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10 Attorneys for Plaintiff, LENELL TIMBERLAKE

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF LOS ANGELES**
13

14 LENELL TIMBERLAKE, on behalf of
15 himself and all others similarly situated,

16 Plaintiffs,

17 v.

18 FUSIONE INC., a California Corporation,
doing business as UNICI CASA and
19 SOCIETY UNICI, and DOES 1 through 100,
Inclusive.

20 Defendants.
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CASE NO. BC616783

PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR APPROVAL OF
CLASS NOTICE; SUPPORTING
DECLARATION OF DAVID
GREIFINGER

Assigned for all purposes to the:
Honorable Carolyn B. Kuhl, Dept. 12
312 No. Spring St., Los Angeles CA 90012

Date: August 9, 2018 [Reserved]
Time: 11:00 a.m.
Dept: 12

24 TO THE COURT AND THE DEFENDANT AND ITS ATTORNEY OF RECORD:

25 PLEASE TAKE NOTICE that on August 9, 2018, at 11:00 a.m., in Department 12 of the
26 Los Angeles Superior Court, Civil Central West, located at 312 North Spring Street, Los
27 Angeles, California 90012, Plaintiff Lenell Timberlake will move this court for an order
28 approving plaintiff's proposed class notice.

PLAINTIFF'S MOTION FOR APPROVAL OF CLASS NOTICE

07/05/2018


FILED
Superior Court of California
County of Los Angeles

JUL 02 2018

Sherri R. Carter, Executive Officer/Clerk of Court
By  Deputy
Isaac Love

1 The motion is based on this notice of motion, the proposed notice, the accompanying
2 memorandum of points and authorities, the supporting declaration of David Greifinger, the
3 court's file in this matter, and any further evidence and argument that the court may consider.

4 Dated: July 2, 2018

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6 By: 
7 David Greifinger
8 Howard Goldstein
9 Kenneth Lipton
10 Attorneys for Plaintiffs

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07/05/2018

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MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction

Defendant Fusione, Inc. (Fusione) hosts about 10 parties each year, which it promotes to about 7,000 people on its e-mail database and to the general public. For paying customers, Fusione either discounts women’s admissions to zero or near zero, while men are charged a fee. Plaintiff has alleged in his class action complaint that Fusione’s admissions scheme violates the Unruh Act and the Gender Tax Repeal Act of 1985.

On April 24, 2018, this court certified the following class:

“All males who paid to attend events promoted by FUSIONE, INC. from April 13, 2015, to the present time at which differing prices of admission or discounts were offered to males and females.”

This court also ordered plaintiff to submit a proposed class notice and to file a motion for approval of the notice.

II. The proposed class notice and notice administrator.

Plaintiff has attached the proposed class notice as Exhibit A to this motion. Plaintiff proposes JND Legal Administration (JND) as the Notice Administrator. Relevant information about JND is attached as Exhibit B.

III. The proposed class notice complies with the California Rules of Court.

California Rule of Court, rule 3.766(a) provides that the court may require either party to notify the class of the action in the manner specified by the court. Under rule 3.766(b), “The class proponent must submit a statement regarding class notice and a proposed class notice to members. The statement must including the following items: (1) Whether notice is necessary; (2) Whether class members may exclude themselves from the action; (3) The time and manner in which notice should be given; (4) A proposal for which parties should bear the costs of notice; and (5) If cost shifting or sharing is proposed under subdivision (4), an estimate of the cost in giving notice.”

This court has determined that class notice is necessary. Plaintiff proposes to permit class members to exclude themselves from the action. Plaintiff proposes to give notice by mail

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1 to class members at their mailing addresses provided by defendant and to the members' e-mail
 2 addresses if available. A standard skip trace will be performed for returned notices. Plaintiff
 3 proposes that the JND Legal Administration administer the notice. This court will set the
 4 timetable for notice. Plaintiff proposes that the parties share the cost of notice equally. Plaintiff
 5 does not yet know the cost of notice because discovery responses revealing the total class size
 6 are pending. Plaintiff estimates the total class to be between 1,000 to 2,000 individuals.

7 Under California Rules of Court, rule 3.766(d), if class members are to be given the right
 8 to request exclusion, the class notice must include: "(1) A brief explanation of the case,
 9 including the basic contentions or denials of the parties; (2) A statement that the court will
 10 exclude the member from the class if the member so requests by a specified date; (3) a procedure
 11 for the member to follow in requesting exclusion from the class; (4) a statement that the
 12 judgment, whether favorable or not, will bind all members who do not request exclusion; and (5)
 13 A statement that any member who does not request exclusion may, if the member so desires,
 14 enter an appearance through counsel."

15 The proposed notice meets all of the above requirements. Paragraph 3 of the proposed
 16 notice fulfills Requirement (1); Paragraph 12 fulfills Requirement (2); Paragraphs 12 and 13
 17 fulfill Requirement (3); Paragraph 8 fulfills Requirement (4); and Paragraphs 9 and 15 fulfill
 18 Requirement (5).

19 **IV. Conclusion**

20 This court should approve the proposed form and manner of notice.

21
 22 DATED: July 2, 2018

LAW OFFICES OF DAVID R. GREIFINGER

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 25 By: DAVID R. GREIFINGER, ESQ.
 26 Attorney for Plaintiffs

07/05/2018

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DECLARATION OF DAVID R. GREIFINGER

I, David R. Greifinger, declare as follows:

1. I am the principal of the LAW OFFICES OF DAVID R. GREIFINGER, and am an attorney of record in the above-captioned case. I am an adult resident of the State of California, and, if called as a witness, I would testify fully to the matters stated in this declaration. All of these matters are within my personal knowledge, except those matters that are stated to be upon information and belief, which I believe to be true.

2. I submit this declaration in support of the motion for approval of class notice.

3. Attached to this declaration as Exhibit A is a true and correct copy of plaintiff's proposed class notice.

4. Attached to this declaration as Exhibit B is a true and correct copy of relevant information provided by JND Legal Administration, the proposed Notice Administrator.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Executed this 2nd day of July 2018, at Pacific Palisades, California.


DAVID R. GREIFINGER

07/05/2018

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PROOF OF SERVICE

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action; my business address is: Law Offices of David Greifinger, 15515 Sunset Blvd., No. 214, Pacific Palisades, CA 90272.

On July 2, 2018, I served the foregoing document described as **PLAINTIFF'S MOTION FOR APPROVAL OF CLASS NOTICE; SUPPORTING DECLARATION OF DAVID GREIFINGER** on the interested parties in this action by placing a true copy thereof in a sealed envelope addressed as follows:

SEE ATTACHED SERVICE LIST

BY MAIL - I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on the same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

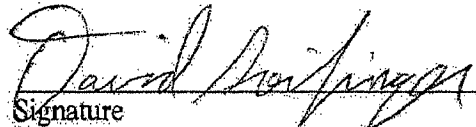
BY PERSONAL SERVICE - I delivered such envelope by hand to the offices of the addressee.

STATE - I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

FEDERAL - I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on July 2, 2018, at Pacific Palisades, California.

David Greifinger
Type or Print Name


Signature

07/05/2018

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PROOF OF SERVICE LIST

Mr. Bobby Samini, Esq.
Samini Scheinberg, PC
840 Newport Center Drive, Suite 700
Newport Beach, CA 92660

07/05/2018

Ex. A

15:58:52 2018-07-02

07/05/2018

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

**LENELL TIMBERLAKE v. FUSIONE, INC., dba UNICI CASA and
SOCIETY UNICI, Case No. BC616783**

NOTICE OF PENDENCY OF CLASS ACTION

**TO: All males who paid to attend events promoted by Fusione, Inc.
from April 13, 2015 to the present:**

**The California Superior Court for the County of Los Angeles has
authorized this notice. This is not a solicitation from a lawyer.**

**PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY.
YOUR RIGHTS MAY BE AFFECTED BY A CLASS ACTION LAWSUIT
PENDING IN THE COURT.**

The purpose of this notice is to inform you of a class action lawsuit now pending before Los Angeles County Superior Court (the "Court") under the above caption (the "Action") brought by Lenell Timberlake (the "Plaintiff") against Fusione, Inc. (the "Defendant"), doing business as Unici Casa and Society Unici. This notice is intended only to advise you of the pendency of the action an your rights with respect to the action.

YOU ARE HEREBY NOTIFIED under California Rules of Court, rule 3.766 and order of the court of the pendency of the action as a class action.

You received this notice because you are a potential class member. If you are a member of the class as defined in Paragraph 1 below, your rights may be affected by this action. If you are a class member, ***you do not need to do anything at this time.*** If you do not meet the class definition, this notice does not apply to you. If you are uncertain as to whether you are a member of the class, contact JND Legal Administration, class counsel listed in paragraph 14 below, or consult your own attorney. **DO NOT CONTACT THE COURT.**

This notice is not an admission by Defendant or an expression of any opinion by the court concerning the merits of the action, or a finding by the court that the claims asserted in the action by Plaintiff are valid. Defendant has denied Plaintiff's claims and maintains it is not liable for the damages alleged by Plaintiff. The class definition may be subject to change by the court.

07/05/2018

THE CLASS

1. The court has entered an order certifying the action as a class action on behalf of a class of: "All males who paid to attend events promoted by FUSIONE, INC. from April 13, 2015, to the present time at which differing prices of admission were offered to males and females."

DESCRIPTION AND STATUS OF THIS ACTION

2. Plaintiff is the court-appointed class representative. Defendant is a California Corporation that does business as Unici Casa and Society Unici.

3. Plaintiff's First Amended Class Action Complaint alleges that Defendant violated the Gender Tax Repeal Act of 1985 (Civ. Code, § 51.6, subd. (b)), the Unruh Act (Civ. Code, § 51.5, subd. (a)), and committed an unfair business practice (Bus. & Prof. Code, § 17200, et. seq.) by charging paying male customers more than females to attend its parties at the venue known as "Unici Casa" in Culver City, California. Plaintiff alleges that the practice has been ongoing since April 13, 2015.

4. Defendant has denied and continues to deny any wrongdoing in this action and believes that Plaintiff's claims are without merit. Defendant maintains that it did not discriminate against male paying customers.

5. The court has not yet ruled on the merits of Plaintiff's claims or Defendant's defenses. The court granted Plaintiff's motion for class certification on April 24, 2018, determined that this action may be maintained as a class action, and appointed Plaintiff as class representative.

6. No judgment has been entered or settlement reached at this time. If a settlement of this action is reached, it will be subject to approval by the court. Class members will be sent additional notice of any proposed settlement that the court may approve, and class members who have not previously excluded themselves will have an opportunity to object to the terms of the proposed settlement, and may be required to submit a claim form to demonstrate their entitlement to any payment. Similarly, the court may direct further notice to the class following any judgment that may be entered after the trial of this action or for any other reason that the court may determine.

YOUR RIGHTS AS A CLASS MEMBER

7. If you are male and paid to attend a party hosted by Defendant between April 13, 2015, and the present, you may be a class member. If you choose to remain a class member, **you do not need to do anything at this time.**

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You will be automatically included in the class unless you request exclusion under the procedure stated in Paragraphs 12 and 13 below.

8. As a class member, you will be bound by all orders and judgments in this action, whether favorable or unfavorable. If any money is awarded to the class, either through a settlement with Defendant or a judgment of the court, you may be eligible to receive a share of that award. If Defendant prevails, you may not pursue a lawsuit on your own behalf with regard to any of the issues decided in the action. The court has discretion whether to allow a second opportunity for class members to request exclusion from the class if there is a settlement or judgment in this action. The class representative and class counsel are representing your interests. You will not be personally responsible for attorneys' fees or costs unless you hire your own individual attorney. Class counsel has agreed to represent the class on a contingent-fee basis, which means that they will be awarded fees and costs only if they succeed in obtaining a recovery from Defendant. The court will award attorneys' fees from the settlement or judgment, if any, obtained on behalf of the class. You may exclude yourself from the class by following the procedures stated in paragraphs 12 and 13 below. You may also remain a member of the class and elect to be represented by counsel of your own choosing.

9. If you retain separate counsel, you will be responsible for that counsel's fees and expenses, and that counsel must enter an appearance on your behalf by filing a Notice of Appearance with the court and mailing it to class counsel at the addresses stated below on or before _____, 2018.

10. If you choose to be excluded from the class, you will not be bound by any judgments in this action, nor will you be eligible to share in any recovery that might be obtained in this action. However, you may individually pursue any legal rights that you may have against Defendant with respect to the claims asserted in the action. Please refer to paragraphs 12 and 13 below if you would like to exclude yourself from the class.

11. Class members may be eligible to recover damages if a recovery is obtained in this action, though this notice is not intended to suggest that Plaintiff or class members will recover any damages.

HOW TO BE EXCLUDED FORM THE CLASS

12. If you are male and paid to attend a party hosted by Defendant between April 13, 2015, and the present, at which differing prices of admission were offered to males and females, you will automatically be considered a member of the class **unless** you request exclusion. You do not need to do anything to

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remain a member of the class. To exclude yourself from the class, you must send a signed letter by mail expressly stating that you "request exclusion from the class in the matter of *Timberlake v. Fusione, Inc.* matter, Los Angeles Superior Court Case No. BC616783." Your request must include your name, address, and telephone number, and must be signed by you. The court will exclude you from the class if you submit a valid exclusion request. Your request for exclusion will not be effective unless it includes your name, address, telephone number, and signature, and is sent within the time limit stated in Paragraph 13.

13. You must mail your exclusion request, postmarked no later than _____, 2018 to:

JND Legal Administration
Attn: Notice Administrator, Fusione Litigation

Please note that you cannot exclude yourself from the class by telephone or e-mail. If your request for exclusion is timely mailed and follows the above requirements, you will not be bound by any judgment in this action, and you may pursue any individual rights you may have against the Defendant. However, if you validly request exclusion, you will not be eligible to share in any recovery in this action, should any recovery be obtained. Do not request exclusion if you wish to participate in this action as a class member.

CLASS COUNSEL

14. As a class member you will be represented by class counsel:

David Greifinger, Esq. Law Offices of David R. Greifinger, 15515 W. Sunset Blvd., No. 214 Pacific Palisades, CA 90272, Tel. (424) 330-0193, Facsimile (831) 920-4864	Howard Goldstein, Esq. Law Offices of Howard A. Goldstein, APLC, 9903 Santa Monica Blvd., Suite 411, Beverly Hills, CA 90212, Tel. (818) 981-1010, Facsimile (818) 981-1311	Kenneth M. Lipton, Esq. 5900 Sepulveda Blvd., Suite 400, Van Nuys, CA 91411, Tel. (818) 780-3562
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15. The court has appointed attorneys to represent the class as described above. If you do not request exclusion, you have the right to enter your appearance through your own personal counsel whom you retain at your own expense. However, you are not required to retain separate counsel. If you do

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not retain separate counsel and remain a class member, class counsel and the class representative will represent your interests.

PLEASE KEEP YOUR MAILING ADDRESS AND E-MAIL ADDRESS CURRENT

16. To assist the court and the parties in maintaining an accurate list of class members, please update your name and contact information in the event of any changes. You may update this information online at _____ or by mailing the information to: JND Legal Administration, Attn: Notice Administrator, Fusione Litigation, _____. You may call the Notice Administrator at _____.

17. If the postal service forwarded this notice to you, or it was otherwise sent to you at an address that is no longer current, you should immediately contact the Notice Administrator and provide them with your correct address. If the Notice Administrator does not have your correct address, you may not receive notice of important developments in this action, or information about any settlements obtained for the benefit of the class.

WHERE YOU CAN FIND ADDITIONAL INFORMATION

This notice provides only a summary of this action and the claims asserted by Plaintiff. You may review a copy of the First Amended Complaint and other documents on the action by visiting the following website:
_____.

QUESTIONS? Visit _____ .com, or call toll-free _____ . You may also contact class counsel.

PLEASE DO NOT CONTACT THE COURT OR THE OFFICE OF THE COURT CLERK ABOUT THIS NOTICE.

07/05/2018