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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

ANDREA KATZ on behalf of herself and all persons similarly situated,

and

JOEL KATZ on behalf of himself and all persons similarly situated,

Plaintiffs,

vs.

GARMIN, LTD, and GARMIN INTERNATIONAL, INC.,

Defendants.

MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT AND MEMORANDUM OF LAW IN SUPPORT THEREOF

Civil No. 2:14-cv-165-RJS

Judge: Hon. Robert J. Shelby

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I. Motion for Preliminary Approval of Class Settlement[1]

Plaintiffs, Andrea Katz and Joel Katz, on behalf of themselves and a class of all other persons similarly situated (collectively, "Plaintiffs"), and Defendant, Garmin International, Inc. ("Garmin"),[2] hereby move, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, for an Order (1) granting preliminary approval of the proposed Class Action Settlement Agreement by and between Plaintiffs and Defendant, a copy of which is attached hereto as Exhibit 1 (the "Settlement"); (2) approving the form of the Class Notice attached to the Settlement as Exhibit 2; (3) approving the form of the Publication Notice attached to the Settlement as Exhibit 3; (4) designating Heideman Nudelman & Kalik, P.C. as lead counsel to represent the Class and Subclasses defined herein ("Class Counsel); and (5) setting deadlines for opt-outs, objections and return of claim forms and a hearing date for final approval of the Settlement.

II. Factual and Procedural Background

In the spring of 2011, Defendant began marketing and selling the Forerunner 610 sports watch (the "Watch") directly and through resellers in the United States. The Watch features, among other things, GPS functionality, a computer interface, and a contemporary design. On December 18, 2013, Plaintiff Andrea Katz filed a class action complaint against Defendant in the United States District Court for the Northern District of Illinois (the "First Illinois Action"). *See* Complaint, *Katz v. Garmin Int'l, Inc. et al.*, Case No. 1:13-cv-09031 (N.D. Ill. Dec. 18, 2013),

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[1] All statements and representations herein are made solely for the purpose of seeking class approval of settlement and are conditioned upon the court approving the settlement. All representations are made pursuant to Federal Rule of Evidence 408 and no such representations shall be admissible for any purpose, including to establish liability, should the court not finally approve the settlement.

[2] Although Garmin Ltd. is a named Defendant, it was never served in this Action, and is not a party to the proposed Settlement Agreement. However, as part of the proposed Settlement Agreement, Garmin Ltd. is released by Plaintiffs.

ECF No. 1. The complaint alleged the Watch design was defective in that the Watch's watchband (the "Watchband") could and did become detatched from the Watch. *Id*. Plaintiff demanded both monetary damages and an injunction prohibiting further sale of the Watch. *Id.*

On January 29, 2014, the Court dismissed the diversity action based on Plaintiff's failure to plead her state of citizenship. *Id.*, ECF No. 11. On January 30, 2014, Plaintiff Andrea Katz refiled her class action complaint in the Northern District of Illinois (the "Second Illinois Action"). *See* Complaint, *Katz v. Garmin Int'l, Inc. et al.*, 1:14-cv-00678 (N.D. Ill. Jan. 30, 2014), ECF No. 1. On February 21, 2014, Defendant filed a motion to dismiss for lack of Article III standing. *Id.*, ECF No. 14. On February 28, 2014, Plaintiff voluntarily dismissed the Second Illinois Action. *Id.*, ECF No. 15.

On March 6, 2014, Plaintiffs Andrea Katz and Joel Katz, residents of this District, filed this class action against Defendant in the United States District Court for the District of Utah (the "Action"), asserting again that the Watch suffered from a design defect that resulted in the Watchband detaching from the Watch. (Doc. 2) Plaintiffs raised claims for breach of contract, breach of express warranty, breach of implied warranty, violations of the Illinois Consumer Fraud and Deceptive Business Practices Act, violations of the Utah Consumer Sales Practice Act, violations of the Lanham Act, violations of the Utah Truth in Advertising Act, as well as alternate claims for negligence, negligent misrepresentation, and unjust enrichment. *Id.*

On March 31, 2014, Defendant filed a motion to change venue to the Northern District of Illinois. (Doc. 6.) On June 6, 2014, Plaintiffs filed a motion for class certification. (Doc. 17.) On October 21, 2014, the Court denied Defendant's motion to change venue, denied Plaintiffs'

motion for class certification without prejudice, and ordered Defendant to respond to the Complaint. (Doc. 29.)

On November 12, 2014, Defendant filed a partial motion to dismiss certain claims. (Doc 32.) On April 16, 2015, the Court granted in part and denied in part Defendant's motion, and dismissed Plaintiffs' Lanham Act claim, negligence and negligent misrepresentation claims, and breach of warranty claim as to Joel Katz. (Doc. 40.) The other causes of action, including breach of contract, breach of warranty as to Andrea Katz, violations of the Illinois Consumer Fraud and Deceptive Business Practices Act, violations of the Utah Consumer Sales Practice Act, and unjust enrichment, remained as alleged in Plaintiffs' Complaint. (Doc.2) On April 29, 2015, Defendant filed its Answer to the Complaint, in which it denied any and all liability to Plaintiffs and the putative class and asserted various affirmative defenses. (Doc. 41.)

Thereafter, the parties engaged in extensive written discovery, including the review and production by Defendant of more than 15,000 pages of documents, and the review by Plaintiff of that production. Following the exchange of written discovery, the parties engaged in extensive arms-length negotiations over many months concerning the terms and conditions of the proposed settlement. The parties did not negotiate the amount of attorneys' fees until after the terms of the classwide relief were agreed upon and reduced to a settlement term sheet executed by counsel for the parties.

III. The Proposed Settlement

The Parties have agreed upon a proposed Settlement that, if approved by the Court, would fully resolve the claims of all settlement class members against Defendant and its affiliates (defined in the agreement as "Released Parties") with respect to all matters alleged in

the Complaint. Both Plaintiffs' counsel and counsel to the Defendant have considered the likelihood of success in the Action and the likely total damages that could be recovered. The parties have conducted extensive arm's-length settlement negotiations and have determined, after taking into account the benefits conferred on the Class by the Settlement, that the Settlement is fair, reasonable, and adequate and in the best interests of the Class. Importantly, the Settlement provides for a Claims Evaluation Process ("CEP") that offers potential Class Members an opportunity to be heard and have their claims evaluated by an independent Settlement Administrator. The Settlement further establishes various classes of potential Class Members, entitling each to recovery, compensation and full resolution of their claims for all matters arising out of the Action.

A. The Settlement Class

The Parties agree to certification of the following Settlement Class (the "Class") solely for purposes of the proposed Settlement: "All persons who purchased and/or owned the Garmin Forerunner 610 watch between April 2011 and July 2014 in the United States.[3]" The Parties further agree to certification of the following two Subclasses: (1) Class Members who purchased a replacement Watchband to address the alleged design defect, regardless of where they purchased the replacement Watchband; and (2) Class Members who paid to repair the

[3] Excluded from the Settlement Class are: (i) individuals who are or were during the class period partners, associates, officers, directors, shareholders, or employees of Defendant; (ii) all judges or magistrates of the United States or any state and their spouses; (iii) all individuals who timely and properly request to be excluded from the class, *i.e.* opt out; (iv) all persons who have previously released Defendant from claims covered by this Settlement; and (v) all persons who have already received payment from Defendant or who have otherwise been fully compensated by Defendant by virtue of free repair or free replacement of the Watch or Watchband and have not received compensation for any other claims with respect to the defects as alleged in the Action.

Watchband or Watch regardless of where they had the Watchband or Watch repaired due to the Watchband or Watch being damaged as a result of the alleged design defect.

B. The Terms of Settlement

With respect to the Class Members, the Settlement Agreement provides that Defendant will repair or replace the Forerunner 610 watchband at no cost, including but not limited to all postage, shipping and handling ("No Cost"), even if the request is made after the warranty has expired, provided that the request is made within 12 months of the date of final approval of the Settlement by the Court. No proof of purchase will be required for repair of the Watchband. If a repair or replacement of the Watchband is not feasible, as determined by Defendant in its sole and absolute discretion, Defendant will replace the Watch with a comparable model, the Garmin Forerunner 620, which has a Manufacturer's recommended retail price of $349.99.

Also with respect to the Class Members, Defendant will extend the limited warranty as set forth in the warranty provided to customers at the time of purchase of the Forerunner 610 (the "One-Year Consumer Limited Warranty") to the allegedly defective Watchband only, for a period of 12 months following the date of final approval of Settlement by the Court. The extension of the One-Year Consumer Limited Warranty will only cover any damage to, or loss of, the Watch as a result of the alleged defective Watchband. In addition, if Defendant replaces the Watch with a comparable model, the comparable model shall come with the One-Year Consumer Limited Warranty applicable to the replacement watch, as if the replacement watch were purchased independent of the Action or this Agreement, from the date of the receipt or delivery of the replacement watch to the Class Member.

If any Class Member suffered damage to the Watch as a result of the Watchband detaching from the Watch, Defendant will repair the Watch at No Cost, even if the request is made after the warranty has expired, provided that the request is made within 12 months of the date of final approval of the settlement by the Court. If a repair of the Watch is not feasible, as determined by Defendant in its sole and absolute discretion, Defendant will replace the Watch with a comparable model, the Garmin Forerunner 620, which has a manufacturer's recommended retail price of $349.99. If Defendant replaces the Watch with a comparable model, the comparable model shall come with the One-Year Consumer Limited Warranty, from the date of the receipt or delivery of the replacement watch to the Class Member. No proof of purchase will be required for repair of the Watch.

If the Watch was lost, in order to obtain the comparable model, the customer will be required to provide a receipt or Objective Evidence of Proof of purchase of the Watch, which is described in the Settlement Agreement.

Members of the Subclasses will receive cash payments. Subclass 1 consists of Class Members who purchased a replacement watchband to address the alleged design defect regardless of where they purchased the replacement watchband. Defendant will reimburse the actual cost of the replacement watchband to class members who have a receipt or Objective Evidence of Proof of purchase if purchased from Defendant or one of Defendant's authorized retailers. If the class member purchased a replacement watchband from a third party and it was a non-Garmin watchband, Defendant will reimburse the class member the actual cost up to $50.00. Subclass 2 consists of Class Members who paid to repair the Watchband or Watch regardless of where they had the Watchband or Watch repaired due to the Watchband or Watch being

damaged because of the alleged design defect. Claimants who provide a receipt or Objective Evidence of Proof of repair of same and written certification in a form agreed upon by the parties, shall be reimbursed for their actual cost, if the repair was done by Defendant. For those customers who used a third party to repair the Watchband or Watch, Defendant will agree to reimbursement for the actual cost up to $75.00. The Settlement Agreement also permits Class Members to recover more than one benefit in the same or multiple categories provided they meet the requirements to participate separately in each category.

In addition, the Settlement Agreement provides for the form and manner of Class Notice, the proof of claim procedures, the procedure for objecting to any terms of the Settlement, the procedure for voluntary exclusion from the Class and Settlement Agreement, and the procedure by which Plaintiffs' Counsel will apply for agreed upon-attorneys' fees and reimbursement of expenses incurred in prosecuting the Action.

IV. The Settlement Meets the Criteria Necessary for this Court to Grant Preliminary Approval

A. The Law Governing Approval of Class Action Settlements

Approval of a class action settlement occurs in several steps. First, the Court should conduct a preliminary evaluation of the fairness and adequacy of the settlement to determine whether there is good reason to schedule a full fairness hearing and notify the class. *In re Motor Fuel Temp. Sales Practices Lit.*, 258 F.R.D. 671, 675 (D. Kan. 2009); *see also Lucas v. Kmart Corp.*, 234 F.R.D. 688, 693 (D. Colo. 2006). This examination is generally "made on the basis of information already known, supplemented as necessary by briefs, motions, or informal presentations by parties." Manual for Complex Litigation (Fourth) § 21.632, at 320-21; *see also* 4 Newberg on Class Actions § 11:25 (4th ed. 2002). "A preliminary fairness assessment is not to

be turned into a trial or rehearsal for trial on the merits, for it is the very uncertainy of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements. Rather, the Court's duty is to conduct a threshold examination of the overall fairness and adequacy of the settlement in light of the likely outcome and the cost of continued litigation." *In re Inter-Op Hip Prosthesis Liab. Litig.*, 204 F.R.D. 330, 350 (N.D. Ohio 2001) (internal citation and quotations omitted).

A court will ordinarily grant preliminary approval "where the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, 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." *In re Motor Fuel Temp. Sales Practices Lit.*, 258 F.R.D. at 675 (internal citation and quotations omitted). If the settlement appears fair and adequate upon preliminary examination, then the court should direct plaintiffs to send notice of the proposed settlement to the class. After receiving any comments and objections from class members, the court should conduct a final fairness hearing on settlement approval. *See* Manual for Complex Litigation (Fourth) §§ 21.632, 21.633.

Before granting final approval to a class settlement, the district court must find that it is fair, adequate, and reasonable. Fed. R. Civ. P. 23(e)(2). The Tenth Circuit has established four factors in determining whether a proposed settlement is fair, reasonable, and adequate: (1) whether the proposed settlement was fairly and honestly negotiated; (2) whether serious questions of law and fact exist, placing the ultimate outcome of the litigation in doubt; (3) whether the value of an immediate recovery outweights the mere possibility of future relief after protracted and expensive litigation; and (4) the judgment of the parties that the settlement is fair

and reasonable. *Rutter & Wilbanks Corp. v. Shell Oil Co.*, 314 F.3d 1180, 1188 (10th Cir. 2002) (internal citation omitted). A court should evaluate these factors in light of the strong judicial policy favoring settlement. *Wilerson v. Martin Marietta Corp.*, 171 F.R.D. 273, 284 (D. Colo. 1997) (courts should not decide the merits of the case in evaluating the fairness of the settlement, because "the essence of settlement is compromise, and settlements are generally favored"); *see also Lane v. Page*, 862 F. Supp. 2d 1182, 1248 (D.N.M. 2012) ("There is an overriding public interest in settling class action litigation...especially where substantial judicial resources can be conserved by avoiding formal litigation") (internal citations and quotations omitted).

B. The Court Should Grant Preliminary Approval of the Settlement

This Settlement is at the first stage described above, to wit, for Preliminary Approval, in which the Court conducts a preliminary examination to determine whether it appears to be fair, reasonable and adequate and that there is good reason to give notice to the class. While the four factors above are considered in depth at the final approval hearing, they are a "useful guide at the preliminary approval stage as well." *In re Motor Fuel Temp. Sales Practices Lit.*, 258 F.R.D. at 680. In light of these four factors, and for the reasons set forth in greater detail below, the Court should grant preliminary approval of the Settlement and direct Plaintiffs to notify the Class.

1. The Proposed Settlement was Fairly and Honestly Negotiated

When examining whether a settlement was "fairly and honestly negotiated," district courts within the Tenth Circuit "often examine whether the parties have vigorously advocated their respective positions throughout the pendency of the case." *Lane*, 862 F. Supp. 2d at 1246. Plaintiffs and Defendant have robustly advocated their respective positions in this Action. Plaintiffs have aggressively and with determination pursued their claims, both in this District and

in the First and Second Illinois Actions. Defendant from the beginning has maintained that Plaintiffs' claims lack merit. Indeed, Defendant filed a motion to dismiss in the Second Illinois Action, filed a motion for change of venue in this Action, and then filed a partial motion to dismiss, which was granted in part. In its Answer, Defendant also vigorously denied any liability to Plaintiffs and raised 18 different affirmative defenses. (Doc. 41.) Plaintiffs, for their part, filed two actions in the Northern District of Illinois, and subsequently filed a third in the District of Utah asserting in each their claims for defect in the design of the product and seeking relief at all stages. In addition, the parties engaged in extensive written fact discovery, including Defendant's production and Plaintiff's review of more than 15,000 pages of documents. There is no question that this Action has been vigorously litigated.

Moreover, there is no fixed standard for how much litigation must be conducted before the Parties can entertain settlement discussions. *In re Rio Hair Naturalizer Products Liability Litig.*, No. MDL 1055, 1996 WL 780512, at *13 (E.D. Mich. Dec. 20, 1996) ("There is no precise yardstick to the measure [of] the amount of litigation that the parties should conduct before settling"). Even settlements reached at a very early stage and prior to formal discovery may be approved where the settlements represent substantial concessions and no evidence of collusion exists. *See, e.g., Weiss v. Mercedes- Benz of N. Am., Inc.*, 899 F.Supp. 1297, 1301 (D. N.J. 1995).

Finally, when the "settlement resulted from arm's length negotiations between experienced counsel after significant discovery [has] occurred," as is the case here, the court should presume that the Settlement was fairly and honestly negotiated. *Lucas*, 234 F.R.D. at 693.

2. Serious Questions of Law and Fact Exist

While a Court does not evaluate the merits of the litigation at the preliminary approval stage, it is clear in this case that there are serious questions of law and fact which put the outcome of litigation in doubt. As noted, this Court granted in part and denied in part Defendant's partial motion to dismiss certain claims. (Doc 40.) Thus, there remain numerous factual and legal questions yet to be addressed in the Action and which, if this Settlement is not approved by the Court, will be fully litigated by the parties, consuming vast resources of both the parties and the Court.

3. The Value of Immediate Recovery Outweighs the Mere Possibility of Relief after Protracted and Expensive Litigation

While the Parties have vigorously advocated their respective positions in this Action to date, the litigation is also in its relatively early stages. Plaintiff Andrea Katz's initial lawsuit was filed in late 2013. Defendant answered the Complaint in this Action in April 2015, and under this Court's recent scheduling Order, discovery is not due to be completed until September 2016, with dispositive motions to be filed by October 2016. (Doc. 53.) Moreover, as significant time and efforts have been expended by the parties in negotiating the proposed Settlement, it is likely that the parties would jointly move this Court to modify the Scheduling Order so the Parties have sufficient time to recommence their efforts in discovery and in preparation of dispositive motions. Additionally, as previously noted, Plaintiffs have not yet gone through the process of moving for Class Certification, which itself is likely to take both significant time and expend significant resources of the Parties. Furthermore, pursuing the litigation further would "require significant judicial and party resources to complete motions for summary judgment . . . and motions in limine," with any subsequent appeal to the Tenth Circuit on any number of issues—

including class certification—likely to delay final resolution of the Action. *See Lane*, 862 F. Supp. 2d at 1248-49. The Settlement, in contrast, provides benefits to the Parties in the form of judicial economy and the Class with guaranteed relief in the here and now, provides guaranteed monetary relief for the proposed Subclasses and guaranteed finality to the proceedings that also benefit the Defendant. *See Lucas*, 234 F.R.D. at 694 (court found value of immediate recovery outweighed possibility of relief after continued litigation when litigation was likely to last several years).

4. The Parties Believe the Settlement to be Fair and Reasonable

Courts in this Circuit have found that "counsels' judgment as to the fairness of the agreement is entitled to considerable weight." *Lucas*, 234 F.R.D. at 695. This is particuarly the case when the Parties' counsel are attorneys with substantial experience in complex class action litigation, as is the case in this Action. *See id.* The Parties believe the Settlement is fair, reasonable, and adequate in light of the facts and circumstances of this case, and jointly move this Court to preliminarily certify the Class and approve the settlement.

V. The Court Should Certify a Settlement Class, Appoint Class Counsel, Schedule a Final Fairness Hearing and Authorize the Parties to Implement their Class Notice Plan.

"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, for the proposal is that there be no trial." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997) (internal citation omitted). Instead, the Court must determine that the proposed Settlement Class satisfies the requirements of Fed. R. Civ. P. 23(a), as well as at least one of the subsections of Fed. R. Civ. P. 23(b). *Id.*; *see also* Manual for Complex Litigation (Fourth) § 21.632.

A. The Proposed Settlement Class Satisfies Rule 23(a)

Rule 23(a) imposes four requirements. First, the class must be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). Unlike many other circuits, the Tenth Circuit has not adopted a presumption that a certain number of class members satisfies the numerosity requirement. Rather, it has specifically stated that "there is no set formula to determine if the class is so numerous that it should be so certified." *Trevizo v. Adams*, 455 F.3d 1155, 1162 (10th Cir. 2006) (internal citations and quotations omitted). That said, because it is "such a fact-specific inquiry," wide latitude is granted to the district court in making the determination. *Id.* Defendant represents to the Court that it estimates there are tens of thousands of individuals who purchaed the Watch at issue, thus easily satisfying the numerosity requirement. *See, e.g., In re Crocs, Inc. Securities Lit.*, 306 F.R.D. 672, 686 (D. Colo. 2014) (parties' representation that hundreds if not thousands of individuals had purchased the product at issue and would fall into Class was sufficient for finding that Class met numerosity requirement). While the number of members of the Class alone is not dispositive of the decision to certify the class, the fact that such a large number share questions of fact and law, as discussed below, strongly militates in favor of class certification, particularly considering the numerousity factor when taken in the context of all other factors supporting the Court's preliminary determination.

Second, there must be at least one question of law or fact common to the proposed class. Fed. R. Civ. P. 23(a)(2). Factual differences between class members' claims "do not defeat certification where common questions of law exist." *D.G. ex rel. Stricklin v. Devaughn*, 594 F.3d 1188, 1195 (10th Cir. 2010). Commonality requires "only a single question of law or fact

common to the entire class." *Id.* Here, there are multiple common questions of law and fact to all members of the Class and Subclasses, which include, but are not limted to, whether Defendant breached any of the implied or express warranties that the Watch was of merchantable quality and free from defects, as alleged by the Plaintiffs, and whether the Defendant's conduct breached the material terms of the contracts entered into with members of the Class and Subclasses, with specific regard to defects in design, manufacturing and servicing.

Third, the claims of the class representatives must be "typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). The Tenth Circuit has held that the "interests and claims of Named Plaintiffs and class members need not be identical to satisfy typicality." *D.G. ex rel. Stricklin*, 594 F.3d at 1198-99 (internal citation omitted). Rather, "[p]rovided the claims of Named Plaintiffs and class members are based on the same legal or remedial theory, differing fact situations of the class members do not defeat typicality." *Id.* (internal citation omitted). Here, typicality is easily satisfied, where the named Plaintiffs and all class members assert claims under the same grounds for the same conduct - damages resulting from the alleged design defect of the Watchband based on, among other things, express or implied warranties.

Finally, Rule 23(a)(4) requires that "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). The Tenth Circuit analyzes this requirement in two ways: (1) do the named plaintiffs and their counsel have any conflicts of interest with other class members; and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class. *Rutter & Wilbanks Corp.*, 314 F.3d at 1187-88. Here, Plaintiffs' claims are not antagonistic to, nor do they conflict with, the proposed Class. To the contrary, Plaintiffs represent both the Class and Subclasses and have done so vigorously and

aggressively for nearly two years of litigation. Additionally, Plaintiffs' counsel has considerable experience litigating similar class action disputes in the past and has demonstrated its clear commitment to achieving justice for the members of this Class, advocating strongly and demonstrating proficiency on behalf of the Representative Plaintiffs as proposed representatives of the Class and on behalf of all members of the Class.

B. The Proposed Settlement Class Satisfies Rule 23(b)(3)

Rule 23(b)(3) requires that "questions of law or fact common to class members predominate over any questions affecting only individual members." Fed. R. Civ. P. 23(b)(3). In this case, the common questions of fact and law depend entirely upon the conduct of Defendant - whether it marketed and sold the Watch and/or Watchband with a design defect. Thus, these questions predominate as they are "unaffected by the particularized conduct of individual class members." *In re Crocs, Inc. Securities Lit.*, 306 F.R.D. at 689.

Rule 23(b)(3) also inquires whether a "class action is superior to other available methods for the fair and efficient adjudication of the controversy." Fed. R. Civ. P. 23(b)(3). A class action is superior when it would "achieve economies of time, effort, and expense, and promote . . . uniformity of decision as to persons similarly situated, without sacrificing procedural fairness or bringing about other undesirable results." *Amchem Prods., Inc.,* 521 U.S. at 615 (*quoting* Advisory Committee Notes). While many people may claim to have been injured by the alleged harmful conduct, for practical economic reasons, it is very unlikely that individual redress would (or even could) be sought or achieved, which militates heavily in favor of a class action's superiority to individual claims. Conte & H. Newberg, 4 *Newberg on Class Actions* § 21.29 at pp.21-55 (3rd ed. 1994). In this case, "settlement is appropriate because recovery" for the claims

alleged here "is likely too small to provide an incentive for individual class members to adjudicate individual claims," and thus settlement would achieve economies of time, effort, and expense. *In re Crocs, Inc. Securities Lit.*, 306 F.R.D. at 689. Moreover, to the extent members of the Class attempted to bring separate actions, such actions would be duplicative and wasteful. *Califano v. Yamasaki,* 422 U.S. 682, 690 (1979). Additionally, there is "no indication that similar litigation is currently pending in another forum related to the same time period that would undermine the class certification requested" by the Parties here. *In re Crocs, Inc. Securities Lit.*, 306 F.R.D. at 689. Thus, in keeping with all applicable indices, the "settlement class is a superior method of resolving this litigation." *Id.* at 690 (internal citation omitted). Given the overwhelming similarlity of the claims and damages among the Class, no unusual problems will arise in the management of this action as a class action and there is no reasonable basis to presume that this Settlement is other than in the best interests of the Class.

C. The Court Should Appoint Class Counsel

Respectfully, the Parties ask the Court to appoint the law firm of Heideman Nudelman & Kalik, P.C. as lead counsel for the Settlement Class. This firm has represented the proposed classes since the onset of the Action. The factors set forth in Rule 23(g) weigh in favor of appointing this counsel to represent the Settlement Class.

First, the Court must consider the "work counsel has done in identifying or investigating potential claims in the action." Fed. R. Civ. P. 23(g)(1)(A)(i). In this case, counsel has done all of the work necessary to identify and support the claims of the class members under the causes of action in the Complaint. Moreover, counsel has done all of the work necessary to advance these claims to the point of settlement. This includes the drafting and filing of the First Illinois Action,

the Second Illinois Action, the pending Action, the persistent pursuit of the within claims with vigor and determination, briefing the opposition to the motion to dismiss, the motion to change venue, as well as extensive review of Defendant's document production, and months of settlement negotiations over the various terms of the class settlement, which is a comprehensive proposed solution to the issues presented in the litigation.

Second, the Court must consider "counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in this action." Fed. R. Civ. P. 23(g)(1)(A)(ii). As set forth in the Affidavit of Noel J. Nudelman attached hereto as Exhibit 4, counsel has handled significant matters of complex litigation in various state and federal courts throughout the United States, as well as numerous class actions, including multiple class cases alleging similar product design defects.

Third, the Court must consider "counsel's knowledge of the applicable law." Fed. R. Civ. P. 23(g)(1)(A)(iii). Counsel has demonstrated that knowledge through its comprehensive approach to the litigation, and having aggressively advocated on behalf of the rights of the putative Class, briefing submitted in this Court on class certification, the motion to dismiss, the motion for change of venue and the efficient management of the Action.

Finally, the Court must consider the "resources that counsel will commit to representing the class." Fed. R. Civ. P. 23(g)(1)(A)(iv). Counsel has demonstrated a commitment to comprehensive excellence in achieving a just result to this contested litigation and herein commits to bringing all further required legal and financial resources necessary to pursue the class claims, and has demonstrated that commitment by efficiently and comprehensively pursuing this case since its inception and for nearly two years.

D. The Court Should Schedule a Fairness Hearing and Authorize Class Notice

The proposed method of notice satisfies the requirements of the Federal Rules of Civil Procedure and should be approved by the Court. Notice of class certification of a Rule 23(b)(3) class under Rule 23(c)(2) must be the "best practicable notice under the circumstances." Fed. R. Civ. P. 23(c)(2). Under Rule 23(c)(2), the notice must provide the following information: (1) the nature of the action; (2) the definition of the class certified; (3) the class claims, issues, or defenses; (4) that a class member may enter an appearance through an attorney if the member so desires; (5) that the court will exclude from the class any member who requests exclusion; (6) the time and manner for requesting exclusion; and (7) the binding effect of a class judgment on members under Rule 23(c)(3). *Id.* Here, the proposed notices comply fully with these requirements. *See* Proposed Class Notice and Publication Notice, attached hereto as Exhibits 2 and 3. Both notices direct class members to a website maintained by the settlement administrator with detailed information about the litigation, the full settlement agreement, links to key pleadings and clear instructions regarding claims deadlines and other procedures.

The parties propose that the Court appoint Heffler Claims Group to serve as the administrator for purposes of notifying the Settlement Class. Heffler Claims Group is highly experienced in administering settlements in class action cases, including notifying the class members. The settlement administrator will mail or e-mail the Class Notice to each address on the Class Notice List, which will be determined from Defendant's database of customers who provided either e-mail addresses or mailing addresses when purchasing the Watch. The settlement administrator will also provide publication notice in one month's issue of *Runner's World* magazine, supplemented with a settlement website, to notify the class members for whom

the Parties have been unable to locate an address. Persons receiving notice will be directed to a comprehensive settlement website that includes all Class Notice information, along with other information about the Action and the settlement, the full Settlement Agreement and other key documents from this Action. Accordingly, for the foregoing reasons, the Parties respectfully request the Court approve the proposed notice plan and authorize mailing and publication of the notice.

VI. Proposed Schedule of Events

The Parties propose the following schedule of events leading to the Court Approval Hearing:

Notice to the Class	Within 45 days after the Preliminary Approval Date
Publication Notice	Within 90 days after the Preliminary Approval Date
Deadline to file Claims	120 days after the Preliminary Approval Date
Last day for Class members to object	No less than 20 days prior to Court Approval Hearing
Last day for Class members to intervene	No less than 20 days prior to Court Approval Hearing
Last day to Opt-Out	No less than 20 days before the Court Approval Hearing
Filings, objections, statements, or other submissions by any person or government entity noticed pursuant to 28 USC § 1715, or that claims an entitlement to have been noticed pursuant to 28 USC § 1715	No less than 20 days before Court Approval Hearing
Court Approval Hearing	At least 105 days after date of Notice to the Class.

Conclusion

For the reasons set forth above, the Court should grant preliminary approval of the proposed Settlement. The parties have prepared a preliminary approval order, attached hereto as Exhibit 5, and will prepare a final version with the approval schedule and any other modifications required by the Court after consideration of the foregoing, the within pleadings and attachments, and conference to be held by the Court with counsel for the parties as the Court may determine.

Dated: May 13, 2016

Respectfully submitted,

/s/ Zack L. Winzeler

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CERTIFICATE OF SERVICE

The undersigned certifies that he electronically filed a copy of the foregoing document, which served notice of the filing upon all counsel of record identified on the Court's electronic filing system on May 13, 2016.

/s/ Zack L. Winzeler

EXHIBIT 1

Privileged and Confidential

Final Execution Copy

SETTLEMENT AGREEMENT

This Settlement Agreement is made and entered into as of April 25, 2016 between Plaintiffs, Andrea Katz and Joel Katz ("Plaintiffs"), on behalf of themselves and the Settlement Class (as defined herein), and Defendant, Garmin International, Inc. ("Defendant"), (each, individually, a "Party" and collectively, the "Parties").

RECITALS[1]

WHEREAS, on December 18, 2013, Plaintiff Andrea Katz filed a lawsuit in the United States District Court for the Northern District of Illinois, captioned as *Andrea Katz, on behalf of herself and all persons similarly situated, v. Garmin Ltd. and Garmin International, Inc.*, No. 13-cv-9031 (the "Illinois Action");

WHEREAS, on February 28, 2014, Plaintiff Andrea Katz voluntarily dismissed the Illinois Action;

WHEREAS, on March 6, 2014, Plaintiffs filed a lawsuit in the United States District Court for the District of Utah, captioned as *Andrea Katz, on behalf of herself and all persons similarly situated and Joel Katz, on behalf of himself and all persons similarly situated, v. Garmin Ltd. and Garmin International, Inc.*, No. 2:14-cv-00165 (the "Action");

WHEREAS, in the Action, Plaintiffs raised, *inter alia,* claims for breach of contract; breach of express warranty; breach of implied warranty; violations of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1 *et seq.*; violations of the Utah Consumer Sales Practice Act, Utah Code §§ 13-11-4, 71A-2-314, 71A-2-315; violations of the Lanham Act, 15 USC § 1125(a); violations of the Utah Truth In Advertising Act, Utah Code § 11a-3(1); an alternative claim for negligence; an alternative claim for negligent misrepresentation; and an alternative claim for unjust enrichment;

WHEREAS, Plaintiffs brought their claims in the Action for Defendant's alleged failure to provide for purchase a Garmin Forerunner 610 watch that was free of certain design defects as alleged in the Action on behalf of themselves and a putative national class of allegedly similarly situated persons;

WHEREAS, on November 12, 2014, Defendant filed a partial motion to dismiss certain claims in the Action;

WHEREAS, on April 16, 2015, the Court granted in part and denied in part Defendant's partial motion to dismiss, in which it dismissed Plaintiffs' Lanham Act claim, Plaintiffs' breach of warranty claim as to Joel Katz, and Plaintiffs' negligence and negligent misrepresentation claims;

WHEREAS, on April 29, 2015, Defendant filed an answer in the Action, denying any and all liability to Plaintiffs and the putative class and asserting various affirmative defenses;

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[1] Capitalized terms used in these Recitals shall, unless otherwise defined in the Recitals, have the meanings set forth in Section I of the Settlement Agreement.

WHEREAS, Garmin Ltd., although a named defendant, was never served with the Complaint in the Action and is not a party to this Settlement Agreement, but is a named Releasee hereunder;

WHEREAS, Defendant has denied and continues to deny the material allegations in the Action, has denied and continues to deny any wrongdoing and any liability to Plaintiffs or any Class Member, in any amount, in connection with the claims asserted in the Action, has denied that class certification is required or appropriate, and contends that it would prevail in the Action;

WHEREAS, Plaintiffs maintain that they would prevail in the Action, on behalf of themselves and the Class;

WHEREAS, Plaintiffs' Counsel, on behalf of Plaintiffs and the class ("Class Counsel"), has conducted a thorough examination and evaluation of the relevant law and facts to assess the merits of the pending and potential claims in the Action, and has conducted a further investigation to determine how to best serve the interests of the putative class in the Action, both before commencing the Action, as well as during the litigation of the Action as well as the negotiation of the Settlement provided for in this Settlement Agreement;

WHEREAS, Plaintiffs, for themselves and on behalf of the Class, desire to settle the Action and all matters within the scope of the Release set forth herein, having taken into account the risks, delay, and difficulties involved in establishing liability, the likelihood of recovery in excess of that offered by this Settlement Agreement, the desirability of payment now, the likelihood that the Action could be protracted and expensive, and the interests of judicial economy;

WHEREAS, although Defendant denies any wrongdoing and any liability to Plaintiffs and the Class whatsoever, Defendant believes that it is desirable and in its best interests to settle the Action and all matters within the scope of the Release in the manner and upon the terms and conditions provided for in this Settlement Agreement in order to avoid the further expense, inconvenience, and distraction of litigation, and in order to put to rest the claims that have been asserted in the Action and/or are within the scope of the Release;

WHEREAS, the issues before the Court are complex and, if fully litigated, would likely result in protracted litigation, appeals and continued uncertainty as to any outcome;

WHEREAS, the Parties have had the opportunity to evaluate their respective positions on the merits of the Action; and

WHEREAS, the Parties have agreed on all of the terms and conditions of this Settlement Agreement through extensive good faith, arm's-length negotiations between their respective counsel.

NOW, THEREFORE, in consideration of the foregoing and the covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged herein, Plaintiffs, for themselves and as representatives of the Class, and Defendant agree, subject to the approval by the Court of the Settlement, as follows:

I. DEFINITIONS

In addition to the terms defined above, the following terms are used in this Settlement Agreement:

1.01 "Action" means the action captioned as *Andrea Katz, on behalf of herself and all persons similarly situated and Joel Katz, on behalf of himself and all persons similarly situated, v. Garmin Ltd. and Garmin International, Inc.*, No. 2:14-cv-00165, now pending in the United States District Court for the District of Utah.

1.02 "Agreement" or "Settlement Agreement" means this Settlement Agreement.

1.03 "Attorney Fee Award" means any award made to Class Counsel by the Court, upon application pursuant to Paragraphs 2.26 and 2.27 below.

1.04 "Benefit Check" means the negotiable check to be sent to those Class Members who shall receive Claims Consideration pursuant to Paragraph 3.01(c), below.

1.05 "Claim Form" means the settlement class claim form in substantially the same form as attached to the Settlement Agreement as Exhibit A.

1.06 "Claims Consideration" means the funds or services as described in Paragraph 3.01(a)-(d) to be provided to those Class Members who submit a Valid Claim Form in exchange for the Release, as described in Paragraphs 4.01 and 4.02 below.

1.07 "Class" means:

(a) All persons who purchased and/or owned the Watch between April 2011 and July 2014 in the United States.

(b) Excluded from the Settlement Class are: (i) individuals who are or were during the class period partners, associates, officers, directors, shareholders, or employees of Defendant; (ii) all judges or magistrates of the United States or any state and their spouses; (iii) all individuals who timely and properly request to be excluded from the class, *i.e.* opt out; (iv) all persons who have previously released Defendant from claims covered by this Settlement; and (v) all persons who have already received payment from Defendant or who have otherwise been fully compensated by Defendant by virtue of free repair or free replacement of the Watch or Watchband and have not received compensation for any other claims with respect to the defects as alleged in the Action.

1.08 "Class Counsel" means Heideman Nudelman & Kalik, P.C as lead counsel and Hatch, James & Dodge, P.C. as the law firm(s) approved by the Court to represent the Class, subject to such designation being approved by the Court.

1.09 "Class Member" means a member of the Class.

1.10 "Class Notice" means the publication notice, mailed notice, and/or e-mail notice(s) of this Settlement to the Settlement Class that is contemplated by this Settlement Agreement in substantially the same form as attached hereto as Exhibit B.

1.11 "Class Notice List" means the list of persons and/or entities to whom/which Class Notice will be sent.

1.12 "Class Period" means the period from April 1, 2011 through July 31, 2014.

1.13 "Counsel for the Defendant" means Kenneth Mallin and Jena Valdetero of Bryan Cave LLP.

1.14 "Court" means the Honorable Robert J. Shelby, United States District Court for the District of Utah, and/or such other district judge or magistrate judge of the same court to whom the Action, or a proceeding in the Action, may hereafter be assigned.

1.15 "Court Approval Hearing" means the hearing at which Final Approval is sought for the Settlement Agreement.

1.16 "Defendant" means Garmin International, Inc.

1.17 "Final Approval" means the last date on which all of the following have occurred:

(a) The Court has issued all necessary orders under Fed. R. Civ. P. 23 approving of the Settlement Agreement in a manner substantially consistent with the terms and intent of this Settlement Agreement, including the Final Approval Order;

(b) The Court enters a judgment, including as part of the Final Approval Order, (i) dismissing all claims in the Action with prejudice, and (ii) finally approving the Settlement Agreement in a manner substantially consistent with the terms and intent of this Settlement Agreement;

(c) Either: (i) thirty-five (35) days have passed after entry of the Court's judgment finally approving the Settlement Agreement in a manner substantially consistent with the terms and intent of this Settlement Agreement and, within such time, no appeal is taken after the Court's entry of judgment and no motion or other pleading has been filed with the Court to set aside or in any way alter the judgment and/or orders of the Court finally approving of the Settlement Agreement, or (ii) all appellate, reconsideration, or other forms of review and potential review of the Court's orders and judgment finally approving the Settlement Agreement are exhausted or become unavailable by virtue of the passage of time, and the Court's orders and judgment are upheld, or not altered in a manner that is substantially inconsistent with the judgment contemplated by subparagraph (b) provided that, and without limitation, any change or modification that may increase Defendant's liability, or not approve the use of the Claim Form, or reduce the scope of the Release, or reduce the scope of the Class or failure

or refusal of the Court to approve Class Counsel and all aspects of this Settlement Agreement as stated herein shall prevent the occurrence of Final Approval at the option of Plaintiffs or of Defendant; and

(d) No Party with a right to do so has terminated the Settlement Agreement.

1.18 "Final Approval Date" means the date upon which Final Approval occurs.

1.19 "Final Approval Order" means the order and judgment of the Court, in substantially the same form as attached hereto as Exhibit C, approving the Settlement Agreement in a manner substantially consistent with the terms and intent of this Settlement Agreement, and dismissing all claims in the Action with prejudice.

1.20 "Garmin" means:

(a) Garmin International, Inc., a corporation organized and existing under the laws of the State of Kansas;

(b) all past, present and future parents, subsidiaries, affiliates, or assigns of Garmin, including all shareholders, employees, servants, agents, attorneys, insurers, and reinsurers.

1.21 "No Cost" means at no charge to the Class Member, including, but not limited to, all postage, shipping and handling.

1.22 "Objection" means the written objection to the Settlement Agreement by any Class Member who is not a Successful Opt-Out, mailed or hand-delivered to Class Counsel and Counsel for the Defendant, at the addresses set forth in the Class Notice, and mailed or hand-delivered simultaneously to the Court.

1.23 "Objective Evidence of Proof" means one or more of the following: (a) registration by the customer of the device on Garmin Connect (the customer would have to provide his or her e-mail address at the time of the making of the claim, which would be verified by Defendant through Garmin Connect); (b) registration by the customer of the warranty (verified through Defendant); (c) purchase of the Watch through Defendant's online store (verified by Defendant); (d) a credit card/bank statement reflecting one or more transactions in the approximate amount(s) of the Watch purchased at an authorized retailer of Defendant and/or for any repair during the appropriate time period; (e) the serial number of the Watch the customer purchased; (f) photographs of the damaged or repaired Watch; or (g) other reliable evidence agreed upon by the Parties at the time the claim is made and considered.

1.24 "One-Year Consumer Limited Warranty" means the limited warranty as set forth in the warranty document provided to customers at the time of purchase of the Watch.

1.25 "Opt-Out" means the written request for exclusion from the Class and not to be bound by this Settlement Agreement completed and mailed to the Settlement Administrator at the addresses set forth in the Class Notice.

1.26 "Opt-Out Period" means such time as is ordered by the Court and contained in the Class Notice for each Class Member to request exclusion from the Class and not to be bound by this Settlement Agreement.

1.27 "Party" means Representative Plaintiffs or Defendant individually, and "Parties" means each of the Representative Plaintiffs and Defendant, collectively.

1.28 "Plaintiffs' Counsel" means (a) Richard D. Heideman, Noel J. Nudelman and Tracy R. Kalik of Heideman Nudelman & Kalik PC, (b) Mark F. James, Phillip J. Russell, and Mitchell A. Stephens of Hatch, James & Dodge, PC; and (c) each partner, shareholder or other part or full owner of any of the foregoing.

1.29 "Preliminary Approval" means the order or orders of the Court preliminarily approving the terms and conditions of this Settlement Agreement as contemplated by this Settlement Agreement, and in substantially the same form as attached hereto as Exhibit D.

1.30 "Preliminary Approval Date" means the date on which the order or orders constituting Preliminary Approval are entered by the Court.

1.31 "Publication Notice" means the public notice of this Settlement Agreement that is contemplated by this Settlement Agreement, and in substantially the same form as attached hereto as Exhibit E.

1.32 "Release" means the release set forth in Paragraphs 4.01 and 4.02 of this Settlement Agreement.

1.33 "Released Defendant" shall mean Defendant, and its predecessors, principals, parents (including, but not limited to, Garmin Ltd.), heirs, successors, assigns, subsidiaries, affiliates, commonly controlled entities, companies, enterprises, ventures, partners, insurers, reinsurers, investors, attorneys, officers, shareholders, directors, agents, representatives, authorized and non-authorized retailers, employees, clients, contractors, administrators, executors, personal representatives, heirs or successors in interest and assigns.

1.34 "Releasing Persons" (collectively and individually) shall mean Representative Plaintiffs and each Class Member who is not a Successful Opt-Out, and each of their respective spouses, children, executors, representatives, guardians, wards, heirs, estates, successors, predecessors, next friends, legal representatives, attorneys, agents and assigns, and all those who claim through them or who assert claims (or could assert claims) on their behalf, and each of them.

1.35 "Repair and/or Replacement" shall mean the services of repairing or replacing the Watch or Watchband for those Class Members who are entitled to receive Claims Consideration pursuant to Paragraph 3.01(a)-(b), below.

1.36 "Representative Plaintiffs" or "Plaintiffs" means Plaintiffs Andrea Katz and Joel Katz.

1.37 "Representative Plaintiffs' Award" means any award made to Representative Plaintiffs by the Court upon application pursuant to Paragraphs 2.28 and 2.29 below.

1.38 "Settlement" means the resolution of the matters within the scope of the Release set forth herein, as embodied in Paragraphs 4.01 and 4.02 of this Settlement Agreement.

1.39 "Settlement Administration Costs" means the costs of administering the Settlement Agreement provided for herein, including but not limited to the costs of mailing and e-mailing the Class Notice to the Class Members, providing Publication Notice of the Settlement Agreement, establishing and maintaining the Settlement Agreement Website and toll-free settlement number, providing the notifications under 28 U.S.C. § 1715, and providing the Benefit Checks to eligible Class Members who submit a Valid Claim Form, but specifically excluding all class benefit payments, payments to the Representative Plaintiffs, attorneys' fees and litigation costs except as otherwise provided in Paragraph 2.21 and/or 2.23 of this Settlement Agreement.

1.40 "Settlement Administrator" means the person or entity in the business of class action settlement administration as may be selected by Defendant at its sole and absolute discretion, provided that Defendant uses a third-party administrator experienced in the industry and unaffiliated with Defendant or its counsel, subject to the Court's approval.

1.41 "Settlement Agreement Web Site" means the website established and maintained by the Settlement Administrator to provide information regarding the Settlement Agreement, including the Settlement Agreement, Notice, and Claim Form, and where Class Members may complete and submit a Claim Form electronically.

1.42 "Subclass 1" means:

(a) Class Members who purchased a replacement Watchband to address the alleged design defect regardless of where they purchased the replacement Watchband.

1.43 "Subclass 2" means:

(a) Class Members who paid to repair the Watchband or Watch regardless of where they had the Watchband or Watch repaired due to the Watchband or Watch being damaged as a result of the alleged design defect.

1.44 "Subclass 1 Member" means a Class Member of Subclass 1.

1.45 "Subclass 2 Member" means a Class Member of Subclass 2.

1.46 "Successful Opt-Out" means a person who, pursuant to Paragraph 2.09 and Fed. R. Civ. P. 23, timely and validly exercises his or her right to be excluded from the Settlement Class, but shall not include (a) persons whose requests for exclusion are disputed by Defendant, Plaintiffs' Counsel or Class Counsel pursuant to Paragraphs 2.11 and 2.21 below, and the dispute is not overruled by the Court or withdrawn by Defendant, Plaintiffs' Counsel or Class Counsel, (b) persons whose communication is not treated as a request for exclusion pursuant to Paragraph 2.09, and (c) persons whose requests for exclusion are not valid or are otherwise void pursuant to Paragraphs 2.09, 2.10 and 2.12.

1.47 "Valid Claim Form" shall mean a Claim Form that:

(a) is fully and truthfully completed (i) by the Class Member, or (ii) by a person authorized by law, such as a trustee, guardian or person acting under a power of attorney, to act on behalf of the Class Member with respect to a claim or right such as those in the Action;

(b) attests that the Class Member purchased and/or owned the Watch between April 1, 2011 and July 31, 2014;

(c) is executed under penalty of perjury;

(d) is timely, as judged by the fact that it is postmarked by the deadline set by the Court or otherwise electronically received by the Settlement Administrator by the deadline as agreed by the Parties;

(e) is returned by U.S. First Class mail to the Settlement Administrator as provided for in the Class Notice; or submitted electronically to the Settlement Administrator as agreed by the parties; and

(f) is not successfully challenged. A Claim Form shall be treated as successfully challenged by Defendant only under the standards set forth in Paragraph 2.21 below.

1.48 "Watch" means the Garmin Forerunner 610 wristwatch made by Defendant.

1.49 "Watchband" means the watchband of the Garmin Forerunner 610 wristwatch.

1.50 As used herein, the plural of any defined term includes the singular thereof and *vice versa*, except where the context requires otherwise. All references to days shall be interpreted to mean calendar days, unless otherwise noted. When a deadline or date falls on a weekend or a legal Court holiday, the deadline or date shall be extended to the next business day that is not a weekend or legal Court holiday.

1.51 Other terms are defined in the text of this Settlement Agreement, and shall have the meaning given those terms in the text. It shall be the intent of the Parties in connection with all documents related to the Settlement Agreement that terms as used in other documents shall have the meaning defined to them in this Settlement Agreement.

II. SETTLEMENT PROCEDURES

A. Preliminary Approval.

2.01 As soon as practical after the execution of this Settlement Agreement, the Parties shall move the Court for the order for Preliminary Approval substantially in the form of Exhibit F hereto, which order shall, among other things, (a) preliminarily approve the Settlement memorialized in this Settlement Agreement as fair, reasonable, and adequate, including the material terms of this Settlement Agreement; (b) certify the Class for settlement purposes only; (c) set a date for the Court Approval Hearing; (d) approve the proposed Class Notice, Publication Notice and Claim Form, and

authorize their dissemination to the Class; (e) approve the requirement that Class Members file a claim form in order to obtain (i) the Benefit Check, and/or (ii) Repair and/or Replacement; (f) set deadlines consistent with this Settlement Agreement for mailing and e-mailing of the Class Notice and Claim Form and publication of the Publication Notice, the submission of Claim Forms, the filing of objections, the filing of motions to intervene, the filing of objections, statements or other submissions by any person noticed pursuant to 28 U.S.C. § 1715 (or that claims an entitlement to have been noticed pursuant to 28 U.S.C. § 1715), the submission of requests for exclusion from the Settlement Class, and the filing of papers in connection with the Court Approval Hearing; (g) conditionally designate Representative Plaintiffs as the representative of the Class and Plaintiffs' Counsel as Class Counsel; (h) prohibit all generalized notices or communications, whether by written correspondence, advertisements, Internet postings, or other media, to Class Members by the Parties about the Settlement Agreement or its terms other than that specifically authorized by this Settlement Agreement or order of the Court; and (i) approve a Settlement Administrator. Without implication of limitation, Defendant's agreement not to oppose the entry of the Preliminary Approval Order shall not be an admission or concession by Defendant that a class was appropriate in the Action or would be appropriate in any other matter, and/or that any relief was appropriate in the Action, for litigation or for settlement purposes, or would be appropriate in any other matter.

2.02 Within the time period provided under 28 U.S.C. § 1715, Defendant shall cause the requisite notifications of the Settlement to be made to the persons and/or governmental entities or officials identified in the statute.

B. Administration.

2.03 In the event of and upon Preliminary Approval, Defendant thereafter shall prepare the Class Notice List. In preparing the Class Notice List, Defendant shall use reasonable good faith efforts to identify potential Class Members from Defendant's business records and readily searchable computer media and business records, but shall have no obligation to look beyond information obtainable from Defendant's readily searchable business records. Defendant shall identify potential Class Members by taking the following action:

(a) Providing to the Settlement Administrator e-mail addresses of those customers for whom Defendant has e-mail addresses and/or cellular numbers who Defendant has reason to believe from any source purchased or owned the Watch (*e.g.* online purchasers of the Watch, replacement band, and replacement kits, registrants on Garmin Connect and warranty registrants, people who complained about problems with the Watchband);

(b) Providing to the Settlement Administrator physical addresses for those customers for whom Defendant has physical addresses but not e-mail addresses who Defendant has reason to believe purchased or owned the Watch based upon the criteria set forth in 2.03(a); and

(c) Posting a link on the Garmin.com Support page to the Settlement Agreement Web Site to be established by the Settlement Claims Administrator.

2.04 Within forty-five (45) days after the Preliminary Approval Date, the Settlement Administrator shall mail or e-mail the Class Notice to each address or email address on the Class Notice List. Before mailing or e-mailing, the Settlement Administrator shall fill in all applicable dates in the Class Notice to conform to the dates specified by the Court in the Preliminary Approval Order. The Settlement Administrator also shall have discretion to format the Class Notice and Claim Form in a reasonable manner to minimize mailing or administrative costs.

2.05 Within ninety (90) days after the Preliminary Approval Date, the Settlement Administrator shall also cause the Publication Notice, substantially in the form of Exhibit G hereto, to be published in one month's issue of *Runner's World* magazine in a one-third page ad, along with the same or substantially similar ad in the digital online copy of *Runner's World* magazine for the same time period.

2.06 Within forty-five (45) days after the Preliminary Approval Date, Defendant shall post a link on the Garmin.com Support page to the Settlement Agreement Website.

2.07 Within forty-five (45) days after the Preliminary Approval Date, the Settlement Administrator shall cause the Settlement Agreement Website to become live and fully accessible by the public.

2.08 The Parties will recommend that the Court Approval Hearing be scheduled for a date at least one hundred and five (105) days after the date set forth in Paragraph 2.04 for the mailing of the Class Notice and Claim Form.

2.09 The Class Notice shall permit each Class Member to request exclusion from the Class and not to be bound by this Settlement Agreement, if, within the Opt-Out Period, the Class Member personally completes and mails an Opt-Out to the Settlement Administrator at the addresses set forth in the Class Notice. For a Class Member's Opt-Out to be valid and treated as a Successful Opt-Out, it must (a) state his or her full name, address, and telephone number; (b) provide a copy of the receipt showing proof of purchase of the Watch or Objective Evidence of Proof that the watch was purchased or owned within the Class Period, (c) contain the Class Member's personal and original signature or the original signature of a person authorized by law, such as a trustee, guardian or person acting under a power of attorney, or attorney at law, to act on behalf of the Class Member with respect to a claim or right such as those in the Action (*i.e.*, conformed, reproduced, facsimile, or other non-original signatures are not valid); and (d) state unequivocally the Class Member's intent to be excluded from the Class, to be excluded from the Settlement Agreement, not to participate in the Settlement Agreement, and/or to waive all right to the benefits of the Settlement Agreement. The Parties will recommend that the Opt-Out period shall expire no less than twenty (20) days before the Court Approval Hearing, and that Opt-Outs postmarked after the expiration of the Opt-Out Period shall not be treated as a successful Opt-Out.

2.10 No person shall purport to exercise any exclusion rights of any other person, or purport (a) to opt-out Class Members as a group, aggregate, or class involving more than one Class Member; or (b) opt-out more than one Class Member on a single paper, or as an agent or representative; any such purported opt-outs shall be void, and the Class Member(s) that is or are the subject of such purported opt-out shall be treated as a Class Member.

2.11 At the expiration of the Opt-Out Period, Class Counsel, Counsel for the Defendant and the Settlement Administrator shall create a comprehensive list of Successful Opt-Outs. The Parties shall, if possible, agree as to whether a communication from a Class Member is a request to opt-out. Defendant or Class Counsel may dispute an Opt-Out or purported Opt-Out, and the presentation and resolution of such disputes shall be governed by the identical procedure set forth herein with respect to Disputed Claims in Paragraph 2.19 below.

2.12 Any Class Member who does not submit a timely Opt-Out, or otherwise comply with all requirements for opting-out as may be contained in this Settlement Agreement, in the Class Notice, and otherwise as ordered by the Court, or who is not a Successful Opt-Out shall be bound by this Settlement Agreement, including the Release, as embodied in Paragraphs 4.01 and 4.02 of this Settlement Agreement. If a Class Member is a Successful Opt-Out, that Class Member shall be excluded from the Settlement Agreement, and shall not receive any benefits of the Settlement Agreement, including the Claims Consideration, and will not be bound by the terms of this Settlement Agreement. Any Class Member who is a Successful Opt-Out shall have no standing to object to the Settlement Agreement.

2.13 No Class Member may assign or delegate to any individual or entity the right to receive a Benefit Check or to submit a Claim Form on behalf of the Class Member. If a Class Member assigns or delegates such right, the Claim Form submitted by or on behalf of that Class Member shall be null and void. Nothing herein shall preclude a person authorized by law, such as a trustee, guardian or person acting under a power of attorney, to act on behalf of the Class Member from receiving the Claims Consideration or submitting a Claim Form on behalf of a Class Member.

2.14 Claim Forms shall be submitted to the Settlement Administrator by the deadline set by the Court in the Preliminary Approval Order or be forever barred. Further, in the event that a Class Member is unable to execute a Claim Form in accordance with Paragraph 1.45 above and there is no person authorized by law, such as a trustee, guardian or person acting under a power of attorney, to act on behalf of such a Class Member with respect to a claim or right such as those in the Action, a statement signed under penalty of perjury explaining the reason(s) the Class Member is unable to execute the Claim Form (e.g., death, divorce, overseas military service) may be attached to and submitted with the Claim Form. In the event and only in the event of the submission of such statement with a Claim Form meeting all the criteria for a Valid Claim Form set forth in Paragraph 1.45 except for the execution requirement in Paragraph 1.45(a), the Settlement Administrator shall have discretion to treat the Claim Form as a Valid Claim Form.

2.15 Any Class Member who is not a Successful Opt-Out and who wishes to object to the proposed Settlement must mail or hand-deliver an Objection to Class Counsel and Counsel for the Defendant, at the addresses set forth in the Class Notice, and mail or hand-deliver the Objection simultaneously to the Court. Each Objection must (a) set forth the Class Member's full name, current address, and telephone number; (b) contain a copy of a receipt showing proof of purchase of the Watch or Objective Evidence of Proof, (c) contain the Class Member's original signature (conformed, reproduced, facsimile, or other non-original signatures will not be valid); (d) state that the Class Member objects to the Settlement, in whole or in part; (e) set forth a statement of the legal and factual basis for the objection; (f) provide copies of any documents that the Class Member wishes to submit in support of his/her position; and (g) identify whether he/she is represented by counsel with respect to the objection. Objections may be filed by counsel for a Class Member. Any Class Member who does not submit a timely Objection in complete accordance with this Settlement

Agreement, the Class Notice, and otherwise as ordered by the Court shall not be treated as having filed a valid Objection to the Settlement Agreement.

2.16 The motion for Preliminary Approval shall provide that all Objections should be mailed or hand-delivered to the Court and mailed or hand-delivered to Class Counsel and Counsel for the Defendant no less than twenty (20) days before the Court Approval Hearing.

2.17 Any Class Member who wishes to appear at the Court Approval Hearing, whether *pro se* or through counsel, must, within the time set by the Court, and, in any event, no less than 20 days prior to the Court Approval Hearing, mail or hand-deliver to the Court a notice of appearance in the Action, take all other actions or make any additional submissions as may be required in the Class Notice or as otherwise ordered by the Court, and mail the notice and other pleadings to Class Counsel and Counsel for the Defendant as provided in the Class Notice. No Class Member shall be permitted to raise matters at the Court Approval Hearing that the Class Member could have raised in an Objection, but failed to do so. Any Class Member who fails to comply with this Settlement Agreement, the Class Notice, and as otherwise ordered by the Court shall be barred from appearing at the Court Approval Hearing.

2.18 Any Class Member who wishes to intervene in the Action must mail or hand-deliver to the Court a motion or application to do so, and contemporaneously mail or hand-deliver it to Class Counsel and Counsel for the Defendant, within the time set by the Court, and in any event, no less than twenty (20) days before the Court Approval Hearing.

2.19 Unless the Court orders otherwise, the dates set forth in the Class Notice shall govern the rights of the Class Members.

2.20 The Class Notice shall provide that the Claim Form shall be returned to the Settlement Administrator submitted by the deadline set by the Court in the Preliminary Approval Order, or be forever barred. The Parties will recommend that the deadline for the return of Claim Forms to the Settlement Administrator should be forty-five (45) calendar days after the last day of the issue month of *Runner's World* in which the Publication Notice appears.

2.21 The Settlement Administrator shall determine whether a claim meets the definition of Valid Claim Form. In addition, within thirty (30) calendar days after the final date for submitting Claim Forms set by the Court, the Settlement Administrator shall provide Class Counsel and Counsel for the Defendant with a list of Claim Forms that do not meet the definition of a Valid Claim Form ("Invalid Claims").This list shall also contain information sufficient to identify the reason or reasons a Claim Form or group of Claim Forms do not meet the definition of a Valid Claim Form.

(c) Within twenty (20) calendar days after receipt of the list of Invalid Claims, Class Counsel and Counsel for Defendant shall meet and confer regarding any challenges Class Counsel has as to any Invalid Claim it believes meets the definition of a Valid Claim Form ("Disputed Invalid Claim"). Class Counsel and Counsel for Defendant agree that if they cannot reach an agreement with respect to the validity or invalidity of any Disputed Invalid Claims, the Court shall retain jurisdiction to resolve Disputed Invalid Claims.

2.22 The motion for Preliminary Approval shall provide that any filings, objections, statements, or other submissions by any person or government entity noticed pursuant to 28 U.S.C. § 1715, or that claims an entitlement to have been noticed pursuant to 28 U.S.C. § 1715, shall be filed with the Court and served upon Class Counsel and Counsel for the Defendant no less than twenty (20) days before the Court Approval Hearing. The Parties also will recommend that any request for appearance by such person or government entity be made by the same method and subject to the same restrictions as set forth in Paragraphs 2.15 and 2.16.

2.23 Settlement administration shall be conducted by the Settlement Administrator, and Settlement Administration Costs shall be paid by Defendant.

2.24 For a period of one hundred twenty (120) days after the Final Approval Date, the Settlement Administrator shall maintain an address to receive (a) Claim Forms that are returned, whether valid or not, and (b) other inquiries with respect to the Settlement. The Parties, Class Counsel, and the Settlement Administrator shall, subject to the provisions of Paragraph 6.08 below and any order of the Court, have the right to respond to verbal inquiries initiated by individual Class Members concerning the Settlement Agreement at any time.

2.25 Prior to Class Counsel submitting to the Court a motion for entry of an order and final judgment, the Settlement Administrator or Counsel for Defendant shall serve on Class Counsel one or more declarations stating that the Class Notice was provided in accordance with the requirements of the Preliminary Approval Order.

C. Final Approval.

2.26 By the time provided in the Preliminary Approval Order, Representative Plaintiffs and Class Counsel will move the Court for the Final Approval Order (a) finally approving the Settlement Agreement and the consideration of Benefit Checks and Repair and/or Replacement as fair, reasonable, and adequate; (b) giving the terms of the Settlement Agreement final and complete effect; (c) finally certifying the Class; (d) finding that all requirements of statutes (including 28 U.S.C. § 1715), rules, and state and federal Constitutions necessary to effectuate this Settlement Agreement have been met and satisfied; (e) determining that the Class Notice and Claim Form were disseminated to Class Members in compliance with the Preliminary Approval, and in full satisfaction of Fed. R. Civ. P. 23 and the requirements of due process; (f) listing in a sealed appendix all Successful Opt-Outs; (g) permanently barring and enjoining all Class Members, and any person actually or purportedly acting on behalf of Class Members, from commencing, instituting, continuing, pursuing, maintaining, prosecuting or enforcing any Released Rights, directly or indirectly, in any judicial, administrative, arbitral, or other forum, against any of the Released Defendants; and (h) otherwise entering final judgment of dismissal on the merits and with prejudice in the Action.

2.27 The Final Approval Order, or a separate order, shall be entered providing that all Class Members (who are not Successful Opt-Outs), including Representative Plaintiffs and Class Counsel, shall be enjoined from commencing, prosecuting, or assisting in any lawsuit against the Released Defendants that asserts or purports to assert matters within the scope of the Action, Release and judgment in the Action.

2.28 Prior to the Court Approval Hearing, Representative Plaintiffs and Class Counsel may, subject to the limitations set forth in Paragraph 2.29 below, make written application to the Court for an aggregate award of attorneys' fees and actual litigation costs incurred in the prosecution of the Action in the amount of $385,000.00. Defendant agrees to represent to the Court that a fee and cost award of $385,000.00 is fair and reasonable under the circumstances and not to oppose such application or to take any position adverse to such application provided it does not exceed $385,000.00. Defendant shall have no obligation to pay any fees and/or litigation costs greater than either the agreed-upon amount contained in this Paragraph or the amount awarded by the Court. In the event the Court does not appoint Heideman Nudelman & Kalik, PC as Class Counsel, nothing herein shall preclude Heideman Nudelman & Kalik, PC from seeking from the Court all, or a share, of the attorneys' fees and litigation costs in the agreed-upon amount contained in this Paragraph or the amount awarded by the Court.

2.29 In the event that a lawyer, law firm or other person or entity, other than Class Counsel, seeks an award of attorneys' fees, costs, expenses or other sums in connection with the Settlement Agreement or the Action, such appearance or attempt to obtain any award, or the Court's action thereon, shall in no way increase Defendant's maximum liability in connection with the Settlement of the Action to pay attorneys' fees and litigation costs and expenses in excess of the $385,000.00, or the amount awarded by the Court for attorneys' fees to Class Counsel and shall in no way increase Defendant's maximum liability in connection with the Settlement Agreement or the Action.

2.30 Prior to the Court Approval Hearing, Representative Plaintiffs and Class Counsel may, subject to the limitations set forth in Paragraph 2.31 below, make written application to the Court for a Representative Plaintiffs Award to be paid to Representative Plaintiffs for their service as class representatives in an amount not to exceed $1,250.00 per Representative Plaintiff. Defendant agrees not to oppose such application or to take any position adverse to such application.

2.31 Defendant shall not be obligated to pay any Representative Plaintiffs Award that is in excess of $ 1,250.00 for each of the two Representative Plaintiffs. Representative Plaintiffs and Class Counsel expressly disclaim any and all right to collect in excess of $1,250.00 to each Representative Plaintiff in a Representative Plaintiffs Award from any person or entity, and agree, upon demand, to execute a release of any person's or entity's obligations to pay such sum.

2.32 In the event that the Court denies, in whole or in part, and after final review (a) any application made by Class Counsel pursuant to Paragraph 2.26 above; and/or (b) any application made by Representative Plaintiffs and Class Counsel pursuant to Paragraph 2.30 above, the remainder of the terms of this Settlement Agreement shall remain in effect.

2.33 At the Court Approval Hearing, Representative Plaintiffs and Class Counsel shall present sufficient evidence to support the entry of a Final Approval Order, and shall present such evidence as they deem appropriate to support requests for Final Approval of the Settlement, an Attorney Fee Award, and/or a Representative Plaintiffs Award.

2.34 The Parties and Class Counsel agree that Representative Plaintiffs and Class Counsel will submit to Counsel for the Defendant drafts of any motions, memoranda or other materials Representative Plaintiffs and/or Class Counsel intend to submit to the Court at least five (5) days prior to the date any such motion, memoranda or other materials are to be filed with the Court.

Defendant may provide reasonable comments on such motions, memoranda or other materials to the extent Defendant deems necessary, in its sole discretion, to protect its interests in the Settlement Agreement or otherwise.

2.35 If and when the Court gives Final Approval to the Settlement Agreement, the Action shall be dismissed with prejudice, with a full release of claims that Class Members could bring now, or in the future, against Defendant, its parent, subsidiaries, affiliates, or assigns, including Defendant Garmin Ltd., relating to the Garmin Forerunner 610 watchband issue as alleged in the Action. All Parties are to bear his, her, or its own costs and attorneys' fees and litigation expenses not otherwise awarded and provided in this Settlement Agreement.

III. SETTLEMENT BENEFITS

3.01 Notwithstanding that Defendant denies any wrongdoing and any liability to Representative Plaintiffs and Class Members, subject to the terms and conditions of this Settlement Agreement, if a Class Member submits a Valid Claim Form, he or she (or in the case of multiple owners, the owners jointly as one Class Member) is eligible to receive the following Claims Consideration:

(a) **Repair or Replacement of Watchband:** Defendant agrees to repair or replace the Watchband at No Cost, even if the request is made after the warranty period has expired, provided that the request is made within 12 months of the date of final approval of the settlement by the Court. No proof of purchase will be required for repair of the watchband. Defendant will agree to an extension of the One-Year Consumer Limited Warranty provided that the extension will only cover any damage to, or loss of, the Watch as a result of the alleged defective Watchband, for 12 months following the date of final approval of settlement by the Court. If a repair or replacement of the watchband is not feasible, as determined by Defendant in its sole and absolute discretion, Defendant will replace the Watch with a comparable model, the Garmin Forerunner 620, which currently has a recommended retail price of $349.99. If Defendant replaces the Watch with a comparable model, the comparable model shall come with the "One-Year Consumer Limited Warranty" from the date of the receipt or delivery of the replacement watch to the Class Member.

(b) **Damage or Loss of Forerunner 610 Watch**:

(i) **Repair of the Watch:** Defendant agrees to repair the Watch at No Cost, even if the request is made after the warranty has expired, provided that the request is made within 12 months of the date of final approval of the settlement by the Court. If a repair of the Watch is not feasible, as determined by Defendant in its sole and absolute discretion, Defendant will replace the Watch with a comparable model, the Garmin Forerunner 620, which currently has a recommended retail price of $349.99. If Defendant replaces the Watch with a comparable model, the comparable model shall come with the One-Year Consumer Limited Warranty from the date of the

receipt or delivery of the replacement watch to the Class Member. No proof of purchase will be required for repair of the Watch.

(ii) **Replacement of the Watch**: If the Watch was lost, in order to obtain the comparable model discussed in 3.01(b)(i) above, the Class Member will be required to provide a receipt or Objective Evidence of Proof (as defined in 3.01(b)(iii)) of purchase of the Watch.

(iii) **Objective Evidence of Proof**: If the Class Member does not have a receipt and cannot obtain one, the Class Member may provide written certification of the circumstances under which the Watch or Watchband was lost or damaged or repaired as a result of the Watchband detaching from the Watch, in combination with at least one of the items identified as Objective Evidence of Proof, as defined in Paragraph 1.23 above.

(c) **Reimbursement for Out of Pocket Monies**: For those Class Members in Subclass 1 or Subclass 2 who paid to replace or repair the existing Watchband or Watch, Defendant agrees to provide Benefit Checks for the following:

(i) **Subclass 1**: Class Members who purchased a replacement Watchband due to the alleged design defect: Defendant will reimburse the actual cost of the replacement Watchband to Class Members who have a receipt or Objective Evidence of Proof of purchase if purchased from Defendant or an authorized retailer of Defendant. If the Class Member purchased a replacement Watchband from a third party and it was a non-Garmin watchband, Defendant will reimburse the Class Member the actual cost of the non-Garmin watchband up to a maximum of $50.00 if the Class Member has a receipt or Objective Evidence of Proof of purchase.

(ii) **Subclass 2**: Class Members who paid to repair the Watchband or Watch: Class Members who provide a receipt or Objective Evidence of Proof of repair of the Watchband or Watch and written certification in a form agreed upon by the Parties shall be reimbursed for their actual cost, if the repair was done by Defendant. For those Class Members who used a third party to repair the Watchband or Watch, Defendant will reimburse the Class Member for the actual cost of the repair up to a maximum of $75.00 if the Class Member has a receipt or Objective Evidence of Proof of purchase.

(d) **Recovery under Multiple Categories**: Nothing herein shall preclude or limit a Class Member from recovering more than one benefit under the same or multiple categories.

3.02 Notwithstanding that Defendant denies any wrongdoing and any liability to Representative Plaintiffs and Class Members, subject to the terms and conditions of this Settlement

Agreement, Defendant agrees to refrain from knowingly marketing or selling the Watch with the design defect alleged by Plaintiffs in the Action.

3.03 Subject to the terms and conditions of the Settlement Agreement, within forty-five (45) calendar days after the Final Approval Date, the Settlement Administrator shall commence providing a Benefit Check in the amount of the Claims Consideration pursuant to Paragraph 3.01(c) or providing instructions for Repair and/or Replacement pursuant to Paragraph 3.01(a)-(b) to each Class Member: (a) who is not a Successful Opt-Out; (b) who has returned a Valid Claim Form; and (c) with respect to whom a dispute does not remain outstanding regarding the validity of the Claim Form. With respect to any Disputed Claim or Dispute Invalid Claim determined to be a Valid Claim Form, the Benefit Check in the amount of the Consideration pursuant to Paragraph 3.01(c) or instructions for Repair and/or Replacement pursuant to Paragraph 3.01(a)-(b) shall be mailed or otherwise provided within forty-five (45) calendar days after resolution of any dispute by the Parties or, if no agreement can be reached by the Parties, resolution of any dispute by the Court. The Benefit Checks and instructions for Repair and/or Replacement shall be mailed to the address provided by the Class Member on a Valid Claim Form. If a Class Member fails to provide an address on the Valid Claim Form, then the Settlement Administrator shall mail the Benefit Check or instructions for Repair and/or Replacement to the Class Member at the address on the Class Notice List, as updated through the NCOA maintained by the United States Postal Service. All Benefit Checks issued pursuant to this Paragraph shall be void if not negotiated within one hundred eighty (180) calendar days of their date of issue, and shall contain a legend to that effect. Benefit Checks issued pursuant to this Paragraph that are not negotiated within one hundred eighty (180) calendar days of their date of issue shall not be reissued. Further, the value of all Benefit Checks issued pursuant to this Paragraph that are unclaimed by Class Members, including all returned Benefit Checks and all Benefit Checks not negotiated within one hundred eighty (180) calendar days of their date of issue, shall be retained by Defendant.

3.04 No Class Member shall be entitled to the Benefit Check or shall be entitled to Repair and/or Replacement unless the Class Member submits a Valid Claim Form and is not a Successful Opt-Out. If a Class Member is a Successful Opt-Out, that Class Member shall be excluded from the Settlement Agreement, and shall not receive any benefits of the Settlement Agreement, and will not be bound by the terms of this Settlement Agreement.

3.05 The Settlement Administrator shall be permitted to distribute only one Benefit Check to each Class Member who submits a Valid Claim Form for a Class Member who may recover more than one benefit within the scope of 3.01(c) of this Settlement Agreement. Defendant and the Settlement Administrator shall have no liability to any co-owner arising from any claim regarding the division of the value of a Benefit Check among co-owners, regardless of which owner(s) signs or submits a Claim Form.

3.06 No Class Member whose claim is disputed shall be entitled to receive a Benefit Check or entitled to Repair and/or Replacement during the pendency of the dispute. If the Disputed Claim is ultimately resolved favorably to the Class Member, then the Settlement Administrator shall distribute the Benefit Check or provide instructions for Repair and/or Replacement to the Class Member within a reasonable time after such resolution.

3.07 Subject to the terms and conditions of this Settlement Agreement, within forty-five (45) calendar days after the Final Approval Date, Defendant shall remit to Class Counsel the

Attorney Fee Award provided Class Counsel has sent to Counsel for Defendant a fully executed IRS form W-9 for the law firm of Heideman Nudelman & Kalik, PC as the named payee. Said distribution shall be made jointly to Class Counsel by single wire transfer made payable to "Heideman Nudelman & Kalik, PC IOLTA Account" per the written wire instructions to be provided to Counsel for the Defendant by Class Counsel. Defendant shall have no liability arising from any claim regarding the division of any Attorney Fee Award distributed hereunder between and among Class Counsel or other lawyers or law firms.

3.08 Subject to the terms and conditions of this Settlement Agreement, within forty-five (45) calendar days after the Final Approval Date, Defendant shall pay the Representative Plaintiffs Award to the Representative Plaintiffs provided that Class Counsel has sent to Counsel for Defendant a fully executed IRS form W-9 for all named payees. Said distribution shall be made by check payable to each Representative Plaintiff individually, and delivered to Class Counsel, c/o Noel J. Nudelman, Heideman Nudelman & Kalik, PC, 1146 19th Street, NW, Fifth Floor, Washington, DC 20036. Defendant shall have no liability to the Representative Plaintiffs or Class Counsel arising from any claim regarding the delivery or payment of the Representative Plaintiffs Award by Class Counsel to Representative Plaintiffs.

3.09 The Settlement Administrator's and Defendant's respective obligations with respect to the distribution of Benefit Checks, Repair and/or Replacement, the Settlement Administration Costs, the Attorney Fee Award, if any, and the Representative Plaintiffs Award, if any, shall be performed reasonably and in good faith. So long as they do, Defendant and the Settlement Administrator shall not be liable for erroneous, improper, or inaccurate distribution, and the Release (as embodied in Paragraphs 4.01 and 4.02 of this Settlement Agreement) and any judgment shall be effective as of the Final Approval Date as to the Representative Plaintiffs, Class Counsel, and every Class Member notwithstanding any such error and regardless of whether such error is corrected.

3.10 In the event that a bankruptcy trustee or bankruptcy court orders, requests or demands that the Class Member pay the Claims Consideration to the trustee or to the court, the Class Member shall inform the Class Administrator of the order, request or demand and comply therewith without contesting it, unless Defendant objects.

3.11 The Parties acknowledge and agree that the Settlement Agreement is fair, reasonable and adequate for the Class.

3.12 All monies that might be paid or payable to any Class Member under this Settlement Agreement are not vested, and are not otherwise monies in which the Class Member has an enforceable legal, tangible or intangible interest, but instead such monies shall remain the sole and exclusive property of Defendant unless and until all conditions precedent to payment under this Settlement Agreement are met and the monies are paid. In order to give effect to the Parties' intention, no person, entity, or governmental body shall have any rights to the monies paid hereunder, the Claims Consideration or the Benefit Checks or any portion of such, whether claimed or unclaimed, or in any amounts of uncashed Benefit Check, or in any sums which might have been paid to Class Members had more Class Members filed Valid Claim Forms. Defendant shall be entitled to all interest on the funds available to pay the Benefit Checks until any such amounts are paid to a Class Member. The Parties further acknowledge and agree that, to the extent a separate account or fund may be established as part of settlement administration, including but not limited to an account for the payment of Benefit Checks, such accounts or funds are for administrative or legal

convenience or requirements only and do not create any vested or ownership interest on the part of the Settlement Class or any Class Member. Such accounts or funds set up by the Defendant, the Settlement Administrator and/or Counsel for the Defendant shall be treated as property of Defendant.

3.13 The Benefit Checks, the Repair and/or Replacement, the limited warranty extension, as well as Defendant's payment of (a) the Attorney Fee Award, (b) the Representative Plaintiffs Award, (c) the Settlement Administration Costs, and (d) other benefits in this Settlement Agreement, shall be the sole benefits in exchange for the Release and consideration for this Settlement. Notwithstanding any judgment, principle or statute, there shall be no interest accrued, owing or paid on the Claims Consideration, or on the Settlement Amount, or on any other benefit.

3.14 The Settlement Administrator shall provide, upon request, copies of any and all cancelled and/or cashed Benefit Checks to Class Counsel and Counsel for the Defendant.

IV. RELEASE

4.01 Upon Final Approval, and in consideration of the promises and covenants set forth in this Settlement Agreement, the Releasing Persons will be deemed to have completely released and forever discharged the Released Defendants from any and all past, present and future claims, counterclaims, lawsuits, set-offs**,** costs, losses, rights, demands, charges, complaints, actions, causes of action, obligations, or liabilities of any and every kind, including without limitation (i) those known or unknown or capable of being known, and (ii) those which are unknown but might be discovered or discoverable based upon facts other than or different from those facts known or believed at this time, including facts in the possession of and concealed by any Released Defendants, and (iii) those accrued, unaccrued, matured or not matured, all from the beginning of the world until today (collectively, the "Released Rights"), that arise out of in any way relate or pertain to (a) Released Rights that were asserted, or attempted to be asserted, or could have been asserted in the Action relating to the Garmin Forerunner 610 watchband issue as alleged in the Action., (b) the claims asserted or that could have been asserted in the Action relating to the Garmin Forerunner 610 watchband defect as alleged in the Action.; and/or (c) any violation and/or alleged violation of state and federal law, whether common law or statutory, arising from or relating to the conduct and/or omissions described in Paragraph 4.01(a)-(b) above relating to the Garmin Forerunner 610 watchband issue as alleged in the Action.

The Released Rights include any right or opportunity to claim, seek, or obtain restitution, disgorgement, injunctive relief, or any other benefit as a member of the general public, under California Business and Professions Code section 17200, *et seq*., or otherwise. Further, without in any way limiting the foregoing, the Released Rights specifically extend to and include claims that the Releasing Persons do not know or suspect to exist in their favor at the time of the Final Approval. This Paragraph constitutes a release and waiver of, without limitation as to any other applicable law, Section 1542 of the California Civil Code, and any and all similar laws of other states. Section 1542 of the California Civil Code 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 HER SETTLEMENT WITH THE DEBTOR.

Representative Plaintiffs understand and acknowledge, and each Class Member shall be deemed to understand and acknowledge, the significance of these releases and of this waiver of California Civil Code Section 1542 and of any and all similar laws of other states relating to limitations on releases, including without limitation, limitations on releases of unknown or unliquidated claims. In connection with such releases, waiver, and relinquishment, Representative Plaintiffs acknowledge, and all Class Members shall be deemed to acknowledge, that they are aware that they may hereafter discover facts in addition to, or different from, those facts which they now know or believe to be true with respect to the subject matter of the Settlement and releases, but that it is their intention to release fully, finally, and forever all Released Rights, and in furtherance of such intention, the releases of the Released Rights will be and will remain in effect notwithstanding the discovery or existence of any such additional or different facts.

This Release shall be included as part of any judgment, so that all released claims and rights shall be barred by principles of *res judicata*, collateral estoppel, and claim and issue preclusion.

4.02 Class Counsel, Plaintiffs' Counsel and each of their past and present law firms, partners, or other employers, employees, agents, representatives, successors, or assigns (the "Counsel Releasing Parties") will be deemed to have completely released and forever discharged the Released Defendants from any and all past, present and future claims, counterclaims, lawsuits, set-offs, costs, losses, rights, demands, charges, complaints, actions, causes of action, obligations, or liabilities of any and every kind relating to attorney's fees, costs and expenses of any and every kind relating to the Action upon payment of the Attorney Fee Award.

V. REPRESENTATIONS AND WARRANTIES

5.01 In addition to the provisions hereof, this Settlement Agreement and the Settlement shall be subject to the ordinary and customary judicial approval procedures under Fed. R. Civ. P. 23(e). Until and unless this Settlement Agreement is dissolved or becomes null and void by its own terms, or unless otherwise ordered by the Court, or if Final Approval is not achieved, Representative Plaintiffs, the Settlement Class, and Class Counsel represent and acknowledge to Defendant that they shall take all appropriate steps in the Action necessary to preserve the jurisdiction of the Court, use their best efforts to cause the Court to grant Preliminary and Final Approval of this Settlement Agreement as promptly as possible, and take or join in such other steps as may be necessary to implement this Settlement Agreement and to effectuate the Settlement. This includes (a) the obligation to oppose Objections, not to solicit or provide material assistance to any person noticed under 28 U.S.C. § 1715 (or that claims entitlement to have been noticed under 28 U.S.C. § 1715), not to solicit or provide material assistance to objectors, and to defend the Settlement Agreement and the Settlement before the Court and on appeal, if any; (b) to seek approval of this Settlement Agreement and of the Settlement by the Court; (c) to move for the entry of the orders set forth in Paragraphs 2.01 and 2.26; and (d) to join in the entry of such other orders or revisions of orders or notices, including the orders and notices attached hereto, as are required by Defendant, subject to Plaintiffs' consent, not to be unreasonably withheld or delayed.

5.02 Representative Plaintiffs and Class Counsel represent and warrant that any Attorney Fee Award they may seek upon application to the Court pursuant to Paragraphs 2.26 and 2.27 above shall include all attorneys' fees and litigation costs that Representative Plaintiffs, Class Counsel, Plaintiffs' Counsel and any of the current and former owners, predecessors, successors, partners, shareholders, agents (alleged or actual), representatives, employees, and affiliates of Plaintiffs' Counsel and Class Counsel will seek in connection with the Action.

5.03 Representative Plaintiffs and Class Counsel represent and warrant that, other than "Class Counsel" and "Plaintiffs' Counsel," there are no persons (natural or legal) having any interest in any award of attorneys' fees, expenses or litigation costs in connection with the Action, including any of the current and former owners, predecessors, successors, partners, shareholders, agents (alleged or actual), representatives, and employees of Plaintiffs' Counsel and Class Counsel. Representative Plaintiffs and Class Counsel further represent and warrant that they will satisfy all attorneys' fees, expenses, or litigation costs incurred by Pomerantz Grossman Hufford Dahlstrom & Gross LLP ("Illinois Counsel") and any other prior counsel with whom Class Counsel has jointly pursued the Action or the Illinois Action ("All Prior Counsel"). Class Counsel will hold Defendant harmless as to any such award to Illinois Counsel or All Prior Counsel.

5.04 Class Counsel represent and warrant that they have not been retained by a current client to commence a new lawsuit against Defendant asserting claims that were raised or could have been raised relating to the Garmin Forerunner 610 watchband defect as alleged in the Action. Class Counsel further represent and warrant that they will not seek out or solicit consumers who purchased and/or owned a Watch to pursue individual or class claims against a Released Person with respect to the matters within the scope of the Release, as embodied in Paragraphs 4.01 and 4.02. The Parties understand and agree, however, that nothing in this Settlement Agreement shall be construed to preclude Plaintiffs' Counsel or Class Counsel from representing or communicating with consumers who purchased and/or owned a Watch with respect to claims and potential claims that are not within the scope of the Release, as embodied in Paragraphs 4.01 and 4.02 above.

5.05 Representative Plaintiffs, Class Counsel and Defendant represent and warrant that he, she, or it are fully authorized to enter into this Settlement Agreement and to carry out the obligations provided for herein. Each person executing this Settlement Agreement on behalf of a Party, entity, or other person(s) covenants, warrants, and represents that he, she, it, or they are and have been fully authorized to do so by that Party, entity, or other person(s). Representative Plaintiffs, Class Counsel and Defendant represent and warrant that he, she or it intends to be bound fully by the terms of this Settlement Agreement.

5.06 Representative Plaintiffs, Class Counsel, and Defendant represent and warrant that they have not, nor will they (a) attempt to void this Settlement Agreement in any way (unless provided for under the terms of this Settlement Agreement); (b) opt-out of the Settlement under this Settlement Agreement; (c) solicit or encourage in any fashion Class Members to opt-out; or (d) solicit or encourage in any fashion any effort by any person (natural or legal) to object to the Settlement under this Settlement Agreement.

5.07 Representative Plaintiffs and Class Counsel represent and warrant that they will not use or seek to use the discovery obtained in the Action in any other claim, proceeding, action or litigation against Defendant or any Released Person. Representative Plaintiffs and Class Counsel further represent and warrant that they will not seek to use the fact or content of the Settlement

Agreement in any other claim, proceeding, action or litigation against Defendant or any Released Person to establish or attempt to establish (a) Defendant's or any Released Person's liability, and/or (b) that class treatment or certification is required or appropriate. Additionally, consistent with the terms of the Standard Protective Order governing the Action, Representative Plaintiffs and Class Counsel represent and warrant that, within 30 days after the conclusion of the Action, all originals and reproductions of documents and materials designated "Protected Information," "Confidential Information," or "Confidential Information – Attorneys' Eyes Only," under the Standard Protective Order, shall be returned to Counsel for Defendant or be destroyed (unless such document was filed as an exhibit to a pleading in the Action), in which Class Counsel shall certify in writing to Counsel for Defendant that such destruction has taken place.

5.08 Until and unless this Settlement Agreement is dissolved or becomes null and void by its own terms, or unless otherwise ordered by the Court, or if Final Approval is not achieved, Defendant represents and acknowledges to Representative Plaintiffs that it will not oppose the Settlement, Preliminary Approval and/or Final Approval, provided Representative Plaintiffs and Class Counsel seek approval of the Settlement in accordance with the terms of this Settlement Agreement.

5.09 If any person, legal or natural, breaches the terms of any of the representations and warranties in this section, the Court shall retain jurisdiction over this matter to entertain actions by a Party against such person for breach and/or any Party's request for a remedy for such breach.

VI. MISCELLANEOUS PROVISIONS

6.01 Each and every exhibit to this Settlement Agreement is incorporated herein by reference as if fully set forth herein.

6.02 This Settlement Agreement reflects, among other things, the compromise and settlement of disputed claims and defenses among the Parties hereto, and nothing in this Settlement Agreement nor any action taken to effectuate this Settlement Agreement is intended to be an admission or concession of liability of any Party or third party or of the validity of any claim. Defendant denies the allegations in the Action and contends that its conduct has been lawful and proper.

6.03 This Settlement Agreement is entered into only for purposes of settlement. In the event that Final Approval of this Settlement Agreement and this Settlement does not occur for any reason, this Settlement Agreement shall become null and void. In that event, the Parties shall be absolved from all obligations under this Settlement Agreement, and this Settlement Agreement, any draft thereof, and any discussion, negotiation, documentation, or other part or aspect of the Parties' settlement discussions leading to the execution of this Settlement Agreement shall have no effect and shall not be admissible evidence for any purpose. Any order provisionally certifying a settlement class pursuant to the Settlement shall be null and void, shall not be an adjudication of any fact or issue for any purpose other than the effectuation of this Settlement Agreement, and shall not be considered as law of the case, *res judicata*, or *collateral estoppel* in this or any other proceeding. In addition, in that event, the status of the Action shall revert to the state it was in prior to settlement, the pleadings shall revert to that date, and the agreements contained herein shall be null and void, shall not be cited or relied upon as an admission as to the Court's jurisdiction or the propriety of

class certification, and the Parties shall have all rights, claims and defenses that they had or were asserting as of the date of this Settlement Agreement.

6.04 Nothing shall prevent Representative Plaintiffs or Defendant from appealing any denial by the Court of Final Approval of this Settlement, or any aspect hereof, and the Parties agree that, in the event of such an appeal, the Action will be stayed pending the resolution of any such appeal. The Parties agree they will continue to zealously support and advocate for approval of the Settlement Agreement on appeal or in post-appeal proceedings, if there is such an appeal, to the same extent as they are bound herein to do so while the case is before the Court. In the event such an appeal results, by order of the appellate court or by an order after remand or a combination thereof, in the entry of an order(s) whereby the Settlement Agreement is approved in a manner substantially consistent with the substantive terms and intent of this Settlement Agreement, and dismissing all claims in the Action with prejudice, and otherwise meeting the substantive criteria of this Settlement Agreement for approval of the Settlement, such order shall be treated as a Final Approval Order.

6.05 The Parties agree that all negotiations, statements, proceedings, and other items related to this Settlement Agreement are for settlement purposes only, and shall not be offered or be admissible in evidence by or against Defendant or cited or referenced in any other action or proceeding.

6.06 This Settlement Agreement shall be terminable at the option of Defendant or Representative Plaintiffs (a) if more than 25.0% of the Class Members become Successful Opt-Outs; (b) in the event the Court fails to enter the orders contemplated by Paragraphs 2.01 and 2.25, or does so in a form materially different from the forms contemplated by this Settlement Agreement; (b) if the Settlement Agreement becomes null and void in accordance with Paragraph 5.08; (d) if the Court or any other court permits a person or persons to opt-out as a Plaintiffs Representative, or otherwise to exercise or preserve the opt-out, or substantive rights, of others; or (e) if the Court fails to approve this Settlement Agreement as written and agreed to by the Parties, including but not limited to a failure to approve the Preliminary Approval Order, the Final Approval Order, or the use of a Claim Form. The Settlement Agreement also shall be terminable upon the mutual written agreement of Representative Plaintiffs and Defendant.

6.07 If this Settlement Agreement is terminated pursuant to its terms, or if the Final Approval Date does not occur, or if this Settlement Agreement is not approved in full, then any and all orders vacated or modified as a result of this Settlement Agreement shall be reinstated, and any judgment or order entered by the Court in accordance with the terms of this Settlement Agreement shall be treated as vacated *nunc pro tunc*.

6.08 Representative Plaintiffs shall not (a) issue, or otherwise cause to be issued, any press release, advertisement, Internet posting or similar document concerning the Action; the facts and circumstances that were the subject of, or disclosed in discovery in, the Action; and/or the Settlement Agreement, or (b) make any extrajudicial statements concerning the Action; the facts and circumstances that were the subject of, or disclosed in discovery in, the Action; and/or the Settlement of the Action, excepting only that such statements may be made to individual Class Members in one-on-one communications. Further, the Parties agree to work cooperatively with regard to communications with potential objectors and agree that this provision does not bar any such communications.

6.09 Representative Plaintiffs, Class Counsel, each of the Releasing Persons, Defendant, and Counsel for the Defendant shall refrain from making any disparaging statements about one another of any kind whatsoever. Nothing herein shall preclude Plaintiffs' Counsel or Class Counsel from posting on its website or issuing a press release about the Settlement. Plaintiffs' Counsel or Class Counsel must provide a copy of the proposed press release to Defendant's Counsel at least five (5) days prior to releasing the press release.

6.10 This Settlement Agreement is intended to and shall be governed as a contract executed under the laws of the State of Utah.

6.11 The terms and conditions set forth in this Settlement Agreement constitute the complete and exclusive agreement between the Parties hereto, and may not be contradicted by evidence of any prior or contemporaneous agreement, and no extrinsic evidence may be introduced in any judicial proceeding to interpret this Settlement Agreement. Other than as stated herein, the Parties represent and warrant that no representation, promise, or other inducement has been offered or made to induce any party to enter into this Settlement Agreement, and that they are competent to execute this Settlement Agreement. This Settlement Agreement supersedes and replaces all negotiations, agreements, and understandings between and among the Parties, whether written or oral. This Settlement Agreement may not be waived, repealed, altered or amended in whole or in part except by an instrument in writing executed by authorized representatives of each and every party hereto. Any modification of the Settlement Agreement must be confirmed and executed in writing by all Parties and served upon Counsel for the Defendant and Class Counsel. Any notice of termination of the Settlement Agreement, as otherwise provided for in the Settlement Agreement, shall be in writing and served upon opposing counsel.

6.12 This Settlement Agreement shall be deemed to have been drafted jointly by the Parties, and any rule that a document shall be interpreted against the drafter shall not apply to this Settlement Agreement.

6.13 This Settlement Agreement shall inure to the benefit of the Released Defendants, and each and every one of the Released Defendants shall be deemed to be intended third-party beneficiaries of this Settlement Agreement and, once approved by the Court, of the Settlement.

6.14 The waiver by one Party of any provision or breach of this Settlement Agreement shall not be deemed a waiver of any other provision or breach of this Settlement Agreement.

6.15 This Settlement Agreement, and the Settlement provided for herein, shall not be admissible in any lawsuit, administrative action, or any judicial or administrative proceeding if offered to show, demonstrate, evidence, or support a contention that (a) Released Defendants acted illegally, improperly, or in breach of law, contract, ethics, or proper conduct; and/or (b) class certification is required or appropriate.

6.16 This Settlement Agreement shall become effective upon its execution by Class Counsel and Counsel for the Defendant. The signature of Counsel for the Defendant as an agent of Defendant and the signature of Plaintiffs' Counsel as putative Class Counsel shall be for this purpose only, and shall not create any separate duties or obligations on Counsel for the Defendant or upon Class Counsel. The Parties shall thereafter execute this Settlement Agreement promptly, and may execute this Settlement Agreement in counterparts. Each counterpart shall be deemed to

be an original, and execution of counterparts shall have the same force and effect as if all Parties had signed the same instrument. Representative Plaintiffs and Defendant authorize their respective counsel to execute this Settlement Agreement for this purpose.

6.17 Under no circumstances shall the Settlement Agreement create or be construed as evidence of any violation of law or contract; in the event this Settlement Agreement is so construed as to a particular Class Member, it can be declared by Defendant to be null and void as to that Class Member only (and in such latter event, the Release as to that Class Member shall also be void). Representative Plaintiffs and the Class expressly covenant and agree, as a material inducement to Defendant, and recognizing the practical difficulties faced by Defendant in ongoing or future matters, that each of them waive and forever relinquish any rights or entitlement they may possess or come to possess (other than as set forth herein) to have Defendant or the Released Defendants amend, alter or revise proofs of claims, rights, demands, suits, or other claims made (or to be made) in order to reflect the benefit of the Benefit Checks and Repair and/or Replacement provided or to be provided or to reflect the other terms of this Settlement Agreement and the Settlement.

6.18 Although the Court shall enter a judgment, the Court shall retain jurisdiction over the interpretation, effectuation, enforcement, administration, and implementation of this Settlement Agreement. In the event any proceeding is brought to enforce the terms of this Settlement Agreement, the prevailing Party shall be entitled to recover from the other(s) damages arising from any breach of the Settlement Agreement, and his, her or its reasonable attorneys' fees and costs incurred therein. Further, if a Class Member takes any action or position, after the Final Approval Date, in any lawsuit (including the Action) that causes any Party to seek relief, intervention, or ruling by this Court to enforce, interpret, or protect the Settlement, this Settlement Agreement, or any of its orders subsequent hereto (including the Preliminary Approval Order or the Final Approval Order), the Court shall retain jurisdiction over this matter to entertain motions or requests by that Party for an award of damages and attorneys' fees against such Class Member.

6.19 Any communication or notice sent by any Party in connection with this Settlement Agreement shall be given by overnight mail as follows:

To Representative Plaintiffs and/or Class Counsel:

Noel J. Nudelman
Tracy Kalik
HEIDEMAN NUDELMAN KALIK, P.C.
1146 19th Street, N.W.
5th Floor
Washington, D.C. 20036
Phone: 202-463-1818
Fax: 202-463-2999
Email: njnudelman@hnklaw.com
trkalik@hnklaw.com

To Defendant and/or Counsel for Defendant:

Jena M. Valdetero
BRYAN CAVE LLP

161 N. Clark Street
Suite 4300
Chicago, IL 60601
Phone: 312-602-5000
Fax: 312-602-5050
Email: jena.valdetero@bryancave.com

6.20 Defendant and Representative Plaintiffs acknowledge that they have been represented and advised by independent legal counsel throughout the negotiations that have culminated in the execution of this Settlement Agreement, and that they have voluntarily executed the Settlement Agreement with the consent and on the advice of counsel. The Parties have negotiated and reviewed fully the terms of this Settlement Agreement.

6.21 The captions and headings contained herein are meant for reference purposes only and are not meant to provide any substance or interpretive guidance to the provisions either that immediately follow them or that may be anywhere else within the Settlement Agreement.

6.22 It is understood that agreed by the Parties that the terms of this Settlement Agreement are contractual, not a mere recital, and that this Settlement Agreement shall take effect as a sealed instrument.

IN WITNESS WHEREOF, the Parties hereto have entered into this Settlement Agreement on the date first above written, and have executed this Settlement Agreement on the date indicated below each respective signature.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

ANDREA KATZ

Andrea Katz

Date: 5/12/16

REPRESENTATIVE PLAINTIFF

JOEL KATZ

Joel Katz

Date: 5/12/16

REPRESENTATIVE PLAINTIFF

HEIDEMAN NUDELMAN & KALIK PC

Richard D. Heideman
Noel J. Nudelman
Tracy Reichman Kalik

Date:

ATTORNEYS FOR PLAINTIFFS

HATCH, JAMES & DODGE PC

Mark F. James

Date:

ATTORNEYS FOR PLAINTIFFS

GARMIN INTERNATIONAL, INC.

By:

Title:

Date:

BRYAN CAVE LLP

Jena M. Valdetero

Date:

ATTORNEYS FOR DEFENDANT GARMIN INTERNATIONAL, INC.

PARSONS BEHLE & LATIMER

Francis M. Wikstrom

Date:

ATTORNEYS FOR DEFENDANT GARMIN INTERNATIONAL, INC.

Privileged and Confidential
Final Execution Copy

ANDREA KATZ

Andrea Katz

Date:_____
REPRESENTATIVE PLAINTIFF

JOEL KATZ

Joel Katz

Date:_____
REPRESENTATIVE PLAINTIFF

HEIDEMAN NUDELMAN & KALIK PC

Richard D. Heideman
Noel J. Nudelman
Tracy Reichman Kalik

Date: May 3, 2016
ATTORNEYS FOR PLAINTIFFS

HATCH, JAMES & DODGE PC

Mark F. James

Date: May 3, 2016
ATTORNEYS FOR PLAINTIFFS

GARMIN INTERNATIONAL, INC.

By:

Title:_____

Date:_____

BRYAN CAVE LLP

Jena M. Valdetero

Date:_____
ATTORNEYS FOR DEFENDANT GARMIN INTERNATIONAL, INC.

PARSONS BEHLE & LATIMER

Francis M. Wikstrom

Date:_____
ATTORNEYS FOR DEFENDANT GARMIN INTERNATIONAL, INC.

ANDREA KATZ

Andrea Katz

Date:_____

REPRESENTATIVE PLAINTIFF

JOEL KATZ

Joel Katz

Date:_____

REPRESENTATIVE PLAINTIFF

HEIDEMAN NUDELMAN & KALIK PC

Richard D. Heideman
Noel J. Nudelman
Tracy Reichman Kalik

Date:_____

ATTORNEYS FOR PLAINTIFFS

HATCH, JAMES & DODGE PC

Mark F. James

Date:_____

ATTORNEYS FOR PLAINTIFFS

GARMIN INTERNATIONAL, INC.

By: Andrew R. Etkind

Title: Vice President and General Counsel

Date: April 25, 2016

BRYAN CAVE LLP

Jena M. Valdetero

Date: April 26, 2016

ATTORNEYS FOR DEFENDANT GARMIN INTERNATIONAL, INC.

PARSONS BEHLE & LATIMER

Francis M. Wikstrom

Date: April 26, 2016

ATTORNEYS FOR DEFENDANT GARMIN INTERNATIONAL, INC.

EXHIBIT 2

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

***Andrea Katz and Joel Katz, on behalf of themselves and all persons similarly situated v. Garmin International, Inc.*, No. 14-cv-165 (D. Utah)**

[PROPOSED] Notice of Class Action and Proposed Settlement

This is a notification that you may be a member of a plaintiff class in a lawsuit brought against Garmin International, Inc. ("Garmin") in the United States District Court for the District of Utah alleging a defect in the watchband design of the Garmin Forerunner 610 watch. You could be eligible for a cash payment or free repair or replacement of your Garmin Forerunner 610 watch if you purchased and/or owned the watch between April 2011 and July 2014 in the United States.

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

- Your legal rights are affected whether you act or do not act. Read this Notice carefully.

- **For a full statement of your rights and options as a member of the Settlement Classes, you should refer to the complete Settlement Agreement, which is available by reviewing the court file at the U.S. District Court for the District of Utah, or by contacting the Class Counsel designated herein below or by visiting www.ForeRunnerSettlement.com. The terms of the Settlement Agreement will govern your rights if you are a member of the class, unless you take further action as indicated below.**

The purpose of this Notice is to inform you of the Class Action, the Proposed Settlement and to alert you that the Court will hold a hearing to consider the settlement to be held on _____ at _____ before the Honorable Judge Robert J. Shelby at Courtroom 7.300, United States District Court for the District of Utah, 351 S. West Temple, Salt Lake City, UT 84101.

YOUR LEGAL RIGHTS AND OPTIONS IN CONNECTION WITH THIS LAWSUIT	
SUBMIT A CLAIM FORM	**The only way to get cash payment or other settlement benefits.** You will need to timely submit a valid Claim Form (Claim Form enclosed).
ASK TO BE EXCLUDED	**Receive no payment or other settlement benefits. Get out of this lawsuit. Keep rights.** If you ask to be excluded, you are not eligible to receive a cash payment or other benefits from this lawsuit, but you will maintain the right to bring an individual lawsuit against Garmin for the same or similar legal claims in this lawsuit on your own behalf.
COMMENT OR OBJECT	**Write the Court about why you like or do not like the Settlement.** You may write the Court indicating why you like or dislike the Settlement. You must remain a member of the lawsuit (*i.e.*, you cannot ask to be excluded) in order to object to the Settlement.
DO NOTHING	**Get no cash payment or other settlement benefits. Give up rights.** By doing nothing, you will be a deemed a member of the class and will be subject to the Terms of the Settlement and the Release of Claims contained therein. If you do not submit a Claim Form in

	accordance with the instructions herein below, you will give up any rights to sue Garmin separately about the same or similar legal claims in this lawsuit.

- These rights and options—and the deadlines to exercise them—are explained in this Notice.
- The Court in charge of this case still has to decide whether to approve the Settlement. Payments and other settlement benefits will be made if the Court approves the Settlement and after appeals, if any, are resolved.

CONTENTS

Additional Information

25. Are there more details available?

Appendix - Release

BASIC INFORMATION

1. What is the purpose of this Notice?

Garmin's records show that you purchased and/or owned the Garmin Forerunner 610 watch between April 2011 and July 2014 in the United States.

A class action lawsuit is pending in the United States District Court for the District of Utah known as *Andrea Katz and Joel Katz, on behalf of themselves and all persons similarly situated v. Garmin International, Inc.*, No. 14-165 (D. Utah). Judge Robert J. Shelby, who is overseeing this case, authorized this Notice. You have a right to know about the class action lawsuit and proposed Settlement. As a potential Class Member, you have various options that you may exercise before the Court decides whether to approve the Settlement. If the Court approves the Settlement, and after appeals are resolved, if any, Garmin will make payments and provide other settlement benefits pursuant to the Settlement to Class Members who submit timely and valid Claims and will take other actions consistent with the Settlement terms.

This Notice explains the lawsuit, the Settlement, your legal rights, the available benefits, who is eligible for them, and how to get them.

This Notice should not be understood as an expression of any opinion by the Court as to the merits of the claims asserted by the Plaintiffs or any of the defenses asserted by Garmin.

2. What is this class action lawsuit about?

The plaintiffs in this case are Andrea Katz and Joel Katz. They allege, on behalf of themselves and other similarly situated individuals, that they purchased and/or owned a Garmin Forerunner 610 watch, and that the watchband was defective. Plaintiffs allege that Garmin breached its contract, breached its warranties, and committed other violations of law by selling Forerunner 610 watches with allegedly defective wristbands.

Garmin denies that it has acted unlawfully or improperly, denies that class certification is required or appropriate, and has contested Plaintiffs' claims. Garmin contends that it has acted properly and prudently with regard to manufacture, production, marketing, and selling of the Garmin Forerunner 610 watch.

3. What is a class action lawsuit and who is involved:

In a class action lawsuit, one or more persons called "Class Representatives" sue on behalf of other people who have similar claims. All of these people together are called a "Class" or "Class Members." In this case, there are also "Subclasses," in which a subset of Class Members have similar claims. The Class Representatives - and all Class Members like them - are called the Plaintiffs. The company they sued (in this case Garmin) is called the Defendant. The lawyers who represent the Class are called "Class Counsel." In a class action lawsuit, all factual questions and legal issues are resolved for everyone in the Class - except for those people who choose to exclude themselves from the Class.

4. Why is there a Settlement?

The Court did not decide in favor of Plaintiffs or Defendant. Instead, both sides agreed to a Settlement, among others things, to avoid the costs and uncertainty of a trial, to avoid ongoing business interruption and resources demanded by litigation, and in order to provide certainty and benefits to the people affected. The Class Representatives and Class Counsel believe the Settlement is fair and reasonable for everyone who purchased and/or owned a Garmin Forerunner 610 watch in the relevant time period.

WHO IS IN THE SETTLEMENT?

5. Am I part of this Class?

According to Garmin's records, you may have purchased and/or owned a Garmin Forerunner 610 watch in the United States between April 2011 and July 2014. If this is true, you are a member of the Settlement Class. Garmin does not have records of all purchasers. Accordingly, you may have determined on your own that you are a member of the Settlement Class

(a) Am I a member of any Subclass?

The proposed settlement agreement includes two Subclasses. If you are a Class Member who has already purchased a replacement watchband to address the alleged design defect, then you are a member of Subclass 1. If you are a Class Member who paid to repair your watchband or watch as a result of the watchband detaching from the watch face, then you are a member of Subclass 2. Members of these Subclasses may be entitled to additional settlement benefits.

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

If this notice was mailed to you, Garmin's records reflect that you may be a member of the Settlement Class. If you are still not sure whether you are included, you can contact the Settlement Administrator, Heffler Claims Group or write to Class Counsel at the addresses listed in question 19, below.

SETTLEMENT BENEFITS – WHAT YOU GET

7. What are the Settlement Benefits?

If the Court finally approves the Proposed Settlement, Class Members who submit a valid Claim Form, in accordance with the procedure describe below, may receive a repair or replacement of their watchband or watch at no cost. These Class Members also will receive an extension of the One-Year Consumer Limited Warranty provided that the extension will only cover any damage to, or loss of the Watch as a result of the alleged defective watchband, for 12 months following the date of final approval of settlement. This extension will cover any damage to, or loss of, the watch as a result of the alleged defective watchband. Members of Subclass 1 and Subclass 2 may receive cash payments.

Instructions on how to obtain free repair or replacement of watchbands or watches will be mailed to Class members at the addresses stated on their respective Claim Forms. Cash Payment distributions will be made by mailing checks to Subclass Members at the addresses stated on their respective Claim Forms. In the event that a bankruptcy trustee or bankruptcy court orders, requests, or demands that a Class Member pay the Claim Consideration to the trustee or to the court, the Class Member shall inform Garmin of the order, request, or demand and comply therewith without contesting it, unless Garmin objects.

8. How much money will subclass members get?

Members of Subclass 1 (those who purchased a replacement watchband) may be eligible for cash payments of either: (a) the actual cost of the replacement watchband if the replacement watchband was purchased from Garmin or an authorized Garmin retailer; or (b) up to $50.00 if the replacement watchband was purchased from a third party and it was not a Garmin manufactured watchband.

Members of Subclass 2 (those who paid to repair the watchband or watch) may be eligible for cash payments of either: (a) the actual cost of the repair if done by Garmin; or (b) the actual cost of the repair up to $75.00 if repaired by a third party.

Subclass Members will be required to provide either a receipt or Objective Evidence of Proof of purchase as that term is defined in paragraph 1.23 of the Settlement Agreement or repair and a written certification in order to receive cash benefits.

9. How do I receive my Settlement Benefit?

You have to do 3 things:

(1) Complete the Claim Form;

(2) On the Claim Form, **sign and date** at the bottom under penalty of perjury; and

(3) **Timely Submit the Claim Form:** Claim Forms must be submitted to the Settlement Administrator, via First Class Mail, at the address stated on the Claim Form, post-marked no later than _____. Alternatively, a Claim Form may be submitted online at www.ForeRunnerSettlement.com.

As part of the Claim Form, you will attest under penalty of perjury that purchased and/or owned the Garmin Forerunner 610 watch between April 2011 and July 2014 in the United States and that the facts stated therein are true. Depending on the settlement benefit applicable to you, you may be required to submit supporting documentation.

10. What if I don't timely submit a completed Claim Form?

If you fail to mail or electronically submit a completed Claim Form by the required deadline, you will not receive any settlement benefits. You will still be bound by the other Settlement Agreement terms and Release of Liability. Sending in a Claim Form late or without all the information will be the same as doing nothing (see question 24).

11. When do I get my payment or instructions for free repair or replacement of my watchband or watch?

The Court will hold a fairness hearing on _____ to decide whether to approve the Settlement as fair, reasonable, and adequate. If the Court approves the Settlement, there may be appeals which may delay the conclusion of the case. It is always uncertain when and whether these appeals can be resolved. The Settlement Agreement provides that settlement payments will start being made within 45 calendar days after all such issues have been resolved and the Court's judgment becomes final. Resolving such issues can take time, perhaps more than a year.

12. What am I giving up to get a settlement benefit and stay in the Class?

Unless you exclude yourself, you will be part of the Settlement Class. The Court's orders approving the Settlement and the judgment in the case will apply to you and legally bind you.

Upon Final Settlement Approval, you unconditionally, fully and finally release and forever discharge the Released Persons from each of the Released Claims, as defined in Sections 4.01 and 4.02 of the Settlement Agreement, and agree to abide by the terms of the Release. In so doing, you are agreeing not to sue Garmin ever again about any past, present or future claims based on or related to the conduct covered by the class action. You can read the full text of the definition of Released Claims and the Release in Appendix A to this Notice.

If you want the right to sue Garmin on your own about conduct covered by the class action, you must exclude yourself from the Settlement Classes in this case. If you exclude yourself, you will not be eligible to recover any benefits as a result of the settlement of the action.

EXCLUDING YOURSELF FROM THE SETTLEMENT

13. How do I get out of this Settlement?

To exclude yourself from the Settlement, you must send a letter by U.S. mail saying that you want to be excluded from *Andrea Katz and Joel Katz, on behalf of themselves and all persons similarly situated v. Garmin International, Inc.*, No. 14-165 (D. Utah). To be valid, your exclusion request must include:

- Your full name, current mailing address, and telephone number;
- A copy of the receipt showing proof of purchase of the Garmin Forerunner 610 watch, or Objective Evidence of Proof as that term is defined in paragraph 1.23 of

the Settlement Agreement that the Garmin Forerunner 610 watch was purchased or owned between April 2011 and July 2014;

- The following statement "I/we request to be excluded from the class settlement in *Andrea Katz and Joel Katz, on behalf of themselves and all persons similarly situated v. Garmin International, Inc.";* and

- Your original signature or the original signature of a person previously authorized by law to act on your behalf

You must mail your exclusion request to the three addresses that appear below so that it is received no later than _____.

Requests for exclusion from the Settlement Class that are not received on or before _____ will not be honored. You cannot exclude yourself from the Settlement Class by telephone or e-mail. You cannot exclude yourself by mailing a request to any other location, or after the deadline

14. If I don't exclude myself, can I sue Garmin later?

No, not for the same or similar legal claims at issue in this litigation matter.

15. If I exclude myself, can I get any Settlement Benefits from this Settlement?

No. If you exclude yourself from the Class you will not get any money or benefits from this Settlement. If you exclude yourself, you should not submit a Claim Form to ask for money from the class action Settlement. You cannot do both.

THE LAWYERS REPRESENTING YOU

16. Do I have a lawyer in this case?

The Court has decided preliminarily that the law firm of Heideman Nudelman & Kalik, P.C as lead counsel and Hatch, James, Dodge, P.C. are qualified to represent you and all Class Members. Together these law firms are called "Class Counsel." They are experienced in handling similar cases. More information about these law firms, their practices, and their lawyers' experience is available at www.hnklaw.com.

17. Should I get my own lawyer?

You do not need to hire your own lawyer because Class Counsel is working on your behalf. If you want your own lawyer, you may hire one at your own cost.

18. How will the lawyers be paid and will there be incentive payments?

Class Counsel has not received any fees or reimbursement for any of the expenses associated with this case. The parties have agreed that Garmin will pay Class attorneys' fees and expenses in the amount of $385,000.00. In addition, Class Counsel will ask that the Court award each of the Class Representatives a $1,250.00 service award in recognition of their efforts on behalf of the Class. Any fees, expenses or incentive awards that Class Counsel requests must be approved

by the Court. Class Counsel will request that their fees and expenses, and the incentive awards, be paid directly by Garmin, which means they will not reduce the recovery to you and other members of the Class. Garmin has agreed that it will not object to these requests by Class Counsel and the Class Representatives.

SUPPORTING OR OBJECTING TO THE SETTLEMENT

19. How do I tell the Court that I like or do not like the Settlement?

If you are a Class Member, you can tell the Court you like the Settlement and it should be approved, **or** that you object to the Settlement if you do not like a part of it. The Court will consider all comments from Class Members.

To object, you must send a letter saying that you are commenting on the Settlement in *Andrea Katz and Joel Katz, on behalf of themselves and all persons similarly situated v. Garmin International, Inc.*, No. 14-cv-165 (D. Utah), and you must include your full name, current address, telephone number, documents sufficient to show you are a Class member, your factual and legal grounds for objecting, any documents supporting your objection, your signature, and whether you are represented by counsel with respect to the objection. Any Class Member objecting to the Settlement must provide a detailed list of any other objections submitted by the objector, or the objector's counsel, to any class action settlements submitted in any court in the previous five (5) years. If the Class Member or his or her counsel has not objected to any other class action settlement in any court in the United States in the previous five (5) years, he, she or it shall affirmatively so state in the written materials provided with the objection. If you intend to appear at the fairness hearing through counsel, your comment must also state the identity of all attorneys representing you who will appear at the fairness hearing. Be sure to send your objection to each of the three different places set forth below such that it is received no later than _____.

No. 1 Court	No. 2 Class Counsel	No. 3 Defense Counsel
Clerk of the Court **United States District Court for the District of Utah** **351 S. West Temple, Rm 1.100** **Salt Lake City, UT 84101**	**Heideman Nudelman Kalik, P.C.** c/o Noel J. Nudelman 1146 19th Street, NW, 5th FL Washington, DC 20036	**Bryan Cave LLP** c/o Jena Valdetero 161 N Clark Street, Ste 4300 Chicago, IL 60601

If you file an objection, Class Counsel or Counsel for Garmin are allowed to notice and take your deposition consistent with the Federal Rules of Civil Procedure at an agreed-upon location before the fairness hearing and to seek any documentary evidence or other tangible things that are relevant to the objection. Failure by an objector to comply with discovery requests may result in the Court striking the objector's objection and otherwise denying that person the opportunity to make an objection or be further heard. The Court reserves the right to tax the costs of any such discovery to the objector or the objector's counsel should the Court determine that the objection is frivolous or is made for an improper purpose.

If you do not submit a written comment on the proposed Settlement or the application of Class Counsel for Incentive Awards, attorneys' fees and expenses in accordance with the deadline and procedure set forth above, you will waive your right to be heard at the fairness hearing and to appeal from any order or judgment of the Court concerning the matter.

20. What is the difference between objecting and excluding?

Objecting is simply telling the Court that you do not like something about the Settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you do not want to be part of the Class, and you will not be entitled to receive settlement benefits from the Settlement or be subject to the Release of the Released Persons. If you exclude yourself, you have no basis to object because the case no longer affects you.

FAIRNESS HEARING

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

The Court will hold a fairness hearing at ___ a.m. on _____, 2016 in Courtroom 7.300, **United States District Court for the District of Utah, 351 S. West Temple, Salt Lake City, UT 84101.** At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court may listen to people who have asked to speak at the hearing. The Court may also decide how much to pay Class Counsel or whether to approve incentive awards. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long it will take for the Court to make its decision.

Once the Court approves the Settlement and such order becomes final following any appeals, the Court will enter any order and judgment in this action. All of the claims of the Class will be dismissed with prejudice, whether or not a Claim form has been submitted.

22. Do I have to come to the hearing?

No; Class Counsel will answer questions the Court may have, but you are welcome to come at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you sent your written objection such that it is received on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

23. May I speak at the hearing?

If you do not exclude yourself, you may ask the Court's permission to speak at the hearing concerning the proposed Settlement or the application of Class Counsel for attorneys' fees and expenses. To do so, you must send in a letter saying that it is your notice of your intention to appear at the fairness hearing in *Andrea Katz and Joel Katz, on behalf of themselves and all persons similarly situated v. Garmin International, Inc.*, No. 14-cv-165 (D. Utah). The letter must state the position you intend to present at the hearing, state the identities of all attorneys who will represent you (if any), and must include your full name, current address, telephone number, and all documents identified above under question 9 sufficient to show you are a Class Member. You must send your notice to the Clerk of the Court, Class Counsel, and defense counsel at the three addresses listed under question 19 above, such that it is *received* no later than _____, 2016. You may combine this notice and your comment (described under question 19) in a single letter. You cannot speak at the hearing if you excluded yourself.

IF YOU DO NOTHING

24. What happens if I do nothing at all?

If you do nothing, you will remain a member of the Settlement Class and you will be bound by the terms of the Settlement and Release of the Released Persons, but you will get no settlement benefits from this Settlement. Unless you exclude yourself, you won't be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Garmin about the legal issues in this case, ever again.

ADDITIONAL INFORMATION

25. Are there more details available?

If you need an additional copy of the Claim Form, you may contact the Settlement Administrator, Heffler Claims Group, at 1-855-585-1129 or download a Claim Form by visiting www.ForeRunnerSettlement.com. The Settlement Administrator can provide a copy of the Settlement Agreement upon request. You may also call Class Counsel at 202-463-1818 or write them at the addresses in 19 above.

The pleadings and other records in this litigation, including copies of the Settlement Agreement, may be examined during regular office hours at the office of the Clerk of Court of the United States District Court for the District of Utah.

PLEASE DO NOT CONTACT THE COURT OR THE CLERK OR GARMIN INTERNATIONAL.

Dated: May __, 2016 The Honorable Robert J. Shelby

APPENDIX A

RELEASED CLAIMS AND RELEASES

As indicated in the Settlement Notice section entitled "**12. What am I giving up to get a payment and stay in the Class?"** the following text has been excerpted from the Settlement Agreement and included here for your reference. All capitalized terms have the meaning provided in the Settlement Agreement.

1.1 Upon Final Approval, and in consideration of the promises and covenants set forth in this Settlement Agreement, the Releasing Persons will be deemed to have completely released and forever discharged the Released Defendants from any and all past, present and future claims, counterclaims, lawsuits, set-offs**,** costs, losses, rights, demands, charges, complaints, actions, causes of action, obligations, or liabilities of any and every kind, including without limitation (i) those known or unknown or capable of being known, and (ii) those which are unknown but might be discovered or discoverable based upon facts other than or different from those facts known or believed at this time, including facts in the possession of and concealed by any Released Defendants, and (iii) those accrued, unaccrued, matured or not matured, all from the beginning of the world until today (collectively, the "Released Rights"), that arise out of in any way relate or pertain to (a) Released Rights that were asserted, or attempted to be asserted, or could have been asserted in the Action, (b) the claims asserted or that could have been in the Action; and/or (c) any violation and/or alleged violation of state and federal law, whether common law or statutory, arising from or relating to the conduct and/or omissions described in Paragraph 4.01(a)-(b) above.

The Released Rights include any right or opportunity to claim, seek, or obtain restitution, disgorgement, injunctive relief, or any other benefit as a member of the general public, under California Business and Professions Code section 17200, *et seq*., or otherwise. Further, without in any way limiting the foregoing, the Released Rights specifically extend to and include claims that the Releasing Persons do not know or suspect to exist in their favor at the time of the Final Approval. This Paragraph constitutes a release and waiver of, without limitation as to any other applicable law, Section 1542 of the California Civil Code, and any and all similar laws of other states. Section 1542 of the California Civil Code 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 HER SETTLEMENT WITH THE DEBTOR.

Representative Plaintiffs understand and acknowledge, and each Class Member shall be deemed to understand and acknowledge, the significance of these releases and of this waiver of California Civil Code Section 1542 and of any and all similar laws of other states relating to limitations on releases, including without limitation, limitations on releases of unknown or unliquidated claims. In connection with such releases, waiver, and relinquishment, Representative Plaintiffs acknowledge, and all Class Members shall be deemed to acknowledge, that they are aware that they may hereafter discover facts in addition to, or different from, those facts which they now know or believe to be true with respect to the subject matter of the Settlement and releases, but that it is their intention to release fully, finally, and forever all Released Rights, and in furtherance of such intention, the releases of the Released Rights will be

and will remain in effect notwithstanding the discovery or existence of any such additional or different facts.

This Release shall be included as part of any judgment, so that all released claims and rights shall be barred by principles of *res judicata*, collateral estoppel, and claim and issue preclusion. Class Counsel, Plaintiffs' Counsel and each of their past and present law firms, partners, or other employers, employees, agents, representatives, successors, or assigns (the "Counsel Releasing Parties") will be deemed to have completely released and forever discharged the Released Persons from any and all past, present and future claims, counterclaims, lawsuits, set-offs, costs, losses, rights, demands, charges, complaints, actions, causes of action, obligations, or liabilities of any and every kind relating to attorney's fees, costs and expenses of any and every kind relating to the Action upon payment of the Attorney Fee Award.

EXHIBIT 3

A federal court authorized this Notice. This is not a solicitation.

If you purchased and/or owned a Garmin Forerunner 610 watch between April 2011 and July 2014 in the United States, you could receive benefits from a class action settlement.

A proposed class action settlement has been reached in a lawsuit that claims Garmin International, Inc.'s marketed and sold the Forerunner 610 watch with a defective watchband, in violation of Illinois and Utah law. The Defendant denies it violated any laws, and the Court has not determined who is right. The parties have agreed to settle the lawsuit to avoid the uncertainties and expenses of ongoing litigation.

How do I know if I am a Class Member? The Settlement Class includes individuals who purchased and/or owned the Garmin Forerunner 610 watch between April 2011 and July 2014 in the United States. Postcards have been mailed and e-mails have been sent to persons potentially affected by the Settlement who Garmin has reason to believe may be Class Members. However, if you did not receive a postcard or e-mail and want to know if a Garmin Forerunner 610 watch you purchased and/or owned between April 2011 and July 2014 qualifies, you may submit a Claim Form to the Settlement Administrator.

What can I get from the Settlement? If you are a Class Member and if the Court approves the Settlement, you may be eligible for free repair or replacement of the watch or watchband. Certain Class members who have already paid to replace their watchband may receive monetary compensation of either the actual cost of the replacement band if purchased from Garmin, or up to $50.00 if the band is not a Garmin product. Certain class members who have already paid to repair their watch or watchband may receive monetary compensation of the actual cost of the repair if done by Garmin, or up to $75.00 if repaired by someone other than Garmin.

How do I submit a claim? To qualify for settlement benefits, you must submit a timely and properly completed Claim Form under penalty of perjury. You may submit a Claim Form online at www.ForeRunnerSettlement.com, or you can call the toll-free number 1-855-585-1129 to request a paper form. Claim Forms must be signed under penalty of perjury, and postmarked or submitted through the Settlement website by _____, 2016.

Other options and deadlines. If you do not want to be legally bound by the Settlement, you must exclude yourself by _____, 2016. If you stay in the Settlement, you may object to it by _____, 2016. The Court will hold a hearing on _____, 2016 to consider whether to approve the Settlement and a request by Class Counsel for attorneys' fees up to $385,000.00 and incentive awards for the Class Representatives of $1,250.00 each. The Court may award less than these amounts.

How do I get more information? Detailed information about the Settlement, including specific instructions about how to object to, or exclude yourself from, the Settlement is available at www.ForeRunnerSettlement.com. You may write to the Settlement Administrator, Heffler Claims Group at: Katz v. Garmin International, c/o Heffler Claims Group, PO Box 58533, Philadelphia, PA 19102-8533, or call toll-free at 1-855-585-1129.

EXHIBIT 4

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Attorneys for Garmin International, Inc.

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

ANDREA KATZ on behalf of herself and all persons similarly situated,

and

JOEL KATZ on behalf of himself and all persons similarly situated,

Plaintiffs,

vs.

GARMIN, LTD, and GARMIN INTERNATIONAL, INC.,

Defendants.

AFFIDAVIT OF NOEL J. NUDELMAN IN SUPPORT MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT

Civil No. 2:14-cv-165-RJS

Judge: Hon. Robert J. Shelby

Noel J. Nudelman, Esq., under penalty of perjury, states upon personal knowledge and information as follows:

1. I am an adult of sound mind, over twenty-one (21) years of age, and make this statement under penalty of perjury based on my own personal knowledge.

2. I have been licensed to practice law in the States of New Jersey, New York and the District of Columbia since 1993, 1994 and 1996, respectively. I have been licensed in U.S. District Court for the Southern District of New York since 2010, and the U.S. District Court for the District of Columbia since 1996, respectively. I was admitted to practice before this Court *pro hac vice* for the above referenced case in August 2014.

3. I am a partner with the law firm of Heideman Nudelman & Kalik, P.C. in Washington, D.C.

4. I represent the Plaintiff in this class action. I, along with members of my law firm, began investigating the claims involved in this case for more than a year before we filed the lawsuit in March 2014.

5. Prior to filing this class action lawsuit in this Court, my firm conducted extensive research, investigation and analysis to identify the specific problems with the Garmin Forerunner 610 watch ("Watch"), including the mechanical and engineering problems related to these Watches detaching from the watchband, and the efforts at repairing or fixing

those problems by Garmin and feedback from consumers who were potential class members. Our pre-filing investigation included extensive research on the claims to investigate the scope of the problem and the size of the class. Considerable time was spent interviewing Garmin customers and reviewing customer statements and customer reviews regarding the problems consumers were experiencing. Numerous websites, and other forms of publicly available information were analyzed. Considerable time was also spent preparing the original Complaint for filing.

6. In conjunction with the filing of this class action lawsuit, my law firm also analyzed the practical and technical issues related to identifying the scope of the defective watch and watchband problem, the size of the potential class impacted by the watchband problem, and the valuation of damages to the class and other issues related to the Garmin Forerunner 610 potential class.

7. Despite initial research which revealed numerous customer complaints about the Watch, there were no lawsuits filed against Garmin based on this defective design.

8. This class action was first filed in December, 2013 in the Northern District of Illinois. In January, 2014 the Illinois District Court

dismissed the diversity action based on Plaintiff's failure to plead her state of citizenship, as she had only plead her domicile[1].

9. On March 6, 2014, Plaintiffs Andrea Katz and Joel Katz, residents of this District filed this class action against Defendant in the United States District Court for the District of Utah, asserting that the Watch suffered from a design defect that resulted in the watchband detaching from the Watch. Plaintiffs raised claims for breach of contract, breach of express warranty, breach of implied warranty, violations of the Illinois Consumer Fraud and Deceptive Business Practices Act, violations of the Utah Consumer Sales Practice Act, violations of the Lanham Act, violations of the Utah Truth in Advertising Act, as well as alternate claims for negligence, negligent misrepresentation, and unjust enrichment.

10. On March 31, 2014, Defendant filed a motion to change venue to the Northern District of Illinois.

11. On June 6, 2014, Plaintiffs filed a motion for class certification. (Doc. 17.)

12. On October 21, 2014, the Court denied Defendant's motion to change venue, denied Plaintiffs' motion for class certification without prejudice, and ordered Defendant to respond to the Complaint. (Doc. 29.)

[1] Plaintiff Andrea Katz refiled her class action complaint in the Northern District of Illinois (the "Second Illinois Action"). In February, 2014, Defendant filed a motion to dismiss for lack of Article III standing. Plaintiff then voluntarily dismissed the Second Illinois Action.

13. On November 12, 2014, Defendant filed a partial motion to dismiss certain claims.

14. On April 16, 2015, the Court granted in part and denied in part Defendant's motion, and dismissed Plaintiffs' Lanham Act claim, negligence and negligent misrepresentation claims, and breach of warranty claim as to Joel Katz only. The other causes of action, including breach of contract, breach of warranty as to Andrea Katz, violations of the Illinois Consumer Fraud and Deceptive Business Practices Act, violations of the Utah Consumer Sales Practice Act, and unjust enrichment, remained as alleged in Plaintiffs' Complaint.

15. On April 29, 2015, Defendant filed its Answer to the Complaint, in which it denied any and all liability to Plaintiffs and the putative class and asserted various affirmative defenses.

16. Research and review of the issues involved with venue transfer, the preliminary motion for class certification, the partial motion to dismiss, and the affirmative defenses set forth by Garmin were completed and analyzed.

17. Formal written discovery requests were made of Garmin for the purposes of obtaining documentation related to the scope of the alleged deficiencies in the Watch. These inquiries centered on the need for documentation from Garmin relating to the design, testing, marketing, quantity of Watches sold, identification of and quantity of problems

encountered with the Watch and the timing and extent of Garmin's knowledge and/or discovery of the Watch and watchband problems.

18. These requests culminated in the receipt of over 15,000 pages of documentation from Garmin.

19. My law firm spent a significant number of hours reviewing Garmin's interrogatory answers as well as the documents produced and analyzing the contents of them. The documents were analyzed for the purposes of identifying problems, determining the size of the potential Plaintiff class and the amount of potential damages the class members suffered. The documents were categorized for use in a database, so that whether for settlement or litigation purposes, the documents could be used to support Plaintiff's claims. In addition, the documents were analyzed with additional research for the purposes of testing the veracity of the Garmin documentation, especially as it related to the potential scope and size of the Plaintiffs' proposed class.

20. As Plaintiffs' counsel was preparing various motions, including a renewed motion for class certification, the Court entered a jointly sought stay of further discovery in the matter to allow the parties to pursue settlement discussions.

21. Through the use the discovery and the information obtained as a result of their own independent investigations, the parties engaged in meaningful and complex settlement negotiations.

22. As a result of these extended settlement negotiations, the parties were able to settle all outstanding issues.

23. The Settlement Agreement provides that Defendant will repair or replace the Forerunner 610 watchband at no cost, which includes, but not limited, to all postage, shipping and handling ("No Cost"), even if the request is made after the warranty has expired, provided that the request is made within 12 months of the date of final approval of the Settlement by the Court. No proof of purchase will be required for repair of the watchband. If a repair or replacement of the watchband is not feasible, as determined by Defendant in its sole and absolute discretion, Defendant will replace the Watch with a comparable model, e.g. the Garmin Forerunner 620, which has a Manufacturer's recommended retail price of $349.99.

24. Also with respect to the Class Members, Defendant will extend the limited warranty as set forth in the warranty provided to customers at the time of purchase of the Forerunner 610 (the "One-Year Consumer Limited Warranty") to the allegedly defective watchband only, for a period of 12 months following the date of final approval of Settlement by the Court.

25. In addition, if Defendant replaces the Watch with a comparable model, the comparable model shall come with the One-Year Consumer Limited Warranty applicable to the replacement watch, as if the replacement watch were purchased independent of the Action or the Settlement

Agreement from the date of the receipt or delivery of the replacement watch to the Class Member.

26. Members of the Subclasses will receive cash payments. Subclass 1 consists of Class Members who purchased a replacement watchband to address the alleged design defect regardless of where they purchased the replacement watchband. Defendant will reimburse the actual cost of the replacement watchband to class members who have a receipt or Objective Evidence of Proof of purchase if purchased from Defendant or one of Defendant's authorized retailers. If the class member purchased a replacement watchband from a third party and it was a non-Garmin watchband, Defendant will reimburse the class member the actual cost up to $50.00.

27. Subclass 2 consists of Class Members who paid to repair the Watchband or Watch regardless of where they had the watchband or Watch repaired due to the watchband or Watch being damaged because of the alleged design defect. Claimants who provide a receipt or Objective Evidence of Proof of repair of same and written certification in a form agreed upon by the parties, shall be reimbursed for their actual cost, if the repair was done by Defendant. For those customers who used a third party to repair the watchband or Watch, Defendant will agree to reimbursement for the actual cost up to $75.00.

28. The Settlement Agreement also permits Class Members to recover more than one benefit in the same or multiple categories provided they meet the requirements to participate separately in each category.

29. After the terms of the Settlement Agreement were negotiated to resolve the class members' claim, the parties then met and negotiated an agreement with regard to fees and expenses. Although agreement was difficult to reach, the parties agreed that Garmin would agree to pay, and Plaintiffs' counsel would agree to accept, attorney's fees and litigation costs in the aggregate lump sum of $385,000 dollars, in addition to paying for the claims of the Class Members and all administrative costs of completing the settlement class notice, subject to approval of this Court.

30. During and prior to the settlement discussions, proposed class counsel assessed the probability of ultimate success on the merits, including the evaluation of the risks of successfully establishing both liability and damages at trial. Proposed counsel for the class believed that they had a strong case and negotiated a settlement on that basis. However, Defendant Garmin had numerous potential formidable defenses at its disposal. Garmin contested every aspect of Plaintiffs' claims and expressed an intention to continue contesting Plaintiffs' claims through trial (and possible appeal). Although counsel for Plaintiffs' believe Plaintiffs have substantial claims with valid merit, Garmin is represented by highly experienced and competent counsel who would

likely mount a zealous and thorough defense to Plaintiffs' claims for relief, all of which would consume significant court resources as well as that of the parties.

31. Had this litigation not been resolved, Plaintiffs would have vigorously continued to pursue the action and Garmin would have produced a substantial challenge to Plaintiffs' right to maintain this action in court. Plaintiff would have sought class certification, which it believes it would have obtained, but Garmin would have seriously challenged class certification and had it been successful in having class certification denied, the case would not have been practical to pursue due to the small amount of each individual claim, and the high cost of litigating the case on an individual basis. Moreover, even if the case were to proceed to a jury, which Plaintiffs' counsel believe would be favorable to the class, it is clear from the defense approach of Garmin that the class was faced with the need for and reliance on extensive and costly expert witnesses at trial to establish liability and damages in such a complex case, with no guarantee such testimony or other evidence would be understood, or accepted, by the jury.

32. Due to the extensive investigation, document review, and analysis, Plaintiffs' counsel had a clear view of the strengths and weaknesses of Plaintiffs' case and relied upon the investigation and documentary evidence to evaluate risks of proceeding with trial, the benefits of achieving a firm and agreeable settlement on favorable terms.

Plaintiff's counsel used the documentation and analysis to assist with the determination of the validity and value of the various components of the settlement.

33. The litigation was hard fought and contentious and the settlement is a product of the extensive arm's length negotiations conducted by counsel experienced with all aspects of class action litigation. Plaintiffs' counsel are familiar with all the facts and applicable law related to this action and have significant experience prosecuting claims, including consumer class actions. Plaintiffs' counsel did not possess any "inventory" of individual cases that were separately settled or otherwise faired better than the Class Settlement. The negotiations with Garmin were often intense and occasionally heated as the parties disputed numerous key issues in the litigation, including, but not limited to, whether a class could be successfully certified, whether the legal defenses asserted by Garmin had merit, whether liability could be imposed on Garmin, the extent of Plaintiffs' damages, and the specific terms of the settlement.

34. Counsel for the Plaintiffs are not only skilled practitioners in the litigation field, but have a successful track record in complex litigation including class actions and mass torts.

a. The firm served as lead counsel in Klinger v. Motorola, a case litigated in the District of Maryland as a consumer class action for defective

product design of the antenna attached to the Motorola Star-Tac cellular phone.

b. My firm also served as Co-lead counsel in Bernard v. Microsoft, a District of Columbia indirect purchaser class action, which resulted in a significant recovery for indirect purchasers of Microsoft products in the District of Columbia.

c. My firm served as co-lead counsel in Sherrill, et al. v Amerada Hess, et al, a case litigated in the state court's in Charlotte, North Carolina wherein over 500 individuals who resided next to or near oil tank farms owned by 16 different oil companies sued these oil companies for their environmental claims for personal injuries and other damages. A confidential settlement was reached to conclude this toxic tort litigation.

d. My firm also has served has lead counsel in numerous cased wherein we represent victims and their family members who have been killed or injured in terrorist attacks in Europe and Israel. To date, my firm has collected in excess of $200 million dollars on behalf these clients Among the cases for whom we have recovered on behalf of our victim clients are:

- Patrick Scott Baker, et al. v. Great Socialist People's Libyan Arab Jamahiriya, et al., where my firm served as lead counsel to the American victims of the terrorist hijacking of EgyptAir Flight 648 on November 23, 1985. The case was filed in the United States

District Court for the District of Columbia. The evidence obtained showed that both Libya and Syria were sponsored and provided material support for the hijacking. Our clients obtained a judgment in the amount of $601 million dollars. Our clients were compensated for their injuries as part of a settlement agreement negotiated between the United States and Libya. In addition, they have pursued turnover of funds attached belonging to the Syrian Arab Republic to further satisfy the judgments they have received for their injuries.

- The Estate of John Buonocore, III, et al. v. Great Socialist People's Libyan Arab Jamahiriya, et al. and Malina et al. v. Great Socialist People's Libyan Arab Jamahiriya, where my firm served as lead counsel to the American victims and their families in and action filed in the United States District Court for the District of Columbia against the Great Socialist People's Libyan Arab Jamahiriya and Syrian Arab Republic. Our clients obtained a judgment of over $3 billion dollars. Our clients recovered for the death or injury to themselves or their family members as a result of the terrorist attack at the Leonardo da Vinci Airport in Rome, Italy on December 27, 1985. Our clients were compensated for their injuries as part of a settlement agreement negotiated between the United States and Libya.

- Philip Litle, et al. v. Arab Bank, plc, my firm serves as co-counsel for over two hundred American plaintiffs in an ongoing action against Arab Bank, plc, a Jordanian Bank, for the facilitation of acts of international terrorism and provision of material support to various terrorist groups involved in the Second Intifada in Israel, which resulted in the death and injury to American nationals. In September 2014, my firm and our co-counsel obtained judgment as to liability against the Bank. This is the first time that a financial institution was found liable for violating the Anti-Terrorism Act. A settlement is currently being pursed to compensate these clients for their personal injury and death claims.
- We also represent over 200 marines and their family members who were victims of the 1985 Marine Barracks bombing in Beirut, Lebanon in their claims against the Islamic Republic of Iran. These victims have received over $2 billion in compensatory and punitive judgment awards. As result thereof, we, along with our co-counsel have been able to attach approximately $1.9 billion dollars in Iranian assets. The assets have been ordered to be turned over to our clients and other victims of Iranian terrorism, and Iran has appealed the turnover order. Following oral argument before the United States Supreme Court, the matter was recently decided on a 6-2 favorable decision written by Justice Ginsberg upholding

the rights of the Marines to recover against the funds of the Iranian Bank, Bank Markazi.

35. My firm has an extremely busy law practice and we have forgone work on other matters presented to my firm in order to assure we had the proper time and resources to represent the Plaintiffs in this case.

36. Despite my experience in litigating class actions and complex litigation, I believe that prosecuting this litigation through trial and appeal would likely be extremely expensive and time consuming for a variety of reasons. Plaintiffs' claims are meritorious and based on claimed defects in the Watch and watchband. Issues related to causation would establish liability against the Defendant but would require the preparation and presentation of extensive, expensive, risky and time consuming proof challenges for Plaintiffs' counsel. Defendant could assert many various reasons why particular Watchband's broke and Defendant would assert that it is difficult, if not impossible, to show a particular defective design caused the watchband to detach in all circumstances, involving millions Watches.

37. Research performed by Plaintiffs' counsel determined that there was misuse and abuse by customers using the Watch. Therefore, proving causation would require detailed analysis of all variables to show that valid Class Members' Watch broke due to no misuse or abuse. Counsel for Plaintiffs' Class are willing and able to undertake such a task, but it clearly would be a challenge to overcome the defenses set forth by the

Defendant. Additionally, because Defendant's resistance to Plaintiffs' claims has been steadfast, it has been Plaintiffs Counsel's experience, that large companies such as Defendant remain as determined advocates committed to sparing no expense or resource in litigating claims such as the Plaintiffs for prolonged periods of time.

38. Accordingly, I believe this Settlement to be in the best interests of the Class and the case, and that the Court should give preliminary approval to this Settlement.

39. In addition to the settlement value achieved for the Plaintiffs class as a whole, counsel for the Plaintiffs class also separately negotiated a settlement with the Defendant for the payment of attorney's fees and expenses. The attorney's fees and expenses that Garmin has agreed to pay in this case, in no way reduced, or came out of, the settlement benefits made available to the class members because the attorney's fees and expenses are being paid in addition to the settlement relief available to class members.

40. Additionally, the negotiated attorney fees include compensation for all future services to be rendered by Plaintiffs' counsel through the completion of the pending litigation, services which firsthand experience shows will constitute a substantial and continuing commitment of time, effort and resources. The fee negotiation in this case was conducted at arm's-length as well, and, again, only after all the terms of the Settlement had been agreed upon by the parties. Plaintiffs'

counsel and Defendant's counsel, fully separated the issues of (a) settlement and (b) expenses and (c) fees, negotiating all substantive terms of the settlement first and deferring negotiation of attorney's fees and expenses until all substantive terms of the Settlement were agreed upon.

41. The fee award negotiated by the parties, which includes Plaintiffs' counsel paying all of its own expenses, is a reasonable percentage, but does not take into account the unknown substantial amount of work going forward following the preliminary approval of the Settlement, for which Plaintiffs' counsel will receive no additional compensation.

42. Plaintiffs' counsel has dedicated a sizeable amount of effort and attention spanning years and including countless number of hours conducting legal research related to issues germane to this class action, including, but not limited to, causes of action, pleading issues, similar type consumer protection and product defect claims, notice requirements, identification of national class members, the proper claims evaluation procedures and guidelines, and Plaintiffs' counsel's obligations as class counsel.

43. Experience with settlements of this nature shows that substantial ongoing time and effort will be required of Plaintiffs' class counsel after preliminary approval of this Settlement to ensure that the Settlement is properly implemented and that class members receive their benefits.

44. In summary, prior experience confirms that many additional real attorney hours of providing continuing service to the class through final completion of this matter will be required.

45. Plaintiffs' counsel has provided significant value to the Class beyond the substantive relief available to class members as a result of the Settlement. Plaintiffs' counsel has negotiated with Garmin to also pay certain other costs that otherwise would have absorbed by the class members. For example, Garmin has agreed to separately spend significant sums to provided notice to the Class, administer the settlement through an independent Settlement Administrator and Claims Evaluator, and finance the entire claims evaluation procedure process. These costs are not chargeable against the Plaintiff' or the relief available to a Class member, but are borne solely by Garmin. They include, but are not limited to the cost of advertising the Notice in nationwide publications, the cost of establishing a website and call center related to the class action.

46. Since the presentation of the proposed Settlement to this Court and the entry of the Court's Preliminary Approval Order, counsel for Garmin and counsel for the Plaintiffs' class have worked tirelessly to carry out the provisions of the Court's Preliminary Approval Order.

47. The proposed settlement before the Court is the culmination of years of intense legal research, drafting, analysis of thousands of pages of

documentation and information received from Garmin and potential class members and extensive arms-length negotiations with Garmin.

48. The proposed settlement before the Court is fair, comprehensive and beneficial to the members of the Class; and merits the approval of this Court after due consideration.

FURTHER AFFIANT SAYETH NAUGHT

I, Noel J. Nudelman declare under penalty of perjury that the forgoing is true and correct.

Executed on this the 11th day of May, 2016.

Noel J. Nudelman

Subscribed and Sworn before me, a Notary Public in the District of Columbia on this the 11th day of May, 2016.

Notary Public

My Commission Expires: 10/14/18

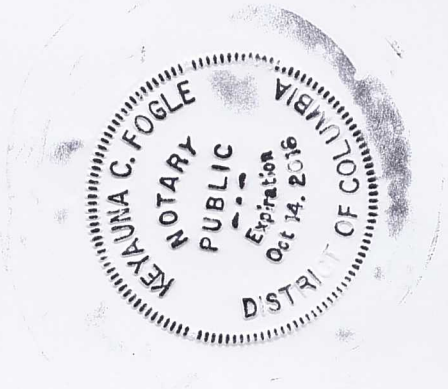

EXHIBIT 5

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

ANDREA KATZ on behalf of herself and all persons similarly situated, and JOEL KATZ on behalf of himself and all persons similarly situated, Plaintiffs, vs. GARMIN, LTD, and GARMIN INTERNATIONAL, INC., Defendants.	Civil No. 2:14-cv-165-RJS Judge: Hon. Robert J. Shelby

[PROPOSED] ORDER PRELIMINARILY APPROVING SETTLEMENT, CERTIFYING CLASS FOR SETTLEMENT PURPOSES, APPOINTING LEAD COUNSEL FOR THE CLASS, DIRECTING THE ISSUANCE OF CLASS NOTICE, AND SCHEDULING A FAIRNESS HEARING AND RELATED EVENTS

This matter coming before the Court on Defendant's Agreed Motion for Preliminary Approval of Class Settlement Agreement ("Agreement") and Notice to Class between Plaintiffs Andrea Katz and Joel Katz ("Plaintiffs") and Garmin International, Inc. ("Defendant"). Based on the evidence presented, IT IS HEREBY ORDERED:

1. This Court finds that the proposed settlement is within the applicable range of fairness and reasonableness and grants preliminary approval for it.

2. The Court conditionally certifies a class and subclasses, for settlement purposes only, defined as:

Class: All persons who purchased and/or owned the Garmin Forerunner 610 watch (the "Watch") between April 2011 and July 2014 in the United States.

Subclass 1: Class members who purchased a replacement watchband to address the alleged design defect regardless of where they purchased the replacement watchband.

Subclass 2: Class members who paid to repair the watchband or Watch regardless of where they had the watchband or Watch repaired due to the Watchband or Watch being damaged as a result of the alleged design defect.

Excluded from the Settlement Class are: (i) individuals who are or were during the class period partners, associates, officers, directors, shareholders, or employees of Defendant; (ii) all judges or magistrates of the United States or any state and their spouses; (iii) all individuals who timely and properly request to be excluded from the class, *i.e.* opt out; (iv) all persons who have previously released Defendant from claims covered by this Settlement; and (v) all persons who have already received payment from Defendant or who have otherwise been compensated by Defendant by virtue of free repair or free replacement of the Watch or watchband for alleged violations with respect to an allegedly defective Watch or watchband.

There are approximately 136,728 members of the Class, and an unknown number of members of Subclass 1 and Subclass 2, according to Defendant's records. The court acknowledges that Defendant does not have records of every customer who purchased or owned the Garmin Forerunner 610 watch.

3. The Court conditionally appoints the following as Class Counsel for the Class and Subclasses: Noel J. Nudelman of Heideman Nudelman Kalik, P.C., as lead class counsel.

4. A hearing on the fairness and reasonableness of the Agreement and whether final approval shall be given to it and the requests for fees and expenses by Class Counsel will be held before this Court on _____, 2016 at _____ a.m./p.m.

5. The Court approves the proposed form of mailed and e-mailed notice to the Class and Subclasses, to be directed to the last known address of each Class and Subclass member as shown in Defendant's records. The Court further approves the notices that would be disseminted by publication in *Runner's World*. Defendant will mail or e-mail, or caused to be mailed or e-

mailed, notice to class members on or before _____, 2016. Any mail returned with a forwarding address will be re-mailed. Defendant will have the notice sent or caused to be sent by any form of bulk mail that provides address forwarding mail to each address.

6. The Court finds that mailing of the class notice and dissemination of notice by publication and the other measures specified above to locate and notify members of the Class and Subclasses are the only notices required and that such notice satisfies the requirements of due process under Fed. R. Civ. P. 23.

7. Class and Subclass members who wish to claim any of the settlement benefits must complete and return the claim form which will be mailed with the class notice, and which will be available on the settlement administrator's website. The claim form must be postmarked by _____, 2016.

8. Any Class and Subclass members who desire to exclude themselves from the action and the relief obtained in the Agreement must file a request for exclusion with the Clerk of the Court by _____, 2016 and serve copies of the request upon Class Counsel and counsel for Defendant.

9. Any Class and Subclass members who wish to object to the settlement must submit the objection to the Clerk of the Court by _____, 2016. Any objection must include the name and number of the case and a statement of the reasons why the objector believes that the Court should find that the proposed settlement is not in the best interests of the Class and Subclasses. Objectors who have filed written objections to the settlement may also appear at the hearing and be heard on the fairness of the settlement.

10. Plaintiffs and Defendant may file memoranda of law in support of the Agreement prior to the fairnes hearing. Any submission must be filed no later than _____, 2016.

Defendant shall also file proof of compliance with the notice requirements of the Class Action Fairness Act of 2005, 28 U.S.C. § 1715(b), on or before the same date.

DATE: _____ ENTERED: _____
Honorable Robert J. Shelby