

CLERK'S OFFICE U.S. DIST. COURT
AT HARRISONBURG, VA
FILED

December 12, 2024

Laura A. Austin, Clerk
BY: K. Lokey

DEPUTY CLERK

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION**

WENDY PRINCE, individually and on
behalf of all others similarly situated,

Plaintiff,

Civil Action No. 5:22-cv-00035-EKD

v.

**JOHNSON HEALTH TECH TRADING,
INC., et al.**,

Defendants.

**ORDER GRANTING PLAINTIFF'S UNOPPOSED MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION SETTLEMENT AND NOTICE PLAN, AND TO
APPOINT CLASS REPRESENTATIVE AND CLASS COUNSEL**

This matter is before the Court on Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement and Notice Plan, and to Appoint Class Representative and Class Counsel ("Motion"), including approval of the settlement reached between Plaintiff Wendy Prince, for herself and on behalf of the Settlement Class, and Defendants Johnson Health Tech Trading, Inc., and Johnson Health Tech Retail, Inc. ("Defendants"), for consideration of whether the Settlement reached by the parties should be preliminarily approved, the proposed Settlement Class preliminarily certified, the proposed plan for notifying the Settlement Class should be approved, and the proposed Class Representative and Class Counsel should be approved.

Having reviewed the proposed Settlement, together with its exhibits, and based upon the relevant papers and all prior proceedings in this matter, the Court has determined the proposed Settlement satisfies the criteria for preliminary approval, the proposed Settlement Class should be preliminarily certified, the proposed notice plan should be approved, and the proposed Class

Representative and Class Counsel should be approved.¹ Accordingly, good cause appearing in the record, Plaintiffs' Motion is GRANTED, and it is hereby ORDERED that:

Provisional Certification of the Settlement Class

(1) The Court provisionally certifies the following Settlement Class:

All persons in the United States of America who purchased a Horizon treadmill during the time period from June 9, 2018, through November 9, 2020, primarily for personal, family, or household purposes, and not for resale. Excluded from the Class are: Defendants and their officers, directors and lawyers; Proposed Class Counsel and their partners, associates, and lawyers; and judicial officers and their immediate family members and associated Court staff assigned to this case.

This Settlement Class is provisionally certified for purposes of settlement only.

(2) The Court determines that for settlement purposes the proposed Settlement Class meets all the requirements of Federal Rule of Civil Procedure 23(a) and (b)(3), namely that the class is so numerous that joinder of all members is impractical; that there are common issues of law and fact; that the claims of the Class Representative are typical of absent Class Members; that the Class Representative will fairly and adequately protect the interests of the Class as she has no interests antagonistic to or in conflict with the Class and have retained experienced and competent counsel to prosecute this matter; that common issues predominate over any individual issues; and that a class action is the superior means of adjudicating the controversy.

(3) Plaintiff Wendy Prince is designated and appointed as the Class Representative.

(4) The following lawyers are designated as Class Counsel pursuant to Fed. R. Civ. P. 23(g): W.B. Markovits, Terence R. Coates, and Justin C. Walker of Markovits, Stock & DeMarco, LLC; Gary M. Klinger and Nick Suciu III of Milberg Coleman Bryson Phillips Grossman, PLLC;

¹ Unless otherwise indicated, capitalized terms used herein have the same meaning as in the Settlement Agreement attached as Exhibit A to the Declaration of W.B. Markovits in support of Plaintiff's Motion.

and Malissa Lambert Giles of Giles & Lambert, P.C. The Court finds that these lawyers are experienced and will adequately protect the interests of the Settlement Class.

Preliminary Approval of the Proposed Settlement

(5) Upon preliminary review, the Court finds the proposed Settlement is fair, reasonable, adequate, and otherwise meets the criteria for approval, and warrants issuance of notice to the Settlement Class. Accordingly, the proposed Settlement is preliminarily approved.

Final Fairness Hearing

(6) A Final Fairness Hearing shall take place before the Court on July 14, 2025 at 10:00 a.m. before the Honorable Elizabeth K. Dillon, Chief United States District Court Judge, in Courtroom 1, Richard H. Poff United States Courthouse, 210 Franklin Road Southwest, Roanoke, VA 24011 to determine, among other things, whether: (a) the proposed Settlement Class should be finally certified for settlement purposes pursuant to Federal Rule of Civil Procedure 23; (b) the Settlement should be finally approved as fair, reasonable and adequate and, in accordance with the Settlement's terms, all claims in the First Amended Complaint should be dismissed with prejudice; (c) Settlement Class Members should be bound by the releases set forth in the Settlement; (d) the proposed Final Approval Order and Judgment should be entered; (e) the application of Class Counsel for an award of attorneys' fees, costs, and expenses should be approved; and (f) the application for a Service Award should be approved. Any other matters the Court deems necessary and appropriate will also be addressed at the hearing.

(7) Class Counsel shall submit their application for fees, costs, and expenses, and the application for a Service Award, 14 days before the Final Fairness Hearing. Objectors, if any, shall file any objections within 60 days of the Notice Date. By no later than 7 days prior to the Final Fairness Hearing, responses shall be filed, if any, to any filings by objectors, and any replies in

support of final approval of the Settlement and/or Class Counsel's application for attorneys' fees, costs, and expenses and for Service Award shall be filed.

(8) Any Settlement Class Member that has not timely and properly excluded itself from the Settlement Class in the manner described below, may appear at the Final Fairness Hearing in person or by counsel and be heard, to the extent allowed by the Court, regarding the proposed Settlement; provided, however, that no Settlement Class Member that has elected to exclude itself from the Settlement Class shall be entitled to object or otherwise appear, and, further provided, that no Settlement Class Member shall be heard in opposition to the Settlement unless the Settlement Class Member complies with the requirements of this Order pertaining to objections, which are described below.

Administration

(9) Simpluris is appointed as the Settlement Administrator, with responsibility for Claims Administration, the Notice Program, and all other obligations of the Claims Administrator as set forth in the Settlement. The Settlement Administrator's fees, as well as all other costs and expenses associated with notice and administration, will be paid out of the Common Fund, as provided in the Settlement.

Notice to the Class

(10) The Notice Program set forth in the Settlement, including the forms of notice set forth therein, as well as the notice forms attached as exhibits to the Settlement Agreement, satisfy the requirements of Federal Rule of Civil Procedure 23 and due process, and thus are approved. Non-material modifications to the exhibits may be made without further order of the Court. The Settlement Administrator is directed to carry out the Notice Program in conformance with the Settlement and to perform all other tasks that the Settlement requires.

(11) The Court finds that the form, content, and method of giving notice to the Settlement Class as described in the Settlement and exhibits: (a) constitute the best practicable notice to the Settlement Class; (b) are reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the action, the terms of the proposed Settlement, and their rights under the proposed Settlement; (c) are reasonable and constitute due, adequate, and sufficient notice to those persons entitled to receive notice; and (d) satisfy the requirements of Federal Rule of Civil Procedure 23, the constitutional requirement of due process, and any other legal requirements. The Court further finds that the notice is written in plain language, uses simple terminology, and is designed to be readily understandable by Settlement Class Members.

Exclusions from the Class

(12) Any Settlement Class Member that wishes to be excluded from the Settlement Class must complete and send to the Settlement Administrator a letter stating: “I want to be excluded from the Settlement Class in *Prince v. Johnson Health Tech Trading, Inc. et al.*, Case No. 5:22-CV-00035-EKD.” The Opt-Out Form or request for exclusion must be sent to the Settlement Administrator at the address below so that it is received no later than March 31, 2025.

**CLASS ACTION OPT-OUT/OBJECTION
HORIZON TREADMILL SETTLEMENT CLAIMS ADMINISTRATOR
PO BOX 25415
SANTA ANA, CA 92799**

If the Settlement Class Member fails to provide all of the required information on or before the deadlines specified in the Settlement and fails to cure any deficiency within the time allowed in the Settlement, then the attempt to opt out shall be invalid and have no legal effect, and the Settlement Class Member shall be bound by the Settlement, including the releases, if finally approved.

(13) All Settlement Class Members who submit valid and timely notices of their intent

to be excluded from the Settlement shall not receive any benefits of or be bound by the terms of the Settlement. Any Settlement Class Member that does not timely and validly exclude itself from the Settlement shall be bound by the terms of the Settlement. If final judgment is entered, any Settlement Class Member that has not submitted a timely, valid written notice of exclusion from the Settlement (in accordance with the requirements of the Settlement) shall be bound by all subsequent proceedings, orders and judgments in this matter, the Settlement, including but not limited to the releases set forth in the Settlement, and the Final Approval Order and Judgment.

(14) The Settlement Administrator shall provide the parties with copies of all opt-out notifications promptly upon receipt, and a final list of all that have timely and validly excluded themselves from the Settlement Class in accordance with the terms of the Settlement, which Class Counsel may move to file under seal with the Court no later than twenty (20) days prior to the Final Fairness Hearing.

Objections to the Settlement

(15) A Settlement Class Member that complies with the requirements of this Order may object to the Settlement, the request of Class Counsel for an award of attorneys' fees, costs, and expenses, and/or the request for a Service Award.

(16) No Settlement Class Member shall be heard, and no papers, briefs, pleadings, or other documents submitted by any Settlement Class Member shall be received and considered by the Court, unless the objection is mailed first-class postage prepaid to the Settlement Administrator, the Clerk of Court, Class Counsel and Defendants' Counsel at the addresses listed in the Notice, and postmarked no later than the Objection deadline, which shall be 60 days from the Notice date, as specified in the Notice. Objections shall not exceed twenty-five (25) pages. For the objection to be considered by the Court, the objection shall set forth:

- (a) the full name, address, telephone number, and email address of the objector;
- (b) the serial number(s) for the objector's Treadmill(s);
- (c) a written statement of all grounds for the objection accompanied by any legal support for such objection;
- (d) copies of any papers, briefs, or other documents on which the objection is based;
- (e) a list of all cases in which the objector and/or objector's counsel had filed or in any way participated in—financially or otherwise—objecting to a class action settlement in the preceding five years;
- (f) the name, address, email address, and telephone number of all attorneys representing the objector;
- (g) a statement indicating whether the objector and/or the objector's counsel intends to appear at the Fairness Hearing, and, if so, a list of all persons, if any, who will be called to testify in support of the objection; and
- (h) the objector's signature.

(17) In addition, any Settlement Class Member that objects to the proposed Settlement must make itself available to be deposed regarding the grounds for its objection and must provide along with its objection the dates when the objector will be available to be deposed during the period from when the objection is filed through the date five days before the Final Fairness Hearing.

(18) Any Settlement Class Member that fails to comply with the provisions in this Order will waive and forfeit any and all rights to object, and shall be bound by all the terms of the Settlement, this Order, and by all proceedings, orders, and judgments, including, but not limited to, the releases in the Settlement, if finally approved. Any Settlement Class Member who both

objects to the Settlement and opts out will be deemed to have opted out and the objection shall be deemed null and void.

Claims Process and Distribution Plan

(19) The Settlement establishes a process for assessing and determining the validity and value of claims and a methodology for providing benefits to Settlement Class Members that submit a timely, valid Claim Form. The Court preliminarily approves this process.

(20) Settlement Class Members that qualify for and wish to submit a Claim Form shall do so in accordance with the requirements and procedures specified in the Notice and the Claim Form. If the Settlement is finally approved, all Settlement Class Members that qualify for any benefit under the Settlement but fail to submit a claim in accordance with the requirements and procedures specified in the Notice and Claim Form shall be forever barred from receiving any such benefit, but will in all other respects be subject to and bound by the provisions of the Settlement, including the releases included in the Settlement, and the Final Approval Order and Judgment.

Termination of the Settlement and Use of this Order

(21) This Order shall become null and void and shall be without prejudice to the rights of the Parties, all of which shall be restored to their respective positions existing immediately before this Court entered this Order if the Settlement is not finally approved by the Court or is terminated in accordance with the terms of the Settlement. In such event, the Settlement shall become null and void and be of no further force and effect, and neither the Settlement (including any Settlement-related filings) nor the Court's orders, including this Order, relating to the Settlement shall be used or referred to for any purpose whatsoever.

(22) If the Settlement is not finally approved or there is no Effective Date under the terms of the Settlement, then this Order shall be of no force or effect; shall not be construed or

used as an admission, concession, or declaration by or against Defendants of any fault, wrongdoing, breach, or liability; shall not be construed or used as an admission, concession, or declaration by or against the Class Representative that her claims lack merit or that the relief requested is inappropriate, improper, or unavailable; and shall not constitute a waiver by any party of any defense (including without limitation any defense to class certification) or claims it may have in this litigation or in any other lawsuit.

Stay of Proceedings

(23) Except as necessary to effectuate this Order, this matter and any deadlines set by the Court in this matter are stayed and suspended pending the outcome of the Final Fairness Hearing and issuance of the Final Approval Order and Judgment, or until further order of this Court.

Continuance of Final Fairness Hearing

(24) The Court reserves the right to adjourn or continue the Final Fairness Hearing and related deadlines without further written notice to the Settlement Class. If the Court alters any of those dates or times, the revised dates and times shall be posted on the website maintained by the Settlement Administrator.

Actions by Settlement Class Members

(25) The Court stays and enjoins, pending Final Approval of the Settlement, any actions, lawsuits, or other proceedings brought by Settlement Class Members against Defendants concerning the Released Claims.

Summary of Deadlines

(26) The Settlement, as preliminarily approved in this Order, shall be administered according to its terms pending the Final Fairness Hearing. Deadlines arising under the Settlement

and this Order include but are not limited to the following:

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| Settlement Administrator Sends CAFA Notice Required by 28 U.S.C. § 1715(b) | 10 days after Filing of Motion for Preliminary Approval Motion Papers, including Settlement Agreement |
| Grant of Preliminary Approval | |
| Defendants to Provide Settlement Administrator with data for Settlement Class Members | 14 days after Preliminary Approval Order |
| Settlement Administrator to send Notice Pursuant to Settlement Agreement and post the same to the Settlement Website (“Notice Date”) | 35 days after Defendants Provide Settlement Class Member data to Settlement Administrator |
| Class Counsel’s Motion for Attorneys’ Fees, Litigation Expenses and Class Representative Service Award to be Filed | 46 days after the Notice Date |
| Objection Deadline | 60 days after the Notice Date |
| Opt-Out Deadline | 60 days after the Notice Date |
| Claims Deadline | 90 days after the Notice Date |
| Settlement Administrator to File Declaration of Compliance and Statement Regarding Notice Provided | 30 days after the Claims Deadline |
| Settlement Administrator to Have Evaluated Claims, sent Claim Denials, and Reported to Counsel | 30 days after the Claims Deadline |
| Settlement Administrator to Provide Opt-Out Information to Parties’ Counsel | 30 days after the Claims Deadline |
| Final Fairness Hearing | |
| Motion for Final Approval Hearing and Supporting Documents to be Filed and Served | 14 days prior to Fairness Hearing |
| Final Fairness Hearing | At least 150 days after the Notice Date |
| Class Counsel to Reply to Any Objections | 7 days before the Fairness Hearing |
| Final Approval | |
| Effective Date | 30 days after Final Approval Granted |
| Settlement Administrator to Pay Attorneys’ Fees and Service Awards | 30 days after Final Approval Granted |

It is so ORDERED.

Entered: December 12, 2024.

/s/ Elizabeth K. Dillon

Elizabeth K. Dillon
Chief United States District Judge