

SETTLEMENT AGREEMENT

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

RECITALS¹

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I. DEFINITIONS

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

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

1.02 “Agreement” or “Settlement Agreement” means this Settlement Agreement.

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

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

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

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

1.07 “Class” means:

- (a) All persons who purchased and/or owned the Watch between April 2011 and July 2014 in the United States.
- (b) Excluded from the Settlement Class are: (i) individuals who are or were during the class period partners, associates, officers, directors, shareholders, or employees of Defendant; (ii) all judges or magistrates of the United States or any state and their spouses; (iii) all individuals who timely and properly request to be excluded from the class, *i.e.* opt out; (iv) all persons who have previously released Defendant from claims covered by this Settlement; and (v) all persons who have already received payment from Defendant or who have otherwise been fully compensated by Defendant by virtue of free repair or free replacement of the Watch or Watchband and have not received compensation for any other claims with respect to the defects as alleged in the Action.

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

1.09 “Class Member” means a member of the Class.

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

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

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

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

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

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

1.16 “Defendant” means Garmin International, Inc.

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

- (a) The Court has issued all necessary orders under Fed. R. Civ. P. 23 approving of the Settlement Agreement in a manner substantially consistent with the terms and intent of this Settlement Agreement, including the Final Approval Order;
- (b) The Court enters a judgment, including as part of the Final Approval Order, (i) dismissing all claims in the Action with prejudice, and (ii) finally approving the Settlement Agreement in a manner substantially consistent with the terms and intent of this Settlement Agreement;
- (c) Either: (i) thirty-five (35) days have passed after entry of the Court’s judgment finally approving the Settlement Agreement in a manner substantially consistent with the terms and intent of this Settlement Agreement and, within such time, no appeal is taken after the Court’s entry of judgment and no motion or other pleading has been filed with the Court to set aside or in any way alter the judgment and/or orders of the Court finally approving of the Settlement Agreement, or (ii) all appellate, reconsideration, or other forms of review and potential review of the Court’s orders and judgment finally approving the Settlement Agreement are exhausted or become unavailable by virtue of the passage of time, and the Court’s orders and judgment are upheld, or not altered in a manner that is substantially inconsistent with the judgment contemplated by subparagraph (b) provided that, and without limitation, any change or modification that may increase Defendant’s liability, or not approve the use of the Claim Form, or reduce the scope of the Release, or reduce the scope of the Class or failure

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

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

1.18 “Final Approval Date” means the date upon which Final Approval occurs.

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

1.20 “Garmin” means:

- (a) Garmin International, Inc., a corporation organized and existing under the laws of the State of Kansas;
- (b) all past, present and future parents, subsidiaries, affiliates, or assigns of Garmin, including all shareholders, employees, servants, agents, attorneys, insurers, and reinsurers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.36 “Representative Plaintiffs” or “Plaintiffs” means Plaintiffs Andrea Katz and Joel Katz.

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

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

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

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

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

1.42 “Subclass 1” means:

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

1.43 “Subclass 2” means:

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

1.44 “Subclass 1 Member” means a Class Member of Subclass 1.

1.45 “Subclass 2 Member” means a Class Member of Subclass 2.

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

1.47 “Valid Claim Form” shall mean a Claim Form that:

- (a) is fully and truthfully completed (i) by the Class Member, or (ii) by a person authorized by law, such as a trustee, guardian or person acting under a power of attorney, to act on behalf of the Class Member with respect to a claim or right such as those in the Action;
- (b) attests that the Class Member purchased and/or owned the Watch between April 1, 2011 and July 31, 2014;
- (c) is executed under penalty of perjury;
- (d) is timely, as judged by the fact that it is postmarked by the deadline set by the Court or otherwise electronically received by the Settlement Administrator by the deadline as agreed by the Parties;
- (e) is returned by U.S. First Class mail to the Settlement Administrator as provided for in the Class Notice; or submitted electronically to the Settlement Administrator as agreed by the parties; and
- (f) is not successfully challenged. A Claim Form shall be treated as successfully challenged by Defendant only under the standards set forth in Paragraph 2.21 below.

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

1.49 “Watchband” means the watchband of the Garmin Forerunner 610 wristwatch.

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

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

II. SETTLEMENT PROCEDURES

A. Preliminary Approval.

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

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

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

B. Administration.

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

- (a) Providing to the Settlement Administrator e-mail addresses of those customers for whom Defendant has e-mail addresses and/or cellular numbers who Defendant has reason to believe from any source purchased or owned the Watch (*e.g.* online purchasers of the Watch, replacement band, and replacement kits, registrants on Garmin Connect and warranty registrants, people who complained about problems with the Watchband);
- (b) Providing to the Settlement Administrator physical addresses for those customers for whom Defendant has physical addresses but not e-mail addresses who Defendant has reason to believe purchased or owned the Watch based upon the criteria set forth in 2.03(a); and
- (c) Posting a link on the Garmin.com Support page to the Settlement Agreement Web Site to be established by the Settlement Claims Administrator.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C. Final Approval.

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

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

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

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

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

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

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

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

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

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

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

III. SETTLEMENT BENEFITS

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

- (a) **Repair or Replacement of Watchband:** Defendant agrees to repair or replace the Watchband at No Cost, even if the request is made after the warranty period has expired, provided that the request is made within 12 months of the date of final approval of the settlement by the Court. No proof of purchase will be required for repair of the watchband. Defendant will agree to an extension of the One-Year Consumer Limited Warranty provided that the extension will only cover any damage to, or loss of, the Watch as a result of the alleged defective Watchband, for 12 months following the date of final approval of settlement by the Court. If a repair or replacement of the watchband is not feasible, as determined by Defendant in its sole and absolute discretion, Defendant will replace the Watch with a comparable model, the Garmin Forerunner 620, which currently has a recommended retail price of \$349.99. If Defendant replaces the Watch with a comparable model, the comparable model shall come with the "One-Year Consumer Limited Warranty" from the date of the receipt or delivery of the replacement watch to the Class Member.
- (b) **Damage or Loss of Forerunner 610 Watch:**
 - (i) **Repair of the Watch:** Defendant agrees to repair the Watch at No Cost, even if the request is made after the warranty has expired, provided that the request is made within 12 months of the date of final approval of the settlement by the Court. If a repair of the Watch is not feasible, as determined by Defendant in its sole and absolute discretion, Defendant will replace the Watch with a comparable model, the Garmin Forerunner 620, which currently has a recommended retail price of \$349.99. If Defendant replaces the Watch with a comparable model, the comparable model shall come with the One-Year Consumer Limited Warranty from the date of the

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

- (ii) **Replacement of the Watch:** If the Watch was lost, in order to obtain the comparable model discussed in 3.01(b)(i) above, the Class Member will be required to provide a receipt or Objective Evidence of Proof (as defined in 3.01(b)(iii)) of purchase of the Watch.
 - (iii) **Objective Evidence of Proof:** If the Class Member does not have a receipt and cannot obtain one, the Class Member may provide written certification of the circumstances under which the Watch or Watchband was lost or damaged or repaired as a result of the Watchband detaching from the Watch, in combination with at least one of the items identified as Objective Evidence of Proof, as defined in Paragraph 1.23 above.
- (c) **Reimbursement for Out of Pocket Monies:** For those Class Members in Subclass 1 or Subclass 2 who paid to replace or repair the existing Watchband or Watch, Defendant agrees to provide Benefit Checks for the following:
- (i) **Subclass 1:** Class Members who purchased a replacement Watchband due to the alleged design defect: Defendant will reimburse the actual cost of the replacement Watchband to Class Members who have a receipt or Objective Evidence of Proof of purchase if purchased from Defendant or an authorized retailer of Defendant. If the Class Member purchased a replacement Watchband from a third party and it was a non-Garmin watchband, Defendant will reimburse the Class Member the actual cost of the non-Garmin watchband up to a maximum of \$50.00 if the Class Member has a receipt or Objective Evidence of Proof of purchase.
 - (ii) **Subclass 2:** Class Members who paid to repair the Watchband or Watch: Class Members who provide a receipt or Objective Evidence of Proof of repair of the Watchband or Watch and written certification in a form agreed upon by the Parties shall be reimbursed for their actual cost, if the repair was done by Defendant. For those Class Members who used a third party to repair the Watchband or Watch, Defendant will reimburse the Class Member for the actual cost of the repair up to a maximum of \$75.00 if the Class Member has a receipt or Objective Evidence of Proof of purchase.
- (d) **Recovery under Multiple Categories:** Nothing herein shall preclude or limit a Class Member from recovering more than one benefit under the same or multiple categories.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IV. RELEASE

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

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

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR

HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

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

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

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

V. REPRESENTATIONS AND WARRANTIES

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

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

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

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

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

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

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

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

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

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

VI. MISCELLANEOUS PROVISIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

To Representative Plaintiffs and/or Class Counsel:

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

To Defendant and/or Counsel for Defendant:

Jena M. Valdetero
BRYAN CAVE LLP

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

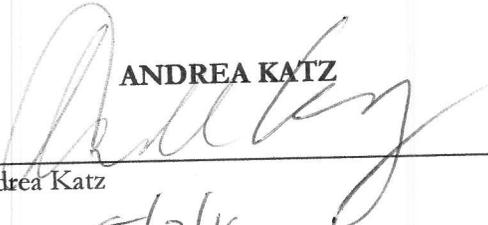
6.20 Defendant and Representative Plaintiffs acknowledge that they have been represented and advised by independent legal counsel throughout the negotiations that have culminated in the execution of this Settlement Agreement, and that they have voluntarily executed the Settlement Agreement with the consent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

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

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

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

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]



Andrea Katz
Date: 5/2/16
REPRESENTATIVE PLAINTIFF



Joel Katz
Date: 5/2/16
REPRESENTATIVE PLAINTIFF

HEIDEMAN NUDELMAN & KALIK PC

Richard D. Heideman
Noel J. Nudelman
Tracy Reichman Kalik

Date: _____
ATTORNEYS FOR PLAINTIFFS

HATCH, JAMES & DODGE PC

Mark F. James

Date: _____
ATTORNEYS FOR PLAINTIFFS

GARMIN INTERNATIONAL, INC.

By: _____
Title: _____
Date: _____

BRYAN CAVE LLP

Jena M. Valdetero
Date: _____
**ATTORNEYS FOR DEFENDANT
GARMIN INTERNATIONAL, INC.**

PARSONS BEHLE & LATIMER

Francis M. Wikstrom
Date: _____
**ATTORNEYS FOR DEFENDANT
GARMIN INTERNATIONAL, INC.**

ANDREA KATZ

JOEL KATZ

Andrea Katz

Joel Katz

Date: _____
REPRESENTATIVE PLAINTIFF

Date: _____
REPRESENTATIVE PLAINTIFF

HEIDEMAN NUDELMAN & KALIK PC

HATCH, JAMES & DODGE PC





Richard D. Heideman
Noel J. Nudelman
Tracy Reichman Kalik

Mark F. James

Date: May 3, 2016
ATTORNEYS FOR PLAINTIFFS

Date: May 3, 2016
ATTORNEYS FOR PLAINTIFFS

GARMIN INTERNATIONAL, INC.

By:

Title:

Date:

BRYAN CAVE LLP

PARSONS BEHLE & LATIMER

Jena M. Valdetero

Francis M. Wikstrom

Date: _____
**ATTORNEYS FOR DEFENDANT
GARMIN INTERNATIONAL, INC.**

Date: _____
**ATTORNEYS FOR DEFENDANT
GARMIN INTERNATIONAL, INC.**

ANDREA KATZ

JOEL KATZ

Andrea Katz

Joel Katz

Date: _____
REPRESENTATIVE PLAINTIFF

Date: _____
REPRESENTATIVE PLAINTIFF

HEIDEMAN NUDELMAN & KALIK PC

HATCH, JAMES & DODGE PC

Richard D. Heideman
Noel J. Nudelman
Tracy Reichman Kalik

Mark F. James

Date: _____
ATTORNEYS FOR PLAINTIFFS

Date: _____
ATTORNEYS FOR PLAINTIFFS

GARMIN INTERNATIONAL, INC.

Andrew R. Etkind

By: Andrew R. Etkind

Title: Vice President and General Counsel

Date: April 25, 2016

BRYAN CAVE LLP

Jenia M. Valdetero
Jenia M. Valdetero

Date: April 26, 2016
**ATTORNEYS FOR DEFENDANT
GARMIN INTERNATIONAL, INC.**

PARSONS BEHLE & LATIMER

Francis M. Wikstrom
Francis M. Wikstrom

Date: April 26, 2016
**ATTORNEYS FOR DEFENDANT
GARMIN INTERNATIONAL, INC.**