UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

GAYL JACKSON, *et al.* Plaintiffs v. VIKING GROUP, INC., *et al.* Defendants.	Civil Action No. 8:18-cv-02356-PJM

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Plaintiffs Gayl Jackson, Michelle Ebner, and Denise Turner (collectively "Plaintiffs"), by and through their respective counsel of record, submit this Motion for Preliminary Approval of Class Action Settlement between Plaintiffs and the proposed Settlement Class and Defendants Viking Group, Inc., The Viking Corporation, and Supply Network, Inc., d/b/a Viking Supplynet (collectively, "Viking") and for an Order: (a) granting approval of the Parties' proposed class action settlement (the "Settlement"); (b) certifying the proposed Settlement Class for settlement purposes only; (c) approving the proposed form, content, and dissemination of the notice to the Settlement Class pursuant to the Notice Plan detailed in the Settlement Agreement; (d) appointing Class Counsel and Plaintiffs to represent the Settlement Class; and (e) scheduling a final approval hearing.

I. INTRODUCTION

After approximately nine months of discovery and settlement negotiations, the Parties have resolved this class action in which Plaintiffs allege that Viking's VK457 Sprinklers (the "Subject Sprinklers") sold between January 1, 2013 and March 31, 2015, are defective. Plaintiffs allege that Defendants knew of the material defect in the Subject Sprinklers but failed to disclose it. Under

the Settlement, Settlement Class Members[1] will receive a range of benefits, including no-cost replacement and installation of all Subject Sprinklers in their residential or commercial structure with a different model sprinkler, the ability to be reimbursed up to $35.00 per sprinkler if they previously paid to replace them prior to the Settlement, and the ability to submit reimbursement claims for property damage caused by the activation of a Subject Sprinkler without the presence of a fire that occurs after the Objection and Opt-Out Deadline but during the Activation Claim Period.

The Settlement provides substantial benefits to Settlement Class Members without the time or expense of protracted, adversarial litigation. Therefore, Plaintiffs respectfully request that this Court grant their Motion for Preliminary Approval of the Class Action Settlement. Granting Plaintiffs' motion will allow the parties to proceed with the Notice Plan outlined by the Settlement.

II. FACTUAL BACKGROUND

A. History of the Litigation

This Lawsuit was first commenced on July 31, 2018. It was filed after an extensive pre-suit investigation by Plaintiffs' counsel that began in approximately August of 2017. This investigation included, *inter alia*, speaking with members of the potential class, reviewing documents provided by class members, reviewing the design of Viking's VK457 sprinklers in conjunction with consulting experts, and investigating potential legal claims applicable to the class.

Prior to filing suit, Plaintiffs sent pre-suit notice to Defendants regarding Defendants' alleged violations of the California Consumers Legal Remedies Act, Cal. Civ. Code § 1782. On

[1] The capitalized terms used in this Memorandum are defined in Section A of the Settlement Agreement. The Settlement Agreement and its exhibits are attached as Exhibit A to the Declaration of James P. Ulwick.

August 31, 2018, Defendants sent a substantive response to the notice detailing their anticipated defenses in the Lawsuit. Shortly thereafter, the parties began to informally exchange information and discussed the possibility of mediation. In February of 2019, Plaintiffs requested, and Defendants produced, discovery pursuant to Fed. R. Evid. 408 in anticipation of mediation.

On March 20, 2019, the parties mediated the Lawsuit with the Honorable Diane Welsh (Ret.) at JAMS in Philadelphia, Pennsylvania. Prior to the mediation, both parties submitted confidential mediation statements that addressed the strengths and weaknesses of Plaintiffs' claims and the defenses thereto. With the assistance of Judge Welsh, the parties negotiated the material terms of the structure of relief to the proposed Settlement Class set forth in a Memorandum of Understanding ("MOU") and, over the course of the next several months, negotiated the Settlement Agreement.

B. Terms of the Settlement Agreement

If approved, the Settlement will provide substantial benefits to the following proposed Settlement Class:

> All Persons that currently or at any time previously have owned a residential or commercial structure in the United States while it contains or contained Subject Sprinklers or while the structure sustained water damage from a non-fire activation of a Subject Sprinkler, including their spouses, joint owners, heirs, executors, administrators, mortgagees, residents, tenants, creditors, lenders, predecessors, successors, trusts and trustees, and assigns ("Occupant Persons"); as well as all Persons who have standing and are entitled to assert a claim on behalf of any such Occupant Persons, such as, but not limited to, a builder, contractor, installer, distributor, seller, subrogated insurance carrier, or other Person who has claims for contribution, indemnity or otherwise against Viking based on claims for a non-fire activation of a Subject Sprinkler with respect to such residential or commercial structures. The Settlement Class includes all Persons who subsequently purchase or otherwise obtain an interest in a property covered by this Settlement without the need of a formal assignment by contract or court order.[2]

[2] Excluded from the Settlement Class are: (i) Viking, its officers, directors, affiliates, legal representatives, employees, successors, and assigns, and entities in which Viking has a controlling

As described further below, the proposed Settlement would provide substantial benefits and value to the Settlement Class Members if approved.

Plaintiffs initially brought this Lawsuit on behalf of all persons in the United States who purchased VK457 fire sprinklers or purchased structures with Viking VK457 fire sprinklers installed in them. (ECF No. 1, ¶ 42.) Between the pre-mediation and post-mediation discovery efforts, Viking produced approximately 80,000 pages of documents in response to Plaintiffs' discovery requests. These documents related to, among other topics, the design and manufacture of the VK457 fire sprinklers, including production dates for fire sprinklers that activated without the presence of a fire. After a comprehensive review of these materials, Plaintiffs and Class Counsel have concluded that the VK457 sprinklers sold by Viking between January 1, 2013 and March 31, 2015 were manufactured in production lots in the upper range of the allowable load on the solder link, thus making them susceptible to activation without the presence of a fire. Thus, Plaintiffs and Class Counsel concluded that the claims in the Lawsuit and the Settlement were appropriately confined to the sprinklers sold within the proposed January 1, 2013 to March 31, 2015 date range (the Subject Sprinklers) that were made differently than other VK457 sprinklers produced before and after this range. After completing their review of the documents and information produced, Plaintiffs' filed a First Amended Complaint properly limiting the class to the Subject Sprinklers. (ECF No. 24.)

1. The Replacement Program

Settlement Class Members are eligible to submit a claim for the no-cost replacement and installation of all Subject Sprinklers in their residential or commercial structure with a different

interest; (ii) the judge presiding over the Lawsuit; and (iii) local, municipal, state, and federal governmental entities.

model sprinkler, referred to as the Viking VK494 (the "Replacement Sprinklers").[3] Settlement Class Members will be given ample opportunity to seek a replacement -- the Replacement Claim Period extends for eighteen months after the Effective Date. The Replacement Sprinklers will be installed by contractors selected and retained by Defendants at no cost to the Settlement Class Member. The Replacement Sprinklers also will be accompanied by Viking's standard warranty.

Significantly, Settlement Class Members who had already paid to replace Subject Sprinklers prior to the Notice Date will be eligible to submit a claim for reimbursement of out-of-pocket costs associated with the replacements, up to a maximum amount of $35.00 per Subject Sprinkler replaced, inclusive of materials and labor.

To participate in either facet of the Replacement Program, Settlement Class Members will be required to submit a straightforward Claim Form substantially similar to Exhibit A-1 to the Declaration of James P. Ulwick. Among other information, the Claim Form will require Settlement Class Members seeking reimbursement to submit documentation and other information supporting their Claim.

2. Claims for Future Activations

Settlement Class Members who incur property damage caused by the activation of a Subject Sprinkler without the presence of a fire that occurs after the Objection and Opt-Out Deadline but during the Activation Claim Period may submit a Claim for payment of 70% of their Reasonably Proven Recoverable Damages. The Activation Claim Period will extend for two years after the Effective Date, and Settlement Class Members will be given 180 days from the date of the qualifying activation to submit a Claim.

[3] The Settlement provides in the alternative that replacements sprinklers of equal or greater quality to the VK494 may be used, and also confirms that the Subject Sprinklers will not be used in the replacement program.

The Activation Claim remedy will reimburse Settlement Class Members for a wide range of reasonably proved out-of-pocket losses consisting of: (a) proven expenses paid to remediate water damage as a direct result of the non-fire activation, (b) proven expenses paid to repair or replace property damaged as a direct result of the non-fire activation, (c) the material and labor costs reasonably necessary to bring the structure and its contents back to the same finish and quality as existed before the non-fire activation, and (d) reasonable costs of alternative lodging and meals for those displaced by the non-fire activation for a reasonable duration not to exceed the amount of time reasonably necessary to return the home to a condition for reasonable occupancy (together, "Reasonably Proven Recoverable Damages").[4] Settlement Class Members will also be instructed in the Notice to retain and submit the activated sprinkler and components with their Activation Claim, including for purposes of establishing the installation and qualifying activation of a Subject Sprinkler.[5]

III. ARGUMENT

A. The Settlement Merits Preliminary Approval

"Review of a proposed class action settlement generally involves two hearings." Manual for Complex Litigation (Fourth) § 21.632 (2004) (footnote omitted). The first is a "preliminary fairness" hearing, where the court makes "a preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms" and "direct[s] the preparation of notice of

[4] Reasonably Proven Recoverable Damage does not include, *inter alia*: (a) any claimed economic losses arising from the loss of value of the property, (b) lost wages, or (c) any amounts paid by a Person other than the Claimant or that were paid by the Claimant and then reimbursed or refunded by another Person, *i.e.*, there shall be no double recovery.

[5] Proof of eligibility for an Activation Claim shall be made by a Claimant through the Claimant's submission of a Claim Form to the Settlement Administrator that shall include the failed Subject Sprinkler or a reason why it is not available for submission, and any valid reason (*e.g.*, the reason the failed Subject Sprinkler is not available for submission) shall be acceptable to the Settlement Administrator.

the certification, proposed settlement, and date of the final fairness hearing." *Id.* The second is the "fairness" hearing, where the court assesses whether the proposed settlement is "fair, reasonable, and adequate" for all class members. *Id.* § 21.634; *see also In re Am. Capital Shareholder Derivative Litig.*, No. 11-2424-PJM, 2013 WL 3322294, at *2 (D. Md. June 28, 2013). At the preliminary approval stage, the Court's inquiry focuses on whether there has been a basic showing that the proposed settlement "is sufficiently within the range of reasonableness so that notice ... should be given." *Id.* (citing *In re Lupron Marketing and Sales Practices Litigation*, 345 F. Supp. 2d 135, 139 (D. Mass. 2004)). A proposed settlement is within the range of reasonableness if it is fair, adequate, and reasonable. *Id.*

1. The Settlement is Fair

"A settlement is fair if it was reached as a result of good faith bargaining at arm's length, without collusion." *Whitaker v. Navy Fed. Credit Union*, 2010 WL 3928616, at *2 (D. Md. Oct. 4, 2010). In determining whether the settlement is "fair," the court should consider "(l) the posture of the case at the time settlement was proposed; (2) the extent of discovery that had been conducted; (3) the circumstances surrounding the negotiations, and (4) the experience of counsel in the area of class action litigation." *Id.*

a. The Posture of the Case and Extent of Discovery

The posture of the case supports preliminarily approving the Settlement. While the case has not moved into formal discovery, the parties have exchanged confidential discovery pursuant to Fed. R. Evid. 408 for nearly nine months. During that period, Defendants have produced, and Plaintiffs have reviewed, approximately 80,000 pages of documents. These documents include warranty and product liability claims made to Viking, Viking's internal communications regarding the activation of the Subject Sprinklers without the presence of a fire, manufacturing information related to the Subject Sprinklers, and Viking's internal analysis of claims made to Viking. In

addition, Defendants have agreed to make an employee of Viking available for a deposition that will occur prior to Plaintiffs' motion for final approval. As such, the work done by Class Counsel to date demonstrates that the Settlement is fair, reasonable, and adequate. *Decohen v. Abbasi, LLC*, 299 F.R.D. 469, 480 (D. Md. 2014) ("The record shows that the parties have engaged in informal discovery, assuring sufficient development of the facts to permit an accurate assessment of the merits of the case.")

b. The Circumstances Surrounding the Negotiations

The circumstances surrounding the parties' settlement negotiations supports the Settlement. As indicated above, the parties' engaged in a mediation before the Honorable Diane Welsh (Ret.) of JAMS. Judge Welsh is an experienced mediator and only after a full day of mediation did the parties agree to a proposed MOU setting forth the material terms of the relief to the Settlement Class. The subsequent settlement negotiations that resulted in the Settlement were all conducted at arms'-length by experienced counsel for the parties and took an additional eight months. *See, e.g.*, *Beaulieu v. EQ Indus. Servs., Inc.*, No. 5:06-CV-400-BR, 2009 WL 2208131, at *24 (E.D.N.C. July 22, 2009) (observing the "extended nature" of the settlement negotiations supported fairness of settlement). The amount of attorneys' fees was negotiated only after the substantive relief for the Settlement Class was agreed upon, and the amount of fees does not reduce the benefits made available to the Settlement Class. As such, the circumstances surrounding the negotiations supports preliminarily approving the Settlement. *See, e.g.*, *In re Am. Capital Shareholder Derivative Litig.*, 2013 WL 3322294, at *4 (noting negotiations between counsel were "appropriately adverse and at arms' length"); *G. F. v. Contra Costa Cty.*, No. 13-CV-03667-MEJ, 2015 WL 4606078, at *13 (N.D. Cal. July 30, 2015) ("[T]he assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive").

c. The Experience of Counsel in Class Action Litigation

The experience of Class Counsel also supports preliminarily approving the Settlement. The experience of Class Counsel is detailed in the accompanying firm resumes. *See* Exhibit B to the Declaration of James P. Ulwick. Class Counsel have substantial experience in class action litigation involving product defects. Indeed, recently the District of New Jersey granted final approval to a $43.5 million settlement related to allegedly defective plumbing products in which Sauder Schelkopf served as class counsel. *Cole v. NIBCO, Inc.*, No. 13-7871, ECF No. 227 (D.N.J. April 12, 2019). Class Counsel believe the Settlement offers substantial relief to the Settlement Class Members and that the prompt and certain relief of the Settlement outweighs the years of contested litigation that will result in the absence of settlement. Class Counsel therefore requests that the Court grant preliminary approval to the Settlement. *See In re Am. Capital Shareholder Derivative Litig.*, 2013 WL 3322294, at *4 (finding affiliation with well-regarded law firms with strong experience in the relevant practice area supports preliminary approval).

2. The Settlement is Adequate

When determining whether a settlement is substantively adequate, a court should consider: "(l) the relative strength of the plaintiff's case on the merits, (2) the existence of any difficulties of proof or strong defenses the plaintiffs are likely to encounter if the case goes to trial, (3) the anticipated duration and expense of additional litigation, (4) the solvency of the defendant and the likelihood of recovery on a litigated judgment, and (5) the degree of opposition to the settlement." *Whitaker*, 2010 WL 3928616, at *2.

a. Relative Strength on the Merits and Existence of Difficulties of Proof

If the Lawsuit were to proceed on a litigation path, Plaintiffs believe they could demonstrate that the Subject Sprinklers were sold with a common defect that renders them prone to activation without the presence of a fire. Plaintiffs also expect that they could present evidence suggesting that Defendants knew about the defect before Subject Sprinklers were made available

for purchase. Plaintiffs would thus be in a position to mount a formidable case that Defendants violated numerous state consumer protection statutes, breached state and federal warranty laws, and engaged in fraud by failing to disclose a known defect. Nevertheless, Class Counsel are seasoned in product defect class litigation, and recognize that even seemingly strong cases can sometimes fail on liability, or be whittled.

For example, Defendants may argue that the Subject Sprinklers are not defective because - even though they were manufactured in the upper range -- they still fall within the range of allowable load on the solder link and all times carried necessary industry certifications. Moreover, Defendants may argue that any non-fire activations of the Subject Sprinklers actually were caused by environmental factors, including ambient heat beyond the product specifications, not the product itself. Defendants also may argue that even if there was a defect, it did not conceal material information about the Subject Sprinklers because it did not discover any such alleged defect until after it had sold many of the Subject Sprinklers. In addition, Plaintiffs anticipate an argument that Defendants covered replacements of the Subject Sprinklers under warranty or through goodwill, and that those repairs not covered were fairly denied because of physical damage to the sprinkler or environmental operating conditions well in excess of permissible ambient temperature ranges. Defendants also may present legal defenses either eliminating certain claims outright, or certain remedies sought, including the availability of replacement sprinklers under several of the theories pled and the potential impact of the economic loss doctrine on claims for physical damage to adjacent areas of the structure caused by an activated sprinkler. Finally, even if the case were to proceed to trial and if Plaintiffs were to prevail both at trial and on appeal, any such recovery would not be made available for years. In other words, a victory at trial, coming several years from now, would likely not deliver results superior to the Settlement before the Court.

b. Anticipated Duration and Expense of Additional Litigation

Class actions typically entail a high level of risk, expense, and complexity, which is one reason that judicial policy so strongly favors resolving class actions through settlement. *Reed v. Big Water Resort*, LLC, No. 2:14-CV-01583-DCN, 2016 WL 7438449, at *5 (D.S.C. May 26, 2016 ("There is a 'strong judicial policy in favor of settlements, particularly in the class action context.'") (quoting *In re PaineWebber Ltd. P'ships Litig.*, 147 F.3d 132, 138 (2d Cir. 1998)). If the parties had been unable to resolve this case through settlement, the litigation would likely have been protracted and costly. Class Counsel have litigated many product defect class actions that have taken several years to conclude, and some have lasted over a decade factoring in appeals. Before ever approaching a trial in this case, the parties likely would have briefed at least one motion to dismiss, class certification (along with a potential Rule 23(f) appeal), and summary judgment, in addition to expending considerable resources on electronic discovery, depositions, and expert witnesses. It is therefore unlikely that the case would have reached trial before late 2020, with post-trial activity to follow. By that time, many more class members may have incurred non-fire activations that could have been avoided by the Replacement Program provided for as part of the proposed Settlement.

c. Solvency of Defendant and Likelihood of Recovery on a Litigated Judgment

Defendants' solvency and ability to perform its duties under the Settlement are not in question. As such, Plaintiffs respectfully submit that this factor is neutral. *See, e.g.*, *Decohen*, 299 F.R.D. at 480.

d. Degree of Opposition to the Settlement

Finally, the Settlement Class has yet to be notified of the Settlement and given an opportunity to object, so it is premature to assess this factor. Before the final approval hearing, the parties will provide the Court with any objections they receive after notice is disseminated, and reserve the right to address the substance of any of the objections in their final approval papers.

B. The Settlement Class Satisfies Rule 23

1. The Settlement Class Meets the Requirements of Rule 23(a)

In connection with granting preliminary approval, the Court should also confirm that the proposed Settlement Class meets the requirements of Rule 23. *See Amchem Prods. v. Windsor*, 521 U.S. 591, 620 (1997); Manual for Complex Litigation, § 21.632. The prerequisites for class certification under Rule 23(a) are (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy of representation, each of which is satisfied here. Fed. R. Civ. P. 23(a)

First, Rule 23(a)(1) requires that the class be "so numerous that joinder of all members is impracticable." The Fourth Circuit has held that "[t]here is no mechanical test for determining whether in a particular case the requirement of numerosity has been satisfied." *Kelley v. Norfolk & W. Ry. Co.*, 584 F.2d 34, 35 (4th Cir. 1978). Classes with as few as 25 to 30 members "have been found to raise the presumption that joinder would be impracticable." *Stanley v. Cent. Garden & Pet Corp.*, 891 F. Supp. 2d 757, 770 (D. Md. 2012). Here, approximately 1.86 million Subject Sprinklers were sold in the United States, and were installed in an estimated 30,000 to 40,000 structures. As such, there is no question that numerosity is met here.

Second, Rule 23(a)(2) requires that "there are questions of law or fact common to the class." "Commonality requires the plaintiff to demonstrate that the class members have suffered the same injury." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349-50 (2011) (citation and internal quotation marks omitted). The Rule, however, "does not require that all, or even most issues be common, nor that common issues predominate, but only that common issues exist." *Central Wesleyan College v. W.R. Grace & Co.*, 143 F.R.D. 628, 636 (D.S.C. 1992) (citing *Holsey*, 743 F.2d at 216-217). When the party opposing the class has engaged in some course of conduct that affects a group of persons and gives rise to a cause of action, one or more of the elements of that cause of action will be common to all of the persons affected." Newberg on Class Actions §

3:10. Here, there are numerous common questions of law and fact, including whether the Subject Sprinklers are defective and whether Defendants knew of the defect. As such, commonality is easily satisfied here.

Third, Rule 23(a)(3) requires that "the claims or defenses of the representative parties are typical of the claims or defenses of the class." To be typical, the Plaintiff's "interest in prosecuting his own case must simultaneously tend to advance the interests of the absent class members." *Deiter v. Microsoft Corp.*, 436 F.3d 461, 466 (4th Cir. 2006). In other words, the plaintiff's claim "cannot be so different from the claims of absent class members that their claims will not be advanced by plaintiff's proof of his own individual claim." *Id.* at 466-67. Here, all Plaintiffs purchased or otherwise had Defendants' Subject Sprinklers installed in their structures. Plaintiffs' claims are typical of those of the Settlement Class Members.

Fourth, Rule 23(a)(4) requires "the representative parties [to] fairly and adequately protect the interests of the class." "To meet this requirement, a plaintiff must demonstrate that he or she (1) 'will vigorously prosecute the interests of the class through qualified counsel' and (2) that they have 'common interests with unnamed members of the class.'" *Beaulieu*, 2009 WL 2208131, at *15 (quoting *Olvera–Morales v. Int'l Labor Mgmt. Corp.*, 246 F.R.D. 250, 258 (M.D.N.C. 2007). The importance of the adequacy requirement is based on the principle of due process, which "requires that named plaintiffs possess undivided loyalties to absent class members." *Broussard*, 155 F.3d at 338.

As demonstrated in Section III(A)(1)(c), *supra*, Class Counsel possess substantial experience in product defect class action litigation and have successfully resolved product defect and other class action litigation across the country. Plaintiffs also have common interests with the unnamed members of the Settlement Class, as discussed in the preceding section analyzing typicality. As such, adequacy is easily satisfied here. *See, e.g.*, *Decohen*, 299 F.R.D. at 477

("Decohen's interests are not opposed to the other class members, and class counsel have shown by their vigorous prosecution of this litigation for three and a half years that they are qualified, experienced, and able to conduct the litigation.").

2. The Settlement Class Meets the Requirements of Rule 23(b)(3)

Rule 23(b)(3) requires the Court to find "that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.").

First, the predominance inquiry focuses on whether liability issues are subject to class-wide proof or require individualized and fact-intensive determinations. *Cuthie v. Fleet Reserve Ass'n*, 743 F. Supp. 2d 486, 499 (D. Md. 2010). "Deciding whether common questions predominate over individual ones involves a qualitative, rather than quantitative, inquiry." *Singleton v. Domino's Pizza, LLC*, 976 F. Supp. 2d 665, 677 (D. Md. 2013) (citing *Gunnells v. Healthplan Servs., Inc.*, 348 F.3d 417, 429 (4th Cir. 2003)). Here, the overriding questions that are at the core of Plaintiffs' claims are whether the Subject Sprinklers are defective, whether Defendants had a duty to disclose the defect, whether Defendants knowingly concealed the defect, and whether the defect is a material fact.

Second, there can be little doubt that resolving all class members' claims through a single class action is superior to a series of individual lawsuits. The superiority inquiry weights the following factors:

> (i) the strength of the individual class members' interest in controlling the prosecution and defense of a separate action, (ii) the extent and nature of existing litigation already begun by or against class members, (iii) the desirability or undesirability of concentrating the litigation in the single forum selected by the class plaintiffs, and (iv) the likely difficulties in managing the class action.

Lloyd v. Gen. Motors Corp., 275 F.R.D. 224, 228 (D. Md. 2011). Each of these factors demonstrate superiority is satisfied. First, there is no advantage to individual members controlling the prosecution of separate actions. There would be less litigation or settlement leverage, significantly reduced resources, and no greater prospect for successful resolution. Given the sheer number of Subject Sprinklers sold, concentrating the litigation and the Settlement in front of one Judge lessens the strain on judicial resources and conserves the resources of all involved. Finally, in the settlement context, there can be no objection here that class proceedings would present the sort of intractable management problems that sometimes override the collective benefits of class actions, "for the proposal is that there be no trial." *Amchem*, 521 U.S. at 620.

C. The Court Should Order Dissemination of the Notice

Pursuant to the terms of the Settlement, Defendants are responsible for all costs of the Notice Plan and settlement administration. The Settlement provides that EPIQ Class Action & Claims Solutions, Inc. ("Epiq") will administer the Settlement. Claims can be submitted by U.S. mail, email, or through the dedicated settlement website.

1. The Contents of the Class Notice

The federal rules require that before finally approving a class settlement, "[t]he court must direct notice in a reasonable manner to all class members who would be bound by the proposal." Fed. R. Civ. P. 23(e)(1). Where the settlement class is certified pursuant to Rule 23(b)(3), the notice must also be the "best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B).

Plaintiffs submit that the proposed Notice Plan meets the requirements of Fed. R. Civ. P. 23(c)(2)(B). That rule, in pertinent part, provides as follows:

The notice must concisely and clearly state in plain, easily understood language:

(i) the nature of the action;
(ii) the definition of the class certified;
(iii) the class claims, issues, or defenses;
(iv) that a class member may enter an appearance through an attorney if the member so desires;
(v) that the court will exclude from the class any member who requests exclusion;
(vi) the time and manner for requesting exclusion; and
(vii) the binding effect of a class judgment on class members under Rule 23(c3).

Fed. R. Civ. P.23(c)(2)(B).

The Notice Plan satisfies each of these requirements and is the best notice practicable. *See* Declaration of Cameron R. Azari, ¶¶ 10-48. It states the nature of the action, the Settlement Class definition, the Class claims, and the issues and defenses. It also states that a Settlement Class Member may enter an appearance through counsel, may elect to opt out of the Settlement Class, and that the Settlement, if and when approved, will be binding on all Settlement Class Members who do not opt out. The Notice further sets forth the terms of the proposed Settlement and the right of each Settlement Class Member to object to the proposed Settlement. *See* Rule 23(e)(4)(A). It summarizes the nature of the pending litigation and the Settlement's essential terms. It also informs the Settlement Class, among other things, that complete information regarding the Settlement is available upon request from Class Counsel and that any Settlement Class Member may appear and be heard at the hearing on final approval of the Settlement. In addition, the Class Notice informs the Class Members of the request for the award of attorneys' fees and reimbursement of litigation expenses by Class Counsel. Fed. R. Civ. P. 23(h).

2. The Manner of Notice

As to the manner of giving notice, Fed. R. Civ. P. 23(c)(2)(B) provides, in pertinent part, as follows

> For any class certified under Rule 23(bX3), the Court must direct to class members the best notice practicable under the circumstances including individual notice to all members who can be identified through reasonable effort.

An individual mailing to each class member's last known address has been held to satisfy the "best notice practicable" test. *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156 (1974).

Notice of the Settlement will be published in print and digital/internet publications designed to target residential and commercial property owners and installers. The short form publication notice will be substantially in the form of Exhibit A-6 to the Declaration of James P. Ulwick. Publication notice of this nature alone is sufficient to satisfy due process. *See, e.g.*, *In re Toys R Us-Delaware, Inc.--Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 448–49 (C.D. Cal. 2014) ("When the court certifies a nationwide class of persons whose addresses are unknown, notice by publication is reasonable."); *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1080 (N.D. Cal. 2007) (approving notice of settlement via publication).

In addition, for those Settlement Class Members who are identifiable, a Notice of Settlement, substantially in the form of Exhibit A-2 to the Declaration of James P. Ulwick, will be mailed, first class postage prepaid. On a confidential basis, Viking and Class Counsel will both provide the Settlement Administrator with reasonably available information that identifies possible Settlement Class members from their existing records. The Notice of Settlement shall also be sent by the Settlement Administrator to all homeowners' insurance companies that the Settlement Administrator can identify.

A settlement website (www.vk457sprinklersettlement.com) will also be established. The Settlement Website will include: (i) information concerning deadlines for filing a Claim Form, and the dates and locations of relevant Court proceedings, including the Final Approval Hearing; (ii) the toll-free phone number applicable to the Settlement; (iii) copies of the Settlement Agreement,

the Notice of Settlement, the Claim Form, Court Orders regarding this Settlement, and other relevant Court documents, including Class Counsel's Motion for Approval of Attorneys' Fees, Costs, and Service Awards; and (iv) information concerning the submission of Claim Forms, including the ability to submit Claim Forms electronically using an electronic signature service such as DocuSign through the Settlement Website.

In addition to the settlement website, a toll-free telephone number and facility will be established that will provide members of the Settlement Class with information and direct them to the Settlement Website. The toll-free number and facility will be equipped to assist with (i) receiving requests for Claims Forms, the Notice of Settlement, this Settlement Agreement; and (ii) providing general information concerning deadlines for filing a Claim Form, opting out of or objecting to the Settlement, and the dates and locations of relevant Court proceedings, including the Final Approval Hearing.

Importantly, Epiq estimates that the Notice Plan will reach at least 80% of the Settlement Class, which is well within the established standard for class notice campaigns. Declaration of Cameron R. Azari, ¶ 38. For the foregoing reasons, Class Counsel and Epiq respectfully submit that the Notice Plan satisfies due process and should be approved. *See*, *e.g.*, *In re Serzone Prod. Liab. Litig.*, 231 F.R.D. 221, 231 (S.D.W. Va. 2005) (approving notice plan "which included nationwide publication notice, establishment of a notice and claims information website. . . , a toll free number to take questions, and individual mailings to reasonably identifiable Class Members.").

3. Notice to Federal and State Officials

Notice of the proposed settlement will also be provided to the U.S. Attorney General and appropriate regulatory officials in all 50 states, as required by the Class Action Fairness Act, 28 U.S.C. § 1715. Defendants, through Epiq, will provide these government officials with copies of

all required materials so that the states and federal government may make an independent evaluation of the settlement and bring any concerns to the Court's attention prior to final approval

D. The Court Should Set a Schedule for Final Approval

Plaintiffs request that the Court set a final fairness hearing to consider whether to grant final approval to the Settlement. Manual for Complex Litigation (Fourth) § 21.634 (2004). At the fairness hearing, Plaintiffs will request that the Court finally approve the Settlement. By way of example, for the Court's convenience, a chart identifying the milestones leading up to the final fairness hearing assuming a Preliminary Approval Date of November 18, 2019, is included below:

Event	**Date**
Preliminary Approval	November 18, 2019
Notice Date	January 27, 2020 (70 days after the Preliminary Approval Order)
Objection Deadline	March 27, 2020 (60 days after the Notice Date)
Opt-Out Deadline	March 27, 2020 (60 days after the Notice Date)
Final Approval Hearing	April 27, 2020 (not earlier than 30 days after the Objection and Opt Out Deadline)

IV. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court enter the accompanying Proposed Order Granting Preliminary Approval to the Settlement attached as Exhibit A-3 to the Declaration of James P. Ulwick.

Dated: November 14, 2019

/s/ James P. Ulwick

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