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***EXHIBIT 1***

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA**

**ROBERT W. MAUTHE, M.D., P.C.,**  
individually, and on behalf of all others  
similarly situated,

Plaintiff,

v.

**VERSA CARDIO, LLC,**

Defendant.

Case No. 5:16-cv-00570-JLS

**CLASS ACTION SETTLEMENT AGREEMENT**

This class action settlement agreement (“Agreement” or “Settlement Agreement”) is entered as of November 5, 2018, between Robert W. Mauthe, M.D., P.C. (“Plaintiff”), individually and on behalf of the class defined herein, and Versa Cardio, LLC (“Defendant”),. Plaintiff and Defendant are collectively referred to as the “Parties.”

**RECITALS**

A. On April 2, 2015, Plaintiff filed a class action complaint in the United States District Court, Middle District of Pennsylvania, against Defendant alleging that it sent fax advertisements to Plaintiff and class members in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 (the “TCPA”). Case No. 3:15-cv-00657, Dkt. No 1.

B. On February 4, 2016, Plaintiff’s Uncontested Motion to Transfer Pursuant to 28 U.S.C. § 1406 was granted and the case was transferred to the Eastern District of Pennsylvania. *Id.*, Dkt. No. 36

C. On May 17, 2016, Defendant filed a Motion for Judgment on the Pleadings. Case No. 5:16-cv-00570, Dkt. No. 5.

D. The Parties engaged in an initial mediation on September 19, 2016 with the Hon. Edward A. Infante (Ret.) of JAMS.

E. The Parties reached a tentative agreement at the mediation subject to funding by Evanston. Ultimately, Evanston refused to fund the agreement and subsequently filed a declaratory judgment action. *Evanston Ins. Co. v. Versa Cardio, LLC*, No. 5:17-cv-00180-PSG-SP (C.D. Cal.) (the “Coverage Action”).

F. On April 2, 2018, the court in the Coverage Action denied in part and granted in part, Evanston’s and Versa’s cross motions for summary judgment, holding that the TCPA claims asserted in this Action were covered by the Evanston Policy, up to a \$1 million liability limit.

G. The Coverage Action was subsequently appealed to the 9<sup>th</sup> Circuit.

H. On August 2, 2018, an Order issued denying the Motion for Judgment on the Pleadings without prejudice and with leave to re-file the Motion pending the result of the second mediation. Case No. 5:16-cv-00570, Dkt. No. 29.

I. The Parties to this Action and Evanston subsequently attended another mediation on September 17, 2018 with Brad Honoroff of the Mediation Group, resulting in this Settlement.

NOW, THEREFORE, the Parties, along with their counsel, in consideration of the benefits flowing from the Settlement Agreement set forth herein, agree to the Settlement, subject to Court approval, upon the following terms and conditions.

## **AGREEMENT**

### **1. DEFINITIONS**

As used in this Settlement Agreement, the following terms have the meanings specified below:

**1.1 “Claim Form”** means the claim form that will be posted to the Settlement Website that can be downloaded by Settlement Class Members, filled out, and submitted by facsimile, U.S. Mail or online, in substantially the form as that attached hereto as Exhibit 1.

**1.2 “Claim Period”** begins the date the Class Notice is sent and ends sixty days later.

**1.3 “Class Counsel”** means:

Elizabeth Ryan  
John Roddy  
BAILEY & GLASSER LLP  
99 High Street, Suite 304  
Boston, MA 02110

Edward A. Broderick  
Anthony I. Paronich  
BRODERICK & PARONICH, P.C.  
99 High Street, Suite 304  
Boston, MA 02110

Matthew P. McCue  
THE LAW OFFICE OF MATTHEW P. MCCUE  
1 South Avenue, Suite 3  
Natick, MA 01760

Richard Shenkan  
SHENKAN INJURY LAWYERS, LLC  
6550 Lakeshore Street  
West Bloomfield, MI 48323

**1.4 “Class Notice”** means the notice of this Settlement Agreement and Final Approval Hearing, which shall contain a claim form, and which is to be provided to the Settlement Class in accordance with this Agreement and substantially in the form of Exhibit 2 hereto, or in such form as may be ordered by the Court.

**1.5 “Class Representative”** means Robert W. Mauthe, M.D., P.C.

**1.6 “Court”** means the United States District Court for the Eastern District of Pennsylvania.

**1.7 “Defendant’s Counsel” means:**

Andrew M. Schwartz  
MARSHALL DENNEHEY WARNER COLEMAN & GOGGIN  
2000 Market Street, Suite 2300  
Philadelphia, PA 19103

**1.8 “Effective Date”** means the date five business days following the later of the following events: (i) the date upon which the time expires for filing a notice of appeal of the Court’s Final Approval Order and Judgment; or (ii) if there is an appeal or appeals of the Final Approval Order and Judgment, five business days after the date of entry of an order affirming the Final Approval Order and Judgment without material modification, and the time for review of that order has run, or entry of an order dismissing the appeal(s).

**1.9 “Fee Award”** means the total amount of attorneys’ fees and reimbursement of expenses awarded by the Court to Class Counsel.

**1.10 “Final Approval Hearing”** means the hearing before the Court where the Parties will request that the Court enter the Final Approval Order and Judgment, approve the Settlement Agreement, and approve the Fee Award and the Incentive Award to the Class Representative.

**1.11 “Final Approval Order and Judgment”** means a document substantially in the form of Exhibit 3 or in such form as may be ordered by the Court, to be entered by the Court following the Final Approval Hearing.

**1.12 “Incentive Award”** means any amount the Court awards to Plaintiff to recognize his efforts and risks in prosecuting this litigation on behalf of the Settlement Class.

**1.13 “Notice Deadline”** means the deadline for the Settlement Administrator to commence notice by faxing the Notice pursuant to the Notice Plan. The Notice Deadline will be thirty days following entry of the Preliminary Approval Order



**1.14 “Notice Plan”** means the plan for disseminating notice to members of the Settlement Class of the Settlement Agreement and of the Final Approval Hearing, as developed by the Settlement Administrator and approved by the Parties and set forth in greater detail in Section 4 herein.

**1.15 “Objection/Exclusion Deadline”** means the date by which (1) a written objection to this Settlement Agreement, or (2) a written request for exclusion, must be postmarked. The Objection/Exclusion Deadline is sixty days after the after the Notice is sent.

**1.16 “Preliminary Approval Order”** means the document substantially in the form of Exhibit 4 or such other order as may be entered by the Court for purposes of preliminarily approving the Settlement Agreement.

**1.17 “Released Claims”** means any and all claims, rights, causes of action, suits, obligations, debts, demands, agreements, promises, liabilities, damages, losses, controversies, costs, expenses, and attorneys’ fees of any nature whatsoever, whether based on any federal law, state law, common law, territorial law, foreign law, contract, rule, regulation, any regulatory promulgation (including, but not limited to, any opinion or declaratory ruling), common law, or equity, whether known or unknown, suspected, or unsuspected, asserted or unasserted, foreseen or unforeseen actual or contingent, liquidated or unliquidated, punitive or compensatory, as of the date of the Final Approval Order and Judgment, that were alleged or could have been alleged in the Class Action Complaint that arise out of or relate in any way to the sending of information to or from telephone facsimile machines, as well as any claims arising out of the same nucleus of operative facts as any of the claims asserted in the Action. Versa Cardio reserves the right to seek contribution or indemnity from any third-party(ies).

In addition, with respect to Class Representative only, “Released Claims” includes all claims arising, or that could arise in the future, out of any conduct or omissions occurring as of the date of preliminary court approval of the settlement that might be attributable to Versa Cardio.

**1.18 “Released Parties”** means Defendant Versa Cardio, LLC, Darin Slack, Admax Marketing, and all other persons and entities who played any role in sending telephone facsimiles for or on behalf of Versa Cardio (including any of their respective affiliates, parents, direct and indirect subsidiaries, agents, insurers (including but not limited to Evanston), and any company or companies under common control with any of them, and each of their respective predecessors, successors, past and present officers, directors, managers, employees, agents, servants, accountants, attorneys, advisors, shareholders, members, insurers, representatives, partners, vendors, issuers, and assigns, or anyone acting on their behalf).

**1.19 “Releasing Parties”** means: (a) Plaintiff; (b) Settlement Class Members who do not timely opt out of the Settlement Class (whether or not such members submit claims) and their respective present, former or subsequent assigns, heirs, successors, predecessors, parents, subsidiaries, officers, directors, shareholders, members, managers, partners, principals, representatives, agents, employees and anyone working on their behalf.

**1.20 “Settlement”** means the compromise and settlement described in this Agreement.

**1.21 “Settlement Administration Expenses”** means the expenses incurred by the Settlement Administrator in providing Notice pursuant to the Notice Plan approved by the Court, processing claims, and mailing checks for Settlement Class Members. Settlement Administration Expenses shall be paid from the Settlement Fund.

**1.22 “Settlement Administrator”** means the independent company that Defendant selects, agreed upon by Plaintiff, and the Court approves to notify the Settlement Class of the Settlement as described in Section 4 of this Agreement, and administer this Settlement.

**1.23 “Settlement Class”** means are all persons and entities residing in the United States who received on or after June 1, 2014, through the date of preliminary settlement approval on a telephone facsimile machine, computer, or other device an unsolicited advertisement from or on behalf of Versa Cardio.

**1.24 “Settlement Class Member”** means any person who is included within the definition of the Settlement Class and who has not submitted a valid request for exclusion.

**1.25 “Settlement Class Recovery”** means the amount of the Settlement Fund available for distribution to Settlement Class Members who submit claims, after payment of Settlement Administration Expenses, the Fee Award to Class Counsel (together with attorney expenses) and any approved Incentive Award to the Class Representative.

**1.26 “Settlement Fund”** means the amount of \$850,000 that Defendant and Evanston have agreed to pay pursuant to the terms of this Settlement Agreement, as set forth in Section 2.1.

**1.27 “Settlement Website”** means the website to be created by the Settlement Administrator containing full details and information about the Settlement, including this Agreement and the Notice, and to receive online claims.

## **2. SETTLEMENT RELIEF**

**2.1 Settlement Fund.** A Settlement Fund in the amount of \$850,000 will be created and maintained by the Settlement Administrator, with \$830,000 to be funded by Evanston and \$20,000 to be funded by Defendant. The Settlement Fund will be used to pay the claims of Settlement Class Members under this Agreement, Settlement Administration Expenses, any



Incentive Award to the Class Representative, and any Fee Award to Class Counsel (including any litigation expenses awarded). Under no circumstances will Defendant or Evanston have any further payment obligations under this Agreement.

**2.2 Funding of Settlement Fund.** Within ten days of entry of the Preliminary Approval Order, Defendant shall transfer \$20,000 and Evanston shall transfer \$80,000 to the Settlement Administrator (via wire instructions to be provided by the Settlement Administrator to Defendant) to be used for upfront notice and administrative costs as needed. Within ten days of the Effective Date, Evanston will transfer \$750,000 to the Settlement Administrator (via wire instructions to be provided by the Settlement Administrator to Evanston). The Settlement Administrator will hold in escrow all funds not used to pay upfront notice and administration costs, until such time as the Settlement Administrator is authorized to pay those funds, including for other costs of administration, pursuant to the Settlement Agreement, or as otherwise ordered by the Court. In the event the Effective Date does not occur, all funds remaining will be returned to Defendant and Evanston.

**2.3 Payments to Settlement Class Members**

a. As soon as practicable, but no later than thirty days after the Effective Date, the Settlement Administrator shall pay to each Settlement Class Member who submits a valid Claim Form a *pro rata* share of the Settlement Fund, after deducting the amount of the Fee Award (and expenses), any Incentive Award to the Class Representative, Settlement Administration Expenses, and such other expenditures as may be authorized by the Court. Such payments shall be mailed to Settlement Class Members via first class mail.

b. All payments issued to Settlement Class Members via check will state on the face of the check that the check will become void unless cashed within 90 days after the date of issuance.

c. To the extent that any checks to Settlement Class Members remain uncashed after the void date, that amount shall be distributed as a *cy pres* award to such organization(s) agreed to by the Parties and approved by the Court.

### **3. RELEASE OF CLAIMS**

**3.1** Upon the Effective Date, the Releasing Parties, and each of them, shall be deemed to have, and by operation of the Final Approval Order and Judgment to have, fully, finally, and forever released, relinquished, and discharged all Released Claims against the Released Parties, and each of them.

**3.2** The Parties intend that this Settlement Agreement will fully and finally dispose of Plaintiff's claims against Defendant, which shall be dismissed with prejudice, along with any and all Released Claims against the Released Parties.

**3.3** Upon the Effective Date, Plaintiff and Settlement Class Members shall be deemed to have, and by operation of the Final Approval Order and Judgment shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal or state law, which 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.

Plaintiff and Settlement Class Members may hereafter discover facts in addition to or different from those they now know or believe to be true with respect to the subject matter of the Released Claims, but upon the Effective Date, shall be deemed to have, and by operation of the Final Approval Order and Judgment shall have, fully, finally, and forever settled and released any and all of the claims released pursuant to the Released Claims whether known or unknown, suspected or unsuspected, contingent or non-contingent, which now exist, or heretofore have existed upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct that is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts. However, the Settlement Agreement is not intended to and does not prohibit a Settlement Class Member from responding to inquiries posited by federal, state or local agencies and/or law enforcement, even if the inquiries relate to the Released Claims. Similarly, the Settlement Agreement is not intended to and does not prohibit a Settlement Class Member from bringing his or her concerns to federal, state or local agencies and/or law enforcement, even if those inquiries relate to the Released Claims, provided that a Settlement Class Member is not attempting to revive any Released Claim.

#### **4. NOTICE TO THE CLASS**

**4.1** As soon as practicable but no later than thirty days following entry of the Preliminary Approval Order, the Settlement Administrator shall cause the Notice to be faxed to Settlement Class Members. Such notice shall comport with Rule 23 of the Federal Rules of Civil Procedure, and be effectuated pursuant to the Notice Plan set forth in Section 4.2, the costs of which shall be deemed part of the Settlement Administration Expenses, and which shall be paid from the Settlement Fund. The Parties expressly agree that the initial out-of-pocket costs of the Notice shall be paid from the initial payment provided for in Section 2.2, and that once incurred



such out-of-pocket costs shall not be refundable in the event of termination of this Settlement or the failure of this Settlement to become effective.

**4.2** The Notice Plan, which was developed in consultation with the Settlement Administrator, consists of the following:

a. *Identifying the Settlement Class.* No later than ten days following entry of the Preliminary Approval Order, Defendant will provide the Settlement Administrator fax numbers to which fax transmissions were attempted on behalf of Versa Cardio during the Class Period.

b. *Settlement Website.* As soon as practicable but no later than fifteen days after entry of the Preliminary Approval Order, this Agreement and the Long Form Notice shall be made available on a website, which shall be obtained, created, and administered by the Settlement Administrator (the "Settlement Website") and shall include the ability to submit a Claim Form online. The Long Form Notice on the Settlement Website shall be substantially in the form attached hereto, or in such form as may be ordered by the Court. The Short Form Notice will refer Settlement Class members to the Settlement Website.

**4.3** *The Notice shall advise Settlement Class Members of their right to object.* Any member of the Settlement Class may object to this Agreement by sending to the Court and the Settlement Administrator a written statement that includes: his or her full name; address; telephone number where he or she may be contacted; the fax number or numbers that he or she maintains received the fax from or on behalf of the Defendant; all grounds in detail for the objection, with factual and legal support for each stated ground; the identity of any witnesses he or she may call to testify; copies of any exhibits that he or she intends to introduce into evidence at the Final Approval Hearing; a statement of the identity (including name, address, phone



number and email) of any lawyer who will be representing the individual with respect to any objection, and a statement of whether he or she intends to appear at the Final Approval Hearing with or without counsel. Such objection must be filed with the Court and sent to the Settlement Administrator with a postmark date on or before the Objection/Exclusion Deadline. The Settlement Administrator shall forward any objections received to counsel for the Parties within three business days of receipt.

4.4 Any member of the Settlement Class who fails to timely file a written objection in accordance with the terms of this sub-section shall not be permitted to object to this Agreement at the Final Approval Hearing, and shall be foreclosed from seeking any review of this Agreement by appeal or other means and shall be deemed to have waived his or her objections and be forever barred from making any such objections.

4.5 *The Notice shall advise Settlement Class Members of their right to request exclusion.* Any member of the Settlement Class may request to be excluded (“opt-out”) from the Settlement Class by sending, by first class mail, a written request for exclusion to the Settlement Administrator postmarked on or before the Objection/Exclusion Deadline. The request for exclusion must include the Settlement Class Member’s full name, address, and telephone number where he or she may be contacted, the fax number(s) which he or she maintains received the fax from or on behalf of Defendant, a statement that the member of the Settlement Class submitting the request wishes to be excluded from the Settlement of this litigation, and personally signed by the member of the Settlement Class submitting the request. A request to be excluded that does not include all of the foregoing information, or that is not sent to the Settlement Administrator, or that is not postmarked within the time specified, shall be invalid, and any person serving such a request shall be a Settlement Class Member and shall be bound as a Settlement Class Member by

the Agreement, if approved. If a member of the Settlement Class submits both a Claim Form and a request for exclusion, the former shall govern and any request for exclusion will be treated as having been withdrawn. The Settlement Administrator will provide a list of those members of the Settlement Class who have requested exclusion each week with its weekly reports, along with copies of each request received, and a final list of everyone who has requested exclusion no later than five business days after the Objection/Exclusion Deadline.

**4.6** Any member of the Settlement Class who requests to be excluded shall not: (i) be bound by the Final Approval Order and Judgment; (ii) be entitled to relief under this Settlement Agreement; (iii) gain any rights by virtue of this Agreement; or (iv) be entitled to object to any aspect of this Agreement. So-called “mass” or “class” opt-outs shall not be allowed.

## **5. CLAIMS PROCESS**

**5.1** A Settlement Class Member must submit a Claim Form in order to make a claim, either by facsimile, mail or online. To be valid, the Claim Form must contain the full name, mailing address of the Settlement Class Member, and the telephone number at which he or she can be reached. The Claim Form must also include the facsimile number(s) the Settlement Class Member maintains received the facsimile from or on behalf of Defendant. Claim Forms submitted by mail must be post-marked by the last day of the Claim Period. Claim Forms submitted through the Settlement Website must be submitted on or before the last day of the Claim Period. The Settlement Class Member must sign the claim form, verifying that all information on the form is accurate and that the Settlement Class Member received allegedly unlawful facsimile(s) from or on behalf of the Defendant. Claim forms submitted online shall allow for electronic signature.

**5.2** No later than fifteen days after the close of the Claim Period, the Settlement Administrator will review each claim that is submitted within the Claim Period. If the claim is

timely, sets forth the information required in Section 5.1, is signed (by written or electronic signature), and is not duplicative of a previously approved claim, then the Settlement Administrator will approve the claim. If a claim is denied as deficient in that it lacks a signature or any of the information required in Section 5.1, the Settlement Administrator will provide the Settlement Class Member with an opportunity to cure the deficiency by sending an email or letter describing the deficiency and informing the Settlement Class Member that he or she has fourteen days to correct the issue. The Settlement Administrator will provide reports weekly to the Parties' counsel on the number of claims that are received, the number that were denied, the number found to be deficient, and the number that were approved as well as the number of requests for exclusion and objections received, along with copies of both. If there are any disputes over the validity of a claim, the Parties' counsel will attempt to resolve such disputes between themselves, and if not successful, the disputes will be promptly presented to the Court for resolution.

## **6. SETTLEMENT ADMINISTRATION**

**6.1** The Settlement Administrator retained by the Parties shall have the following duties:

- a. Prepare the Notices in substantially the form as those attached to this Agreement as approved by the Court;
- b. Implement the Notice Plan set forth in Section 4 above;
- c. Create and maintain the Settlement Website;
- d. Process, log, and review claims for deficiencies and/or fraud, and address deficiencies with claimants providing them with an opportunity to cure, as provided for in Section 5.2;



e. Calculate Settlement Class Member *pro rata* distributions and distribute checks to Settlement Class Members who submit valid claims, maintain a bank account to contain the Settlement Fund, maintain all required records, and distribute any funds remaining from uncashed checks to the *cy pres* recipient.

f. Provide the Parties with weekly reports regarding the status of the Notice Plan, the number of claims, exclusion requests, and objections received;

g. Maintain copies of exclusion requests and objections;

h. Provide declarations to the Court in support of preliminary and final settlement approval.

**6.2** The Settlement Administrator shall, under the supervision of the Court, administer the relief provided by this Settlement Agreement by completing its duties in a reasonable, cost effective, and timely manner. The Settlement Administrator shall maintain reasonably detailed records of its activities under this Agreement. The Settlement Administrator shall maintain all such records as are required by applicable law and in accordance with its normal business practices, including but not limited to a summary of work performed by the Settlement Administrator, and an accounting of all amounts paid from the Settlement Fund to Settlement Class Members. Such records will be provided to Class Counsel and Defendant's Counsel and to the Court along with the motion for final approval.

**6.3** In the exercise of its duties outlined in this Agreement, the Settlement Administrator shall have the right to reasonably request additional information from the Parties or any Settlement Class Member.



**6.4** The Settlement Administrator, with approval by the Parties, shall be responsible for compliance with the applicable provisions of the Class Action Fairness Act (“CAFA”), including the notice requirements in 28 U.S.C. § 1715.

**6.5** As soon as practicable after the conclusion of the Settlement Administrator’s obligations to provide notice and administer the settlement, the Settlement Administrator shall provide Class Counsel and Defendant’s Counsel with an appropriate declaration outlining compliance with those obligations.

**7. PRELIMINARY APPROVAL ORDER AND FINAL APPROVAL ORDER AND JUDGMENT**

**7.1** Within seven days of the execution of this Agreement, Plaintiff shall submit this Agreement together with its Exhibits to the Court and shall move the Court for entry of the Preliminary Approval Order, which shall, among other things, preliminarily approve this Settlement Agreement, set a date for a Final Approval Hearing, which shall be scheduled no earlier than one hundred and eighty days after entry of the Preliminary Approval Order, in order to comply with the requirements of CAFA, or such other time as the Court shall approve, and approve the Notice for dissemination in accordance with the Notice Plan.

**7.2** Class Counsel shall submit to the Court evidence and legal argument to support the Final Approval Order and Judgment, which shall (among other things):

a. find that the Court has personal jurisdiction over all Settlement Class Members and that the Court has subject matter jurisdiction to approve the Agreement, including all exhibits hereto;

b. grant final approval of the Settlement Agreement and likewise approve the Settlement as fair, reasonable and adequate as to, and in the best interests of Settlement Class Members; direct the Parties and their counsel to implement the Agreement according to its terms

and provisions; and declare the Agreement to be binding on, and have preclusive effect on, all pending and future lawsuits or other proceedings maintained by or on behalf of Plaintiff and the Releasing Parties;

c. find that the Notice Plan implemented pursuant to the Agreement (1) constituted the best practicable notice under the circumstances; (2) constituted notice that is reasonably calculated to apprise members of the Settlement Class of the pendency of this litigation, their right to object to or exclude themselves from the proposed Settlement, and to appear at the Final Approval Hearing; (3) are reasonable and constitute due, adequate, and sufficient notice to all entities and individuals entitled to receive notice; and (4) meet all applicable requirements of the Federal Rules of Civil Procedure, the Due Process Clause of the United States Constitution, and the rules of the Court;

d. find that the Class Representative and Class Counsel adequately represented the Settlement Class for purposes of entering into and implementing the Agreement;

e. dismiss Defendant from the action (including, without limitation, all individual claims, Settlement Class Member claims and Released Claims asserted therein against the Released Parties) on the merits and with prejudice, without fees or costs to either Defendant or Plaintiff except as expressly provided in the Settlement Agreement;

f. approve and incorporate the Releases set forth herein and forever discharge the Released Parties from the Released Claims as set forth herein; and

g. without affecting the finality of the Final Approval Order and Judgment for purposes of appeal, retain jurisdiction as to all matters relating to administration, consummation, enforcement, and interpretation of the Settlement Agreement and the Final Approval Order and Judgment, and for any other necessary purpose; and

h. set forth any other provisions, as the Court deems necessary and just.

**8. CLASS COUNSEL'S FEE AWARD AND PLAINTIFF'S INCENTIVE AWARDS**

**8.1** Class Counsel shall apply to the Court for the Fee Award of up to one-third of the Settlement Fund of \$850,000, or \$283,333, plus out-of-pocket costs incurred by Class Counsel in this litigation. Nothing in this Agreement requires Defendant or its counsel to take any position with respect to any motion or request made as contemplated by this Section. If the Fee Award entered by the Court is less than that sought by Class Counsel, the difference will become part of the Settlement Class Recovery.

**8.2** Class Counsel shall file their motion for attorney's fees and litigation costs or expenses thirty days before the Exclusion/Objection deadline. Class Counsel shall post their fee petition to the Settlement Website within twenty-four hours of filing the fee petition with the Court.

**8.3** The Settlement Administrator shall pay the amount of the Fee Award approved by the Court to Class Counsel, from the Settlement Fund and subject to the terms of this Settlement, no later than ten days after the Effective Date.

**8.4** Class Counsel shall apply to the Court for an Incentive Award for the Class Representative in an amount up to \$10,000, subject to Court approval.

**8.5** The Incentive Award, if approved by the Court, shall be paid by the Settlement Administrator from the Settlement Fund, no later than ten days after the Effective Date.

**9. CONDITIONS OF SETTLEMENT, EFFECT OF DISAPPROVAL, CANCELLATION OR TERMINATION**

**9.1** This Settlement Agreement shall not become effective unless and until each of the following events has occurred:

a. This Agreement has been signed by Plaintiff and Defendant;



b. The Court has entered the Preliminary Approval Order; and

c. The Court has entered the Final Approval Order and Judgment, following notice to the Settlement Class and a Final Approval Hearing, or a final approval order and judgment substantially consistent with this Agreement; and

d. All appeals have been resolved or the time for filing any appeal has run.

**9.2** If this Agreement is terminated or is not approved by the Court or an order approved the Agreement is reversed on appeal, the Parties shall be restored to their respective positions as of the date of the signing of this Agreement. In such event, any Final Approval Order and Judgment or other order entered by the Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*, and the Parties shall be returned to the *status quo ante* with respect to the litigation as if this Agreement had never been entered into. If the termination or failure to become effective occurs before the Preliminary Approval Order is entered, the Parties agree that Defendant shall have no obligation to make any payment to the Settlement Administrator and that any sums on deposit with the Settlement Administrator shall be returned to Defendant and Evanston. If the termination or failure to be approved occurs after the initial payment, provided for in Section 2.2, above, has been made to the Settlement Administrator and charges have been incurred, then any sums not necessary for incurred expenses, or already expended upon notice at the time of the termination or failure to be approved shall be returned to Defendant.

## **10. DEFENDANT'S OPTION TO TERMINATE**

**10.1** Defendant has the option to terminate this Settlement Agreement and thereby render the Settlement Agreement null and void, if (a) the Court fails to give preliminary approval to this Settlement Agreement or any aspect of the settlement, or fails to give final approval to this Settlement Agreement or any aspect of the Settlement; (b) the Court modifies the Agreement, the



proposed Preliminary Approval Order or proposed Final Approval Order in a way that Defendant reasonably considers to be material; (c) the number of valid and timely requests for exclusion (opt-outs) by individuals exceeds one hundred individuals in the Settlement Class who are sent Notice as provided in Section 4.2(b), above; or (d) upon such other grounds as may be agreed to by the Parties or permitted by the Court. Defendant's option to terminate shall be communicated in writing to Class Counsel within seven days after receiving a report of the numbers of opt-outs certified by the Settlement Administrator following the last date for members of the Settlement Class to opt-out.

## **11. NO ADMISSION OF LIABILITY**

**11.1** Defendant has denied and continues to deny any liability or wrongdoing of any kind with respect to the claims that are or could have been alleged in the Class Action Complaint. It is specifically understood and agreed that this Agreement does not constitute and is not to be construed as an admission by Defendant of: (a) any fact or liability; (b) any violation of any federal, state, local or common law, statute, policy or regulation, including but not limited to the Telephone Consumer Protection Act and all other Released Claims; and (c) the commission by Defendant of any other actionable wrong.

## **12. MISCELLANEOUS PROVISIONS**

**12.1** The Parties (a) acknowledge that it is their intent to consummate this Settlement Agreement; and (b) agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Agreement. Class Counsel and Defendant's Counsel agree to cooperate with one another in seeking Court approval of the Preliminary Approval Order, the Settlement Agreement, and the Final Approval Order and Judgment, and to agree upon and execute all such other documentation as may be reasonably required to obtain final approval of the Agreement.

**12.2** The Parties intend this Settlement Agreement to be a final and complete resolution of all disputes between them with respect to the Released Claims and this litigation.

**12.3** The Parties have relied upon the advice and representation of their respective counsel concerning their respective legal liability for the claims hereby released. The Parties have read and understand fully this Agreement and have been fully advised as to its legal effect by their respective counsel and intend to be legally bound by the same.

**12.4** The Settlement and this Agreement represent a negotiated compromise, and regardless whether the Effective Date occurs or the Settlement Agreement is terminated, neither this Agreement nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the Settlement:

a. is, may be deemed, or shall be used, offered or received against the Released Parties, or each or any of them, as an admission, concession, or evidence of the validity of any Released Claims, the truth of any fact alleged by a Class Representative, the deficiency of any defense that has been or could have been asserted in the litigation, the violation of any law or statute, or of any alleged wrongdoing, liability, negligence, or fault of the Released Parties, or any of them;

b. is, may be deemed, or shall be construed against Plaintiff and the Settlement Class, or each or any of them, or against the Released Parties, or each or any of them, as an admission, concession, or evidence that the consideration to be given hereunder represents an amount equal to, less than or greater than that amount that could have or would have been recovered after trial; and

c. is, may be deemed, or shall be construed against Plaintiff and the Settlement Class, or each or any of them, or against the Released Parties, or each or any of them,

as an admission, concession, or evidence that any of Plaintiff's or the Settlement Class's claims are with or without merit or that damages recoverable in the action would have exceeded or would have been less than any particular amount.

**12.5** Unless the context of this Agreement requires otherwise, the plural includes the singular, the singular includes the plural, and "including" has the inclusive meaning of "including without limitation." The words "hereof", "herein", "hereby", "hereunder", and other similar terms of this Agreement refer to this Agreement as a whole and not exclusively to any particular provision of this Agreement. All pronouns and any variations thereof will be deemed to refer to masculine, feminine, or neuter, singular, or plural, as the identity of the person or persons may require.

**12.6** The waiver by one Party of any breach of this Agreement by any other Party shall not be deemed as a waiver of any other prior or subsequent breaches of this Agreement.

**12.7** Except as otherwise provided herein, each Party shall bear its own costs and attorneys' fees.

**12.8** Each counsel or Party executing this Settlement Agreement, any of its Exhibits, or any related settlement documents on behalf of any party hereto hereby warrants and represents that such party has the full authority to do so and has the authority to take appropriate action required or permitted to be taken pursuant to the Agreement to effectuate its terms.

**12.9** This Agreement may be executed by the Parties in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Facsimile signatures or scanned and e-mailed signatures shall be treated as original signatures and shall be binding.



**12.10** Neither this Settlement Agreement nor any of its provisions nor any of the referenced documents (including but not limited to drafts of the Settlement Agreement, the Preliminary Approval Order or the Final Judgment and Order), negotiations, or proceedings relating in any way to the Settlement shall be construed as or deemed to be evidence of an admission or concession by any person, including the Defendant; and shall not be offered or received in evidence, or subject to discovery, in this or any other action except in proceedings brought to enforce the terms of this Settlement Agreement or except as may be required expressly by law or court order. The provisions of this Section shall be binding regardless of whether this Settlement Agreement is approved by the Court, is terminated, or otherwise fails to become effective or whether the Settlement is rendered void for any reason.

**12.11** This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties hereto and the Released Parties.

**12.12** This Settlement Agreement is deemed to have been prepared by counsel for all Parties, as a result of arms' length negotiations among the Parties. Whereas all Parties have contributed substantially and materially to the preparation of this Agreement, it shall not be construed more strictly against one party than another.

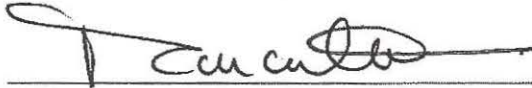
**12.13** This Settlement Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania.

**12.14** The Parties agree that the Court will retain jurisdiction over any disputes regarding the interpretation or implementation of this Agreement and the settlement memorialized herein.



IN WITNESS WHEREOF, the Parties hereto have caused this Settlement Agreement to be executed.


**For Plaintiff and the Settlement Class:**



Robert W. Mauthe, M.D., P.C.

Date: 10-22-18

**For Defendant Versa Cardio, LLC:**



DARIN SLACK CEO  
Printed Name / Title

Date: 11-5-18

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***EXHIBIT 1***





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***EXHIBIT 2***

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**

**THIS IS NOT A SOLICITATION.**

**THE SENDING OF THIS NOTICE BY FACSIMILE HAS BEEN APPROVED BY THE COURT.**

**A settlement has been reached in a class action lawsuit, about unsolicited fax advertisements promoting goods or services that did not contain proper opt out notices.**

**What Is The Lawsuit About?**

Robert W. Mauthe, M.D., P.C ("Plaintiff") brought an action against Versa Cardio, LLC. ("Versa" or "Defendant") in the United States District Court for the Eastern District of Pennsylvania, Case: 1:16-cv-00999, alleging that it received unsolicited fax advertisements from Defendant promoting its goods or services that did not contain a proper opt out notice. Plaintiff alleged that these faxes violated the Telephone Consumer Protection Act ("TCPA"). Defendant denies it violated the TCPA and the court has not decided who is right. Versa will vigorously defend the lawsuit if the proposed settlement is not approved. Versa has not admitted fault or liability, but has agreed to settle this action to avoid the costs and uncertainties of litigation.

**Who Is Included In The Settlement Class?**

The Settlement Class is defined as: all persons and entities residing in the United States who received on or after June 1, 2014, through the date of preliminary settlement approval on a telephone facsimile machine, computer, or other device an unsolicited advertisement from or on behalf of Versa Cardio. Defendant's records show that you are a member of the Settlement Class.

**The Proposed Settlement**

Without admitting any fault or liability, and in exchange for a release of all claims against it, if the Settlement is finally approved, Defendant has agreed to fund a \$850,000 Settlement Fund. Before making payments to Settlement Class Members, the Settlement Fund will be used to pay notice and administrative expenses, an Incentive Award to the Plaintiff of up to \$10,000, attorneys' fees (an amount not to exceed 1/3 of the Settlement Fund) and reasonable litigation expenses. Each Settlement Class Member who submits a valid claim will receive an equal share of the Settlement Fund after these deductions. Your share of the Settlement Fund depends on how many Settlement Class Members submit Claim Forms. This notice is being sent to approximately 306,887 Settlement Class Members. Based on the experience with other similar settlements, Class Counsel estimate that your share will be approximately \$29.00.

**Who Represents You?**

The Court appointed the following firms to represent the Settlement Class as Class Counsel:

Elizabeth Ryan, John Roddy  
BAILEY & GLASSER LLP  
99 High Street, Suite 304  
Boston, MA 02110

Edward A. Broderick, Anthony I. Paronich  
BRODERICK & PARONICH, P.C.  
99 High Street, Suite 304  
Boston, MA 02110

Matthew P. McCue  
THE LAW OFFICE OF MATTHEW P. MCCUE  
1 South Avenue, Suite 3  
Natick, MA 01760

Richard Shenkan  
SHENKAN INJURY LAWYERS, LLC  
6550 Lakeshore Street  
West Bloomfield, MI 48323

**Your Legal Rights And Options**

**(1) Submit a Claim Form.** You must complete and submit the attached Claim Form by **[DATE]** to receive a payment. The value of each individual settlement payment cannot be determined until the Claims Deadline has passed and all claims have been verified. **(2) Exclude Yourself.** If you do not wish to participate in the Settlement you may exclude yourself from it by sending (via US Mail) a request to the Settlement Administrator, *Versa TCPA Settlement Administrator*, **P.O. Box xxxx, City, ST xxxx-xxxx**, postmarked no later than \_\_\_\_\_. The Notice of Exclusion must state your name or your company's name, address, the fax number to which you were sent the fax, the case name and number, and state that you wish to be excluded from the Settlement Class. If you exclude yourself from the Settlement you will not receive a payment and you will not release any claims against Versa. **(3) Object.** If you do not exclude yourself, you can file an objection, either on your own or through an attorney, explaining why you think the Court should not approve the Settlement. The objection must contain the case name and number; your name and address; the fax number to which you were sent the fax; a statement of your objection; an explanation of the legal and factual basis for the objection; and documentation, if any, to support your objection. The objection must be filed by **DATE** with (1) the **Clerk of the United States District Court, Eastern District of Pennsylvania, 601 Market St., Philadelphia, PA 19106** and the Settlement Administrator; **(4) Do Nothing.** If you do nothing you will not receive a monetary recovery, but you will be bound by all the terms of the Settlement Agreement.

**What Am I Giving Up Under The Settlement?**

If the Settlement becomes final, you will be releasing Versa for any claims you may have relating in any way to any advertising faxes it sent to you during the Class Period. The Released Claims are fully explained in the Settlement Agreement, available at [www.XXXXX.com](http://www.XXXXX.com) **[Settlement Administrator's website]**.

**Final Approval Hearing**

The Court has scheduled a Final Approval Hearing before **[INSERT]** on **[DATE AND TIME]** in Courtroom 3041 of the United States District Courthouse for the Eastern District of Pennsylvania, 601 Market St., Philadelphia, PA 19106. You or your attorney may attend this hearing if you desire and request to address the Court regarding any matters relating to this Settlement.

**More Information**

More information is available at [www.XXXX.com](http://www.XXXX.com) **[Settlement Administrator's website]**. You may also inspect the pleadings and other papers that have been filed in this case at the office of the Clerk of the Court, U.S. District Court for the Eastern District of Pennsylvania, 601 Market St., Philadelphia, PA 19106. If you have questions about this notice or the proposed Settlement, you may contact Settlement Class Counsel. **THE COURT AND THE DEFENDANT CANNOT PROVIDE INFORMATION.**





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***EXHIBIT 3***

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA**

**ROBERT W. MAUTHE, M.D., P.C.,**  
individually, and on behalf of all others  
similarly situated,

Plaintiff,

v.

**VERSA CARDIO, LLC,**

Defendant.

Case No. 5:16-cv-00570-JLS

**[PROPOSED] FINAL APPROVAL ORDER AND JUDGMENT**

The Parties in this class action lawsuit have moved for final approval of their proposed class settlement. The Court preliminarily approved the Settlement Agreement on \_\_\_\_\_, and notice was given to all members of the Settlement Class under the terms of the Preliminary Approval Order.

Upon consideration of the motion, the Settlement Agreement, and the exhibits thereto, the Court **GRANTS** final approval of the Settlement, finding specifically as follows:

**I. Jurisdiction**

1. This Court has jurisdiction over the subject matter of the Action and over all parties to the Action, including all Settlement Class Members.<sup>1</sup>

**II. Class Definition**

2. Under Federal Rule of Civil Procedure 23(c), the Court certifies the following “Settlement Class,” consisting of:

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<sup>1</sup> Unless otherwise defined herein, all terms used in this Order that are defined terms in the Settlement Agreement have the same meaning as set forth in the Settlement Agreement.

all persons and entities residing in the United States who received on or after June 1, 2014, through the date of preliminary settlement approval on a telephone facsimile machine, computer, or other device an unsolicited advertisement from or on behalf of Versa Cardio.

### **III. Class Representative and Class Counsel**

3. Under Federal Rule of Civil Procedure 23, Robert Mauthe, M.D., P.C., is hereby appointed as Class Representative.

4. The following are hereby appointed as Class Counsel:

Elizabeth Ryan, John Roddy  
BAILEY & GLASSER LLP  
99 High Street, Suite 304  
Boston, MA 02110

Edward A. Broderick, Anthony I. Paronich  
BRODERICK & PARONICH, P.C.  
99 High Street, Suite 304  
Boston, MA 02110

Matthew P. McCue  
THE LAW OFFICE OF MATTHEW P.  
MCCUE  
1 South Avenue, Suite 3  
Natick, MA 01760

Richard Shenkan  
SHENKAN INJURY LAWYERS, LLC  
6550 Lakeshore Street  
West Bloomfield, MI 48323

### **IV. Rule 23 Requirements**

5. Pursuant to Rule 23(a) the Court finds that: (a) the Settlement Class is so numerous that joinder of all members is impracticable; (b) there are questions of law or fact common to the Settlement Class; (c) the claims of the Class Representative, identified above, are typical of the claims of the Settlement Class; and (d) the Class Representative will fairly and adequately protect the interests of the Settlement Class.

6. Pursuant to Rule 23(b)(3) the Court finds that: (a) the questions of law or fact common to the members of the Settlement Class predominate over the questions affecting only individual members, and (b) certification of the Settlement Class is superior to other available methods for the fair and efficient adjudication of the controversy.



## **V. Notice and Opt-outs**

7. The Court finds that, in accordance with the Notice Plan and Rule 23(c)(2)(B), the Settlement Administrator provided the best notice practicable under the circumstances, including individual notice to all Settlement Class Members who could be identified through reasonable effort.

8. The Court finds that the Settlement Administrator properly and timely notified the appropriate state and federal officials of the Settlement Agreement under the Class Action Fairness Act of 2005 (“CAFA”). *See* 28 U.S.C. § 1715.

9. All persons who made timely and valid requests for exclusion are excluded from the Settlement Class and are not bound by this Final Approval Order and Judgment. The list of persons submitting requests for exclusion from the Settlement Class, submitted by Plaintiff pursuant to the Preliminary Approval Order is hereby accepted as the list of persons who have made timely and valid requests for exclusion.

## **VI. Final Approval of the Settlement**

10. Pursuant to the Settlement Agreement, the Defendant has agreed to pay a total of \$850,000 to create the Settlement Fund. Amounts awarded to Class Counsel or the Class Representative will be paid from the Settlement Fund. Settlement Class Members who have submitted a valid Claim Form will receive an equal share of the Settlement Fund after attorneys’ fees and expenses, the Class Representative’s service award, and the costs of notice and administration are deducted.

11. The Court has read and considered the papers filed in support of the Motion, including the Settlement Agreement and the exhibits thereto, memoranda and arguments submitted on behalf of the Plaintiff, Settlement Class Members, and the Defendant. The Court

has not received any objections from any person regarding the Settlement. The Court held a hearing on \_\_\_\_\_ at which time the parties were afforded the opportunity to be heard in support of or in opposition to the Settlement. Furthermore, the Court finds that notice under the Class Action Fairness Act was effectuated on \_\_\_\_\_, and that ninety (90) days has passed without comment or objection from any governmental entity.

12. The Court now grants final approval to the Settlement and finds that the Settlement is fair, adequate, reasonable, and in the best interests of the Settlement Class. This finding is supported by, among other things, the complex legal and factual posture of the Action, the fact that the Settlement is the result of arm's length negotiations presided over by a neutral mediator, and the settlement benefits being made available to Settlement Class Members.

13. The Court orders the Parties to the Settlement Agreement to perform their obligations thereunder. The Settlement Agreement shall be deemed incorporated herein as if explicitly set forth and shall have the full force of an order of this Court.

14. The Court dismisses this Action with prejudice and without costs (except as otherwise provided herein and in the Settlement Agreement).

15. On and after the Effective Date, the Releasing Parties, and each of them, are forever barred and permanently enjoined from directly, indirectly, representatively, or in any other capacity filing, commencing, prosecuting, continuing, or litigating any other proceeding against any of the Released Parties in any jurisdiction based on or relating in any way to the Released Claims, and the Releasing Parties are forever barred and permanently enjoined from filing, commencing, or prosecuting any lawsuit individually or as a class action against any of the Released Parties (including by seeking to amend a pending complaint to include class allegations or by seeking class certification in a pending action in any jurisdiction) based on or

relating in any way to the Released Claims.

16. The Court further orders that upon the Effective Date, the above-described releases and the Settlement Agreement will be binding on, and have *res judicata* and preclusive effect in all pending and future lawsuits or other proceedings maintained by or on behalf of the Releasing Parties.

17. Without affecting the finality of this Final Approval Order and Judgment in any way, the Court retains jurisdiction over: (a) implementation and enforcement of the Settlement Agreement until the final judgment contemplated hereby has become effective and each and every act agreed to be performed by the parties hereto pursuant to the Settlement Agreement have been performed; (b) any other action necessary to conclude the Settlement and to administer, effectuate, interpret and monitor compliance with the provisions of the Settlement Agreement; and (c) all parties to this Action and Settlement Class Members for the purpose of implementing and enforcing the Settlement Agreement.

#### **VII. Attorneys' Fees and Class Representative's Award**

18. The Court approves payment of attorneys' fees in the amount of \$\_\_\_\_\_. The Court further awards Class Counsel their reasonable expenses of \$\_\_\_\_\_. These amounts shall be paid from the Settlement Fund in accordance with the terms of the Settlement Agreement. The Court, having considered the materials submitted by Class Counsel in support of final approval of the Settlement and their request for attorneys' fees, costs, and expenses and in response to the filed objections thereto, finds the award of attorneys' fees, costs, and expenses appropriate and reasonable and the Court notes that the Notice specifically and clearly advised the Settlement Class that Class Counsel would seek the award.

19. The Court approves payment of \$\_\_\_\_\_ to the Settlement Administrator. This

amount shall be paid from the Settlement Fund in accordance with the terms of the Settlement Agreement.

20. The Court approves the payment of \$\_\_\_\_\_ for an Incentive Award for Class Representative Robert Mauthe, P.C., M.D., and specifically finds that amount to be reasonable in light of the service performed by the Plaintiff for the Settlement Class. This amount shall be paid from the Settlement Fund in accordance with the terms of the Settlement Agreement.

21. Neither this Final Approval Order and Judgment as to the Defendant, nor the Settlement Agreement shall be construed or used as an admission or concession by or against the Defendant or any of the Released Parties of any fault, omission, liability, or wrongdoing, or the validity of any of the Released Claims. This Final Approval Order and Judgment is not a finding of the validity or invalidity of any claims in this Action or a determination of any wrongdoing by the Defendant or any of the Released Parties. The final approval of the Settlement Agreement does not constitute any opinion, position, or determination of this Court, one way or the other, as to the merits of the claims and defenses of Plaintiff, the Settlement Class Members, or the Defendant.

The Clerk is hereby directed to enter this Final Approval Order and Judgment.

DATED: \_\_\_\_\_, 2019

\_\_\_\_\_  
Hon. Jeffrey Schmehl  
United States District Court



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***EXHIBIT 4***

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA**

**ROBERT W. MAUTHE, M.D., P.C.,**  
individually, and on behalf of all others  
similarly situated,

Plaintiff,

v.

**VERSA CARDIO, LLC,**

Defendant.

Case No. 5:16-cv-00570-JLS

**PRELIMINARY APPROVAL ORDER**

The Plaintiff has moved for preliminary approval of a proposed class settlement which would resolve the Plaintiff's class-action claims brought under the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* Upon consideration of the motion, the Settlement Agreement, and the exhibits thereto, the Court **GRANTS** preliminary approval of the Settlement, finding specifically as follows.

**I. Jurisdiction**

1. The Court preliminarily finds that it has jurisdiction over the subject matter of this action and personal jurisdiction over the parties and the members of the Settlement Class described below.<sup>1</sup>

**II. Certification of Settlement Class**

2. Under Rule 23 of the Federal Rules of Civil Procedure, the Court preliminarily certifies the following "Settlement Class," consisting of:

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<sup>1</sup> Unless otherwise defined herein, all terms used in this Order that are defined terms in the Settlement Agreement have the same meaning as set forth in the Settlement Agreement.

all persons and entities residing in the United States who received on or after June 1, 2014, through the date of preliminary settlement approval on a telephone facsimile machine, computer, or other device an unsolicited advertisement from or on behalf of Versa Cardio.

### **III. Class Representative and Class Counsel**

3. The Court preliminarily appoints Plaintiff Robert W. Mauthe, M.D., P.C. as Class Representative.

4. Under Rule 23(g), the following attorneys and firms are preliminarily appointed as Class Counsel:

Elizabeth Ryan  
John Roddy  
BAILEY & GLASSER LLP  
99 High Street, Suite 304  
Boston, MA 02110

Edward A. Broderick  
Anthony I. Paronich  
BRODERICK & PARONICH, P.C.  
99 High Street, Suite 304  
Boston, MA 02110

Matthew P. McCue  
THE LAW OFFICE OF MATTHEW P. MCCUE  
1 South Avenue, Suite 3  
Natick, MA 01760

Richard Shenkan  
SHENKAN INJURY LAWYERS, LLC  
6550 Lakeshore Street  
West Bloomfield, MI 48323

### **IV. Rule 23 Requirements**

5. The Court preliminarily finds that the prerequisites for a class action under Federal Rules of Civil Procedure 23(a) have been satisfied in that: (a) the number of Settlement Class Members is so numerous that joinder of all members thereof is impracticable; (b) there are

questions of law and fact common to the Settlement Class Members; (c) the claims of the class representative are typical of the claims of the Settlement Class Members; (d) the class representative will fairly and adequately represent the interests of the Settlement Class Members.

6. The Court further finds that the prerequisites for class certification under Rule 23(b)(3) have been satisfied in that (A) questions of law and fact common to the Settlement Class Members predominate over any questions affecting only individual Settlement Class Members; and (B) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

#### **V. Preliminary Approval of the Settlement**

7. Pursuant to the Settlement Agreement, the Defendant has agreed to pay \$850,000 to create the Settlement Fund. Amounts awarded to Class Counsel or the Class Representative will be paid from the Settlement Fund. Class Members will receive an equal share of the Settlement Fund after attorneys' fees and costs, the Class Representative's award, the costs of notice and administration are deducted, and any other expenditure authorized by the Court.

8. Having considered the motion for preliminary approval, the Settlement Agreement, and the exhibits thereto, the Court preliminarily finds that the Settlement is fair, adequate, reasonable, and in the best interests of the Settlement Class. This finding is supported by, among other things, the complex legal and factual posture of the Action, the fact that the Settlement is the result of arm's length negotiations presided over by a neutral mediator, and the settlement benefits being made available to Settlement Class Members.

#### **VI. Notice and Administration**

9. The Court appoints A.B. Data, Ltd. to perform the functions and duties of the Settlement Administrator set forth in the Settlement Agreement – including effectuating the



Notice Plan – and to provide such other administration services as are reasonably necessary to facilitate the completion of the Settlement.

10. The Court has carefully considered the Notice Plan set forth in the Settlement Agreement. The Court finds that the Notice Plan constitutes the best notice practicable under the circumstances, and satisfies fully the requirements of Rule 23(c)(2), and the requirements of due process.

11. The Court thus approves the Notice Plan and the form, content, and requirements of the Notice described in and attached as exhibits to the Settlement Agreement. The Settlement Administrator shall cause the Notice Plan to be completed not less than 30 days following entry of the Preliminary Approval Order. Class Counsel shall, prior to the Final Approval Hearing, file with the Court a declaration executed by the Settlement Administrator attesting to the timely completion of the Notice Plan.

12. All costs of providing Notice to the Settlement Class, processing Claim Forms, and administering distributions from the Settlement Fund shall be paid out of the Settlement Fund, as provided by the Settlement Agreement.

## **VII. Exclusions and “Opt-Outs”**

13. Each and every member of the Settlement Class shall be bound by all determinations and orders pertaining to the Settlement, including the release of all claims to the extent set forth in the Settlement Agreement, unless such persons request exclusion from the Settlement in a timely and proper manner, as hereinafter provided.

14. A member of the Settlement Class wishing to request exclusion (or “opt-out”) from the Settlement shall mail the request in written form, by first class mail, postage prepaid, and must be received by the Settlement Administrator no later than 60 days after the Class Notice is sent by the Settlement Administrator at the address specified in the Notice. In the

written request for exclusion, the member of the Settlement Class must state his or her full name, address, and telephone number where he or she may be contacted, the fax number(s) which he or she maintains received the fax or faxes, and a statement that the member of the Settlement Class submitting the request wishes to be excluded from the Settlement of this litigation, and personally signed by the member of the Settlement Class submitting the request. The request for exclusion shall not be effective unless it provides the required information and is made within the time stated above, or the exclusion is otherwise accepted by the Court. No member of the Settlement Class, or any person acting on behalf of or in concert or in participation with a member of the Settlement Class, may request exclusion of any other member of the Settlement Class from the Settlement.

15. Members of the Settlement Class who timely request exclusion from the Settlement will relinquish their rights to benefits under the Settlement and will not release any claims against the Defendant or any of the other Released Parties.

16. All Settlement Class Members who do not timely and validly request exclusion shall be so bound by all terms of the Settlement Agreement and by the Final Approval Order and Judgment even if they have previously initiated or subsequently initiate individual litigation or other proceedings against the Defendant or any of the other Released Parties.

17. The Settlement Administrator will promptly provide all Parties with copies of any exclusion requests, and Plaintiff shall file a list of all persons who have validly opted-out of the Settlement with the Court prior to the Final Approval Hearing.

### **VIII. Objections**

18. Any Settlement Class Member who does not file a timely request for exclusion, but who wishes to object to approval of the proposed Settlement, to the award of attorneys' fees and expenses, or to the compensation award to the Class Representative must file with the Court

and, at the same time, mail to the Settlement Administrator a written statement that includes: his or her full name; address; the telephone number where he or she may be contacted; the fax number(s) that he or she maintains received the fax or faxes; all grounds for the objection, with factual and legal support for each stated ground; the identity of any witnesses he or she may call to testify; copies of any exhibits that he or she intends to introduce into evidence at the Final Approval Hearing; the identity of any attorney will be representing the individual with respect to any objection, and a statement of whether he or she intends to appear at the Final Approval Hearing with or without counsel. Such objection must be filed with the Court and sent to the Settlement Administrator with a postmark date on or before the Objection/Exclusion Deadline. The Settlement Administrator shall forward any objections received to counsel for the Parties within three business days of receipt.

19. The Court will consider objections to the Settlement, to the award of attorneys' fees and expenses, or to the compensation award to the Class Representative only if, no later than 90 days after the Class Notice is sent, such objections and any supporting papers are filed in writing with the Clerk of this Court and served on the Settlement Administrator.

20. A Settlement Class Member who has timely filed a written objection as set forth above may appear at the Final Approval Hearing in person or through counsel to be heard orally regarding their objection. It is not necessary, however, for a Settlement Class Member who has filed a timely objection to appear at the Final Approval Hearing. No Settlement Class Member wishing to be heard orally in opposition to the approval of the Settlement or the request for attorneys' fees and expenses or the request for a compensation award to the Class Representative will be heard unless that person has filed a timely written objection as set forth above. No non-party, including members of the Settlement Class who have timely opted-out of the Settlement,

will be heard at the Final Approval Hearing.

21. Any member of the Settlement Class who does not opt out or make an objection to the Settlement in the manner provided herein shall be deemed to have waived any such objection by appeal, collateral attack, or otherwise, and shall be bound by the Settlement Agreement, the releases contained therein, and all aspects of the Final Approval Order and Judgment.

### **IX. Final Approval Hearing**

22. A Final Approval Hearing is will be held before the Court **no earlier than 180 days after Preliminary Approval Order, \_\_\_\_\_ 2019 at \_\_\_\_ am/pm** for the following purposes:

- (a) to finally determine whether the requirements of Federal Rules of Civil Procedure 23(a) and (b) are met;
- (b) to determine whether the Settlement is fair, reasonable, and adequate, and should be approved by the Court;
- (c) to determine whether the judgment as provided under the Settlement Agreement should be entered, including a bar order prohibiting Settlement Class Members from further pursuing claims released in the Settlement Agreement;
- (d) to consider the application for an award of attorneys' fees and expenses of Class Counsel;
- (e) to consider the application for a service award to the Class Representative;
- (f) to consider the distribution of the Settlement Benefits under the terms of the Settlement Agreement; and
- (g) to rule upon such other matters as the Court may deem appropriate.

23. Fourteen (14) days before the Final Approval Hearing, Class Counsel shall file



and serve (i) a motion for final approval; and (ii) any application for a compensation award to the Class Representative.

24. Class Counsel shall file their motion for attorneys' fees and expenses thirty days before the Exclusion/Objection deadline. Class Counsel shall post their fee petition to the Settlement Website within twenty-four hours of filing the fee petition with the Court.

25. The Final Approval Hearing may be postponed, adjourned, transferred or continued by order of the Court without further notice to the Settlement Class. At, or following, the Final Approval Hearing, the Court may enter a Final Approval Order and Judgment in accordance with the Settlement Agreement that will adjudicate the rights of all class members.

26. For clarity, the deadlines the Parties shall adhere to are as follows:

<b>Class Notice Completed by:</b>	<b>30 days after Preliminary Approval Order</b>
<b>Objection/Exclusion Deadline:</b>	<b>60 days after Class Notice is sent</b>
<b>Claim Deadline:</b>	<b>60 days after Class Notice is sent</b>
<b>Final Approval Submissions:</b>	<b>14 days before Final Approval Hearing</b>
<b>Final Approval Hearing:</b>	<b>No earlier than 180 days after Preliminary Approval Order _____, 2019 at ____ am/pm</b>

27. Settlement Class Members do not need to appear at the Final Approval Hearing or take any other action to indicate their approval.

#### **X. Further Matters**

28. All discovery and other pretrial proceedings in the Action are stayed and suspended until further order of the Court except such actions as may be necessary to implement the Settlement Agreement and this Order.

29. In the event that the Settlement Agreement is terminated under the terms of the

Settlement Agreement, or for any reason whatsoever the approval of it does not become final and no longer subject to appeal, then: (i) the Settlement Agreement shall be null and void, including any provisions related to the award of attorneys' fees and expenses, and shall have no further force and effect with respect to any party in this Action, and shall not be used in this Action or in any other proceeding for any purpose; (ii) all negotiations, proceedings, documents prepared, and statements made in connection therewith shall be without prejudice to any person or party hereto, shall not be deemed or construed to be an admission by any party of any act, matter, or proposition, and shall not be used in any manner of or any purpose in any subsequent proceeding in this Action or in any other action in any court or other proceeding, provided, however, that the termination of the Settlement Agreement shall not shield from subsequent discovery any factual information provided in connection with the negotiation of this Settlement Agreement that would ordinarily be discoverable but for the attempted settlement; (iii) this Order shall be vacated; and (iv) any party may elect to move the Court to implement the provisions of this paragraph, and none of the non-moving parties (or their counsel) shall oppose any such motion.

30. The Court retains jurisdiction to consider all further matters arising out of or connected with the Settlement.

DATED: \_\_\_\_\_, 2018

\_\_\_\_\_  
Hon. Jeffrey Schmehl  
United States District Court