

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

SCOTT BALFOUR, DON LEE, KULDEEP  
SINGH, MATTHEW TEMPLON, and  
SHELIA VOORHEIS, individually and on  
behalf of all others similarly situated,

Plaintiffs,

v.

iFIT HEALTH AND FITNESS, INC., a  
Delaware Corporation,

Defendants.

1:23-CV-00067-UNA

Hon. Colm F. Connolly

**SETTLEMENT AGREEMENT**

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## SETTLEMENT AGREEMENT AND RELEASE

This Class Action Settlement Agreement and Release (“Agreement”) is entered into between and among (1) Scott Balfour, Don Lee, Kuldeep Singh, Matthew Templon, and Shelia Voorheis (collectively, “Plaintiffs”) on behalf of themselves and as representatives of the Class defined below, and (2) Defendant iFIT Health and Fitness Inc. (“iFIT”) (all parties collectively referred to as the “Parties”). This Agreement provides for and effects a full and final settlement and, upon final approval by the court, will result in the dismissal with prejudice of all claims asserted by Plaintiffs against Defendant in the litigation known as *Balfour, et al. v. iFIT Health and Fitness*, Case No. 1:23-cv-00067 (D. Del.), on the terms set forth below and to the full extent reflected herein. Capitalized terms shall have the meaning ascribed to them in Section II of this Agreement.

### I. RECITALS

**WHEREAS**, on January 20, 2023, Plaintiffs filed a class action complaint against Defendant in the U.S. District Court for the District of Delaware in an action styled *Balfour, et al. v. iFIT Health and Fitness*. Plaintiffs allege, *inter alia*, that iFIT manufactured and sold a variety of “smart” treadmills and other fitness equipment fitted with specialized touch screen consoles that provided features such as live workout streaming, interactive workouts, and more detailed workout tracking. Plaintiffs further allege that iFIT pushed a mandatory software update onto these consoles that caused them to cease to function (the “Defect”), and that iFIT refused, or was unable to, permanently cure the Defect at no cost pursuant to its warranty obligations. Plaintiffs assert claims for (1) Breach of Express and Implied Warranties, (2) Negligent Misrepresentation, (3) Fraudulent Concealment, (4) Unjust Enrichment, and (5) Violation of the consumer protection/consumer fraud statutes of several states.

**WHEREAS**, on February 24, 2023, Plaintiffs and Defendant filed a joint stipulation to stay the case pending settlement discussions and the exchange of discovery.

**WHEREAS**, as a result of extensive arm's length negotiations, including an in-person mediation on June 20, 2023 conducted by the Honorable Layn R. Phillips (Ret.) of Phillips ADR Enterprises (PADRE), Plaintiffs, Class Counsel and Defendant have entered into this Agreement;

**WHEREAS**, Class Counsel have conducted substantial discovery, have investigated the facts and underlying events relating to the subject matter of the claims, have carefully analyzed the applicable legal principles and have concluded, based upon their investigation, and taking into account the risks, uncertainties, burdens and costs of further prosecution of their claims and taking into account the substantial benefits to be received pursuant to this Agreement as set forth below, which, in the view of the Plaintiffs and Class Counsel, is designed for the purpose of putting to rest all controversies with iFIT that were or could have been alleged or brought and that a resolution and compromise on the terms set forth herein is fair, reasonable, adequate and in the best interests of the Plaintiffs and the Class;

**WHEREAS**, iFIT denies and continues to deny each and every allegation of liability, wrongdoing and damages and further denies that the Action may be properly maintained as a class action except for settlement purposes. Nonetheless, without admitting or conceding any liability or damages whatsoever and without admitting wrongdoing or conceding the appropriateness of class treatment for claims asserted in any future complaint, iFIT has agreed to settle the Action on the terms and conditions set forth in this Agreement solely to avoid the substantial expense, inconvenience, burden and disruption of continued litigation;

**WHEREAS**, Class Counsel represent and warrant that they are fully authorized to enter into this Agreement on behalf of Plaintiffs; and

**WHEREAS**, it is agreed that this Agreement shall not be deemed or construed to be an admission, concession or evidence of any violation of any federal, state or local statute, regulation, rule or other law or principle of common law or equity or of any liability or wrongdoing whatsoever by iFIT or any of the Released Parties or of the truth or validity of any of the claims that Plaintiffs have asserted.

**NOW, THEREFORE**, without any admission or concession by Plaintiffs or Class Counsel of any lack of merit to their allegations or claims and without any admission or concession by iFIT of any liability or wrongdoing or lack of merit in its defenses on the merits or to the propriety of class treatment of Plaintiffs' claims in a non-settlement context, in consideration of the mutual covenants and terms contained herein and subject to the final approval of the Court, Plaintiffs, Class Counsel, and iFIT agree as follows:

## **II. DEFINITIONS**

A. As used in and solely for the purposes of this Agreement and the attached exhibits (which are an integral part of this Agreement and are incorporated in their entirety by reference), the following terms have the following meanings:

1. "Action" means *Balfour, et al. v. iFIT Health and Fitness*, Case No. 1:23-cv-00067 (D. De.) pending before the Honorable Colm F. Connolly.
2. "Agreement" means this Settlement Agreement and Release as well as the exhibits attached hereto or incorporated herein, including any subsequent amendments and any exhibits to such amendments.
3. "Attorneys' Fees and Expenses" means any and all attorneys' fees, costs, and expenses that may be awarded by the Court for work performed in the Action for the benefit of the Class, as described in Section VIII of this Agreement.

4. “Claim” means a claim for compensation via the submission of a Claim Form as provided for under Section IV of this Agreement.

5. “Claim Deadline” means one year from the Notice Date.

6. “Claim Forms” means the forms approved by the Court that Class Members must complete and submit on or before the Claim Deadline to be eligible for the benefits described herein, which shall be substantially in the form of Exhibit 1 hereto.

7. “Claims Period” means the time period during which Class Members may submit Claim Forms in accordance with the Claims Process. The Claims Period shall begin on the Notice Date and end on the Claim Deadline.

8. “Claims Process” means the process described in this Agreement and further agreed to by the Parties and the Class Action Settlement Administrator.

9. “Class” means, for settlement purposes only:

All persons in the United States or its territories who, on or before January 23, 2023, purchased a Class Device. Excluded from the Class are Defendant; any entity in which Defendant has a controlling interest or which has a controlling interest in Defendant; Defendant’s legal representatives, assigns and successors; and all judges who have presided over the Action and any member of the judges’ immediate families.

10. “Class Action Settlement Administrator” means the third-party agent or administrator agreed to by the Parties and appointed by the Court to implement the notice and other settlement requirements of this Agreement. The Parties agree that Epiq Global shall serve as Class Action Settlement Administrator, subject to approval by the Court.

11. “Class Counsel” means Cafferty Clobes Meriwether and Sprengel LLP and Sauder Schelkopf LLC.

12. “Class Device” means any fitness equipment manufactured by iFIT or any of its past, present and future parents, predecessors, successors, spin-offs, assigns, holding

companies, joint-ventures and joint-venturers, partnerships and partners, members, divisions, stockholders, bondholders, subsidiaries, related companies, or affiliates (including specifically, but without limitation, iFIT, Inc. fka ICON Health & Fitness, Inc. and Free Motion Fitness, Inc.) equipped with a Royal Wolf, Argon 1, or Argon 2 tablet, which was (1) purchased on or before January 23, 2023; (2) and which a Class Member connected to the iFIT network between November 1, 2021, and January 23, 2023. A full list of applicable model numbers is attached as Exhibit 2.

13. “Class Member” means a member of the Class who does not submit a timely and valid opt out request.

14. “Court” means the United States District Court for the District of Delaware.

15. “Defect” means a documented failure of the tablet installed in Class Devices due to the alleged corruption of the flash memory chip equipped therein, and which manifests as one of the failure modes described in Section IV of this Agreement.

16. “Defendant” means iFIT Health & Fitness Inc.

17. “Email Notice for the Refund Remedy” means direct notice delivered via email, as described in Section V of this Agreement, to Class Members eligible for the Refund Remedy as that remedy is described in Section IV of this Agreement. Email Notice for the Refund Remedy will be in substantially the same form as Exhibit 3.

18. “Email Notice for the Repair Remedy” means direct notice delivered via email, as described in Section V of this Agreement, to Class Members eligible for the Repair Remedy as that remedy is described in Section IV of this Agreement. Email Notice for the Refund Remedy will be in substantially the same form as Exhibit 4.



19. “Fairness Hearing” means the hearing conducted by the Court to determine whether to approve this Agreement as fair, reasonable, and adequate.

20. “Final Approval” means the date on which the Court enters the Final Order.

21. “Final Effective Date” means the date on which the Final Order and/or Final Judgment approving this Agreement becomes final. For purposes of this Agreement the Final Effective Date will be:

a. The date on which the time to appeal therefrom has expired, if no appeal has been taken from the Final Order and/or Final Judgment; or

b. The date on which all appeals therefrom, including petitions for rehearing or re-argument, petitions for rehearing *en banc* and petitions for *certiorari* or any other form of review, have been finally disposed of in a manner that affirms the Final Order or Final Judgment, if any appeal has been taken from the Final Order and/or Final Judgment; or

c. Any other date agreed to in writing by Class Counsel and iFIT’s Counsel.

22. “Final Judgment” means the Court’s final judgment as described in Section X of this Agreement.

23. “Final Order” means the Court’s Order approving the Settlement and this Agreement, as described in Section X of this Agreement.

24. “iFIT” means iFIT Health and Fitness Inc.

25. “iFIT’s Counsel” means Terry E. Welch, Bryan S. Johansen, and Andrew V. Collins of Parr Brown Gee & Loveless LLP.

26. “Mailed Notice for the Refund Remedy” means the mailed notice program, as described in Section V of this agreement, for Class Members eligible for the Refund Remedy, as that remedy is described in Section IV of this Agreement. The Mailed Notice for the Refund Remedy will be in substantially the same form as Exhibit 5.

27. “Mailed Notice for the Repair Remedy” means the mailed notice program, as described in Section V of this agreement, for Class Members eligible for the Repair Remedy, as that remedy is described in Section IV of this Agreement. The Mailed Notice for the Repair Remedy will be in substantially the same form as Exhibit 6.

28. “Long Form Notice” means the comprehensive and court-approved notice that provides information about the settlement, including the remedies and relief available therein, and advises Class Members about their rights, including the right to object. The Long Form Notice shall be published on the Settlement Website. The Long Form Notice will be in substantially the same form as Exhibit 7.

29. “Notice” means the notice program consisting of Email Notice, Mailed Notice, and (if applicable) Publication Notice as described in Section V of this Agreement.

30. “Notice And Administrative Costs” means the reasonable and authorized costs and expenses of effecting notice in accordance with this Agreement and the Preliminary Approval Order and all reasonable and authorized costs and expenses incurred by the Class Action Settlement Administrator in administering the Agreement, including but not limited to costs and expenses associated with assisting Class Members, processing claims, and other reasonable and authorized fees and expenses incurred by the Class Action Settlement Administrator.

31. “Notice Date” means the date thirty (30) days following entry of the Preliminary Approval Order by which the Class Action Settlement Administrator must effect the Notice provided for in Section V of this Agreement and create and activate the Settlement Website provided for in Section V of this Agreement.

32. “Objection Deadline” means the date by which objections to this Agreement must be submitted, which shall be one-hundred-and-twenty (120) days after the Notice Date.

33. “Opt-Out” means member of the Class who properly and timely submits a request for exclusion from the Class as set forth in Section VI of this Agreement.

34. “Opt-Out Deadline” means the date by which Opt-Out Requests must be submitted, which shall be one hundred and twenty (120) days after the Notice Date.

35. “Opt-Out List” means the list compiled by the Class Action Settlement Administrator pursuant to Section VI of this Agreement identifying those members of the Class who properly and timely submit a request for exclusion from the Class.

36. “Parties” means Plaintiffs and iFIT, as each of those terms is defined in this Agreement.

37. “Plaintiffs” means Scott Balfour, Don Lee, Kuldeep Singh, Matthew Templon, and Shelia Voorheis.

38. “Preliminary Approval Order” means the Order to be entered by the Court preliminarily approving the Settlement as outlined in Section X of this Agreement and in substantially the same form as Exhibit 8 hereto.

39. “Publication Notice” means the Court approved publication notice program described in Section V of this Agreement. The Publication Notice will, if necessary

under the terms of this Agreement, be created by the Class Action Settlement Administrator for appropriate publications in consultation with Class Counsel and Defendants' Counsel and submitted to the Court for approval.

40. "Release" means the release and waiver set forth in Section IX of this Agreement and in the Final Order and Final Judgment.

41. "Released Parties" or "Released Party" means iFIT, iFIT Inc., NordicTrack, Inc., Free Motion Fitness, Inc., any manufacturer of a Class Device, and each of their past, present and future parents, predecessors, successors, spin-offs, assigns, holding companies, joint-ventures and joint-venturers, partnerships and partners, members, divisions, stockholders, bondholders, subsidiaries, related companies, affiliates, officers, directors, employees, associates, dealers, representatives, suppliers, vendors, advertisers, service providers, distributors and sub-distributors, agents, insurers, attorneys, administrators and advisors. The Parties expressly acknowledge that each of the foregoing is included as a Released Party even though not identified by name herein.

42. "Service Awards" means such funds as may be awarded by the Court to Plaintiffs to compensate them for their participation in the Action, as described in Section VIII of this Agreement.

43. "Settlement" means this Settlement Agreement, including all exhibits.

B. Other capitalized terms used in this Agreement but not defined in this Section shall have the meanings ascribed to them elsewhere in this Agreement.

C. All terms defined in this Agreement have the definition asserted herein solely for the purposes of this Agreement.

D. The terms "he or she" and "his or her" include "it" or "its" where applicable.

E. The plural of any defined term includes the singular, and the singular of any defined term includes the plural, as the case may be.

### **III. CERTIFICATION OF SETTLEMENT CLASS**

A. The Parties stipulate to certification, for settlement purposes only, of a Class defined as follows:

All persons in the United States or its territories who, on or before January 23, 2023, purchased a Class Device. Excluded from the Class are Defendant; any entity in which Defendant has a controlling interest or which has a controlling interest in Defendant; Defendant's legal representatives, assigns and successors; and all judges who have presided over the Action and any member of the judges' immediate families.

B. Solely for the purpose of implementing this Agreement and effectuating the Settlement, iFIT stipulates to the Court entering an Order preliminarily certifying the Class, appointing Plaintiffs as representatives of the Class, and appointing Class Counsel as counsel for the Class.

C. Solely for the purpose of implementing this Agreement and effectuating the Settlement, iFIT stipulates that Plaintiffs and Class Counsel meet the requirements of Federal Rules of Civil Procedure 23(a) and 23(b)(3).

### **IV. SETTLEMENT RELIEF**

A. Subject to the terms of this Agreement, Class Members will be eligible for the remedies described herein if they satisfy both of the following criteria:

1. The tablet equipped in a Class Member's Class Device failed due to the Defect, as evidenced by the tablet manifesting any one of the following symptoms when the Class Device is plugged in and powered on:

a. Permanently stuck on a white screen displaying the iFIT name and Logo bootloader screen;

- b. Permanently stuck on a black screen displaying the text "API: 3";
- c. Permanently stuck on the Android Halo screen;
- d. Permanently stuck on a black screen with only the Bluetooth light turned on;
- e. Displays the text "iFit>", continuously reboots, and only displays the flashing text "iFit>";
- f. Permanently stuck on a screen displaying only "iFit>";
- g. Permanently stuck on a screen displaying only a chevron (">");
- h. Permanently stuck on a screen displaying only a flashing chevron (">"); or
- i. Permanently stuck displaying a blank white screen.

2. The failure occurred after November 1, 2021, or within one (1) year from the Notice Date.

B. Depending on the current condition of their Class Device, Class Members shall be entitled to one—and only one—of the following three remedies for each Class Device they own or owned that satisfy the above-referenced criteria:

**Option 1 – Repair Remedy:** With respect to Class Members who are still in possession of a Class Device that failed due to the Defect but have yet to repair it or whose Class Device fails due to the Defect within one (1) year of the Notice Date, iFIT shall replace and install a replacement tablet or console at no cost. The replacement parts and service will be provided by iFIT, and iFIT shall have sole discretion to determine whether to replace only the tablet or the entire console (i.e., the housing in which the tablet is installed, as well as the tablet itself). For

the avoidance of doubt, the Agreement requires iFIT to provide and install one of these two options.

**Option 2 – Refund Remedy:** With respect to Class Members who, on or before the Notice Date, paid iFIT to repair a Class Device that failed due to the Defect, iFIT shall refund any documented and verified amounts paid to iFIT to repair or replace the Device’s console or tablet, including all amounts paid to iFIT for diagnosis, replacement parts, and accompanying service.

**Option 3 – Credit Remedy:** With respect to Class Members who previously (i) contacted iFIT about the Defect in a Class Device prior to the Notice Date, as reflected in iFIT’s records, (ii) did not receive a no-cost repair, and (iii) subsequently disposed of their Class Device, iFIT will compensate each such Class Member with a coupon for 20% off (up to a value of \$600) toward the purchase of fitness equipment and/or service at either of [www.nordictrack.com](http://www.nordictrack.com), [www.proform.com](http://www.proform.com), or [www.workoutwarehouse.com](http://www.workoutwarehouse.com), at the Class Member’s election.

C. In addition to Options 1 through 3 above, any Class Member who on or before the Notice Date (1) paid for an iFIT streaming content subscription membership and subsequently lost access to the streaming content for one or more months because the tablet on their Class Device ceased to function and (2) contacted iFIT for repairs, but iFIT failed to repair or replace the tablet at no cost within a month of such a request being made, shall be entitled to 20% off a twelve month extension of that same subscription membership. Notwithstanding the foregoing, nothing in this Agreement prohibits iFIT from implementing or continuing to implement any additional customer satisfaction or goodwill policy, program, or procedure at their discretion, and may extend goodwill consideration to individual Class Members on a case-by-case basis. No

such goodwill decision by iFIT, however, shall act to deprive a Class Member of the benefits available under the Settlement.

D. In order to participate in the relief to which they may be entitled pursuant to this Settlement, Class Members must timely submit to the Class Action Settlement Administrator by the Claim Deadline a valid Claim Form and any proof required to substantiate their claim, as set forth in the Claim Form.

E. The Class Action Settlement Administrator, in consultation with, and with the agreement of, iFIT's Counsel and Class Counsel shall be responsible for, without limitation:

1. Establishing a process through which Class Members may obtain and submit Claim Forms and submit Claims for relief pursuant to this Section;
2. Receiving and maintaining any correspondence from members of the Class regarding Claims for relief under this Section;
3. Forwarding all completed Claim Forms to iFIT and Class Counsel upon request; and
4. Performing any and all duties and tasks required to administer the process of receiving and processing all Claims made by any Class Member pursuant to this Agreement.

F. If a Class Member contacts iFIT during the Claims Period regarding a Class Device that allegedly failed due to the Defect, iFIT shall direct any such Class Member to participate in the Claims Process and shall not compensate any such Class Member except through the Claims Process.

G. Either Party shall have the right to challenge any potential errors made by the Class Action Settlement Administrator in the processing, handling, reviewing, approving, and



paying of claims. Any such challenge that the Parties cannot resolve among each other shall be submitted to the Court for resolution.

H. If the Class Action Settlement Administrator suspects fraud or misleading conduct with respect to any Claim, the Class Action Settlement Administrator will immediately bring the Claim to the attention of Class Counsel and Counsel for iFIT, who shall meet and confer with the Class Action Settlement Administrator concerning the claim, and who reserve the right to bring the Claim to the attention of the Court and/or the appropriate authorities.

#### V. NOTICE TO THE CLASS

A. Notice and Administrative Costs shall be paid by iFIT separate and apart from any relief made available to Class Members.

B. Solely for the purpose of implementing this Agreement and effectuating the Settlement, the Parties stipulate that they will request the Court to appoint Epiq Global as Class Action Settlement Administrator. Once approved by the Court, the Class Action Settlement Administrator will be an agent of the Court and will be subject to the Court's supervision and direction as circumstances may require. The Class Action Settlement Administrator shall use its best efforts to provide notice to the Class as described in this Agreement, the Preliminary Approval Order, and as may be ordered by the Court.

C. The Class Action Settlement Administrator shall send to each appropriate State and Federal official the materials specified in 28 U.S.C. § 1715 and otherwise comply with its terms.

D. **Components of Notice.** Notice shall be accomplished through a combination of notice delivered directly to Class Members as follows: Email Notice and Mailed Notice, as described below. If the Email Notice and the Mailed Notice do not reach a sufficient proportion of the Class, then the Settlement Administrator shall effect Court approved Publication Notice as

described below. The Notice as specified in the Preliminary Approval Order and this Agreement shall comply with all applicable laws, including but not limited to, Fed. R. Civ. P. 23, the Due Process Clause of the United States Constitution, and any other applicable statute, law or rule.

1. **Email Notice.** On or before the Notice Date, the Class Action Settlement Administrator shall commence sending Email Notices, to all Class Members for whom iFIT is able to locate a valid email address in its records. This Email Notice will take one of two forms, depending on the type of remedy the individual Class Member is eligible for. The Class Action Settlement Administrator shall determine the remedy each Class Member is eligible for based on their review of iFIT's records.

a. **Email Notice for the Refund Remedy.** This Email Notice shall be sent to Class Members who are eligible for the Refund Remedy as this remedy is described in Section IV. The Email Notice for the Refund Remedy shall be substantially in the form attached as Exhibit 3.

b. **Email Notice for the Repair Remedy.** This Email Notice shall be sent to Class Members who are eligible for the Repair Remedy as this remedy is described in Section IV. The Email Notice for the Repair Remedy shall be substantially in the form attached as Exhibit 4.

2. **Mailed Notice.** For Class Members whose email address is unknown to iFIT or whose Email Notice was returned as undeliverable but for whom a physical address is available in iFIT's records, the Class Action Settlement Administrator shall send Mailed Notice via postcard, by U.S. Mail, proper postage prepaid. In addition, the Class Action Settlement

Administrator shall: (1) re-mail any notices returned by the United States Postal Service with a forwarding address and (2) by itself or using one or more address research firms, as soon as practicable following receipt of any returned notices that do not include a forwarding address, research such returned mail for better addresses, and promptly mail copies of the applicable notice to any better addresses so found. The postcards will take one of two forms, depending on the type of remedy the individual Class Member is eligible for. The Class Action Settlement Administrator shall determine the remedy each Class Member is eligible for based on their review of iFIT's records.

a. **Mailed Notice for the Refund Remedy.** This postcard shall be sent to Class Members who are eligible for the Refund Remedy as this remedy is described in Section IV. The Email Notice for the Refund Remedy shall be substantially in the form attached as Exhibit 5.

b. **Mailed Notice for the Repair Remedy.** This postcard shall be sent to Class Members who are eligible for the Repair Remedy as this remedy is described in section IV. The Email Notice for the Repair Remedy shall be substantially in the form attached as Exhibit 6.

3. **Settlement Website.** Prior to sending Notice, the Class Action Settlement Administrator shall establish a Settlement Website that will inform Class Members of the terms of this Agreement, their rights, dates and deadlines, and other related information. The Settlement Website shall include, in .pdf format, materials agreed upon by the Parties and/or

required by the Court, including the Long Form Notice, which shall be in substantially the same form as Exhibit 7.

4. **Toll-Free Telephone Number.** Prior to sending the first Mailed Notice, the Class Action Settlement Administrator shall establish a toll-free telephone number that will provide Settlement-related information to members of the Class.

5. **Publication Notice.** Based on the expertise, experience, and informed opinion of the Class Action Settlement Administrator, the Parties agree the deliverability of Email Notice and Mailed Notice efforts will be monitored, and if needed, a cost-effective method of providing Publication Notice (media notice) will also be implemented. These notice efforts constitute the best notice practicable under the circumstances and satisfy due process.

E. The Class Action Settlement Administrator may make appropriate modifications to the Notice described in this Section and the Exhibits to this Agreement that have been approved by iFIT, Class Counsel, and the Court, and are consistent with Due Process and the terms of this Section. The Settlement Administrator may request the assistance of the Parties to facilitate Notice to Class Members and to accomplish such other purposes as may be approved by iFIT's Counsel and Class Counsel. The Parties shall reasonably cooperate with such requests.

## VI. REQUESTS FOR EXCLUSION

A. Any Class Member who wishes to be excluded from the Class must mail a written request for exclusion to the Class Action Settlement Administrator at the address provided in the Notice and the Settlement Website, postmarked no later than the Opt-Out Deadline specifying that they wish to be excluded from the Settlement and otherwise complying with the terms stated in the Preliminary Approval Order. A request for exclusion must include (i) the full name and current address and telephone number of the Class Member and (ii) a clear written statement of

their desire to be excluded from the Class signed by the person submitting the request for exclusion.

B. The Class Action Settlement Administrator shall forward copies of any written requests for exclusion to Class Counsel and iFIT's Counsel. A list reflecting all requests for exclusion shall be filed with the Court no later than thirty (30) days after the Opt-Out Deadline.

C. If a potential Class Member files a request for exclusion, he or she may not file an objection under Section VII of this Agreement.

D. A member of the Class may opt-out on an individual basis only. So-called "mass" or "class" opt-outs, whether filed by third parties on behalf of a "mass" or "class" of class members or multiple class members where no personal statement has been signed by each and every individual class member, shall not be allowed.

E. Any member of the Class who does not file a timely written request for exclusion as provided in this Section shall be bound by all subsequent proceedings, orders and judgments, including, but not limited to, the Release, Final Order, and Final Judgment in the Action, even if he, she or it has litigation pending or subsequently initiates litigation against iFIT relating to the claims and transactions released in the Action. iFIT's Counsel shall provide to the Class Action Settlement Administrator, within ten (10) days of the entry of the Preliminary Approval Order, a list of all counsel for anyone who has then-pending litigation against iFIT relating to Class Devices and/or otherwise covered by the Release. However, for the avoidance of doubt, the Parties hereby state and confirm that they do not intend to release claims raised in the action styled *Pagano et al v. NordicTrack Inc et al.*, Case No. 1:23-cv-00058 (D. Utah), which claims are unrelated to the Defect, or claims for personal injury or property damage not relating to the

Defect. If, however, *Pagano's* putative class includes Class Members with claims related to the Defect, those claims—and only those claims—are deemed released on the terms set forth herein.

## VII. OBJECTIONS TO SETTLEMENT

A. Any Class Member who has not filed a timely written request for exclusion and who wishes to object to the fairness, reasonableness, or adequacy of this Agreement or the proposed Settlement, the award of Attorneys' Fees and Expenses, or the Service Awards to Plaintiffs must deliver or mail to Class Counsel and to iFIT's Counsel and file with the Court by the Objection Deadline a written statement of their objections.

B. An objection must include (i) the full name and current address and telephone number of the Class Member; (ii) the model number of their Class Device; (iii) proof of purchase of their Class Device; (iv) a clear and detailed written statement of the specific legal and factual bases for each and every objection, accompanied by any legal support for the objection the objector believes applicable; (v) the identity of any counsel representing the objector; (vi) a statement whether the objector intends to appear at the Final Approval Hearing, either in person or through counsel, and, if through counsel, identifying that counsel; (vii) a list of all persons who will be called to testify at the Final Approval Hearing in support of the objections and any documents to be presented or considered; (viii) the objector's signature and the signature of the objector's duly authorized attorney or other duly authorized representative (if any), and (ix) the objector's email address. In addition, any Class Member objecting to the settlement shall 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, whether state, federal, or otherwise, in the United States in the previous five years. If the Class Member or his or her counsel has not made any such prior objection, the Class Member shall affirmatively so state in the written materials provided with the objection.

C. Any Class Member who files and serves a written objection, as described in the preceding Paragraph, may appear at the Fairness Hearing, either in person or through personal counsel hired at the Class Member's expense, to object to the fairness, reasonableness, or adequacy of this Agreement or the proposed Settlement, or to the award of Attorneys' Fees and Expenses or the Service Awards to Plaintiffs. Class Members or their attorneys who intend to make an appearance at the Fairness Hearing must deliver or mail a notice of intention to appear to Class Counsel and iFIT's Counsel, and file said notice with the Court, on a date ordered by the Court (which shall be at least fourteen (14) days before the Fairness Hearing).

D. Any Class Member who fails to comply with the provisions of Paragraphs VII.A through VII.C above shall waive and forfeit any and all rights he or she may have to appear separately and/or to object, and shall be bound by all the terms of this Agreement and by all proceedings, orders and judgments, including, but not limited to, the Release, the Final Order, and the Final Judgment in the Action. The exclusive means for any challenge to this Settlement shall be through the provisions of this Section. Without limiting the foregoing, any challenge to the Settlement, Final Approval Order, or Final Judgment shall be pursuant to appeal under the Federal Rules of Appellate Procedure and not through any collateral attack.

E. Any Class Member who objects to the Settlement shall be entitled to all of the benefits of the Settlement if this Agreement and the terms contained herein are approved, as long as the objecting Class Member complies with all requirements of this Agreement applicable to Class Members.

#### **VIII. ATTORNEYS' FEES AND EXPENSES AND PLAINTIFFS' SERVICE AWARDS**

A. Plaintiffs will apply for reasonable Service Awards for the time and efforts spent by Plaintiffs on tasks related to the Action. Each Plaintiff will request a Service Award equal to \$3,000.00. Any such awards shall be subject to Court approval and will be paid by iFIT. iFIT's

obligation to pay any such awards shall be limited to the amounts set forth in this Paragraph, and iFIT shall be under no obligation to pay any amounts in excess of those amounts.

B. Class Counsel will apply to the Court for an award of Attorneys' Fees and Expenses in the amount of nine-hundred-and-seventy-five-thousand dollars (\$975,000) to be paid by iFIT separate and apart from any relief made available to Class Members. Any award of Attorneys' Fees and Expenses shall be subject to Court approval. iFIT's obligation to pay Attorneys' Fees and Expenses shall be limited to the nine-hundred-and-seventy-five-thousand dollars (\$975,000) and iFIT shall be under no obligation to pay any court-ordered amounts in excess thereof.

C. Class Counsel shall have the sole authority and discretion to allocate any Court-awarded attorneys' fees and expenses amongst themselves and any other attorneys or firms who have appeared in this action on behalf of Plaintiffs.

## **IX. RELEASE**

A. The Parties agree to the following Release, which shall take effect upon entry of the Final Order and Final Judgment.

B. In consideration of the Settlement, Plaintiffs and each Class Member, on behalf of themselves and any other legal or natural persons who may claim by, through, or under them, agree to fully, finally, and forever release, relinquish, acquit, discharge, and hold harmless the Released Parties from any and all claims, demands, suits, petitions, liabilities, causes of action, rights, and damages of any kind and/or type regarding the subject matter of the Action, including, but not limited to, compensatory, exemplary, punitive, expert and/or attorneys' fees or by multipliers, whether past, present, or future, mature, or not yet mature, known or unknown, suspected or unsuspected, contingent or non-contingent, derivative or direct, asserted or unasserted, whether based on federal, state or local law, statute, ordinance, regulation, code,



contract, common law, or any other source, or any claim of any kind related arising from, related to, connected with, and/or in any way involving the Defect in Class Devices as alleged in the Action, in any manner that was, or could have been, defined, alleged or described in the Action or any amendments of the Action. The Parties explicitly agree that this Release shall bind each Class Member, whether or not that Class Member claims and/or receives compensation under the Agreement.

C. Notwithstanding the foregoing, Plaintiffs and Class Members are releasing only claims that arise from, relate to, connect with, and/or in any way involve the Defect in Class Devices as alleged in the Action. The Plaintiffs, Class Members, and Defendant do not intend to, and the Parties hereby confirm they do not, release claims unrelated to the Defect or claims alleged in the Action, including the claims raised in *Pagano et al v. NordicTrack Inc et al.*, Case No. 1:23-cv-00058 (D. Utah), or claims for personal injury, property damage, or subrogation, which are unrelated to the Defect alleged in the Action. However, to the extent any members of the putative class alleged in *Pagano* also possess claims relating to the Defect, such claims are released.

D. Plaintiffs and Class Members are not releasing claims relating to iFIT's performance of the obligations imposed upon it by virtue of this Agreement, or its compliance with the terms of this Agreement.

E. The Final Order and Final Judgment will reflect these terms.

F. Plaintiffs and Class Members expressly agree that this Release, the Final Order, and/or the Final Judgment is, will be, and may be raised as a complete defense to, and will preclude any action or proceeding encompassed by, this Release.

G. Plaintiffs and Class Members shall not now or hereafter institute, maintain, prosecute, assert, and/or cooperate in the institution, commencement, filing, or prosecution of any suit, action, and/or proceeding, against the Released Parties, either directly or indirectly, on their own behalf, on behalf of a class or on behalf of any other person or entity with respect to the claims, causes of action, and/or any other matters released through this Settlement.

H. In connection with this Agreement, Plaintiffs and Class Members acknowledge that they may hereafter discover claims presently unknown or unsuspected, or facts in addition to or different from those that they now know or believe to be true concerning the subject matter of the Action and/or the Release herein. Nevertheless, it is the intention of Plaintiffs and Class Members in executing this Agreement to fully, finally and forever to settle, release, discharge, and hold harmless all such matters, and all claims relating thereto which exist, hereafter may exist, or might have existed (whether or not previously or currently asserted in any action or proceeding) with respect to the Action, except as otherwise stated in this Agreement.

I. Plaintiffs expressly understand and acknowledge, and all Plaintiffs and Class Members will be deemed by the Final Order and Final Judgment to acknowledge and waive Section 1542 of the Civil Code of the State of California, which provides that:

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.

Plaintiffs and Class Members expressly waive and relinquish any and all rights and benefits that they may have under, or that may be conferred upon them by, the provisions of Section 1542 of the California Civil Code, or any other law of any state or territory that is similar, comparable or equivalent to Section 1542, to the fullest extent they may lawfully waive such rights.

J. Plaintiffs represent and warrant that they are the sole and exclusive owners of all claims that they are releasing under this Agreement. Plaintiffs further acknowledge that they have not assigned, pledged, or in any manner whatsoever, sold, transferred, assigned, or encumbered any right, title, interest or claim arising out of or in any way whatsoever pertaining to the Action, including without limitation, any claim for benefits, proceeds, or value under the Action and that Plaintiffs are not aware of anyone other than themselves claiming any interest, in whole or in part, in the Action or in any benefits, proceeds, or values under the Action. Class Members receiving payments pursuant to this Agreement shall, by remaining as Class Members in this Settlement, represent and warrant that they are the sole and exclusive owner of all claims that they are releasing under the Settlement and that they have not assigned, pledged, or in any manner whatsoever, sold, transferred, assigned, or encumbered any right, title, interest, or claim arising out of or in any way whatsoever pertaining to the Action, including without limitation, any claim for benefits, proceeds, or value under the Action, and that such Class Member(s) are not aware of anyone other than themselves claiming any interest, in whole or in part, in the Action or in any benefits, proceeds, or values under the Action.

K. Without in any way limiting its scope, and, except to the extent otherwise specified in the Agreement, this Release covers by example and without limitation, any and all claims for attorneys' fees, attorneys' liens, costs, expert fees, or consultant fees, interest, or litigation fees, costs or any other fees, costs, and/or disbursements incurred by Class Counsel.

L. In consideration for the Settlement, iFIT and its past or present officers, directors, employees, agents, attorneys, predecessors, successors, affiliates, subsidiaries, divisions, and assigns shall be deemed to have, and by operation of the Final Approval Order shall have, released Class Counsel and each current and former Plaintiff from any and all causes of action

that were or could have been asserted pertaining solely to the conduct in filing and prosecuting the litigation or in settling the Action.

M. Plaintiffs and Class Counsel acknowledge that they have conducted sufficient independent investigation and discovery to enter into this Settlement Agreement and, by executing this Settlement Agreement, state that they have not relied upon any statements or representations made by the Released Parties or any person or entity representing the Released Parties, other than as set forth in this Settlement Agreement.

N. Nothing in this Release shall preclude any action to enforce the terms of the Agreement, including participation in any of the processes detailed herein.

O. Plaintiffs and Class Counsel hereby agree and acknowledge that the provisions of this Release are applicable to iFIT, its past or present officers, directors, employees, agents, attorneys, predecessors, successors, affiliates, subsidiaries, divisions, and assigns.

P. No person shall have any claim against iFIT, Counsel for iFIT, Plaintiffs, Class Counsel, the Released Parties, and/or the Class Action Settlement Administrator based on the Court approved Notice or any determinations, distributions, or awards made with respect to any Claim. This provision does not affect or limit in any way the right of review of any challenged Claim as provided in this Settlement Agreement. The applicable dispute procedures set forth in this Agreement shall be the sole and exclusive means of resolving disputes based on any determinations, distributions, awards, or payments made with respect to any Claim. For the avoidance of doubt, in no event shall Plaintiffs, Class Counsel, iFIT, or Counsel for iFIT, have any liability for claims of wrongful or negligent conduct on the part of the Class Action Settlement Administrator or their agents.

Q. Plaintiffs and Class Counsel hereby agree and acknowledge that the provisions of this Release together constitute an essential and material term of the Agreement and shall be included in any Final Order and Final Judgment entered by the Court.

**X. PRELIMINARY APPROVAL ORDER, FINAL ORDER, FINAL JUDGMENT, AND RELATED ORDERS**

A. The Signatories shall seek from the Court, within a reasonable time after the execution of this Agreement, a Preliminary Approval Order, substantially in the form of Exhibit 8 hereto (subject to Court approval). The Preliminary Approval Order shall, among other things:

1. Preliminarily approve the Settlement;
2. Require the dissemination of the Notice and the taking of all necessary and appropriate steps to accomplish this task;
3. Determine that the Notice complies with all legal requirements, including, but not limited to, Fed. R. Civ. P. 23 and the Due Process Clause of the United States Constitution;
4. Schedule a date and time for a Fairness Hearing to determine whether the Settlement should be finally approved by the Court;
5. Require that Class Members who wish to exclude themselves to submit an appropriate and timely written request for exclusion as directed in this Agreement and that a failure to do so shall bind those Class Members who remain in the Class;
6. Require Class Members who wish to appear to object to this Agreement to submit an appropriate and timely written statement as directed in the Agreement;
7. Require attorneys representing Class Members, at the Class Members' expense, to file a notice of appearance as directed in this Agreement;

8. Issue a preliminary injunction enjoining potential Class Members, pending the Court's determination of whether the Settlement should be given final approval, from challenging in any action or proceeding any matter covered by this Settlement, except for proceedings in this Court to determine whether the Settlement will be given final approval;

9. Appoint the Class Action Settlement Administrator;

10. Authorize iFIT to take all necessary and appropriate steps to establish the means necessary to implement the Agreement; and

11. Issue other related Orders to effectuate the preliminary approval of the Agreement.

B. After the Fairness Hearing, the Plaintiffs and iFIT shall seek to obtain from the Court a Final Order and Final Judgment. The Final Order and Final Judgment shall, among other things:

1. Find that the Court has personal jurisdiction over all Plaintiffs and Class Members, that the Court has subject matter jurisdiction over the claims asserted in the Action, and that venue is proper;

2. Finally approve the Agreement and Settlement, pursuant to Fed. R. Civ. P. 23;

3. Finally certify the Class for settlement purposes only;

4. Find that the Notice and its dissemination methodology complied with all laws, including, but not limited to, Fed. R. Civ. P. 23 and the Due Process Clause of the United States Constitution;

5. Dismiss the Action with prejudice and without costs;

6. Incorporate the Release set forth in the Agreement and make the Release effective as of the date of the Final Order and Final Judgment;
7. Issue a permanent injunction enjoining Class Members from challenging in any action or proceeding any matter covered by this Settlement;
8. Authorize the Parties to implement the terms of the Agreement;
9. Retain jurisdiction relating to the administration, consummation, enforcement, and interpretation of the Agreement, the Final Order and Final Judgment, and for any other necessary purpose; and
10. Issue related Orders to effectuate the final approval of the Agreement and its implementation.

#### **XI. MODIFICATION OR TERMINATION OF THIS AGREEMENT**

A. Within fifteen (15) days after the occurrence of any of the following events and upon written notice to counsel for all Parties, the Parties shall have the right to withdraw from the Settlement and terminate this Agreement:

1. If the Court fails to approve the Agreement as written or if on appeal the Court's approval is reversed or modified;
  2. If the Court materially alters any of the terms of the Agreement, except that a reduction in an award of Attorneys' Fees and Expenses or Plaintiffs' Service Awards shall not be deemed to be a material alteration; or
  3. If the Preliminary Approval Order or the Final Order and Judgment is not entered by the Court or is reversed or modified on appeal, or otherwise fails for any reason.
- In the event of a withdrawal pursuant to this Paragraph, any certification of a Class for purposes of settlement will be vacated, without prejudice to any Party's position on the issue of class certification and the amenability of the claims asserted in the Action to class treatment, and the

Plaintiffs and iFIT shall be restored to their litigation position existing immediately before the execution of this Agreement.

B. If Class Members properly and timely submit requests for exclusion from the Class as set forth in Section VI of this Settlement Agreement, thereby becoming Opt-Outs, and are in a number more than the confidential number submitted to the Court by the Parties under seal, then at its sole election, iFIT may withdraw from the Settlement and terminate this Agreement. In that event, all of iFIT's obligations under this Agreement shall cease to be of any force and effect, and the Parties shall be restored to their litigation position existing immediately before the execution of this Agreement. In order to elect to withdraw from the Settlement and terminate this Agreement on the basis set forth in this Paragraph, iFIT must notify Class Counsel in writing of its election to do so within ten (10) business days after the Opt-Out List has been served on the Parties. In the event that iFIT exercises such right, Class Counsel shall have twenty (20) business days or such longer period as agreed to by the Parties to address the concerns of the Opt-Outs. If through such efforts the total number of members of the Opt-Out List subsequently becomes and remains fewer than the number of Class Members submitted to the Court under seal at the time of filing the Motion for Preliminary Approval, iFIT shall withdraw its election to withdraw from the Settlement and terminate the Agreement. In no event, however, shall iFIT have any further obligation under this Agreement to any Opt-Out unless such Class Member withdraws his/her request for exclusion. For purposes of this Paragraph, Opt-Outs shall not include (i) persons who are specifically excluded from the Class; (ii) Class Members who elect to withdraw their request for exclusion; and (iii) Opt-Outs who agree to sign an undertaking that they will not pursue an individual claim, class claim, or any other claim that would otherwise be a Released Claim as defined in this Agreement.



C. In the event of withdrawal by iFIT in accordance with the terms set forth in Paragraphs XI.A or XI.B above, the Agreement shall be null and void, shall have no further force and effect with respect to iFIT, and shall not be offered in evidence or used in any litigation for any purpose, including the existence, certification, or maintenance of any proposed or existing class, or the amenability of these or similar claims to class treatment. In the event of such withdrawal, this Agreement and all negotiations, proceedings, and documents prepared and statements made in connection herewith shall be without prejudice to iFIT, the Plaintiffs, and the Class Members, and shall not be deemed or construed to be an admission or confession in any way by any Party of any fact, matter, or proposition of law and shall not be used in any manner for any purpose, and the Parties to the Action shall stand in the same position as if this Agreement had not been negotiated, made, or filed with the Court.

## **XII. GENERAL MATTERS AND RESERVATIONS**

A. iFIT has denied and continues to deny each and all of the claims and contentions alleged in the Action and has denied and continues to deny that it has committed any violation of law or engaged in any wrongful act that was alleged or that could have been alleged in the Action. iFIT believes that it has valid and complete defenses to the claims asserted against it in the Action and denies that it committed any violations of law, engaged in any unlawful act or conduct, or that there is any basis for liability for any of the claims that have been, or might have been, alleged in the Action. Nevertheless, iFIT has concluded that it is desirable that the Action be fully and finally settled in the matter and upon the terms and conditions set forth in this Agreement.

B. The obligation of the Parties to conclude the proposed Settlement is and shall be contingent upon each of the following:

1. Entry by the Court of the Final Order and Final Judgment approving the Settlement, from which the time to appeal has expired or which has remained unmodified after any appeal(s); and

2. Any other conditions stated in this Agreement.

C. Plaintiffs, iFIT, and their respective counsel agree to keep the existence and contents of this Agreement confidential until the date on which the Motion for Preliminary Approval is filed; provided, however, that this Section shall not prevent (i) iFIT from disclosing such information, prior to the date on which the Motion for Preliminary Approval is filed, to state and federal agencies, independent accountants, actuaries, advisors, financial analysts, insurers, or in house attorneys; (ii) the Parties and their counsel from disclosing such information to persons or entities (such as experts, courts, co-counsel, and/or administrators) to whom the Parties agree disclosure must be made in order to effectuate the terms and conditions of this Agreement; and (iii) iFIT and/or Plaintiffs from disclosing this Agreement and the contents of this Agreement to any Party or Released Party.

D. Plaintiffs and Class Counsel agree that any and all confidential information made available to them solely through the settlement process was made available on the condition that neither Plaintiffs nor Class Counsel may disclose it to third parties (other than experts or consultants retained by Plaintiffs in connection with the Actions); that it not be the subject of public comment; that it not be used by Plaintiffs or Class Counsel in any way in this litigation or otherwise should the Settlement not be achieved, and that it is to be returned if a Settlement is not concluded; provided, however, that nothing contained herein shall prohibit Plaintiffs from seeking such information through formal discovery if not previously requested through formal

discovery or from referring to the existence of such information in connection with the Settlement of the Action.

E. Within ninety (90) days after the Final Effective Date (unless the time is extended by agreement of the Parties), Class Counsel, any expert or other consultant employed by them in such capacity, or any other individual with access to documents provided by iFIT and/or its Counsel to Class Counsel shall either: (1) return to iFIT's Counsel all such documents and materials (and all copies of such documents in whatever form made or maintained) produced during the settlement process by iFIT and/or its Counsel, and any and all handwritten notes summarizing, describing, or referring to such documents; or (2) certify to iFIT's Counsel that all such documents and materials (and all copies of such documents in whatever form made or maintained) and any and all handwritten notes summarizing, describing, or referring to such documents have been destroyed, provided, however, that this Section shall not apply to any documents made part of the record in connection with a Claim, nor to any documents made part of a Court filing, nor to Class Counsel's work product.

F. Six (6) months after the completion of the Claims Process, the Class Action Settlement Administrator shall destroy or return all documents and materials to iFIT and/or its Counsel and/or Class Counsel that produced the documents and materials, except that it shall not destroy any and all information and/or documentation submitted by Class Members. Nothing in this Agreement shall affect any confidentiality order or protective order in the Action.

G. iFIT's execution of this Agreement shall not be construed to release – and iFIT expressly does not intend to release – any claim iFIT may have or make against any insurer for any cost or expense incurred in connection with this Settlement, including, without limitation, for attorneys' fees and costs.

H. Class Counsel further represent that the Plaintiffs: (1) have agreed to serve as representatives of the Class proposed to be certified herein; (2) are willing, able, and ready to perform all of the duties and obligations of representatives of the Class, including, but not limited to, being involved in discovery and fact finding; (3) have read the pleadings in the Action, or have had the contents of such pleadings described to them; (4) are familiar with the results of the fact-finding undertaken by Class Counsel; (5) have been kept apprised of settlement negotiations among the Parties, and have either read this Agreement, including the exhibits annexed hereto, or have received a detailed description of it from Class Counsel and they have agreed to its terms; (6) have consulted with Class Counsel about the Action and this Agreement and the obligations imposed on representatives of the Class; (7) have authorized Class Counsel to execute this Agreement on their behalf; and (8) shall remain and serve as representatives of the Class until the terms of this Agreement are effectuated, this Agreement is terminated in accordance with its terms, or the Court at any time determines that said Plaintiffs cannot represent the Class.

I. The Parties acknowledge and agree that no opinion concerning the tax consequences of the proposed Settlement to Class Members is given or will be given by the Parties nor are any representations or warranties in this regard made by virtue of this Agreement. Each Class Member's tax obligations, and the determination thereof, are the sole responsibility of the Class Member, and it is understood that the tax consequences may vary depending on the particular circumstances of each individual Class Member.

J. iFIT represents and warrants that each individual executing this Agreement on behalf of iFIT is authorized to enter into this Agreement.

K. This Agreement, complete with its exhibits, sets forth the sole and entire agreement between and among the Parties with respect to its subject matter, and it may not be altered, amended, or modified except by written instrument executed by Class Counsel and iFIT's Counsel. The Parties expressly acknowledge that no agreements, arrangements, or understandings not expressed in this Agreement exist among or between them and that in deciding to enter into this Agreement, they rely solely upon their judgment and knowledge. This Agreement supersedes any prior agreements, understandings, or undertakings (written or oral) by and between the Parties regarding the subject matter of this Agreement.

L. This Agreement and any amendments thereto shall be governed by and interpreted according to the law of the State of Delaware notwithstanding its conflict of law provisions.

M. Any disagreement regarding and/or action to enforce this Agreement shall be commenced and maintained only in the United States District Court for the District of Delaware

N. Plaintiffs, Class Counsel, and iFIT's Counsel hereby agree not to issue any press releases regarding this Settlement or publicize it in any way and further agree not to engage in any communications with the media or the press, on the internet, or in any public forum, orally or in writing, that relate to this Settlement or the Litigation other than statements that are fully consistent with the Class Notice.

O. Whenever this Agreement requires or contemplates that one of the Parties shall or may give notice to the other, notice shall be provided by e-mail and/or next-day (excluding Saturdays, Sundays and Federal Holidays) express delivery service as follows:

If to iFIT, then to:

Terry E. Welch  
Bryan S. Johansen

Andrew V. Collins  
PARR BROWN GEE & LOVELESS LLP  
101 South 200 East, Suite 700  
Salt Lake City, Utah 84111  
Telephone: (801) 532-7840

If to Plaintiffs, then to:

Daniel Herrera  
Cafferty Clobes Meriwether & Sprengel LLP  
135 S. LaSalle Street, Suite 3210  
Chicago, IL 60603  
Telephone: 312-782-4880  
Facsimile: 312-782-4485

Joseph G. Sauder  
Sauder Schelkopf LLC  
1109 Lancaster Avenue  
Berwyn, PA 19312  
Telephone: 888-711-9975

P. All time periods set forth herein shall be computed in calendar days unless otherwise expressly provided. In computing any period of time prescribed or allowed by this Agreement or by order of the Court, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a Federal Holiday, or, when the act to be done is the filing of a paper in court, a day on which weather or other conditions have made the office of the clerk of the court inaccessible, in which event the period shall run until the end of the next day that is not one of the aforementioned days. As used in this Section, “Federal Holiday” includes New Year’s Day, Birthday of Martin Luther King, Jr., Presidents’ Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Patriot’s Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President,

the Congress of the United States, or the Clerk of the United States District Court for the District of Delaware.

Q. The Parties reserve the right, subject to the Court's approval, to agree to any reasonable extensions of time that might be necessary to carry out any of the provisions of this Agreement.

R. The Class, Plaintiffs, Class Counsel, iFIT and/or iFIT's Counsel shall not be deemed to be the drafter of this Agreement or of any particular provision, nor shall they argue that any particular provision should be construed against its drafter. The Parties agree that this Agreement was drafted by counsel for the Parties during extensive arm's length negotiations. No parol or other evidence may be offered to explain, construe, contradict, or clarify its terms, the intent of the Parties or their counsel, or the circumstances under which this Agreement was made or executed.

S. The Parties expressly acknowledge and agree that this Agreement and its exhibits, along with all related drafts, motions, pleadings, conversations, negotiations, and correspondence, constitute an offer of compromise and a compromise within the meaning of Federal Rule of Evidence 408 and any equivalent rule of evidence in any state. In no event shall this Agreement, any of its provisions or any negotiations, statements, or court proceedings relating to its provisions in any way be construed as, offered as, received as, used as, or deemed to be evidence of any kind in the Action, any other action, or in any judicial, administrative, regulatory, or other proceeding, except in a proceeding to enforce this Agreement or the rights of the Parties or their counsel. Without limiting the foregoing, neither this Agreement nor any related negotiations, statements, or court proceedings shall be construed as, offered as, received as, used as, or deemed to be evidence or an admission or concession of any liability or

wrongdoing whatsoever on the part of any person or entity, including, but not limited to, the Released Parties, Plaintiffs, or the Class or as a waiver by the Released Parties, Plaintiffs or the Class of any applicable privileges, claims or defenses.

T. The Parties, their successors and assigns, and their counsel undertake to implement the terms of this Agreement in good faith, and to use good faith in resolving any disputes that may arise in the implementation of the terms of this Agreement.

U. The waiver by one Party of any breach of this Agreement by another Party shall not be deemed a waiver of any prior or subsequent breach of this Agreement.

V. If one Party to this Agreement considers another Party to be in breach of its obligations under this Agreement, that Party must provide the breaching Party with written notice of the alleged breach and provide a reasonable opportunity to cure the breach before taking any action to enforce any rights under this Agreement.

W. The Parties, their successors and assigns, and their counsel agree to cooperate fully with one another in seeking Court approval of this Agreement and to use their best efforts to effect the prompt consummation of this Agreement and the proposed Settlement.

X. This Agreement may be signed with a facsimile signature and in counterparts, each of which shall constitute a duplicate original.

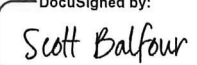
Y. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision if iFIT's Counsel, on behalf of iFIT, and Class Counsel, on behalf of Plaintiffs and Class Members, mutually agree in writing to proceed as if such invalid, illegal, or unenforceable provision had never been included in this



Agreement. Any such agreement shall be reviewed and approved by the Court before it becomes effective.

*Agreed to on the date indicated below.*

APPROVED AND AGREED TO BY:


DocuSigned by:  
  
BY: 77A6BD4C0444400... DATE: 2/23/2024  
SCOTT BALFOUR

DocuSigned by:  
  
BY: 96F9AE8B5800428... DATE: 2/23/2024  
DON LEE


DocuSigned by:  
  
BY: E442D447F61B439... DATE: 2/23/2024  
KULDEEP SINGH

DocuSigned by:  
  
BY: 422A583AFC7B40E... DATE: 2/23/2024  
MATTHEW TEMPLON

DocuSigned by:  
  
BY: 37D205FA8DC9406... DATE: 2/24/2024  
SHELIA VOORHEIS

  
BY: \_\_\_\_\_ DATE: 2/23/24  
DANIEL O. HERRERA  
CAFFERTY CLOBES MERIWETHER &  
SPRENGEL LLP

  
BY: \_\_\_\_\_ DATE: 2/26/24  
JOSEPH G. SAUDER  
SAUDER SCHELKOPF LLC

  
BY: \_\_\_\_\_ DATE: 02/26/2024  
TERRY E. WELCH  
BRYAN S. JOHANSEN  
ANDREW V. COLLINS  
PARR BROWN GEE & LOVELESS LLP

DocuSigned by:  
BY: *Dylan Ramsey* DATE: 2/27/2024  
16737409530B4GD...  
IFIT HEALTH AND FITNESS, INC.  
Dylan Ramsey  
Chief Legal Officer