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.

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

This Class Action Settlement Agreement (the "Agreement") is made and entered effective November 6, 2024, by and among, Wendy Prince ("Plaintiff" and "Proposed Class Representative"), on behalf of herself and the Settlement Class (defined below), and Johnson Health Tech Trading, Inc., and Johnson Health Tech Retail, Inc.[1] ("Horizon" or "Defendants"). Plaintiff and Defendants are referred to collectively as the "Parties" or the "Settling Parties," and each individually as a "Party."

This Agreement is intended to resolve and settle the case captioned *Wendy Prince v. Johnson Health Tech Trading, Inc. et al.,* Civil Action No. 5:22-CV-00035, currently pending in the United States District Court for the Western District of Virginia (the "Lawsuit") fully and finally. In this Agreement, any capitalized term not immediately defined is defined in Section III below.

[1] Prior defendant Johnson Health Tech, Inc. is, according to Defendants, a non-existent entity and therefore has been dismissed by stipulation of the parties. (Doc. 76).

I. THE LAWSUIT AND ITS PROPOSED RESOLUTION

1. On June 9, 2022, Plaintiff and Proposed Class Representative Wendy Prince filed a complaint against Defendants, alleging that Defendants misrepresented horsepower attributes in the advertising, marketing and sale of their Horizon treadmills. (Doc. 1, Complaint). Plaintiff asserted claims for: (1) breach of express warranty (nationwide class); (2) breach of express warranty under the Magnuson-Moss Warranty Act (nationwide class); (3) breach of express warranty (Virginia class); (4) breach of implied warranty (Virginia class); (5) breach of warranty under the Magnuson-Moss Warranty Act (Virginia class); (6) negligent misrepresentation; (7) fraud (nationwide or, alternatively, Virginia class); and (8) violation of the Virginia Consumer Protection Act (Virginia class).

2. On July 5, 2022, Plaintiff filed a First Amended Class Action Complaint (Doc. 7), adding alternative nationwide classes for breach of implied warranty (Count 4) and breach of implied warranty under the Magnuson-Moss Warranty Act (Count 5), as well as constructive fraud (Virginia class – Count 6), and dropping prior claims for negligent misrepresentation and fraud.

3. On July 22, 2022, the Defendants filed a motion to dismiss. (Doc. 16). On December 15, 2022, after full briefing, the Court heard oral argument, and on January 31, 2023, issued an Order (Doc. 46) granting in part and denying in part Defendants' motion.

4. On February 15, 2023, Defendants filed a motion for a certificate of appealability and to stay proceedings. (Doc. 47). After briefing, on May 1, 2023, this was denied. (Doc. 53).

5. On February 29, 2024, Plaintiff filed a motion to certify the class (Doc. 65), which was withdrawn pursuant to an Order issued on June 21, 2024. (Doc. 71).

6. On July 29, 2024, the Parties filed an agreed motion to stay the Lawsuit pending mediation and settlement efforts (Doc. 72), which the Court granted on August 8, 2024. (Doc. 73).

7. The Parties have engaged in extensive settlement efforts over the course of months, aided in part by informal discovery regarding class size and composition. These efforts led to an agreement in principle on September 20, 2024.

8. Plaintiff and Proposed Class Counsel have thoroughly reviewed and analyzed this case, including but not limited to, through informal discovery, discussions with and opinions from experts in electrical engineering and price premium analysis, and review of applicable law.

9. The Parties to this Agreement have now reached an agreement providing for a resolution of all claims that have been or could have been brought in the Lawsuit against Defendants on behalf of the Plaintiff and the Settlement Class Members.

10. Plaintiff and Proposed Class Counsel believe the Settlement is fair, adequate, reasonable, and in the best interest of the Settlement Class Members, considering the benefits provided to the Settlement Class Members through the terms of the Settlement, the risks of continued litigation and possible trial and appeals, and the length of time and the costs that would be required to complete the litigation.

11. Defendants have at all times disputed, and continue to dispute, Plaintiff's allegations in the Lawsuit and deny any wrongdoing and any liability for all the claims that have or could have been raised in the Lawsuit by Plaintiff and/or the Settlement Class Members. Nonetheless, Defendants believe that the comprehensive resolution of the claims in the Lawsuit as provided in this Agreement will avoid the substantial costs, uncertainty and disruptions of continued litigation, including potential trial and appeals, and have concluded that it is desirable that the claims against them be settled and dismissed on the terms reflected in this Agreement.

12. The Parties understand, acknowledge, and agree that this Agreement constitutes the compromise of disputed claims and that it is their mutual desire and intention that the Lawsuit be

settled and dismissed, on the merits and with prejudice, and that the Released Claims be finally and fully settled and dismissed, subject to and according to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, without any concession by Plaintiff that her claims lack merit, and without any concession by Defendants of any liability or wrongdoing or lack of merit in their defenses, it is hereby AGREED by and between the Parties, subject to approval by the Court pursuant to Rule 23 of the Federal Rules of Civil Procedure, that, in consideration for the benefits flowing to the Settlement Class and the Parties, the Lawsuit and all Released Claims, as defined below, shall be compromised, settled, acquitted, and dismissed with prejudice, on the following terms and conditions:

II. NO ADMISSION OF WRONGDOING AND CONDITIONAL NATURE OF THIS AGREEMENT

13. Defendants do not admit any wrongdoing, fault, liability, or damage to Plaintiff or Class Members. Nor do Defendants admit that they engaged in any wrongdoing or committed any violation of law. Defendants maintain that they have meritorious defenses to the Lawsuit. In view, however, of the uncertainty and risk of the outcome of any litigation, the difficulties and substantial expense and length of time necessary to defend the proceeding—including potentially through trial, post-trial motions, and appeals—and to eliminate the burden and expense of further litigation, Defendants wish to settle the Lawsuit and to put the claims alleged in the Lawsuit to rest finally and forever, without in any way acknowledging any wrongdoing, fault, liability, or damage to Plaintiff. The Settlement and this Agreement represent a compromise of disputed claims. The arm's-length negotiations, discussions, and communications in connection with or leading up to and including the Settlement are not and shall not be construed as admissions or concessions by any of the Parties, either as to any liability or wrongdoing or as to the merits of any claim or

defense, regardless of whether this Agreement becomes effective.

14. This Agreement and all associated exhibits or attachments are made for the sole purpose of settling the Lawsuit and are made in compromise of disputed claims. Because this Agreement settles the action on a class-wide basis, it must receive preliminary and final approval from the Court. Accordingly, the Settling Parties enter into this Agreement on a conditional basis. If the Court does not enter the Final Approval Order, the proposed judgment does not become a final judgment for any reason, or the Effective Date does not occur, this Agreement shall be deemed null and void *ab initio*; it shall be of no force or effect whatsoever; it shall not be referred to or used for any purpose whatsoever; and the negotiation, terms, and entry of the Agreement shall remain subject to Rule 408 of the Federal Rules of Evidence and any analogous federal or state court rules of evidence or substantive law.

15. If the Court alters any of the terms of this Agreement to the material and substantial detriment of Plaintiff or Defendants, at the sole discretion of each adversely affected Party, this Agreement shall be deemed null and void *ab initio* and shall be of no force or effect whatsoever. To exercise this right, the Party must inform the Court, the other Party, and the Settlement Administrator, in writing, of the exercise of this right within ten (10) days after any such alteration by the Court.

16. This Agreement and all associated exhibits or attachments, and any and all negotiations relating to it, shall not be admissible in the Lawsuit, or in any other action or legal proceeding, in any manner whatsoever, except as necessary: (a) to enforce the terms of this Agreement, including to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, accord and satisfaction, good-faith settlement, judgment bar or reduction, or any theory of claim or issue preclusion or similar defense or counterclaim; or (b) in

connection with Third-Party Claims.

III. DEFINITIONS

As used in this Agreement, the following terms have the corresponding definitions below:

17. "Administration and Notice Expenses" means reasonable fees and expenses incurred by the Settlement Administrator for the: (1) mailing (including postage), emailing, publication, and other dissemination of the Settlement Notice; (2) receipt and adjudication of claims submitted by Class Members for benefits under this Settlement, including the costs of administering a Settlement Website for the review of the Settlement Notice and submission of claims; (3) preparation of status reports at the request of the Court or in preparation for a hearing or conference with the Court; (4) receipt and processing of Opt-Out Requests submitted by Class Members who wish to exclude themselves from the Settlement Class; and (5) other reasonable costs of notice and claims administration agreed to by the Parties.

18. "Agreement" means this Class Action Settlement Agreement and all exhibits attached to, and incorporated by reference into, it.

19. "Amended Complaint" means the First Amended Class Action Complaint filed by Plaintiff on July 5, 2022 (Doc. 7).

20. "Attorneys' Fees and Expenses" means the amount of any attorneys' fees and reimbursement of litigation costs awarded to Class Counsel under their Fee Application.

21. "CAFA Notice" means a notice of the proposed Settlement in compliance with the requirements of the Class Action Fairness Act, 28 U.S.C. § 1711 et seq. ("CAFA"), to be served on the appropriate state official in each state where a Class Member resides and the appropriate federal official. The Settlement Administrator shall provide a CAFA Notice on behalf of Defendants.

22. "Claimant" means a Class Member who submits a valid and timely Claim Form.

23. "Claims Deadline" means 90 days after the Notice Date.

24. "Claim Form" or "Claim Forms" means the forms to be approved by the Court as part of the Preliminary Approval Order and to be submitted to the Settlement Administrator by Class Members who wish to make a claim or receive a benefit in accordance with Section VI of this Agreement.

25. "Class" means 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.

26. "Class Period" means June 9, 2018 through November 9, 2020.

27. "Class Member" means any Person who is a member of the Settlement Class and who does not exclude himself, herself, or itself from the Settlement Class in the manner and time prescribed by the Court in the proposed Preliminary Approval Order.

28. "Class Representative" means Plaintiff Wendy Prince.

29. "Common Fund" means the non-reversionary total of Six Hundred Thousand Dollars ($600,000) to be paid by Defendants to the Settlement Administrator within 30 days of the Effective Date. Notwithstanding the foregoing, following Preliminary Approval Defendants will advance from the Common Fund up to Seventy Thousand Dollars ($70,000) for notice and claims administration expenses incurred prior to the Effective Date, and such reimbursement shall reduce the Common Fund to be paid by Defendants.

30. "Court" means the United States District Court for the Western District of Virginia, Harrisonburg Division.

31. "Defendants" means Johnson Health Tech Trading, Inc., and Johnson Health Tech Retail, Inc., and their respective parent corporations, affiliates, direct and indirect subsidiaries, predecessors, successors, assigns, anyone acting or purporting to act on their behalf, and all their current or former board members and executives.

32. "Effective Date" means the first date that is three business days after all the following have occurred: (a) the Court has entered an order granting final approval of the Settlement in accordance with the terms of this Agreement; (b) the time for any challenge to the Settlement, both in the Court and on appeal, has lapsed; and (c) the Settlement has become final, either because no timely challenge was made to it or because any timely challenge has been finally adjudicated and rejected. For purposes of this Section, an "appeal" shall not include any appeal that concerns solely the issue of Class Counsel's request for attorneys' fees or costs, Administration and Notice Expenses, and/or a Service Award to the Class Representative.

33. "Email Notice" means the notice regarding the Settlement to be sent by e-mail, which is attached hereto as **Exhibit A**, subject to approval or revision by the Court as part of the Preliminary Approval Order.

34. "Final Fairness Hearing" means the final hearing, to be held on or about 150 days after the Notice Date or as soon thereafter as practicable: (a) to determine whether to grant final approval to (i) the certification of the Settlement Class, (ii) the designation of the Class Representative as the representative of the Settlement Class, (iii) the designation of Class Counsel as counsel for the Settlement Class, and (iv) the Settlement; (b) to rule on Class Counsel's Fee Application; and (c) to consider whether to enter the Final Approval Order.

35. "FAQ" means the proposed Frequently Asked Questions and Answers form, attached hereto as **Exhibit D**, to be approved by the Court as part of the Preliminary Approval Order and posted on the Settlement Website in accordance with this Agreement. In addition, the FAQ form will be emailed or mailed to Class Members who contact the Settlement Administrator by telephone or email and request a Claim Form.

36. "Fee Application" means the application to be filed by Class Counsel no later than 14 days prior to the Objection Deadline by which they will seek an award to be paid out of the Common Fund for attorneys' fees and reimbursement of costs incurred by them in prosecuting the Lawsuit, as well as a Service Award to be paid to the Class Representative.

37. "Final Approval Motion" means the motion and accompanying documents to be filed by Class Counsel no later than 14 days prior to the Final Fairness Hearing by which they will seek final approval of the Settlement.

38. "Final Approval Order" means the proposed Order Granting Final Approval to the Class Action Settlement and Entry of Final Judgment, to be entered by the Court following the Final Fairness Hearing.

39. "Final Void Date" means the final void date for reissued checks, which shall be no later than 240 days following initial distribution.

40. "Lawsuit" means the case captioned *Wendy Prince v. Johnson Health Tech Trading, Inc. et al.,* Civil Action No. 5:22-CV-00035, currently pending in the United States District Court for the Western District of Virginia.

41. "Long Form Notice" means the written notice substantially in the form of **Exhibit B** to this Settlement Agreement subject to approval or revision by the Court as part of the Preliminary Approval Order.

42. "Notice and Administration Expenses" means the expenses incurred for all notice and administration performed by the Settlement Administrator.

43. "Notice of Claim Denial" means the form that the Settlement Administrator will send, by email or first-class United States Mail, to each Person who has submitted a Claim Form that the Settlement Administrator has determined not to be a Valid Claim.

44. "Notice Data" means the Class Member identifying information obtained from Defendants and third-party retailers. Defendants shall assist in obtaining such identifying information from third-party retailers, or in having third-party retailers provide notice. If warranted, the Parties will seek an order from the Court requiring the third-party retailers to provide either information or notice.

45. "Notice Date" means the Court-ordered deadline by which the Settlement Administrator and any third parties must complete the emailing or mailing of Settlement Notice to Class Members, which shall be no later than 35 days after Settlement Administrator has received the Notice Data from the Defendants and third parties.

46. "Notice Plan" means the plan for providing Settlement Notice to members of the Class, as set forth in Section VII of this Agreement.

47. "Objection Deadline" means the Court-ordered deadline by which members of the Settlement Class must file any written objection or opposition to this Agreement or any part or provision of this Agreement, as set forth in Section VIII, which shall be 60 days from the Notice Date.

48. "Opt-Out Request" means a valid written request submitted to the Settlement Administrator, pursuant to the provisions of Section VIII of this Agreement, indicating that the Class Member wishes to be excluded from the Settlement.

49. "Opt-Out Request Deadline" means the Court-ordered deadline by which members of the Settlement Class must deliver, by mail or electronically, an Opt-Out Request pursuant to the provisions of Section VIII of this Agreement, which shall be 60 days from the Notice Date.

50. "Parties" means the parties to this Agreement, Plaintiff and Defendants.

51. "Person" means any natural person, including his or her beneficiaries, heirs, assigns, or executors, or any legal entity, including its predecessors, successors, affiliates, or assigns.

52. "Plaintiff" means the Plaintiff asserting claims in the Lawsuit: Wendy Prince.

53. "Preliminary Approval Order" means the proposed Order Granting Preliminary Approval to Class Action Settlement, to be entered by the Court in either its current form or with the Court's modifications.

54. "Proof of Purchase" means a valid serial number, the receipt for the Treadmill purchased, or other similar type of documentation evidencing the purchase of the Treadmill by the Class Member.

55. "Proposed Class Counsel" means Gary M. Klinger of Milberg Coleman Bryson Phillips Grossman, PLLC, Malissa Lambert Giles of Giles & Lambert, P.C., and W. B. Markovits, Terence Coates, and Justin Walker of Markovits, Stock & DeMarco, LLC.

56. "Proposed Class Representative" means Plaintiff Wendy Prince.

57. "Protective Order" means the agreed protective order entered by the Court (Doc. 58) that, in part, addresses the confidentiality of Class Members' identifying information.

58. "Publication Notice" means the proposed notice, if any, using the language of the Settlement Notice to the extent practicable, which is subject to approval by the Court as part of the Preliminary Approval Order and which will be published in accordance with the Notice Plan set

forth in Section VII of this Agreement.

59. "Released Claims" means, as to Plaintiff and all Class Members, all claims released under the release and waiver set forth in Section XI of this Agreement.

60. "Released Parties" or "Releasing Parties" for Defendants means Defendants, and each of their respective predecessors, successors, assigns, parents, subsidiaries, divisions, affiliates, departments, and any and all of their past, present, and future officers, directors, employees, stockholders, partners, servants, agents, successors, attorneys, representatives, insurers, reinsurers, subrogees, and assigns of any of the foregoing, and any retailers, dealers, or distributors that has sold a Treadmill to the Class.

61. "Released Parties" or "Releasing Parties" for Plaintiff means Plaintiff and all Class Members and each of their respective heirs, executors, representatives, agents, assigns, and successors.

62. "Service Award" means a reasonable award sought by application to and approved by the Court that is payable to Plaintiff from the Common Fund, for her role in and contribution to the Lawsuit, separate and apart from her Valid Claim.

63. "Settled Class Claims" means any and all claims or causes of action of every kind and description, in all U.S. states and territories, including any causes of action in law, claims in equity, complaints, suits or petitions, and any allegations of wrongdoing, demands for legal, equitable or administrative relief (including, but not limited to, any claims for injunction, rescission, reformation, restitution, disgorgement, constructive trust, declaratory relief, compensatory damages, consequential damages, penalties, exemplary damages, punitive damages, attorneys' fees, costs, interest or expenses) that the Releasing Party (Class) had or has (including, but not limited to, assigned claims and any and all "Unknown Claims" as defined below) that have

been or could have been asserted in the Lawsuit or in any other action or proceeding before any court, arbitrator(s), tribunal or administrative body (including but not limited to any state, local or federal regulatory body), regardless of whether the claims or causes of action are based on federal, state, or local law, statute, ordinance, regulation, contract, common law, or any other source, and regardless of whether they are known or unknown, brought or could have been brought, foreseen or unforeseen, suspected or unsuspected, or fixed or contingent, arising out of, or related or connected in any way to the alleged misrepresentations relating to continuous horsepower used to market, advertise, and sell Horizon treadmills.

64. "Settlement" means the settlement provided for in this Agreement.

65. "Settlement Administrator" means the third-party notice and administration provider agreed upon by the Parties and approved by the Court. The Parties have agreed upon Simpluris and will be seeking approval by the Court for its appointment.

66. "Settlement Class" means the Proposed Class Representative and the Class.

67. "Settlement Notice" means the proposed forms of notice, or such other forms as may be approved by the Court, which inform the Class Members of (a) the certification of the Class for Settlement purposes; (b) the date and location of the Final Fairness Hearing; and (c) the elements of the Settlement Agreement—all in accordance with Section VII of this Agreement.

68. "Settlement Website" means a website created by the Settlement Administrator to facilitate notice, the making of claims, and for other administrative purposes related to the Settlement, as detailed in Section VII of this Agreement.

69. "Settling Parties" means, collectively, Plaintiff and Defendants.

70. "Short Form Settlement Notice" means an abbreviated version of the Settlement Notice to be delivered as a postcard, using the language of the Settlement Notice to the extent

practicable, to be used where email notice is not delivered successfully, which is attached hereto as **Exhibit C**, subject to approval or revision by the Court as part of the Preliminary Approval Order.

71. "Third-Party Claims" means any case, lawsuit, or other claim that the Class may bring, formally or informally, against any other Person seeking recovery on another theory or based on other causes of action related to the subject matter of the Lawsuit.

72. "Treadmill(s)" means a Horizon treadmill sold to an original purchaser from June 9, 2018 through November 9, 2020, primarily for personal family, or household purposes, and not for resale.

73. "Valid Claim" means a Claim Form that (a) is timely submitted by a Class Member in accordance with the requirements of the Preliminary Approval Order, (b) is signed by that Class Member with a certification that the information is true and correct to the best of the Class Member's knowledge and recollection, (c) contains as necessary a Proof of Purchase, (d) is not fraudulent, and (e) otherwise contains all of the information for that Class Member to be eligible to receive the benefits provided in Section VI of this Agreement. Persons who receive direct notice either by email or mail are known Class Members as determined by inclusion in Defendants' records or the records of the third parties. The Parties agree that any such direct-notice Class Member who completes a Claim Form by entering the credentials provided to them by the Settlement Administrator or who provides said credentials on the mailed Claim Form shall not be required to provide a serial number or other Proof of Purchase; provided, however, that each Claim Form must contain credentials that can be used only once, and that the credentials must be sufficient for the Settlement Administrator to verify that the person submitting the claim is the Class Member to whom the direct notice was originally sent. Any claimant who completes a Claim

Form, either online through the settlement website or via mail that does not provide the credentials referenced above, must provide a valid Proof of Purchase. In the event that the same valid serial number is submitted by multiple Claimants, the original purchaser associated with that serial number shall be treated as having a Valid Claim. If it is not possible to determine the original purchaser conclusively after expending reasonable efforts to do so, then the Settlement Administrator shall use its judgment and treat only one Claimant as having a Valid Claim. In the event the same direct-notice credential is submitted by multiple Claimants, the Settlement Administrator shall use its judgment based on the information it has available and treat only one Claimant as having a Valid Claim.

IV. CONDITIONAL CERTIFICATION OF THE SETTLEMENT CLASS

74. For the purposes of implementing this Agreement and the Settlement, and for no other purpose, Defendants will not oppose the conditional certification of the Settlement Class on a nationwide basis. If for any reason this Agreement fails to become effective, Defendants' lack of opposition to certification of the nationwide Settlement Class shall be null and void, and the Parties shall return to their respective positions in the Lawsuit as those positions existed immediately before execution of this Agreement.

75. If for any reason this Agreement fails to become effective, neither this Agreement nor any document referred to or incorporated into it is or may be construed as an admission by Defendants of any fault, wrongdoing, or liability whatsoever. Nor should this Agreement be construed as an admission by Defendants that Plaintiff can serve as an adequate class representative, other than for settlement purposes, or that certification of any class is proper or permissible.

V. REQUIRED EVENTS: PRELIMINARY AND FINAL APPROVAL

76. Within 14 days of the execution of this Agreement, Plaintiff shall file with the Court a motion seeking entry of the Preliminary Approval Order, which shall:

a. Preliminarily approve the Settlement and this Agreement as fair, adequate, and reasonable to the Settlement Class;

b. Conditionally certify the Settlement Class as a nationwide class for the purpose of effectuating the Settlement;

c. Designate the Proposed Class Representative as the representative of the Settlement Class;

d. Designate Proposed Class Counsel as counsel for the Settlement Class;

e. Designate Simpluris as the Settlement Administrator and instruct the Settlement Administrator to perform the following functions in accordance with the terms of this Agreement, the Notice Plan, the Preliminary Approval Order, and the Final Approval Order:

i. No later than 35 days from receipt of the Notice Data, Settlement Administrator shall begin disseminating the various Settlement Notices pursuant to the Notice Plan, substantially in the forms provided in Section VII, to the extent applicable and practicable;

ii. No later than the Notice Date, Settlement Administrator shall establish the Settlement Website with information the Parties jointly agree to post concerning the nature of the case and the status of the Settlement, including relevant pleadings as available such as the Amended Complaint, papers in support of preliminary and final

approval of the Settlement, and Class Counsel's Fee Application, plus relevant orders of the Court, within two business days of filing. The Settlement Website shall be established before or concurrently with emailing or mailing the Settlement Notice or publishing Publication Notice;

iii. No later than the Notice Date, Settlement Administrator shall establish a toll-free telephone number that Class Members can call to request electronic or hard copies of the Claim Forms and FAQ be sent to them and to obtain additional information regarding the Settlement. This shall be accomplished before or concurrently with emailing or mailing the Settlement Notice or publishing Publication Notice;

iv. Beginning on the Notice Date, if deemed necessary, Settlement Administrator shall commence Publication Notice (through banner ads and social media) for the Settlement Class in the form and pursuant to the Notice Plan to which the Parties agree. The Publication notice shall continue for 30 consecutive days;

v. By 30 days after the Claims Deadline, the Settlement Administrator shall, receive, evaluate, and either approve as meeting the requirements of this Agreement or disapprove as failing to meet those requirements the Claim Forms submitted by Claimants;

vi. By 30 days after the Claims Deadline, the Settlement Administrator shall send, by email or first-class United States Mail, to each Person

who has submitted a Claim Form that the Settlement Administrator has determined not to be a Valid Claim, and which has not been challenged by Class Counsel, a Notice of Claim Denial. Such a person shall have 30 days from the date of transmission of a Notice of Claim Denial to cure the reason for any denial;

vii. By 30 days after the Claims Deadline, Settlement Administrator shall provide to Class Counsel the information set forth in Sections (e)(v) and (e)(vi), above, including: (a) a list of the names, addresses, email addresses, and other contact information of all Class Members who have submitted Claim Forms and whose Claim Forms the Settlement Administrator has determined to be Valid Claims; and (b) a separate list of the names addresses, email addresses, and other contact information of all Persons who have submitted Claim Forms and whose Claim Forms the Settlement Administrator has determined not to be Valid Claims, including the reason each Claim was rejected;

viii. Process requests for exclusion from the Settlement in accordance with Section VIII of this Agreement;

ix. Process objections to the Settlement in accordance with Section VIII of this Agreement; and

x. No later than 20 days before the Final Fairness Hearing, the Settlement Administrator shall provide to the Court, Defendants, and Class Counsel, a statement, under penalty of perjury, declaring:

(a) that it has effectuated notice in compliance with the terms set forth herein and report the preliminary number of claims submitted (in total and by category of benefit); (b) the total number of requests for exclusion received; (c) the total number of objections received; (d) the total number of claims adjudicated as Valid Claims (in total and by category of benefit); and (e) the total number of claims adjudicated not to be Valid Claims.

xi. Approve the Notice Plan and CAFA Notice, including the form, contents, and methods of notice to be given to the Class and the Settlement Class as set forth in Section VII of this Agreement, and direct the Settlement Administrator on behalf of the Defendant to provide, and cause to be provided, and to file with the Court a declaration of compliance with the Notice Plan set forth in Section VII of this Agreement (including the statement from the Settlement Administrator referenced in Section VIII).

xii. Establish procedures and schedule deadlines for Class Members to object to the Settlement or certification of the Settlement Class, to exclude themselves from the Settlement, and to submit Claim Forms to the Settlement Administrator, all consistent with Sections VII and VIII of this Agreement.

77. The deadlines established in the Preliminary Approval Order are:

a. Within 35 days of receipt of the Notice Data, the Settlement Administrator shall mail and email the initial Settlement Notices as required by Section

VII. The Settlement Administrator may also provide additional notice as provided by Section VII below.

b. At least 14 days prior to the Objection Deadline, Class Counsel shall file their Fee Application.

c. At least 14 days prior to the Objection Deadline, Class Counsel shall file a proposed Final Approval Order and Motion and Memorandum in Support of Final Approval.

d. Within 60 days of the Notice Date, any Class Member shall file objections with the Court and serve that filing on Class Counsel and Defendants. Objections must be in writing and must contain the following information:

i. the full name, address, telephone number, and email address of the objector;

ii. the serial number(s) for the objector's treadmill(s) or other Proof of Purchase, unless the objector received direct notice either by email or mail and therefore is not required to provide a serial number or other Proof of Purchase to make a Valid Claim as set forth above;

iii. a written statement of all grounds for the objection accompanied by any legal support for such objection;

iv. copies of any papers, briefs, or other documents on which the objection is based;

v. a list of all cases in which the objector and/or objector's counsel have filed or in any way participated in, financially or otherwise, any objection to a class action settlement in the preceding five years;

vi. the name, address, email address, and telephone number of all attorneys representing the objector;

vii. a statement indicating whether the objector and/or the objector's counsel intends to appear at the Final Fairness Hearing and, if so, a list of all persons, if any, who will be called to testify in support of the objection; and,

viii. the objector's signature.

This Section applies to all objections, including objections to certification of the Settlement Class, the designation of the Class Representative, the appointment of Class Counsel, the Settlement, this Agreement, or Class Counsel's Fee Application.

e. Within 60 days of the Notice Date, requests by Class Members to be excluded from the Settlement must be received by the Settlement Administrator. The Settlement Administrator must file a list of all exclusions (including Class Members submitting Opt-Out Requests and those objecting) with the Court no later than 20 days before the Final Fairness Hearing.

f. Within 60 days of the Notice Date, any Person or attorney seeking to appear at the Final Fairness Hearing must file with the Court and serve on Proposed Class Counsel and Defendants an entry of appearance in the Lawsuit and notice of intention to appear at the Final Fairness Hearing. This includes any person objecting to any or all of certification of the Settlement Class, designation of the Class Representative, appointment of Class Counsel, the

Settlement, the Agreement, or Class Counsels' Fee Application.

g. No later than 20 days before the Final Fairness Hearing, the Settlement Administrator shall file with the Court a declaration of compliance with the notice requirements set forth in Section VIII of this Agreement.

h. No later than seven (7) days of the Final Fairness Hearing, Class Counsel shall file their reply, if any, in support of the Settlement, and in response to any objections.

i. 90 days from the Notice Date shall be the Claims Deadline for all Class Members. All claims must be received by this date. Claims received after this date shall not be Valid Claims.

78. Defendants may, but are not required to, file a memorandum in support of the motion seeking entry of the Preliminary Approval Order.

79. At the Final Fairness Hearing, the Parties will jointly request the Court to enter the Final Approval Order that:

a. Grants final approval of the certification of the Settlement Class;

b. Designates the Class Representative as the representative of the Settlement Class and Class Counsel as counsel for the Settlement Class;

c. Grants final approval of the Settlement and this Agreement as fair, reasonable, and adequate to the Settlement Class;

d. Provides for the release of all Released Claims and enjoins Class Members from asserting, filing, maintaining, or prosecuting any of the Released Claims in the future;

e. Orders the dismissal with prejudice of all claims alleged in the Lawsuit, and incorporates the releases and covenant not to sue stated in this Agreement, with each of the Parties to bear its, his, or her own costs and attorney fees, except as provided in Section XII below;

f. Authorizes Defendants to honor Valid Claims approved by the Settlement Administrator as Valid Claims, or otherwise reviewed by Class Counsel and counsel for Defendants and determined to be Valid Claims; and

g. Preserves the Court's continuing jurisdiction over the administration of the Settlement and enforcement of this Agreement.

80. In addition, at the Final Fairness Hearing, Class Counsel will move the Court for entry of a separate order approving: (a) Service Awards; and (b) Attorneys' Fees and Expenses to Proposed Class Counsel in an amount to be determined by the Court consistent with the terms of this Agreement. Defendants will not oppose an Attorney Fee request of up to one-third of the Common Fund.

81. This Agreement will not be finalized or submitted to the Court for approval without the consent of and execution by Plaintiff and Defendants.

82. Plaintiff, Proposed Class Counsel, and Defendants will cooperate and make their best efforts to secure preliminary and final approval for and to effectuate the Settlement, including cooperating in drafting the documents necessary for preliminary and final approval and securing the prompt, complete, and final dismissal, with prejudice, of the Lawsuit. If the Court fails to enter either the Preliminary Approval Order or the Final Approval Order, Plaintiff, Proposed Class Counsel, and Defendants will use all reasonable efforts that are consistent with this Agreement to cure any defect identified by the Court. If, despite such efforts, the Court does not enter the

Preliminary Approval Order or Final Approval Order, the Parties will return to their positions in the Lawsuit as they were immediately prior to the execution of this Settlement Agreement and confer on a revised schedule for the completion of fact and expert discovery and class certification.

VI. BENEFITS AVAILABLE TO MEMBERS OF THE SETTLEMENT CLASS

83. To qualify for any benefits under this Agreement, a Claimant must timely submit to the Settlement Administrator a properly completed Claim Form. A Claim Form received on or before the Claims Deadline will be treated as timely. If the Class Member can establish excusable neglect for an untimely claim, with the agreement of the Parties, a benefit may still be provided.

84. Class Members will be able to submit claims electronically through the Settlement Website or by mail. The Settlement Administrator shall prepopulate the online Claim Form with all relevant information, such as name, address, email, model, and serial numbers, that is readily accessible. Class Members may edit or change prepopulated information.

85. Class Members who timely submit a Valid Claim are eligible for the following benefits:

a. A payment from the Common Fund remaining after payment of Attorney Fees and Expenses, Service Awards, and Notice and Administration Expenses, to be made following the Effective Date. The payment will be pro rata based upon the number of Valid Claims. Those Class Members whose payments are not cleared within one hundred eighty (180) calendar days after issuance (the "Void Date") will be ineligible to receive a cash settlement benefit and the Settlement Administrator will have no further obligation to make any payment from the Common Fund pursuant to this Agreement or otherwise to such Class Member. Checks may, at the

discretion of the Settlement Administrator, be reissued for a period up to 30 days following the Void Date. Any reissued check is void within 180 days of issuance or 60 days from the Void Date, whichever is sooner. Any funds that remain unclaimed or remain unused after the initial distribution and any reissuances will be distributed to Class Members who cashed the initial payment, on a pro rata basis, to the extent the cost of such redistribution is considered economical by the Settlement Administrator, Class Counsel, and Defendants. If such redistribution is not considered economical, or if unpaid funds remain after a second distribution, any unpaid funds will be donated *cy pres* as proposed by the Parties and approved by the Court to an appropriate non-profit organization.

b. In addition to any monetary payment described in 85(a), above, Class Members may choose one of the following:

(i) A maintenance package consisting of a treadmill lubrication kit and a fitness mat valued at $50.00; or

(ii) Two full months of a subscription to JRNY (mobile version), along with one JRNY tablet stand valued at $50.00.

86. The provisions of Section VI of this Agreement are subject to reasonable anti-fraud measures employed by the Settlement Administrator with the approval of the Parties.

87. Defendants will also provide the following relief relating to the allegations of the Complaint:

a. Agreed upon language, placement and prominence of a horsepower (HP) or continuous horsepower (CHP) disclaimer to be used—prospectively only—

on any website, marketing/advertising, manual, or product packaging that Defendants produce or display wherein the HP or CHP of a treadmill motor is stated. For purposes of 86(a), "prospectively" is defined as incorporating the agreed upon disclaimer into the next update to design or content made in the ordinary course of business starting 30 calendar days from the date of the Court's final approval of the Parties' settlement, without requiring an update for the sole purpose of changing any current CHP disclaimer. The specifics of the agreed-upon, prospective disclaimer requirements referenced in 86(a) are set forth in **Exhibit E**, attached.

b. An agreed-upon form of letter/email (**Exhibit F**, attached) that, within 30 calendar days from the date of the Court's final approval of the Parties' settlement, Defendants will provide to third-party retailers requesting that those retailers provide the disclaimer prospectively in conjunction with the retailers' motor CHP rating advertising for Horizon treadmills. Upon providing the letter/email to the retailer, Defendants' obligations under this provision will be fully and irrevocably discharged.

c. If Proposed Class Counsel believe Defendants are in breach of any of the provisions set forth in this paragraph, they shall be obligated to give Defendants reasonable notice and opportunity to cure following a "meet and confer" conference before seeking any related relief.

VII. SETTLEMENT NOTICE AND NOTICE PLAN

88. All decisions regarding notice and settlement administration shall be made jointly between Defendants and Proposed Class Counsel except as otherwise set forth in this Agreement.

The Parties and their counsel agree to cooperate in good faith in the notice and settlement administration process and to make reasonable efforts to control and minimize the costs and expenses as well as business disruption incurred in providing notice and in the execution and administration of the terms of this Settlement Agreement.

89. Proposed Class Counsel and counsel for Defendants shall have the ability to communicate with the Settlement Administrator without the need to include each other in each of those communications. Disputes, if any, shall be resolved by the Court. This includes any disputes over whether a particular Class Member is entitled to a particular benefit under Section VI of this Agreement.

90. On or before 35 days after receipt of the Notice Data:

a. The Settlement Administrator will send or cause to be sent a copy of the Email Notice by electronic mail, to every Class Member whose email address can reasonably be identified in Defendants' records or the records that third parties such as retailers, dealers, or distributors provide. If the Settlement Administrator can identify more email addresses for Class Members by performing an email address lookup or similar exercise, the Settlement Administrator may include such costs in the Administration and Notice Expenses so long as those costs do not result in those expenses exceeding the estimate provided by the Settlement Administrator. Any such electronic mail addresses are subject to the provisions of Section VIII below. All email addresses shall be subjected to an email validation process and invalid addresses shall not be sent an Email Notice.

b. For all Class Members whose email is either unknown or who did not

successfully receive the Email Notice as described above, supplemental direct notice by Short Form Settlement Notice may be included as a way to notice the subset of individual Class Members whose postal address is maintained by Defendants and third-party retailers.

c. If the above notices are deemed insufficient by the administrator, a digital media campaign or print publication through digital media may also be implemented within the terms of the estimated cost.

91. The estimated cost of notice (not including claims administration) is less than $65,000 (the cap), as reflected in a bid by Simpluris, the proposed Settlement Administrator.

92. With respect to third parties, if cooperation cannot be obtained voluntarily, through subpoena, or if one or more third parties requests, the Parties will agree to an order to be entered by the Court directing third parties either to:

i. Deliver to the Settlement Administrator their respective customer lists identifying Class Members and the names, addresses, telephone numbers, email addresses, purchase dates, and—to the extent the third-party has them—serial numbers for the Treadmills of Class Members. The Settlement Administrator shall treat a customer list provided to it pursuant to this Section as Confidential under the Stipulated Protective Order previously entered by the Court (Doc. 58) and the appropriate employees of the Settlement Administrator shall agree to the terms of that Protective Order.

ii. Provide the Email Notice, or Short Form Settlement Notice where email notice is not possible, to Class Members on their respective

customer lists. If requested, the Settlement Administrator shall reimburse a third-party for the reasonable cost of providing this notice and include such amount in the Administration and Notice Expenses. No later than 65 days after entry of Preliminary Approval any third-party providing Settlement Notice under this Section shall certify that it has done so by filing with the Court a declaration pursuant to 28 U.S.C. § 1746 substantially in a form to be approved by the Court as part of the Preliminary Approval Order. Nothing in this Section obligates payment for any third-party's compliance costs other than the cost of postage at no greater than the U.S. Postal Service's applicable rate for marketing mail.

iii. Proposed Class Counsel will serve the order on third parties and take reasonable steps to ensure timely compliance by third parties to allow a reasonable amount of time for Class Members to submit a Claim Form before the Claims Deadline. Non-cooperation by a third-party or late notice by a third-party is not good cause to adjust the Claims Deadline or to treat any untimely claim as a Valid Claim.

93. Within 14 days of the entry of the Preliminary Approval Order, Defendants will provide the Settlement Administrator with electronic data containing the contact information Defendants have for Class Members. Defendants will provide this information in an Excel-readable format unless Defendants and the Settlement Administrator agree on another format to facilitate providing Settlement Notice. The Settlement Administrator will maintain the information

and data provided to it by Defendants pursuant to this provision as Confidential under the terms of the Protective Order.

94. To facilitate the efficient administration of this Settlement, and to promote the provision of benefits pursuant to this Settlement, the Settlement Administrator will establish a Settlement Website that enables Class Members to:

a. Read the Settlement Notice and FAQ;

b. Complete, review, and submit a Claim Form online;

c. Print the Claim Form for completion and submission by the Class Member by mailing to the Settlement Administrator along with any required documentary support; and

d. View a toll-free telephone number Class Members may call to obtain general information about the Settlement and this Agreement.

95. The Settlement Administrator will not maintain the Claim Forms on the Settlement Website after the Claims Deadline passes. The Settlement Administrator shall maintain the Settlement Website through the Final Void Date.

96. The Parties agree that the Settlement Notice, Short Form Settlement Notice, FAQ, Claim Forms, any Publication Notice (if any), and Settlement Website will provide information sufficient to inform Class Members of: (a) the essential terms of this Agreement; (b) appropriate means for obtaining additional information regarding the Agreement and the Lawsuit; (c) appropriate information about the procedure for objecting to or excluding themselves from the Settlement, if they should wish to do so; and (d) appropriate means for and information about submitting a claim for benefits pursuant to the Settlement. The Parties also agree that the dissemination of the Settlement Notice, Short Form Settlement Notice, and the FAQ in the manner

specified in this Section VII satisfies the notice requirements of due process and Rule 23 of the Federal Rules of Civil Procedure.

97. On or about one week prior to the midpoint of the claim filing period the Settlement Administrator shall prepare for the review of the Parties a report reflecting claims made up to that time. The Settlement Administrator shall attempt to perform a cursory review of the claims made including performing a non-exhaustive programmatic deduplication and fraud review to give the parties an approximation of the current state of potentially approved and denied claims. The Parties understand that the report shall be an approximation and shall not be relied upon as a final product but rather a guide for use exclusively for the determination of the implementation of the claim stimulation notice. The Parties shall confer and within one week of receipt of the report, shall jointly direct the Settlement Administrator regarding completion of a claim stimulation notice which is contemplated to include a reminder email to class members who were sent the original email but for whom a claim has not been filed. Should the Parties agree that a claim stimulation notice is warranted, the Claims Administrator shall implement such notice within one week from receipt of the directive by the Parties.

98. Pursuant to this Agreement, Class Counsel will request the Court to approve, in the Preliminary Approval Order, the emailing and (to the extent email is unavailable or unsuccessful) direct mailing of the Short Form Settlement Notice and establishment of the Settlement Website, which will include the Settlement Notice, FAQ, the Claim Forms, and the Publication Notice all as set forth above in this Section VII, and the claim stimulation notice if the Parties agree it is warranted.

99. As soon as practicable, but no later than 10 days after Plaintiff files this Agreement in the Court, the proposed Settlement Administrator shall serve the CAFA Notice on behalf of the

Defendants as required by the notice provisions of the Class Action Fairness Act, 28 U.S.C. § 1715.

100. No later than 30 days after the Claims Deadline, the Settlement Administrator shall file with the Court a declaration of compliance with this Notice Plan, including a statement of (a) the number of Persons to whom the Class Notice was mailed and emailed for each source of records (i.e., the number of Persons to whom the Class Notice was mailed or emailed identified in records provided by Defendants and by each third-party providing records pursuant to this Section); and (b) the identity of each third-party that opted to undertake notice and certify compliance pursuant to Section VIII.

VIII. CLAIM ADMINISTRATION, EXCLUSION FROM THE SETTLEMENT CLASS, AND OBJECTIONS

101. Administration and Notice Expenses shall be paid from the Common Fund. Defendants shall not be responsible for any Administration and Notice Expense with the exception of up to Seventy Thousand Dollars ($70,000) that shall be advanced by the Defendant to the Settlement Administrator for Administration and Notice Expenses incurred following Preliminary Approval and before the Effective Date. Any such amounts paid will be subtracted from the Common Fund payment made by Defendants following the Effective Date and are non-refundable.

102. As soon as practicable and in any event no later than 30 days after the Claims Deadline, the Settlement Administrator will provide Defendants and Proposed Class Counsel with: the names, contact information, and other information submitted by Class Members who have submitted Opt-Out Requests, objections, or notices of intent to appear at the Final Fairness Hearing. The Settlement Administrator shall provide information pursuant to this Section in electronic form in Excel format or another format agreed on with Defendants or Proposed Class Counsel, respectively.

103. The period for Class Members to submit Claim Forms will commence with the first date a Settlement Notice, Short Form Settlement Notice, or Publication Notice is provided to any Class Member and remain open for 90 days.

104. The Settlement Administrator will reject a Claim Form that does not include all information required to make the Claim Form a Valid Claim. The Settlement Administrator will provide a Notice of Claim Denial, in a timely fashion and by the same means a Person submitted a Claim Form, to any Person who has not submitted a Valid Claim and will identify the reason(s) the Person has not submitted a Valid Claim. The Notice of Claim Denial will also notify such Persons that they have the right to have the Court review whether they have submitted a Valid Claim.

105. Any Person receiving a Notice of Claim Denial that his, her, or its Claim Form is not a Valid Claim who wishes to contest such denial must, within 30 days of the date of mailing or transmission of Notice of Claim Denial of a claim by the Settlement Administrator as described in Paragraph 104 above, submit to the Settlement Administrator a statement of the reasons contesting the grounds for the rejection of his, her, or its claim as well as provide supporting documentation as necessary. If a Person provides the required information to contest, the Settlement Administrator shall reevaluate the claim and approve the claim if the deficiency is cured. In the case of a dispute about whether the Person has submitted a Valid Claim the Settlement Administrator shall escalate the claim to Proposed Class Counsel and Counsel for the Defendants. If the claim remains unresolved, Proposed Class Counsel shall present the issue for review by the Court after certifying that Proposed Class Counsel, Defendants, and the Settlement Administrator have personally conferred and disagree about whether the claim is a Valid Claim.

106. No later than 20 days before the Final Fairness Hearing, the Settlement

Administrator will provide Defendants and Proposed Class Counsel a statement of the number of Valid Claims submitted at that point by Class Members. On request, the Settlement Administrator will provide particular Claim Forms and Opt-Out Requests. By the same deadline, the Settlement Administrator shall provide Defendants and Proposed Class Counsel with an accounting detailing the Administration and Notice Expenses incurred. Should the detailed accounting provided be submitted to the Court, Proposed Class Counsel and Defendants' counsel shall do so under seal. The Settlement Administrator shall provide information pursuant to this Section in electronic form in its native format or another format agreed on with Defendants or Proposed Class Counsel, respectively.

107. Proposed Class Counsel shall apply to the Court for an order approving or denying the Settlement Administrator's administrative determinations concerning the acceptance and rejection of Valid Claims and approving the Settlement Administrator's Administration and Notice Expenses.

108. All proceedings with respect to the administration, processing, and determination of claims described in this Agreement and the determination of all cases or controversies relating thereto, including disputed questions of law and fact with respect to whether any claim is a Valid Claim, are subject to the jurisdiction of the Court. All persons interested in such determinations submit to the personal jurisdiction of the Court.

109. Opt-Out Requests. Class Members other than the Proposed Class Representatives may opt out of the Settlement by submitting an Opt-Out Request to the Settlement Administrator no later than 60 days from the Notice Date. To be valid, an Opt-Out Request must contain the name, company name (if applicable), address, email address, telephone number, and serial number(s) or other identifying information of the Treadmill(s). Each Class Member seeking

exclusion from the Settlement must personally sign the Opt-Out Request. No Opt-Out Request may be signed electronically. No Class Member may opt out by a request signed by an actual or purported agent or attorney acting on behalf of a group of Class Members. No Opt-Out Request may be made on behalf of a group of Class Members. Class Members who do not submit a timely, personally signed, valid Opt-Out Request will be bound by the Settlement and this Agreement, including the release of Released Claims. Class Members who timely submit a valid, personally signed Opt-Out Request will have no further role in this Settlement and will not be bound by this Agreement; accordingly, such Class Members will not be permitted to assert an objection to the Settlement or this Agreement and will receive no benefit described in Section VI of this Agreement. The Settlement Notice, the Short Form Settlement Notice, the FAQ, and the Publication Notice (if any) will advise Class Members of their ability to opt out of the Settlement and of the consequences of opting out of the Settlement. Neither the Parties nor their counsel will solicit any Class Member to submit an Opt-Out Request.

110. The Settlement Administrator will correspond with Class Members who timely submit both an Opt-Out Request and a Valid Claim Form to clarify the Class Member's intent. The Settlement Administrator's correspondence will state that, unless the Class Member clarifies that he, she, or they intend to opt out of the Settlement within seven (7) days, the Class Member will be deemed to have submitted a Valid Claim.

111. Objections. Class Members, except for Plaintiff, will have until 60 days after Notice date to file an objection to the Settlement. Only Class Members who have not submitted an Opt-Out Request to the Settlement Administrator may object to the Settlement. To object, a Class Member must timely file with the Court a written objection and a notice of intent to appear at the Final Fairness Hearing, if the objector chooses to appear at the Final Fairness Hearing. The filing

date of any written objection will be the exclusive means for determining the timeliness of an objection. The Settlement Notice, the Short Form Settlement Notice, the FAQ, the Publication Notice (if any), and the Preliminary Approval Order will set forth the procedures for submitting an objection. A written objection must state: (a) the full name, address, telephone number, and email address of the objector; (b) the serial number(s) or other proof or purchase 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 Final 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. Class Members who fail to make objections in the manner specified in this Section will be deemed to have waived any objections and will be foreclosed from making any objection to the Settlement or this Agreement (whether by appeal, collateral proceeding, or otherwise). Neither the Parties nor their counsel will encourage any Class Member to object.

IX. PAYMENTS TO PLAINTIFF

112. Plaintiff may participate in the claims process described in Section VI of this Agreement to the same extent as Class Members.

113. Subject to approval by the Court, Plaintiff will also receive following the Effective Date a Service Award pursuant to the provisions of this Section. Defendants will not oppose a Service Award payment to Plaintiff of up to Seven Thousand, Five Hundred Dollars ($7,500), to

be paid from the Common Fund, solely as compensation for their time and effort associated with her participation in this Lawsuit. This amount is not reimbursement or compensation for any alleged injuries, damages, or any other relief sought in the Lawsuit. Even though Plaintiff has signed this Agreement and supports approval of the Settlement, payment of the amount specified in this Section is not contingent on such authorization and support for the Agreement. Proposed Class Counsel will not seek payments for Plaintiff more than the amount in this Section, which Defendants will not oppose. The Parties did not negotiate or agree to this Section or any of its terms before negotiating and agreeing to the substantive terms of the Settlement.

X. CLASS COUNSEL'S APPLICATION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES

114. Class Counsel shall file a Fee Application for an award of Attorneys' Fees and Expenses, including Administration and Notice Expenses, no later than 14 days prior to the Objection Deadline, pursuant to Rule 23(h), Rule 54(d)(2), and the Court's Local Rules.

115. The Parties have agreed that Defendants shall not oppose: (i) any request for Administration and Notice Expenses of up to $65,000; (ii) Attorneys' Fees of up to $200,000, or one third of the Common Fund; (iii) Expenses of up to $100,000; and (iv) a Service Award of up to $7,500 for Plaintiff. It is not a condition of the Settlement or this Agreement that the Court award any particular amount of Attorneys' Fees and Expenses or any particular amount as a Service Award.

116. If the Court makes an award of Attorneys' Fees and Expenses, the Settlement Administrator shall pay Class Counsel from the Common Fund the amount of attorneys' fees and expenses awarded by the Court within 30 calendar days after the Effective Date, subject to Class Counsel providing all payment routing information and a valid IRS W9 form for Markovits, Stock & DeMarco, LLC, as agent for Class Counsel. Payment of the Fee Award will be made from the

Common Fund by wire transfer to Markovits, Stock & DeMarco, LLC, and completion of all necessary forms, including but not limited to W-9 forms.

117. Any Service Award approved by the Court for the Proposed Class Representative shall be paid by Defendants in the form of a check to the Proposed Class Representative that is sent care of Proposed Class Counsel within 30 calendar days after Final Approval.

118. The award of attorneys' fees and costs, and payment to the Proposed Class Representative are subject to and dependent upon the Court's approval. However, this Settlement is not dependent or conditioned upon the Court's approving Proposed Class Counsel's fees and expenses or the Proposed Class Representative's Service Award or awarding the particular amounts sought by Proposed Class Counsel and Proposed Class Representatives. In the event the Court declines or modifies Proposed Class Counsels' or Proposed Class Representative's requests, this Settlement will continue to be effective and enforceable by the Parties, provided, however, that the Proposed Class Representative and Proposed Class Counsel retain the right to appeal any decision by the Court regarding Attorneys' Fees and Expenses, and Service Award, even if the Settlement is otherwise approved by the Court.

XI. RELEASES

119. Class Members who do not timely exclude themselves from the Settlement, upon the Effective Date, forever release and discharge the Released Parties (Defendants) from any and all claims or causes of action of every kind and description, in all U.S. states and territories, including any causes of action in law, claims in equity, complaints, suits or petitions, and any allegations of wrongdoing, demands for legal, equitable or administrative relief (including, but not limited to, any claims for injunction, rescission, reformation, restitution, disgorgement, constructive trust, declaratory relief, compensatory damages, consequential damages, penalties,

exemplary damages, punitive damages, attorneys' fees, costs, interest or expenses) that the Releasing Party (Class) had or have (including, but not limited to, assigned claims and any and all "Unknown Claims" as defined below) that have been or could have been asserted in the Lawsuit or in any other action or proceeding before any court, arbitrator(s), tribunal or administrative body (including but not limited to any state, local or federal regulatory body), regardless of whether the claims or causes of action are based on federal, state, or local law, statute, ordinance, regulation, contract, common law, or any other source, and regardless of whether they are known or unknown, brought or could have been brought, foreseen or unforeseen, suspected or unsuspected, or fixed or contingent, arising out of, or related or connected to the alleged misrepresentations relating to continuous horsepower used to market, advertise, and sell Horizon treadmills.

120. Upon the Effective Date, Defendants forever release and discharge the Released Parties (Plaintiff and Class Members) from any and all claims or causes of action of every kind and description, in all U.S. states and territories, including any causes of action in law, claims in equity, complaints, suits or petitions, and any allegations of wrongdoing, demands for legal, equitable or administrative relief (including, but not limited to, any claims for injunction, rescission, reformation, restitution, disgorgement, constructive trust, declaratory relief, compensatory damages, consequential damages, penalties, exemplary damages, punitive damages, attorneys' fees, costs, interest or expenses) that the Releasing Parties (Defendants) had or have (including, but not limited to, assigned claims and any and all "Unknown Claims" as defined below) that have been or could have been asserted in the Lawsuit or in any other action or proceeding before any court, arbitrator(s), tribunal or administrative body (including but not limited to any state, local or federal regulatory body), regardless of whether the claims or causes of action are based on federal, state, or local law, statute, ordinance, regulation, contract, common

law, or any other source, and regardless of whether they are known or unknown, brought or could have been brought, foreseen or unforeseen, suspected or unsuspected, or fixed or contingent, arising out of, or related or connected in any way from the alleged misrepresentations relating to continuous horsepower used to market, advertise, and sell Horizon treadmills.

121. The Released Claims specifically exclude claims for product liability seeking to recover for personal injury, property damage, and emotional distress for Class Members other than Plaintiff, as well as claims relating to the JRNY App.

122. By executing this Agreement, the Parties acknowledge that, upon entry of the Final Approval Order by the Court, the Lawsuit shall be dismissed with prejudice, an order of dismissal with prejudice shall be entered, and all Released Claims shall thereby be conclusively settled, compromised, satisfied, and released as to the Released Parties as of the Effective Date. The Final Approval Order shall provide for and effect the full and final release by the Releasing Parties of all Released Claims.

123. Plaintiff and Class Members knowingly and voluntarily waive Section 1542 of the California Civil Code, which provides:

> **A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or settlement with the debtor.**

Plaintiff and Class Members expressly waive and relinquish all rights and benefits that they may have under, or that may be conferred on them by, the provisions of Section 1542 of the California Civil Code and of all similar laws of other States or territories, to the fullest extent they may lawfully waive such rights or benefits pertaining to the Released Claims. In connection with such waiver and relinquishment, Plaintiff and Class Members hereby acknowledge that they are aware that they or their attorneys may hereafter discover claims or facts in addition to or different

from those which they now know or believe to exist with respect to the Released Claims, but that it is their intention to hereby fully, finally, and forever settle and release all of the Released Claims, known or unknown, suspected or unsuspected, that they have against the Released Parties (Defendants). In furtherance of such intention, the release given by Plaintiff and Class Members to the Released Parties (Defendants) shall be and remain in effect as a full and complete general release of all claims notwithstanding the discovery or existence of any such additional different claims or facts.

124. Plaintiff expressly consents that this release shall be given full force and effect according to each of its terms and provisions, including those relating to unknown and unspecified claims, injuries, demands, rights, lawsuits, or causes of action as referenced above. Plaintiff acknowledges and agrees that this waiver is an essential and material term of this release and the compromise settlement that led to it, and that without this waiver the compromise settlement would not have been accomplished. Plaintiff has been advised by her attorneys with respect to this waiver and, being of competent minds, understand and acknowledges its significance.

125. Each Party expressly accepts and assumes the risk that, if facts with respect to matters covered by this Agreement are found to be other than or different from the facts now believed or assumed to be true, this Agreement shall nevertheless remain effective. It is understood and agreed that this Agreement shall constitute a general release and shall be effective as a full and final accord and satisfaction and is a bar to all actions, causes of action, costs, expenses, attorney fees, damages, claims, and liabilities whatsoever, whether or not now known, suspected, claimed or concealed, pertaining to the Released Claims of this Agreement.

XII. COVENANT NOT TO SUE

126. Plaintiff, on behalf of herself and all Class Members, (a) covenants and agrees that

neither Plaintiff nor any Class Member, nor anyone authorized to act on behalf of any of the Plaintiff or any Class Member, will commence, authorize, or accept any benefit from any judicial or administrative action or proceeding, other than as expressly provided for in this Agreement, against the Released Parties (Defendants), or any of them, in either their personal or corporate capacity, or against third parties such as retailers, dealers, or distributors that sell or market Treadmills, with respect to any claim, matter, or issue that in any way arises from, is based on, or relates to any alleged loss, harm, or damages allegedly caused by the Released Parties (Defendant), or any of them, in connection with the Released Claims; (b) waive and disclaim any right to any form of recovery, compensation, or other remedy in any such action or proceeding brought by or on behalf of any of them; and (c) agree that this Agreement shall be a complete bar to any such action.

127. Plaintiff and Class Members are hereby permanently barred and enjoined from seeking to use the class action procedural device (or any analogue of or counterpart to it) in any future lawsuit against the Released Parties (Defendants), where the lawsuit asserts claims that were related to the Released Claims and could have been brought in the Lawsuit before entry of the Final Approval Order and are not otherwise released and discharged by this Agreement.

128. If Plaintiff or any of the Class Members violate this Section, whether by filing any claim, lawsuit, arbitration, petition, administrative action, or other proceeding, Defendants are entitled to payment of its attorneys' fees, costs, and expenses, including expert fees in connection with responding to or defending such claim, lawsuit, arbitration, petition, administrative action, or other proceeding.

XIII. REPRESENTATIONS AND WARRANTIES

129. Each of the Parties represents and warrants to, and agrees with, each of the other

Parties as follows**:**

130. To the extent permitted by law and the applicable rules of professional conduct, Proposed Class Counsel represent and warrant that they do not have any present intention to file any lawsuit, class action, or claim of any kind against Defendants in any jurisdiction, including other states or countries, relating to the claimed misrepresentations or omissions at issue in the Lawsuit or Defendants' response to or efforts to address such claimed misrepresentations or omission relating to Defendants' Treadmills. Proposed Class Counsel further represent and warrant that they will not contact any other attorney or law firm to discuss or encourage pursuing litigation related to such alleged issues against the Released Parties (Defendants). The foregoing shall not restrict the ability of Proposed Class Counsel to fulfill their responsibilities to absent Class Members in connection with the settlement proceedings in the Lawsuit.

131. To the extent permitted by law and the applicable rules of professional conduct, the Settlement is conditioned on Plaintiff's and Proposed Class Counsel's agreement not to cooperate with any other lawyers who are litigating or who wish to litigate any issue relating to the issues in the Lawsuit or Defendant's response to or efforts to address such issues relating to any of Defendant's Treadmills. The foregoing shall not restrict the ability of Proposed Class Counsel to fulfill their responsibilities to absent Class Members in connection with the settlement proceedings in the Lawsuit, nor shall it restrict Class Counsel's responsibility to respond to orders of any court or other legal obligation.

132. Each Party has had the opportunity to receive, and has received, independent legal advice from his, her, or its attorneys regarding the advisability of making the Settlement, the advisability of executing this Agreement, and the legal and income-tax consequences of this Agreement, and fully understands and accepts the terms of this Agreement.

133. Plaintiff represents and warrants that no portion of any claim, right, demand, action, or cause of action against any of the Released Parties (Defendants) that Plaintiff has or may have arising out of the Lawsuit or pertaining to the design, manufacture, testing, marketing, purchase, use, sale, servicing, or disposal of any of Defendants' Treadmills, and no portion of any recovery or settlement to which Plaintiff may be entitled, has been assigned, transferred, or conveyed by or for Plaintiff in any manner; and no Person or entity other than Plaintiff has any legal or equitable interest in the claims, demands, actions, or causes of action referred to in this Agreement as those of Plaintiff herself.

134. None of the Parties relies or has relied on any statement, representation, omission, inducement, or promise of the other Party (or any officer, agent, employee, representative, or attorney for the other Party) in executing this Agreement, or in making the Settlement provided for herein, except as expressly stated in this Agreement.

135. Each of the Parties has investigated the facts pertaining to the Settlement and this Agreement, and all matters pertaining thereto, to the full extent deemed necessary by that Party and his, her, or its attorneys.

136. Each of the Parties has carefully read, and knows and understands, the full contents of this Agreement and is voluntarily entering into this Agreement after having had the opportunity to consult with, and having in fact consulted with, his, her, or its attorneys.

137. Each term of this Agreement is contractual and not merely a recital.

138. Extensions of Time. Unless otherwise ordered by the Court, the Parties may agree to reasonable extensions of time to carry out any of the provisions of this Agreement and Settlement.

139. Default or Breach. Defendants represent that they will make good-faith efforts to

meet the various deadlines that apply to it under this Agreement. Defendants' failure, for any reason, to meet any applicable deadline shall not constitute a default or breach of this Agreement without formal, written notice by Proposed Class Counsel and without a reasonable opportunity for Defendants to cure the claimed default or breach. If Proposed Class Counsel maintain that any action or inaction constitutes a default or breach of this Agreement, then the Settling Parties shall meet and confer. If reasonable efforts do not cure any claimed default or breach after a reasonable period of time, only then may a Settling Party involve the Court. The waiver by either Party of any default or breach of this Agreement shall not be deemed a waiver of any other claimed default or breach by the other Party.

140. Number of Treadmills Sold. The Settlement is premised on Defendant's representation that Defendants sold, during the Class Period, approximately 141,362 Treadmills. If, as of the date of the Agreement, the number of Treadmills sold exceeds 141,362 then the Administration and Notice Expenses cap of $65,000 may have to be adjusted upward as appropriate. However, any such upward adjustment will not increase the amount of the Common Fund.

141. Exhibits. All of the exhibits or attachments to this Agreement are material and integral parts of this Agreement and are incorporated by reference as if fully set forth here.

142. Severability. With the exception of the provision for attorneys' fees and costs to Proposed Class Counsel and Service Awards to Plaintiff pursuant to Sections IX and X of this Agreement, none of the terms of this Agreement is severable from the others. If the Court or a court of appeals should rule that any term is void, illegal, or unenforceable for any reason, however, Defendants, in their sole discretion, and Plaintiff, in her sole discretion (but acting in accord with their duties and obligations as Class Representative of the Settlement Class), may elect to waive

any such deficiency and proceed with the Settlement under the terms and conditions approved by the Court.

143. Entire Agreement of the Parties. This Agreement constitutes and comprises the entire agreement between the Parties concerning the Settlement. No representations, warranties, or inducements have been made by any Party concerning the Settlement or this Agreement other than those contained and memorialized in this Agreement. This Agreement supersedes all prior and contemporaneous oral and written agreements and discussions concerning resolution of the Lawsuit. It may be amended only by an agreement in writing, signed by the Parties.

144. Binding on Agents, Successors, and Assigns. This Agreement is binding on, and shall inure to the benefit of, the Parties and their respective agents, employees, representatives, officers, directors, parents, subsidiaries, assigns, executors, administrators, insurers, and successors in interest.

145. Third-Party Beneficiaries. The Released Parties and any of their agents other than the signatories to this Agreement are intended to be third-party beneficiaries of this Agreement.

146. Taxes. Members of the Settlement Class, Plaintiff, and Class Counsel shall be responsible for paying any and all federal, state, and local taxes that may be due on account of any payment or benefit conferred pursuant to this Agreement.

147. Cooperation in Implementation. Defendants, Plaintiff, and their respective counsel agree to prepare and execute any additional documents that may reasonably be necessary to effectuate the terms of this Agreement.

148. Notices. Any formal or informal notices provided for, required by, or relating to this Agreement shall be provided to:

For Plaintiffs and the Settlement Class:

W.B. Markovits
Markovits, Stock, & DeMarco, LLC
119 East Court Street, Suite 530
Cincinnati, Ohio 45202
(513) 651-3700
bmarkovits@msdlegal.com

For Defendants:

Paul E. Benson
Michael Best & Friedrich LLP
790 North Water Street, Suite 2500
Milwaukee, WI 53202
(414) 271-6560
pebenson@michaelbest.com

149. Governing Law. This Agreement shall be construed and governed in accordance with federal procedural law and the substantive laws of the State of Virginia, without regard to Virginia's conflict-of-laws principles.

150. Jurisdiction. Without affecting the finality of any order, the Court shall retain jurisdiction over the Parties and the Agreement with respect to implementation and enforcement the terms of the Settlement. All Settling Parties and Class Members submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement and this Agreement and all related matters.

151. No Drafter. None of the Parties to this Agreement shall be considered to be the primary drafter of this Agreement or any part of it for purposes of any rule of construction or interpretation.

152. Construction. This Agreement shall not be construed more strictly against one Party than another, or in favor of one Party or another, merely by virtue of the fact that it or any part of it may have been prepared by counsel for one of the Parties. This Agreement and each part of it is

the result of arm's-length negotiations among the Parties.

153. Counterparts. This Agreement may be executed in counterparts, including signature transmitted by facsimile or in PDF format. Each counterpart when so executed shall be deemed to be an original, and all such counterparts together shall constitute the same instrument.

154. Signature. By signing, Proposed Class Counsel represent and warrant that Plaintiff Wendy Prince has approved and agreed to be bound by this settlement. By signing, all counsel and any other person signing this Agreement represent and warrant that they have full authority to do so and that they have the authority to take appropriate action to effectuate the terms of this Agreement.

Dated: November 6, 2024.

On Behalf of the Plaintiff and the Settlement Class:

/s/ Wendy Prince
Wendy Prince (Nov 6, 2024 16:40 EST)
Wendy Prince
515 Eighth Street
Shenandoah, Virginia 22849

Plaintiff

/s/ Malissa Giles
Malissa Lambert Giles (33955)
Giles & Lambert
129 Campbell Ave SE
Roanoke, VA 24011
540-981-9000
mgiles@gileslambert.com

/s/ W.B. Markovits
W.B. Markovits (Nov 6, 2024 09:06 EST)
W.B. Markovits
Terence R. Coates
Justin C. Walker
Markovits, Stock & DeMarco, LLC
119 East Court St., Suite 530
Cincinnati, Ohio 45202
(513) 651-3700
bmarkovits@msdlegal.com
tcoates@msdlegal.com
jwalker@msdlegal.com

/s/ Gary M. Klinger (Nov 5, 2024 20:36 CST)
Gary M. Klinger
Milberg Coleman Bryson
Phillips Grossman, PLLC
227 W. Monroe St., Suite 2100
Chicago, IL 60606
866-252-0878
gklinger@milberg.com

Counsel for Plaintiff and the Settlement Class

On Behalf of Defendants:

Johnson Health Tech Trading, Inc.

/s/ Ryan Hoodjer

By: Ryan Hoodjer

Its VP Ecommerce & Operations

Johnson Health Tech Retail, Inc.

/s/

By: Bob Zande

Its President

/s/

Paul E. Benson
Michael Best & Friedrich LLP
790 N. Water Street, Suite 2500
Milwaukee, WI 53202
(414) 271-6560
pebenson@michaelbest.com

Counsel for Defendants