

**PLAINTIFF’S MEMORANDUM IN SUPPORT OF UNOPPOSED MOTION FOR FINAL
APPROVAL OF CLASS ACTION SETTLEMENT**

I. PRELIMINARY STATEMENT

Plaintiff Walker respectfully requests that the Court grant final approval of the Settlement that it preliminarily approved on November 16, 2021. Plaintiff will not repeat at length but will summarize below the background and arguments that supported preliminary approval and now support final approval.² What has occurred since the grant of preliminary approval, however, is identified in more detail below and is a further demonstration of why the proposed Settlement is fair, reasonable, and adequate and should be given final approval. A dynamic and effective notice process has resulted in a substantial number of claims to date, with many more expected as the claims deadline approaches. In contrast, there have been no objections and a low number of opt outs. All of this speaks to the strength of the settlement and supports final approval.

II. FACTUAL BACKGROUND

A. Litigation and Settlement

On July 7, 2020, Class Representative Robert Walker filed a complaint against Defendant Nautilus, Inc. alleging that Nautilus made misrepresentations regarding the horsepower attributes in the advertising, marketing and sale of its treadmills sold under the brand names Nautilus, Schwinn and Bowflex. (Doc. 1, Complaint). Plaintiff Walker and Class Counsel have thoroughly reviewed and analyzed this case, including but not limited through informal discovery, discussions with experts in electrical engineering and price premium damage analysis, and review of

² The detailed procedural background, along with facts and argument supporting certification and settlement, may be found in the preliminary approval filings of this docket. *See* Doc. 39 and accompanying exhibits.

applicable nationwide and Ohio law. Defendant Nautilus has denied, and continues to deny, Plaintiff's allegations in the complaint and denies any liability for any of the claims.

Following denial of Defendant's motion to compel arbitration before this Court, and while an appeal was pending in the Sixth Circuit on that issue, Sixth Circuit mediator John A. Minter scheduled a mediation conference. The Parties engaged in multiple arm's length mediation conferences under the guidance and supervision of Mr. Minter, beginning on June 28, 2021 and ending on September 8, 2021, as well as in continued email exchanges and discussions between formal mediation sessions.

On October 11, 2021, the Parties filed a joint motion for an indicative ruling asking whether the Court would evaluate a proposed settlement and conduct a fairness hearing. (Doc. 36). Following grant of this motion, on November 5, 2021, Plaintiff Robert Walker filed an unopposed motion for preliminary approval, supported in part with a settlement agreement between the parties effective as of that date. (Doc. 39). On November 16, 2021, this Court granted preliminary approval, initiating the notice and claims process to the Class. (Doc. 41).

B. Notice, Claims, Inquiries, Objections, Opt-Outs

The Court-approved notice program that was implemented by settlement administrator, The Angeion Group ("Angeion"), was particularly robust for a consumer class action. This is in part because the Court issued an order requiring third-party retailers of Nautilus to produce customer contact information. (Doc. 42). In order to provide direct notice to as many Class Members as possible, the Parties worked together to identify the major retailers of Nautilus treadmills and jointly agreed to the contents of a cover letter that would accompany the written requests sent to those retailers for the purpose of collecting customer contact information. Copies of the joint letter, as well as the Court's November 16, 2021 order requiring third-party retailers to

produce customer information, were sent to the retailers in beginning on November 18, 2021 requesting the disclosure of the contact information. Declaration of W. B. Markovits (“Markovits Decl.”), ¶ 10. To accommodate the receipt of class member information from Amazon, the notice deadline was extended from January 4, 2022 until January 31, 2022. (Doc. 45). Angeion used customer contact information from retailers and from Nautilus to send direct notice to 93,175 of the estimated 200,000 class members. Declaration of Denise Earle (“Earle Decl.”), ¶ 5.

In addition to direct notice, Class Counsel and Angeion implemented a broad notice program that included: a custom social media campaign; a programmatic digital banner ads campaign; a settlement website with additional information, including frequently asked questions and important case documents; and a toll-free hotline. *Id.*, ¶¶ 6-17.

The claims deadline is May 2, 2022, and there is generally a surge of claims surrounding the deadline date. *Id.*, ¶ 18. But as of March 16, 2022 Angeion has already received 9,184 claims. *Id.*, ¶ 18. This is an expected claims rate at this point in the claims period for a consumer class action of this nature. *Id.*, ¶ 18.

Class Members have also demonstrated interest in the settlement through their inquiries and use of the settlement website. Angeion’s dedicated toll-free hotline for Class Members has handled 136 inquiries as of March 16, 2022. *Id.*, ¶ 18. Angeion has also responded to 184 email

inquiries. *Id.* The settlement website – [www. nautilustreadmillsettlement.com](http://www.nautilustreadmillsettlement.com) – has received 45,908 hits on its webpages from 23,503 individual users. *Id.*, ¶ 15.

The deadline for any objections to the Settlement or requests for exclusion is April 1, 2022. (Doc. 41). To date, there have been zero objections and 16 requests for exclusion. *Id.*, ¶ 19. This is a low level of objections and opt outs at this point. *Id.*

III. ARGUMENT

A. Final Class Certification for Settlement Purposes is Appropriate.

This Court preliminarily approved class certification for Settlement purposes in its November 16, 2021 Order (Doc. 41). At this juncture, final approval is appropriate.

1. The Elements of Rule 23(a) are Satisfied.

For a lawsuit to be maintained as a class action under Rule 23, the plaintiff must establish each of the four threshold requirements of Subsection (a) of the Rule, which provides:

One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a). Here, all four elements are satisfied.

a. Numerosity

Rule 23(a)(1) requires that plaintiff demonstrate that “the class is so numerous that joinder of all members is impracticable.” While no specific number of class members is required to maintain a class action, “[w]hen class size reaches substantial proportions. . . the impracticability requirement is usually satisfied by the numbers alone.” *In re Am. Med. Sys., Inc.*, 75 F.3d 1069, 1079 (6th Cir. 1996) (citation omitted). Here, there are an estimated 200,000 Class Members, satisfying the numerosity requirement. Markovits Decl., ¶ 14.

b. Commonality

Rule 23(a)(2) requires a showing of the existence of questions of law or fact common to the class. *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 345 (2011). “Their claims must depend upon a common contention of such a nature that it is capable of classwide resolution- which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.” *Id.* at 350. Both the majority and dissenting opinions in that case agreed that “for purposes of Rule 23(a)(2) even a single common question will do.” *Id.* at 359.

In this case, there are numerous common questions of law and fact, such as whether the Treadmill horsepower claims are accurate, and whether the Class Members have actionable claims. Commonality is, therefore, satisfied.

c. Typicality

In order to satisfy the typicality requirement of Rule 23(a)(3), the claims or defenses of the representative parties must be typical of the claims or defenses of the class. “The typicality requirement ensures that the representative’s interests will be aligned with those of the represented group and that the named plaintiff will also advance the interests of the class members.” *Chesher v. Neyer*, 215 F.R.D. 544, 549 (S.D. Ohio 2003). “A plaintiff’s claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members, and if his or her claims are based on the same legal theory.” *Id.* (citing 1 Herbert B. Newberg & Alba Conte, *Newberg on Class Actions*, § 3-13, at 3-76 (3d ed. 1992)); *see also Am. Med. Sys.*, 75 F.3d at 1082 (same).

Typicality seeks to ensure that there are no conflicts between the class representatives’ claims and the claims of the class members represented. Here, Plaintiff’s claims arise out of the same alleged conduct by Nautilus related to the sale and marketing of its Treadmills, in particular

with regard to horsepower representations, and the same legal theories apply to all. Typicality is satisfied.

d. Adequacy of Representation

Rule 23(a)(4) requires that “the representative parties will fairly and adequately protect the interests of the class.” “There are two criteria for determining this element: 1) the representatives must have common interests with the unnamed class members, and 2) it must appear that the representatives will vigorously prosecute the class action through qualified counsel.” *Senter v. Gen. Motors Corp.*, 532 F.2d 511, 524-25 (6th Cir. 1976).

Here, Plaintiff Walker is adequate because he has actively participated in the case, and during the Class Period he purchased a Treadmill that would be covered by the Settlement and was allegedly damaged in the same manner based on the same alleged treadmill horsepower misrepresentations. Class Counsel are qualified, possessing a wealth of experience in litigating complex class action lawsuits, which allowed them to negotiate an outstanding settlement for the Class. (See Markovits Decl. ¶ 5). The adequacy requirement is satisfied.

2. The Requirements of Rule 23(b)(3) are Met in the Settlement Context.

Plaintiff seeks to certify a Class under Rule 23(b)(3), which has two components: predominance and superiority. When assessing predominance and superiority, the court may consider that the class will be certified for settlement purposes only, and a showing of manageability at trial is not required. *See Amchem Prods. v. Windsor*, 521 U.S. 591, 620 (1997). With respect to predominance, the Sixth Circuit has explained that “named plaintiffs must show, and district courts must find, that questions of law or fact common to members of the class predominate over any questions that affect only individual members.” *In re Whirlpool Corp. Front-Loading Washer Prods. Liab. Litig.*, 722 F.3d 838, 860 (6th Cir. 2013). With respect to

superiority, the Court considers whether a class action is “superior to other methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3).

Here, there are several common questions of law and fact that predominate over any questions that may affect individual Class Members. For example, were this case to proceed, the primary issue would be whether Defendant misrepresented the horsepower of its Treadmills, and whether Defendant is liable as a result. A court within this District recently found that predominance was established the class certification stage in a very similar treadmill CHP misrepresentation case based on a price premium damages theory. *Bechtel v. Fitness Equipment Services, LLC*, 339 F.R.D. 462, 482 (S.D. Ohio 2021). In *Bechtel*, Chief Magistrate Judge Karen L. Litkovitz stated,

Plaintiffs here offer evidence that none of the treadmills are able to obtain the represented CHP in household use because residential outlets cannot produce sufficient power to support that CHP regardless of the speed setting, weight of the treadmill user, or any other individual variable. As a result, treadmill purchasers allegedly overpaid for their treadmills, according to plaintiffs’ economic expert. The determination of these issues will succeed or fail based on evidence common to the class. For these reasons, common issues predominate pursuant to Rule 23(b)(3).

Id.

Plaintiff would be able to show the same evidence in this case at class certification. Accordingly, predominance is met in this case.

The second prong of Rule 23(b)(3) — that a class action is superior to other available methods for the fair and efficient adjudication of the controversy — is also readily satisfied. *See* Fed. R. Civ. P. 23(b)(3). The settlement would relieve the substantial judicial burdens that would be caused by repeated adjudications in individual trials against Nautilus. *See Young v. Nationwide Mut. Ins. Co.*, 693 F.3d 532, 545 (6th Cir. 2012); *see also Bechtel*, 339 F.R.D. at 485 (noting that

“a class action is the superior method for adjudicating” a similar treadmill CHP misrepresentation class action).

B. The Notice Program Preliminary Approved by the Court Was the Best Notice Practicable Under the Circumstances, and Was Successful.

In class actions certified under Federal Rule of Civil Procedure 23(b)(3), notice must meet the requirements of Rule 23(c)(2). The latter rule requires that notice to the class be the “best notice that is practicable under the circumstances.” Rule 23(c)(2). *See In re Auto. Parts Antitrust Litig.*, No. 12-CV-00103, 2016 WL 8200511, at *10 (E.D. Mich. Aug. 9, 2016) (program satisfied Rule 23 and due process). The Court must consider the mode of dissemination and the content of the notice to assess whether such notice was sufficient. *See* Federal Judicial Center, Manual for Complex Litig. § 21.312 (4th Cir. 2004). There is no statutory or due-process requirement that all class members receive actual notice by mail or other means; rather, “individual notice must be provided to those class members who are identifiable through reasonable effort.” *Eisen v. Carlisle & Jacqueline*, 417 U.S. 156, 175 (1974). Rule 23(e) gives the Court “virtually complete” discretion as to the manner of service of settlement notice. *See Franks v. Kroger Co.*, 649 F.2d 1216, 1223-23 (6th Cir. 1981); *Vassalle v. Midland Funding, LLC*, No. 3:11-CV-00096, 2014 WL 5162380, at *11 (N.D. Ohio Oct. 14, 2014), *aff’d sub nom. Pelzer v. Vassalle*, 655 F. App’x 352 (6th Cir. 2016).

Class Counsel worked closely with the Settlement Administrator to develop and implement the notice program preliminarily approved by the Court. Markovits Dec., ¶ 12; Earle Dec., ¶ 3. The notice process was substantially improved through direct notice, made possible in large part by this Court’s order requiring third-party retailers to provide customer contact information. (Doc. 42). Using customer contact information provided by Nautilus and its major third-party retailers, the Settlement Administrator was able to provide direct notice to 93,175 Class Members. Earle

Dec., ¶ 5. This process included removing duplicates and updating information, including through use of the USPS's National Change of Address database and skip-tracing. *Id.*, ¶ 9. Any email notice that was undelivered was sent via regular mail to those Class Members with a mailing address. *Id.* Any mail notice that was returned with a forwarding address was remailed to the appropriate address. *Id.* Of the original 93,175 direct notices sent, the Settlement Administrator was unable to locate a valid mailing or email address for only four individuals. *Id.*

In addition to the direct notice plan, the Settlement Administrator also implemented an internet and social media campaign that included the establishment of a settlement website (www.nautilustreadmillsettlement.com) and targeted Facebook ads using the available Class Member data. *Id.*, ¶¶ 11, 13. The website received 45,908 directed clicks and 23,503 overall visits as of March 16, 2022. *Id.* The targeted ads reached 516,153 individuals. *Id.*

The Settlement Administrator estimates that between direct notice and other forms of notice, the notice program reached over 90% of Class Members. Courts routinely approve direct notice plan that reach at least 70% of the Class. A notice reaching 70-95% of the class is often cited as meeting the requirements of Rule 23(c)(2)(B) and due process. Federal Judicial Center, *Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide*, at 3 (2010), www.fjc.gov/sites/default/files/2012/NotCheck.pdf.

The notice program provided Class Members with a clear and concise statement of their rights under Rule 23(c)(2)(B). (Doc. 39-2). The notices directed Class Members to the Settlement Website or a toll-free number for additional information regarding how they could opt out of or object to the settlement. *Id.* The notice program meets the structures of Rule 23 and due process and should be approved by the Court.

C. The Settlement Agreement Merits Final Approval

Pursuant to Rule 23(e), the Court may approve this Settlement if it determines that it is “fair, reasonable and adequate.” The determination of whether to grant final approval for the Settlement is left to the sound discretion of the Court. *Lonardo v. Travelers Indem. Co.*, 706 F. Supp. 2d 766, 778 (N.D. Ohio 2010) (citing *Bailey v. Great Lakes Canning, Inc.*, 908 F.2d 38, 42 (6th Cir. 1990)). The Sixth Circuit has identified the following factors when considering whether to finally approve a class action settlement: “(1) the risk of fraud or collusion; (2) the complexity, expense and likely duration of the litigation; (3) the amount of discovery engaged in by the parties; (4) the likelihood of success on the merits; (5) the opinions of class counsel and class representatives; (6) the reaction of absent class members; and (7) the public interest.” *Vassalle v. Midland Funding LLC*, 708 F.3d 747, 754 (6th Cir. 2013).

The 2018 amendments to Rule 23(e) also contain specific factors for federal courts to consider in determining whether a class action settlement is fair, reasonable and adequate. *See* Fed. R. Civ. P. 23(e)(2). These factors include:

- A. Whether the class representatives and class counsel have adequately represented the class;
- B. Whether the proposal was negotiated at arm’s length;
- C. Whether the relief provided for the class is adequate, taking into account: (i) the costs, risk, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class including the method of processing class members claims; (iii) the terms of any proposed award of attorney’s fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3); and
- D. Whether the proposal treats class members equitably.

Id. These amendments are not intended to displace the factors set forth in case law “but rather focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision whether to approve the proposal.” *Id.* at *Advisory Committee’s Note to 2018*

amendment. Courts in this Circuit consider both sets of factors when assessing the reasonableness of a settlement and enjoy “wide discretion in assessing the weight and applicability of these factors.” *Doe v. Ohio*, No. 2:91-cv-464, 2020 WL 728276, at * 3 (S.D. Ohio Feb. 12, 2020). All of the case law and 23(e) factors weigh in favor of granting final approval.

1. The Settlement resulted from mediated, arm’s length negotiations without any risk or evidence of fraud or collusion.

Settlements resulting from arm’s length negotiations conducted by court-approved counsel are presumptively reasonable. *See* 1 Herbert B. Newberg & Alba Conte, *Newberg on Class Actions*, § 11.41 at 90 (4th Ed. 2002). Courts presume the absence of fraud or collusion in settlement negotiations unless there is evidence to the contrary. *In re Telectronics Pacing Sys.*, 137 F. Supp. 2d 985, 1106 (S.D. Ohio 2001). Here, there is no such evidence.

This Settlement was the result of extensive, contentious, arm’s length negotiations between counsel with many decades of experience in handling complex, class action litigation. Negotiations were arduous and lengthy, stretching over many months under the close supervision of Sixth Circuit mediator John Minter. Mr. Minter’s participation in the Parties’ negotiations alone establishes the lack of fraud or collusion in this case.³ This factor strongly supports granting final approval.

³ *See, e.g., Moran v. Wunderlich*, No. 3:05CV073, 2007 WL 3005235, at *2 (S.D. Ohio Oct. 12, 2007) (noting that settlement negotiations conducted by a federal magistrate judge were arm’s length and without the risk of fraud or collusion); *In re Regions Morgan Keegan Secs.*, Nos. 2:09-2209SMH V, 2:07-cv-02830-SHM-dkv, 2013 WL 12110279, at *5 (W.D. Tenn. Aug. 6, 2013) (noting that “[t]he parties protected against the risk of fraud or collusion by using a highly qualified and experienced independent mediator during settlement negotiations.”).

2. The complexity, expense, and likely duration of the litigation warrant final approval of the Settlement.

“Most class actions are inherently complex and settlement avoids the costs, delays and multitude of other problems associated with them.” *Brent v. Midland Funding, LLC*, No. 3:11 CV 1332, 2011 WL 3862363, at *16 (N.D. Ohio Sept. 1, 2011) (quoting *In re Austrian & German Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 174 (S.D.N.Y. 2000)). “Thus, ‘[i]n most situations, unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results.’” *Id.* (quoting 4 Herbert B. Newberg & Alba Conte, *Newberg on Class Actions* § 11.50 (4th ed. 2002)).⁴ This case is no different in that it is a consumer class action and a settlement at this stage of the case will avoid the risk of “costs, delays, and multitude of other problems associated” with class action cases.

In the absence of settlement, Plaintiff’s action would remain subject to Defendant’s appeal of this Court’s May 28, 2021 Order denying Nautilus’s request to compel arbitration of this entire case. *Walker v. Nautilus, Inc.*, 541 F. Supp. 3d 836 (S.D. Ohio 2021). This case was pending on appeal with the Sixth Circuit Court of Appeals when the Parties’ reached this settlement. Even if Defendant’s appeal were unsuccessful the resulting litigation, including any further appeals, could take many years and involve substantial expense for all Parties. The uncertainty of continued litigation stands in stark contrast to the immediate relief offered by this Settlement. The Settlement provides Settlement Class Members with real benefits now without having to endure the risks, duration, and expense that would surely follow if this litigation were to continue. *See Bert v. AK*

⁴ *See also Amos v. PPG Indus., Inc.*, No. 2:05-cv-70, 2015 WL 4881459, at *1 (S.D. Ohio Aug. 13, 2015) (“In general, most class actions are inherently complex, and settlement avoids the costs, delays, and multitude of other problems associated with them.”) (internal citations and quotations omitted); *Miracle v. Bullitt Cnty., Ky.*, No. CIV.A. 05-130-C, 2008 WL 3850477, at *6 (W.D. Ky. Aug. 15, 2008) (The “uncertainty of the outcome of the litigation makes it more reasonable for the plaintiffs to accept the settlement offer from the defendant”).

Steel Corp., No. 1:02-cv-467, 2008 WL 4693747, at *2 (S.D. Ohio Oct. 23, 2008) (“The Court has no doubt that the required trials or hearings would have been time consuming, and that a complete resolution of the case would not be reached for several more years. This factor clearly weighs in favor of the proposed settlement.”).

3. Sufficient discovery was conducted in this case.

The Parties have already engaged in sufficient discovery, which has included informal discovery relating to the number of Class Members, as well as Class Counsel consultation with experts in motor horsepower and conjoint analysis damages. This factor also lends support for granting final approval of the Settlement.

4. The likelihood of success balanced against the amount and form of relief offered by the settlement weigh in favor of approving the settlement.

The Sixth Circuit has identified the likelihood of success on the merits as the most important of all the factors a district court must evaluate in assessing the fairness of a class action settlement. *Poplar Creek Dev. Co. v. Chesapeake Appalachia, LLC*, 636 F.3d 235, 245 (6th Cir. 2011). A district court must weigh the likelihood that the class ultimately will prevail “against the amount and form of the relief offered in the settlement.” *Carson v Am. Brands, Inc.*, 450 U.S. 79, 88 n.14 (1981); *see also In re Gen. Tire & Rubber*, 726 F.2d 1075, 1086 (6th Cir. 1984); *UAW v. Gen. Motors, Corp.*, 497 F.3d 615, 631 (6th Cir. 2007).

Although Plaintiff remains confident in his claims against Nautilus, he recognizes the substantial risks involved in establishing liability and damages in this case. From the outset of this litigation, Defendant has consistently maintained that the allegations in this action are without merit. Following appeal of the arbitration issue, even if remanded the Court could grant a motion to dismiss, or rule against Plaintiff later in this case on issues related to class certification or summary judgment. Furthermore, there is a risk that a jury might award little or nothing in the way

of damages. And even if Plaintiff prevailed on Defendant's motion to dismiss, class certification, summary judgment, and at trial, Plaintiff would still face the potential for prolonged appeals to the Sixth Circuit.

By contrast, the Settlement offers immediate, significant, and substantial relief to all Class Members who submit a claim. Generally, Class Members who purchased a Treadmill from July 7, 2016 through November 16, 2021 may receive: 1) a *pro rata* payment from a Common Fund of Four Million Two Hundred and Fifty Thousand Dollars (\$4,250,000.00), after deductions for Attorneys' Fees and Expenses, administration and Notice Expenses, and a Service Award, if any; and 2) a year-long subscription, or subscription extension, to JRNY, a fitness app offered by Defendant. At the current claims rate each Class Member would receive a payment in excess of Two Hundred and Fifty Dollars (\$250.00) from the Common Fund. Markovits Decl., ¶ 15. The year-long subscription, or subscription extension, to Defendant's JRNY app is currently valued at approximately One Hundred and Fifty Dollars (\$150.00). There are currently 9,161 Class Members who claimed this benefit – a value of \$1,339,200.00. In addition, Defendant has agreed to make significant changes to its sales and marketing of its Treadmills with respect to horsepower claims—the issue central to the Lawsuit. Defendant will cease using the terminology “Continuous Horsepower” or “CHP” to market or sell its Treadmills, and with respect to any horsepower claim will note that the stated horsepower is that obtained is based on the motor manufacturer's horsepower rating and does not reflect the operational horsepower of the treadmill in ordinary household use.

The Settlement delivers real value to Class Members. Under any analysis, the relief afforded by this Settlement is fair and reasonable, especially when weighed against the anticipated

cost, prolonged nature, and uncertain outcome of continued litigation. Thus, this factor too weighs in favor of granting final approval.

5. The fact that both Plaintiff's and Defendant's counsel, as well as Plaintiff, recommend approval of the Settlement strongly indicates that the Settlement is fair, reasonable, and adequate.

The Sixth Circuit has observed that, when experienced counsel immersed in the legal and factual issues comprising a class action recommend approval of their class settlement, their recommendations are entitled to deference. *See Williams v. Vukovich*, 720 F.2d 909, 922 (6th Cir. 1983) (a district court “should defer to the judgment of experienced counsel who has competently evaluated the strength of his proofs” and that deference “should correspond to the amount of discovery completed and the character of the evidence uncovered”). Likewise, courts in the Sixth Circuit defer to the recommendations made by a class representative who, like the Plaintiff here, was intimately involved in the litigation and supports the Settlement. *Gascho v. Global Fitness Holdings, LLC*, No. 2:11-cv-436, 2014 WL 1350509, at *18 (S.D. Ohio Apr. 4, 2014) (“Not insignificantly, the Class Representatives have also approved the Settlement Agreement”).

Class Counsel and Plaintiff support this Settlement because it provides Class Members with immediate and substantial benefits that will directly address the issue of what they believe to be horsepower misrepresentations on the part of Nautilus. Defendant is also supportive of the Settlement, which was reached after more than a year of litigation and thorough settlement negotiations. As the result of informal discovery conducted and extensive settlement negotiations, the Parties are in a position to fully analyze the strengths and weaknesses of their respective cases and determine that the Settlement at this stage of the litigation is appropriate. Accordingly, the informed recommendations of the Parties and their experienced counsel weigh in favor a granting final approval.

6. The reactions of Class Members to date supports the Settlement.

The deadline for Class Members to object or opt out of the Settlement is April 1, 2022. Accordingly, Plaintiffs cannot yet fully assess the Class Members' reaction to the Settlement. After the April 1 deadline passes and before the Final Approval Hearing on June 21, 2022, Class Counsel will file a supplemental notice summarizing the number of claims, objections, and opt-outs received. As discussed above, however, to date the reaction of the absent Class Members is positive: there is a strong claims rate, with zero objections and 16 opt outs. This further supports final approval.

7. This Settlement serves the public interest.

“[T]he law favors settlement, particularly in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation.” *Brent*, 2011 WL 3862363, at *12 (quoting 4 Herbert Newberg & Alba Conte, *Newberg on Class Actions*, § 11.41 (4th ed. 2002)). *See also In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508, 530 (E.D. Mich. 2003) (“There is a strong public interest in encouraging settlement of complex litigation and class action suits because they are ‘notoriously difficult and unpredictable’ and settlement conserves judicial resources.”).⁵ This Settlement serves the public’s interest by ending already protracted litigation and freeing up judicial resources. *See In re Telectronics*, 137 F. Supp. 2d at 1025; *see also Hainey*, 617 F. Supp. 2d at 679; *Enter. Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 248 (S.D. Ohio 1991) (noting that the settlement of a class action lawsuit served

⁵ *See also In re Nationwide Fin. Servs. Litig.*, No. 2:08-cv-00249, 2009 WL 8747486, at *8 (S.D. Ohio Aug. 18, 2009) (“[T]here is certainly a public interest in settlement of disputed claims that require substantial federal judicial resources to supervise and resolve.”); *Hainey v. Parrott*, 617 F. Supp. 2d 668, 679 (S.D. Ohio 2007) (“noting that “[p]ublic policy generally favors settlement of class action lawsuits.”).

the public interest because it “avoid[ed] a time-consuming and expensive trial” and “eliminate[d] the possibility of any time-consuming and expensive appeals.”).

Particularly in light of the immediate benefits that the Settlement provides to the Class Members, and the fact that this Settlement will avoid further discovery and expensive motion practice, this “overriding public interest” would be well served by approval of this Settlement.

8. The Other Rule 23(e) Factors Support the Settlement.

To the extent not addressed above, the Rule 23(e) factors support the Settlement. The method of distributing relief was chosen to make the claims process as easy as possible. Rule 23(e)(2)(C)(ii). For Class Members whose purchase information was obtainable, claim forms were prepopulated with the information necessary to make a claim, a claim can easily be made electronically, and payments can be made by check or electronically. Earle Decl., ¶ 14. A unique individual code to obtain the JRNY subscription benefit will be made available electronically. *Id.*

The attorneys’ fees of one third of the common fund are, as more fully set forth in the contemporaneously filed motion, well within the range of fees for a case of this nature and will not be paid until the Effective Date. Markovits Decl., ¶¶ 20, 23. Rule 23(e)(2)(C)(iii).

There is no undisclosed agreement made in connection with the Settlement. Markovits Decl., ¶ 7; Rule 23(e)(2)(C)(iv).

All class members are treated equitably relative to each other—they all have the opportunity both for a pro rata payment of money and a subscription to JRNY. Markovits Decl., ¶ 16; Rule 23(e)(2)(D).

In total, all of the factors to be considerable when determining whether to grant final approval weigh in favor of a finding that the Settlement is fair, reasonable, and adequate.

IV. CONCLUSION

Because the proposed Settlement is fair, adequate, and reasonable, Plaintiff Walker respectfully requests that the Court grant final approval and enter the proposed Order attached as Exhibit 1.

Respectfully submitted,

/s/ W.B. Markovits

W.B. Markovits (0018514)

Terence R. Coates (0085579)

Justin C. Walker (0080001)

MARKOVITS, STOCK & DEMARCO, LLC

3825 Edwards Road, Suite 650

Cincinnati, OH 45209

Phone: (513) 651-3700

Fax: (513) 665-0219

bmarkovits@msdlegal.com

tcoates@msdlegal.com

jwalker@msdlegal.com

Nathan D. Prosser (*pro hac vice*)

HELLMUTH & JOHNSON, PLLC

8050 West 78th Street

Edina, MN 55439

Telephone: (952) 941-4005

Fax: (952) 941-2337

nprosser@hjlawfirm.com

Bryan L. Bleichner (*pro hac vice*)

Jeffrey D. Bores (*pro hac vice*)

CHESTNUT CAMBRONNE, PA

100 Washington Avenue South, Suite 1700

Minneapolis, MN 55401

Telephone: (612) 339-7300

Fax: (612) 336-2940

bbleichner@chestnutcambronne.com

jbores@chestnutcambronne.com

Class Counsel

CERTIFICATE OF SERVICE

I hereby certify that on March 17, 2022 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ W.B. Markovits
W. B. Markovits (0018514)

EXHIBIT

1

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

1. This Order incorporates by reference the definitions in the Settlement and all terms used herein shall have the same meaning as set forth in the Settlement unless set forth differently herein. The terms of the Settlement are fully incorporated in this Order as if set forth herein.

2. The Court has jurisdiction over the subject matter of the Settlement and all parties in this matter.

3. The Court finds that due and adequate notice was given in early 2021 to the potential class members of their right to be excluded from the Class. The Court further finds that because all potential class members previously received the Court-approved class certification notice and were afforded the opportunity to be excluded from the Class, the parties need not provide potential class members a second opportunity to be excluded from the Class.

4. The Court finds that due and adequate notice was given of the Settlement, the plan of allocation of the Settlement benefits, Class Counsel's request for attorneys' fees and reimbursement of litigation expenses as well as a Service Award for the Class Representative, and that the forms and methods for providing such notice to the Class:

a. constituted the best notice practicable under the circumstances, including individual notice to all Class Members who could be identified through reasonable effort;

b. was reasonably calculated, under the circumstances, to apprise Settlement Class Members of: (i) their right to object to any aspect of the proposed Settlement, including the terms of the Settlement; (ii) their right to appear at the Settlement Fairness Hearing, either on their own or through counsel hired at their own expense, if they were not excluded from the Class; (iii) the amount of attorneys' fees, litigation expenses, administration expenses, and Class

Representative Service Awards requested in the Settlement; and (v) the binding effect of the proceedings, rulings, orders and judgment in this Action, whether favorable or unfavorable, on all persons who are not excluded from the Class;

c. was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to be provided with such notice; and,

d. fully satisfied all the applicable requirements under Fed. R. Civ. P. 23, due process, and all other applicable laws.

5. The Class excludes those persons or entities who timely and validly filed a request for exclusion from the Class under the Court-approved notice sent to the Class in early 2021. Persons or entities who timely filed complete and valid requests for exclusion from the Class and who have not availed themselves of the opportunity to opt back into the Class are not bound by this Order or the terms of the Settlement, and may pursue their own individual remedies against Defendant, to the extent they have standing to do so. Such persons or entities are not entitled to any rights or benefits provided to the Class Members under the Settlement.

6. Under Fed. R. Civ. P. 23(e), this Court hereby approves the Settlement and finds that it is, in all respects, fair, reasonable, and adequate to, and is in the best interests of, Plaintiffs. Accordingly, the Settlement is approved in all respects and shall be consummated in accordance with its terms and conditions. Plaintiff and Defendant are hereby directed to perform the terms of the Settlement, and the Clerk of the Court is directed to enter and docket this judgment in this action.

7. This Court hereby approves the plan of allocation as set forth in the Notice as fair and equitable. The Court directs Class Counsel and The Angeion Group (“Angeion”), the claims administrator, to proceed with processing Claims and the administration of the Settlement under

the terms of the Settlement and, upon completion of the claim processing procedure, to present to this Court a proposed final distribution order for the distribution of the remaining Settlement funds, if any.

8. Defendant is hereby released and forever discharged from any and all of the Settled Class Claims and Released Claims. All Class Members are hereby forever barred and enjoined from asserting, instituting or prosecuting, directly or indirectly, any of the Settled Class Claims in any court or other forum against any of the Released Parties, regardless of whether or not such Class Member executes a Claim Form. All Class Members are bound by the Settlement and hereby are forever barred and enjoined from taking any action in violation of the Settlement.

9. The Court hereby dismisses with prejudice this Action and all of Plaintiffs' claims against Defendant. Plaintiffs and Defendant shall bear their own fees and costs.

10. Neither the Settlement nor any act performed or document executed under or in furtherance of the Settlement: (a) is or may be deemed or may be used as an admission of, or evidence of, the validity of any of Plaintiffs' claims against Defendant; or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of Defendant in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal; or (c) is admissible in any proceeding except an action to enforce or interpret the terms of the Settlement and any other documents executed in connection with the performance of the agreement embodied therein. Defendant may file the Settlement and/or this Order in any action that may be brought against it in order to support a defense or counterclaim based on the principles of res judicata, collateral estoppel, full faith and credit, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

11. This Court, also having considered Plaintiff's Motion for Attorneys' Fees, Expenses, and Class Representative Service Award, hereby:

a. concludes that Class Counsel's requested fee award equal to one third of the Common Fund, or \$1,416,666.67, is fair and reasonable and may be deducted from the Common Fund and paid in accordance with the Settlement;

b. concludes that Class Counsel's requested reimbursement of litigation expenses of \$5,561.05, is fair and reasonable, and that the settlement administration expenses of Angeion, in the amount of \$120,000, were reasonable and necessary in the prosecution of this Action on behalf of the Class, and may be deducted from the Common Fund and paid in accordance with the Settlement;

c. concludes that the Service Award of \$5,000 for the Class Representative is fair and reasonable, and necessary to compensate the Class Representative for his time and effort and the risk he undertook in pursuing this Action, and may be deducted from the Common Fund and paid in accordance with the Settlement.

12. Without affecting the finality of this Order in any way, this Court hereby reserves and retains continuing jurisdiction over: (a) implementation and enforcement of any award or distribution from the Common Fund; (b) disposition of the Common Fund; (c) payment of taxes by the Common Fund; and, (d) any other matters related to finalizing the Settlement and distribution of the proceeds of the Settlement.

13. Neither appellate review, nor modification of the plan of allocation set forth in the Settlement, nor any action in regard to the award of Class Counsel's attorneys' fees and reimbursement of litigation expenses, payment or administration expenses, or incentive awards to Class Representatives, shall affect the finality of any other portion of this Order, nor delay the

Effective Date of the Stipulation, and each shall be considered separate for the purposes of appellate review of this Order.

14. In the event that the Settlement does not become Final in accordance with the terms of the Settlement or the Effective Date does not occur, then this Order shall be rendered null and void to the extent provided by and in accordance with the Settlement and shall be vacated and, in such event, all orders entered and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Settlement.

15. This Order applies to all claims asserted in this Action. This Court finds, for purposes of Fed. R. Civ. P. 54(b), that there is no just reason for delay and expressly directs entry of judgment as set forth herein.

Date: _____

EDMUND A. SARGUS, JR.
UNITED STATES DISTRICT JUDGE

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

ROBERT WALKER, on behalf of
himself and all others similarly
situated,

Plaintiff,

V.

NAUTILUS, INC.,

Defendant.

[illegible]

Case No. 2:20-cv-3414

Judge Edmund A. Sargus Jr.

Magistrate Judge Elizabeth A. Preston

Deavers

**DECLARATION OF W.B. MARKOVITS
IN SUPPORT OF PLAINTIFF'S MOTIONS FOR FINAL APPROVAL AND FOR
ATTORNEY FEES, EXPENSES AND CLASS REPRESENTATIVE SERVICE AWARD**

I, W.B. Markovits, declare as follows:

1. I am a partner in the law firm of Markovits, Stock & DeMarco, LLC (“MSD”), one of three firms representing Plaintiff Robert Walker (“Plaintiff”) and the proposed Class (collectively, “Plaintiffs”). My firm’s co-counsel in representing the Plaintiff in this matter are the firms Hellmuth & Johnson, PLLC, and Chestnut Cambronne, PA.

2. I received my Juris Doctorate degree from Harvard Law School in 1981 and have practiced complex civil litigation, including class action litigation, for over 40 years. I am a member in good standing with the Ohio Supreme Court and have never been the subject of any disciplinary proceedings.

3. I have significant experience as lead counsel in class action cases. I was a lead counsel in *In re Fannie Mae Securities Litigation*, Case No. 04-cv-1439, United States District

Court, District of Columbia, resulting in a court-approved \$133 million settlement in 2014. I was a lead counsel in *Williams v. Duke Energy*, Case No. 1:08-cv-0046, United States District Court, Southern District of Ohio – a case before this Court that resulted in a court-approved \$80.875 million settlement in 2016. I am currently a lead counsel in the pending matter of *Ohio Public Employee Retirement Systems v. Federal Home Loan Mortgage* (“Freddie Mac”), Case No. 4:08-cv-0160, United States District Court, Northern District of Ohio.

4. As a proposed class counsel in this matter, along with my partner Terence Coates, I oversaw my firm’s daily work on this case and am intimately aware of my firm’s representation of Plaintiff in this matter. My firm has worked on this case along with co-counsel since this case was initiated in 2020 and has expended considerable time and expense in pursuit of this case, including extensive factual investigation, review of potentially applicable claims, preparing and filing pleadings, informal discovery and review, consultation with experts in electrical engineering and price premium damage analysis, review of applicable nationwide and Ohio law, and extensive mediation efforts through the Sixth Circuit mediator following this Court’s denial of Nautilus’s motion to compel arbitration.

5. Proposed Class Counsel are all experienced in class action litigation. A copy of the biographical information for each attorney appearing for Plaintiff in this matter is included in the firm overviews, which are attached to this declaration as Exhibits A, B, and C.

6. The Plaintiff, Robert Walker, was actively involved in this litigation, including participating in and monitoring mediation efforts, assisting with the Complaint, and provided valuable information and documentation throughout.

7. The proposed Settlement in this case is the result of extensive arm’s length negotiations with counsel for Nautilus under the direction of Sixth Circuit mediator John Minter.

Joint mediation with Mr. Minter began on June 28, 2021 (the date the parties first jointly mediated with Mr. Minter – there were some mediation statements and individual discussions with Mr. Minter prior to that date). There were a number of follow up sessions with Mr. Minter, culminating in an agreement in principle between the parties in September 2021. Plaintiffs’ counsel and Nautilus’s counsel also had numerous interim discussions relating to potential settlement. All negotiations were contested negotiations and were instrumental to finalizing potential benefits available to proposed Class Members. There is no undisclosed agreement made in connection with the Settlement. I was involved in these sessions.

8. Based on my experience with class action cases, I believe the Settlement of this case is fair, reasonable and adequate, and provides an outstanding benefit to putative Class Members, particularly taking into account what the putative Class Members will receive under the Settlement compared to the risks and delay of continued litigation. There is typically a surge of claims toward claims deadline, which is May 1, 2022, but based on conversation with the claims administrator and my experience I would project that the payment to each Class Member will still be over \$150.00 when all claims are in.

NOTICE PROGRAM

9. The Court-approved notice program implemented by settlement administrator, The Angeion Group (“Angeion”), was particularly robust for a consumer class action. Class Counsel received bids from three settlement administrator firms, ultimately choosing Angeion – the middle bid – because all Class Counsel felt comfortable with both the bid and the company and wanted to avoid possible administration problems down the road. Angeion provided a firm, fixed-price bid slightly higher than the \$120,000 to which they have now agreed.

10. Following the Court's order (Doc. 42) requiring third-party retailers of Nautilus to produce customer contact information, on November 18, 2021, the Parties sent joint letters to third-party retailers requesting the disclosure of customer contact information.

11. Using the contact information provided by the retailers allowed direct notice to be issued to 93,175 Class Members.

12. In addition to direct notice, Class Counsel and Angeion worked closely to implement the robust notice program approved by the Court, which included a targeted social media campaign and digital banner ads.

NUMEROSITY

13. Rule 23(a)(1) requires that plaintiff demonstrate that "the class is so numerous that joinder of all members is impracticable."

14. In this case, there are an estimated 200,000 Class Members, satisfying the numerosity requirement.

RELIEF FOR CLASS MEMBERS

15. The Settlement offers immediate, significant, and substantial relief to all Class Members who submit a claim. Generally, Class Members who purchased a Treadmill from July 7, 2016 through November 16, 2021 may receive: 1) a *pro rata* payment from a Common Fund of Four Million Two Hundred and Fifty Thousand Dollars (\$4,250,000.00), after deductions for Attorney Fees and Expenses, administration and Notice Expenses, and a Service Award, if any; and 2) a year-long subscription, or subscription extension, to JRNY, a fitness app offered by Defendant.

16. All class members are treated equitably relative to each other—they all have the opportunity both for a *pro rata* payment of money and a subscription to JRNY.

17. At the current claims rate each Class Member would receive a payment in excess of \$250.00 from the Common Fund.

18. Given that the deadline for claims is not until May 2, 2022, and it is typical for there to be a surge of claims surrounding the deadline, this number will drop as the claims increase. But the payment per Class Member in this case would still be projected at over \$150.00.

19. This payment is in the range of the price premium damages that Class Members would seek at trial.

ATTORNEYS' FEES

20. The Notice mailed to the members of the Class stated that Class Counsel would apply for an award of attorneys' fees on behalf of themselves not to exceed 1/3 of the \$4.25 million Settlement Fund as well as reimbursement of expenses incurred and advanced by Class Counsel in prosecuting this litigation not to exceed \$75,000.

21. Class Counsel are applying for fees of \$1,416,666.67, which is 1/3 of the Settlement Fund, and are seeking reimbursement of out-of-pocket litigation expenses of \$5,561.05.

22. In prosecuting this Action, Class Counsel expended 969.1 hours resulting in a lodestar of \$627,988.00. *See* Exhibit D¹ (summarizing the collective lodestar and hours of all Class Counsel). The total requested fee, therefore, yields an estimated 2.26 multiplier with respect to Class Counsel's lodestar. Per the Court's Order (Doc. 48), we have filed detailed time entries under seal.

23. With regard to work performed and expenses incurred prosecuting this Action, I submit this declaration in support of an award of attorneys' fees and reimbursement of litigation

¹ Detailed time entries, including hourly rates, for each person contributing to the lodestar total are being submitted under seal for the Court's review.

expenses. The lodestar summaries were prepared from contemporaneous time records regularly prepared and maintained by Class Counsel.

24. The rates billed by Class Counsel are comparable to peer plaintiffs' law firms litigating matters of similar nationwide magnitude. My hourly rate submitted in this case is \$750 per hour. This rate is supported by my rate in similar cases. For example, our firm was recently appointed as class counsel as part of a proposed settlement of a class action dating back 30 years. *Shy et al. v. Navistar International Corporation, et al.*, No. 3:92-cv-00333, Southern District of Ohio, Western Division. I am being reimbursed on an hourly basis for my work on that case, at the rate of \$750 per hour. Similarly, six years ago this Court in the *Williams* case cited above awarded fees where my submitted lodestar rate was \$700 per hour.

25. Class Counsel submit that the requested award of fees is fair and reasonable based upon the significant risk of the litigation and the quality of representation by Class Counsel in achieving the exceptional Settlement. Indeed, as discussed in the accompanying memorandum of law, courts regularly award fee requests of one third of a common fund, and with lodestar multipliers of 2 to 5.

26. Class Counsel are actively engaged in complex federal civil litigation, particularly the litigation of class actions. Our experience in the field allowed us to identify the complex issues involved in this case and to formulate strategies to effectively prosecute them. We believe that our reputations as attorneys who will zealously carry a meritorious case through the trial and appellate levels, as well as our demonstrated ability to vigorously develop the evidence in this case, placed us in a strong position in settlement negotiations with Defendant.

27. Frequently, plaintiffs' attorneys take contingent cases such as this and, after expending hundreds of thousands of hours and hundreds of thousands of dollars out of pocket,

receive nothing. The risk of non-payment in complex cases such as this one is real. Even if one succeeds or is *en route* to success, there could be changes in the law or unexpected evidence that fells the plaintiffs' case. A large fee is not guaranteed by virtue of the commencement of a class action. It takes hard and diligent work by skilled counsel to develop facts and theories that will withstand motion practice and succeed at trial or persuade defendants to enter into serious settlement negotiations.

28. Unlike counsel for most defendants, who are paid substantial hourly rates and reimbursed for their expenses on a regular basis, Class Counsel have not been compensated for any of the roughly 969.1 hours they expended, or the litigation expenses they incurred. Class Counsel would not have been compensated for their time or expenses had they been unsuccessful. In undertaking that responsibility, Class Counsel obligated themselves to ensure that sufficient dollars and attorney resources were dedicated to the prosecution of this litigation. When Class Counsel undertook to act for Plaintiff Walker and the Class, we were aware that the only way we could be compensated was to achieve a successful result. Additionally, Class Counsel will continue to spend time on this matter: responding to objections, if any; addressing appeal issues, if any; and overseeing settlement administration, including responding as necessary to Class Member inquiries.

29. Courts in this Circuit also consider the complexity of the litigation in determining the reasonableness of an attorneys' fee award. This case was hardly a cakewalk for Class Counsel and Plaintiffs. While "[m]ost class actions are inherently complex,"² this one presented a number of complicated legal and factual issues concerning (1) the applicability of arbitration (2) a theory

² *In re Telectronics*, 137 F. Supp. 2d at 1013.

of liability where the product is not defective, and performs adequately, but does not meet the performance specifications; (3) a damages theory based upon a complicated price premium analysis.

30. Defendants were represented by a highly-respected and experienced defense firm, Faruki PLL, who aggressively defended this case. Presenting the above issues to a jury would have involved enormous time, expense and complexity against exceedingly well-funded and savvy Defense Counsel.

31. In sum, given the complexity and magnitude of this Action, the risks associated with it, the responsibility undertaken by Plaintiff's Counsel, the difficulty of proof on damages, the experience of Class Counsel and Defendant's Counsel, and the contingent nature of Class Counsel's agreement to prosecute this Action, and most importantly the benefits made available to the Class, Class Counsel believe that the requested attorneys' fees are reasonable and should be approved.

LITIGATION EXPENSES

32. Class Counsel are also requesting reimbursement of the out-of-pocket expenses necessarily incurred and advanced by them in the prosecution of the litigation in the amount of \$5,561.05. The chart set forth in Exhibit E details these expenses – broken down by category – Class Counsel incurred and underwrote during the prosecution of this Action, all of which were at risk in this litigation. These expenses are a necessary part of litigation and were essential to enable Plaintiffs to achieve the results now before the Court – the \$4.25 million Common Fund Settlement with an additional subscription benefit. Courts have typically found that such expenses are reimbursable from a fund recovered by counsel for the benefit of the class. Class Counsel's expenses in this case are extremely reasonable.

33. The expenses for which reimbursement is sought by Class Counsel do not include the Claims Administrator expenses associated with providing Court-ordered notice to the Class of the Settlement and administering claims. The Claims Administrator has agreed that its total costs related to claims administration in this case will be capped at \$120,000. Those amounts will be deducted from the Common Fund.

34. From the beginning of the case, Class Counsel recognized that they might not recover any of their expenses, and, at the very least, would not recover anything until the Action was successfully resolved. Class Counsel also understood that, even assuming that the case was ultimately successful, an award of expenses would not compensate them for the lost use of the funds advanced to prosecute this Action. Thus, Class Counsel were motivated to, and did, take significant steps to minimize expenses whenever practicable without jeopardizing the vigorous and efficient prosecution of the Action. Class Counsel carefully reviewed all expenses submitted to ensure that they accurately reflected costs necessarily incurred in obtaining the Settlement.

35. Approval of the Settlement is separate from the approval of Class Counsel's application for an award of fees and expenses. Any determination with respect to Class Counsel's application for an award of fees and expenses will not affect the Settlement, if approved.

SERVICE AWARD

36. Mr. Walker as Class Representatives devoted his time to this cause without any expectation of a bounty. His initiative, time, and effort were essential to the prosecution of the case. He participated in settlement talks and, in some cases, attended mediation sessions. Mr. Walker had several discussions with Class Counsel and willingly gave of his time.

37. Class Counsel believe that an incentive award of \$5,000 for Mr. Walker is reasonable and consistent with the awards in other cases.

CONCLUSION

38. For the reasons set forth above and in the accompanying memoranda, we respectfully submit that the motion for final approval, as well as the application for an award of attorneys' fees and reimbursement of expenses is fair and reasonable and should be granted. We also submit that the service award of \$5,000 for Mr. Walker is fair and reasonable.

I declare under the penalty of perjury under the laws of the State of Ohio that the foregoing is true and correct to the best of my knowledge.

Executed this 17th day of March, 2022 in Cincinnati, Ohio.

/s/ W.B. Markovits

W.B. Markovits, Esq.

EXHIBIT

A



MARKOVITS
STOCK
DeMARCO

MARKOVITS, STOCK & DeMARCO, LLC

Markovits, Stock & DeMarco, LLC is a boutique law firm whose attorneys have successfully represented clients in some of the largest and most complex legal matters in U.S. history. Our deep and varied experience extends from representing businesses, public pension funds, and individuals in federal and state courts across the nation, to successfully arguing appeals at the highest levels of the legal system – including prevailing before the United States Supreme Court. This broad-based litigation and trial expertise, coupled with no overstaffing and overbilling that can typify complex litigation, sets us apart as a law firm. But expertise is only part of the equation.

“Legal success comes only from recognizing a client’s goals and being able to design and effectively execute strategies that accomplish those goals. We understand that every client is different, which is why we spend so much time learning what makes them tick.”

As the business world becomes increasingly complex, you need to be able to trust your law firm to help you make the right decisions. Whether you seek counsel in resolving a current conflict, avoiding a future conflict, or navigating the sometimes choppy state and local government regulatory waters, the lawyers at Markovits, Stock & DeMarco have both the experience and track record to meet your legal needs.

BILL MARKOVITS

Bill Markovits practices in the area of complex civil litigation, with an emphasis on securities, antitrust, RICO, and False Claims Act cases. Bill began his career as a trial lawyer at the U.S. Department of Justice Antitrust Division in Washington, D.C. He continued a focus on antitrust after moving to Cincinnati, where he became an adjunct professor of antitrust law at the University of Cincinnati Law School. Bill has been involved in the past in a number of notable cases, including: the Choice Care securities, antitrust and RICO class action in which the jury awarded over \$100 million to a class of physicians; a fraud/RICO case on behalf of The Procter & Gamble Company, which resulted in a settlement of \$165 million; an eleven year antitrust and RICO class action against Humana, including appeals that reached the United States Supreme Court, which culminated in a multi-million dollar settlement; and a national class action against Microsoft, in which he was chosen from among dozens of plaintiffs' attorneys to depose Bill Gates. More recently, Bill was: a lead counsel for plaintiffs in the Fannie Mae Securities Litigation that settled for \$153 million; a lead counsel for plaintiffs in a class action against Duke Energy that settled for \$80.75 million; and lead counsel for plaintiff in *Collins v. Eastman Kodak*, where he successfully obtained a preliminary injunction against Kodak on an antitrust tying claim. Based upon the result in *Collins*, Bill was a 2015 finalist in the American Antitrust Institute's Antitrust Enforcement Awards under the category "Outstanding Antitrust Litigation Achievement in Private Law Practice."

Bill has received a number of awards and designations, including current and past designations as a "Best Lawyer in America" in the fields of antitrust and commercial litigation.

Education:

Harvard Law School, J.D. (1981), cum laude

Washington University, A.B. (1978), Phi Beta Kappa

Significant and Representative Cases:

- *Collins v. Eastman Kodak*, United States District Court, Southern District of Ohio. Lead counsel representing Collins in antitrust tying claim, resulting in preliminary injunction against Kodak.
- *In Re Federal National Mortgage Association Securities, Derivative, and "ERISA" Litigation*, United States District Court, District of Columbia. Co-lead counsel representing Ohio pension funds in securities class action that settled for \$153 million.
- *Ohio Employees Retirement System v. Federal Home Loan Mortgage, aka Freddie Mac, et al.*, United States District Court, Northern District of Ohio, Eastern Division. Special counsel representing Ohio pension fund in securities class action.
- *Williams v. Duke Energy et al.*, United States District Court, Southern District of Ohio. Representing class of energy consumers against energy provider in complex antitrust and RICO class action that settled for \$80.75 million.
- *In Re Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, and Products Liability Litigation*, United States District Court, Central District of California. Former member of economic loss lead counsel committee, representing class of consumers in litigation relating to sudden acceleration.
- *In Re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010*, United States District Court, Eastern District of Louisiana. RICO workgroup coordinator in class action resulting from oil spill.
- *In Re Microsoft Corp. Litigation*, United States District Court, District of Maryland. Member of co-lead counsel firm in antitrust class action.
- *Procter & Gamble v. Amway Litigation*, United States District Court, Southern District of Texas, at

Houston; United States District Court, District of Utah, at Salt Lake City. Member of trial team representing Procter & Gamble in obtaining jury verdict against Amway distributors relating to spreading of false business rumors.

- *United States ex rel. Brooks v. Pineville Hospital*, United States District Court, Eastern District of Kentucky. One of the lead counsel in successful False Claims Act litigation.
- *Procter & Gamble v. Bankers' Trust Litigation*, United States District Court, Southern District of Ohio. Co-counsel in successful \$165 million settlement; developed the RICO case.
- *United States ex rel. Watt v. Fluor Daniel*, United States District Court, Southern District of Ohio. Co-lead counsel of successful False Claims Act case.
- *Forsyth v. Humana*, United States District Court, District of Nevada. Represented class of consumers in antitrust and RICO class action; successfully argued antitrust appeal; co-chaired successful Supreme Court appeal on RICO.
- *In Re Choice Care Litigation*, United States District Court, Southern District of Ohio, Western Division. Trial attorney on largest antitrust/RICO/securities verdict.

Presentations & Publications:

- "Implications of Sixth Circuit *Collins Inkjet Corp. v. Eastman Kodak Co. Decision*," American Bar Association panel discussion, December 10, 2015
- "Defining the Relevant Market in Antitrust Litigation," Great Lakes Antitrust Seminar, October 29, 2010
- "Beyond Compensatory Damages – Tread, RICO and The Criminal Law Implications," HarrisMartin's Toyota Recall Litigation Conference, Part II, May 12, 2010
- "The Racketeer Influenced and Corrupt Organizations Act (RICO)," HarrisMartin's Toyota Recall Litigation Conference, March 24, 2010
- "The False Claims Act: Are Healthcare Providers at Risk?," presentation to Robert Morris College Second Annual Health Services Conferences, Integrating Health Services: Building a Bridge to the 21st Century, Moon Township, PA, October 9, 1997
- "The Federal False Claims Act: Are Health Care Providers at Risk?," (Co-Speaker), Ohio Hospital Association, April, 1996
- "A Focus on Reality in Antitrust," Federal Bar News & Journal, Nov/Dec 1992
- "Using Civil Rico and Avoiding its Abuse," Ohio Trial, William H. Blessing, co-author, Summer 1992
- "Antitrust in the Health Care Field," a chapter published in Legal Aspects of Anesthesia, 2nd ed., William H. L. Dornette, J.D., M.D., editor
- *Antitrust Law Update, National Health Lawyers Health Law Update and Annual Meeting (Featured Speaker)*, San Francisco, California, 1989

Affiliations:

- American Association for Justice
- American Bar Association
- American Trial Lawyers Association
- Cincinnati Bar Association
- District of Columbia Bar Association (non-active)
- Hamilton County Trial Lawyers Association
- National Health Lawyers Association
- Ohio State Bar Association
- Ohio Trial Lawyers Association

Courts Admitted:

- District of Columbia (1981)
- State of Ohio (1983)
- United States District Court, Southern District of Ohio (1983)
- U.S. Court of Appeals, 6th Circuit (1991)
- U.S. Court of Appeals, 9th Circuit (1995)
- U.S. Supreme Court, United States of America (1998)
- United States District Court, Northern District of Ohio (2008)

TERENCE R. COATES

Terry Coates is Markovits, Stock & DeMarco's managing partner. His legal practice focuses on personal injury law, sports & entertainment law, business litigation and class action litigation. Before joining Markovits, Stock & DeMarco in May 2013, Terry gained considerable experience at one of the nation's preeminent plaintiffs' litigation law firms, including working as the firm administrator. He is currently the Executive Director of the Potter Stewart Inn of Court based in Cincinnati, Ohio.

Several organizations have recognized Terry's accomplishments and dedication to the practice of law. In 2014, Wittenberg University, Terry's alma mater, presented him the Outstanding Young Alumnus Award. In 2015, Terry's peers in the Cincinnati legal community presented him the Cincinnati Bar Association, Young Lawyers Section Professionalism Award. Terry has been designated as an Ohio Super Lawyers "Rising Star" from 2014-2019, which is a distinction awarded to less than 2.5% of Ohio attorneys under the age of 40. In 2019, he was selected to the Forty Under 40 by the Cincinnati Business Courier. For the past two years, Terry has been named to the Best Lawyers in America list for Commercial Litigation.

Education:

Thomas M. Cooley Law School, J.D. (2009)

Wittenberg University, B.A. (2005)

Representative Cases:

- *Bowling v. Pfizer, Inc.*, No. C-1-95-256, United States District Court, Southern District of Ohio (Class Counsel for recipients of defective mechanical heart valves including continued international distribution of settlement funds to remaining class members);
- *Collins Inkjet Corp. v. Eastman Kodak Company*, No. 1:13-cv-0664, United States District Court, Southern District of Ohio (trial counsel for Collins in an antitrust tying claim resulting in a preliminary injunction against Kodak – a decision that was affirmed by the Sixth Circuit Court of Appeals: *Collins Inkjet Corp. v. Eastman Kodak Co.*, 781 F.3d 264 (6th Cir. 2015));
- *Day v. NLO, Inc.*, No. C-1-90-67, United States District Court, Southern District of Ohio (Class Counsel for certain former workers at the Fernald Nuclear weapons facility; the medical monitoring program continues);
- *In re Fannie Mae Securities Litigation*, No. 1:04-cv-1639, United States District Court, District of Columbia (represented Ohio public pension funds as Lead Plaintiffs in Section 10b securities class action litigation resulting in a \$153 million court-approved settlement);
- *In re NCAA Student-Athlete Name & Likeness Licensing Litigation*, No. 09-1967, United States District Court, Northern District of California (represented NCAA, Olympic, and NBA legend, Oscar Robertson, in antitrust claims against the National Collegiate Athletic Association (NCAA), Collegiate Licensing Company (CLC), and Electronic Arts (EA) leading to a \$40 million settlement with EA and CLC and the Court issuing a permanent injunction against the NCAA for unreasonably restraining trade in violation of antitrust law);
- *In re Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, & Products Liability Litigation*, MDL No. 2151, United States District Court, Southern District of California (represented plaintiffs and prepared class representatives for deposition testimony resulting in a court-approved settlement valued in excess of \$1.5 billion);
- *Linneman v. Vita-Mix Corp.*, No. 14-cv-748, United States District Court, Southern District of Ohio (Class Counsel for a nationwide class of Vita-Mix blender consumers resulting in a nationwide settlement); and,
- *Williams v. Duke Energy*, No. 1:08-cv-00046, United States District Court, Southern District of Ohio (representing class of energy consumers against energy provider in complex antitrust and RICO class action resulting in the court granting final approval of an \$80.875 million settlement);

In addition to these representative cases, Terry is participating as class counsel over 25 data breach/privacy class actions in various state and federal courts around the country.

Community Involvement:

- Cincinnati Academy of Leadership for Lawyers (CALL), Class XXI, *Participant* (2017)
- Cincinnati Chamber of Commerce C-Change Class 9, *Participant* (2014)
- Cincinnati Chamber of Commerce, *Ambassador* (2014)
- Cincinnati Athletic Club, *President* (2015-2017)
- Cincinnati Athletic Club, *Vice President* (2014-2015)
- Cincinnati Bar Association, Board of Trustees, *Trustee* (2019-present)
- Cincinnati Bar Association, *Membership Services & Development Committee* (2014-present)
- Cincinnati Bar Association, *Run for Kids Committee* (2009-2014)
- Cincinnati Bar Association, *Social Committee* (2011-2014)
- Clermont County Humane Society, *Board Member* (2014-2017)
- Clermont County Humane Society, *Legal Adviser* (2017-present)
- Potter Stewart Inn of Court, *Executive Director* (2021-present)
- Summit Country Day High School, *Mock Trial Adviser* (2013-2016)

Recognitions:

- Super Lawyers, Rising Star (2014 – present)
- Best Lawyers in America, Commercial Litigation (2020 – present)
- Wittenberg University Outstanding Young Alumnus Award (2014)
- Cincinnati Bar Association, Young Lawyers Section Professionalism Award (2015)
- JDRF Bourbon & Bow Tie Bash, *Young Professional (Volunteer) of the Year* for the Flying Pig Marathon (2016)
- Cincinnati Business Courier, Forty Under 40 (2019)
- Cincinnati Cystic Fibrosis Foundation, Cincinnati's Finest Honoree (2020)

Affiliations:

- Ohio State Bar Association
- Cincinnati Bar Association
- The Potter Stewart American Inn of Court
- Ohio Association for Justice

Courts Admitted:

- State of Ohio (2009)
- United States District Court, Southern District of Ohio (2010)
- United States District Court, Northern District of Ohio (2010)
- U.S. Court of Appeals, Sixth Circuit (2018)

JUSTIN C. WALKER

Justin C. Walker is Of Counsel at Markovits, Stock & DeMarco. Justin's practice areas are focused on complex civil litigation and constitutional law, with an emphasis on consumer fraud and defective products. Before joining Markovits, Stock & DeMarco in April 2019, Justin practiced at the Finney Law Firm, a boutique law firm specializing in complex litigation and constitutional law. At the beginning of his legal career, Justin served as a judicial extern for Senior United States District Judge Sandra S. Beckwith before taking a full-time position as a law clerk and magistrate in the Hamilton County Ohio Court of Common Pleas for the Honorable Norbert A. Nadel. After completing his clerkship, Justin took a position as a prosecutor, serving as first chair for multiple jury trials. Justin then entered private practice, shifting his practice to focus on litigation matters.

Education:

University of Cincinnati, J.D. (2005)

Miami University, B.S. (2001)

Courts Admitted:

- State of Ohio (2005)
- U.S. Court of Appeals, 6th Circuit (2017)
- U.S. District Court, Southern District of Ohio (2008)
- U.S. Bankruptcy Court, Southern District of Ohio (2009)

Representative Cases:

- *Linneman v. Vita-Mix Corp.*, Case No. 15-cv-748, United States District Court, Southern District of Ohio (Co-Class Counsel for a nationwide class of Vita-Mix blender consumers resulting in a nationwide settlement).
- *Baker v. City of Portsmouth*, Case No. 1:14-cv-512, 2015 WL 5822659 (S.D. Ohio Oct. 1, 2015) (Co-Counsel for a class of property owners, the Court ruled that City violated the Fourth Amendment when it required property owners to consent to a warrantless inspection of their property or face a criminal penalty where not valid exception to the warrant requirement exists).
- *E.F. Investments, LLC v. City of Covington, Kentucky*, Case No. 17-cv-00117-DLB-JGW, United States District Court, Eastern District of Kentucky (Lead Counsel on case brought on behalf of local property owners, contending that City's rental registration requirements violated the Fourth Amendment resulting in a settlement).
- *State of Ohio ex rel. Patricia Meade v. Village of Bratenahl*, 2018-04409, Supreme Court State of Ohio (Co-Counsel on behalf of local taxpayer contending that Defendant's violated Ohio Open Meetings Law).
- *Dawson v. Village of Winchester*, United States District Court, Southern District of Ohio (Lead Counsel represented Plaintiff claiming Federal Civil Rights violations due to unconstitutional arrest and detainment).

Affiliations and Presentations:

- Cincinnati Bar Association
- Clermont County Bar Association
- American Association for Justice
- "Municipal Bankruptcy: Chapter 9 – Should Cincinnati Consider Filing for Bankruptcy"
- "Ohio CLE Introduction to Bankruptcy for Lawyers CLE"

EXHIBIT

B



CHESTNUT CAMBRONNE FIRM RESUME

For over 50 years, Chestnut Cambronne PA has been representing clients in class action litigation both in the Twin Cities area and at a national level. Since its inception, Chestnut Cambronne has been engaged in complex litigation throughout the country and has successfully both prosecuted and defended class litigation addressing substantive legal questions in the fields of data security breaches, securities, ERISA, banking, antitrust, and consumer protection law. Representative class action cases in which the firm and its members have been involved with over the past several years include:

In Re: Netgain Technology, LLC, Consumer Data Breach Litigation, No. 21-cv-1210-SRN-LIB (D. Minn.). A pending class action on behalf of a putative class of consumers against Netgain Technology alleging negligence and other claims in a data security breach. Bryan L. Bleichner was court appointed as Interim Co-Lead Counsel.

Baker v. Parkmobile, LLC, No. 21-cv-2181-SCJ (N.D. Ga.). A pending class action on behalf of a putative class of consumers against Parkmobile, LLC alleging negligence and other claims in a data security breach. Bryan L. Bleichner was court appointed to the Interim Plaintiffs' Steering Committee.

DeSue v. 20/20 Eye Care Network, Inc., No. 21-cv-61275-RAR (S.D. Fla.). A pending class action on behalf of a putative class of consumers against 20/20 Eye Care Network alleging negligence and other claims in a data security breach. Bryan L. Bleichner was court appointed as Interim Co-Lead Counsel.

Garrett v. Herff Jones, LLC, No. 21-cv-01329-TWP-DLP (S.D. Ind.). A pending class action on behalf of a putative class of consumers against Herff Jones alleging negligence and other claims in a data security breach. Bryan L. Bleichner was court appointed as Interim Co-Lead Counsel.

In re EyeMed Vision Care, LLC Data Security Breach Litigation, No. 21-cv-00036-DRC

(S.D. Ohio). A pending class action on behalf of a putative class of consumers against EyeMed alleging negligence and other claims in a data security breach. Bryan L. Bleichner was court appointed as Interim Co-Lead Counsel.

In re Luxottica of America, Inc. Data Security Breach Litigation, No. 20-cv-00908-MRB (S.D. Ohio). A pending class action on behalf of a putative class of consumers against Luxottica alleging negligence and other claims in a data security breach. Bryan L. Bleichner was court appointed as Interim Co-Lead Counsel.

Greenstate Credit Union v. Hy-Vee, Inc., No. 20-cv-00621-DSD-DTS (D. Minn.). A pending class action on behalf of a putative class of financial institutions against Hy-Vee alleging negligence and violations of the Minnesota Plastic Card Security Act in a data security breach. Bryan L. Bleichner currently serves as co-counsel.

Village Bank v. Caribou Coffee Company, Inc., No. 19-cv-01640-JNE-HB (D. Minn.). A recently settled class action on behalf of a putative class of financial institutions against Hy-Vee alleging negligence and violations of the Minnesota Plastic Card Security Act in a data security breach. Bryan L. Bleichner serves as court appointed settlement class counsel.

Walker v. Nautilus, Inc., No. 20-cv-3414-EAS-EPD (S.D. Ohio). A pending consumer protection class action against Nautilus, Inc. alleging Defendant materially misrepresented the horsepower produced by the electric motors in its treadmills. Chestnut Cambronne currently serves as Plaintiffs' counsel.

In re DPP Beef Litig., No. 20-cv-1319-JRT/HB (D. Minn.). A pending class action on behalf of a putative class of direct purchasers against beef product producers alleging claims of price fixing. Chestnut Cambronne serves as Plaintiffs' Counsel.

Alicia Schaeffer v. Life Time Fitness, Inc. et al., No. 27-cv-20-10513 (Minn. 2020). A pending class action on behalf of a putative class of group fitness instructors against Life Time Fitness, Inc. alleging Defendants refused to compensate Plaintiff and class members for work performed for their employer's benefit. Chestnut Cambronne currently serves as Plaintiffs' counsel.

In re WaWa, Inc. Data Security Litig., No. 19-cv-6019-GEKP (E.D. Pa.). A pending class action on behalf of a putative class of financial institutions against WaWa, Inc. alleging negligence and other claims in a data security breach. Bryan L. Bleichner serves on the Financial Institution Track Defendant Discovery and ESI Committee

Teeda Barclay v. Icon Health & Fitness, Inc., et al., No. 19-cv-02970-ECT-DTS (D. Minn.). A pending consumer protection class action against Icon Health & Fitness and NordicTrack alleging Defendants materially misrepresented the horsepower produced by the electric motors in its treadmills. Bryan L. Bleichner currently serves as Plaintiffs' counsel.

In re Resideo Technologies, Inc. Securities Litig., No. 19-cv-02863-WMW-KMM (D. Minn.). A pending shareholder class action against Resideo and its directors and officers for failing to disclose material information about its spin-off from Honeywell. Chestnut Cambronne serves as liaison counsel on this matter.

Delamarter v. Supercuts, Inc., No. 19-3158-DSD-TNL (D. Minn.). A pending class action on behalf of a putative class of consumers against Supercuts alleging violations of the Fair and Accurate Credit Transactions Act. Bryan L. Bleichner serves as Plaintiff's Counsel.

Kenneth Peterson v. JBS USA Food Company Holdings, et al., No. 19-cv-1129-JRT-HB (D. Minn.). A pending class action on behalf of a putative class of indirect purchasers against beef product producers alleging claims of price fixing. Chestnut Cambronne served as Plaintiffs' Counsel.

In re: FedLoan Student Loan Servicing Litigation, No. 2:18-md-02833-CDJ (E.D. Pa.). A pending class action on behalf of a putative class of student loan borrowers against FedLoan Servicing / Pennsylvania Higher Education Assistance Agency alleging consumer fraud violations and other claims. Bryan L. Bleichner was court appointed to the Executive Committee.

ASEA/AFSCME Local 52 Health Benefits Trust v. St. Jude Medical, LLC, et al., No. 18-cv-02124-DSD-HB (D. Minn.). A class action on behalf of a putative class of third party health benefits payors against St. Jude Medical and Abbott Laboratories alleging product liability and other claims. Chestnut Cambronne served as Plaintiffs' Counsel.

In Re Pork Antitrust Litigation, No. 18-cv-1776-JRT-HB (D. Minn.). A pending class action on behalf of a putative class of direct purchasers against pork product producers alleging claims of price fixing. Chestnut Cambronne currently serves as Plaintiffs' Counsel.

James Bruner, et al. v. Polaris Industries Inc. et al., No. 18-cv-00939-WMW-DTS (D. Minn.). A pending class action on behalf of a putative class of consumers against Polaris Industries alleging product liability claims. Chestnut Cambronne was court appointed as Plaintiffs' Liaison Counsel.

In re: Equifax, Inc., Customer Data Security Breach Litigation, No. 17-md-2800-TWT (N.D. Ga.). A settled class action on behalf of a putative class of financial institutions against Equifax alleging negligence and other claims in a data security breach. Bryan L. Bleichner was court appointed to the Financial Institution Plaintiffs' Steering Committee.

Marie Travis v. Navient Corp. et al., No. 17-cv-04885-JFB-GRB (E.D.N.Y.). A pending class action on behalf of a putative class of student loan borrowers against Navient Corp. alleging consumer fraud act violations and other claims. Bryan L. Bleichner serves as Plaintiffs' Counsel.

Midwest Am. Fed. Credit Union v. Arby's Rest. Grp. Inc., No. 17-cv-00514-AT (N.D. Ga.). A pending class action on behalf of a putative class of financial institutions against Arby's alleging negligence and other claims in a data security breach. Bryan L. Bleichner was appointed to the Interim Plaintiffs' Executive Committee.

Veridian Credit Union v. Eddie Bauer LLC, No. 2:17-cv-00356 (W.D. Wash.). A settled class action on behalf of a putative class of financial institutions against Eddie Bauer alleging negligence and other claims in a data security breach. Bryan L. Bleichner served as Plaintiff's counsel.

Bellwether Community Credit Union v. Chipotle Mexican Grill, Inc., No. 17-cv-1102 (D. Colo.). A settled class action on behalf of a putative class of financial institutions against Chipotle alleging negligence and other claims in a data security breach. Bryan L. Bleichner was court appointed to Chair of the Executive Committee.

First Choice Fed. Credit Union et al. v. The Wendy's Company et al., No. 2:16-cv-00506 (W.D. Pa.). An ongoing class action on behalf of a putative class of financial institutions against Wendy's alleging negligence and other claims in a data security breach. Bryan L. Bleichner was court appointed to the Executive Committee.

Gordon v. Amadeus IT Group, S.A., No. 1:15-cv-05457 (S.D.N.Y. July 14, 2015). A resolved putative class action alleging collusion and anticompetitive behavior among the companies that provide the systems used by travel agents to link to

airline flight and fare information known as global distribution systems (GDS). Chestnut Cambronne served as Plaintiffs' Counsel in this litigation.

In re: Anthem, Inc. Data Breach Litigation, No. 5:15-md-02617 (LHK) (N.D. Cal. March 13, 2015). A settled class action against Anthem alleging negligence and other claims in a data security breach affecting in excess of 80 million consumers. Chestnut Cambronne served as Plaintiffs' Counsel in the litigation.

Gassoway v. Benchmark Energy Transport Services, Inc., (S.D. Tex. February 23, 2015). A certified and settled class action case alleging Benchmark Energy Transport Services deducted and withheld an undisclosed surcharge from trucking owner-operators in violation of Federal Regulations. Chestnut Cambronne served as co-lead counsel for the certified class.

In re: The Home Depot, Inc., Customer Data Security Breach Litigation, No. 1:14-md-02583 (TWT) (N.D. Ga.). This is an ongoing putative class action against The Home Depot alleging negligence and other claims in a data security breach affecting 56 million consumers and tens of thousands of financial institutions. Bryan L. Bleichner was court appointed to the Financial Institution Plaintiffs' Steering Committee.

In re: Target Corporation Customer Data Security Breach Litigation, No. 0:14-md-02522 (PAM/JJK) (D. Minn. December 26, 2013). This is a settled class action against Target Corporation alleging negligence and violations of the Minnesota Plastic Card Security Act in a data security breach affecting 70 million consumers and tens of thousands of financial institutions. Chestnut Cambronne served as Co-Lead Counsel for the Financial Institution Class and Coordinating Lead Counsel for Plaintiffs.

Christian v. National Hockey League, No. 0:14-md-02551 (SRN/JSM) (D. Minn. April 15, 2014) This is a settled putative class action against the National Hockey League (NHL) alleging that the NHL ignored the known risks of concussive injuries and failed to safeguard its players. Chestnut Cambronne was court appointed to the Plaintiffs' Executive Committee.

Puerta v. Tile Shop Holdings, Inc., No. 0:14-cv-00786 (ADM/TNL) (D. Minn. March 21, 2014). A settled shareholder class action against Tile Shop Holdings and its directors and officers for failing to disclose material information about a supplier relationship. Chestnut Cambronne served as liaison counsel on this matter.

In re: Domestic Drywall Antitrust Litig., No. 2:13-md-2437; 939 F. Supp. 2d 1371 (E.D. Pa. 2013). This is an ongoing antitrust putative class action against domestic manufacturers of drywall alleging price-fixing. Chestnut Cambronne is acting as plaintiffs' counsel in this matter.

Lucas v. SCANA Energy Marketing, Inc., No. 1:12-cv-02356 (SCJ) (N.D. Ga. Feb. 8, 2013). A settled consumer protection class action in which Chestnut Cambronne served as co-lead counsel.

In re: Imprelis Herbicide Mktg., Sales Practices and Products Liability Litig., No. 2:11-md-02284 (GP) (E.D. Pa. Oct. 20, 2011). This is a settled products liability class action against the manufacturer of Imprelis Herbicide, DuPont. The class has recovered over \$378 million to date.

Minneapolis Firefighters' Relief Ass'n v. Medtronic, Inc., No. 08-6324 (PAM/AJB) (D. Minn. 2009); 618 F. Supp. 1016 (D. Minn. 2009); 278 F.R.D. 454 (D. Minn. 2011). This is a settled securities fraud class action in which Chestnut Cambronne was lead and liaison counsel. The class recovered \$80 million.

In re: American Express Anti-Steering Rules Antitrust Litig. (No. II), MDL No. 2221, 764 F. Supp. 2d 1343 (E.D.N.Y. 2010). This is a settled class action alleging that Defendant American Express' policies prohibiting merchants from offering customers incentives to use a particular card or type of payment violated antitrust laws. The case is currently under appellate review before the United States Court of Appeals for the Second Circuit.

Mooney v. Allianz Life Ins. Co. of North America, No. 06-545 (ADM/FLN); 2010 WL 419962 (D. Minn. Jan. 29, 2010). This was a certified class action in which Chestnut Cambronne was co-lead counsel seeking damages of \$2 billion. After a three-week trial, the jury concluded Allianz made false and misleading statements intentionally in violation of the statute, but did not award damages.

In re United Healthcare, Inc. Shareholder Derivative Litig., 631 F.3d 913 (8th Cir. 2011), *affirming* 631 F. Supp. 2d 1151 (D. Minn. 2009). This is a settled shareholder derivative case involving the backdating of stock options. Chestnut Cambronne served as lead counsel and recovered on behalf of the company a settlement valued at \$922 million. Today, it remains the largest recovery in a shareholder derivative case in United States history.

San Francisco Health Plan v. McKesson Corp., No. 1:08-cv-10843 (D. Mass. May 20, 2008). A settled RICO and Clayton Act class action challenging the pricing of pharmaceutical drugs. The class recovered \$82 million. Chestnut Cambronne represented Plaintiff Anoka County.

In re MoneyGram Int'l, Inc. Securities Litig., No. 08-cv-883 (DSD/JJG) (D. Minn. July 22, 2008); 626 F. Supp. 2d 947 (D. Minn. 2009). This is a settled securities fraud class action in which Chestnut Cambronne was co-lead counsel and recovered \$80 million for the class.

Avritt v. Reliastar Life Ins. Co., No. 0:07-cv-01817 (JNE/JJG) (D. Minn. April 9, 2007). This is a settled class action that alleged Defendant defrauded consumers in the sale of its Fixed Annuities. Chestnut Cambronne served as local counsel and recovered \$31 million for the class.

In re: Air Cargo Shipping Services Antitrust Litig., No. 1:06-md-01775 (JG/VVP) (E.D.N.Y. June 27, 2006). This is a partially settled class action alleging a price-fixing conspiracy by dozens of international air cargo carriers. To date over \$500 million has been recovered for the class.

In re: Payment Card Interchange Fee and Merchant Discount Antitrust Litig., MDL No. 1720, 398 F. Supp. 2d 1356 (E.D.N.Y. 2005). A settled class action alleging that the rules Defendants Visa and MasterCard impose upon merchants violate antitrust laws. The case is currently on appeal before the United States Court of Appeals for the Second Circuit. The current settlement value is in excess of \$7.25 billion.

In re Xcel Energy, Inc. Sec, Derivative & "ERISA" Litig., 364 F. Supp. 980, 995-996 (D. Minn. 2005); *In re Xcel Energy Securities, Derivative & "ERISA" Litigation*, 286 F. Supp. 2d 1047 (D. Minn. 2003). This was a securities fraud class action in which Chestnut Cambronne was co-lead counsel. The class recovered \$80 million.

Cooper v. Miller, Johnson, Steichen & Kinnard, No. 0:02-cv-01236 (RHK/AJB) (D. Minn. June 5, 2002) This is a settled securities fraud class action in which Chestnut Cambronne served as lead counsel. The class recovered \$5.6 million.

In Re E.W. Blanch Holdings, Inc. Securities Litig., No. 0:01-cv-00258 (JNE/JGL) (D. Minn. Feb. 12, 2001) This is a settled securities fraud class action in which Chestnut Cambronne served as lead counsel. The class recovered \$20 million.

In re Blue Cross Subscriber Litig., No. 19-C3-98-7780 (Minn. Dist. Ct. 1st Dist.) This was a consumer protection class action on behalf of Blue Cross subscribers. Over

\$41 million was recovered for Blue Cross policy holders. Chestnut Cambronne served as lead counsel.

Alford v. Mego Mortgage Home Loan Owner Trust 1997-1; Mazur v. Empire Funding Home Loan Owner Trust 1997-1; and Banks, et al. v. FirstPlus Home Loan Trust 1996-2 (Minn. Dist. Ct. 4th Dist.). These are settled consumer-lending cases in which Chestnut Cambronne acted as co-lead counsel.

Chestnut Cambronne also has experience successfully defending class litigation.

See, e.g., In re K-Tel, 300 F.3d 881 (8th Cir. 2002); *Wylde v. Champps of New Brighton*, No. 10-cv-4953 (ADM/JJK) (D. Minn. 2011); *Johnson v. BP America, Inc.* No. 12-cv-00417 (RHK/JSM) (D. Minn. 2012).

Not only do the results obtained in the above cases attest to the skill and competence of Chestnut Cambronne lawyers in shareholder litigation, various courts have publicly commended Chestnut Cambronne for its efforts:

Plaintiffs' co-lead counsel have significant experience in representing shareholders and shareholder classes in federal securities actions around the country and in this district in particular. Counsel-both the lawyers representing lead plaintiffs and defendants-conducted themselves in an exemplary manner. ... Thus, the effort of counsel in efficiently bringing this case to fair, reasonable and adequate resolution is the best indicator of the experience and ability of the attorneys involved, and this factor supports the court's award of 25%.

In re Xcel Energy, Inc. Sec, Derivative & "ERISA" Litig, 364 F. Supp. 980, 995 (D. Minn. 2005).

EXHIBIT

C



HELLMUTH & JOHNSON PLLC CLASS ACTION LITIGATION PRACTICE

Hellmuth & Johnson (“H&J”) is a mid-sized law firm with a nationally recognized class action and complex litigation practice group that has successfully represented clients in some of the largest and most complex class action litigations across the country. HJ’s class action litigation practice is focused on consumer fraud, data breach, antitrust class action, and complex litigation matters, with its team of experience attorneys has represented both plaintiffs and defendants in many of the most challenging antitrust, consumer fraud, data breach, mass tort, MDL, class action and complex business litigation cases in venues across the United States. HJ’s vast litigation and trial experience successfully resolving high-profile, high-exposure cases includes matters involving consumer fraud, price-fixing, monopolization, unfair competition, data breach, financial institution, and sports law. H&J’s commitment to efficiency and efficacy is the cornerstone of client service that we provide in every matter.

H&J was recently named to the 2022 “Best Law Firm” list by U.S. News – Best Lawyers and to the *Forbes* list of “America’s Top Trusted Corporate Law Firms”. In addition, H&J has recently earned from *Forbes* a “most recognized for” designation in “Antitrust and Competition Law.”

Because our attorneys have represented both plaintiffs and defendants, our class action attorneys have developed keen insights and experience which allows us to provide unique perspectives and strategies in the representation of our clients. We are better able to understand and anticipate the objectives and tactics of opposing counsel, giving our clients a distinct advantage. We are particularly adept at avoiding unnecessary tasks and expenses in pursuit of the most favorable outcomes for class members.

Our class action and complex litigation group attorneys offer experience and in-depth knowledge across a wide range of industries, and utilize their subject-matter knowledge to determine how the specific needs of our clients and class members in each case relate to the broader implications of any dispute. Our complex litigation team has extensive experience with careful and thorough investigation and evaluation of the facts and applicable state and federal law, and with novel approaches to help our clients achieve success.

CONSUMER FRAUD / DATA BREACH / FINANCIAL INSTITUTIONS / SPORTS LAW

The H&J class action and complex litigation group attorneys have represented consumers, investors, small businesses and others as plaintiffs in data breach, consumer protection, securities fraud, financial services, unfair competition, unfair business practices, product liability, mass tort, property rights, sports, and ERISA claims. While a significant portion of the class action cases are in the federal district court proceedings, H&J attorneys are also commonly involved in state court class actions across the country.



Representative Experience of H&J Attorneys

In re CenturyLink Residential Customer Billing Disputes Litigation, MDL 1795 (D. Minn.). Executive committee member representing class for unlawful sales and billing practices in consumer fraud action.

H&T Fairhills, Ltd., et. al. c. Alliance Pipeline, L.P., 19-cv-01095 (D. Minn.). Lead counsel representing land interest holders in ND, MN, IA and IL in a class action involving the failure to pay those land interest holders compensation for damages caused by construction and maintenance of natural gas pipeline.

In re Netgain Technology, LLC Consumer Data Breach Litigation, 21-cv-1210 (D. Minn.). Member of Plaintiffs' Executive Committee prosecuting data breach claims on behalf of individual consumers.

20/20 Eye Care Network, Inc., et al., 21-cv-61275 (S.D. Fla). Member of Plaintiffs' Executive Committee prosecuting data breach claims on behalf of individual consumers.

In re Arthur J. Gallagher Data Breach Litigation, 21-cv-04056 (N.D. Ill.). Member of Plaintiff team prosecuting consolidated data breach claims on behalf of consumer plaintiffs.

Taqueria El Primo LLC, et al. v. Farmers Group, Inc. et al., 19-cv-03071 (D. Minn.). Proposed Interim Co-Lead Counsel prosecuting a class action on behalf of Minnesota consumers alleging fraudulent misrepresentations and violations of No-Fault insurance in the sale of auto insurance policies.

In re Volkswagen "Clean Diesel" Marketing Sales Practices and Products Liability Litigation, MDL 2672 (N.D. Cal.). Member of discovery team representing consumers defrauded by concealment of software which defeated clean air technology under normal vehicle operation.

In re NHL Concussion Injury Litigation, MDL 2551 (D. Minn.). Executive committee member representing retired players concerning the devastating long-term brain injuries including CTE, resulting from repeated concussive and sub-concussive blows sustained when playing in the NHL.

In re Target Corporation Customer Data Security Breach Litigation, MDL 2522 (D. Minn.). Member of lead counsel Daubert briefing team.

Haritos, et al. v. American Express Financial Advisors, (D. Ariz.). Represented consumers who purchased financial plans tainted by conflicts of interest.

In re NCAA Student Athletic Concussion Litigation, MDL 2492 (N.D. Ill.). Represented student athletes regarding long-term effects of repetitive concussive and sub-concussive blows.

In re Intel Corp. CPU Marketing, Sales Practices and Products Liability. Litigation, MDL 2828 (D. Or.). Member of the Interim Plaintiffs' Steering Committee appointed to represent the interests of all



Entity Plaintiffs nationwide for claimed security vulnerabilities in Intel's processors that may be exploited to permit unauthorized access to stored confidential information.

In re Boston Scientific Corporation Securities Litigation, (D. Mass.). Member of lead counsel team in case asserting violations of the Private Securities Litigation Reform Act related to misleading or false statements regarding a medical device recall.

Rupp, et al. v. Thompson et al. (Minnesota Corn Processors) (Minn. Dist. Ct.). Represented unit holders in class action asserting breach of fiduciary duty and self-dealing against former officers and directors of an agricultural co-operative.

In re Medtronic Securities Litigation. (D. Minn.). Represented securities purchasers alleging misrepresentations and omissions regarding adverse outcomes relating to medical device.

Nathan, et al. v. Whirlpool Corp., 3:19-cv-00226 (D. Ohio). Represent putative class of consumers who purchased high performance KitchenAid blenders and allege violations of state consumer laws and breach of warranty claims for misrepresentations concerning the performance capabilities of its blenders.

Barclay, et al., v. ICON Health & Fitness, Inc. et al., 0:19-cv-02970 (D. Minn.). Represent putative class of fitness equipment purchaser consumers alleging violations of state consumer laws and breach of warranty claims for misleading performance representations in the sale of treadmills.

Bechtel v. Fitness Equipment Services, LLC, 1:19-cv-00726 (D. Ohio). Represent putative class of fitness equipment purchaser consumers alleging violations of state consumer laws and breach of warranty claims for misleading performance representations in the sale of treadmills.

ANTITRUST LITIGATION REGARDING DIRECT AND INDIRECT PURCHASERS

HJ's approach to antitrust matters is decidedly different from other class action law firms. In addition to representing classes composed of individuals, businesses, and governmental entities, H&J has represented multi-national corporations, along with medium and small businesses as both plaintiffs and defendants. We are selective in the disputes we pursue and consistently position that litigation for success in the courtroom. H&J has found this approach yields the best results for our clients at the settlement table or at trial. We carefully consider the objectives and economic realities in every case, looking for the best way to achieve an outcome that meets the needs and expectations of our clients.

The experience and track record of our antitrust attorneys has been recognized in courts across the country. HJ's antitrust prosecution has let to the recovered of hundreds of millions of dollars for our plaintiff clients and class members, and we have successfully defended other clients in mitigating their most significant exposures. We have substantial experience both settling and trying the most challenging antitrust cases.

Representative Experience of H&J Attorneys



In re Viega Copper Press Fitting Antitrust Litigation, Case No. 1:19-cv-00159 (M.D. Pa.). Represented of nationwide class of indirect purchasers for conspiracy to fix prices through the tying of carbon steel press fittings and copper press fittings under state antitrust and consumer fraud laws.

In re Interior Molded Doors Indirect Purchaser Antitrust Litigation, 3:18-cv-00850 (E.D. Va.). Represented class of consumer indirect interior door purchasers for price fixing allegations in the sale of interior doors through large third-party retailers.

In re Crop Inputs Antitrust Litigation, 4:21-MD-2993 (E.D. Mo.). Represent class of consumer farmers on Interim Plaintiffs' Executive Committee, alleging antitrust claims against crop input manufacturers and distributors for anticompetitive price fixing in conspiring to inflate the prices of seeds and crop protection chemicals.

In re Microsoft Antitrust Litigation, (MDL 1332 and Multiple State Class Cases). Represented indirect purchaser antitrust class action in federal MDL, and appointed co-lead counsel in several states to represent separate state classes of indirect purchasers for Microsoft's illegal monopolization of the markets for personal computer operating system, word processing and spreadsheet software.

In re Aftermarket Automotive Filters Antitrust Litigation, MDL 1957 (N.D. Ill.). Co-Lead counsel of indirect purchaser class.

In re NCAA Athletic Grant-In-Aid-Cap Antitrust Litigation, MDL 2541 (N.D. Cal.). Representation of student athletes to recover shortfalls from grants intended to cover the cost of college attendance.

In re DRAM Antitrust Litigation, MDL 1486 (N.D. Cal.). Representation of a nationwide class of indirect purchasers for conspiracy to fix prices.

In re TFT-LCD (Flat Panel) Antitrust Litigation, MDL 1827 (N.D. Cal.). Representation of a nationwide class of indirect purchasers of LCD products, as flat panel televisions and computer monitors, in this multi-district antitrust class action filed against the world's leading manufacturers of thin-film transistor liquid crystal display (TFT-LCD), and alleging that these companies engaged in a conspiracy to artificially inflate the prices of their LCD products.

In re Suboxone Antitrust Litigation, MDL 2445 (E.D. Pa.). Member of executive committee representing end-payors who alleged drug maker illegally sought to extend its drug monopoly and keep opiate addiction treatment off the market.

State of New Mexico, et al., v. Visa, Inc., et al. (New Mexico D. Ct., Santa Fe District). Special Assistant Attorney General to the State of New Mexico in case alleging payment card interchange fees violate state antitrust and consumer fraud laws.

In re Midwest Milk Monopolization Litigation, MDL 83 (W.D. Mo.). Represented milk cooperatives in defense of claims under Sections 1 and 2 of the Sherman Act.



EMPLOYMENT LAW

H&J attorneys are at the forefront of cutting-edge employment issues in the context of class and collective action claims. We act intelligently and proactively every step of the way helping to identify the best options for resolving difficult and challenging conflicts and balancing the financial and emotional costs surrounding these disputes. Our experience, in jurisdictions throughout the country, involves success in settling and trying class claims involving independent contractor issues, ERISA, donning and doffing, discrimination, misclassification from overtime, and other wage and hour disputes.

Representative Experience of H&J Attorneys

In re FedEx Ground Package System Inc. Employment Practices Litigation, MDL 1700 (N.D. Ind.). Member of Plaintiff's Steering Committee team representing misclassified package delivery drivers nationwide. Successfully challenged FedEx's independent contractor model in multiple cases brought under federal and state wage and hour laws and ERISA, leading to multi-million dollar class and aggregate settlements.

DeKeyser, et al. v. ThyssenKrupp Waupaca, Inc., 1:08-cv-00488 (E.D. Wisc.). Class counsel in wage and hour case challenging foundry's practice of not compensating workers for pre- and post-shift work.

Garner, et al. v. Butterball, LLC, et al., 4:10-cv-01025 (E.D. Ark.) Class counsel for Arkansas poultry processing workers who were not paid for time spent performing work before and after paid shifts. Obtained \$4.25 million settlement and change in employer practices.

Frank, et al. v. Gold'n Plump Poultry, Inc., 04-cv-1018 (D. Minn.) Class counsel for Minnesota and Wisconsin poultry processing workers who were not paid for time spent performing work before and after paid shifts. Settlement resulted in change of practices and \$2.65 million monetary settlement for employees.

Milner v. Farmers Ins. Exchange, 27-cv-01-015004 (Hennepin County District Court). Represented class of Minnesota insurance claims adjusters misclassified as exempt from overtime laws. Jury found employer liable for misclassification; case settled after multiple appeals.



Hellmuth & Johnson's Class Action Litigation Team

Michael R. Cashman - Michael is an experienced trial lawyer who specializes in high-stakes complex commercial litigation, arbitrations and trials. He has represented corporations and individuals, as plaintiffs and defendants, in both state and federal court in jurisdictions across the country. Michael also handles international disputes, and has assisted clients with problems in England, Africa, and Mexico. The cases Michael handles typically involve multiparty disputes and tens or hundreds of millions of dollars.

- Education
 - William Mitchell College of Law, J.D., 1990
 - University of Minnesota, B.A., 1983
- Admitted
 - Minnesota State Court
 - U.S. District Court for the District of Minnesota
 - U.S. District Court for the District of Colorado
 - U.S. District Court for the Eastern District of Wisconsin
 - U.S. Court of Appeals for the Federal Circuit
 - U.S. Court of Appeals for the Sixth Circuit
 - U.S. Court of Appeals for the Seventh Circuit
 - U.S. Court of Appeals for the Eighth Circuit

Anne T. Regan - Anne advocates for private and public clients in large-scale commercial and employment litigation across the country, in cases involving the health care, medical device, pharmaceutical, food and agriculture, financial services, transportation, insurance, and manufacturing sectors. She has experience in all aspects of pre-trial and appellate practice, as well as class action and multi-district litigation.

Anne has represented businesses and individuals in complex litigation involving antitrust, consumer fraud, employment, environmental law, intellectual property, products liability, and securities fraud claims, as well as businesses in insurance-related claims and disputes. She was recognized on the Minnesota Rising Stars list from 2012-2013, and since 2014, has been named to the Minnesota Super Lawyers list.

- Education
 - University of Minnesota, J.D., *cum laude*, 2003
 - Washington University, B.A., *magna cum laude*, 1990
- Admitted
 - Minnesota State Court
 - Illinois State Court
 - U.S. District Court for the District of Minnesota
 - U.S. District Court for the Northern District of Illinois



- U.S. District Court for the District of Colorado
- U.S. Court of Appeals for the First Circuit
- U.S. Court of Appeals for the Seventh Circuit
- U.S. Court of Appeals for the Eighth Circuit

Nathan D. Prosser - Nate focuses his practice on complex civil litigation and class actions. His experience includes disputes involving consumer protection, data breach, antitrust and unfair competition, products liability, securities/financial fraud, and general business litigation. Nate has represented individual consumers, small businesses in consumer, data breach and price fixing matters, shareholders, institutional investors, and individual investors in financial fraud matters involving false or misleading material statements against publically traded corporations, as well as misappropriation of funds by financial advisors. He was recognized on the Minnesota Rising Stars list from 2008-2012.

Nate also has unique experience in legal administration services as an ediscovery consultant and in class action administration making him extremely knowledgeable in understanding litigation technology capabilities and the associated costs. He has been retained by law firms and corporations to consult on numerous ediscovery processes including information governance, legal hold processes, data collection, and the processing, review, and production of electronically stored information. He is also well versed in Federal Rules of Civil Procedure 23, due process notice requirements and best practices.

- Education
 - University of North Dakota School of Law, J.D., *with distinction*, 2003
 - Concordia College (Moorhead), B.A., 1997
- Admitted
 - Minnesota State Court
 - U.S. District Court for the District of Minnesota
 - U.S. Court of Appeals for the Eighth Circuit

EXHIBIT

D

LODESTAR TOTAL
(as of March 11, 2022)

<u>Law Firm</u>	<u>Lodestar</u>
Markovits, Stock & DeMarco, LLC	\$348,372.50
Hellmuth & Johnson, PLLC	\$202,908.00
Chestnut Cambronne, PA	\$76,707.50
Total:	\$627,988.00

<u>Law Firm</u>	<u>Hours</u>
Markovits, Stock & DeMarco, LLC	592.80
Hellmuth & Johnson, PLLC	274.20
Chestnut Cambronne, PA	102.10
Total:	969.10

EXHIBIT

E

LITIGATION EXPENSES

<u>Universal Category</u>	<u>Subtotal</u>
Copies	\$466.10
Filings	\$1,000.00
Mailings	\$620.57
Client Contact	\$37.61
Research	\$936.77
Support Services	\$2,500.00
TOTAL:	\$5,561.05

<u>Law Firm</u>	<u>Expense Total</u>
Markovits, Stock & DeMarco	\$4,725.98
Hellmuth & Johnson, PLLC	\$381.92
Chestnut Cambronne, PA	\$453.15
Total:	\$5,561.05

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

ROBERT WALKER, on behalf of himself and all others similarly situated,	:	
	:	
	:	Case No. 2:20-cv-3414
	:	
Plaintiff,	:	Judge Edmund A. Sargus Jr.
	:	
v.	:	Magistrate Judge Elizabeth A. Preston
	:	Deavers
NAUTILUS, INC.,	:	
	:	
Defendant.	:	

DECLARATION OF SETTLEMENT ADMINISTRATOR

I, Denise Earle, hereby declare the following pursuant to 28 U.S.C. §1746:

1. I am a Senior Project Manager with Angeion Group (“Angeion”), located at 1650 Arch Street, Suite 2210, Philadelphia, PA 19103. I am over 21 years of age and am not a party to this action. I have personal knowledge of the facts set forth herein and, if called as a witness, could and would testify competently thereto.

2. The purpose of this declaration is to provide the Parties and the Court with a summary and the results of the work performed by Angeion to effectuate notice pursuant to the Court’s November 16, 2021 Order Granting Preliminary Approval of Class Action Settlement (ECF No. 41) (“Order”).

3. Angeion was retained by the Parties to serve as the Settlement Administrator to, among other tasks, disseminate Notice to the Settlement Class and perform other duties as specified in the Class Action Settlement Agreement (“Agreement”) and the Order that this Court preliminarily approved on November 16, 2021.

DISTRIBUTION OF CAFA NOTICE

4. On November 15, 2021, pursuant to 28 U.S.C. §§ 1715(b), Angeion caused Notice regarding the Settlement to be sent to the Attorneys General of all states and territories and the

Attorney General of the United States (“CAFA Notice”). The CAFA Notice mailings included copies of the documents listed in the CAFA Notice. A true and correct copy of the CAFA Notice is attached hereto as Exhibit A.

DIRECT NOTICE

Class Data

5. Between December 2, 2021 and January 3, 2022, as ordered by the Court, Nautilus and certain Third-Party Retailers provided Angeion with electronic files containing approximately 102,378 records of class member mailing addresses and email addresses where available. After analyzing the data and removing duplicative records, Angeion performed a reverse append in an attempt to locate email addresses for records where the email address was identified as invalid or where there was no email address present. Angeion was able to locate 18,152 email addresses. These email addresses were subjected to a validation process and after deduplicating again, Angeion identified a total of 67,815 unique records with a valid email address and a total of 25,360 unique records with a mailing address.

Email Notice

6. On January 28, 2022, Angeion caused the email notice to be sent to the 67,815 records with valid email addresses. As of March 8, 2022, approximately 3,865 notices could not be delivered. Of the undeliverable emails, there were 3,816 records that contained mailing address information in the provided class data. Angeion will mail a postcard notice to the address on record. A true and accurate copy of the email notice is attached hereto as Exhibit B.

7. Angeion was informed through Plaintiff’s counsel that Amazon also caused notice of the Settlement to be sent via email to 30,208 unique Amazon customer accounts. Of these, four were undeliverable.

Mailed Notice

8. Between January 24, 2022 and January 31, 2022, Angeion caused the postcard notice to be mailed to the 25,360 Class Member records that did not have a valid email address,

but had mailing address information. A true and accurate copy of the postcard notice is attached hereto as Exhibit C.

9. Prior to Mailing, Angeion caused the mailing list to be updated utilizing the United States Postal Service's ("USPS") National Change of Address database, which provides updated address information for individuals or entities that have moved during the previous four years and filed a change of address with the USPS. Angeion will receive and process mailed notices returned by the USPS as undeliverable. Notices returned to Angeion by the USPS with a forwarding address will be re-mailed to the new address provided by the USPS. Notices returned to Angeion by the USPS without a forwarding address will be subjected to address verification searches ("skip traces"), and notices will be re-mailed to any updated addresses identified through the skip trace process.

10. As of March 16, 2022, Angeion received approximately 1,649 Notices returned by the USPS as undeliverable. For 3 of these, the USPS automatically forwarded them to an updated address. For 64 of these, the USPS provided an updated address to which Angeion will remail the Notice. For the remaining 1,577, Angeion conducted address verification searches (commonly referred to as "skip traces") in an attempt to locate updated address information. Notices are being remailed to any updated addresses identified.

Custom Social Media Notice

11. On January 31, 2022, Angeion caused the custom social media campaign to commence to Class Members for which an email address was present, as ordered by the Court, and where those email addresses are used as the primary log-in for Facebook or Instagram, display ads are delivered directly to Class Members via those social media platforms. As of March 16, 2022, the social media notice delivered approximately 516,153 impressions. A true and accurate copy of the advertisement is attached hereto as Exhibit D.

DIGITAL NOTICE

12. On January 31, 2022, Angeion implemented programmatic digital banner ads campaign designed to reach the Target Audience and drive them to the Settlement Website. As

of March 16, 2022, the digital banner ads delivered approximately 1,260,700 impressions. True and correct copies of the banner ads are attached hereto as Exhibit E.

SETTLEMENT WEBSITE AND TOLL-FREE HOTLINE

13. On or about January 19, 2022, Angeion established the following website devoted to this Settlement: www.NautilusTreadmillSettlement.com (“Settlement Website”). The Settlement Website contains general information about the Settlement, including answers to frequently asked questions, important dates and deadlines pertinent to this matter, and copies of important documents. Visitors to the Settlement Website can download (1) a Long Form Notice, (2) a Claim Form, (3) an Opt Out Form, (4) the Complaint, (5) the Order, and (6) the Agreement. The Settlement Website also has a “Contact Us” page whereby Class Members can submit questions regarding the Settlement to a dedicated email address: Info@NautilusTreadmillSettlement.com. The Settlement Website address was set forth in the Long Form Notice and Claim Form. A true and correct copy of the Long Form Notice is attached hereto as Exhibit F.

14. On or about January 19, 2022, Angeion established an online claim filing portal (on the Submit a Claim page of the Settlement Website) whereby Class Members can complete and submit their Claim Form via the Settlement Website, or where they can download a PDF of the Claim Form to complete and submit by mail. For Class Members whose purchase information was obtainable, claim forms were prepopulated with the information necessary to make a claim. A claim can easily be made electronically, and Class Members can elect to receive their payment by check or electronically. A unique individual code to obtain the JRNY subscription benefit will be made available electronically.

15. As of March 16, 2022, the Settlement Website has had approximately 45,908 page views and 23,503 sessions, which represents the number of individual sessions initiated by all users.

16. On or about January 25, 2022, Angeion established the following toll-free line dedicated to this case: 1-855-965-4009. The toll-free line utilizes an interactive voice response

(“IVR”) system to provide Class Members with responses to frequently asked questions, the ability to request a Claim Form, and includes information about filing a claim and important dates and deadlines. The toll-free line is accessible 24 hours a day, 7 days a week.

17. As of March 16, 2022, the toll-free number has received approximately 136 calls, totaling 695 minutes. Angeion has also responded to approximately 184 email inquiries.

CLAIM FORM SUBMISSIONS

18. The deadline for members of the Settlement Class to submit a claim form is May 2, 2022 and there is generally a surge of claims surrounding the deadline date. As of March 16, 2022, Angeion has received approximately 9,184 claim form submissions. This is an expected claims rate at this point in the claims period for a consumer class action of this nature. These claim form submissions are still subject to final audits, including the full assessment of each claim’s validity and a review for duplicate submissions. Angeion will continue to keep the parties apprised of the number of claim form submissions received.

REQUESTS FOR EXCLUSION AND OBJECTIONS TO THE SETTLEMENT

19. The deadline for members of the Settlement Class to request exclusion from the Settlement or object to the Settlement is April 1, 2022. As of March 16, 2022, Angeion has received 16 requests for exclusion from the Settlement. This is a low level of objections and opt outs at this point. A list containing the names of the individuals requesting exclusion is attached hereto as Exhibit G. Angeion will inform the parties of any additional requests for exclusion it receives.

20. Angeion has not been made aware of any objections to the Settlement.

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: March 17, 2022

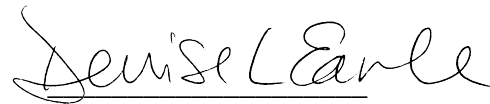

DENISE EARLE

Exhibit A



1650 Arch Street, Suite 2210
Philadelphia, PA 19103
(p) 215-563-4116
(f) 215-563-8839
www.angeiongroup.com

November 15, 2021

VIA USPS PRIORITY MAIL

United States Attorney General, State Attorneys
General, and Appropriate Officials

Re: Notice of Class Action Settlement
Robert Walker v. Nautilus, Inc.

Dear Counsel or Official:

Angeion Group, an independent claims administrator, on behalf of Defendant Nautilus, Inc. in the below-described action, hereby provides your office with this notice under the provisions of the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1715, to advise you of the following proposed class action settlement:

Case Name: *Robert Walker v. Nautilus, Inc.*

Index Number: 2:20-cv-03414-EAS-EPD

Jurisdiction: United States District Court Southern District of Ohio Eastern Division

Date Settlement Filed with Court: November 5, 2021

In accordance with the requirements of 28 U.S.C. § 1715, please find copies of the following documents associated with this action on the enclosed CD-ROM:

1. **28 U.S.C. § 1715(b)(1)-Complaint:** Complaint, filed with the Court on July 7, 2020.
2. **28 U.S.C. § 1715(b)(2)-Notice of Any Scheduled Judicial Hearings:** There are no judicial hearings currently scheduled.
3. **28 U.S.C. § 1715(b)(3)-Notification to Class Members:** The proposed Long Form Notice, Postcard Notice and Email Notice, attached to the Class Action Settlement Agreement and Release filed with the Court on November 5, 2021.
4. **28 U.S.C. § 1715(b)(4)-Class Action Settlement Agreement:** Class Action Settlement Agreement and Release, filed with the Court on November 5, 2021. Also included are Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement filed with the Court on November 5, 2021; Declaration of W.B. Markovitz in Support of the Settlement Agreement and Preliminary Approval of the Settlement filed with the Court on November 5, 2021; Proposed Order Requiring Third-Party Retailers of Nautilus, Inc. Treadmills to Produce Limited Customer Information for the Purpose of Assisting in Providing Direct Notice

Nautilus Notice of Class Action Settlement

November 15, 2021

Page 2

to Class Members filed with the Court on November 5, 2021; Proposed Order Granting Preliminary Approval of Class Action Settlement filed with the Court on November 5, 2021; Motion for Indicative Ruling of Plaintiff-Appellee Robert Walker and Defendant-Appellant Nautilus, Inc. filed October 11, 2021; Memorandum in Support of Joint Motion for Indicative Ruling of Plaintiff-Appellee Robert Walker et al. and Defendant-Appellant Nautilus, Inc. filed with the Court on October 11, 2021; Order re: Joint Motion for Indicative Ruling filed with the Court on November 2, 2021; Opinion and Order re Nautilus' Motion to Compel Arbitration filed with the Court on May 28, 2021; and the Notice of Appeal re: The Court's May 28, 2021 Opinion and Order filed with the Court on June 2, 2021.

5. **28 U.S.C. § 1715(b)(5)-Any Settlement or Other Agreements:** Other than the Class Action Settlement Agreement and Release, no other settlements or other agreements have been contemporaneously made between the Parties.
6. **28 U.S.C. § 1715(b)(6)-Final Judgment:** The Court has not issued a Final Judgment or notice of dismissal as of the date of this CAFA Notice.
7. **28 U.S.C. § 1715(b)(7)(B)-Estimate of Class Members:** Given that the equipment that is the subject matter of the Litigation is sold throughout the United States, Class Members may be domiciled anywhere in the United States. The estimated proportional share of the Settlement benefits is not available at this time, as it is contingent on the Class Member submission of a claim form.
8. **28 U.S.C. § 1715(b)(8)-Judicial Opinions Related to the Settlement:** The Court has not issued any judicial opinions related to the Settlement at this time.

If you have questions or concerns about this notice, the proposed settlement, or the enclosed materials, or if you did not receive any of the above-listed materials, please contact this office.

Sincerely,

Angeion Group
1650 Arch Street, Suite 2210
Philadelphia, PA 19103
(p) 215-563-4116
(f) 215-563-8839

Enclosures

Exhibit B

From: Walker v. Nautilus Settlement Administrator
Sent: DoNotReply@NautilusTreadmillSettlement.com
To: [INSERT]
Subject: Notice of Proposed Treadmill Settlement

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO, EASTERN DIVISION

Robert Walker v. Nautilus, Inc.
Case No. 2:20-cv-3414

A federal court authorized this notice. This is not a solicitation from a lawyer.

Dear [INSERT NAME],

This court-authorized notice has been sent to you because a Settlement has been reached in a class action lawsuit involving Nautilus, Schwinn and Bowflex Treadmills that was brought against Defendant Nautilus, Inc. ("Nautilus"). You may be eligible to receive a Settlement payment and other benefits as you have been identified as a potential Settlement Class Member. Please read this notice carefully, as it explains your legal rights in this matter.

What Is the Lawsuit About?

Defendant sells Nautilus, Schwinn and Bowflex Treadmills ("Treadmills"). Plaintiff alleges that Defendant made misrepresentations regarding the horsepower of its Treadmills and, as a result, he and other Class Members paid more for the Treadmills than they would have absent the alleged misrepresentation. Nautilus denies the allegations.

Under the Settlement, Defendant agrees to create a Common Fund of \$4,250,000 from which to pay, subject to the Court's approval: (a) attorneys' fees and expenses to Class Counsel; (b) a service award; (c) notice and administration costs; and (d) a pro rata share of remaining Common Fund monies to Class Members asserting valid claims. No portion of the Common Fund will revert to Defendant. In addition, each Class Member asserting a valid claim will receive a one-year subscription to Nautilus's JRNY app or, for those Class Members already subscribed, a one-year extension. Under the proposed Settlement, Defendant has agreed to stop using certain horsepower representations in connection with the future sale and/or marketing of its treadmills.

For detailed information about the lawsuit and the Settlement, please see the Notice of Settlement and the Settlement Agreement, available at www.NautilusTreadmillSettlement.com.

Am I a Settlement Class Member?

Defendant's and/or a retailers' records indicate you may be a Settlement Class Member. These records reflect that you purchased a covered Treadmill during the class period, July 7, 2016 through November 16, 2021.

If you do not opt out of the Settlement Class, you will be eligible to receive a payment and a subscription benefit under the Settlement. To claim a Settlement benefit, you must file a timely and valid claim by **May 2, 2022** at www.NautilusTreadmillSettlement.com or you can download a Claim Form there. During that process you may add or update your Settlement payment information, including your mailing address, or select to receive payment via electronic means.

What Can I Get?

If the Settlement is approved by the Court and you have filed a timely and valid claim, you will be entitled to a monetary payment. The exact amount of the payment will depend on a number of factors, including the number of Class Members who can be located and make valid claims, the amount of attorneys' fees and expenses, the service award, and Court-approved administration costs. If there is a 20% claims rate, the payment per claimant is estimated to exceed \$50.00. In addition to the monetary payment, you would be entitled to a one-year subscription to Nautilus's JRNY app, or for those Class Members already subscribed, a one-year extension of your current subscription. The one-year subscription is valued at approximately \$150.00.

How Would I Exclude Myself?

If you do not want to be a Settlement Class Member, you may exclude yourself from the Settlement Class by mailing a written notice to the Settlement Administrator received by **April 1, 2022**. This would mean you would not receive a Settlement payment, but you will retain your rights concerning the legal issue in the lawsuit. Detailed instructions on how to exclude yourself from the Settlement are available at www.NautilusTreadmillSettlement.com.

What If I Do Not Agree with the Settlement?

If you do not exclude yourself, but do not like some aspect of the Settlement, you can also object. To object or appear before the Court to discuss your objection, you must file a written notice to the Court, and mail copies to counsel and the Settlement Administrator no later than **April 1, 2022**. Instructions on how to object to the Settlement or appear before the Court can be found at www.NautilusTreadmillSettlement.com.

Do I Have a Lawyer?

The Court has appointed lawyers from three law firms to serve as Class Counsel: Markovits, Stock & DeMarco, LLC, Hellmuth & Johnson PLLC, and Chestnut Cambronne PA. They will petition to be paid legal fees from the Settlement Fund not to exceed one third of the Settlement Fund, their reasonable expenses in pursuing the lawsuit not to exceed \$75,000 and payment of a Class representative service award not to exceed \$5,000. However, you may hire your own lawyer at your expense if you so choose.

When Will the Court Consider the Settlement?

The Court will hold a final approval hearing on **June 21, 2022 at 10 a.m.** at Joseph P. Kinneary U.S. Courthouse, Room 301, 85 Marconi Boulevard, Columbus, OH 43215. The hearing may be postponed to a later date without further notice and may occur via remote means such as teleconference or Zoom. Settlement Class Members should check www.NautilusTreadmillSettlement.com regularly for any changes to this date or method of attending. At that hearing, the Court will hear any objections concerning the fairness of the Settlement, decide whether to approve the Settlement, the requested attorneys' fees not to exceed one-third of the Settlement Fund, plus reasonable expenses not to exceed \$75,000, the requested Class Representative payment not to exceed \$5,000, and administration costs.

How Do I Get More Information?

For more information, go to www.NautilusTreadmillSettlement.com, or contact the Settlement Administrator by email at info@NautilusTreadmillSettlement.com.

Please Do Not Contact the Court for Information.

To unsubscribe from this list, please click on the following link: [Unsubscribe](#)

Exhibit C

A Settlement has been reached in a class action lawsuit, *Robert Walker v. Nautilus, Inc.*, Case No. 2:20-cv-3414, pending in the United States District Court for the Southern District of Ohio, Eastern Division. Between 2016 and 2021, Defendant marketed and sold Nautilus, Schwinn and Bowflex treadmills. Plaintiff claims that Defendant made misrepresentations regarding the horsepower of its treadmills, causing he and other Class Members to pay more than they would have absent the alleged misrepresentations. Defendant vigorously denies that it violated any law but has agreed to the Settlement to avoid the expenses associated with continuing the litigation. This Notice summarizes the proposed Settlement. Under the Settlement, Defendant agreed to create a non-reversionary Common Fund of \$4,250,000 for the benefit of the Settlement Class and from which to pay, subject to the Court's approval, any attorneys' fees and expenses, a service award to Plaintiff, notice and administration costs, and pro rata payments to Class Members. For the precise terms and conditions of the Settlement, please see the Notice of Settlement and review the Settlement Agreement, available at www.NautilusTreadmillSettlement.com.

Am I a Class Member? Defendant's or retailers' records indicate you are a Class Member, because you purchased a treadmill manufactured by Defendant during the class period July 7, 2016 through November 16, 2021.

What Can I Get? If the Settlement is approved by the Court, you are eligible to receive money. If approved, the amount of payment will depend on the number of Settlement Class Members who can be located and make a claim, the amount of approved attorneys' fees, costs, the Class Representative service award, and administration costs. In addition, you are eligible to receive a one-year subscription, or subscription renewal, to Defendant's JRNY app.

How Do I Receive Settlement Benefits? You will be eligible to receive money and a subscription benefit under the Settlement by making a claim, unless you opt out of the Settlement Class. To claim a Settlement benefit and to update your address, please visit www.NautilusTreadmillSettlement.com. Claim Forms must be submitted on or before **May 2, 2022**.

What Are My Other Options? You may exclude yourself from the Settlement Class by mailing a written notice to the Settlement Administrator by **April 1, 2022**. If you exclude yourself, then you cannot receive a Settlement payment or subscription benefit, but you will not be bound by the Settlement. If you do not exclude yourself, then you may object to the Settlement, and you or your lawyer can appear before the Court. Your written objection must be submitted to the Settlement Administrator, counsel and the Court no later than **April 1, 2022**. Specific instructions on how to exclude yourself from the Settlement or object are available at www.NautilusTreadmillSettlement.com.

Who Represents Me? The Court has appointed lawyers from three firms to serve as Lead Class Counsel. They will petition to be paid legal fees and their reasonable expenses from the Settlement Fund. You may hire your own lawyer at your expense if you so choose.

When Will the Court Consider the Settlement? The Court will hold a final approval hearing on **June 21, 2022 at 10:00 a.m.** at Joseph P. Kinneary U.S. Courthouse, Room 301, 85 Marconi Boulevard, Columbus, OH 43215. At that hearing, the Court will hear timely objections concerning the fairness of the Settlement, decide whether to approve the requested attorneys' fees of up to one-third of the Settlement Fund plus reasonable out of pocket costs not to exceed \$75,000, the requested Class Representative payment of \$5,000, and administration costs.

How Do I Get More Information? For more information, go to www.NautilusTreadmillSettlement.com, or contact the Settlement Administrator at (855) 965-4009.

Nautilus Headmill Settlement
Settlement Administrator
1650 Arch St., Ste 2210
Philadelphia, PA 19103

FIRST CLASS
MAIL
US POSTAGE
PAID
Permit#__

**COURT ORDERED
SETTLEMENT
NOTICE**

*Robert Walker v.
Nautilus, Inc.*

Class Action Notice

Opt-Out Deadline:
April 1, 2022

[Postal barcode]

Postal Service: Please do not mark barcode.

Claim Number: [TVX123456789]

Confirmation Code: [125wed6985]

[MailingID]

[NAME]

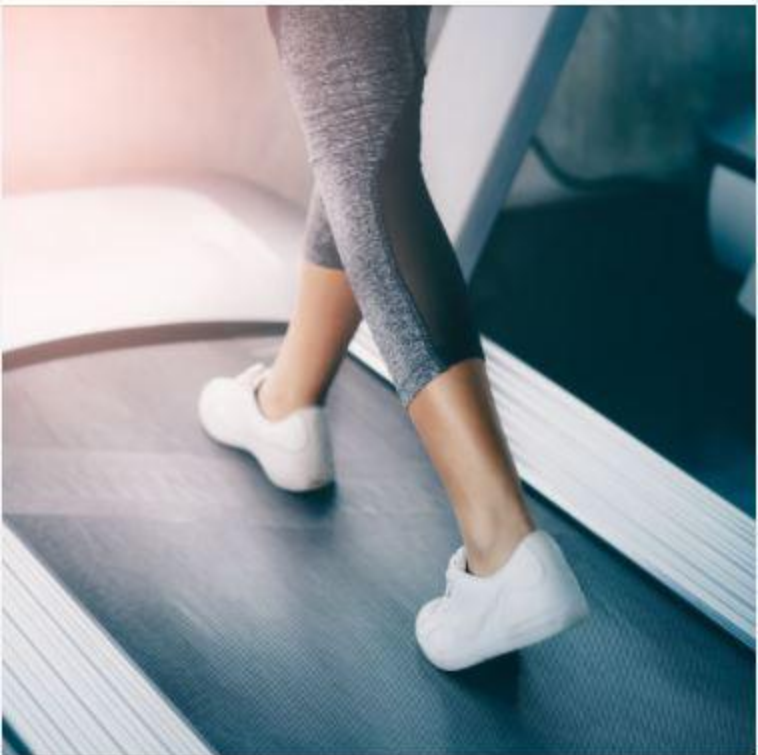
[ADDR1]

[ADDR2]

[CITY], [ST] [ZIP]

Exhibit D

If you purchased a Nautilus, Bowflex or Schwinn Treadmill, you may be entitled to benefits from a class action Settlement.



NAUTILUSTREADMILLSETTLEMENT.COM

Walker v. Nautilus, Inc.

No. 2:20-cv-3414

[Learn More](#)

Exhibit E



If you
purchased a
**Nautilus,
Bowflex or
Schwinn
Treadmill,**
you may be
entitled to
benefits
from a class
action
Settlement.

Click Here
for more information

S-EPD Doc # 50-3 Filed: 03/17/22 Page: 1

If you purchased a Nautilus, Bowflex or

Technogym exercise machine, you may be entitled to

to benefits from a class action Settlement.

If you purchased a
Nautilus, Bowflex
or **Schwinn**
Treadmill, you
may be entitled to
benefits from a
class action
Settlement.

Click Here
for more information





If you purchased a
Nautilus, Bowflex
or **Schwinn**
Treadmill, you may
be entitled to
benefits from a
class action
Settlement.

Click Here
for more information

AS-EPD Doc # 50-3 Filed: 03/17/22 Page: 23

Case: 2:20-cv-03414-EAS-EPD Doc#: 50-3 Filed: 03/17/22 Page: 24 of 35 PAGEID #: 706

If you purchased a Nautilus, Bowflex or Schwinn Treadmill, you may be entitled to benefits from a class action Settlement.

Click Here
for more information



If you purchased a **Nautilus**,
Bowflex or **Schwinn Treadmill**,
you may be entitled to benefits
from a class action Settlement.

Click Here
for more information

Exhibit F

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO – EASTERN DIVISION

If you purchased a Nautilus, Bowflex or Schwinn Treadmill, you may be entitled to benefits from a class action Settlement.

A Federal Court authorized this Notice. This is not a solicitation from a lawyer.

Please be advised that the Plaintiff, Robert Walker (“Plaintiff”) has reached a proposed Settlement in *Walker v. Nautilus, Inc.*, Case No. 2:20-cv-3414, a class action lawsuit (the “Lawsuit”) with Defendant Nautilus, Inc. (“Defendant” or “Nautilus”) concerning certain Bowflex, Schwinn, and Nautilus treadmills (“Treadmills”).¹

PLEASE READ THIS NOTICE CAREFULLY. If you live within the United States and its territories and purchased a Bowflex, Schwinn, or Nautilus treadmill between July 7, 2016 and November 16, 2021, your rights may be affected whether or not you act.

YOUR LEGAL RIGHTS ARE AFFECTED BY THIS SETTLEMENT WHETHER YOU ACT OR DON’T ACT:

SUBMIT A CLAIM FORM Deadline: May 2, 2022	Submitting a Claim Form is the only way to be eligible to receive any benefit under this Settlement.
EXCLUDE YOURSELF Deadline: April 1, 2022	Excluding yourself, or “opting-out,” is the only option that allows you ever to be part of another lawsuit against Nautilus about the claims resolved by this Settlement. If you exclude yourself from or opt out of this Settlement, you will not be able to get any benefits from it.
OBJECT Deadline: April 1, 2022	Mailing an objection is the only way to notify the Court that you are unhappy with any aspect of the Settlement. You cannot object to the proposed Settlement unless you are a Class Member.
APPEAR AND BE HEARD AT THE FAIRNESS HEARING Deadline: April 1, 2022	You must file a Notice of Intention to Appear with the Court if you wish to speak at the Fairness Hearing.
GO TO THE HEARING Deadline: June 21, 2022	You may attend the hearing, but you do not have to do so. The Court will hold the Fairness hearing at 10 a.m. on June 21, 2022 , at the Joseph P. Kinneary U.S. Courthouse, 85 Marconi Boulevard, Columbus, OH 43215, in Courtroom 301.
DO NOTHING	If you are a Class Member and do not submit a Claim Form by May 2, 2022 , you will not receive any benefit from the Settlement and you will give up your right to ever be part of another lawsuit against Nautilus regarding the legal claims resolved by this Settlement.

If you have any questions about this Notice, the proposed Settlement, or your eligibility to participate in the Settlement, please DO NOT contact Nautilus or its legal counsel. All questions should be directed to the Settlement Administrator (see paragraph 25 below). You may also contact Class Counsel.

¹ All capitalized terms used in this Notice that are not otherwise defined herein shall have the meaning provided in the Class Action Settlement Agreement and Release dated November 5, 2021 (“Settlement Agreement”), which is available online on the website for this Lawsuit at www.NautilusTreadmillSettlement.com.

1. **Description of the Lawsuit and Class:** This Notice relates to a proposed class action Settlement of a case alleging that Nautilus made misrepresentations regarding the horsepower of its Treadmills. Plaintiff alleges that, as a result, he and other Class Members paid more for the Treadmills than they would have absent the alleged misrepresentations. Nautilus denies the allegations in the Lawsuit and has asserted numerous defenses. The Court has not ruled on the merits of Plaintiff's claims or on Nautilus' denial of the claims or on Nautilus' defenses, with the exception of denying Nautilus' motion to compel arbitration. The proposed Settlement, if approved by the United States District Court for the Southern District of Ohio (the "Court") will settle claims of the following class of persons and entities (the "Class"):

All Persons within the United States and its territories who: (a) purchased a Bowflex, Nautilus, or Schwinn treadmill from July 7, 2016 through November 16, 2021, primarily for personal, family, or non-commercial purposes, and not for resale. Excluded from the Class are: Defendant and its officers and directors; Class Counsel and their partners, associates, lawyers, and employees; and the judicial officers and their immediate family members and associated Court staff assigned to this case.

2. **Benefits Available to Class Members:** Class Members who timely submit a valid claim are eligible for the following benefits:

- a. a *pro rata* share of a Common Fund of \$4,250,000, after Attorneys' Fees and Expenses, Administration and Notice Expenses, and a Service Award, if any; and
- b. a one-year subscription to Nautilus' JRNY app or, for those Class Members already subscribed, a one-year extension.
- c. **Injunctive relief in that Defendant has agreed to stop making the CHP representations at issue in this case and to affix a disclaimer to any future horsepower representations made in connection with the sale and/or marketing of Defendant's treadmills.**

If there is a 20% claims rate, the payment per Claimant is estimated to be in excess of \$50. The one-year subscription is valued at approximately \$150.00.

3. **Reasons for the Settlement:** Both sides agreed to a Settlement to avoid the costs and risks of further litigation and to provide benefits to Class Members. The Class Representative and the lawyers representing him (called "Class Counsel") believe that the Settlement is in the best interests of all Class Members.

4. **Attorneys' Fees, Expenses, and Service Awards Sought:** This Lawsuit has been prosecuted on behalf of Plaintiff on a wholly contingent basis by the firms of Markovits, Stock & DeMarco, LLC, Hellmuth & Johnson, PLLC, and Chestnut Cambronne, PA. These firms have received no payment of attorneys' fees for their representation of the Class and have advanced expenses necessarily incurred to prosecute this Lawsuit. Class Counsel have reviewed the factual and legal bases for the claims asserted in the Lawsuit and conducted appropriate investigation regarding those claims, have litigated the lawsuit prior to the proposed Settlement, and have examined and considered the benefits to be provided to the Class Members under the Settlement.

The Parties have not reached any agreement on the amount of Attorneys' Fees and Expenses that Class Counsel will be paid, except that the Parties agree Class Counsel is entitled to an award of Attorneys' Fees and Expenses. Defendants have no liability or obligation with respect to any Attorneys' Fees and Expenses, Settlement Administration and Notice Expenses, or Service Award to the Plaintiff—these amounts will be awarded by the Court and paid out of the \$4.25 million Common Fund. Class Counsel has agreed its Attorneys' Fees request will not exceed one-third of the Common Fund. Class Counsel intends to seek reimbursement for reasonable expenses incurred in pursuit of the litigation, not to exceed \$75,000. Class Counsel also intends to request Court approval of a Service Award to Plaintiff and Class Representative Robert Walker in the amount of \$5,000 to compensate Plaintiff for his efforts in pursuing this Lawsuit. Nautilus has no objection to the proposed Attorneys' Fees and Service Award requests.

5. **Identification of Class Counsel:** Named Plaintiffs and the Class are being represented by W.B. Markovits, Terence Coates and Justin Walker of Markovits, Stock & DeMarco, LLC, 3825 Edwards Road, Suite 650, Cincinnati, OH 45209; Nathan Prosser of Hellmuth & Johnson, PLLC, 8050 West 78th Street, Edina, MN 55439; and Bryan Bleichner and Jeffrey Bores of Chestnut Cambronne, PA, 100 Washington Avenue South, Suite 1700, Minneapolis, MC 55401.

WHAT THIS NOTICE CONTAINS

Why Did I Get A Notice And Does It Apply To Me?.....	Page 3
What Is This Case About?	Page 4
Why Is There A Settlement?	Page 4
What Might Happen If There Were No Settlement?.....	Page 4
What Benefits Might I Receive From The Settlement?	Page 5
What Rights Am I Giving Up By Receiving Benefits and Staying In the Settlement Class?	Page 5
What Payment Are The Attorneys For The Class Seeking? How Will The Lawyers Be Paid?	Page 5
How Do I Participate In The Settlement? What Do I Need To Do?.....	Page 5
How Do I Exclude Myself From the Settlement Class?.....	Page 5
How Do I Object To The Settlement?	Page 6
When And Where Is The Fairness Hearing? Am I Required To Attend The Fairness Hearing?	
May I Speak At The Hearing If I Don't Like The Settlement?	Page 6
How Do I Get More Information About this Case?.....	Page 7

WHY DID I GET A NOTICE AND DOES IT APPLY TO ME?

6. The Notice is provided pursuant to an Order of the Court to potential Class Members who might have purchased a Treadmill between July 7, 2016 and November 16, 2021. The Court has directed that a Short Form Notice be sent to potential Class Members because, as a potential Class Member, they have a right to know about the options before the Court rules on the proposed Settlement. Additionally, they have the right to understand how a class action lawsuit may generally affect their legal rights. If the Court approves the Settlement, the Settlement Administrator approved by the Court, will distribute the benefits of this Settlement (detailed below) after any objections and appeals are resolved.

7. In a class action lawsuit, under state and federal law governing lawsuits such as this one, the Court approves one or more plaintiffs (known as Class Representatives) to represent the class and to oversee the litigation brought on behalf of all persons or entities with the same or similar claims, commonly known as the class or the Class Members. In this Lawsuit, Plaintiff Robert Walker is the Class Representative, and Class Counsel (identified in paragraph 5 above) represent the Plaintiff and the Class Members. A class action is a type of lawsuit in which the claims of a number of individuals are resolved together, thus providing the Class Members with consistent and efficient adjudication of their claims. As part of the Settlement in this case, the Class as described in paragraph 1 above will be certified. Accordingly, the Settlement, if approved by the Court, will resolve all issues on behalf of the Class Members, except for anyone who requests to be excluded from the Settlement.

8. The Court in charge of this case is the United States District Court for the Southern District of Ohio, and the case is known as *Robert Walker v. Nautilus, Inc.* Case No. 2:20-cv-3414. The judge presiding over this Lawsuit is the Honorable Edmund A. Sargus, Jr., United States District Judge. The person suing is called the "Plaintiff" and the company being sued is called the "Defendant."

9. This Notice explains the Lawsuit, the Settlement, your legal rights, what benefits are available, who is eligible for them, and how to receive the benefits. The purpose of this Notice is to inform you that a Settlement has been reached in this Lawsuit and how you might be affected. It is also to inform you of the terms of the proposed Settlement, and of a Hearing on the Final Approval of the Settlement to be held by the Court to consider the fairness, reasonableness, and adequacy of the proposed Settlement, and the motion of Class Counsel for an award of attorneys' fees and reimbursement of litigation expenses (the "Fairness Hearing").

10. The Fairness Hearing will be held on **June 21, 2022 at 10:00 a.m.** at the Joseph P. Kinneary U.S. Courthouse, 85 Marconi Boulevard, Columbus, OH 4321 in Courtroom 301 to determine,

- a) whether the proposed Settlement is fair, reasonable, and adequate and should be approved by the Court;
- b) whether the Lawsuit should be dismissed with prejudice against the Defendant as set forth in the Settlement Agreement;
- c) whether Class Counsel's request for an award of attorneys' fees and reimbursement of litigation expenses should be approved by the Court;
- d) whether the Service Award to the Plaintiff should be approved by the Court; and,
- e) any other relief the Court deems necessary to effectuate the terms of the Settlement.

11. This Notice does not express an opinion by the Court concerning the merits of any claim in this Lawsuit, and the Court still has to decide whether to approve the Settlement. If the Court approves the Settlement, benefits of the Settlement will be given to Class Members who submit valid claims after any appeals are resolved, and after the completion of all claims processing. The claims process could take substantial time to complete fully and fairly as there are over a hundred thousand Class Members. Please be patient. The Settlement website, www.NautilusTreadmillSettlement.com, will be updated on a regular basis to provide Class Members with the most recent information.

12. If you are a member of the Class, you are subject to the Settlement unless you take the steps set forth below to exclude yourself. The Class consists of:

All Persons within the United States and its territories who: (a) purchased a Bowflex, Nautilus, or Schwinn treadmill from July 7, 2016 through November 16, 2021, primarily for personal, family, or non-commercial purposes, and not for resale. Excluded from the Class are: Defendant and its officers and directors; Class Counsel and their partners, associates, lawyers, and employees; and the judicial officers and their immediate family members and associated Court staff assigned to this case.

PLEASE NOTE: RECEIPT OF THE SHORT FORM NOTICE DOES NOT MEAN THAT YOU ARE A CLASS MEMBER OR THAT YOU WILL BE ENTITLED TO RECEIVE BENEFITS FROM THE SETTLEMENT. IF YOU ARE A CLASS MEMBER AND YOU WISH TO BE ELIGIBLE TO PARTICIPATE IN THE SETTLEMENT BENEFITS, YOU ARE REQUIRED TO SUBMIT THE CLAIM FORM ONLINE OR SO THAT IT IS RECEIVED NO LATER THAN MAY 2, 2022.

WHAT IS THIS CASE ABOUT?

Summary of Procedural History and Arms' Length Settlement Negotiations

13. On July 7, 2020, Named Plaintiff and proposed Class Representative Robert Walker filed a complaint against Defendant Nautilus, Inc. alleging that Nautilus made misrepresentations regarding horsepower attributes in the advertising, marketing and sale of its treadmills sold under the brand names Nautilus, Schwinn and Bowflex. (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 (Ohio class); 4) breach of implied warranty (nationwide class); 5) breach of implied warranty under the Magnuson-Moss Warranty Act (nationwide class); 6) violation of the Ohio Consumer Sales Practices Act (Ohio class); and 7) negligent misrepresentation (Ohio class). *Id.* Plaintiff sought certification of a nationwide class of purchasers, as well as an Ohio class. *Id.*

Defendant Nautilus has at all times disputed, and continues to dispute, Plaintiff's allegations in the Lawsuit and denies any liability for any of the claims that have or could have been raised in the Lawsuit by Plaintiff or the Class Members.

WHY IS THERE A SETTLEMENT?

14. Plaintiff's principal reason for consent to the Settlement is that it provides immediate and substantial benefits to the Class in the form of both monetary compensation and a valuable fitness app subscription. The benefits provided by the proposed Settlement must be compared to the risk that no recovery might be achieved after further contested litigation, including appeals, which likely would last several years into the future.

15. Nautilus' principal reason for consent to the Settlement is to avoid the uncertainty, burden, and expense of further protracted litigation. Nautilus has expressly denied and continues to deny all assertions of wrongdoing or liability arising out of any of the conduct, statements, or acts, alleged against them, or that could have been alleged, in this Lawsuit. Nautilus continues to believe that the claims in this Lawsuit are meritless.

WHAT MIGHT HAPPEN IF THERE WERE NO SETTLEMENT?

16. If there were no Settlement and Plaintiff failed to establish any essential legal or factual element of his claims, neither Plaintiff nor the other members of the Class would recover anything from Nautilus. Also, if Nautilus were successful in proving any of their defenses, either at summary judgment, at trial, or on appeal, the Class likely would recover substantially less than the amount provided in the Settlement, or nothing at all.

WHAT BENEFITS MIGHT I RECEIVE FROM THE SETTLEMENT?

17. The Settlement provides two primary benefits that Class Members submitting a valid claim can receive. Class Members who timely submit a valid claim are eligible for the following benefits: (1) a pro rata share of a Common Fund of \$4,250,000, after Attorneys' Fees and Expenses, Administration and Notice Expenses, and a Service Award, if any; and (2) a one-year subscription to Nautilus' JRNY app or, for those Class Members already subscribed, a one-year extension. If there is a 20% claims rate, the payment per Claimant is estimated to be in excess of \$50. The one-year subscription is valued at approximately \$150.00.

WHAT RIGHTS AM I GIVING UP BY RECEIVING BENEFITS AND STAYING IN THE SETTLEMENT CLASS?

18. Unless you exclude yourself, you are staying in the Settlement Class. If the Settlement is approved and becomes final, all of the Court's orders will apply to you and legally bind you. Generally, that means you will not be able to sue, continue to sue, or be part of any other lawsuit against Nautilus for the legal issues and claims resolved by this Settlement. The specific rights you are giving up are called Released Claims.

WHAT PAYMENT ARE THE ATTORNEYS FOR THE CLASS SEEKING? HOW WILL THE LAWYERS BE PAID?

19. Class Counsel identified in paragraph 5 above have not received any payment for their services in pursuing claims against Nautilus on behalf of the Class, nor have they been reimbursed for their out-of-pocket expenses. Before final approval of the Settlement, Class Counsel intends to ask the Court to award them up to one-third of the Common Fund for attorneys' fees, plus reimbursement of the litigation expenses and costs they incurred. Class Counsel will also ask for a service award of \$5,000 to be paid to the Class Representative. All of these amounts will be paid from the Common Fund prior to the pro rata distribution to Class Members. Nautilus does not oppose these requests. Class Members are not personally liable for any such attorneys' fees or expenses.

HOW DO I PARTICIPATE IN THE SETTLEMENT? WHAT DO I NEED TO DO?

20. To be eligible for benefits from the Settlement, you must be a member of the Class and you must submit a timely and valid Claim Form through the Class Website (www.NautilusTreadmillSettlement.com) **no later than May 2, 2022**, or execute and return by U.S. mail a completed Claim Form **so that it is received no later than May 2, 2022**. A Claim Form may be obtained from www.NautilusTreadmillSettlement.com, or you may request that a Claim Form be mailed to you by emailing the Settlement Administrator, at info@NautilusTreadmillSettlement.com. If you are excluded from the Class by definition or file a request to opt out of the Class or if you do not submit a timely and valid Claim Form, you will not be eligible to share in the benefits of the Settlement.

HOW DO I EXCLUDE MYSELF FROM THE SETTLEMENT CLASS?

21. If you want to keep the right to sue or continue to sue Nautilus about the legal claims in this lawsuit, and you do not want to receive any benefits from this Settlement, you must take steps to exclude yourself from the Settlement. This is sometimes called "opting out" of the Settlement Class.

22. To exclude yourself from the Settlement, you must complete and send to the Settlement Administrator a letter stating: "I want to be excluded from the Settlement Class in *Robert Walker v. Nautilus, Inc.*, Case No. 2:20-cv-3414." Your 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 April 1, 2022**.

Class Action Opt Out
Nautilus Settlement
PO Box 58220
Philadelphia, PA 19102

23. If you choose to exclude yourself from the Settlement, you are telling the Court that you do not want to be part of the Settlement Class in this Settlement. You can only get Settlement benefits if you stay in the Settlement Class and submit a valid Claim Form for the benefits as described above.

24. If you choose to exclude yourself from the Settlement, you are not giving up the right to sue Nautilus for the claims that this Settlement resolves and releases. You must exclude yourself from this Settlement Class to start or continue with your own lawsuit or be part of any other lawsuit against Nautilus.

HOW DO I OBJECT TO THE SETTLEMENT?

25. Any Class Member who does not submit a request for exclusion from the Class may object to the proposed Settlement, or Class Counsel's motion for an award of attorneys' fees and reimbursement of litigation expenses, or the Plaintiff's Service Award. Objections must be in writing **postmarked no later than April 1, 2022**. To object to the Settlement, you must give reasons why you think the Court should not approve it. The Court will consider your views before making a decision. In order to have your objection considered, you or your attorney must mail the written objection to Class Counsel, Nautilus' Counsel, the Settlement Administrator, and the Court. Your objection must contain: (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. 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). You must mail your written objection to the following addresses:

<p style="text-align: center;"><u>Objections – Nautilus Settlement Administrator</u></p> <p style="text-align: center;">Class Action Objection Nautilus Settlement PO Box 58220 Philadelphia, PA 19102</p>	<p style="text-align: center;"><u>Court</u></p> <p style="text-align: center;">Office of the Clerk Potter Stewart U.S. Courthouse Room 103 100 East Fifth Street Cincinnati, OH 45202</p>
<p style="text-align: center;"><u>Class Counsel</u></p> <p style="text-align: center;">Bill Markovits Markovits, Stock & DeMarco, LLC 3825 Edwards Road Suite 650 Cincinnati, OH 45209</p>	<p style="text-align: center;"><u>Nautilus' Counsel</u></p> <p style="text-align: center;">D. Jeffrey Ireland Faruki PLL 110 North Main Street Suite 1600 Dayton, OH 45402</p>

26. You may file a written objection without having to appear at the Settlement Fairness Hearing. You may not, however, appear at the Fairness Hearing to present your objection unless you first filed and served a written objection in accordance with the procedures described above, unless the Court orders otherwise. The Fairness Hearing is described in more detail in paragraphs 28-30 below.

27. There is a difference between objecting to the Settlement and requesting to exclude yourself (opt-out) from the Settlement. Objecting is simply telling the Court that you do not like something about the Settlement. You can object only if you stay in the Settlement Class (*i.e.*, do not exclude yourself). Excluding yourself is telling the Court that you do not want to be part of the Settlement Class. If you exclude yourself, you cannot object because the Settlement no longer affects you.

WHEN AND WHERE IS THE FAIRNESS HEARING? AM I REQUIRED TO ATTEND THE FAIRNESS HEARING? MAY I SPEAK AT THE FAIRNESS HEARING IF I DON'T LIKE THE SETTLEMENT?

28. The Court will hold a hearing to decide whether to approve the Settlement. You may attend and you may ask to speak at the hearing, but you do not have to do so. The Court will hold the Fairness hearing at **10 a.m. on June 21, 2022**, at the Joseph P. Kinneary U.S. Courthouse, 85 Maroni Boulevard, Columbus, OH 43215, in Courtroom 301. At the hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections that were

received by the deadline, the Court will then consider them. If you submit a timely objection, the Court will also listen to you speak at the hearing, if you so request.

29. You are not required to attend the Fairness Hearing but are welcome to attend. If you send an objection, then you can, but are not obligated to, come to Court to discuss it if you filed a Notice of Appearance and the Court permits. You may also pay your own lawyer to attend or discuss your objection, but that is not necessary.

30. You may ask the Court to permit you to speak at the Fairness Hearing. To do so, you must file a written request with the Court saying that it is your "Notice of Intent to Appear at the Fairness Hearing in *Robert Walker v. Nautilus, Inc.* Case No. 2:20-cv-3414. If you plan to have your own attorney speak for you at the hearing, you must also include the name, address, and telephone number of the attorney who will appear. Your written request must be sent to the Clerk of Court, Class Counsel, the Settlement Administrator, and Nautilus' Counsel at their addresses above. You may not be permitted to speak at the hearing if your Notice of Intent to Appear is late. Your Notice of Intention to Appear must be **postmarked by April 1, 2022**.

HOW DO I GET MORE INFORMATION ABOUT THIS CASE?

31. This Notice summarizes the proposed Settlement. More details are in the Settlement Agreement filed with the Court. You may examine the Court's file in the Clerk's Office at the United States District Court for the Southern District of Ohio, Joseph P. Kinneary U.S. Courthouse, 85 Marconi Boulevard, Columbus, OH 43215 for more complete information about the details of the lawsuit and the proposed Settlement. You also may visit the Settlement Website at www.NautilusTreadmillSettlement.com, where the Settlement Agreement is posted. Relevant case filings will be added to the Settlement Website as Settlement proceedings continue.

Exhibit G

Walker v. Nautilus
Requests for Exclusion

	First Name	Last Name
1	Dale	Stober
2	Susan	Jones
3	Gary	Pledger
4	Josh	Hellendrung
5	Chester	Kaczinski
6	Timothy	Wilds
7	CYNTHIA	WILDS
8	Clarence	Simmons
9	Cindy	Yeargain
10	Erin	Ford
11	Tamara	Dierks
12	Mohammed	Uddin
13	Keith	Ollis
14	Marjorie	Williams
15	Anna	Lisin
16	Darlene	Jaeger

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

ROBERT WALKER, on behalf of himself and all others similarly situated,	:	Case No. 2:20-cv-3414
	:	
	:	Judge Edmund A. Sargus Jr.
	:	
Plaintiff,	:	Magistrate Judge Elizabeth A. Preston
	:	Deavers
v.	:	
	:	
NAUTILUS, INC.,	:	
	:	
Defendant.	:	

**DECLARATION OF ROBERT WALKER IN SUPPORT OF FINAL APPROVAL OF
CLASS ACTION SETTLEMENT, ATTORNEYS' FEES, EXPENSES, AND CLASS
REPRESENTATIVE SERVICE AWARD**

I, Robert Walker, under penalty of perjury, state as follows:

1. I am the named Plaintiff in this class action lawsuit. I submit this declaration in support of Plaintiff's Motion for Final Approval of Class Action Settlement, and Plaintiff's Motion for Attorneys' Fees, Expenses, and Class Representative Service Award.
2. I make this declaration based on my personal knowledge of facts as stated herein, and could and would testify to the truthfulness of these stated facts.
3. I purchased a Bowflex BXT116 Treadmill (the "Treadmill") on March 4, 2019 from www.bowflex.com for personal use at my home in Ohio.
4. But for Nautilus's representations and marketing stating that the Treadmill produced 3.75 CHP, I would not have purchased the Treadmill or would have paid considerably less for it.

5. I have been in consistent contact with my attorneys in this matter, especially the attorneys at Markovits, Stock & DeMarco, LLC, and have stayed apprised of this case's progress.

6. As part of my participation as the named plaintiff in this case, I had my cell phone searched by a tech person to determine what Nautilus apps I downloaded on my phone and when. This was a part of gathering the information necessary for my attorneys to appropriately respond to Nautilus's request to compel this case to arbitration.

7. I generally understand the price premium legal theory for damages my attorneys pursued in this case on my behalf. My attorneys have been available to answer any questions I've had as this case has progressed.

8. I remained engaged with my attorneys as this case progressed including as we started to engage with Nautilus about settlement. My attorneys kept me informed throughout the many mediation sessions including having my authority at all times during the mediation process.

9. I have committed many hours to pursuing this matter on my own behalf and on behalf of the class.

10. After reaching a settlement in principle with Nautilus to resolve this case on a nationwide class basis, I reviewed the Settlement Agreement in detail and worked with my attorneys to finalize the Settlement Agreement.

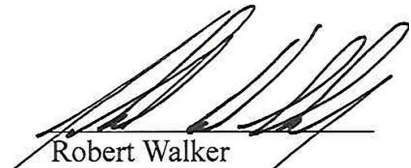
11. I understand that the Settlement benefits afforded to me and other similar treadmill purchasers include a \$4.25 million settlement fund that will be used to make cash payments to me and other class members submitting valid claims after the reduction of my counsel's attorneys' fees and expenses, any settlement administration costs and expenses, and the potential class representative incentive award. I also understand that each class member will have the opportunity

obtain a free year of the JRNY Fitness app under the Settlement and that Nautilus has agreed to modify its CHP representations because of this lawsuit.

12. I believe that the Settlement benefits made available to me and my fellow treadmill purchasers who are part of the class in this case are a great result for us. I strongly support this Settlement and the benefits recovered and believe they are more than reasonable.

13. I have reviewed Class Counsel's attorneys' fee request of 1/3 of the \$4.25 million common fund (\$1,416,666.67) and expenses totaling \$5,561.05 and believe that they are fair and adequate.

Executed on this 16th day of March, 2022 in Bellefontaine, Ohio.



Robert Walker