEMENT IN CALIFORNIA.

IT IS SO AGREED:

PLAINTIFF-INTERVENOR:

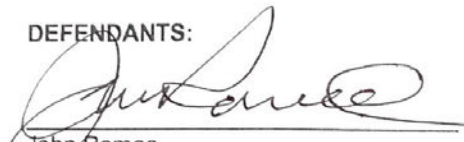


Christynne Lili Wrene Wood,
Plaintiff-Intervenor

DATED:  _____

11/22/2021

DEFENDANTS:


John Romeo
Defendant

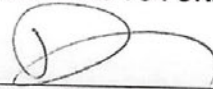
DATED: 11/23/21

CFG JAMACHA, LLC, dba Crunch Fitness:

By:
Defendant

DATED: _____

APPROVED AS TO FORM



David Loy, Esq.
American Civil Liberties Union Foundation of San Diego and Imperial Counties
Attorneys for Plaintiff-Intervenor

DATED: 11/22/21

Tami G. Vail, Esq.
Kahana Feld LLP
Attorneys for Defendants


DATED: _____

DEFENDANTS:

John Romeo
Defendant

DATED: _____


CFG JAMACHA, LLC, dba Crunch Fitness:



By: Jeff Clark
Defendant


DATED: December 2 2021

APPROVED AS TO FORM



David Loy, Esq.
American Civil Liberties Union Foundation of San Diego and Imperial Counties
Attorneys for Plaintiff-Intervenor

DATED: 11/22/21



Tami G. Vail, Esq.
Kahana Feld LLP
Attorneys for Defendants

DATED: December 2, 2021