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Precor Treadmill Buyers Want Final OK Of Heart Monitor Deal

By **Lauraann Wood**

Law360 (May 1, 2019, 3:10 PM EDT) -- A class of consumers who say a treadmill manufacturer sold them machines with defective heart monitors asked an Illinois federal judge Wednesday for final approval of a settlement that includes new chest straps or compensation for nearly 4,000 customers.

The deal between Precor Inc. and the consumers says that Precor will provide new heart rate monitor chest straps to each customer who bought a treadmill that came without them, and will extend the chest strap warranties for the customers whose treadmills included them. The consumers had sued Precor in 2014, claiming the company marketed its treadmills by highlighting a hand sensor meant to measure heart rate while knowing the sensors gave inaccurate measurements or didn't work at all.

Class counsel also intends to ask U.S. District Judge Harry D. Leinenweber to approve \$1.2 million in attorneys fees, and named plaintiffs Gary Mednick and Steven Bayer will each ask the court for a \$10,000 service award for bringing and litigating their suit, according to the motion.

The court preliminarily signed off on the deal in January. The class argued final approval is merited because the relief Precor has offered is "certainly within the range of reasonable outcomes and provide[s] class members with exactly what they have always sought through this lawsuit — treadmills that are capable of accurately monitoring their heart rates during exercise."

The consumers' motion comes after losing their **first attempt** at certification in June 2016 and then winning **partial certification** in March 2017. That certification order grouped a liability-only class of consumers from California, Illinois, Missouri, New Jersey and New York but found the states' laws vary too widely from one another to extend class treatment to the issue of damages.

But as the parties continued litigation, Precor stated its intention to move for decertification on personal jurisdiction grounds if a settlement could not be reached, the motion said. Certification of a damages class "would be hotly contested" by Precor, and conducting individualized hearings on those issues would be costly and time consuming, the consumers said.

Plus, the consumers' claims would be subject to a battle of experts that they'd have no guarantee of winning at trial, according to the motion.

"Therefore, while plaintiffs believe that their claims are strong, plaintiffs are also aware of the inherent risks and costs of continuing with complex litigation of this nature," the motion said.

Representatives for the parties did not immediately respond Wednesday to a request for comment.

In April 2017, Precor urged the judge to **reconsider his partial certification order**, saying the commonality factor in class certification had not been met because different consumers got different results when they used the heart rate monitors at issue. But the court **rejected Precor's request**, saying the company was rehashing old arguments.

Judge Leinenweber **trimmed the consumers' lawsuit** in 2016, blocking their bid to obtain injunctive relief and limiting the types of claims he'd allow to proceed.

The consumers are represented by Katrina Carrol, Kyle Shamberg, Danielle Alvarez and Katlyn Mathy of Lite Depalma Greenberg LLC and Richard Gordon of Gordon Law Offices Ltd.

Precor is represented by Michael Levinson and Louis Chronowski Jr. of Seyfarth Shaw LLP and Jeffrey 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 Diana Novak Jones. Editing by Alyssa Miller.

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