**UNITED STATES DISTRICT COURT**
**EASTERN DISTRICT OF LOUISIANA**

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| M. CLAUDIA GAROFALO and THADDEUS HARDY, individually, and on behalf of all others similarly situated,<br>Plaintiffs,<br><br>v.<br><br>PERMOBIL, INC., MAX MOBILITY LLC, and UNITED SEATING AND MOBILITY, LLC D/B/A NUMOTION,<br>Defendants. | Case No. 2:25-cv-2080 |

**PRELIMINARY APPROVAL ORDER**

M. Claudia Garofalo, Thaddeus Hardy, and Christina Earheart ("Plaintiffs"), individually and on behalf of the proposed Settlement Class,[1] seek preliminary approval of a proposed Settlement of claims against Defendants Permobil, Inc. and Max Mobility LLC ("Defendants"), which will resolve this Action entirely. For the reasons set forth herein, the Court **GRANTS** preliminary approval and **GRANTS** preliminary certification of the Settlement Class for settlement purposes only.

## I. BACKGROUND

Plaintiffs Garofalo and Hardy initiated this lawsuit on October 3, 2025 on behalf of themselves and a class of persons who purchased or used the SpeedControl Dial for the SmartDrive

[1] Unless otherwise specifically defined herein, all capitalized terms have the same meanings as those set forth in the parties' Settlement Agreement.

MX2+ Power Assist Device ("SmartDrive"), both devices which were marketed and sold by Defendants during the alleged class period. Plaintiffs generally allege that the SpeedControl Dial was defective and did not work as intended. Plaintiffs allege the following claims on behalf of a putative nationwide class: (i) redhibition/breach of implied warranty; (ii) breach of express warranty; (iii) violation of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301 *et seq.*; (iv) design defect; (v) manufacturing defect; (vi) failure to warn; (vii) fraudulent concealment/inducement; (viii) unjust enrichment; (ix) violation of consumer protection statutes; and (x) negligence. Defendants dispute and deny the allegations and claims.

The Parties conducted an investigation of the facts and analyzed relevant legal issues regarding the claims asserted in the Action. The Parties have exchanged written disclosures and other materials.

The Parties engaged in arm's-length negotiations, including an in-person mediation before John W. Perry, Jr., Esq., of Perry Dampf Dispute Solutions in New Orleans, Louisiana. As a result of these efforts, the Parties reached a resolution reflected in the Settlement Agreement currently before the Court.

Having read the papers filed and reviewed the materials submitted, the Court finds that the proposed Settlement is fair, reasonable, and adequate. The Court finds as follows:

## II. SETTLEMENT TERMS

### A. The Proposed Settlement Class

The Settlement Agreement contemplates certification of the following Settlement Class for settlement purposes only: all persons in the United States or its territories who purchased or were distributed a SpeedControl Dial for personal, family, or household purposes between April 1, 2022 and the date of entry of the Preliminary Approval Order excluding (a) any individuals who have pending litigation against the Released Parties; (b) any Settlement Class Members who file a timely request for exclusion; (c) any current officers, directors, shareholders of Defendants; (d) any legal counsel or employee of legal counsel for Defendants; (e) any federal, state, or local government entities; and (f) any judicial officers presiding over the Action and the members of their immediate family and judicial staff.

The Settlement Agreement, if approved, will create a non-reversionary common fund, the Cash Settlement Fund, of $4,100,000.00 to resolve the claims of Plaintiffs and all Settlement Class Members against Defendants, and would end this Action. The Cash Settlement Fund will provide direct cash payments to Settlement Class Members who do not exclude themselves from the settlement, as well as pay the costs of settlement notice and administration, Plaintiffs' Counsel's Fees and Expenses, and any Class Representative Service Payments that the Court may approve.

**B. Settlement Administrator and Administration Costs**

The proposed Settlement Administrator is Fidexis, a reputable class action administration firm in the United States. The administrative costs of the Settlement will be paid from the Cash Settlement Fund.

**C. Class Member Release**

Upon the Settlement Date, and in consideration for the cash payments and other promises contained in the Settlement Agreement, each Settlement Class Member who does not timely opt-out of the Settlement shall release the Released Defendants from claims arising out or relating to those alleged in this Action, and Plaintiffs will provide additional releases to the Released Defendants, as detailed in the Settlement Agreement filed with the Court with the motion for preliminary approval.

**D. Proposed Notice and Claims Program**

The Parties' proposed Class Notice as provided in the Settlement Agreement consists of direct email and mail notice to Settlement Class Members whose contact information is known or reasonably obtainable by Defendants. The Settlement Administrator will perform skip trace research for any Mailed Notice that is returned as undeliverable and shall make one attempt to remail the Mailed Notice. The Settlement Administrator also will initiate a reasonably tailored Internet Notice campaign. A Settlement Website will allow Settlement Class Members to view and download the Longform Notice and other enumerated case documents, including a Claim Form that allows a Settlement Class Member to modify their contact information or to elect the form of payment. The Settlement Administrator will also ensure that the necessary and timely notice is provided to any state or federal officers a required by the Class Action Fairness Act, 28 U.S.C. § 1715.

**E. Requests for Exclusion and Objections**

The Class Notice will advise Settlement Class Members of their right to exclude themselves from the Settlement or to object to the Settlement and/or to Class Counsel's application for attorneys' fees and costs, and/or Class Representative Service Payments.

Settlement Class Members who choose to exclude themselves must follow the procedures set forth in the Settlement Agreement.. Any Settlement Class Member who does not submit a request to exclude per the deadlines and other requirements will be bound by the Settlement absent a court order to the contrary.

Settlement Class Members who have not submitted a timely written exclusion request and who wish to object to the fairness, reasonableness, or adequacy of the Agreement, may elect to object to the Agreement by following the deadlines and other requirements for written objections as set forth in the Settlement Agreement.

### F. Attorneys' Fees and Expenses and Class Representative Service Payment

The Settlement Agreement contemplates Class Counsel petitioning the Court for attorneys' fees, as well as reasonable expenses incurred by Class Counsel. The Parties have not discussed, nor agreed to, any particular amount of Plaintiffs' Counsel's Fees, but Plaintiffs' Counsel do not currently intend to seek an amount of attorneys' fees exceeding one-third of the Cash Settlement Fund, in addition to expenses. Any approved fees and expenses will be paid from the Cash Settlement Fund prior to distribution to the Settlement Class Members. Class Counsel may also petition the Court for up to $10,000 for each proposed Class Representative as a Class Representative Service Payment to compensate for each such person's time and effort in the Action, and the released contemplated by the Settlement. Any approved payment will be deducted from the Cash Settlement Fund prior to distribution to the Settlement Class Members. Neither final approval, nor the size of the Cash Settlement Fund, are contingent upon approval of the full amount of requested Plaintiff's Counsel's Fees and Expenses or any Class Representative Service Payment.

## III. FINDINGS AND ORDERS

### A. The Settlement Agreement Warrants Preliminary Approval

The Court finds, on a preliminary basis, that the Settlement Agreement is within the range of reasonableness of a settlement that could ultimately be given final approval by this Court. The Court has reviewed the terms of the Settlement and preliminarily finds the Settlement to be fair, reasonable, and adequate. The Court further finds that the Settlement Agreement substantially fulfills the purposes and objectives of the class action, and provides substantial relief to the Settlement Class without the risks, burdens, costs, or delay associated with continued litigation, trial, and/or appeal. The Court also finds that the Settlement Agreement: (a) is the result of arm's-length negotiations between experienced class action attorneys, with the assistance of a neutral third-party mediator; (b) is sufficient to warrant notice of the Settlement and the Fairness Hearing to be disseminated to the Settlement Class; and (c) meets all applicable requirements of law, including Federal Rule of Civil Procedure 23 and the Class Action Fairness Act, 28 U.S.C. § 1715, and the United States Constitution.

**B. Certification For Settlement Purposes Is Appropriate**

On a motion for preliminary approval, the parties must also show that the Court "will likely be able to . . . certify the class for purposes of judgment on the proposal." Fed. R. Civ. P. 23(c)(1). The Court finds for purposes of settlement only that the Settlement Class meets all the requirements of Fed. R. Civ. P. 23(a) and (b)(3) and (g). This includes appointment of M. Claudia Garofalo and Thaddeus Hardy and Christina Earheart as the Class Representatives, and Ruben Honik and David J. Stanoch of Honik LLC as Class Counsel, as each of the foregoing satisfies Fed. R. Civ. P. 23(a)(4) and (g), as applicable.

**C. The Settlement Administrator and Notice Plan Is Approved**

Due process under Fed. R. Civ. P. 23 requires that class members receive notice of the Settlement and an opportunity to be heard and participate in the litigation. *See* Fed. R. Civ. P. 23(c)(2)(B). It seems to the Court that the proposed Class Notice plan in the Settlement Agreement, which consists of direct Email Notice, Mail Notice, Internet Notice, and a Settlement Website, comports with due process, Rule 23, and all other applicable law. The proposed Settlement Administrator, Fidexis, also appears to be appropriately qualified and is hereby approved to serve as Settlement Administrator.

## IV. SCHEDULE AND PROCEDURES

The Court orders the following schedule and procedures for disseminating the Class Notice, requesting exclusion from the Settlement Class, objecting to the Settlement, filing the motion for the Plaintiffs Counsel's Fees and Expenses and the Class Representative Service Payments, filing the Motion for Final Approval, and submitting Claims:

| Event | Dates |
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| Settlement Administrator serves CAFA notices (*see* Settlement § 9.3) | 10 calendar days after filing of Motion for Preliminary Approval |
| Deadline for Defendants to provide Settlement Administrator with available email addresses and mailing addresses for Settlement Class Members (*see id.* § 9.2) | 5 business days after Preliminary Approval |
| Defendants pays estimated notice costs to Settlement Administrator (*see* Settlement § 3.2) | 10 business days after Preliminary Approval Order |
| Notice Period begins – Settlement Administrator launches Settlement Website, issues Email Notice, initiates Internet Notice (*id.* §§ 1.22, 9.2) | 20 calendar days after Preliminary Approval Order |
| Deadline for Plaintiffs' Counsel's Motion for Attorneys' Fees, Costs, and Class Representative Service Payments (*id.* § 4.2) | 40 calendar days after Preliminary Approval Order |
| Deadline for Settlement Administrator to post on Settlement Website the Plaintiffs' Counsel's Motion for Attorneys' Fees, Costs, and Class Representative Service Payments (*id.* § 9.2) | 45 calendar days after Preliminary Approval Order |
| Claim, Exclusion, and Objection Deadlines (*id.* §§ 1.4 1.15, 1.22, 1.23) | 60 calendar days after Preliminary Approval Order |
| Settlement Administrator provides Parties' counsel with list of exclusion requests and objections, and claims metrics (*id.* § 7.3) | 65 calendar days after Preliminary Approval Order |
| Deadline for Defendants to optionally initiate process under Section 8.2, and deadline for Plaintiffs' Motion for Final Approval | 75 calendar days after Preliminary Approval Order |
| Fairness Hearing | At least 90 days after Preliminary Approval Order |

## V. FAIRNESS HEARING

The Fairness Hearing shall be held before this Court on **October 29, 2026 at 9:30 a.m.** in Courtroom C268, 500 Poydras Street, New Orleans, LA 70130 to determine: (a) whether the proposed Settlement Agreement is fair, reasonable, and adequate and should be given final approval by the Court; (b) whether the Final Approval Order dismissing the Action with prejudice should be entered; (c) whether to approve payment of Plaintiffs' Counsel's Fees and Costs; and (d) whether to approve payment of the Class Representative Service Payments for Plaintiffs as requested by Class Counsel.

## VI. OTHER PROVISIONS

Class Counsel and Defense Counsel are authorized to take, without further Court approval, all necessary and appropriate steps to implement the Settlement, including the proposed Class Notice plan provided in the Settlement Agreement. The deadlines set forth in this Order may be extended by Order of the Court without further notice to Settlement Class Members, except that notice shall be posted on the Settlement Website. Settlement Class Members should check the Settlement Website regularly for updates and further details regarding the deadlines. Exclusions and objections must meet the deadlines and follow the requirements set forth in the approved Class Notice to be valid, although the Court may accept exclusions and objections deemed to be in substantial compliance.

If for any reason the Court does not execute and file an Order of Final Approval, or if the Effective Date does not occur for any reason, the Parties will be restored to the *status quo ante* as set forth more specifically in the Settlement Agreement.

## VII. CONCLUSION

Accordingly, the Court having considered the *Motion for Preliminary Approval of Class*

*Action Settlement and Provisional Certification of the Settlement Class* **(Rec. Doc. 22)**, it is hereby **ORDERED** that:

1. The Motion is **GRANTED**;

2. The proposed Settlement Class is certified for settlement purposes only pursuant to Rules 23(a) and 23(b)(3) and (g) of the Federal Rules of Civil Procedure;

3. M. Claudia Garofalo and Thaddeus Hardy and Christina Earheart are appointed as Class Representatives;

4. Ruben Honik and David J. Stanoch of Honik LLC are appointed as Class Counsel; and,

5. The proposed Class Notice plan complies with the requirements of Rule 23 and Due Process, and Class Notice is to be sent to the Settlement Class Members as set forth in the Settlement Agreement and pursuant to the deadlines above.

**IT IS SO ORDERED, New Orleans, Louisiana, this 1st day of July, 2026.**

CARL J. BARBIER
UNITED STATES DISTRICT JUDGE