

UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF FLORIDA

**If You Were Sent a Text Message from Galleria Fitness Club,
LLC, d/b/a Powerhouse Gym Fort Lauderdale Defendants,
You May Be Entitled to a Payment from a
Class Action Settlement.**

A federal court authorized this Notice. You are not being sued. This is not a solicitation from a lawyer.

- A Settlement¹ has been reached in a class action lawsuit alleging that Defendant Galleria Fitness Club, LLC, d/b/a Powerhouse Gym Fort Lauderdale (“Galleria Fitness”) sent text messages to mobile telephone numbers without prior express written consent of the recipients in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 (“TCPA”). Defendants deny the allegations and any wrongdoing. The Court has not decided the merits of the claims.
- The Settlement offers payments to Settlement Class Members who file valid Claims.
- Your legal rights are affected whether you act or do not act. Read this Notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
SUBMIT A CLAIM FORM	If you are a member of the Settlement Class, you must submit a completed Claim Form to receive a payment. If the Court approves the Settlement and it becomes final and effective, and you remain in the Settlement Class, you will receive your payment by check.
EXCLUDE YOURSELF	You may request to be excluded from the Settlement and, if you do, you will receive no benefits from the Settlement.
OBJECT	Write to the Court if you do not like the Settlement.
GO TO A HEARING	Ask to speak in court about the fairness of the Settlement.
DO NOTHING	You will not receive a payment if you fail to timely submit a completed Claim Form, and you will give up your right to bring your own lawsuit against Defendants about the Claims in this case.

- 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 after any appeals are resolved, benefits will be distributed to those who submit qualifying Claim Forms. Please be patient.

¹ Capitalized terms herein have the same meanings as those defined in the Settlement Agreement, a copy of which may be found online at the Settlement Website below.

WHAT THIS NOTICE CONTAINS

BASIC INFORMATION.....	PAGE 3
1. Why is there a Notice?	
2. What is this litigation about?	
3. What is the Telephone Consumer Protection Act?	
4. Why is this a class action?	
5. Why is there a settlement?	
WHO IS PART OF THE SETTLEMENT.....	PAGE 4
6. Who is included in the Settlement?	
7. What if I am not sure whether I am included in the Settlement?	
THE SETTLEMENT BENEFITS.....	PAGE 4
8. What does the Settlement provide?	
9. How do I file a Claim?	
10. When will I receive my payment?	
EXCLUDING YOURSELF FROM THE SETTLEMENT.....	PAGE 5
11. How do I get out of the Settlement?	
12. If I do not exclude myself, can I sue Defendants for the same thing later?	
13. What am I giving up to stay in the Settlement Class?	
14. If I exclude myself, can I still get a payment?	
THE LAWYERS REPRESENTING YOU.....	PAGE 6
15. Do I have a lawyer in the case?	
16. How will the lawyers be paid?	
OBJECTING TO THE SETTLEMENT.....	PAGE 6
17. How do I tell the Court I do not like the Settlement?	
18. What is the difference between objecting and asking to be excluded?	
THE FINAL APPROVAL HEARING.....	PAGE 7
19. When and where will the Court decide whether to approve the Settlement?	
20. Do I have to attend the hearing?	
21. May I speak at the hearing?	
IF YOU DO NOTHING.....	PAGE 8
22. What happens if I do nothing at all?	
GETTING MORE INFORMATION.....	PAGE 8
23. How do I get more information?	

BASIC INFORMATION

1. Why is there a Notice?

A court authorized this Notice because you have a right to know about a proposed Settlement of a class action lawsuit known as *Galleria Fitness Club, LLC d/b/a Powerhouse Gym Fort Lauderdale*, Case No. 0:18-cv-62108-CMA (S.D. Fla.) and about all of your options before the Court decides whether to give Final Approval to the Settlement. This Notice explains the lawsuit, the Settlement, and your legal rights.

Judge Cecilia Altonaga of the United States District Court for the Southern District of Florida is overseeing this case. The person who sued, Daniel Gerstenhaber, is called the “Plaintiff.” Galleria Fitness Club, LLC d/b/a Powerhouse Gym Fort Lauderdale, together with the individual defendant, are called the “Defendants.”

2. What is this litigation about?

The lawsuit alleges that Defendants sent a text message to Plaintiff’s wireless telephone number about joining a fitness center without prior express written consent in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 (“TCPA”) and seeks actual and statutory damages under the TCPA on behalf of the named Plaintiff and a class of all individuals in the United States.

Defendants deny each and every allegation of wrongdoing, liability, and damages that were or could have been asserted in the litigation and that the claims in the litigation would be appropriate for class treatment if the litigation were to proceed through trial.

The Plaintiff’s Complaint, Settlement Agreement, and other case-related documents are posted on the Settlement Website, www.GymTCPASettlement.com. The Settlement resolves the lawsuit. The Court has not decided the merits of the claims.

3. What is the Telephone Consumer Protection Act?

The Telephone Consumer Protection Act (commonly referred to as the “TCPA”) is a federal law that restricts telephone solicitations and the use of automated telephone equipment.

4. Why is this a class action?

In a class action, one person called the “Class Representative” (in this case, Plaintiff Daniel Gerstenhaber) sues on behalf of himself and other people with similar claims.

All of the people who have claims similar to the Plaintiff’s are Settlement Class Members, except for those who exclude themselves from the class.

5. Why is there a settlement?

The Court has not found in favor of either Plaintiff or Defendants. Instead, both sides have agreed to a settlement. By agreeing to the Settlement, the parties avoid the costs and uncertainty of a trial, and if the Settlement is approved by the Court, Settlement Class Claimants will receive the benefits described in this Notice. Defendants denies all legal claims in this case. Plaintiff and his lawyers think the proposed Settlement is best for everyone who is affected.

WHO IS PART OF THE SETTLEMENT

6. Who is included in the Settlement?

The Settlement includes all persons who received a text message on their cell phone from Defendants. Specifically, the Settlement is defined as:

All individuals within the United States (i) who were sent and received a text message call (ii) on his or her cellular telephone (iii) by or on behalf of Defendants (iv) from June 16, 2017, the date of formation of Galleria Fitness, through March 12, 2019.

Persons meeting this definition are referred to collectively as the “Settlement Class” and, individually, as “Settlement Class Members.”

Excluded from the Settlement Class are: (i) the district judge and magistrate judge presiding over this case, the judges of the U.S. Court of Appeals for the Eleventh Circuit, their spouses, and persons within the third degree of relationship to either of them; (2) individuals who are or were during the Class Period agents, directors, employees, officers, or servants of Defendants or of any affiliate or parent of Defendants; (3) Plaintiff’s counsel and their employees, and (4) all persons who file a timely and proper request to be excluded from the Settlement Class.

7. What if I am not sure whether I am included in the Settlement?

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.GymTCPASettlement.com or call the toll-free number, 1-833-253-8060. You also may send questions to the Settlement Administrator at Gerstenhaber v. Galleria Fitness Club, c/o Settlement Administrator, P.O. Box 58158, Philadelphia, PA 19102-8158.

THE SETTLEMENT BENEFITS

8. What does the Settlement provide?

To fully settle and release claims of the Settlement Class Members, Defendants have agreed to make payments to the Settlement Class Members and pay for notice and administration costs of the Settlement, attorneys’ fees and expenses incurred by counsel for the Settlement Class, and a service award for Plaintiff (the “Settlement Fund”). Each Settlement Class member who timely files with the Settlement Administrator a valid Claim Form will receive a check for up to \$30.00 per text message call they received, less notice and administration costs, attorneys’ fees and expenses, and a service award.

9. How do I file a Claim?

If you qualify for a payment, you must complete and submit a valid Claim Form. You may download a Claim Form at the Settlement Website, www.GymTCPASettlement.com, or request a Claim Form by calling the Settlement Administrator at the toll-free number below. To be valid, a Claim Form must be completed fully and accurately, signed under penalty of perjury, and submitted timely through the Settlement website or through mail postmarked by **June 5, 2019**.

Please read the Claim Form carefully and provide all the information required. Only one Claim Form may be submitted per Settlement Class Member.

QUESTIONS? CALL 1-833-253-8060 OR VISIT www.GymTCPASettlement.com

10. When will I receive my payment?

Payments to Settlement Class Members will be made only after the Court grants Final Approval to the Settlement and after any appeals are resolved (*see* “Final Approval Hearing” below). If there are appeals, resolving them can take time. Please be patient.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want benefits from the Settlement, and you want to keep the right to sue or continue to sue Defendants on your own about the legal issues in this case, then you must take steps to get out of the Settlement. This is called excluding yourself—or it is sometimes referred to as “opting out” of the Settlement Class.

11. How do I get out of the Settlement?

To exclude yourself from the Settlement, you must send a timely letter by mail to:

Gerstenhaber v. Galleria Fitness Club
c/o Settlement Administrator
P.O. Box 58158
Philadelphia, PA 19102-8158

Your request to be excluded from the Settlement must be personally signed by you under penalty of perjury and contain a statement that indicates your desire to be “excluded from the Settlement Class” and that, absent of excluding yourself or “opting out,” you are “otherwise a member of the Settlement Class.”

Your exclusion request must be postmarked no later than **May 20, 2019**. You cannot ask to be excluded on the phone, by email, or at the Settlement Website.

You may opt out of the Settlement Class only for yourself.

12. If I do not exclude myself, can I sue Defendants for the same thing later?

No. Unless you exclude yourself, you give up the right to sue Defendants for the claims that the Settlement resolves. You must exclude yourself from this Settlement Class in order to pursue your own lawsuit.

13. What am I giving up to stay in the Settlement Class?

Unless you opt out of the Settlement, you cannot sue or be part of any other lawsuit against Defendants about the issues in this case, including any existing litigation, arbitration, or proceeding. Unless you exclude yourself, all of the decisions and judgments by the Court will bind you.

The Settlement Agreement is available at www.GymTCPASettlement.com. The Settlement Agreement provides more detail regarding the Releases and describes the Released Claims with specific descriptions in necessary, accurate legal terminology, so read it carefully. You can talk to the law firms representing the Settlement Class listed in Question 15 for free, or you can, at your own expense, talk to your own lawyer if you have any questions about the Released Claims or what they mean.

14. If I exclude myself, can I still get a payment?

No. You will not get a payment from the Settlement Fund if you exclude yourself from the Settlement.

THE LAWYERS REPRESENTING YOU

15. Do I have a lawyer in the case?

The Court has appointed the following lawyers as “Class Counsel” to represent all members of the Settlement Class.

Manuel S. Hiraldo, Esq.
Hiraldo P.A.
401 E. Las Olas Blvd., Ste. 1400
Fort Lauderdale, FL 33301

Ignacio J. Hiraldo, Esq.
IJH Law
1200 Brickell Ave., Ste. 1950
Miami, FL 33131

Michael Eisenband, Esq.
Eisenband Law, P.A.
515 E. Las Olas Blvd., Suite 120
Fort Lauderdale, FL 33301

You will not be charged for these lawyers. If you want to be represented by another lawyer, you may hire one to appear in Court for you at your own expense.

16. How will the lawyers be paid?

Class Counsel intend to request \$140,000.00, or up to approximately 23.33% of the value of the Settlement, for attorneys’ fees plus reimbursement of reasonable, actual out-of-pocket expenses incurred in the litigation. The fees and expenses awarded by the Court will be paid out of the Settlement Fund. The motion for these fees and expenses award will be posted to the settlement website after they are filed. The Court will decide the amount of fees and expenses to award.

Class Counsel will also request that a Service Award of \$5,000.00 be paid from the Settlement Fund to the Class Representative for his service as representative on behalf of the whole Settlement Class.

OBJECTING TO THE SETTLEMENT

17. How do I tell the Court if I do not like the Settlement?

If you are a Settlement Class Member (and do not exclude yourself from the Settlement Class), you can object to any part of the Settlement. To object, you must timely submit a letter that includes the following:

- 1) A heading that includes the case name and case number— Gerstenhaber v. Galleria Fitness Club, LLC d/b/a Powerhouse Gym Fort Lauderdale, Case No. 0:18-cv-62108-CMA (S.D. Fla.)

- 2) Your name, address, telephone number, the cell phone number at which you received text messages from Defendants and if represented by counsel, the name, bar number, address, and telephone number of your counsel;
- 3) A signed statement stating, under penalty of perjury, that you received one or more text message from Defendants and are a member of the Settlement Class;
- 4) A statement of all your objections to the Settlement including your legal and factual basis for each objection;
- 5) A statement of whether you intend to appear at the Final Approval Hearing, either with or without counsel, and if with counsel, the name of your counsel who will attend;
- 6) The number of times in which your counsel and/or counsel's law firm have objected to a class action settlement within the five years preceding the date that you file the objection, the caption of each case in which counsel or the firm has made such objection, and a copy of any orders related to or ruling upon counsel's or the firm's prior objections that were issued by the trial and appellate courts in each listed case;
- 7) A list of all persons who will be called to testify at the Final Approval Hearing in support of the objection; and
- 8) Any and all agreements that relate to the objection or the process of objecting—whether written or verbal—between you or your counsel and any other person or entity.

If you wish to object, you must file your objection with the Court (using the Court's electronic filing system or in any manner in which the Court accepts filings) and mail your objection to each of the following three (3) addresses, and your objection must be postmarked by **May 20, 2019**.

Clerk of the Court	Class Counsel	Defendant's Counsel
United States District Court for the Southern District of Florida 400 N. Miami Ave Miami, FL 33128	Manuel S. Hiraldo, Esq. Hiraldo P.A. 401 E. Las Olas Blvd., Ste. 1400 Fort Lauderdale, FL 33301	Maria Vigilante, Esq. Blank Rome LLP 500 East Broward Blvd. Suite 2100 Fort Lauderdale, FL 33394

18. What is the difference between objecting and asking to be excluded?

Objecting is 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.

THE FINAL APPROVAL HEARING

The Court will hold a hearing to decide whether to approve the Settlement and any requests for fees and expenses ("Final Approval Hearing").

19. When and where will the Court decide whether to approve the Settlement?

The Court has scheduled a Final Approval Hearing on **June 12, 2019 at 9:00 a.m.** at the Wilkie D. Ferguson, JR. United States Courthouse, 400 North Miami Avenue, Room, 12-2, Miami, Florida 33128. The hearing may be moved to a different date or time without additional notice, so it is a good idea to check www.GymTCPASettlement.com for updates. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The Court will also consider the requests by Class

Counsel for attorneys' fees and expenses and for a Service Award to the Class Representative. If there are objections, the Court will consider them at that time. After the hearing, the Court will decide whether to approve the Settlement. It is unknown how long these decisions will take.

20. Do I have to attend the hearing?

No. Class Counsel will answer any questions the Court may have. But, you are welcome to attend the hearing at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you submitted your written objection on time to the proper addresses and it complies with all the other requirements set forth above, the Court will consider it. You may also pay your own lawyer to attend the hearing, but it is not necessary.

21. May I speak at the hearing?

You may ask the Court for permission to speak at the Final Approval Hearing. To do so, your timely filed objection must include a statement of whether you intend to appear at the Final Approval Hearing (*see* Question 17 above).

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

IF YOU DO NOTHING

22. What happens if I do nothing at all?

If you are a Settlement Class member and do nothing, meaning you do not file a timely Claim, you will not get benefits from the Settlement. Further, unless you exclude yourself, you will be bound by the judgment entered by the Court.

GETTING MORE INFORMATION

23. How do I get more information?

This Notice summarizes the proposed Settlement. You are urged to review more details in the Settlement Agreement. For a complete, definitive statement of the Settlement terms, refer to the Settlement Agreement at www.GymTCPASettlement.com. You also may write with questions to the Settlement Administrator: Gerstenhaber v. Galleria Fitness Club, c/o Settlement Administrator, P.O. Box 58158, Philadelphia, PA 19102-8158, or call the toll-free number, 1-833-253-8060.