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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