

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

<p>LAURA BECHTEL and TROY THOENNES,</p> <p>Plaintiffs,</p> <p>v.</p> <p>FITNESS EQUIPMENT SERVICES, LLC dba SOLE FITNESS</p> <p>Defendant.</p>	<p>Case No. 1:19-cv-00726</p> <p>Judge Michael R. Barrett</p> <p>Magistrate Judge Karen L. Litkovitz</p>
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**PLAINTIFFS’ UNOPPOSED MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT**

Pursuant to Fed. R. Civ. P. 23(e), Plaintiffs Laura Bechtel and Troy Thoennes (“Plaintiffs”),¹ on behalf of themselves and the Settlement Class, respectfully move this Court to enter the proposed Order (attached as **Exhibit 1**) Granting Preliminary Approval of Class Action Settlement (“Preliminary Approval Order”). Per Local Rule 7.3, Plaintiffs consulted with Defendant before filing this Motion and determined that this Motion is unopposed. The grounds for the Court’s potential granting of this unopposed Motion are included in the accompanying Memorandum in Support of Preliminary Approval of Class Action Settlement.

¹ Capitalized terms not defined herein are as stated in the Class Action Settlement Agreement and Release (“Agreement”) dated January 24, 2022 attached hereto as **Exhibit 2**.

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

I. PRELIMINARY STATEMENT

Plaintiffs have reached an agreement with Defendant Fitness Equipment Services, LLC dba Sole Fitness (“Defendant” or “Sole”) to settle this class action on the terms set forth in the Agreement. The proposed Settlement will provide a substantial benefit to the Settlement Class, conservatively estimated at a claimed value of at least Seven Million Dollars (\$7,000,000),² along with injunctive relief including a disclaimer clarifying the Continuous Horsepower (CHP) representation that is at issue in this Lawsuit. The Settlement, if approved, will resolve all claims asserted against Defendant in this class action.

The proposed Settlement was reached at a time when the Parties to the Agreement understood the strengths and weaknesses of their respective positions. Specifically, Plaintiffs, through their counsel, conducted an extensive investigation of their claims, filed complaints, took discovery, engaged experts, and successfully obtained class certification.

Plaintiffs and Defendant engaged in extensive arm’s-length settlement negotiations and participated in mediation under the supervision of U.S. Magistrate Judge Morton Denlow (Ret.), a JAMS mediator and highly-respected neutral. The mediation ultimately resulted in the Agreement. Plaintiffs and Class Counsel, based upon their evaluation of the facts and applicable law and their recognition of the substantial risk and expense of continued litigation, submit that the proposed Settlement is in the best interests of the Class and will provide an immediate meaningful recovery.

² The estimate is based on potential claims. The actual value provided to the Settlement Class includes not only the \$3.65 million proposed non-reversionary Common Fund but a transferable \$100 gift card that can be spent on the Sole website, available to approximately 375,000 class members.

Before the Fairness Hearing, Plaintiffs will submit detailed papers supporting the proposed Settlement and will ask the Court to determine whether the proposed Settlement is fair, reasonable, and adequate. At this time, however, Plaintiffs request only that the Court grant preliminary approval of the proposed Settlement so that notice under Fed. R. Civ. P. 23(c)(2) may be provided to the Class. Specifically, Plaintiffs request that the Court enter the proposed Order Granting Preliminary Approval of Class Action Settlement, submitted herewith, which, among other things, will:

- i. Preliminarily approve the Settlement and the Agreement as fair, adequate, and reasonable to the Settlement Class;
- ii. Conditionally certify a Settlement Class including a nationwide class as well as Ohio and Minnesota classes for the purpose of effectuating the Settlement;
- iii. Designate Plaintiffs as the representatives of the Settlement Class;
- iv. Designate Markovits, Stock & DeMarco, LLC and Hellmuth & Johnson, PLLC as Class Counsel for the Settlement Class;
- v. Designate Angeion Group as the Settlement Administrator;
- vi. Order the reasonable production of Class Member information from third-party retailers and distributors;
- vii. Approve the form, content, and methods of the Notice Plan;
- viii. Establish procedures and schedule deadlines for notice to Class Members, and for Class Members to object to the Settlement, to opt-out of the Settlement, and to make claims under the Settlement;

- ix. Schedule deadlines for the filing of papers in support of final approval, and in support of attorneys' fees, reimbursement of expenses, and requested service awards for Plaintiffs;
- x. Schedule a deadline for the Fairness Hearing; and,
- xi. Establish other requirements and procedures necessary to effectuate the Settlement.

Given the substantial benefits available to Class Members under the Settlement, and the risks in establishing Defendant's liability and proving damages, Plaintiffs respectfully submit that the proposed Settlement reflected in the Agreement is not only fair, reasonable, and adequate, but that it represents an outstanding recovery on behalf of Class Members, as further described below.

II. FACTUAL BACKGROUND

On August 30, 2019, Plaintiff and proposed Class Representative Laura Bechtel filed a complaint against Defendant Sole alleging that Sole misrepresented horsepower attributes in the advertising, marketing and sale of its treadmills. (Doc. 1, Complaint). Plaintiff asserted claims for: 1) breach of express warranty (nationwide class); 2) breach of express warranty under the Magnuson-Moss Warranty Act (nationwide class); 3) breach of express warranty (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 (nationwide class). *Id.*

On September 8, 2020, Plaintiff amended her complaint to add Troy Thoennes as an additional plaintiff, and assert additional claims for: 1) breach of express warranty (Minnesota class); 2) breach of implied warranty (Minnesota class); 3) breach of warranty under the

Magnuson-Moss Warranty Act (Minnesota class); 4) breach of the Minnesota Uniform Deceptive Trade Practices Act; 5) breach of the Minnesota Consumer Fraud Act; 6) breach of the Minnesota False Statement in Advertising Act; 7) breach of Minnesota Unlawful Trade Practices Act; and 8) negligent misrepresentation (Minnesota class). Doc, 31, Amended Complaint.

On December 3, 2020, Plaintiffs filed a motion for class certification. (Doc. 37, Class Certification Motion). Following briefing, the Court held a hearing on August 16, 2021. On September 12, 2021, the Court issued an order granting in part and denying in part Plaintiffs' motion, certifying a class action for: 1) breach of express warranty, breach of express warranty under the Magnuson-Moss Warranty Act, and breach of the Ohio Consumer Sales Practices Act, all under Ohio law; and 2) breach of express warranty, breach of express warranty under the Magnuson-Moss Warranty Act, and breach of implied warranty, all under Minnesota law. (Doc. 56, Class Certification Order). Plaintiffs were appointed as Class Representatives, and Markovits, Stock & DeMarco, LLC and Hellmuth & Johnson, PLLC were appointed as Class Counsel.

In October 2021, counsel for the Parties discussed the possibility of mediation and agreed to utilize retired U.S. Magistrate Judge Denlow for mediation. Judge Denlow conducted an extensive mediation process, including detailed mediation statements and "checklists," along with two joint mediation sessions as well as multiple individual sessions with the Parties. The main mediation session was conducted on December 2, 2021 with an agreement in principle finally being reached between the Parties on January 6, 2022.

Plaintiffs and Class Counsel have thoroughly reviewed and analyzed this case, including but not limited through formal and informal discovery, engagement of experts in electrical

engineering and price premium damage analysis, and review of applicable nationwide, Ohio, and Minnesota law.

Plaintiffs and Class Counsel believe the Settlement is fair, adequate, reasonable, and in the best interests of the Class Members, taking into account the benefits provided to the Class Members through the terms of the Settlement, the risks of continued litigation and possible trial and appeals, and the length of time and the costs that would be required to complete the litigation.

III. ARGUMENT

A. The proposed Settlement warrants preliminary approval.

Settlement of class actions is generally favored and encouraged. *Franks v. Kroger Co.*, 649 F.2d 1216, 1224 (6th Cir. 1981). Rule 23(e) provides three steps for the approval of a proposed class action settlement: (1) the Court must preliminarily approve the proposed settlement; (2) members of the class must be given notice of the proposed settlement; and (3) a fairness hearing must be held, after which the court must determine whether the proposed settlement is fair, reasonable, and adequate. *In re Broadwing, Inc. ERISA Litig.*, 252 F.R.D. 369, 372 (S.D. Ohio 2006).³ Plaintiffs request that the Court preliminarily approve the proposed Settlement, the first step in the three-step process.

During the preliminary approval proceedings, “the questions are simpler, and the court is not expected to, and probably should not, engage in analysis as rigorous as is appropriate for final approval.” David F. Herr, ANNOTATED MANUAL FOR COMPLEX LITIGATION (Fourth) § 21.662 (2012). Instead, the Court should evaluate only whether the proposed settlement

³ See also *Amos v. PPG Indus.*, No. 2:05-cv-70, 2015 WL 4881459, at *1 (S.D. Ohio Aug. 13, 2015) (same).

“appears to be the product of serious, informed, non-collusive negotiation, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval.” *Hyland v. Homeservices of Am., Inc.*, No. 3:05-CV-612-R, 2009 WL 2525587, at *2 (W.D. Ky. Aug. 17, 2009) (citing *In re Nasdaq Market-Makers Antitrust Litig.*, 176 F.R.D. 99, 102 (S.D.N.Y.1997)).⁴ In essence, the Court must preliminarily determine that the settlement is sufficiently fair, reasonable, and adequate so that it can “direct the preparation of notice of certification, proposed settlement, and date of the final fairness hearing” to all those affected by it. *In re Skechers Toning Shoe Prod. Liab. Litig.*, No. 3:11-MD-2308-TBR, 2012 WL 3312668, at *7 (W.D. Ky. Aug. 13, 2012).⁵

1. The proposed Settlement was reached after serious, informed, and arm’s-length negotiations.

Arm’s-length negotiations conducted by competent counsel constitute prima facie evidence of fair settlements. *See, e.g., Roland v. Convergys Customer Mgmt. Grp. Inc.*, No. 1:15-CV-00325, 2017 WL 977589, at *1 (S.D. Ohio Mar. 10, 2017) (noting that settlement was “reached after good faith, arms’ length negotiations, warranting a presumption in favor of approval”); *Brotherton*, 141 F. Supp. 2d at 906 (absence of any evidence suggesting collusion or illegality “lends toward a determination that the agreed proposed settlement was fair, adequate

⁴ *See also Bautista v. Twin Lakes Farms, Inc.*, No. 104-CV-483, 2007 WL 329162, at *4 (W.D. Mich. Jan. 31, 2007) (“The court’s role in reviewing settlements must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between the negotiating parties, and that the settlement taken as a whole is fair, reasonable, and adequate to all concerned.”) (internal quotes omitted).

⁵ *See also In re Prandin Direct Purchaser Antitrust Litig.*, No. 2:10-CV-12141-AC-DAS, 2014 WL 8335997, at *3 (E.D. Mich. Oct. 2, 2014) (“The ultimate approval of a class action settlement requires a finding that the settlement is fair, adequate, and reasonable.”); *Brotherton v. Cleveland*, 141 F. Supp. 2d 894 (S.D. Ohio 2001); *In re Southern Ohio Corr. Facility*, 173 F.R.D. 205, 211 (S.D. Ohio 1997).

and reasonable”).⁶ Notably, “[t]he participation of an independent mediator in settlement negotiations virtually insures that the negotiations were conducted at arm’s length and without collusion between the parties.” *Bert v. AK Steel Corp.*, No. 1:02-CV-467, 2008 WL 4693747, at *2 (S.D. Ohio Oct. 23, 2008).

In this case, the Settlement was the result of intensive, arm’s-length negotiations between experienced attorneys who have extensive class action litigation experience and who have knowledge of the legal and factual issues of this case in particular. The Parties’ respective counsel are experienced in the litigation, certification, trial, and settlement of class action cases. There is no evidence that any collusion or illegality existed during the settlement process. Settlement negotiations in this case took place over the course of multiple mediation sessions and the Settlement was ultimately reached under the supervision and with the aid of the mediator, Judge Denlow. Both Parties’ counsel support the Settlement as fair and reasonable, and Class Counsel certifies that it was reached at arm’s-length.⁷ Declaration of W. B. Markovits (“Markovits Decl.”), ¶ 7.

2. The proposed Settlement falls within the range of reasonableness and warrants issuance of notice and a hearing on final approval of settlement.

Although Plaintiffs believe that the claims asserted in the Class Action are meritorious and the Class would ultimately prevail at trial, continued litigation against Defendant poses significant risks that make any recovery for the Class uncertain. The fairness and adequacy of the Settlement is underscored by consideration of the obstacles that the Class would face in

⁶ See also *Mangone v. First USA Bank*, 206 F.R.D. 222, 226 (S.D. Ill. 2001); 1 Herbert B. Newberg & Alba Conte, *NEWBERG ON CLASS ACTIONS* § 11.41 at 90 (4th Ed. 2002).

⁷ See also *Amos v. PPG Indus.*, 2015 WL 4881459, at *1 (noting that the Southern District of Ohio “recognizes that the settlement of class action is generally favored and encouraged” (internal citations omitted)).

ultimately succeeding on the merits, as well as the expense and likely duration of the litigation. *See Amos*, 2015 WL 4881459, at *1 (“In general, most class action are inherently complex, and settlement avoids the costs, delays, and multitude of other problems associated with them.” (internal citations and quotations omitted)).⁸

Here, if the litigation were to continue, Plaintiffs would face a number of high-stakes risks before trial that could limit, or even eliminate, their claims, including a possible summary judgment ruling in favor of Defendant. Despite these real and significant risks, Plaintiffs and the Rule 23 putative Class Members will receive significant benefits under the Settlement. Generally, Class Members can receive: 1) a *pro rata* payment from a Common Fund of Three Million Six Hundred Fifty Thousand Dollars (\$3,650,000.00), after deductions for Attorneys’ Fees and Expenses, Administration and Notice Expenses, and Service Awards, if any; and 2) a transferable \$100 Gift Card, usable toward a one-time purchase from Sole’s website, subject to certain date restrictions.

Based upon the currently estimated number of Class Members (approximately 375,000), and estimates of other expenses, at a claims rate of twenty percent (20%) each Class Member would receive a payment in excess of Thirty Dollars (\$30.00) from the Common Fund. The \$100 Gift Card adds additional value, particularly given that it will be transferable, allowing a secondary market for those Class Members who wish to sell it.

In addition, Defendant has agreed to make significant changes to its sales and marketing of Treadmills with respect to horsepower claims—the issue central to the Lawsuit. Defendant

⁸ *See also Brotherton*, 141 F. Supp. 2d at 905 (noting that adding any further delay to an 11-year-old case “would not substantially benefit class members” and would support a finding that the settlement was fair, reasonable, and adequate); *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”).

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 based on the motor manufacturer’s horsepower rating of the motor or similar language.

When considering the Settlement, Plaintiffs weighed the certainty of an immediate recovery for the Class against the significant legal challenges Plaintiffs faced. Under these circumstances, the proposed Settlement is fair, reasonable, and adequate.

3. The proposed Settlement has no obvious deficiencies.

There are no grounds to doubt the fairness of the proposed Settlement or other obvious deficiencies, such as unduly preferred treatment of the Plaintiffs or excessive attorney compensation. *Thacker v. Chesapeake Appalachia, LLC*, 259 F.R.D. 262, 271 (E.D. Ky. 2009). Plaintiffs, like all other Class Members, will receive their settlement benefit in accordance with a claims process that will be presented to the Court for approval. The matter of Attorneys’ Fees and Expenses, as well as any Service Award for Plaintiffs, will be determined by the Court. Plaintiffs’ counsel have agreed to limit their attorney fee request to one-third of the Common Fund rather than the total value of the Settlement. Plaintiffs’ counsel asks for a Service Award of Five Thousand Dollars (\$5,000.00) for each Plaintiff, based on their active involvement in this litigation. Accordingly, nothing in the course of this class action, the settlement negotiations, or the Settlement itself raises fairness concerns. Plaintiffs therefore request that the Court preliminarily approve the Settlement and set a date for the Fairness Hearing.

B. Certification of the proposed Class for purposes of Settlement is appropriate.

The Supreme Court has recognized that at times the benefits of a proposed settlement of a class action can be realized only through the certification of a settlement class. *See Amchem*

Prods. v. Windsor, 521 U.S 591, 620 (1997). Accordingly, Plaintiffs seek the conditional certification of the Settlement Class set forth above and in the Agreement.

“For the Court to certify a class, the plaintiffs must satisfy all of the requirements of Rule 23(a), and one of the requirements of Rule 23(b).” *Pelzer v. Vassalle*, 655 F. App’x 352, 363 (6th Cir. 2016). The four requirements of Federal Rule of Civil Procedure 23(a) are numerosity, commonality, typicality, and adequacy. Furthermore, Plaintiffs seek certification of the Settlement Class pursuant to Rule 23(b)(3), which provides that certification is appropriate where “the court finds the questions of law or fact common to class members predominate over any questions affecting only individual members [predominance], and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy [superiority].” Fed. R. Civ. P. 23(b)(3).

As discussed below, these requirements are met for purposes of settlement in this case.

1. Numerosity

The numerosity requirement under Rule 23(a)(1) is satisfied where the class is so numerous that joinder of all class members is impracticable. Fed. R. Civ. P. 23(a)(1). There is no magic number needed to satisfy numerosity; in the Sixth Circuit, numerosity has been satisfied with a class of 35. *See In re Am. Med. Sys. Inc.*, 75 F.3d 1069, 1076 (6th Cir. 1996) (“the Sixth Circuit has previously held that a class of 35 was sufficient to meet the numerosity requirement” (internal quotation marks omitted)); *see also Daffin v. Ford Motor Co.*, 458 F.3d 549, 553 (6th Cir. 2006) (“substantial” numbers satisfy, and thousands are “substantial”). Here, the total number of Treadmills at issue and putative Class Members are well over 300,000.⁹ Numerosity is therefore readily satisfied. *See In re Whirlpool Corp. Front-loading Washer Prod. Litig.*, No.

⁹ Through the course of informal discovery, Sole’s counsel has attested that the total class size is approximately 375,000 Class Members as of the date of this filing. Markovits Dec., ¶ 10.

1:08-WP-65000, 2016 WL 5338012, at *7 (N.D. Ohio Sept. 23, 2016) (with millions of class members, joinder is not “simply impractical, it is impossible”).

2. Commonality

Rule 23(a)(2) requires that there be “questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2). The Supreme Court has stated that Rule 23(a)(2)’s commonality requirement is satisfied where the plaintiff asserts claims that “depend upon a common contention” that is “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.” *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2556 (2011). 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 2556.

In this Lawsuit, 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. *See, e.g., Winters v. Two Towns Ciderhouse, Inc.*, No. 20-CV-00468-BAS-BGS, 2020 WL 5642754, at *2 (S.D. Cal. Sept. 22, 2020) (commonality satisfied where class claims all stem from Defendant’s alleged misrepresentation that its products had no artificial flavors); *Elkind v. Revlon Consumer Prod. Corp.*, No. CV142484JSAKT, 2017 WL 9480894, at *8 (E.D.N.Y. Mar. 9, 2017), *report and recommendation adopted*, No. 14-CV-2484(JS)(AKT), 2017 WL 1169552 (E.D.N.Y. Mar. 29, 2017) (commonality based on alleged misrepresentations regarding DNA aspect of beauty product).

3. 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.*; *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, Plaintiffs' claims arise out of the same alleged conduct by Sole 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.

4. Adequacy of Representation

The final requirement of Rule 23(a) is that "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). There are two criteria: 1) the "representative must have common interests with unnamed members of the class," and 2) "it must appear that the representatives will vigorously prosecute the interests of the class through qualified counsel." *Am. Med. Sys.*, 75 F.3d at 1083 (quoting *Senter v. Gen. Motors Corp.*, 532 F.2d 511, 525 (6th Cir. 1976)).

Here, the Plaintiffs are adequate Class Representatives because 1) they purchased Treadmill models that are included in the Settlement; 2) they purchased the Treadmills based on the alleged horsepower misrepresentations; and, 3) they have actively participated in the litigation of this Lawsuit.

In addition, Plaintiffs' counsel are qualified. The Agreement proposes Markovits, Stock & DeMarco, LLC and Hellmuth & Johnson, PLLC as Class Counsel of the Settlement Class (this Court has already appointed them as Class Counsel of the currently certified classes). These firms have invested considerable time and resources into the prosecution of this action. Class Counsel possess a wealth of experience litigating complex class action lawsuits and were able to negotiate an outstanding settlement for the Class Members. (See Markovits Decl. ¶¶ 7-8). Based on the results achieved here, the Court should appoint these firms as Class Counsel for the Settlement Class and determine that Rule 23(a)'s adequacy requirement is satisfied.

5. Rule 23(b)(3) Requirements

Plaintiffs seek to certify a Class under Rule 23(b)(3), which has two components: predominance and superiority. “The Rule 23(b)(3) predominance requirement parallels the Rule 23(a)(2) commonality requirement in ‘that both require that common questions exist, but subdivision (b)(3) contains the more stringent requirement that common issues ‘predominate’ over individual issues.’” *In re Countrywide Fin. Corp. Customer Data Sec. Breach Litig.*, No. 3:08-MD-01998, 2009 WL 5184352, at *7 (W.D. Ky. Dec. 22, 2009) (quoting *In re Am. Med. Sys., Inc.*, 75 F.3d at 1084 (6th Cir. 1996)). 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*, 521 U.S. at 618 (“Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems, see Fed. Rule Civ. Proc. 23(b)(3)(D), for the proposal is that there be no trial.”).

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.*, 722 F.3d at 860. 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). Rule 23(b)(3) provides a non-exhaustive list of factors to be considered when making this determination. These factors include: (i) the class members’ interests in individually controlling the prosecution or defense of separate actions; (ii) the extent and nature of any litigation concerning the controversy already begun by or against class members; (iii) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (iv) the likely difficulties in managing a class action. *Willis v. Big Lots, Inc.*, No. 2:12-CV-604, 2017 WL 1063479, at *2 (S.D. Ohio Mar. 17, 2017) (citing 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. This is an issue subject to “generalized proof,” and is a “question that is common to all class members.” *See Daffin*, 2004 WL 5705647, at *2 (predominance satisfied where significant issues included: 1) whether a defect reduced the value of the car; and 3) whether Ford breached its warranty); *see also In re Countrywide*, 2009 WL 5184352, at *6 (“the proof required [must focus] on Defendant’s conduct, not on the conduct of the individual class members”). Accordingly, the predominance prong of Rule 23(b)(3) is satisfied.

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 Agreement provides members of the Settlement Class with prompt,

simple, and certain relief, and contains well-defined administrative procedures to ensure due process. This includes the right of any Class Member who is dissatisfied with the Settlement to object to it or to request exclusion from the Class. The Settlement would also relieve the substantial judicial burdens that would be caused by repeated adjudications in individual trials against Sole. *See Young v. Nationwide Mut. Ins. Co.*, 693 F.3d 532, 545 (6th Cir. 2012) (“Where it is not economically feasible to obtain relief within the traditional framework of a multiplicity of small individual suits for damages, aggrieved persons may be without any effective redress unless they may employ the class-action device.” (internal quotations omitted)). Here, individual trials are not feasible; the proposed class action remedy is superior.

In sum, because the requirements of Rule 23(a) and Rule 23(b)(3) are satisfied, certification of the proposed Class is appropriate.

C. The proposed Class Representatives, Class Counsel, and Settlement Administrator should be approved.

Plaintiffs Laura Bechtel and Troy Thoennes seek to be appointed as Class Representatives for the Settlement Class. They have been intimately involved in the prosecution of this case since its outset. They have cooperated with counsel, assisted in the preparation of the Complaint, and provided information regarding their Treadmills which were purchased during the Class Period. Markovits Decl. ¶ 6. Their claims are typical of the claims of the Settlement Class, and they will fairly and adequately protect the interests of the Settlement Class. Rule 23(a)(3) and (4).

For the reasons previously discussed with respect to adequacy of representation, the law firms of Markovits, Stock & DeMarco, LLC and Helmuth & Johnson, PLLC should be designated as Class Counsel for the Settlement Class.

The proposed Class Counsel have asked that Angeion Group act as Settlement Administrator. Angeion Group and its principals have a long history of successful settlement administrations in class actions. Markovits Decl. ¶ 9.

D. The proposed form and manner of notice to the Class is reasonable and should be approved.

Under Rule 23(e), the Court must “direct notice in a reasonable manner to all class members who would be bound” by the proposed settlement. Fed. R. Civ. P. 23(e)(1). Notice of a proposed settlement to class members must be the “best notice practicable.” Fed. R. Civ. P. 23(c)(2)(B). “[B]est notice practicable” means “individual notice to all members who can be identified through reasonable effort.” *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173, 94 S. Ct. 2140, 2150, 40 L. Ed. 2d 732 (1974). In order to satisfy these standards and “comport with the requirements of due process, notice must be ‘reasonably calculated to reach interested parties.’” *In re Countrywide*, 2009 WL 5184352, at *43 (quoting *Fidel v. Farley*, 534 F.3d 508, 514 (6th Cir. 2008)).

The Notice Plan set forth in the Agreement provides the best notice practicable under the circumstances. The Parties negotiated the form of the Settlement Notice to be disseminated to all persons who fall within the definition of the Class and whose names and addresses can be identified with reasonable effort from or through Sole’s records, as well as reasonably obtainable records from Sole’s primary retailers and distributors. In addition, the Settlement Administrator will supplement the mailed Settlement Notice with a Short Form Settlement Notice and a Publication Notice. The Settlement Notices are attached to the Agreement as Exhibits A, B, and C. A proposed “Frequently Asked Questions” page for the website is attached as Exhibit D.

In addition, Rule 23(h)(1) requires that “[n]otice of the motion [for attorneys’ fees] must be served on all parties and, for motions by class counsel, directed to class members in a

reasonable manner.”¹⁰ Here, the proposed Notice Plan satisfies the requirements of Rule 23(h)(1), as it notifies Class Members that Class Counsel will apply to the Court for attorneys’ fees of no more than one third of the Common Fund, plus reimbursement of litigation expenses. This proposed fee amount is well within the range of reasonable attorneys’ fees awarded for similar class action matters in the Sixth Circuit as well as other federal district courts.¹¹

The proposed Notice Plan complies with Fed. R. Civ. P. 23 and due process because, among other things, it informs Class Members of: (1) the nature of the action; (2) the essential terms of the settlement, including the definition of the Settlement Class, the claims asserted, and the benefits offered; (3) the binding effect of a judgment if the Class Member does not request exclusion; (4) the process for objection and/or exclusion, including the time and method for objecting or requesting exclusion and that Class Members may make an appearance through counsel; (5) information regarding the Plaintiffs’ request for service awards and the payment by Defendants of attorneys’ fees and expenses; and (6) how to make inquiries. Fed. R. Civ. P. 23(c)(2)(B).

Accordingly, the Notice Plan and Settlement Notice will “fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings.” *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96,

¹⁰ Fed. R. Civ. P. 23(h)(1).

¹¹ See, e.g., *In re Cincinnati Gas & Electric Co. Sec. Litig.*, 643 F. Supp. 148, 150 (S.D. Ohio 1986) (“typically the percentages range from 20% - 50%”); *Manners v. Am. Gen. Life Ins. Co.*, No. 3-98-0266, 1999 WL 33581944, at *29 (M.D. Tenn. Aug. 11, 1999) (“[T]hroughout the Sixth Circuit, attorneys’ fees in class actions have ranged from 20%-50%.”); *Dillworth v. Case Farms Processing, Inc.*, No. 5:08-cv-1694, 2010 WL 776933, at *7 (N.D. Ohio Mar. 8, 2010) (fee equal to 33% of settlement amount); *Brent v. Midland Funding, LLC*, No. 3:11 CV 1332, 2011 WL 3862363, at *19 (N.D. Ohio Sept. 1, 2011) (fee equal to 29% of the settlement amount); *Clevenger v. Dillard’s, Inc.*, No. C-1-02-558, 2007 WL 764291, at *1 (S.D. Ohio Mar. 9, 2007) (fee equal to 29% of settlement fund).

114 (2d Cir. 2005). The manner of providing notice, which includes individual notice by mail and email to all Class Members who can be reasonably identified, represents the best notice practicable under the circumstances and satisfies the requirements of due process and Rule 23. *See Frost v. Household Realty Corp.*, 61 F. Supp. 3d 740, 745 (S.D. Ohio 2004).¹² Thus, the Notice Plan should be approved. Fed. R. Civ. P. 23(c)(2)(A).

E. The Court should order the reasonable production of identifying information from retailers and distributors.

Sole has produced a list of the primary retailers and distributors that may have readily accessible contact information for purchasers of the Sole Treadmills at issue. To help effectuate direct notice, proposed Class Counsel seek an order from the Court that would require production by those companies of such information to the extent reasonably possible. *See* attached **Exhibit 3** (proposed retailer order, template letter to retailer, and template retailer declaration regarding notice). Other class action settlements have recognized the importance of “attempting to provide direct notice to retail customers whose contact information may be on file with the retailer.” *Lilly v. Jamba Juice Co.*, 308 F.R.D. 231, 239 (N.D. Cal. 2014); *see also Ostrowski v. Amazon.com, Inc.*, No. C16-1378-JCC (W.D. Wash. Sept. 16, 2016) (ordering a third-party retailer to produce customers’ names and addresses to plaintiffs for the purpose of providing those customers with direct notice of the class action settlement.).

¹² *See also Weinberger v. Kendrick*, 698 F.2d 61, 71 (2d Cir. 1982) (notice sent to individuals’ last known address and notice published in the *Wall Street Journal* constituted adequate notice, even though some members of the class did not receive actual notice); *Jordan v. Global Nat. Res. Inc.*, 102 F.R.D. 45, 51 (S.D. Ohio 1984) (due process does not require actual notice to all class members, and constructive notice by publication will suffice to inform potential class members).

F. The Court should provide a schedule leading up to a Fairness Hearing.

Plaintiffs request that the Court set a schedule, leading up to a Fairness Hearing, that would include, *inter alia*, deadlines for notice to Class Members, for Class Members to object to the Settlement, to opt out of the Settlement, and to make claims under the Settlement; and deadlines for the filing of papers in support of final approval, and in support of attorneys' fees and expenses. A proposed schedule is attached as Exhibit A to the proposed Preliminary Approval Order. At the Fairness Hearing, the Court may hear all evidence and argument necessary to make its final evaluation of the Settlement.¹³ Proponents of the Settlement may offer argument in support of final approval. In addition, Class Members who have properly objected to the Settlement may be heard at this hearing. The Court will determine through the Fairness Hearing whether the Settlement should be approved, and whether to enter a judgment and order of dismissal under Rule 23(e).

IV. CONCLUSION

Because the proposed Settlement is fair, adequate, and reasonable, Plaintiffs respectfully request that the Court grant preliminary approval and enter the proposed Preliminary Approval Order attached as **Exhibit 1**.

Respectfully submitted,

/s/ W.B. Markovits
W.B. Markovits (0018514)
Terence R. Coates (0085579)
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

¹³ Fed. R. Civ. P. 23(e)(2).

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

Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on January 28, 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

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

<p>LAURA BECHTEL and TROY THOENNES,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>FITNESS EQUIPMENT SERVICES, LLC dba SOLE FITNESS</p> <p style="text-align: center;">Defendant.</p>	<p>Case No. 1:19-cv-00726</p> <p>Judge Michael R. Barrett</p> <p>Magistrate Judge Karen L. Litkovitz</p>
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**[PROPOSED] ORDER GRANTING PRELIMINARY
APPROVAL OF CLASS ACTION SETTLEMENT**

This matter comes before the Court on Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Action Settlement (“Motion”). The Court has reviewed the Motion and the Class Action Settlement Agreement and Release dated January 24, 2022 (“Agreement”)¹ entered into by Plaintiffs with Defendant Fitness Equipment Services, LLC dba Sole Fitness (“Defendant” or “Sole”), and attached exhibits, and finds that the Motion should be **GRANTED**.

NOW, THEREFORE, the Court hereby **FINDS, CONCLUDES AND ORDERS**:

1. The Court does hereby preliminarily and conditionally approve, for settlement purposes, the following Class:

(a) All Persons within Ohio and Minnesota who purchased a Sole F63 (3.0 CHP), Sole F65 (3.25 CHP), Sole S77 (4.0 CHP), Sole F80 (3.5 CHP), Sole F85 (4.0 CHP), Sole TT8 (4.0 CHP), Sole F60 (2.75 CHP), Sole S73 (3.0 CHP), Sole F83 (3.25 CHP), and/or Sole TT9 (4.0 CHP) treadmill from August 30, 2015 through the date of preliminary approval, primarily for personal, family, or household purposes, and not for resale, and (b) all Persons within the United

¹ All capitalized terms used in this Order shall have the same meanings as set forth in the Agreement.

States and its territories, excluding Ohio and Minnesota, who purchased a Sole F63 (3.0 CHP), Sole F65 (3.25 CHP), Sole S77 (4.0 CHP), Sole F80 (3.5 CHP), Sole F85 (4.0 CHP), Sole TT8 (4.0 CHP), Sole F60 (2.75 CHP), Sole S73 (3.0 CHP), Sole F83 (3.25 CHP), and/or Sole TT9 (4.0 CHP) treadmill from December 2, 2017 through the date of preliminary approval, primarily for personal, family, or household 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 judicial officers and their immediate family members and associated Court staff assigned to this case.

2. Based upon information provided: the Class is ascertainable; it numbers in the thousands, satisfying numerosity; there are common questions of law and fact, including whether the horsepower of Defendant's Treadmills was misrepresented, satisfying commonality; the proposed Class Representatives' claims are typical, in that they are a member of the Class and allege they have been damaged by the same conduct as other Class Members; the proposed Class Representatives and Class Counsel can fully, fairly and adequately protect the interests of the Class; question of law and fact common to members of the Class predominate over questions affecting only individual members for settlement purposes; and a nationwide class combined with previously certified Ohio and Minnesota classes for settlement purposes is superior to other available methods for the fair and efficient adjudication of this controversy.

3. The Court appoints Plaintiffs Laura Bechtel and Troy Thoennes as the Class Representatives of the Class.

4. The Court appoints W.B. Markovits, Terence Coates, and Justin Walker of Markovits, Stock & DeMarco, LLC, and Nathan Prosser of Hellmuth & Johnson, PLLC as Class Counsel for the Class.

5. The Court appoints Angeion Group as Settlement Administrator.

6. The Court does hereby preliminary approve the Settlement, including the notices and the releases contained therein as being fair, reasonable, and adequate as to Class Members, subject to further consideration at the Fairness Hearing described below.

7. A hearing (the “Fairness Hearing”) shall be held before the Court on [REDACTED] at [REDACTED] a.m./p.m. for the following purposes:

a. To determine whether the proposed Settlement on the terms and conditions provided for by the Agreement is fair, reasonable, and adequate to the Class and should be approved by the Court;

b. To determine whether a Final Approval Order, as defined in the Agreement, should be entered;

c. To determine whether the claims process under the Settlement is fair and reasonable and should be approved by the Court;

d. To determine whether Plaintiffs’ application for Attorneys’ Fees and Expenses, and requested Service Awards for the Class Representatives, should be approved; and

e. To rule upon such other matters as the Court may deem appropriate.

8. The Court approves, as to form and content, the Short Form Settlement Notice, Settlement Notice, Publication Notice, electronic Claim Form, and finds that the mailing, distribution, and publishing of the various notices in the form and manner set forth in paragraph 10 of this Order meets the requirements of Fed. R. Civ. P. 23 and due process, and is the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons entitled to notice.

9. The Complaint was commenced after February 18, 2005. The Court directs Sole to timely notify, through the Settlement Administrator, the appropriate Federal and State officials

under the Class Action Fairness Act of 2005, 28 U.S.C. §1715 (to the extent this has not already been done). Counsel for Sole or the Settlement Administrator shall, at or before the Fairness Hearing, file with the Court proof of compliance with the Class Action Fairness Act of 2005, 28 U.S.C. §1715.

10. The Settlement affords the following settlement benefits to Class Members:

a. non-reversionary \$3,650,000.00 Common Fund from which *pro rata* settlement payments will be made to Class Members submitting a Valid Claim under the Settlement after the deduction of attorneys' fees, litigation expenses, settlement administration costs, and class representative incentive awards;

b. a transferable \$100 gift card for one-time use of the purchase of a product from Sole's website, subject to certain date restrictions; and,

c. injunctive relief in that Defendant has agreed to stop utilizing the continuous horsepower representations at issue in this case and to include a disclaimer to accompany any horsepower representation published in connection with Defendant's future sale and/or marketing of its treadmills.

11. Angeion Group ("Settlement Administrator") is hereby appointed, under the supervision of Class Counsel, to administer the notice procedure as well as the processing of claims as more fully set forth below:

a. Within 35 days of receipt of Notice Data by the Settlement Administrator, the Settlement Administrator shall: i) provide notice with pre-populated information to those Class Members identified through Notice Data, substantially in the form of the Settlement Notice attached as Exhibit A to the Agreement; ii) cause the Publication Notice, substantially in the form as presented to the Court, to be published as proposed, or as otherwise ordered by the Court; iii)

establish a Settlement Website, including an electronic claim form that can be submitted by Class Members as well as other information relevant to the Class, and including material Court submissions within two days of filing.

b. No later than 20 days before the Fairness Hearing, Class Counsel shall cause proof, by affidavit or declaration, of such notice to be filed with the Court.

12. To be entitled to make a claim under the Settlement, in the event the Settlement is effected in accordance with the terms and conditions set forth in the Agreement, each Class Member shall take the following actions and be subject to the following conditions:

a. A properly executed electronic or hard copy Claim Form must be submitted to the Settlement Administrator no later than 90 days following Notice. Each Claim Form submitted via U.S. Mail shall be deemed to be submitted when received. Each Claim Form electronically submitted shall be deemed to be submitted when transmitted. Any Claim Form submitted in any other manner shall be deemed to have been submitted when it is received. Any Class Member who does not submit a Claim Form within the time limit provided shall be barred from receiving any benefit, unless otherwise ordered by the Court. Notwithstanding the foregoing, Class Counsel shall have discretion to accept late-submitted claims for processing by the Settlement Administrator as they, in good faith, deem appropriate.

b. The Claim Form submitted by each Class Member must be properly completed, signed, and submitted in a timely manner in accordance with the provisions of the preceding subparagraph.

c. As part of the Claim Form, each Class Member shall submit to the jurisdiction of the Court with respect to the claim submitted and shall (subject to effectuation of the Settlement) release all Settled Class Claims as provided in the Agreement.

13. All Class Members shall be bound by all determinations and judgments in the class action concerning the Settlement, including, but not limited to, the releases provided for in the Agreement, whether favorable or unfavorable, except those who timely and validly requested exclusion from the Class and have not opted back in. The persons and entities who timely and validly requested exclusion from the Class will be excluded from the Class and shall not have rights under the Agreement, shall not be entitled to submit any Claim Forms, and shall not be bound by the Agreement or the Final Approval Order as to Sole in the class action.

14. Pending final determination of whether the Agreement should be approved, Class Counsel, Plaintiffs, and Class Members are barred and enjoined from commencing or prosecuting any action asserting any Settled Class Claims against Sole.

15. Any Class Member may enter an appearance, individually or, at their own expense, through counsel of their choice, in which case counsel must file with the Clerk of Court and deliver to Class Counsel and counsel for Sole a notice of such appearance no later than 60 days after the Notice Date. If they do not enter an appearance, they will be represented by Class Counsel.

16. All papers in support of the Settlement, and Class Counsel's Fee Application and request for expenses and Service Award, shall be filed no later than 14 days prior to the scheduled Fairness Hearing.

17. Any Class Member may appear and show cause, if that Class Member has any reason why the proposed Settlement should not be approved as fair, reasonable, and adequate, or why Class Counsel's application for an award of attorneys' fees and for reimbursement of expenses should not be granted; provided, however, that no person shall be heard or entitled to contest such matters unless that person has delivered by hand or sent by first class mail sufficient written objections and copies of all papers and briefs any such person wishes to submit in support of any

such objection delivered or post-marked no later than 90 days following Notice to each of the following:

OFFICE OF THE CLERK
Potter Stewart U.S. Courthouse
Room 103
100 East Fifth Street
Cincinnati, OH 45202

MARKOVITS, STOCK & DEMARCO, LLC
W. B. Markovits
119 E. Court Street, Suite 530
Cincinnati, Ohio 45202
Class Counsel

LEAHY, EISENBERG & FRAENKEL, LTD.
Thomas A. Gamache
33 W. Monroe Street
Suite 1100
Chicago, IL 60603-5317
Counsel for SOLE

18. Any person who does not make his, her, or its objection in the manner provided in this Order shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness or adequacy of the proposed Settlement as set forth in the Agreement, unless otherwise ordered by the Court. Any papers in response to any such objections or in further support of the above-named motions shall be filed no later than 60 days after the Notice Date.

19. This Order, the Agreement, and the Settlement, and any of their terms, and all negotiations, discussions, and proceedings in connection with this Order, the Agreement, and the Settlement, shall not constitute evidence, or an admission by Sole that any acts of wrongdoing have been committed and shall not be deemed to create any inference that there is any liability on the part of Sole. This Order, the Agreement, and the Settlement, and any of their terms, and all negotiations, discussions and proceedings in connection with this Order, the Agreement and the

Settlement shall not be offered or received in evidence or used for any purpose in this or any other proceeding in any court, administrative agency, arbitration tribunal, or other forum of any kind or character in the United States or any other country except as necessary to enforce the terms of this Order or the Settlement.

20. Any third-party retailers and/or distributor of the Treadmills must reasonably produce Class Member information to Class Counsel for the purpose of assisting Class Counsel in identifying and/or contacting to provide notice of this Settlement, as set forth in a separate Order.

21. The Court reserves the right to adjourn the date of the Fairness Hearing without further notice to the Class Members and retains jurisdiction to consider all further applications or matters arising out of or connected with the proposed Settlement. The Court may approve the Settlement, with such modifications as may be agreed to by the Plaintiffs and Sole, if appropriate, without further notice to the Class.

IT IS SO ORDERED.

Dated: _____

Karen L. Litkovitz.
United States Magistrate Judge

EXHIBIT

A

BECHTEL V. SOLE TIMELINE

DAYS	MILESTONE	TRIGGER EVENT
10	CAFA NOTICE	MOTION FOR PRELIMINARY APPROVAL FILED
35	NOTICE DATA FROM DEFENDANT AND THIRD PARTIES	PRELIMINARY APPROVAL
35	NOTICE	NOTICE DATA
0	WEBSITE, TOLL-FREE LINE, PUBLICATION	NOTICE
90	CLAIMS DEADLINE	NOTICE
60	OPT-OUT DEADLINE, OBJECTION DEADLINE	NOTICE
10	OPT-OUT REPORT	OPT-OUT DEADLINE
0	NOTICE OF APPEARANCE	OBJECTION DEADLINE
-14	FEE, EXPENSE, AND SERVICE AWARD APPLICATION	OBJECTION DEADLINE
-14	MOTION FOR FINAL APPROVAL	OBJECTION DEADLINE
0	REPORT TO COUNSEL (DECLARATION)	CLAIMS DEADLINE
30	DEFICIENCY NOTICE	CLAIMS DEADLINE
30	DEFICIENCY RESPONSE	DEFICIENCY NOTICE
21	DEFICIENCY PROCESSING	DEFICIENCY RESPONSE
120	FINAL FAIRNESS HEARING	NOTICE
0	FEES, EXPENSES, AND SERVICE AWARDS PAID FROM COMMON FUND	FINAL APPROVAL
	DISTRIBUTION	EFFECTIVE DATE OR FINAL DEFICIENCY PROCESSING, WHICHEVER IS LATER
180	VOID DATE	DISTRIBUTION
30	FINAL DATE FOR REISSUE	VOID DATE
60	FINAL VOID DATE FOR REISSUED CHECKS	VOID DATE
21	CY PRES DISTRIBUTION	FINAL VOID DATE FOR REISSUED CHECKS
0	SETTLEMENT WEBSITE REMOVED	FINAL VOID DATE FOR REISSUED CHECKS

EXHIBIT

2

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

<p>LAURA BECHTEL and TROY THOENNES,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>FITNESS EQUIPMENT SERVICES, LLC dba SOLE FITNESS</p> <p style="text-align: center;">Defendant.</p>	<p>Case No. 1:19-cv-00726</p> <p>Judge Michael R. Barrett</p> <p>Magistrate Judge Karen L. Litkovitz</p>
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CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

This Class Action Settlement Agreement (the “Agreement”) is made and entered effective January 24, 2022, by and among, Laura Bechtel and Troy Thoennes (“Plaintiffs” and “Class Representatives”), on behalf of themselves and the Settlement Class (defined below) and Fitness Equipment Services, LLC dba Sole Fitness (“Sole” or “Defendant”). Plaintiffs and Defendant are referred to collectively as the “Parties” or the “Settling Parties,” and each individually as a “Party.”

This Agreement is intended to resolve and settle the case captioned *Laura Bechtel and Troy Thoennes v. Fitness Equipment Services, LLC dba Sole Fitness*, Civil Action No. 1:19-cv-00726, currently pending in the United States District Court for the Southern District of Ohio, Western Division (the “Lawsuit”) fully and finally. In this Agreement, any capitalized term not immediately defined is defined in Section III below.

I. THE LAWSUIT AND ITS PROPOSED RESOLUTION

1. On August 30, 2019, Plaintiff and proposed Class Representative Laura Bechtel filed a complaint against Defendant Sole alleging that Sole misrepresented horsepower attributes in the advertising, marketing and sale of its treadmills. (Doc. 1, Complaint). Plaintiff asserted claims for: (1) breach of express warranty (nationwide class); (2) breach of express warranty under the Magnuson-Moss Warranty Act (nationwide class); (3) breach of express warranty (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 (nationwide class). *Id.*

2. On September 8, 2020, Plaintiff amended her complaint to add Troy Thoennes as an additional plaintiff, and asserted additional claims for: (1) breach of express warranty (Minnesota class); (2) breach of implied warranty (Minnesota class); (3) breach of warranty under the Magnuson-Moss Warranty Act (Minnesota class); (4) breach of the Minnesota Uniform Deceptive Trade Practices Act; (5) breach of the Minnesota Consumer Fraud Act; (6) breach of the Minnesota False Statement in Advertising Act; (7) breach of Minnesota Unlawful Trade Practices Act; and (8) negligent misrepresentation (Minnesota class). (Doc. 31, Amended Complaint).

3. On December 3, 2020, Plaintiffs filed a motion for class certification. (Doc. 37). Following briefing the Court held a hearing on August 16, 2021. On September 12, 2021, the Court issued an order granting in part and denying in part Plaintiffs' motion, certifying a class action for: 1) breach of express warranty, breach of express warranty under the Magnuson-Moss Warranty Act, and breach of the Ohio Consumer Sales Practices Act, all under Ohio law; and 2) breach of express warranty, breach of express warranty under the Magnuson-Moss Warranty Act, and breach

of implied warranty, all under Minnesota law. (Doc. 56). Plaintiffs were appointed as Class Representatives, and Markovits, Stock & DeMarco, LLC and Hellmuth & Johnson, PLLC were appointed as class counsel.

4. In October 2021, counsel for the parties discussed the possibility of mediation, and agreed to utilize retired U.S. Magistrate Judge Morton Denlow (Ret.), a JAMS mediator and highly-respected neutral. Judge Denlow conducted an extensive mediation process, including detailed mediation statements and “checklists,” along with two lengthy joint mediation sessions as well as multiple individual sessions with the Parties. On January 6, 2022, the Parties reached an agreement in principle.

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

6. The Parties to this Agreement have now reached an agreement providing for a resolution of all claims that have been or could have been brought in the Lawsuit against Defendant Sole on behalf of Plaintiffs. However, the Parties have not reached any agreement on the amount of Attorneys’ Fees and Expenses to be paid to Class Counsel or a service award, if any, to be paid to Plaintiffs, leaving those decisions to the Court.

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

8. Defendant Sole has at all times disputed, and continues to dispute, Plaintiffs’ allegations in the Lawsuit and denies any liability for any of the claims that have or could have

been raised in the Lawsuit by Plaintiffs or the Class Members, but Sole believes that the comprehensive resolution of the claims in the Lawsuit as provided in this Agreement will avoid the substantial costs and disruptions of continued litigation, including potential trial and appeals, and has concluded that it is desirable that the claims against it be settled and dismissed on the terms reflected in this Agreement.

9. The Parties understand, acknowledge, and agree that this Agreement constitutes the compromise of disputed claims and that it is their mutual desire and intention that the Lawsuit be settled and dismissed, on the merits and with prejudice, and that the Released Claims be finally and fully settled and dismissed, subject to and according to the terms and conditions set forth in this Agreement.

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

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

10. Defendant does not admit any wrongdoing, fault, liability, or damage to Plaintiffs or Class Members. Nor does Defendant admit that it engaged in any wrongdoing or committed any violation of law. Defendant maintains that it has meritorious defenses to the Lawsuit. In view, however, of the uncertainty and risk of the outcome of any litigation, the difficulties and substantial expense and length of time necessary to defend the proceeding—including

potentially through trial, post-trial motions, and appeals—and to eliminate the burden and expense of further litigation, Defendant wishes to settle the Lawsuit and to put the claims alleged in the Lawsuit to rest, finally and forever, without in any way acknowledging any wrongdoing, fault, liability, or damage to Plaintiffs. The Settlement and this Agreement represent a compromise of disputed claims and the arms-length negotiations, discussions, and communications in connection with or leading up to and including the Settlement are not and shall not be construed as admissions or concessions by any of the Parties, either as to any liability or wrongdoing or as to the merits of any claim or defense, regardless of whether this Agreement becomes effective.

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

12. If the Court materially alters any of the terms of this Agreement to the material and substantial detriment of Plaintiffs or Defendant, at the sole discretion of each adversely affected Party, this Agreement shall be deemed null and void *ab initio* and shall be of no force or effect whatsoever. To exercise this right, the Party must inform the Court, the other Party,

and the Settlement Administrator, in writing, of the exercise of this right within ten (10) days after any such order.

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

III. DEFINITIONS

As used in this Agreement, the following terms have the definitions that follow:

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

15. “Agreement” means this Class Action Settlement Agreement and all exhibits attached to, and incorporated by reference into, it.

16. “Amended Complaint” means the Amended Complaint filed in the Lawsuit by

Plaintiffs on September 8, 2020.

17. “Attorneys’ Fees and Expenses” means the amount of any attorneys’ fees and reimbursement of litigation costs awarded to Class Counsel under their Fee Application.

18. “CAFA Notice” means a notice of the proposed Settlement in compliance with the requirements of the Class Action Fairness Act, 28 U.S.C. § 1711 et seq. (“CAFA”), to be served on the appropriate state official in each state where a Class Member resides and the appropriate federal official.

19. “Claimant” means a Class Member who submits a valid and timely Claim Form.

20. “Claims Deadline” means 90 days after Notice Date.

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

22. “Class” means (a) all Persons within Ohio and Minnesota who purchased a Sole F63 (3.0 CHP), Sole F65 (3.25 CHP), Sole S77 (4.0 CHP), Sole F80 (3.5 CHP), Sole F85 (4.0 CHP), Sole TT8 (4.0 CHP), Sole F60 (2.75 CHP), Sole S73 (3.0 CHP), Sole F83 (3.25 CHP), and/or Sole TT9 (4.0 CHP) treadmill from August 30, 2015 through the date of preliminary approval, primarily for personal, family, or household purposes, and not for resale, and (b) all Persons within the United States and its territories, excluding Ohio and Minnesota, who purchased a Sole F63 (3.0 CHP), Sole F65 (3.25 CHP), Sole S77 (4.0 CHP), Sole F80 (3.5 CHP), Sole F85 (4.0 CHP), Sole TT8 (4.0 CHP), Sole F60 (2.75 CHP), Sole S73 (3.0 CHP), Sole F83 (3.25 CHP), and/or Sole TT9 (4.0 CHP) treadmill from December 2, 2017 through the date of preliminary approval. Excluded from the Class are: Defendant and its officers and directors;

Class Counsel and their partners, associates, lawyers, and employees; and judicial officers and their immediate family members and associated Court staff assigned to this case.

23. “Class Counsel” means Bill Markovits, Terence Coates, and Justin Walker of Markovits, Stock & DeMarco LLC; and Nathan Prosser of Hellmuth & Johnson, PLLC.

24. “Class Periods” means: (a) for Ohio and Minnesota purchasers, August 30, 2015 through preliminary approval; and (b) for all other purchasers within the United States and its territories, December 2, 2017 through preliminary approval.

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

26. “Class Representative” means Plaintiffs Laura Bechtel and/or Troy Thoennes.

27. “Common Fund” means the non-reversionary total of Three Million, Six Hundred Fifty Thousand Dollars (\$3,650,000) to be paid by Defendant to the Settlement Administrator within 30 days of the Effective Date. Notwithstanding the foregoing, following Preliminary Approval Defendant will advance from the Common Fund up to Two Hundred Fifty Thousand Dollars (\$250,000) for notice and claims administration expenses incurred prior to the Effective Date, and such reimbursement shall reduce the Common Fund to be paid by Defendant.

28. “Court” means the United States District Court for the Southern District of Ohio, Western Division.

29. “Defendant” means Sole and its respective parent corporations, affiliates, direct and indirect subsidiaries, predecessors, successors, assigns, anyone acting or purporting to act on its behalf, and all of its current or former board members and executives.

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

31. “Fairness Hearing” means the final hearing, to be held on or about 120 days after the Notice Date or as soon thereafter as practicable, (a) to determine whether to grant final approval to (i) the certification of the Settlement Class, (ii) the designation of the Class Representatives as the representatives of the Settlement Class, (iii) the designation of Class Counsel as counsel for the Settlement Class, and (iv) the Settlement; (b) to rule on Class Counsel’s Fee Application; and (c) to consider whether to enter the Final Approval Order.

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

33. “Fee Application” means the application to be filed by Class Counsel no later than 14 days prior to the Objection Deadline by which they will seek an award to be paid out of the Common Fund for attorneys’ fees and reimbursement of costs incurred by them in

prosecuting the Lawsuit, as well as a Service Award to be paid to the Class Representative.

34. “Final Approval Motion” means the motion and accompanying documents to be filed by Class Counsel no later than 14 days prior to the Objection Deadline by which they will seek final approval of the Settlement.

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

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

37. “Gift Card” means a \$100 Sole gift card made available to Class Members that can be used once toward the purchase of any product from Sole’s website, www.soletreadmills.com, including toward tax and shipping costs. The Gift Cards will be freely transferable and can be used in conjunction with any sale or promotion, with the exception of the following blackout dates: January 1 – 10; November 20-28, and December 1-11. They will not be stackable (only one per purchase), and they will expire one year from the Effective Date. No credit or cash refunds will be given for the non-use of any portion of the gift card following its one-time use or in the event of non-use.

38. “Lawsuit” means the case captioned *Laura Bechtel and Troy Thoennes v. Fitness Equipment Services, LLC dba Sole Fitness*, Civil Action No. 1:19-cv-00726, currently pending in the United States District court for the Southern District of Ohio, Western Division.

39. “Notice and Administration Expenses” means the expenses incurred for all notice and administration performed by the Settlement Administrator.

40. “Notice of Claim Denial” means the form that the Settlement Administrator will

send, by first-class United States Mail or electronic mail, to each Person who has submitted a Claim Form that the Settlement Administrator has determined not to be a Valid Claim.

41. “Notice Data” means the Class Member identifying information obtained from Sole and third-party retailers.

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

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

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

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

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

47. “Parties” means the parties to this Agreement, Plaintiffs and Defendant.

48. “Person” means any natural person, including his or her beneficiaries, heirs,

assigns, or executors, or any legal entity, including its predecessors, successors, affiliates, or assigns.

49. “Plaintiffs” means the Plaintiffs asserting claims in the Lawsuit, Laura Bechtel and Troy Thoennes.

50. “Preliminary Approval Order” means the proposed Order Granting Preliminary Approval to Class Action Settlement, to be entered by the Court.

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

52. “Protective Order” means the agreed protective order entered by the Court (ECF 23) that, in part, addresses the confidentiality of Class Member identifying information.

53. “Publication Notice” means the proposed notice, using the language of the Settlement Notice to the extent practicable, which is subject to approval by the Court as part of the Preliminary Approval Order and which will be published in accordance with the Notice Plan set forth in Section VII of this Agreement.

54. “Released Claims” means, as to Plaintiffs and all Class Members, all claims released under the release and waiver set forth in Section XI of this Agreement.

55. “Released Party (Defendant)” means Defendant and each of its respective predecessors, successors, assigns, parents, subsidiaries, divisions, affiliates, departments, and any and all of their past, present, and future officers, directors, employees, stockholders, partners, servants, agents, successors, attorneys, representatives, insurers, reinsurers, subrogees, and assigns of any of the foregoing, and any retailers, dealers, or distributors that has sold a Treadmill to the Class.

56. “Releasing Party (Class)” means Plaintiffs and all Class Members and each of their respective heirs, executors, representatives, agents, assigns, and successors.

57. “Service Award” means a reasonable award sought by application to and approved by the Court that is payable to the Plaintiffs from the Common Fund, for their role in and contribution to the Lawsuit, separate and apart from their Valid Claim.

58. “Settled Class Claims” means any and all claims or causes of action of every kind and description, including any causes of action in law, claims in equity, complaints, suits or petitions, and any allegations of wrongdoing, demands for legal, equitable or administrative relief (including, but not limited to, any claims for injunction, rescission, reformation, restitution, disgorgement, constructive trust, declaratory relief, compensatory damages, consequential damages, penalties, exemplary damages, punitive damages, attorneys’ fees, costs, interest or expenses) that the Releasing Party (Class) had or have (including, but not limited to, assigned claims and any and all "Unknown Claims" as defined below) that have been or could have been asserted in the Lawsuit or in any other action or proceeding before any court, arbitrator(s), tribunal or administrative body (including but not limited to any state, local or federal regulatory body), regardless of whether the claims or causes of action are based on federal, state, or local law, statute, ordinance, regulation, contract, common law, or any other source, and regardless of whether they are known or unknown, brought or could have been brought, foreseen or unforeseen, suspected or unsuspected, or fixed or contingent, arising out of, or related or connected in any way with the claims or causes of action of every kind and description that were brought, alleged, argued, raised or asserted in any pleading or court filing in the Lawsuit.

59. “Settlement” means the settlement provided for in this Agreement.

60. “Settlement Administrator” means the third-party notice and administration provider agreed upon by the Parties and approved by the Court. The Parties have agreed upon Angeion Group and will be seeking approval by the Court for its appointment.

61. “Settlement Class” means the Class Representatives and the Class.

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

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

64. “Settling Parties” means, collectively, Plaintiffs and Defendant.

65. “Short Form Settlement Notice” means an abbreviated version of the Settlement Notice to be delivered as a postcard, using the language of the Settlement Notice to the extent practicable, which is subject to approval by the Court as part of the Preliminary Approval Order.

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

67. “Treadmill(s)” means a Sole F63 (3.0 CHP), Sole F65 (3.25 CHP), Sole S77 (4.0 CHP), Sole F80 (3.5 CHP), Sole F85 (4.0 CHP), Sole TT8 (4.0 CHP), Sole F60 (2.75 CHP), Sole S73 (3.0 CHP), Sole F83 (3.25 CHP), and/or Sole TT9 (4.0 CHP) treadmill purchased during the Class Periods, primarily for personal, family, or household purposes, and not for resale.

68. “Valid Claim” means a Claim Form that (a) is timely submitted by a Class Member in accordance with the requirements of the Preliminary Approval Order, (b) is signed by that Class Member with a certification that the information is true and correct to the best of the Class Member’s knowledge and recollection, (c) contains as necessary one or more valid serial numbers for a Treadmill or other Proof of Purchase, (d) is not fraudulent, and (e) otherwise contains all of the information for that Class Member to be eligible to receive one or more of the benefits provided in Section VI of this Agreement. Persons who receive direct notice either by email or mail are known Class Members as determined by inclusion in Defendant’s records or the records of the third parties, and the Parties agree that any such Class Member who completes a Claim Form by entering the credentials provided to them by the Settlement Administrator or who provides said credentials on the mailed Claim Form shall not be required to provide a serial number or other Proof of Purchase. Any claimant who completes a claim form, either online through the settlement website or via mail that does not provide the credentials referenced above, must provide a valid serial number or other Proof of Purchase or such claim will be denied. In the event that the same valid serial number is submitted by multiple Claimants, the original purchaser associated with that serial number shall be treated as having a Valid Claim. If it is not possible to determine the original purchaser conclusively after expending reasonable efforts to do so, then the Settlement Administrator shall use its judgment and treat only one Claimant as having a Valid Claim.

IV. CONDITIONAL CERTIFICATION OF THE SETTLEMENT CLASS

69. For the purposes of implementing this Agreement and the Settlement, and for no other purpose, Defendant will not oppose the conditional certification of the Settlement Class on a nationwide basis. If for any reason this Agreement should fail to become effective,

Defendant's lack of opposition to certification of the nationwide Settlement Class shall be null and void, and the Parties shall return to their respective positions in the Lawsuit as those position existed immediately before execution of this Agreement.

70. If for any reason this Agreement should fail to become effective, neither this Agreement nor any document referred to in, or incorporated into, it is or may be construed as an admission by Defendant of any fault, wrongdoing, or liability whatsoever. Nor should the Agreement be construed as an admission by Sole that Plaintiffs can serve as adequate class representatives, other than for settlement purposes, or that certification of any class is proper or permissible.

V. REQUIRED EVENTS: PRELIMINARY AND FINAL APPROVAL

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

- a. Preliminarily approve the Settlement and this Agreement as fair, adequate, and reasonable to the Settlement Class;
- b. Conditionally certify the Settlement Class as a nationwide class for the purpose of effecting the Settlement;
- c. Designate the Class Representatives as the representatives of the Settlement Class;
- d. Designate Class Counsel as counsel for the Settlement Class;
- e. Designate Angeion Group as the Settlement Administrator and instruct the Settlement Administrator to perform the following functions in accordance with the terms of this Agreement, the Notice Plan, the Preliminary Approval Order, and the Final Approval Order:
 - i. No later than 35 days from receipt of the Notice Data, Settlement

Administrator shall begin disseminating the various Settlement Notices pursuant to the Notice Plan, substantially in the forms provided in Section VII and, to the extent applicable and practicable;

- ii. No later than the Notice Date, Settlement Administrator shall establish the Settlement Website with information the Parties jointly agree to post concerning the nature of the case and the status of the Settlement, including relevant pleadings as available such as the Amended Complaint, papers in support of preliminary and final approval of the Settlement, and Class Counsel's Fee Application, plus relevant orders of the Court, within two business days of filing. The Settlement Website shall be established before or concurrently with emailing or mailing the Settlement Notice or publishing Publication Notice;
- iii. No later than the Notice Date, Settlement Administrator shall establish a toll-free telephone number that Class Members can call to request electronic or hard copies of the Claim Forms and FAQ be sent to them and to obtain additional information regarding the Settlement. This shall be accomplished before or concurrently with emailing or mailing the Settlement Notice or publishing Publication Notice;
- iv. Beginning on the Notice Date, Settlement Administrator shall commence Publication Notice (through banner ads and social

media) for the Settlement Class in the form and pursuant to the Notice Plan to which the Parties agree. The Publication notice shall continue for 30 consecutive days;

- v. By 30 days after the Claims Deadline, the Settlement Administrator shall, receive, evaluate, and either approve as meeting the requirements of this Agreement or disapprove as failing to meet those requirements the Claim Forms submitted by Claimants.
- vi. By 30 days after the Claims Deadline, the Settlement Administrator shall send, by first-class United States Mail or email, to each Person who has submitted a Claim Form that the Settlement Administrator has determined not to be a Valid Claim, and which has not been challenged by Class Counsel, a Notice of Claim Denial. Such a person shall have 30 days from the date of transmission of a Notice of Claim Denial to cure the reason for any denial;
- vii. By 30 days after the Claim Deadline, Settlement Administrator shall provide to Class Counsel the information set forth in Sections (e)(v) and (e)(vi), above, including: (a) a list of the names, addresses, email addresses, and other contact information of all Class Members who have submitted Claim Forms and whose Claim Forms the Settlement Administrator has determined to be Valid Claims; and (b) a separate list of the names addresses,

email addresses, and other contact information of all Persons who have submitted Claim Forms and whose Claim Forms the Settlement Administrator has determined not to be Valid Claims, including the reason each Claim was rejected;

- viii. Process requests for exclusion from the Settlement in accordance with Section VIII of this Agreement;
- ix. Process objections to the Settlement in accordance with Section VIII of this Agreement; and
- x. No later than 20 days before the Fairness Hearing, the Settlement Administrator shall provide to the Court, Defendant, and Class Counsel, a statement, under penalty of perjury, declaring: (a) that it has effectuated notice in compliance with the terms set forth herein and report the preliminary number of claims submitted (in total and by category of benefit); (b) the total number of requests for exclusion received; (c) the total number of objections received; (d) the total number of claims adjudicated as Valid Claims (in total and by category of benefit); and (e) the total number of claims adjudicated not to be Valid Claims.
- xi. Approve the Notice Plan and CAFA Notice, including the form, contents, and methods of notice to be given to the Class and the Settlement Class as set forth in Section VII of this Agreement, and direct the Settlement Administrator on behalf of the Defendant to provide, and cause to be provided, CAFA Notice and to file with

the Court a declaration of compliance with the Notice Plan set forth in Section VII of this Agreement (including the statement from the Settlement Administrator referenced in Section VIII).

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

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

- a. Within 35 days of the receipt of the Notice Data, the Settlement Administrator shall mail and email the initial Settlement Notices as required by Section VII. The Settlement Administrator may also provide additional notice as provided by Section VII below.
- b. At least 14 days prior to the Objection Deadline, Class Counsel shall file their Fee Application.
- c. At least 14 days prior to the Objection Deadline, Class Counsel shall file the proposed Final Approval Order and memorandum in support of Final Approval.
- d. Within 60 days of the Notice Date, any Class Member shall file objections with the Court and serve that filing on Class Counsel and Defendants. Objections must be in writing and must contain the following information:
 - i. the full name, address, telephone number, and email address of

- the objector;
- ii. the serial number(s) for the objector's treadmill(s) or other Proof of Purchase;
- iii. a written statement of all grounds for the objection accompanied by any legal support for such objection;
- iv. copies of any papers, briefs, or other documents on which the objection is based;
- v. a list of all cases in which the objector and/or objector's counsel have filed or in any way participated in, financially or otherwise, any objection to a class action settlement in the preceding five years;
- vi. the name, address, email address, and telephone number of all attorneys representing the objector;
- vii. a statement indicating whether the objector and/or the objector's counsel intends to appear at the Fairness Hearing and, if so, a list of all persons, if any, who will be called to testify in support of the objection; and,
- viii. the objector's signature.

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

- e. Within 60 days of the Notice Date, requests by Class Members to be

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

- f. Within 60 days of the Notice Date, any Person or attorney seeking to appear at the Fairness Hearing must file with the Court and serve on Class Counsel and Defendants an entry of appearance in the Lawsuit and notice of intention to appear at the Fairness Hearing. This includes any person objecting to any or all of certification of the Settlement Class, designation of Class Representatives, appointment of Class Counsel, the Settlement, the Agreement, or Class Counsel's Fee Application.
- g. No later than 20 days before the Fairness Hearing, the Settlement Administrator shall file with the Court a declaration of compliance with the notice requirements set forth in Section VIII of this Agreement.
- h. Within seven (7) days of the Fairness Hearing, Class Counsel shall file their reply, if any, in support of the Settlement, and in response to any objections.
- i. 90 days from the Notice Date shall be the Claims Deadline for all Class Members. All claims must be received by this date. Claims received after this date shall not be Valid Claims.

73. Defendant may file a memorandum in support of the motion seeking entry of the Preliminary Approval Order.

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

- a. Grants final approval of the certification of the Settlement Class;
- b. Designates the Class Representatives as the representatives of the Settlement Class and Class Counsel as counsel for the Settlement Class;
- c. Grants final approval of the Settlement and this Agreement as fair, reasonable, and adequate to the Settlement Class;
- d. Provides for the release of all Released Claims and enjoins Class Members from asserting, filing, maintaining, or prosecuting any of the Released Claims in the future;
- e. Orders the dismissal with prejudice of all claims alleged in the Lawsuit, and incorporates the releases and covenant not to sue stated in this Agreement, with each of the Parties to bear its, his, or her own costs and attorney fees, except as provided in Section XII below;
- f. Authorizes Defendant to honor Valid Claims approved by the Settlement Administrator as Valid Claims, or otherwise reviewed by Class Counsel and counsel for Defendant and determined to be Valid Claims; and
- g. Preserves the Court's continuing jurisdiction over the administration of the Settlement and enforcement of this Agreement.

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

Common Fund.

76. As soon as practicable after execution of this Agreement, the Parties shall file in the Lawsuit a stipulated motion, proposed stipulated order, or other filing to stay the Lawsuit.

77. This Agreement will not be finalized or submitted to the Court for approval without the consent of and execution by Plaintiffs and Defendant.

78. Plaintiffs, Class Counsel, and Defendant will cooperate and make their best efforts to secure preliminary and final approval for and to effectuate the Settlement, including cooperating in drafting the documents necessary for preliminary and final approval and securing the prompt, complete, and final dismissal, with prejudice, of the Lawsuit. If the Court fails to enter either the Preliminary Approval Order or the Final Approval Order, Plaintiffs, Class Counsel, and Defendant will use all reasonable efforts that are consistent with this Agreement to cure any defect identified by the Court. If, despite such efforts, the Court does not enter the Preliminary Approval Order or Final Approval Order, the Parties will return to their positions in the Lawsuit as they were immediately prior to the execution of this Settlement Agreement and confer on a revised schedule for the completion of fact and expert discovery and class certification.

VI. BENEFITS AVAILABLE TO MEMBERS OF THE SETTLEMENT CLASS

79. To qualify for any benefits under this Agreement, a Claimant must timely submit to the Settlement Administrator a properly completed Claim Form. A Claim Form received on or before the Claims Deadline will be treated as timely. If the Common Fund has been distributed but the Class Member can establish excusable neglect for an untimely claim, the Gift Card benefit under paragraph 81(b) may be provided.

80. Class Members will be able to submit claims by mail or electronically through the

Settlement Website. The Settlement Administrator shall prepopulate the online Claim Form with all relevant information, such as name, address, email, and model and serial numbers, that is readily accessible. Class Members may edit or change prepopulated information.

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

- a. A payment from the Common Fund remaining after payment of Attorney Fees and Expenses, Service Awards, and Notice and Administration Expenses. The payment will be pro rata based upon the number of Valid Claims. Those Class Members whose payments are not cleared within one hundred eighty (180) calendar days after issuance (the “Void Date”) will be ineligible to receive a cash settlement benefit and the Settlement Administrator will have no further obligation to make any payment from the Common Fund pursuant to this Agreement or otherwise to such Class Member. Checks may, at the discretion of the Settlement Administrator, be reissued for a period up to 30 days following the Void Date. Any reissued check is void within 180 days of issuance or 60 days from the Void Date, whichever is sooner. Any funds that remain unclaimed or remain unused after the initial distribution and any reissuances will be distributed to Class Members who cashed the initial payment, on a pro rata basis, to the extent the cost of such redistribution is considered economical by the Settlement Administrator, Class Counsel, and Sole. If such redistribution is not considered economical, or if unpaid funds remain after a second distribution, any unpaid funds will be donated *cy pres* as proposed by the

Parties and approved by the Court to a non-sectarian, not-for-profit firm whose work is sufficiently tethered to the allegations in this action.

- b. A \$100 Sole Gift Card that can be used once toward the purchase of any product from Sole's website (www.soletreadmills.com), including toward tax and shipping costs. The Gift Cards will be freely transferable and can be used in conjunction with any sale or promotion, with the exception of the following blackout dates: January 1 – 10, November 20 – 28, and December 1 - 11. They will not be stackable (only one per purchase), and they will expire one year from Effective Date. No credit or cash refunds will be given for the non-use of any portion of the gift card following its one-time use or in the event of non-use.

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

83. Sole will also provide the following relief relating to the allegations of the Complaint:

- a. Sole will cease using the terminology "Continuous Horsepower" or "CHP" to market or sell its Treadmills. Sole will remove such references from its website, from online manuals, and from any future distributed manuals or marketing materials. Sole will make a good faith effort to have retailers that sell its Treadmills cease using these terms and will provide Class Counsel with evidence that they have done so.
- b. Sole will not make the claim that its horsepower representations reflect the maximum output a treadmill motor will actually sustain under variable

conditions of rated user weight and at variable speeds/inclines (or something similar). Sole will not use the term “horsepower” with respect to the input to a motor.

- c. With respect to any future horsepower claim for its treadmills, Sole will in conjunction with such claim provide information proximate to the claim to inform customers about the basis for the claim, such as:

The stated horsepower is based on the motor manufacturer's horsepower rating.

and/or

The stated horsepower is measured in laboratory testing using a dynamometer, which measures the mechanical power of the motor.

Sole will make a good faith effort to have retailers that sell its Treadmills similarly provide such information with respect to future horsepower claims.

- d. If Class Counsel believes Sole is in breach of any of the provisions set forth in this paragraph, they shall be obligated to give Sole reasonable notice and opportunity to cure following a “meet and confer” conference before seeking any related relief.

VII. SETTLEMENT NOTICE AND NOTICE PLAN

84. All decisions regarding notice and settlement administration shall be made jointly between Defendant and Class Counsel except as otherwise set forth in this Agreement. The Parties and their counsel agree to cooperate in good faith in the notice and settlement administration process and to make reasonable efforts to control and minimize the costs and expenses as well as business disruption incurred in providing notice and in the execution and administration of the terms of this Settlement Agreement.

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

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

- a. The Settlement Administrator shall begin sending or causing to be disseminated a copy of the Short Form Settlement Notice to every Class Member who reasonably can be identified in the records of (i) third parties, such as retailers, dealers, or distributors pursuant to the procedures set forth in Section VIII below, or (ii) Sole, including Persons who directly purchased a Treadmill from Sole (Class Members described in Section C above) or registered their Treadmill with Sole.
- b. To the extent practicable, the Settlement Administrator shall send or cause to be sent a copy of the Settlement Notice by electronic mail, to every Class Member whose email address can reasonably be identified in Defendant's records or the records of third parties such as retailers, dealers, or distributors provide. If the Settlement Administrator can identify more email addresses for Class Members by performing an email address lookup or similar exercise, the Settlement Administrator may include such costs in the Administration and Notice Expenses so long as Class Counsel authorize such a search in advance. Any such electronic mail addresses are subject to the provisions of Section VIII below. All email addresses shall be subjected

to an email validation process and invalid addresses shall not be sent an email notice. For all Class Members who are not sent an email notice, but whose record contains a valid mailing address, the Settlement Administrator shall send or cause to be sent a copy of the Settlement Notice by U.S. mail.

- c. The Settlement Administrator will forward Short Form Settlement Notices or Settlement Notices that are returned by the U.S. Postal Service or electronically with a forwarding address to the Class Member. For Settlement Notices returned as undeliverable, the Settlement Administrator shall make reasonable efforts to determine a proper electronic mail address, or mailing address, and re-send the Short Form Settlement Notice. All costs related to this process shall be included in the Administration and Notice Expenses.
- d. With respect to third parties, the Parties will agree to an order to be entered by the Court directing third parties either to:
 - i. Deliver to the Settlement Administrator their respective customer lists identifying Class Members and the names, company names (if applicable), addresses, telephone numbers, email addresses, purchase dates, and—to the extent the third-party has them—serial numbers for the Treadmills of Class Members. The Settlement Administrator shall treat a customer list provided to it pursuant to this Section as Confidential under the Stipulated Protective Order previously entered by the Court (ECF 23) and the appropriate employees of the Settlement Administrator shall agree to the terms

of that Protective Order.

- ii. Provide the Short Form Settlement Notice to Class Members on their respective customer lists. If requested, the Settlement Administrator shall reimburse a third-party for the reasonable cost of providing this notice and include such amount in the Administration and Notice Expenses. No later than 65 days after entry of Preliminary Approval any third-party providing Settlement Notice under this Section shall certify that it has done so by filing with the Court a declaration pursuant to 28 U.S.C. § 1746 substantially in a form to be approved by the Court as part of the Preliminary Approval Order. Nothing in this Section obligates payment for any third-party's compliance costs other than the cost of postage at no greater than the U.S. Postal Service's applicable rate for marketing mail.
 - iii. Class Counsel will serve the order on third parties and take reasonable steps to ensure timely compliance by third parties to allow a reasonable amount of time for Class Members to submit a Claim Form before the Claims Deadline. Noncooperation by a third-party or late notice by a third-party is not good cause to adjust the Claims Deadline or to treat any untimely claim as a Valid Claim
- e. Within 14 days of the entry of the Preliminary Approval Order, Defendant will provide the Settlement Administrator with electronic data containing the contact information Defendant has for Class Members. Defendant will provide this

information in an Excel readable format unless Defendant and the Settlement Administrator agree on another format to facilitate providing Settlement Notice. The Settlement Administrator will maintain the information and data provided to it by Defendant pursuant to this provision as Confidential under the terms of the Protective Order.

87. At approximately the same time the Settlement Administrator mails and emails the Settlement Notice, the Settlement Administrator shall provide Publication Notice to the Class Members pursuant to the Notice Plan.

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

- a. Read the Settlement Notice and FAQ;
- b. Complete, review, and submit a Claim Form online;
- c. Print the Claim Form for completion and submission by the Class Member by mailing to the Settlement Administrator along with any required documentary support; and
- d. View a toll-free telephone number Class Members may call to obtain general information about the Settlement and this Agreement.

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

90. The Parties agree that the Settlement Notice, Short Form Settlement Notice, FAQ, Claim Forms, Publication Notice, and Settlement Website will provide information sufficient to

inform Class Members of: (a) the essential terms of this Agreement; (b) appropriate means for obtaining additional information regarding the Agreement and the Lawsuit; (c) appropriate information about the procedure for objecting to or excluding themselves from the Settlement, if they should wish to do so; and (d) appropriate means for and information about submitting a claim for benefits pursuant to the Settlement. The Parties also agree that the dissemination of the Settlement Notice, Short Form Settlement Notice, and the FAQ in the manner specified in this Section VII satisfies the notice requirements of due process and Rule 23 of the Federal Rules of Civil Procedure.

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

92. Pursuant to this Agreement, Class Counsel will request the Court to approve, in the Preliminary Approval Order, the emailing and (to the extent email is unavailable or unsuccessful)

direct mailing of the Short Form Settlement Notice and establishment of the Settlement Website, which will include the Settlement Notice, FAQ, the Claim Forms, and the Publication Notice all as set forth above in this Section VII, and the claim stimulation notice if the Parties agree it is warranted.

93. As soon as practicable, but no later than 10 days after Plaintiffs file this Agreement in the Court, the proposed Settlement Administrator shall serve the CAFA Notice on behalf of the Defendant as required by the notice provisions of the Class Action Fairness Act, 28 U.S.C. § 1715.

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

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

95. Administration and Notice Expenses shall be paid from the Common Fund. Defendant shall not be responsible for any Administration and Notice Expense with the exception of up to Two Hundred Fifty Thousand Dollars (\$250,000) that shall be advanced by the Defendant to the Settlement Administrator for Administration and Notice Expenses incurred following Preliminary Approval and before the Effective Date. Any such amounts paid will be subtracted from the Common Fund payment made by Defendant following the Effective Date and are non-refundable.

96. As soon as practicable and in any event no later than 30 days prior to the Fairness Hearing, the Settlement Administrator will provide Defendant and Class Counsel with: with the

names, contact information, and other information submitted by Class Members who have submitted Opt-Out Requests, objections, or notices of intent to appear at the Fairness Hearing. The Settlement Administrator shall provide information pursuant to this Section in electronic form in Excel format or another format agreed on with Defendant or Class Counsel, respectively.

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

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

99. Any Person receiving a Notice of Claim Denial that his, her, or its Claim Form is not a Valid Claim who wishes to contest such denial must, within 30 days of the date of mailing or transmission of Notice of Claim Denial of a claim by the Settlement Administrator as described in Paragraph 98 above, submit to the Settlement Administrator a statement of the reasons contesting the grounds for the rejection of his, her, or its claim as well as provide supporting documentation as necessary. If a Person provides the required information the Settlement Administrator shall reevaluate the claim and approve the claim if the deficiency is cured. In the case of a dispute about whether the Person has submitted a Valid Claim the Settlement Administrator shall escalate the claim to Class Counsel and Counsel for the Defendant. If the

claim remains unresolved, Class Counsel shall present the issue for review by the Court after certifying that Class Counsel, Defendant, and the Settlement Administrator have personally conferred and disagree about whether the claim is a Valid Claim.

100. No later than 20 days before the Fairness Hearing, the Settlement Administrator will provide to Defendant and Class Counsel a statement of the number of Valid Claims submitted at that point by Class Members. On request, the Settlement Administrator will provide particular Claim Forms and Opt-Out Requests. By the same deadline, the Settlement Administrator shall provide Defendant and Class Counsel with an accounting detailing the Administration and Notice Expenses incurred. Should the detailed accounting provided be submitted to the Court, Class Counsel and Defendant's counsel shall do so under seal. The Settlement Administrator shall provide information pursuant to this Section in electronic form in its native format or another format agreed on with Defendant or Class Counsel, respectively.

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

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

103. Opt-Out Requests. Class Members other than the Class Representatives may opt out of the Settlement by submitting an Opt-Out Request to the Settlement Administrator no later

than 60 days from the Notice Date. To be valid, an Opt-Out Request must contain the name, company name (if applicable), address, email address, telephone number, and serial number(s) or other identifying information of the Treadmill(s). Each Class Member seeking exclusion from the Settlement must personally sign the Opt-Out Request. No Opt-Out Request may be signed electronically. No Class Member may opt out by a request signed by an actual or purported agent or attorney acting on behalf of a group of Class Members. No Opt-Out Request may be made on behalf of a group of Class Members. Class Members who do not submit a timely, personally signed, valid Opt-Out Request will be bound by the Settlement and this Agreement, including the release of Released Claims. Class Members who timely submit a valid, personally signed Opt-Out Request will have no further role in this Settlement and will not be bound by this Agreement; accordingly, such Class Members will not be permitted to assert an objection to the Settlement or this Agreement and will receive no benefit described in Section VI of this Agreement. The Settlement Notice, the Short Form Settlement Notice, the FAQ, and the Publication Notice will advise Class Members of their ability to opt out of the Settlement and of the consequences of opting out of the Settlement. Neither the Parties nor their counsel will solicit any Class Member to submit an Opt-Out Request.

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

105. Objections. Class Members, except for Plaintiffs, will have until 60 days after Notice date to file an objection to the Settlement. Only Class Members who have not submitted an

Opt-Out Request to the Settlement Administrator may object to the Settlement. To object, a Class Member must timely file with the Court a written objection and a notice of intent to appear at the Fairness Hearing, if the objector chooses to appear at the Fairness Hearing. The filing date of any written objection will be the exclusive means for determining the timeliness of an objection. The Settlement Notice, the Short Form Settlement Notice, the FAQ, the Publication Notice, and the Preliminary Approval Order will set forth the procedures for submitting an objection. A written objection must state: (a) the full name, address, telephone number, and email address of the objector; (b) the serial number(s) or other proof of purchase for the objector's Treadmill(s); (c) a written statement of all grounds for the objection accompanied by any legal support for such objection; (d) copies of any papers, briefs, or other documents on which the objection is based; (e) a list of all cases in which the objector and/or objector's counsel had filed or in any way participated in—financially or otherwise—objecting to a class action settlement in the preceding five years; (f) the name, address, email address, and telephone number of all attorneys representing the objector; (g) a statement indicating whether the objector and/or the objector's counsel intends to appear at the Fairness Hearing, and, if so, a list of all persons, if any, who will be called to testify in support of the objection; and (h) the objector's signature. Class Members who fail to make objections in the manner specified in this Section will be deemed to have waived any objections and will be foreclosed from making any objection to the Settlement or this Agreement (whether by appeal, collateral proceeding, or otherwise). Neither the Parties nor their counsel will encourage any Class Member to object.

IX. PAYMENTS TO PLAINTIFFS

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

107. Subject to approval by the Court, the Plaintiffs will also receive following the Effective Date a Service Award pursuant to the provisions of this Section. Defendant will not oppose a Service Award of up to a five-thousand-dollar (\$5,000) payment to each Plaintiff, to be paid out of the Common Fund, solely as compensation for their time and effort associated with their participation in this Lawsuit. This amount is not reimbursement or compensation for any alleged injuries, damages, or any other relief sought in the Lawsuit. Even though Plaintiffs have signed this Agreement and support approval of the Settlement, payment of the amount specified in this Section is not contingent on such authorization and support for the Agreement. Class Counsel will not seek payments for Plaintiffs in excess of the amount in this Section, which Defendant will not oppose. The Parties did not negotiate or agree to this Section or any of its terms until after negotiating and agreeing to the substantive terms of the Settlement.

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

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

109. The Parties have not reached any agreement on the amount of Attorneys' Fees and Expenses to be paid to Class Counsel, except that the Parties agree Class Counsel is entitled to an award of Attorney's Fees and Expenses and that Defendant shall not oppose any such request of up to one-third of the Common Fund. Defendant has no liability or obligation with respect to any Attorneys' Fees and Expenses, Administration and Notice Expenses, or a Service Award to Plaintiffs; those amounts are to be paid from the Common Fund as awarded by the

Court. It is not a condition of the Settlement or this Agreement that the Court award any particular amount of Attorneys' Fees and Expenses or any particular amount as a Service Award.

110. If the Court makes an award of Attorneys' Fees and Expenses, the Settlement Administrator shall pay to Class Counsel from the Common Fund the amount of attorneys' fees and costs awarded by the Court within 21 calendar days after the Effective Date, subject to Class Counsel providing all payment routing information and a valid IRS W9 form for Markovits, Stock & DeMarco, LLC, as agent for Class Counsel. Payment of the Fee Award will be made from the Common Fund by wire transfer to Markovits, Stock & DeMarco, LLC, and completion of all necessary forms, including but not limited to W-9 forms.

111. Any Service Awards approved by the Court for the Class Representatives shall be paid from the Common Fund in the form of a check to the Class Representative that is sent care of Class Counsel within the earlier of 21 days after the Effective Date, or the date the Settlement Administrator begins making distributions to claimants subject to Class Counsel providing a valid W9 for the Class Representative.

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

XI. RELEASES

113. Class Members who do not timely exclude themselves from the Settlement forever release and discharge the Released Party (Defendant) from all manner of claims, actions, causes of action, administrative claims, demands, debts, damages, costs, attorneys' fees, obligations, judgments, expenses, or liabilities for economic loss in law or in equity, whether based on federal, state, local, or foreign law or regulation, statutory or common law, whether now known or unknown, contingent or fixed, accrued or not accrued, foreseen or unforeseen, including all claims that Plaintiffs and Class Members may now have or, absent this Agreement, may in the future have had, against any of the Released Party (Defendant), by reason of any act, harm, omission, matter, representation, cause, occurrence, or event whatsoever that has occurred from the beginning of time up to and including the Effective Date of this Agreement and that arise from or relate to any of the alleged representations, omissions, or claims alleged or that could have been alleged in the Lawsuit, including but not limited to Defendant's claims relating to the horsepower of the Treadmills, or that arise from or relate to any act, harm, omission, matter, representation, cause, occurrence, or event whatsoever arising out of the initiation, defense, or settlement of the Lawsuit or the claims or defenses asserted in the Lawsuit, including all claims for out-of-pocket expense, consequential damages, diminution in value, benefit of the bargain, cost of repair or replacement, cost of maintenance, premium price damages, or any other damages theory or based on conduct by the Released Party (Defendant) alleged to be negligent or intentional, with or without malice, or an alleged breach of any duty now existing or later arising.

114. The Released Claims specifically exclude claims for product liability seeking to recover for personal injury, property damage, and emotional distress for Class Members other

than Plaintiffs.

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

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

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

Plaintiffs and Class Members expressly waive and relinquish all rights and benefits that they may have under, or that may be conferred on them by, the provisions of Section 1542 of the California Civil Code and of all similar laws of other States or territories, to the fullest extent they may lawfully waive such rights or benefits pertaining to the Released Claims. In connection with such waiver and relinquishment, Plaintiffs and Class Members hereby acknowledge that they are aware that they or their attorneys may hereafter discover claims or facts in addition to or different from those which they now know or believe to exist with respect to the Released Claims, but that it is their intention to hereby fully, finally, and forever settle and release all of the Released Claims, known or unknown, suspected or unsuspected, that they have against the Released Party (Defendant). In furtherance of such intention, the release given by Plaintiffs and Class Members to the Released Party (Defendant) shall be and remain in effect as a full and complete general release of all claims notwithstanding the discovery or existence of any such

additional different claims or facts.

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

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

XII. COVENANT NOT TO SUE

119. Plaintiffs, on behalf of themselves and all Class Members, (a) covenants and agree that neither Plaintiffs nor any Class Member, nor anyone authorized to act on behalf of any of the Plaintiffs or any Class Member, will commence, authorize, or accept any benefit from any judicial or administrative action or proceeding, other than as expressly provided for in this Agreement, against the Released Party (Defendant), or any of them, in either their personal or corporate capacity, or against third parties such as retailers, dealers, or distributors that sell or

market Treadmills, with respect to any claim, matter, or issue that in any way arises from, is based on, or relates to any alleged loss, harm, or damages allegedly caused by the Released Party (Defendant), or any of them, in connection with the Released Claims, the Treadmills, or claims that relate to the allegations of the Lawsuit; (b) waive and disclaim any right to any form of recovery, compensation, or other remedy in any such action or proceeding brought by or on behalf of any of them; and (c) agree that this Agreement shall be a complete bar to any such action.

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

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

XIII. REPRESENTATIONS AND WARRANTIES

Each of the Parties represents and warrants to, and agrees with, each of the other Parties as follows:

122. To the extent permitted by law and the applicable rules of professional conduct, Class Counsel represent and warrant that they do not have any present intention to file any lawsuit, class action, or claim of any kind against Defendant in any jurisdiction, including other states or countries, relating to the claimed misrepresentations or omissions at issue in the Lawsuit

or Defendant's response to or efforts to address such claimed misrepresentations or omission relating to Defendant's Treadmills. Class Counsel further represent and warrant that they will not contact any other attorney or law firm to discuss or encourage pursuing litigation related to such alleged issues against the Released Party. The foregoing shall not restrict the ability of Class Counsel to fulfill their responsibilities to absent Class Members in connection with the settlement proceedings in the Lawsuit.

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

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

125. Plaintiffs represent and warrant that no portion of any claim, right, demand, action, or cause of action against any of the Released Party (Defendant) that Plaintiffs have or may have arising out of the Lawsuit or pertaining to the design, manufacture, testing, marketing, purchase, use, sale, servicing, or disposal of any of Defendant's Treadmills, and no portion of any recovery or settlement to which Plaintiffs may be entitled, has been assigned, transferred,

or conveyed by or for Plaintiffs in any manner; and no Person or entity other than Plaintiffs have any legal or equitable interest in the claims, demands, actions, or causes of action referred to in this Agreement as those of Plaintiffs themselves.

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

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

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

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

XIV. REPRESENTATIONS AND WARRANTIES

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

131. Default or Breach. Defendant represents that it will make good-faith efforts to meet the various deadlines that apply to it under this Agreement. Defendant's failure, for any reason, to meet any applicable deadline shall not constitute a default or breach of this Agreement without formal, written notice by Class Counsel and without a reasonable opportunity for Defendant to cure the claimed default or breach. If Class Counsel maintain that any action or

inaction constitutes a default or breach of this Agreement, then the Settling Parties shall meet and confer. If reasonable efforts do not cure any claimed default or breach after a reasonable period of time, only then may a Settling Party involve the Court. The waiver by Plaintiffs of any default or breach of this Agreement shall not be deemed a waiver of any other claimed default or breach by Defendant.

132. Number of Treadmills Sold. The Settlement is premised on Defendant's representation that Defendant sold, as of the date of this Agreement, approximately 375,000 Treadmills during the Class Periods. If, as of the date of the Agreement, the number of Treadmills sold exceeds 400,000, then Class Counsel, at their discretion, may consider Defendant to be in default or breach of this Agreement. Plaintiffs' sole remedy for such a default or breach shall be termination of this Agreement.

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

134. Severability. With the exception of the provision for attorneys' fees and costs to Class Counsel and Service Awards to Plaintiffs pursuant to Sections IX and X of this Agreement, none of the terms of this Agreement is severable from the others. If the Court or a court of appeals should rule that any term is void, illegal, or unenforceable for any reason, however, Defendant, in its sole discretion, and Plaintiffs, in their sole discretion (but acting in accord with their duties and obligations as Class Representatives of the Settlement Class), may elect to waive any such deficiency and proceed with the Settlement under the terms and conditions approved by the Court.

135. Entire Agreement of the Parties. This Agreement constitutes and comprises the entire agreement between the Parties concerning the Settlement. No representations, warranties,

or inducements have been made by any Party concerning the Settlement or this Agreement other than those contained and memorialized in this Agreement. This Agreement supersedes all prior and contemporaneous oral and written agreements and discussions concerning resolution of the Lawsuit. It may be amended only by an agreement in writing, signed by the Parties.

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

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

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

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

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

For Plaintiffs and the Settlement Class:

W. B. Markovits
MARKOVITS, STOCK & DEMARCO, LLC
3825 Edwards Road, Suite 650
Cincinnati, Ohio 45209
(513) 61-3700
bmarkovits@msdlegal.com

For Defendant:

Thomas A. Gamache
LEAHY, EISENBERG & FRAENKEL, LTD.
33 W. Monroe Street
Suite 1100
Chicago, IL 60603-5317
(312) 358-4554
tag@lefltd.com

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

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

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

144. Construction. This Agreement shall not be construed more strictly against one Party than another, or in favor of one Party or another, merely by virtue of the fact that it or any part of it may have been prepared by counsel for one of the Parties. This Agreement and each part of it is the result of arm's-length negotiations among the Parties.

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

146. Signature. By signing, Class Counsel represent and warrant that Plaintiffs Laura Bechtel and Troy Thoennes have approved and agreed to be bound by this settlement. By signing, all counsel and any other person signing this Agreement represent and warrant that they have full authority to do so and that they have the authority to take appropriate action to effectuate the terms of this Agreement.

On Behalf of the Plaintiffs and the Settlement Class:

/s/
Laura Bechtel
6236 Ashbourne Place
Cincinnati, OH 45233

Troy Thoennes
/s/ Troy Thoennes (Jan 25, 2022 15:54 CST)
Troy Thoennes
20368 Hampton Ave.
Lakeville, MN 5044

/s/
W.B. Markovits
Terence R. Coates
Justin C. Walker
Markovits, Stock, & DeMarco, LLC
3825 Edwards Road, Suite 650
Cincinnati, OH 45209
(513) 651-3700
bmarkovits@msdlegal.com

/s/
Nathan D. Prosser (*pro hac vice*)
Hellmuth & Johnson, PLLC
8050 West 78th Street
Edina, MN 55439
(952) 9410-4005
nprosser@hjlawfirm.com

On Behalf of Defendant:

/s/
Thomas A. Gamache
Leahy, Eisenberg & Fraenkel, Ltd.
33 W. Monroe Street
Suite 1100
Chicago, IL 60603-5317
(312) 358-4554
tag@lef ltd.com

/s/
Will Macfarlane
Chief Economic Officer
Fitness Equipment Services,
LLC dba SOLE Fitness

146. Signature. By signing, Class Counsel represent and warrant that Plaintiffs Laura Bechtel and Troy Thoennes have approved and agreed to be bound by this settlement. By signing, all counsel and any other person signing this Agreement represent and warrant that they have full authority to do so and that they have the authority to take appropriate action to effectuate the terms of this Agreement.

On Behalf of the Plaintiffs and the Settlement Class:

/s/ _____
Laura Bechtel
6236 Ashbourne Place
Cincinnati, OH 45233

/s/ _____
Troy Thoennes
20368 Hampton Ave.
Lakeville, MN 5044

/s/ _____
W.B. Markovits
Terence R. Coates
Justin C. Walker
Markovits, Stock, & DeMarco, LLC
3825 Edwards Road, Suite 650
Cincinnati, OH 45209
(513) 651-3700
bmarkovits@msdlegal.com

/s/ _____
Nathan D. Prosser (*pro hac vice*)
Hellmuth & Johnson, PLLC
8050 West 78th Street
Edina, MN 55439
(952) 9410-4005
nprosser@hjlawfirm.com

On Behalf of Defendant:

/s/ Digitally signed by Thomas A. Gamache
DN: CN = Thomas A. Gamache, email =
tag@lefltd.com C = US
Date: 2022.01.28 13:52:41 -0500 _____
Thomas A. Gamache
Leahy, Eisenberg & Fraenkel, Ltd.
33 W. Monroe Street
Suite 1100
Chicago, IL 60603-5317
(312) 358-4554
tag@lefltd.com

/s/ _____
Will Macfarlane
Chief Economic Officer
Fitness Equipment Services,
LLC dba SOLE Fitness

EXHIBIT

A

From: Bechtel v. Sole Settlement Administrator
Sent: DoNotReply@SoleTreadmillSettlement.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, WESTERN DIVISION

Laura Bechtel, et al. v. Fitness Equipment Services, LLC dba Sole Fitness
Case No. 1:19-cv-00726

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 Sole treadmills that was brought against Defendant Fitness Equipment Services, LLC dba Sole Fitness ("Sole"). 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 Sole treadmills ("Treadmills"). Plaintiffs allege that Defendant made misrepresentations regarding the horsepower of its Treadmills and, as a result, they and other Class Members paid more for the Treadmills than they would have absent the alleged misrepresentation. Sole denies the allegations.

Under the Settlement, Defendant agrees to create a Common Fund of \$3,650,000.00 from which to pay, subject to the Court's approval: (a) attorneys' fees and expenses to Class Counsel; (b) service awards to the two Plaintiffs; (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 transferable \$100 Sole Gift Card that can be used toward the purchase of any product from Sole's website (www.soletreadmills.com), subject to certain restrictions.

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.SoleTreadmillSettlement.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 one of the class periods (August 30, 2015 through _____ for Ohio and Minnesota purchasers; December 2, 2017 through _____ for all other purchasers within the United States and its territories).

If you do not opt out of the Settlement Class, you will be eligible to receive a payment and a gift card benefit under the Settlement. You must file a timely and valid claim, and during that process you may add or update your settlement payment information, including your mailing address, or select to receive payment via electronic means, at www.SoleTreadmillSettlement.com.

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, service awards, and Court-approved administration costs. If there is a 20% claims rate, the payment per claimant is estimated to exceed \$25.00. In addition to the monetary payment, you would be entitled to a transferable \$100 Sole Gift Card that can be used toward the purchase of any product from Sole's website (www.soletreadmills.com), subject to certain restrictions.

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 _____, **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.SoleTreadmillSettlement.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 _____, **2022**. Instructions on how to object to the Settlement or appear before the Court can be found at www.SoleTreadmillSettlement.com.

Do I Have a Lawyer?

The Court has appointed lawyers from two law firms to serve as Class Counsel: Markovits, Stock & DeMarco, LLC, and Hellmuth & Johnson, PLLC. 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 \$130,000, and payment of Class Representative service awards not to exceed \$5,000 for each of the two Plaintiffs. 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 _____, **2022** at _____ **a.m./p.m.** at the Potter Stewart U.S. Courthouse, Room 716, 100 East Fifth Street, Cincinnati, OH 45202. The hearing may be postponed to a later date without further notice and may occur via remote means such a teleconference or Zoom. Settlement Class Members should check www.SoleTreadmillSettlement.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 \$130,000, the requested Class Representative payments not to exceed \$5,000, and administration costs.

How Do I Get More Information?

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

Please Do Not Contact the Court for Information.

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

EXHIBIT

B

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

If you purchased a Sole 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 Plaintiffs, Laura Bechtel and Troy Thoennes (“Plaintiffs”) have reached a proposed settlement in *Laura Bechtel et al. v. Fitness Equipment Services, LLC dba Sole Fitness*, Case No. 1:19-cv-00726 (S.D. Ohio) a class action lawsuit (the “Lawsuit”) with Defendant Fitness Equipment Services, LLC dba Sole Fitness (“Defendant” or “Sole”) concerning the CHP representations affiliated with the electric motors in certain Sole treadmills (“Treadmills”).¹

PLEASE READ THIS NOTICE CAREFULLY. If you live within the United States and its territories and purchased a Sole treadmill, 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: _____	Submitting a Claim Form is the only way to be eligible to receive any benefit under this Settlement.
EXCLUDE YOURSELF Deadline: _____	Excluding yourself, or “opting-out,” is the only option that allows you to ever be part of another lawsuit against Sole 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: _____	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: _____	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 ON _____, Deadline: _____	You may attend the hearing, but you do not have to do so. The Court will hold the Fairness hearing at _____ a.m./p.m. on _____, at the Potter Stewart U.S. Courthouse, Room 716, 100 East Fifth Street, Cincinnati, OH 45202.
DO NOTHING	If you are a Class Member and do not submit a Claim Form by you will not receive any benefit from the Settlement and you will give up your right to ever be part of another lawsuit against Sole 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 Sole or its legal counsel. All questions should be directed to the Settlement Administrator (see paragraph 25 below). You may also contact Class Counsel.

1. Description of the Lawsuit and Class: This Notice relates to a proposed class action Settlement of a case alleging that Sole made misrepresentations regarding the horsepower of its Treadmills. Plaintiffs allege that, as a result, they and other Class Members paid more for the Treadmills than they would have absent the alleged misrepresentations. Sole denies the allegations in the Lawsuit and has asserted numerous defenses. The Court has not

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 January 24, 2022 (“Settlement Agreement”), which is available online on the website for this Lawsuit at www.SoleTreadmillSettlement.com.

ruled on the merits of Plaintiffs' claims or on Sole's denial of the claims or on Sole's defenses, with the exception of granting in part Plaintiffs' Motion for Class Certification. 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"):

(a) All Persons within Ohio and Minnesota who purchased a Sole F63 (3.0 CHP), Sole F65 (3.25 CHP), Sole S77 (4.0 CHP), Sole F80 (3.5 CHP), Sole F85 (4.0 CHP), Sole TT8 (4.0 CHP), Sole F60 (2.75 CHP), Sole S73 (3.0 CHP), Sole F83 (3.25 CHP), and/or Sole TT9 (4.0 CHP) treadmill from August 30, 2015 through the date of preliminary approval, primarily for personal, family, or household purposes, and not for resale, and (b) all Persons within the United States and its territories, excluding Ohio and Minnesota, who purchased a Sole F63 (3.0 CHP), Sole F65 (3.25 CHP), Sole S77 (4.0 CHP), Sole F80 (3.5 CHP), Sole F85 (4.0 CHP), Sole TT8 (4.0 CHP), Sole F60 (2.75 CHP), Sole S73 (3.0 CHP), Sole F83 (3.25 CHP), and/or Sole TT9 (4.0 CHP) treadmill from December 2, 2017 through the date of preliminary approval, primarily for personal, family, or household 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 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 \$3,650,000.00, after Attorneys' Fees and Expenses, Administration and Notice Expenses, and Service Awards, if any;
- b. a transferable \$100 Sole Gift Card that can be used toward the purchase of any product from Sole's website (www.soletreadmills.com), subject to certain restrictions; and,
- 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 \$25.00.

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 Representatives and the lawyers representing them (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 Plaintiffs on a wholly contingent basis by the firms of Markovits, Stock & DeMarco, LLC and Hellmuth & Johnson, PLLC. 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. Defendant has no liability or obligation with respect to any Attorneys' Fees and Expenses, Settlement Administration and Notice Expenses, or Service Awards to the Plaintiffs—these amounts will be awarded by the Court and paid out of the \$3.65 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 \$130,000.00. Class Counsel also intends to request Court approval of a Service Award to each Plaintiff in the amount of \$5,000.00 to compensate Plaintiffs for their efforts in pursuing this Lawsuit. Sole has no objection to the proposed Attorneys' Fees, Expenses, and Service Award requests.

5. Identification of Class Counsel: Named Plaintiffs and the Class are being represented by W.B. Markovits and Terence Coates of Markovits, Stock & DeMarco, LLC, 119 E. Court Street, Suite 530, Cincinnati, OH 45202, and Nathan Prosser of Hellmuth & Johnson PLLC, 8050 West 78th Street, Edina, MN 55439.

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

6. This Notice is provided pursuant to an Order of the Court because it appears you are a Class Member who might have purchased a Treadmill between August 30, 2015 and the date of Preliminary Approval (_____).”The Court has directed that a Notice be sent to potential Class Members because, as a potential Class Members, 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, Angeion Group, the Settlement Administrator approved by the Court, will distribute the benefits (detailed below) of this Settlement 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, Plaintiffs Laura Bechtel and Troy Thoennes are the class representatives, and Class Counsel (identified in paragraph 5 above) represent the Plaintiffs 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 *Laura Bechtel and Troy Thoennes v. Fitness Equipment Services, LLC dba Sole Fitness*, Case No. 1:19-cv-00726. The judge presiding over this Lawsuit is United States Magistrate Judge Karen L. Litkovitz. The persons suing are called the “Plaintiffs” 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 _____ at the Potter Stewart U.S. Courthouse, Room 716, 100 East Fifth Street, Cincinnati, OH 45202 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 Awards to the Plaintiffs 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 three hundred thousand Class Members. Please be patient. The Settlement website, www.SoleTreadmillSettlement.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:

(a) All Persons within Ohio and Minnesota who purchased a Sole F63 (3.0 CHP), Sole F65 (3.25 CHP), Sole S77 (4.0 CHP), Sole F80 (3.5 CHP), Sole F85 (4.0 CHP), Sole TT8 (4.0 CHP), Sole F60 (2.75 CHP), Sole S73 (3.0 CHP), Sole F83 (3.25 CHP), and/or Sole TT9 (4.0 CHP) treadmill from August 30, 2015 through the date of preliminary approval, primarily for personal, family, or household purposes, and not for resale, and (b) all Persons within the United States and its territories, excluding Ohio and Minnesota, who purchased a Sole F63 (3.0 CHP), Sole F65 (3.25 CHP), Sole S77 (4.0 CHP), Sole F80 (3.5 CHP), Sole F85 (4.0 CHP), Sole TT8 (4.0 CHP), Sole F60 (2.75 CHP), Sole S73 (3.0 CHP), Sole F83 (3.25 CHP), and/or Sole TT9 (4.0 CHP) treadmill from December 2, 2017 through the date of preliminary approval, primarily for personal, family, or household 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 judicial officers and their immediate family members and associated Court staff assigned to this case.

PLEASE NOTE: RECEIPT OF THIS 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 [REDACTED].

WHAT IS THIS CASE ABOUT?

Summary of Procedural History and Arms' Length Settlement Negotiations

13. On August 30, 2019, Plaintiff and proposed Class Representative Laura Bechtel filed a complaint against Defendant Sole alleging that Sole misrepresented horsepower attributes in the advertising, marketing and sale of its treadmills. (Doc. 1, Complaint). Plaintiff asserted claims for: 1) breach of express warranty (nationwide class); 2) breach of express warranty under the Magnuson-Moss Warranty Act (nationwide class); 3) breach of express warranty (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 (nationwide class). *Id.* On September 8, 2020, Plaintiff amended her complaint to add Troy Thoennes as an additional plaintiff and assert additional claims under Minnesota law. On September 12, 2021, the Court issued an order granting in part and denying in part Plaintiffs' Motion for Class Certification, certifying a class action for Ohio and Minnesota classes, appointing Plaintiffs as Class Representatives, and appointing Markovits, Stock & DeMarco, LLC and Hellmuth & Johnson PLLC as Class Counsel.

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

WHY IS THERE A SETTLEMENT?

15. Plaintiffs' 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, transferable gift card. 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.

16. Sole's principal reason for consent to the Settlement is to avoid the uncertainty, burden, and expense of further protracted litigation. Sole 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. Sole continues to believe that the claims in this Lawsuit are meritless.

WHAT MIGHT HAPPEN IF THERE WERE NO SETTLEMENT?

17. If there were no Settlement and Plaintiffs failed to establish any essential legal or factual element of their claims, neither Plaintiffs nor the other members of the Class would recover anything from Sole. Also, if Sole 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?

18. 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 \$3,650,000.00, after Attorneys' Fees and Expenses, Administration and Notice Expenses, and Service Awards, if any; and (2) a \$100 Sole Gift Card that can be used once toward the purchase of any product from Sole's website (one gift card per purchase) and is freely transferable. Use of the Gift Card is restricted during the following periods: January 1-10; November 20-28; and December 1-11. If there is a 20% claims rate, the payment per Claimant is estimated to be in excess of \$25.00.

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

19. 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 Sole 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?

20. Class Counsel identified in paragraph 5 above have not received any payment for their services in pursuing claims against Sole 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 each of the Class Representatives. All of these amounts will be paid from the Common Fund prior to the *pro rata* distribution to Class Members. Sole 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?

21. 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.SoleTreadmillSettlement.com) **no later than** _____ or execute and return by U.S. mail a completed Claim Form **so that it is received no later than** _____. A Claim Form may be obtained from www.SoleTreadmillSettlement.com, or you may request that a Claim Form be mailed to you by emailing the Settlement Administrator, at info@SoleTreadmillSettlement.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?

22. If you want to keep the right to sue or continue to sue Sole 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.

23. 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 *Laura Bechtel et al. v. Fitness Equipment Services, LLC*

dba Sole Fitness, Case No. 1:19-cv-00726.” 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 _____.

Class Action Opt-Out/Objection
Sole Settlement Claims Administrator

Angeion Group
PO Box 58220
Philadelphia, PA 19102

24. 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.

25. If you choose to exclude yourself from the Settlement, you are not giving up the right to sue Sole 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 Sole.

HOW DO I OBJECT TO THE SETTLEMENT?

26. 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 Plaintiffs’ Service Awards. Objections must be in writing. 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, Sole’s 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><u>Objections – Sole Settlement Administrator</u></p> <p>Angeion Group PO Box 58220 Philadelphia, PA 19102</p>	<p><u>Court</u></p> <p>Office of the Clerk Potter Stewart U.S. Courthouse Room 103 100 East Fifth Street Cincinnati, OH 45202</p>
<p><u>Class Counsel</u></p> <p>W.B. Markovits Markovits, Stock & DeMarco, LLC 119 E. Court Street Suite 530 Cincinnati, OH 45202</p>	<p><u>Sole’s Counsel</u></p> <p>Thomas A. Gamache Leahy, Eisenberg & Fraenkel, Ltd. 33 W. Monroe Street Suite 1100 Chicago, IL 60603-4554</p>

27. 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 29-31 below.

28. There is a difference between objecting to the Settlement and requesting to exclude yourself (opting-out of 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?

29. 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 a.m./p.m. on _____, at the Potter Stewart U.S. Courthouse, Room 716, 100 East Fifth Street, Cincinnati, OH 45202. 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.

30. 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.

31. 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 *Laura Bechtel et al. v. Fitness Equipment Services, LLC dba Sole Fitness*, Case No. 1:19-cv-00726. 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 Sole's Counsel at their addresses above. You may not be permitted to speak at the hearing if your Notice of Intent to Appear is late.

HOW DO I GET MORE INFORMATION ABOUT THIS CASE?

32. 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, Potter Stewart U.S. Courthouse, Room 103, 100 East Fifth Street, Cincinnati, OH 45202 for more complete information about the details of the lawsuit and the proposed Settlement. You also may visit the Settlement Website at www.SoleTreadmillSettlement.com, where the Settlement Agreement is posted. Relevant case filings will be added to the Settlement Website as Settlement proceedings continue.

EXHIBIT

C

A settlement has been reached in a class action lawsuit, *Quora Bechtel et al v. Fitness Equipment Services, LLC dba Sole Fitness*, Case No. 1:19-cv-00726, pending in the United States District Court for the Southern District of Ohio, Western Division. Between 2015 and 2022, Defendant marketed and sold Sole treadmills. Plaintiffs claim that Defendant made misrepresentations regarding the horsepower of its treadmills, causing them 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 \$3,650,000 for the benefit of the Settlement Class and from which to pay, subject to the Court's approval, any attorneys' fees (not to exceed 1/3 of the Common Fund) and expenses (not to exceed \$130,000), service awards to Plaintiffs, 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.SoleTreadmillSettlement.com.

Am I a Class Member? Defendant's or retailers' records indicate you are a Class Member.

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 Valid Claim, the amount of approved attorneys' fees and costs, the Class Representative service awards, and administration costs. In addition, you are eligible to receive a transferable \$100 Sole gift card for the one-time purchase of a product from Sole's website, subject to certain date restrictions.

How Do I Receive Settlement Benefits? You will be eligible to receive money and a gift card benefit under the Settlement, unless you opt out of the Settlement Class, by making a claim. If you would like to update your address, please visit www.SoleTreadmillSettlement.com.

What Are My Other Options? You may exclude yourself from the Settlement Class by mailing a written notice to the Settlement Administrator by [REDACTED], 2022. If you exclude yourself, then you cannot receive a settlement payment or gift card 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 [REDACTED], 2022. Specific instructions on how to exclude yourself from the Settlement or object are available at www.SoleTreadmillSettlement.com.

Who Represents Me? The Court has appointed lawyers from two firms to serve as Lead Class Counsel. They will petition to be paid legal fees and their reasonable expenses from the Common 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 _____, 2022 at ___ a.m./p.m. at the Potter Stewart U.S. Courthouse, Room 716, 100 East Fifth Street, Cincinnati, OH 45202. 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 \$130,000, the requested Class Representative payments of \$5,000, and administration costs.

How Do I Get More Information? For more information, go to www.SoleTreadmillSettlement.com, or contact the Settlement Administrator at ([REDACTED]).

Sole Readmitt Settlement

POSTAL CLASS

MAIL
US POSTAGE
PAID
Permit#_

**COURT ORDERED
SETTLEMENT
NOTICE**

*Laura Bechtel v.
Fitness Equipment
Services, LLC dba
Sole Fitness*

Class Action Notice

Opt-Out Deadline:
_____, **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

Bechtel, et al. v. Fitness Equipment Services, LLC dba Sole Fitness
Case No. 1:19-cv-00726

FREQUENTLY ASKED QUESTIONS

BASIC INFORMATION

1. What is this lawsuit about?

The Plaintiffs in this case filed a class action lawsuit against the Defendant alleging that Sole made misrepresentations regarding the horsepower of its treadmills. Plaintiffs allege that the horsepower of these Treadmills when used at a consumer's home differed from what was advertised and that as a result Plaintiffs paid more than they otherwise would have if they had known the horsepower was lower than represented. Defendant Sole has at all times disputed, and continues to dispute, Plaintiffs' allegations in the Lawsuit and denies any liability for any of the claims that have been raised or could have been raised in the Lawsuit by Plaintiffs or the Class Members. After considerable litigation, and substantial negotiation, the Parties have arrived at a settlement.

2. What is a class action?

In a class action, one or more people, called class representatives, sue on behalf of people who have similar claims. In this case, the class representatives are Laura Bechtel and Troy Thoennes. One court resolves the issues for all class members, except those who exclude themselves from the class. The Honorable Karen L. Litkovitz, United States Magistrate Judge for the Southern District of Ohio—Western Division, has jurisdiction over the case in which the Parties have submitted this Settlement for approval.

3. Why is there a settlement?

The Court did not decide in favor of the Plaintiffs or Defendant. Instead, both sides agreed to a settlement. Through the Settlement, Plaintiffs and Defendant each avoid the substantial cost of protracted litigation and possibly even trial, and substantial settlement benefits go to the Class Members. The Class Representatives and Class Counsel believe the Settlement is in the Class's best interest given the cost and risk of further litigation compared against the substantial benefits Class Members will receive.

4. I received a postcard in the mail. Why did I receive this?

If you received a direct notice either via postcard or by email containing a notice about this Lawsuit, you were identified as a potential Class Member who may be eligible to receive benefits under this Settlement.

The Court directed that a notice be sent to you because, as a potential Class Member, you have a right to know about your options before the Court rules on the proposed Settlement.

The postcard and email notice are abbreviated notices. Please review the longer Settlement Notice, available at www.SoleTreadmillSettlement.com), which explains the Lawsuit, the Settlement, your legal rights, what benefits are available to Class Members, who is eligible for them, and how to get them. Please read the Notices carefully.

The United States District Court for the Southern District of Ohio—Western Division has jurisdiction over this proposed Settlement.

5. I did not receive a postcard in the mail but heard about this lawsuit from another source.

Please review these FAQs for more information about who may be eligible to participate in this class action settlement. If you believe that you are a potential Class Member, please follow the instructions for submitting a Claim Form, which you may do electronically on the settlement website. If you are unable to file a claim online, you may also download a claim form from the important documents page of the settlement website and submit the claim by mail. Instructions for mailed submission are contained on the claim form.

If you are unsure whether you are a Class Member, you can contact the Settlement Administrator via email at info@soletreadmillsettlement.com, by mail to:

Sole Treadmill Settlement
PO Box 58220
Philadelphia, PA 19102

or toll-free at XXX-XXX-XXXX.

WHO IS IN THE SETTLEMENT?

6. How do I know if I am part of the settlement?

You may be a Class Member if you own a qualifying Sole Treadmill purchased on or after August 30, 2015 until [DATE OF PRELIMINARY APPROVAL] in Ohio and Minnesota, or from December 2, 2017 until [DATE OF PRELIMINARY APPROVAL] in the rest of the United States and its territories.

7. Who is not included in the class?

The Class does not include Defendant and its officers, directors, and employees; 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.

8. I'm still not sure if I am included.

If you are still not sure whether you are included, you can review the relevant court pleadings available on the Important Documents page of the Settlement Website at www.SoleTreadmillSettlement.com for more information, or you can contact the Settlement Administrator. See FAQ 5 for contact information.

THE SETTLEMENT BENEFITS – WHAT YOU GET

9. What does the settlement provide?

Settlement Class Members who submit a valid Claim Form as described in FAQ 10 will be eligible to receive benefits depending on their circumstances. Owners of qualifying Sole Treadmills will be eligible to receive a *pro rata* share of the \$3,650,000 Common Fund (after fees, expenses, and administration costs), and a transferable \$100 Sole gift card that can be used toward the one-time purchase of a product from Sole's website (www.soletreadmills.com), subject to certain date restrictions. Furthermore, the proposed Settlement affords injunctive relief to the Class in that Defendant has agreed to stop utilizing the continuous horsepower representations at issue in this case and to include a disclaimer to accompany any horsepower

representation published in connection with Defendant's future sale and/or marketing of its treadmills.

The settlement also provides for Attorney's Fees and Expenses, Service Awards to each of the two Class Representatives, and settlement administration costs.

10. How can I get the settlement benefits?

Eligible Class Members must submit a Claim Form in order to qualify for the *pro rata* share of the Common Fund and the \$100 gift card. Claim Forms must be submitted through the Settlement Website www.SoleTreadmillSettlement.com no later than 11:59 PM ST on [REDACTED]. You may also complete and return the Claim Form attached to your postcard notice or print out a hard copy of the Claim Form from the Important Documents page of the Settlement Website and mail it to the Settlement Administrator at the address on the Claim Form with a postmark no later than [REDACTED].

The entire Claim Form must be filled out completely and meet the requirements of a valid Claim Form set forth in the Settlement Agreement in order for you to receive a benefit.

11. When would I get my benefit?

The Court will hold a Settlement Fairness Hearing on [REDACTED] to decide whether to approve the Settlement. If Magistrate Judge Litkovitz approves the Settlement, there may still be appeals. It is always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps more than a year. It also takes time for the Claim Forms to be processed.

12. What am I giving up if I remain in the Class?

Unless you exclude yourself, you stay in the Class, and that means that you can't sue, continue to sue, or be part of any other lawsuits against Defendant about the legal issues in this case.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you don't want to be eligible for the share of the \$3,650,000 common fund and the \$100 Sole gift card, and you want to keep any right you may have to sue or continue to sue Defendant about the legal issues in this case, then you must take steps to remove yourself from the Class. This is called excluding yourself and sometimes referred to as "opting out" of the Class.

13. How do I get out of the settlement?

To exclude yourself from the settlement, you may download an Opt-Out Form available on the Important Documents page of the Settlement Website (www.SoleTreadmillSettlement.com) complete and sign the form and mail it to the Settlement Administrator. You may also send a letter stating, "I want to be excluded from the Settlement Class in *Laura Bechtel, et al. v. Fitness Equipment Services, LLC dba Sole Fitness*, Case No. 1:19-cv-00726." Your Opt-Out Form or letter request for exclusion must be mailed to the Settlement Administrator at the below address and postmarked no later than [REDACTED].

Sole Treadmill Settlement
PO Box 58220
Philadelphia, PA 19102

14. What is the effect if I exclude myself from this settlement?

If you request to be excluded, you will not receive a *pro rata* share of the Common Fund or the gift card. Also, you cannot object to the Settlement. You will not be legally bound by anything that happens in the Action. You may be able to sue Defendant in the future about the legal issues in the case.

15. If I don't exclude myself, can I sue Defendant for the same thing later?

No. Unless you exclude yourself, you give up your right to sue Defendant for the claims that this settlement resolves. You must exclude yourself from this Class to pursue your own lawsuit. Remember, your exclusion request must be postmarked on or before [REDACTED].

16. If I exclude myself, can I receive the money or the gift card from the Settlement?

No. If you exclude yourself, do not send in a Claim Form to ask for a share of the Common Fund and the gift card. You may exercise any right you may have to sue, continue to sue, or be part of a different lawsuit against Defendant and other released parties.

THE LAWYERS REPRESENTING YOU

17. Do I have a lawyer in this case?

The Court appointed W.B. Markovits and Terence Coates of Markovits, Stock & DeMarco, LLC, and Nathan Prosser of Hellmuth & Johnson, PLLC, to represent the Class as Class Counsel. You will not be charged for Class Counsel. The Court will determine the amount of Class Counsel's fees and costs, which will be paid from the Common Fund as part of the Settlement. If you want to be represented by your own lawyer, you may hire one at your own expense.

18. How will the lawyers be paid?

Class Counsel will request from the Court an award of attorneys' fees in the amount of one-third of the Common Fund, plus reimbursement for reasonable litigation expenses and costs totaling not more than \$130,000. Class Counsel will also ask for \$5,000 Service Awards to be paid to each of the two Class Representatives. Class Counsel's fees and costs, and the Service Awards as awarded by the Court, will be paid from the Common Fund. You have the right to object to the requested fees and costs, and Service Awards. The costs to administer the Settlement will also be paid from the Common Fund.

Class Counsel will file a Fee Application for an award of Attorneys' Fees and Expenses, including Administrative and Notice Expenses, no later than [REDACTED]. Once filed with the Court, a copy of this Fee Application will be available on the Important Documents page of the settlement website (www.SoleTreadmillSettlement.com).

Class Members are not personally liable for any attorneys' fees or expenses.

OBJECTING TO THE SETTLEMENT

You can tell the Court that you don't agree with the Settlement or some part of it.

19. How do I tell the Court if I don't like the settlement?

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. Objections must be in writing. 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, Sole's 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—objection 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:

Your objection must be filed with the Court no later than _____ and postmarked and mailed to the below parties no later than _____:

<p><u>Objections – Sole Settlement Administrator</u></p> <p>Angeion Group PO Box 58220 Philadelphia, PA 19102</p>	<p><u>Court</u></p> <p>Office of the Clerk Potter Stewart U.S. Courthouse Room 103 100 East Fifth Street Cincinnati, OH 45202</p>
<p><u>Class Counsel</u></p> <p>W.B. Markovits Markovits, Stock & DeMarco, LLC 119 E. Court Street, Suite 530 Cincinnati, OH 45202</p>	<p><u>Defense Counsel</u></p> <p>Thomas A. Gamache Leahy, Eisenberg & Fraenkel, Ltd. 33 W. Monroe Street, Suite 1100 Chicago, IL 60603-4554</p>

20. What’s the difference between objecting and excluding?

Objecting is simply telling the Court that you don’t like something about the Settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you don’t want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

THE COURT’S SETTLEMENT FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the Settlement. You may attend and you may ask to speak, but you don’t have to.

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

The Court will hold a Settlement Fairness Hearing at [redacted] on [redacted] at Potter Stewart U.S. Courthouse, Room 716, 100 East Fifth Street, Cincinnati, OH 45202. At the Fairness 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. Magistrate Litkovitz will listen to Class Members who have asked to speak at the hearing (see FAQ 23 below). After the Fairness Hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take.

22. Do I have to come to the hearing?

No. Class Counsel will answer questions Magistrate Litkovitz may have. You are welcome to come at your own expense. If you send an objection, you don’t have to come to Court and talk about it. As long as your

written objection is timely filed with copies postmarked by [REDACTED], the Court will consider it. You may also pay your own lawyer to attend, but it's not necessary.

23. May I speak at the hearing?

You may ask the Court for permission to speak at the Settlement Fairness Hearing. To do so, you must send a letter to the Court stating that it is your "Notice of Intent to Appear at the Fairness Hearing in *Laura Bechtel et al. v. Fitness Equipment Services, LLC dba Sole Fitness*, Case No. 1:19-cv-00726." Please also include the name, address, and telephone number of your attorney, if applicable. Your request must be mailed to the addresses listed in FAQ 19 above and postmarked no later than [REDACTED].

You cannot speak at the hearing if you exclude yourself.

IF YOU DO NOTHING

24. What happens if I do nothing at all?

If you do nothing, you will not receive any benefits from this Settlement. Unless you exclude yourself from the Class, you won't be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuits against the Defendant about the legal issues resolved by this Settlement, ever again.

GETTING MORE INFORMATION

25. Are there more details about the settlement?

More details regarding this Settlement appear in the Settlement Agreement. Copies of the Settlement Agreement and pleadings and other documents relating to the case are on file at the United States District Court for the Southern District of Ohio – Western Division and may be examined and copied at any time during regular office hours.

The Settlement Agreement and other relevant pleadings (including the postcard Notice and the longer Settlement Notice) are also available for review and download at www.SoleTreadmillSettlement.com.

26. How do I get more information?

For more information, please visit the Settlement Website at www.SoleTreadmillSettlement.com, where you can download and review relevant court pleadings, including the Claim Form and a copy of the Settlement Agreement. You may also contact the Settlement Administrator via email at info@soletreadmillsettlement.com, or by mail to:

Sole Treadmill Settlement
1650 Arch Street, Suite 2210
Philadelphia, PA 19103

or toll-free at XXX-XXX-XXXX.

You should not direct questions to the Court.

EXHIBIT

3

[DATE]

[NAME]
[ADDRESS].

Re: *Bechtel, et al. v. Fitness Equipment Services, LLC dba Sole Fitness*
Case No. 1:19-cv-00726
United States District Court
Southern District of Ohio, Western Division

Dear Sir or Madam:

Enclosed you will find an Order requiring third-party retailers of certain Sole treadmills to produce customer information for the purpose of assisting in providing direct notice to Class Members (“Order”), issued by United States Magistrate Judge Karen L. Litkovitz.

The Plaintiffs in this litigation allege that Sole made misrepresentations regarding the horsepower of certain of its treadmills. Sole denies Plaintiffs’ allegations in the litigation. Magistrate Judge Litkovitz preliminarily approved this nationwide class action settlement on [REDACTED] and issued the enclosed Order requiring retailers such as [NAME] to provide certain customer information to assist the Parties in issuing effective notice.

The settlement covers certain Sole treadmills purchased from August 30, 2015 through [REDACTED] (the “Treadmills”). Accordingly, [NAME] shall produce responsive customer information for sales of Treadmills including:

- customer names;
- mailing addresses;
- email addresses;
- the Treadmill purchased during the relevant time period;
- and the date of purchase.

The data should be produced in Excel format and may be provided directly to the Court-approved Settlement Administrator, Angeion Group, by contacting [contact person] at [phone number and email].¹

Because the Court has ordered the Parties to issue notice beginning [REDACTED], [NAME] should produce the requested customer information on or before [REDACTED]. **All customer**

¹ The Settlement Agreement also permits third-party retailers to directly issue the Court-approved notice to its customers if it so chooses. If [NAME] is interested in pursuing this option, please contact us at your earliest convenience to discuss this further. If [NAME] chooses this option and sends the notice via Regular U.S. Mail, it will be reimbursed only for the postage cost, not to exceed the U.S. Postal Service’s applicable rate for marketing mail.

information provided by [NAME] will be kept confidential pursuant to the terms of the enclosed Protective Order entered by the Court and will not be used for any purpose other than to issue the Court-approved class notice.

Please contact us with any questions. The Parties are certainly willing to work with you to accommodate your needs.

Thank you in advance for your anticipated cooperation.

Very truly yours,

W. B. Markovits
Attorney for Plaintiffs

Enclosure

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

<p>LAURA BECHTEL and TROY THOENNES,</p> <p>Plaintiffs,</p> <p>v.</p> <p>FITNESS EQUIPMENT SERVICES, LLC dba SOLE FITNESS,</p> <p>Defendant.</p>	<p>Case No. 1:19-cv-00726</p> <p>Judge Michael R. Barrett</p> <p>Magistrate Judge Karen L. Litkovitz</p>
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**[PROPOSED] ORDER REQUIRING THIRD-PARTY RETAILERS OF SOLE
TREADMILLS TO PRODUCE LIMITED CUSTOMER INFORMATION FOR THE
PURPOSE OF ASSISTING IN PROVIDING DIRECT NOTICE TO CLASS MEMBERS**

This matter comes before the Court on Plaintiffs’ unopposed Motion for Preliminary Approval of Class Action Settlement and Request for an Order Requiring Third-Party Retailers of Sole Treadmills to Produce Limited Customer Information for the Purpose of Assisting in Providing Direct Notice to Class Members. The Court has reviewed Plaintiffs’ request for an order requiring third-party retailers of Sole Treadmills (“Third-Party Retailers”) to produce customer contact information for the specific purpose of assisting in providing direct notice to Class Members of this Settlement. The Court finds that the Motion should be **GRANTED**.

NOW, THEREFORE, the Court hereby **FINDS, CONCLUDES AND ORDERS:**

1. Third-Party Retailers must produce, within 30 days from notification of this Order, customer information in their possession, custody, and/or control (a) for those customers domiciled within the United States and its territories, excluding Ohio and

Minnesota, who purchased a Sole F63 (3.0 CHP), Sole F65 (3.25 CHP), Sole S77 (4.0 CHP), Sole F80 (3.5 CHP), Sole F85 (4.0 CHP), Sole TT8 (4.0 CHP), Sole F60 (2.75 CHP), Sole S73 (3.0 CHP), Sole F83 (3.25 CHP), and/or Sole TT9 (4.0 CHP) treadmill from December 2, 2017 through [REDACTED], 2022, and (b) for those customers domiciled within Ohio and Minnesota who purchased a Sole F63 (3.0 CHP), Sole F65 (3.25 CHP), Sole S77 (4.0 CHP), Sole F80 (3.5 CHP), Sole F85 (4.0 CHP), Sole TT8 (4.0 CHP), Sole F60 (2.75 CHP), Sole S73 (3.0 CHP), Sole F83 (3.25 CHP), and/or Sole TT9 (4.0 CHP) treadmill from August 30, 2015 through [REDACTED].

2. The Third-Party Retailers have in their possession, custody, and/or control client information that is essential for providing direct notice to potential Class Members under the Settlement in this Lawsuit.
3. Many Third-Party Retailers possess and maintain this customer information in electronic form, so it is generally not overly burdensome to require the production of such customer information.
4. Under this Order, the limited customer information includes any names, mailing addresses, email addresses, the make and model of the treadmill purchased, and the date of purchase for the customers identified in paragraph 1, to the extent such information is available.
5. Any Third-Party Retailer failing to comply with this Order without legal justification may be held in contempt of this Court.

IT IS SO ORDERED.

Dated: _____

Karen L. Litkovitz
United States Magistrate Judge

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

<p>LAURA BECHTEL and TROY THOENNES,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>FITNESS EQUIPMENT SERVICES, LLC dba SOLE FITNESS</p> <p style="text-align: center;">Defendant.</p>	<p>Case No. 1:19-cv-00726</p> <p>Judge Michael R. Barrett</p> <p>Magistrate Judge Karen L. Litkovitz</p>
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DECLARATION OF _____

I, _____, state as follows:

1. I am an employee of _____, a retailer of Sole treadmills.
2. _____ has received the Order of the above court directing retailers to aid in providing information relating to notice and has chosen to provide direct notice to Class Members who could reasonably be determined from our records.
3. _____ has agreed with Class Counsel on the notice to be provided.
4. On or about _____, 2022, _____ provided that direct notice to _____ Class Members.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this ___ day of _____ 2022, in _____, _____.

/s/ _____

EXHIBIT

4

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

<p>LAURA BECHTEL and TROY THOENNES,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>FITNESS EQUIPMENT SERVICES, LLC dba SOLE FITNESS</p> <p style="text-align: center;">Defendant.</p>	<p>Case No. 1:19-cv-00726</p> <p>Judge Michael R. Barrett</p> <p>Magistrate Judge Karen L. Litkovitz</p>
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**DECLARATION OF W.B. MARKOVITS IN SUPPORT OF THE SETTLEMENT
AGREEMENT AND PRELIMINARY APPROVAL OF THE SETTLEMENT**

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

1. I am a partner in the law firm of Markovits, Stock & DeMarco, LLC (“MSD”), one of two firms representing Plaintiffs Laura Bechtel and Troy Thoennes (“Plaintiffs”) and the proposed Class (collectively, “Plaintiffs”). My firm’s co-counsel in representing the Plaintiffs in this matter is the firm of Hellmuth & Johnson, PLLC.

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 Plaintiffs in this matter. My firm has worked on this case along with co-counsel since this case was initiated in 2019 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 and formal discovery and review, engagement of and consultation with experts, and extensive mediation efforts through U.S. Magistrate Judge Morton Denlow (Ret.), a JAMS mediator and highly-respected neutral.

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

6. The Plaintiffs, Laura Bechtel and Troy Thoennes, were actively involved in this litigation, including participating in and monitoring mediation efforts, assisting with the Complaint, and providing valuable information and documentation throughout.

7. The proposed Settlement in this case is the result of extensive arm’s length negotiations with counsel for Sole under the direction of Judge Denlow. In October 2021, counsel for the parties discussed the possibility of mediation, and agreed to use Judge Denlow. Judge Denlow conducted an extensive mediation process, including detailed mediation statements and

“checklists,” along with two lengthy joint mediation sessions as well as multiple individual sessions with the Parties. I was involved in the majority of those sessions, although there were a few phone calls with Judge Denlow that were covered by my partner Terence Coates. On January 6, 2022, the Parties reached an agreement in principle. All negotiations were contested negotiations and were instrumental to finalizing potential benefits available to proposed Class Members.

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.

9. Proposed Class Counsel and Sole have agreed to propose Angeion Group as Settlement Administrator in this case. We interviewed several class action administration firms and believe that Angeion Group is the best fit for carrying out the proposed Settlement. Angeion Group and its principals have extensive experience administering consumer class action settlements throughout the United States.

10. Through the course of informal discovery Sole has attested that as of the date of this filing there are approximately 375,000 class members.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 28th day of January, 2022, in Cincinnati, Ohio.

/s/ W. B. Markovits
W.B. Markovits

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)

PAUL M. DEMARCO

Paul M. De Marco is a founding member of Markovits, Stock & DeMarco, LLC. He is an Appellate Law Specialist certified by the Ohio State Bar Association and has handled more than 100 appellate matters, including cases before the Supreme Court of the United States, six federal circuits, and five state supreme courts.

Paul's practice also focuses on class actions and other complex litigation. During his 25 years in Cincinnati, Paul has been actively involved in successful litigation related to the U.S. Department of Energy's Fernald nuclear weapons plant, the Lucasville (Ohio) prison riot, Lloyd's of London, defective Bjork-Shiley heart valves, Holocaust-related claims against Swiss and Austrian banks, the Bankers Trust derivative scheme, Cincinnati's Aronoff Center, the San Juan DuPont Plaza Hotel fire, the Procter & Gamble Satanism rumor, the Hamilton County (Ohio) Morgue photograph scandal, defective childhood vaccines, claims arising from tire delamination and vehicle roll-over, racial hostility claims against one of the nation's largest bottlers, fiduciary breach claims against the nation's largest pharmacy benefits manager, and claims arising from the heatstroke death of NFL lineman Korey Stringer.

Education:

College of Wooster (B.A., 1981)

University of the Pacific, McGeorge School of Law (J.D. with distinction, 1983)

University of Cambridge (1985)

Significant and Representative Appeals:

- *Arthur Anderson LLP v. Carlisle*, 556 U.S. 624, 129 S.Ct. 1896 (2009): In a case involving allegations of a fraudulent tax shelter and accounting and legal malpractice, the Supreme Court of the United States resolved the issue of the rights of non-parties to arbitration clauses to enforce them against parties, which had divided the circuits.
- *Williams v. Duke Energy International, Inc.*, 681 F.3d 788 (6th Cir. 2012): In a case brought as a class action by a utility's ratepayers for selective payment of illegal rebates to certain ratepayers, the United States Court of Appeals for the Sixth Circuit reversed a district court's dismissal of the excluded ratepayers' claims that the utility violated the RICO statute, the Robinson-Patman Act, and the state corrupt practices act.
- *State of Ohio ex rel. Bd. of State Teachers Retirement Sys. of Ohio v. Davis*, 113 Ohio St.3d 410, 865 N.E.2d 1289 (2007): The Supreme Court of Ohio upheld the appellate court's issuance of the extremely rare writ of procedendo commanding the trial judge to proceed with a trial on claims he mistakenly believed the previous jury had resolved.
- *Chesher v. Neyer*, 477 F.3d 784 (6th Cir. 2007): The Sixth Circuit affirmed the district court's rejection of qualified immunity defenses raised by the Hamilton County (Ohio) coroner, his chief deputy, the coroner's administrative aide, a staff pathologist, and a pathology fellow in connection with the Hamilton County Morgue photo scandal.
- *State of Ohio ex rel. CNG Fin'l Corp. v. Nadel*, 111 Ohio St.3d 149, 855 N.E.2d 473 (2006): The Supreme Court of Ohio affirmed the appellate court's refusal to issue a writ of procedendo commanding the trial judge to halt injunctive proceedings and decide an arbitration issue.
- *Smith v. North American Stainless, L.P.*, 158 F. App'x. 699 (6th Cir. 2006): Rejecting a steel manufacturer's "up-the-ladder" immunity defense, the United States Court of Appeals for the Sixth Circuit reversed the district court's dismissal of a wrongful claim brought by the widow and estate of a steel worker killed on the job.
- *Procter & Gamble Co. v. Haugen*, 427 F.3d 727 (10th Cir. 2005): The United States Court of Appeals for the Tenth Circuit reversed the district court's dismissal of Procter & Gamble's Lanham Act claims, paving the way for a \$19.25 million jury verdict in its favor.

- *Roetenberger v. Christ Hospital*, 163 Ohio App.3d 555, 839 N.E.2d 441 (2005): In this medical malpractice action for wrongful death, the Ohio court of appeals reversed the jury verdict in the physician’s favor due to improper arguments by his attorney and instructional error by the trial court.
- *City of Cincinnati v. Beretta U.S.A. Corp.*, 95 Ohio St.3d 416, 768 N.E.2d 1136 (2002): In this landmark decision on public nuisance law, the Supreme Court of Ohio held that a public nuisance action could be maintained for injuries caused by a product — in this case, guns — if the design, manufacture, marketing, or sale of the product unreasonably interferes with a right common to the general public.
- *Norgard v. Brush Wellman, Inc.*, 95 Ohio St.3d 165, 766 N.E.2d 977 (2002): In an employee’s intentional tort action alleging that his employer subjected him to long-term beryllium exposure, the Supreme Court of Ohio ruled that a cause of action for an employer intentional tort accrues when the employee discovers, or by the exercise of reasonable diligence should have discovered, the workplace injury and — here’s the ground-breaking part of the holding — the wrongful conduct of the employer.
- *Wallace v. Ohio Dep’t of Commerce*, 96 Ohio St.3d 266, 773 N.E.2d 1018 (2002): In overturning the dismissal of a suit against the state fire marshal for negligently inspecting a fireworks store that caught fire killing nine people, the Supreme Court of Ohio held for the first time that the common-law public-duty rule cannot be applied in cases against the state in the Ohio Court of Claims.

Courts Admitted:

- Ohio
- California
- Supreme Court of the United States
- U.S. Court of Appeals, 1st Circuit
- U.S. Court of Appeals, 4th Circuit
- U.S. Court of Appeals, 5th Circuit
- U.S. Court of Appeals, 6th Circuit
- U.S. Court of Appeals, 7th Circuit
- U.S. Court of Appeals, 9th Circuit
- U.S. Court of Appeals, 10th Circuit
- U.S. District Court, Southern District of Ohio
- U.S. District Court, Northern District of Ohio
- U.S. District Court, Eastern District of California
- U.S. District Court, Central District of California
- U.S. District Court, Southern District of California
- U.S. Court of Federal Claims

Since 1994, Paul has worked to promote professional responsibility among lawyers, serving first as a member and eventually the chair of the Cincinnati Bar Association Certified Grievance Committee, and since 2008 as a member of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio.

He also is a member of many legal organizations, including the Federal Bar Association, Ohio State Bar Association, Cincinnati Bar Association, American Bar Association, ABA Council of Appellate Lawyers, and the Cincinnati Bar Association’s Court of Appeals Committee.

Paul was one of the founders of the Collaborative Law Center in Cincinnati, a member of Cincinnati’s Citizens Police Review Panel (1999-2002), and a member of Cincinnati CAN and its Police and Community Subcommittee following the 2001 riots.

He currently serves on the boards of the Ohio Justice and Policy Center and the Mercantile Library and on the advisory committees of the Fernald Community Cohort and the Fernald Workers’ Medical Monitoring Program.

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



**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