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## Treadmill Users Get Partial Cert. In Heart Monitor Suit

By Hannah Meisel

Law360, Springfield (March 17, 2017, 9:31 PM EDT) -- An Illinois federal judge on Thursday granted certification to a class of consumers alleging treadmill maker Precor Inc. sold them products with defective heart rate monitors on the issue of liability, but found that certification should be withheld on the issue of damages.

U.S. District Judge Harry Leinenweber certified a **class of people** who bought Precor treadmills with the allegedly defective heart monitor technology and are residents of California, Illinois, Missouri, New Jersey, and New York. Class representatives Gary Mednick and Steven Bayer originally filed suit against Precor in May of 2014, claiming the heart rate the treadmills were picking up from a user's palms were inaccurate.

In certifying the class, Judge Leinenweber first told Precor that it had to stop trying to block the suit by claiming the plaintiffs had no standing.

"The Court must also dispose of the old issue of standing," Judge Leinenweber wrote. "The Court rejected this argument both in its order denying Precor's Motion to Dismiss and in its last ruling allowing Plaintiffs to amend their Complaint. Precor may disagree with the Court's ruling, but if so, the company has not given the Court any reason to reconsider it. Precor brings no new argument, no overlooked legal authorities, and no fresh evidence in its latest attempt to dispel standing. While the Court would have been willing to take another look at the issue...it will not do so on a stale record."

Precor had **taken issue with** the lead plaintiffs' own testimony that they did not read any promotional materials before buying their treadmills, but rather were convinced to buy Precor treadmills by salespeople in third-party vendors. Judge Leinenweber on Thursday was similarly put off by the plaintiffs' admission, but said the design of the treadmills themselves act as a kind of promotion for the heart rate technology.

"Statements in Precor's brochures and on its website cannot serve as the common misrepresentations to the class," Judge Leinenweber wrote. "Nonetheless, Plaintiffs' quest for a common misrepresentation is saved by two things: the graphics on the Precor treadmills themselves and any material omissions by Precor. To take the omissions first, Precor either knew or it did not that the touch sensor heart rate monitors do not accurately measure the heart rate. Likewise, Precor either told its customers of this fact or it did not. Any alleged omission therefore is common to the class. In the same vein, all treadmill purchasers presumably saw the graphics on the machines. Courts routinely find that whether a product packaging, seen by all purchasers of the product, is misleading is an issue that satisfies commonality."

Judge Leinenweber's certification of the class, however, will not extend to damages for the

individual class members, as he said the laws in each of the five states, including the Illinois Consumer Protection Act, vary too greatly from one another.

“When the Court takes a peek beyond Illinois law, it turns out that the different states differ in what they allow an individual to recover under their consumer fraud statutes,” Judge Leinenweber wrote. “Thus, individual class members’ total recoveries will depend on what state they reside in. For these reasons, the Court concludes that certification of a single class is inappropriate as to the issue of damages. It therefore reserves the issue for individualized hearings.”

Judge Leinenweber had already **slimmed down the suit in September**, saying he’d allow the consumers to take another stab at class certification after **denying their first bid in June**, but he would only allow claims based on Illinois consumer protection law and substantially similar laws of other states.

At that time, Judge Leinenweber also said the consumers could also only sue for damages, blocking their request for injunctive relief barring the company from marketing based on the treadmills’ heart rate sensors, because the consumers have made clear they will not purchase another Precor product.

Representatives for the consumers could not be reached for comment on Friday.

The consumers are represented by Katrina Carroll and Kyle Shamberg of Lite DePalma Greenberg LLC, Joseph Sipur of Sipur PC and Richard Gordon of Gordon Law Offices Ltd.

Precor Inc. is represented by Michael Levinson of Seyfarth Shaw LLP and Jeffery Key of Key & Associates.

The case is Mednick v. Precor Inc., case number 1:14-cv-03624, in the U.S. District Court for the Northern District of Illinois.

--Additional reporting by Steven Trader, Kat Sieniuc and Diana Novak Jones. Editing by Joe Phalon.

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