

**SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (the "Agreement") is entered into by and between Gary Mednick ("Mednick") and Steven Bayer ("Bayer") (collectively referred to below as the "Plaintiffs"), on behalf of themselves individually and the settlement class described below, on the one hand, and Precor Incorporated ("Precor"), on the other hand (collectively referred to below as the "Parties").

**RECITALS**

**WHEREAS**, Precor sold certain treadmills, specifically models 9.23, 9.27, 9.33, 9.35, TRM 211, TRM 223, TRM 243, TRM 425, and TRM 445 (hereafter "Treadmills");

**WHEREAS**, Plaintiffs each purchased a model 9.23 Treadmill for personal use in their homes;

**WHEREAS**, on May 16, 2014, Plaintiff Mednick filed suit against Precor in the United States District Court for the Northern District of Illinois, in an action styled Gary Mednick, et al. v. Precor Inc., Case No. 1:14-cv-03624. On June 9, 2014, Plaintiff Bayer also filed suit against Precor in the United States District Court for the Northern District of Illinois, in an action styled Steven Bayer, et al. v. Precor Inc., Case No. 1:14-cv-04231. Both cases alleged that five treadmill models, eight elliptical models, six stationary bicycles, and an Adaptive Motion Trainer all incorporated defective touch sensor heart rate monitoring. Both cases were consolidated under Case No. 1:14-cv-03624 (hereinafter, the "Lawsuit");

**WHEREAS**, on June 10, 2016, Plaintiffs' Motion for Class Certification regarding the treadmill, elliptical, stationary bicycles, and an Adaptive Motion Trainer models was denied, as no common design defect was found to exist among all the various types of exercise machines.

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**WHEREAS**, on July 14, 2016, the Plaintiffs filed a First Amended Complaint ("FAC") in the Lawsuit. In the FAC, the Plaintiffs, individually and on behalf of a putative class, asserted class action claims against Precor, under Illinois law (the Illinois Consumer Fraud and Deceptive Business Practices Act (the "Act")) and under the consumer protection statutes of California, Florida, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New York and Washington, alleging that Precor made material misrepresentations and/or omissions concerning the heart rate monitoring capabilities of its Treadmills. Plaintiffs are represented in the Lawsuit and the FAC by Lite DePalma Greenberg, LLC and Siprut PC (collectively "Class Counsel") and Gordon Law Offices, Ltd.;

**WHEREAS**, Precor has filed an answer to the FAC, denying that it violated the Act or any consumer protection statutes of the named states, and denying wrongdoing or liability on any of the claims asserted against it in the Lawsuit, and asserting various affirmative and other defenses;

**WHEREAS**, on October 27, 2016, Plaintiffs filed a Renewed Motion for Class Certification in the Lawsuit, seeking a class of consumers from five states, California, Illinois, Missouri, New Jersey and New York. On January 3, 2017, Precor filed an opposition to the Renewed Motion;

**WHEREAS**, on March 16, 2017, the Court certified Plaintiffs' proposed five-state class as to the issue of liability, appointed Mednick and Bayer as class representatives and appointed Katrina Carroll and Joseph J. Siprut, as Class Counsel.

**WHEREAS**, arm's length settlement negotiations have taken place between Class Counsel and Counsel for Precor, the result of which is this Agreement, which embodies all of the

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terms and conditions of the settlement between the Plaintiffs and Precor, and which is subject to the approval of the Court (the "Settlement");

WHEREAS, Class Counsel have concluded, after conducting substantial discovery in the Lawsuit, carefully analyzing the applicable laws relating to the class as certified by the Court, and months of negotiations, that it would be in the best interests of Plaintiffs and the Settlement Class to enter into this Agreement in order to avoid the uncertainties and delay of litigation, particularly trial and appeals, and to assure a benefit to the entire Settlement Class, Class Counsel consider the settlement set forth herein to be fair, reasonable, and adequate and in the best interests of Plaintiffs and all Class Members (as that term is defined below). Based upon the uncertainty and expense involved in litigation, the Parties hereto desire to settle the claims asserted in the Lawsuit, subject to Court approval, on the terms and conditions set forth below;

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, **IT IS HEREBY STIPULATED AND AGREED**, by and between the Plaintiffs, individually and on behalf of all Class Members (as that term is defined below), on the one hand, and Precor, on the other hand, that the Lawsuit shall be compromised and settled, subject to Court approval, on the terms and conditions set forth below.

#### **TERMS AND CONDITIONS**

1. **Purpose of Settlement.** This Agreement shall not be construed by anyone as an admission of any liability or damages of any kind by Precor, which liability and damages are expressly denied. This Agreement shall not be offered or received in evidence in any action or proceeding in any court or other tribunal as an admission or concession of liability or damages or wrongdoing of any nature on the part of Precor. This Agreement is being entered into by Precor solely to fully and completely settle, resolve, and compromise any and all disputes within the

scope of this Agreement between or among Precor and Plaintiffs and the Settlement Class, as described more fully in this this Agreement.

2. **Settlement Class.** Subject to Court final approval and the other provisions of this Agreement, Plaintiffs and Precor agree to certification pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure of the following Settlement Class, for purposes of settlement only:

All individual consumers who purchased new, from Precor or an authorized retailer<sup>1</sup> of Precor in the United States, one or more of the Treadmills. For consumers in California, Illinois, Missouri, New Jersey or New York, the Treadmill must have been purchased between May 16, 2010 and the date of this Agreement. For consumers in the remaining 45 states, the Treadmill must have been purchased in the four years prior to the date of this Agreement.

The Settlement Class excludes Precor and its employees, class counsel, judges who presided over the case, and their family members, who purchased from Precor or an authorized retailer.<sup>2</sup>

The Settlement Class also excludes retailers or others who purchased a Treadmill for resale, and all individual consumers who purchased a Treadmill that included, at the time of sale, an Advisory Notice (defined herein).

Individuals within the Settlement Class shall be referred to as the "Class Members." Further, Precor will work to reasonably identify email addresses and mailing addresses of between 3,000 to 4,000 Class Members who will be entitled to receive direct relief (the "Consumer List").

3. **Class Relief.** The Parties acknowledge that Treadmills are unique among items of cardiovascular exercise equipment in that the user engages in walking or running that creates alternating points of contact between the user and the machine, resulting in a rocking and/or

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<sup>1</sup> Authorized retailers of Precor shall specifically exclude, without limitation, auction websites such as eBay or Craigslist. Precor shall provide the Settlement Administrator with a list of authorized retailers.  
<sup>2</sup> See footnote number 1.

jarring motion that can, in certain instances, interfere with the reception of the user's heart rate signal, thereby reducing the efficacy of the heart rate handle systems incorporated in Precor Treadmills. The Parties acknowledge that chest straps, which are worn on the user's body in close proximity to the heart and which do not rely on handle sensor technology, provide increased accuracy in heart rate monitoring, and thus constitute valuable relief to Class Members. Under the Settlement, Precor will provide new chest straps to Class Members who purchased a Treadmill model, as specified below, that did not include a chest strap at the time of purchase. For Treadmill models that, as specified below, did include a chest strap at the time of purchase, Precor will provide a lengthened warranty for the chest strap. Class Members must proceed under one of three options, only one of which would be applicable to the purchase of any one Treadmill:

- a. **Benefit A: NEW CHEST STRAP – for Treadmills purchased that did not include a chest strap at the time of purchase.**

This option is available to each Class Member who purchased a Treadmill model TRM 223 or TRM 243 (models that did not have a chest strap for heart rate monitoring included in the purchase), and meet the requirements of the claims process provisions of Paragraph 10.d. of this Agreement.

Class Members who meet this clause 3.a are entitled to one (1) chest strap that is compatible with the Treadmills listed above for heart rate readings. Acceptable models that Precor may provide include the Polar T34 model chest strap. If such Polar T34 models are not available to Precor, then Precor may provide similar models from Polar or other suppliers.

- b. **Benefit B: NEW BLUETOOTH-COMPATIBLE CHEST STRAP– for Treadmills purchased that were not compatible with a chest strap.**

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This option is available to each Class Member who purchased a Treadmill model 9.23 or TRM 211 (models that were not compatible with a chest strap for heart rate monitoring), and meet the requirements of the claims process provisions of Paragraph 10.d. of this Agreement.

Class Members who meet this clause 3.b are entitled to one (1) Bluetooth compatible chest strap. Acceptable models that Precor may provide include the Polar H7 model chest strap. If such Polar H7 models are not available to Precor, then Precor may provide similar models from Polar or other suppliers.

c. **Benefit C: LENGTHENED WARRANTY ON CHEST STRAP – for Treadmills purchased that did include a chest strap at the time of purchase.**

This option is available to each Class Member who purchased a Treadmill model 9.27, 9.33, 9.35, TRM 425 or TRM 445 (models that did have a chest strap for heart rate monitoring included in the purchase), and meet the requirements of the claims process provisions of Paragraph 10.d. of this Agreement.

Class Members who meet this clause 3.c are entitled to a one (1) year lengthened warranty from the date of this Agreement on the original chest strap given to them as part of their purchase for heart rate readings. Acceptable models that Precor may provide, if a warranty exchange is to be made, include the Polar T34 model chest straps. If such Polar T34 models are not available to Precor, then Precor may provide similar models from Polar or other suppliers.

d. **Additional Advisory Notice Measures Taken by Precor.**

After the Class was certified and prior to the date of this Agreement, Precor began placing the Advisory Notice, defined below, on the consoles of its treadmills and certain other products. Solely for purposes of this Settlement, the Parties acknowledge that the Lawsuit and

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FAC were motivating factors for the including of the Advisory Notice. The Parties acknowledge that Treadmills are unique among items of cardiovascular exercise equipment in that the user engages in walking or running that creates alternating points of contact between the user and the machine, resulting in a rocking and/or jarring motion that can, in certain instances, interfere with the reception of the user's heart rate signal. Therefore, in addition to the Class Relief provided to Class Members, Precor is currently placing (but shall not be required to place) on its cardio equipment an Advisory Notice in a form and substance similar to the language shown below (the "Advisory Notice"). The Parties agree that the following Advisory Notice is sufficient to advise and notify consumers as to the limitations of the efficacy of the heart rate handle systems used in Precor Treadmills, and that such language would render moot the claims made in the Lawsuit if made after the date of this Agreement. The Advisory Notice reads:

"THE HEART RATE AND SMARTRATE® FEATURES ARE INTENDED FOR REFERENCE ONLY. THEY MAY NOT BE ACCURATE FOR EVERY USER OR AT EVERY SPEED AND ARE NOT INTENDED FOR USE AS A MEDICAL DEVICE. HOLDING THE HEART RATE HANDLE TOUCH SENSOR WHILE RUNNING MAY DECREASE ACCURACY OF THE HEART RATE READING AND IS NOT RECOMMENDED. PLEASE READ YOUR OWNER'S MANUAL AND VISIT PRECOR'S WEBSITE FOR FURTHER INFORMATION"

Precor does not admit any liability or damages for failure to place the Advisory Notice on, or attached to, the Treadmills or other products, and expressly states that Precor has previously advised consumers about the potential limitation of accuracy of heart rate readings for certain users and certain exercise conditions in various publications, and reserves any and all defenses regarding the adequacy of its notices, advisories and warnings to consumers that it provided prior to the date of this Agreement. Precor does not obligate itself to include the Advisory Notice on Treadmills for any set length of time.





4. **Settlement Administrator.** The Parties jointly agree on and designate Angeion Group as the Settlement Administrator for this Settlement. The Settlement Administrator, at its sole discretion but in accordance with the provisions of this Agreement, will evaluate and determine eligibility for the Class Relief to each Class Member, under the provisions of Paragraph 10.d. Precor shall bear all costs of notice and administration. In the event the Court does not give final approval to this Settlement, the Settlement Administrator shall immediately stop any and all activity on this case, and will not be paid for activity taking place thereafter.

5. **Release by Plaintiffs and the Settlement Class.** The Plaintiffs and each Class Member (except those who opt out), on their own behalf and on behalf of their predecessors, successors, heirs, estates, executors, administrators, trusts, trustees, beneficiaries, assigns, transferees, attorneys, representatives and all others with whom they are in privity ("Releasing Parties"), hereby covenant not to sue, and agree to release, acquit and forever discharge Precor and its past, present, and future officers, directors, agents, predecessors, assignees, parents, divisions, subsidiaries, affiliates, sister corporations, insurers and reinsurers, lenders, attorneys, employees, shareholders, administrators, successors, suppliers, distributors, sales agents, retailers, e-tailers, and any subsequent purchaser of all or substantial part of Precor's stock or assets (collectively the "Released Parties") as follows:

a. Plaintiffs release the Released Parties from and against all claims, demands, damages, nuisance annoyance damages, obligations, controversies, suits, liabilities, attorneys' fees, expert fees, expenses, injunctive remedies, and causes of actions at law or equity, whether or not known now, that in any way arise from or relate to the Treadmills and all of their parts and accessories including, but not limited to, any loss of money or value, or the loss of the reasonable use of the Treadmills ("Released Claims"). In addition, and in light of the enhanced



payment that Plaintiffs will receive, Plaintiffs will further release all other claims against the Released Parties, whether known or unknown, under federal law or state law. Plaintiffs understand that this release includes unknown claims and that they are waiving all rights and benefits afforded by Section 1542 of the California Civil Code, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO THE CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

b. Class Members release the Released Parties from any and all claims or causes of action that are asserted, that were at any time asserted, or that could have been asserted in the Lawsuit relating to the Released Claims, violations of the Act, and any and all provisions, rights and benefits of any similar state or federal laws or the common law.

6. Notice to the Class. Pursuant to Federal Rule of Civil Procedure 23(e), the Settlement Administrator shall issue notice as prescribed below, and all Class Members shall be afforded the right to either opt out from or object to this Settlement. Unless otherwise provided herein or as ordered by the Court, the Settlement Administrator shall issue notice as prescribed below no later than sixty (60) days after the Court enters the Preliminary Approval Order (as that term is defined in Paragraph 8 below) (the "Notice Date"). Within thirty (30) days after the date upon which the Court enters the Preliminary Approval Order, Precor shall provide the Settlement Administrator with email addresses and/or mailing addresses of the Consumer List. The Settlement Administrator shall then provide Email Notice and Mail Notice to those Class Members who are on the Consumer List and who will receive direct relief unless they Opt-Out, as outlined in 6.a or 6.b, and 10.d.2 below.

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a. **Email Notice.** No later than the Notice Date, the Settlement Administrator shall cause to be delivered via email to those on the Consumer List the following information: (i) the Direct Relief Settlement Notice, (a copy of which is attached as Exhibit A to this Agreement) and (ii) an Opt-Out Form (a copy of which is attached as Exhibit B to this Agreement) (collectively referred to as the "Direct Relief Notice Package").

b. **Mail Notice.** If the email notice bounces back as undeliverable or if the Consumer List only has a mailing address, the Settlement Administrator shall cause to be delivered the Direct Relief Notice Package via U.S. Mail to those on the Consumer List with known mailing addresses within seven (7) days after the Settlement Administrator receives notice of the email being undeliverable or no later than the Notice Date if the email address is unknown.

c. **Publication Notice.** No later than the Notice Date, the Settlement Administrator will begin Publication Notice as described in the Settlement Notice Plan. Publication Notice shall be published throughout the Claims Period (defined below). Publication Notice will include an interactive Website, an Internet Banner ad campaign established and administered by the Settlement Administrator at a website dedicated to this Settlement and claim process, and a print advertisement to be published in People magazine. The Publication Notice shall inform Class Members that they may obtain the Public Settlement Notice (a copy of which is attached as Exhibit C to this Agreement), an Opt-Out Form, and a Claim Form (a copy of which is attached as Exhibit D to this Agreement) (collectively referred to as the "General Notice Package") by calling the Settlement Administrator and/or by accessing the Website established by the Settlement Administrator. The Settlement Notice Plan, attached as Exhibit E, describes the methods of Publication Notice. The written Publication Notice is attached as Exhibit F.

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The Parties agree that distribution of the Direct Relief Notice Package and the General Notice Package in the manners described above constitutes the best notice practicable under the circumstances to Class Members, and complies fully with the provisions set forth in Federal Rule of Civil Procedure 23, and any and all substantive and procedural due process rights guaranteed by the United States Constitution and any other applicable law. The Parties also agree that the Direct Relief Notice Package and the General Notice Package sufficiently notify the Settlement Class of the terms of the proposed Settlement, their right to object to the Settlement or to opt out of the Settlement, and the deadlines and procedures to object, opt out or submit a Claim Form in connection with this Settlement.

7. Notice to the Appropriate Federal and State Officials. Not later than 10 days after this Agreement is filed with the Court, Precor shall provide notice to the appropriate Federal and State officials as required by the Class Action Fairness Act. The notice to be provided is attached (without exhibits) as Exhibit G to this Agreement. The Parties agree that this notice fully complies with the provisions set forth in the Class Action Fairness Act, 28 U.S.C. § 1715 and any other applicable law.

8. Necessary Court Approvals. This Agreement is conditioned on: 1) the entry of an order granting preliminary approval to the Settlement substantially in the form as attached hereto as Exhibit H (the "Preliminary Approval Order"), and 2) the entry of an order granting final approval to this Settlement and providing for the dismissal of the Lawsuit with prejudice substantially in the form attached hereto as Exhibit I (the "Final Approval Order"), and the occurrence of the Effective Date as that term is defined in Paragraph 12 of this Agreement. The hearing at which the Court will enter the Final Approval Order ("Final Fairness Hearing") shall be no later than ninety (90) days after the Notice Date, but no sooner than forty-five (45) days

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after the Notice Date, subject to the Court's schedule. Class Counsel shall submit papers in support of entry of the Final Approval Order, and for an award of attorneys' fees and expenses, no later than forty-five (45) days after the Notice Date, with responses to any objections to be filed fourteen (14) days prior to the Final Fairness Hearing.

9. **Event of Non-Approval.** In the event that the Court denies preliminary or final approval of this Agreement, or holds that it will not enter 1) the Preliminary Approval Order in substantially the same form as Exhibit 11 to this Agreement, or 2) the Final Approval Order in substantially the same form as Exhibit 1 to this Agreement, or if the Final Approval Order is modified in any material respect or vacated on appeal, then this Agreement shall become null and void and the Lawsuit will continue.

10. **Distribution of the Class Relief and Other Settlement Funds.**

a. **Attorneys' Fees and Expenses.** Pursuant to Federal Rule 23(h) and in connection with final approval of the settlement, Class Counsel shall petition the Court for an award of attorneys' fees, expenses and costs in an amount collectively not to exceed One Million Two Hundred Thousand Dollars (\$1,200,000). Precor shall be responsible for payment to Class Counsel of the amount of attorney fees, costs and expenses approved by the Court, not to exceed the total amount of \$1,200,000. The Parties agree that this Agreement is not contingent on the amount of attorneys' fees and expenses awarded by the Court, if an amount less than \$1,200,000 is awarded by the Court.

b. **Class Representative Awards.** The Plaintiffs, in consideration of their assumption and diligent performance of the duties and responsibilities as class representatives and the extensive time and effort they expended in connection with the Lawsuit, shall petition the Court for class representative awards in an amount not to exceed Ten Thousand Dollars



(\$10,000) to each of the two Plaintiffs, for a total of Twenty Thousand Dollars (\$20,000). These class representative awards are in addition to the amount of compensation the Plaintiffs are entitled to receive as Class Members, as specified below in Paragraph 10.c of this Agreement. Precor shall be responsible for payment to the Plaintiffs of class representation awards approved by the Court, not to exceed the amount of \$10,000 each, for a total of \$20,000.

c. **Settlement Distributions.** Within fourteen (14) calendar days after the Effective Date (as that term is defined below in Paragraph 12) or within fourteen (14) calendar days after the conclusion of the Claims Period (defined below), whichever is later, Precor shall electronically wire to Class Counsel their attorneys' fees and expenses and the class representative awards pursuant to Paragraph 10.b above. Within fourteen (14) calendar days after the Effective Date or within twenty-one (21) calendar days after the conclusion of the Claims Period (defined below), whichever is later, the Settlement Administrator shall commence the Class Relief distribution in accordance with the Claims Process under Paragraph 10.d. The Claims Administrator shall, after distribution of the Benefits, file a certificate with the Court in the Lawsuit attesting that the Class Relief has been distributed to the Settlement Class as provided for in this Agreement.

d. **Claims Process.** Any Class Member who is on the Consumer List, and who has not opted out, shall receive the form of Class Relief applicable to their Treadmill as provided in Paragraph 3 of this Agreement. Class Members who are on the Consumer List do not need to submit a Claim Form to be entitled to relief, but will need to provide their Treadmill's serial number to the Settlement Administrator to activate the lengthened warranty Benefit C, after receiving said Benefit C, if applicable. Class Members who are not listed on the Consumer List must submit a properly completed, written Claim Form (a copy of which is attached hereto



as Exhibit D) no later than 180 days after the Notice Date (the "Claims Period") specifying which Treadmill was purchased and the approximate date of purchase, and otherwise properly completing, furnishing and attesting to the information in the Claim Form. The Claim Form must include a proof of purchase, including but not limited to a serial number. The Claim Form shall be mailed to the Settlement Administrator, or Class Members can submit their Claim Form electronically through the Website established by the Settlement Administrator within the time period specified on the Claim Form and in the Settlement Notice. Plaintiffs' Counsel has the right to challenge the Settlement Administrator's denial of any Claim Form(s) to the extent that the denial is inconsistent with the terms of the Settlement Agreement. Defense Counsel has the right to challenge the Settlement Administrator's acceptance of any Claim Form(s) to the extent that the acceptance is inconsistent with the terms of the Settlement Agreement. If an agreement on any such challenge cannot be reached between Plaintiffs' Counsel, Defense Counsel, and the Settlement Administrator, the decision of the Settlement Administrator will be final.

(1) **Benefits.** Class Members submitting a Claim Form for Benefits A, B, or C shall be verified by the Settlement Administrator. The Settlement Administrator will consider all evidence and any available material submitted by the Class Member and will, at its sole discretion but in accordance with the provisions of this Agreement, determine whether the Class Member is entitled to Benefit A, B, or C no later than fourteen (14) days after the conclusion of the Claims Period.

(2) **Opt Outs and Objections.** No later than thirty (30) days before the Final Fairness Hearing, (the "Opt-out/Objection Deadline") Class Members may opt out of the Settlement or object to the Settlement by following the directions for objections specified in the Settlement Notice. In the event that more than one-hundred (100) Class Members opt-out of



the Settlement Class. Precor shall have the right, but not the obligation, to terminate this Settlement Agreement.

11. **Waiver of Appeal.** In the event that this Agreement receives final approval by the Court in the Lawsuit in accordance with Paragraph 8, the Plaintiffs, non-objecting Class Members, Class Counsel, and Precor hereto waive any right to appeal from any of the orders entered in the Lawsuit, including the Preliminary Approval Order and the Final Approval Order.

12. **Effective Date.** This Agreement shall become effective (the "Effective Date") following the entry of the Final Approval Order and on the date that the time has expired within which to appeal the entry of the Final Approval Order without any appeal having been taken, or, if appeal is taken, the date on which such appeal shall have been fully determined (subject to no further appeal as a matter of right) by the highest court before which such appeal is sought or allowed, and such appeal shall have been resolved in such manner as to permit the consummation of the Settlement effected by this Agreement in accordance with all of its terms and conditions.

13. **Choice of Law.** This Agreement shall be governed and interpreted according to the laws of the State of Illinois.

14. **Entire Agreement.** This Agreement and Exhibits referenced herewith represent the entire agreement among the Parties and there are no terms, representations, agreements, understandings or covenants, oral or otherwise, that are not incorporated into this Agreement.

15. **Capacity, Authority, Indemnity, and Hold Harmless.** All Parties entering into this Agreement have the capacity and authority to do so, and no third party has any rights that could affect the validity or legality of this Agreement. Class Counsel warrants, represents and agrees that it is the only authorized Class Counsel representing the Plaintiffs in the Lawsuit, and





that Class Counsel is fully authorized to execute this Settlement, and that Class Counsel has the full and sole right and power to enter into this Settlement and to collect attorney fees for the representation of Plaintiffs and the Settlement Class. Further, Class Counsel warrants and agrees jointly and severally to defend, indemnify and hold harmless Precor and the Released Parties and to pay any and all reasonable attorneys' fees and costs that may in the future be incurred as a result of defending against claims that any other lawyer or law firm has rights of class counsel, and/or rights to attorney fees or any other recovery or representation right respecting the Plaintiffs and/or any Class Member.

16. **Terms of Agreement Negotiated.** This Agreement has been negotiated and drafted by all Parties and their representatives. The Parties to this Agreement represent and warrant that they have read and understand this Agreement and have consulted with their respective counsel concerning its legal effect. No rule of construction shall apply to this Agreement construing its provisions in favor of or against any party.

17. **Execution in Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

18. **Amendment or Modification.** This Agreement may be amended or modified only by a written instrument signed by all Parties to this Agreement.

19. **Originals.** Facsimile and PDF copies of the Parties' signatures on this Agreement shall be deemed originals.

20. **Incorporation of Recitals.** The recital provisions set forth at the beginning of this Agreement are expressly incorporated into and as terms and conditions of this Agreement.

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**IN WITNESS WHEREOF**, the Parties have read and understood the terms and conditions of this Agreement, agree to be bound by all of its provisions, and have executed this Agreement on the date shown by their signatures below.

**PRECOR INCORPORATED**

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**GARY MEDNICK**

Dated: \_\_\_\_\_, 2018

By: \_\_\_\_\_

*Robert L. Hall*  
Authorized Representative  
Divisional Counsel

Dated: December 26, 2018

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**STEVEN BAYER**

Dated: \_\_\_\_\_, 2018

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Name:  
On Behalf of Class Counsel

Dated: \_\_\_\_\_, 2018

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IN WITNESS WHEREOF, the Parties have read and understood the terms and conditions of this Agreement, agree to be bound by all of its provisions, and have executed this Agreement on the date shown by their signatures below.

  
GARY MEDNICK

Dated: JANUARY 3, 2018

PRECOR INCORPORATED

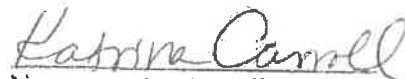
By:

  
Authorized Representative  
Divisional Counsel

Dated: December 26, 2018

STEVEN BAYER

Dated: \_\_\_\_\_, 2018

  
Name: Katrina Carroll  
On Behalf of Class Counsel

Dated: January 9, 2019, ~~2018~~

IN WITNESS WHEREOF, the Parties have read and understood the terms and conditions of this Agreement, agree to be bound by all of its provisions, and have executed this Agreement on the date shown by their signatures below.

**PRECOR INCORPORATED**

\_\_\_\_\_  
**GARY MEDNICK**

Dated: \_\_\_\_\_, 2018

By: \_\_\_\_\_

*Paul C. Hall*  
Authorized Representative  
Divisional Counsel

Dated: December 26, 2018

  
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**STEVEN BAYER**

Dated: December 31, 2018

\_\_\_\_\_  
Name:  
On Behalf of Class Counsel

Dated: \_\_\_\_\_, 2018

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