ZIMMERMAN REED, LLP
CHRISTOPHER P. RIDOUT (State Bar No. 143931)
Email: christopher.ridout@zimmreed.com
CALEB MARKER (State Bar No. 269721)
Email: caleb.marker@zimmreed.com
2381 Rosecrans Ave., #328
Manhattan Beach, CA 90245
(877) 500-8780 Telephone
(877) 500-8781 Facsimile

ZIMMERMAN REED, PLLP
HART L. ROBINOVITCH (admitted *pro hac vice*)
Email: hart.robinovitch@zimmreed.com
14646 N. Kierland Blvd., Suite 145
Scottsdale, AZ 85254
(480) 348-6400 Telephone
(480) 348-6415 Facsimile

Attorneys for Settling Plaintiffs / Class Counsel

(Additional Counsel Listed Below)

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

JEFFERY ETTER; SUSAN ETTER; PAUL KAHLER; FRAN CURTIS; MICHELLE CURTIS; LESLIE CRAWSHAW; RICHARD KAYLOR; BRIAN MCBRIDE; DENNIS OSHA; JAMES PEARCE; CRAIG POST; RAYMOND ROLLE, SR; EMIL VARGO; LEONARD SOMERVILLE; ORRENE SOMERVILLE; RICHARD SPEARS; ALICE KNIGHT; ALAN BURKHART; SANDRA BURKHART; GEORGE FREDERICK; KATHLEEN FREDERICK; ALAN GREAGER; and, LINDA GREAGER, individually, and on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

THEFORD CORPORATION, a Delaware corporation; NORCOLD, INC., a Delaware corporation; THE DYSON-KISSNER-MORAN CORPORATION, a Delaware corporation; and, DOES 1 to 50, inclusive,

Defendants.

Case No. 8:13-CV-00081-JLS-RNB

Assigned for all purposes to the Honorable Josephine Staton

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF SETTLING PLAINTIFFS' MOTION FOR FINAL APPROVAL OF PROPOSED CLASS ACTION SETTLEMENT AND CERTIFICATION OF SETTLEMENT CLASS

Date: September 16, 2016
Time: 2:30 p.m.
Courtroom: 10A

Date Action Filed: December 12, 2012
Removal Date: January 16, 2013

This document also relates to the following related action:

CHARLES CHOW, JOHN ROBINSON, RANDY DUPREE, RAY BURKHEAD, GORDON WILLIAMSON AND LINDA PIERSON, individually, and on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

NORCOLD, INC., a Delaware corporation; THETFORD CORPORATION, a Delaware corporation; THE DYSON-KISSNER-MORAN CORPORATION, a Delaware corporation; and DOES 1 to 50, inclusive.

Defendants.

Case No.: SACV14-06759

Assigned for all purposes to the Honorable Josephine L. Staton

Date Action Filed: August 28, 2014

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I. PRELIMINARY STATEMENT

This motion for final approval of the class action settlement in this case is the culmination of a process this Court has overseen for several years. On March 29, 2016, the Court issued an order preliminarily approving the settlement, overruling objections, conditionally certifying the settlement Class, appointing Class Representatives and Class Counsel, directing the dissemination of the settlement notice to the Class and scheduling the Final Fairness Hearing for September 16, 2016. Order, March 29, 2016 (Doc. 468); Orders Approving Short Form Notice and Scheduling Order, April 8, 2016 (Docs. 473, 474). Settling Plaintiffs now request that the Court grant final approval to the settlement.

The settlement achieved in this case is a sound result for the members of the settlement Class in light of the risks that the Class faced. The Settlement creates a common pool of monetary and non-monetary benefits which can be valued at more than $50 million in the aggregate. There are three primary components of the common fund. Settlement Agreement ("SA") §II(D)(1). The main feature of the settlement is the establishment of a $36 million Monetary Fund from which claims can be made by class members to receive certain shares. SA §II(D)(1)(i) and Revised Addendum. (Docs. 412-1, 447-1.) Depending on the refrigerator or cooling unit model owned and whether any replacement or repair costs were incurred, claimants will be awarded a weighted number of shares in the Monetary Fund and paid accordingly in four installments. As the entire $36 million fund will be distributed to the Class, without any reversion to Defendants, this represents a significant benefit to the settlement Class. The Monetary Fund will also be used to pay costs of notice, administrative costs, attorneys' fees and costs and any incentive awards to the Class Representatives. Next, in addition to the ability to file claims and receive five shares in the settlement's Monetary Fund, all owners of N6 and N8 units will automatically receive a three-year extended warranty against cooling unit leaks. SA §II(D)(1)(ii). Finally, the settlement provides additional written warnings to the class regarding the alleged defect. SA §II(D)(1)(iii). In short, the pool of settlement benefits secured for the Class is significant and represents an outstanding achievement in

light of the numerous risks presented.

The reaction of the Class to the settlement after receiving the settlement notice has been extremely favorable. To date, no objections have been filed and only a small number of class members have elected to exclude themselves from the settlement class. As a result, the Class Representatives and Class Counsel request that the Court grant final approval so the Settlement can be implemented without further delay and the settlement proceeds can begin to be distributed to Eligible Claimants.

II. SUMMARY OF THE PROCEDINGS AND SETTLEMENT TERMS

Relevant facts pertaining to the proceedings and settlement are described in detail in the Declaration of Hart Robinovitch, filed August 11, 2016. (Doc. 480.) The following is a summary of those proceedings and the settlement terms.

A. The Nature of the Alleged Defect.

Plaintiffs in this class action allege that at relevant times Defendants Norcold, Inc., Thetford Corp, and the Dyson-Kissner-Moran Corp. ("Defendants"), designed, manufactured, distributed, advertised and sold three models of Gas Absorption Refrigerators for recreational vehicles such as motorhomes and boats. ("RV's") containing a common safety defect that caused the refrigerator's cooling unit boiler tubes to corrode prematurely, leak chemical gases and in certain instances, ignite.

The three refrigerator models at issue are commonly referred to as the N6 (or 600) Series, the N8 (or 800) Series and the 1200 Series. The lawsuit alleged that each of the models shared certain design features that lead to corrosion and stress in the cooling unit's boiler tubes which could cause a leak. *See generally* Expert Reports of Orion Kieffer and Peter Layson. (Docs. 122, 123.) The lawsuit demanded that Defendants provide class members with either non-Norcold replacement cooling units or the cash equivalent so class members could replace their cooling unit if they so choose.[1] Based on the retail price of replacement cooling units manufactured by other companies, the cost

[1] In October 2012, Defendants modified the steel boiler tubes on newly produced Series 1200 units so that they had an increased gauge and thickness. *See* Roberts Decl. ¶12 (Doc. 144); O. Kieffer Decl. at ¶14 (Doc. 122)(citing B. Cutright deposition).

of the relief sought was estimated at more than $700 million.[2]

B. Relevant Procedural History

The litigation was originally commenced in state court with the filing of the original *Etter* complaint in the Orange County Superior Court. The case was removed to this federal district court on January 16, 2013. (Doc. 1.) Thereafter, the scope of the case was expanded through an Amended Complaint defining additional state subclasses and adding additional plaintiffs. (Docs. 21, 40.) On August 28, 2014, a related case, *Chow et al. v. Norcold, Inc. et al.*, No. 2:14-cv-06759 (C.D. Cal.) was filed asserting similar consumer protection and breach of warranty claims on behalf of a national class. (*Etter* and *Chow* are collectively referred to herein as the "Litigation" or the "Actions").

In the Actions, Plaintiffs alleged that each Defendant breached applicable state consumer protection laws, as well as express and implied warranties by selling defective refrigerators without fully disclosing the extent of the safety defect. Plaintiffs alleged that because Defendant DKM conducted the deceptive acts complained of in and from its principal offices in the state of New York; conduct which emanated to other states, harming Plaintiffs and Class Members nationwide; the New York consumer protection law, General Business Law §349 *et seq.*, applied uniformly to the nationwide class. *See Chow* Complaint ¶¶ 84-85; *Etter* FAC at ¶130 (Doc. 40). Plaintiffs in *Chow* also asserted claims for violation of the Magnuson-Moss Warranty Act, 15 U.S.C. §§2301, *et seq.* As Norcold is the manufacturer of the units, the claims against the two parent companies, Thetford and DKM, were based on alter-ego liability theories.

Defendants generally denied the allegations and offered a number of contrary explanations, defenses and challenges both on the merits and to class certification, supported by the testimony of their own expert witnesses. *See generally* Docs. 73, 134;

[2] The cost of replacing a 1200 Series Cooling Unit is estimated to be approximately $1700. The estimated cost of replacing a N6 or N8 Cooling Unit approximately $1129. Extrapolated across a population exceeding 500,000 units, the cost to retrofit all Class Members' refrigerators with new cooling units would exceed $700 million. *See* Marker Decl. (Doc. 434); *see also* Marker Decl. (Doc. 187)(estimating number of class members with each type of unit).

see also Declarations of Petty-Galis, Roberts, Klein / Cutright, Ross, McMakin, Harris, Chamberlain, and Phillips (Docs. 142-45, 148, 415-420). In short, the legal theories raised in the litigation were and remain sharply disputed by the parties.

C. Discovery.

The parties engaged in significant fact and expert discovery pertaining to both class certification and merits issues. Robinovitch Decl. ¶¶11-14 (Doc. 480). Plaintiffs took numerous fact and corporate / Rule 30(b)(6) depositions of Defendants. Plaintiffs served the maximum amount of interrogatories and over 618 Requests for Production (206 on each Defendant). *Id.* Ultimately, Plaintiffs' counsel received and reviewed over 166,000 pages of responsive documents. *Id.* In addition, Plaintiffs propounded discovery requests (and motions to compel) demanding that Defendants produce copies of their prior sworn testimony (including expert and other witness depositions) and documents from other litigation involving refrigerator leaks or fires. (Docs. 104-107, 130.) In turn, Defendants deposed all 22 named Plaintiffs, except Mrs. Curtis, and served two sets of Interrogatories and Request for Production on each. Finally, each side retained numerous expert witnesses to provide professional opinions on matters relevant to both class certification, merits, procedural and financial issues.

D. Class Certification Proceedings.

The parties briefed the motion for class certification twice in early 2014, each time highlighting the significant disputes as to whether this case was suitable for class certification. *See* Docs. 52, 73, 117, 134. While Plaintiffs' pointed out that a number of vehicle and product safety defect cases have been certified for litigation or settlement purposes, Defendants countered by arguing that this case was distinguishable in several respects, including whether the case was properly before this Court and instead should proceed before the National Highway Transportation Safety Administration ("NHSTA"). Among other things, Defendants claimed that the prudential mootness doctrine applied as they believed that they remedied the problems complained of through voluntary recalls and retrofit programs and that NHTSA approved those actions.

E. Arms-Length Settlement Negotiations.

Shortly before the date originally scheduled for the class certification hearing in June 2014 the parties, each recognizing the significant risks that the motion presented, mutually agreed to go to mediation before the Hon. Carl West (Ret.) to attempt a global resolution. In all, the parties attended six in-person mediation sessions with Judge West at JAMS (on June 4, 5, 9; July 7, 17 and 18), as well as numerous additional telephonic sessions involving counsel for the parties. West Decl.; Robinovitch Decl. ¶20; Ridout Decl. (Docs. 185, 186, 191).

During two of the sessions with Judge West (June 9 and July 7), Defendants brought their outside financial consultant, who assisted them in restructuring their debt on two occasions (2008 and 2013) to explain, *inter alia*, Defendants' current financial situation; their consolidated sales revenue, assets and liabilities; the extent of their debt and assets pledged to existing lenders; existing loan covenants and ability to borrow. *See* Chamberlin Decl. (Doc. 188). Settling Plaintiffs brought their own forensic CPA to help them interpret the documents and information. Brandlin Decl. (Docs. 190, 334). The financial information presented, along with the facts learned just prior to the mediation regarding Defendants' lack of insurance coverage for the class claims at issue, allowed Class Counsel to gain a greater appreciation of the risks presented. (Docs. 109, 112.) While earlier in the litigation it appeared that any sizeable judgment obtained (which itself was far from certain) could be eventually satisfied in large part either by insurance coverage *or* by piercing the corporate veil and having Norcold's larger parent companies fund the judgment (no small feat in and of itself), given the new facts learned this no longer appeared to be as feasible as before. Further, as the mediation progressed other litigation risks became more pronounced. For instance, in the midst of the mediation process, another judge in this district issued an order in a case involving similar issues, *Landen v. Electrolux Home Products, Inc.*, No. 13-cv-1033 (C.D. Cal., July 1, 2014), which highlighted the risks that the Class faced and raised additional concerns.

On July 22, 2014, just days before the critical certification motion hearing, the parties reached a general agreement on the basic structure of a $33 million, non-reversionary settlement with the guidance and recommendation of Judge West.[3]

F. Settlement Approval Phase.

The initial Settlement Agreement, proposed class notices, and Motion for Preliminary Approval were filed by Class Counsel on September 12, 2014 (Docs. 184-191, 196). Certain "Non-Settling Plaintiffs" filed a formal objection to the Motion for Preliminary Approval, through their counsel, Mr. Beard. (Docs. 200, 202.)

On October 10, 2014, the hearing on the initial Motion for Preliminary Approval occurred. The Court raised five issues that it felt needed to be adjusted before a motion for preliminary approval of settlement could be granted. The initial motion was therefore denied without prejudice. (Doc. 221.) The order allowed Plaintiffs 60 days to remedy the deficiencies discussed in the order and file amended motion papers. *Id.*

Class Counsel worked diligently to address the issues raised in the Court's October 14, 2014 Order and promptly filed a second Motion for Preliminary Approval and revised Settlement Agreement on November 7, 2014. (Docs. 228, 229-1.) The second Motion for Preliminary Approval was objected to as well by the Non-Settling Plaintiffs. (Docs. 259, 260.) The Non-Settling Plaintiffs also brought a motion seeking leave to conduct certain discovery of Defendants. (Docs. 239, 243, 269.) On December 9, 2014, the Court granted the motion, in part, allowing limited, additional discovery pertaining to Defendants' finances and insurance coverage for the class claims. After completion of that discovery, supplemental briefs and expert reports pertaining to the second Motion for Preliminary Approval were filed by the Non-Settling Plaintiffs and Settling Plaintiffs on March 13 and 20, 2015, respectively. (Docs. 329, 331, 333-335.)

[3] In *In re Toyota Motor Corp. Unintended Acceleration Mktg., Sales Practices, & Products Liab. Litig.*, No. 8:10ML 02151 JVS, 2013 WL 3224585 (C.D. Cal. June 17, 2013) (*In re Toyota*), the parties similarly resolved the case on a nationwide basis while the class certification motion was pending and still presented risk to both sides.

On June 15, 2015 the Court issued an order denying the second Motion for Preliminary Approval, again without prejudice. (Doc. 402.) In that order, the Court identified three discrete terms that it felt needed to be modified or supported by additional evidence, and provided guidance as to how those issues could be addressed to bring the settlement within the standard necessary for preliminary approval. At the same time, the Court recognized "[a]nd the Court does not agree with Non-Settling Plaintiffs that Defendant are capable of paying $20 million to $40 million more per year." *Id.* at 27.

The settling parties contacted Judge West and engaged in further arms-length discussions eventually: (1) negotiating a $3 million increase in the settlement's Monetary Fund, bringing it to $36 million, with the additional $3 million being distributed in a fourth annual installment; (2) modifying the allocation plan so that N6 and N8 series owners making claims received five shares in the monetary fund instead of three shares; (3) no longer presenting certain named Plaintiffs who had alleged additional individual claim as putative class representatives so to avoid any appearance of any conflict; and, (4) expanding the timing and scope of the warning given class members regarding the alleged defect. Defendants filed the declarations of Norcold President Kevin Phillips and independent outside director Joseph Farnan, a former federal district court judge, confirming that Defendants would have to pursue alternative options available to them to address the class claims if the settlement was not approved. (Docs. 418-419.) Non-Settling Plaintiffs again objected, presenting proposals that were inconsistent with their prior positions and otherwise unfeasible. (Docs. 429-430.) The settling parties addressed these points in their respective replies filed on October 9, 2015. (Docs. 431-434.)

On October 23, 2015, the Court held a hearing on the third Motion for Preliminary Approval. (Doc. 439.) At the hearing, the Court clarified certain matters pertaining to the June 15, 2015 order. *See* Transcript, October 23, 2015 hearing at 6-8. After the hearing, adjustments to the settlement's Allocation Plan and timing of the warnings were agreed to and memorialized in an addendum to Settlement Agreement. (Doc. 447-1.)

On March 29, 2016, the Court granted Settling Plaintiff's third Motion for Preliminary Approval. (Doc. 468.) The Court established a schedule for dissemination of the class notice, deadlines for exclusions and objections, a briefing schedule, and scheduled the final Fairness Hearing for September 16, 2016. (Docs. 473-474.)

III. THE PROPOSED SETTLEMENT

Subject to this Court's approval, the Settlement Agreement ("SA") will resolve the class claims of the Settling Plaintiffs and all members of the Settlement Class who do not opt-out. (Docs. 412-1, 447-1.) The following summarizes the settlement terms:

A. Settlement Class.

The Parties agreed to the national Settlement Class defined in Section II (C) of the SA, and stipulated that it can be certified for settlement purposes pursuant to Fed. R. Civ. P. 23(b)(3). The *Chow* complaint alleges claims on behalf of a national class. Modification of the class definition is permissible when settling a class action. *See Spann v. J.C. Penney Co.*, 314 F.R.D. 312, 318 (C.D. Cal. 2016); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1018 (9th Cir. 1998) (expanding case to national class).

B. The Benefits of the Settlement.

1. Settlement Consideration.

The Settlement Agreement generally provides three types of benefits to Class Members in consideration for the limited Release. *See* Section II (D) of SA.

a. Monetary Fund: If approved, Defendants will pay thirty-six million dollars ($36,000,000.00) to the Class as a non-reversionary common fund cash benefit settlement. This amount will be paid in four annual installments, according to the Payment Schedule described in SA § II (D)(2)(ii). The amount paid by Defendants will to be distributed to Class Members who become Eligible Claimants, pursuant to the Allocation Plan described in SA § II (D)(5) and the Revised Addendum (Doc. 447-1), after deduction of court-approved Administrative Expenses, Attorneys' Fees and Costs, and Class Representative Incentive Awards, as described in SA § II (D)(1)-(4).

b. Extended Warranties for Owners of a Norcold N6 and N8 Series Gas Absorption Refrigerators: Defendants will also provide, at their expense, a three-year extended warranty to class members who own a Norcold manufactured as original equipment N8 Series Gas Absorption Refrigerators or Cooling Units and/or Norcold manufactured as original equipment N6 Series Gas Absorption Refrigerators or Cooling Units that were manufactured from January 1, 2009, to December 31, 2013, covering replacement (parts and reasonable labor costs) of any cooling unit that fails due to a leak. Section II (D)(1)(ii). This benefit is automatically provided to N6 and N8 class members without the need to file a claim. Settling Plaintiffs value this benefit at more than $14 million based on the fact Defendants sell three-year extended warranties of N6 and N8 refrigerators at a retail cost of $199.95. *See* Robinovitch Decl. at ¶97 (Doc. 480).

c. Warning Notice: Defendants will also provide to Eligible Claimants the written warning described in SA § II (D)(1)(iii) and the Revised Addendum (Doc. 447-1). The safety warnings were provided to class members in the Long Form Notice, Short Form Notice, Summary Notice and on the Settlement Website, and will also be at the time of the First Annual Installment from the Monetary Fund to Eligible Claimants.

2. Claims Process.

The Settlement employs a Claims Process to distribute the monetary benefits to the Class. The purpose of the Claims Procedure and the Allocation Plan is to attempt to notify potential class members of their ability to make a claim and to distribute settlement benefits in a fair and reasonable manner. SA § II (D)(3). A Claims Process is employed because Defendants do not have current mailing address and contact information for every person in the Class, who is a current or former owner, or data confirming the amount of the repair / replacement costs incurred by class members. Many class members bought used RV's or replacement refrigerators / cooling units.

3. Allocation Plan.

Under the Settlement, class members are able to submit claim forms either online or via mail attesting to their eligibility to share in the Monetary Fund. The Claim Form is

relatively straightforward and simply requests that the class member provide basic information such as their current name, mailing address, phone number, what model refrigerator they own or owned and if they spent any money to repair or replace the cooling unit. The answer to these questions determines how many "shares" of the Monetary Fund the class member receive. Under the Allocation Plan:

a. Those who *currently* own a 1200 Series refrigerator or cooling unit, manufactured between 1/1/02 and 10/1/12 will receive 25 shares of the Fund;

b. Those who *formerly* owned a 1200 Series refrigerator or cooling unit, manufactured between 1/1/02 and 10/1/12 and who spent money on repairs or to replace the unit due to a suspected cooling unit leak or as a precautionary measure regarding a potential cooling unit leak (including parts, labor, or shipping costs), or incurred a related loss due to a suspected cooling unit leak, will receive the following shares of the Monetary Fund;

Over $1,700.00	25 shares
From $1,360.01 to $1,700.00	20 shares
From $1020.01 to $1360.00	15 shares
From $680.01 to $1,020.00	10 shares
From $340.01 to $680.00	5 shares
From $68.01 to $340.00	3 shares
From $0.01 to $68.00	1 share;

c. Those who *formerly* owned a 1200 Series refrigerator or cooling unit, manufactured between 1/1/02 and 10/1/12 but *did not* spend money on repairs or to replace the unit will receive 1 share of the Monetary Fund;

d. Those who *currently* own a N6 or N8 Series refrigerator or cooling unit, manufactured between 1/1/09 and 12/31/13 and who spent money on repairs or to replace the unit will receive 5 shares of the Monetary Fund. This benefit will be provided in addition to the 3 year Extended Warranty against leaks.

SA § II (D)(5) and Revised Addendum (Docs. 412-1 and 447-1.)

At the end of the Claims Period, the Claims Administrator will tabulate the total

number of timely submitted Claim Forms, and the total number shares that those class members' Claim Forms represent pursuant to the four categories described above. The $36 million Monetary Fund, *less* any court-awarded attorneys' fees and expenses, administrative expenses and class representative awards, will then be divided into that number of shares and a per-share value determined. Each Eligible Claimant will then be entitled to receive payment equal to the total number of shares he/she is allotted, multiplied by the per-share amount. Payment of that amount will be made to the class members who filed claim forms in four separate installments.

The share values associated with each category were determined by considering a number of relevant factors such as the higher cost of the 1200 Series Cooling Units compared to the N6 and N8 Series units; range of repair or replacement costs incurred, the greater frequency of reported incidents in 1200 Series Cooling Units compared to the N6 and N8 Series units and the larger population of N6 and N8 Series Units compared to the 1200 Series units. Marker Decls. (Docs. 187, 413) and Suppl. Memo. (Doc. 449).

The Allocation Plan provides the maximum number of shares (25) to claimants who spent more than $1,700 for cooling unit repairs or replacements – the estimated retail cost of a replacement cooling unit (whether manufactured by Norcold or another manufacturer), which is fair. Thus, a former 1200 owner who already incurred the same replacement costs as a current 1200 owner who is advised to purchase a replacement unit with the proceeds will receive the same number of settlement shares. Former 1200 owners who spent less than the full replacement cost on repairs will receive less on a proportional sliding scale. Former 1200 owners who spent only *de minimis* amounts on repairs (e.g., less than $68) will receive the same single share that former owners without repair costs (but who still present diminished value claims).

Further, class members who own N6 and N8 Series units and submit claims receive five shares in the Monetary Fund – the same number as former 1200 owners attesting that they incurred between $340 and $680 in repair costs. This is rational and equitable even though the replacement cost for a N6 or N8 Series cooling unit may be

higher than $680, because those class members with N6 and N8 Series units face a lower risk of a leak and also receive a three-year extended service plan that covers any future costs incurred due to a cooling unit leak. *See* Marker Decl. ¶¶9-11 (Doc. 413).[4]

Under a class action settlement, class members with claims of different strength may receive different compensation.[5] An allocation plan in a class settlement need not be overly complicated or precise; rather, claimants with relatively similar claims can be grouped into general categories or ranges in order to promote the administrative feasibility and general manageability of a settlement. *In re Oracle Sec. Litig.*, 1994 U.S. dist. LEXIS 21593, at *3, No. 90-0931-VRW (N.D. Cal. June 16, 1994)("A plan of allocation that reimburses class members based on the extent of their injuries is generally reasonable."). "An allocation formula need only have a reasonable rational basis, particularly if recommended by 'experienced and competent' class counsel." *Maley v Del Global Techs. Corp.*, 186 F. Supp.2d 358, 367 (S.D.N.Y., 2002). The allocation of a limited-fund settlement among class members is an equitable determination where the court only has to weigh the "relative deservedness" of class members to the fund. *Curtiss-Wright Corp. v. Helfand* 687 F.2d 171, 174-75 (7th Cir. 1982); *In re Holocaust Victim Assets Litig.*, 413 F.3d 183, 186 (2d Cir. 2005)(same).[6] Here the Allocation plan is reasonable because its design and effect is to provide all class members with shares of the settlement fund that are proportionate to their damage claims to the extent possible. The Court's prior order evaluated and approved the share allocations on this basis. The proposed Allocation Plan continues to satisfy the standard for settlement approval.

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[4] Previously, in its June 15, 2015 order, the Court indicated that N6 and N8 owners should receive more than 3 shares. (Doc. 402). As a result, the allotment to N6 and N8 Series owners under the Allocation Plan was raised to 5 shares. (Docs. 412, 477-1.)

[5] *See generally Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1378 (9th Cir. 1993); *In re Ins. Brokerage Antitrust Litig.*, 579 F.3d 241, 273 (3d Cir. 2009); *In re TD Ameritrade Account Holder Litig.*, No. C 07-2852 SBA, 2011 WL 4079226, at *16 (N.D. Cal. Sept. 13, 2011); *In re NFL Players Concussion Injury Litig.*, 307 F.R.D. 351, 378 (E.D.Pa. 2015); *In re Toyota*, 2013 WL 3224585, at *19-20.

[6] The Court need not resolve disputed issues to evaluate a proposed allocation plan. *Curtiss-Wright*, 687 F.2d at 1175 ("To make an equitable allocation in this case the judge did not have to resolve trial-type issues of liability and therefore did not have to conduct a trial. He had only to weigh the relative deservedness of Curtiss-Wright and the other class members, and he could do this on the basis of the undisputed facts before him").

C. Limited Release of Claims.

The settlement benefits are provided to the Class in consideration for the limited release set forth in SA §VI(B). Specifically excluded from the Release, are class members' claims for personal injury, wrongful death or for damage to property other than to the subject refrigerator. Such claims are "reserved." Section VI (C).

D. Opt-Out and Objection Procedure.

Under the Settlement all class members have the right to either file a claim, to opt-out of the Class, to object to the settlement terms or to enter an appearance through the counsel of their choice by the August 26, 2016 deadline. SA §§ III, IV, V (Doc. 412-1).

E. Any Residual Funds Will Be Directed to a *Cy Pres* or Escheat to the State.

The parties do not anticipate any residual funds to distribute to a *cy pres* beneficiary as the settlement is structured to fully deplete and distribute the Monetary Fund to the Class. Residual funds will only exist if, after the distribution to Eligible Claimants, checks distributed remain uncashed. The proposed *cy pres* recipient is Public Citizen, a non-profit, consumer rights organization. *See* www.citizen.org. This provision satisfies the standard in *Dennis v. Kellogg Co.*, 697 F.3d 858, 865 (9th Cir. 2012). *See* Order, June 15, 2015 at *9. (Docs. 401-402.)

IV. FOR PURPOSES OF SETTLEMENT, THE SETTLEMENT CLASS MEETS THE REQUIREMENTS OF RULE 23

The Court has already provisionally certified the Settlement Class, appointed the Class Representatives and Class Counsel to represent the members of the Settlement Class, and made substantial findings under Rule 23. *See* Order, March 29, 2016 (Doc. 468). As set forth in Plaintiffs' Motion for Preliminary Approval (Doc. 184, 196); and the Court's Preliminary Approval Order, which are incorporated herein by this reference, the Settlement Class and appointed representatives satisfy the class certification requirements set forth in Rule 23(a) and Rule 23(b)(3). As the Ninth Circuit made clear in *Hanlon*, class certification of the type of claims presented here for settlement purposes is proper. 150 F.3d at 1019-24. *See also In re Toyota*, 2013 WL 3224585, at *5. All

concerns regarding challenges to class representatives and counsel have been addressed. (Docs. 464-468.) So as not to add to an already lengthy brief, Plaintiffs will not repeat those points again here.

V. THE SETTLEMENT IS FAIR, ADEQUATE AND REASONABLE TO THE CLASS AND SHOULD BE GRANTED FINAL APPROVAL

A. Settlement and Class Action Approval Process.

1. Public Policy Encourages Settlement of Complex Disputes.

In the Ninth Circuit "voluntary conciliation and settlement are the preferred means of dispute resolution." *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982). "[S]trong judicial policy...favors settlements, particularly where complex class action litigation is concerned." *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992).

2. Standard for Final Approval

Rule 23(e) of the Federal Rules of Civil Procedure sets forth the procedures for approval of class action settlements. Courts engage in a two-step process. First, the court must determine whether the proposed settlement deserves preliminary approval. *Nat'l Rural Telecommc'ns Coop. v. DirecTV, Inc.*, 221 F.R.D. 523, 525 (C.D. Cal. 2004). This step has already been completed here, as the Court preliminarily approved the settlement on March 29, 2016. (Doc. 468). Second, after notice is given to class members, the court must determine whether final approval is warranted. *Id*.

A court may only approve a settlement after a hearing and on finding that the settlement is fair, reasonable, and adequate to the class. Fed. R. Civ. P. 23(e)(2). *Staton v. Boeing Co.*, 327 F.3d 938, 959 (9th Cir. 2003) *citing Hanlon*, 150 F.3d at 1026. "It is the settlement taken as a whole, rather than the individual component parts, that must be examined for overall fairness." *Hanlon*, 150 F. 3d at 1026 citing *Officers for Justice*, 688 F.2d at 628. The Ninth Circuit has noted that "[a]ssessing a settlement proposal requires the district court to balance a number of factors, including: (1) the strength of the plaintiffs' case; (2) the risk, expense, complexity, and likely duration of further litigation;

(3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to the proposed settlement. *Hanlon*, 150 F.3d at 1026; *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1375 (9th Cir.1993); *Churchill Village, L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir.2004). The list is not exhaustive, and "[t]he relative degree of importance to be attached to any particular factor will depend upon and be dictated by the nature of the claim(s) advanced, the type(s) of relief sought, and the unique facts and circumstances presented by each individual case." *Officers for Justice*, 688 F.2d at 625.

Approval of a tentative class action settlement is a matter within the sound discretion of the court. *Class Plaintiffs*, 955 F.2d at 1276. In balancing all of these interests however, the court must keep in mind that "[s]ettlement is the offspring of compromise; the question ... is not whether the final product could be prettier, smarter or snazzier, but whether it is fair, adequate and free from collusion." *Hanlon* 150 F.3d. at 1027. Here, the economic value of the settlement, balanced against the relative risks, and the benefit of a fast resolution avoiding what could be significant delays shows that this settlement is fair, adequate, and reasonable and should be approved.

B. The Criteria for Settlement Approval Are Satisfied.

1. The Strength of the Plaintiffs' Case.

The compromise reached by the settling parties whereby the settlement benefits summarized above are provided in exchange for the limited release is fair, adequate and reasonable for the Class. Throughout the litigation, Plaintiffs were confident in their claims both on the merits and with regard to class certification, but as discussed further below and in the Robinovitch Declaration (Doc. 480), notwithstanding these strengths numerous risks remained that threatened to eliminate the value of the Class's claims.

It cannot be ignored that Defendants have been successful in avoiding liability when faced with claims based on the sale of alleged defective refrigerators. For

instance, on December 14, 2014, the Court in *Nationwide Mutual Insurance Co., A/S/O Leonard and Orrene Somerville, v. Cullum and Maxey Camping Center, Norcold, Inc., Thetford Corp, and Dyson Kissner Moran Corp.*, No. 14C2799 (Sixth Cir. Court, Davidson Cty, Tenn., Dec. 14, 2014) granted summary judgment to Defendants with regard to the named Plaintiffs Orrene and Leonard Somerville's insurance carrier's subrogation litigation on statute of limitations grounds and pursuant to the economic loss doctrine. In *Reis v. Thetford Corp. et. al,* No CIV 02740 (Superior Court, Contra Costa County), the case went to trial and resulted in a defense verdict. While the court granted the plaintiffs' post-trial motion for a new trial, the result in a second trial remained uncertain as well and could have resulted in the Plaintiffs losing again. Similar risks of losing on the merits at trial materialized in *In re Whirlpool Corp. Front Loading Washer Products Liability Litig.*, MDL No. 2001, No. 1-08-wp-6500 (N.D. Ohio, Feb. 18, 2015)(order regarding Whirlpool's motion for costs), a defective product case that Plaintiffs relied on heavily in their class certification motion due to the similarity of legal theories presented. In *Whirlpool*, while the class was certified and that decision affirmed by the Sixth Circuit, the class ultimately *lost* on the merits at trial after more than six years of hard-fought litigation and then faced the defendant's motion seeking recovery of over $534,000 in costs from Plaintiffs, of which $292,930 was ultimately awarded. Similar risks could have materialized here to leave class members with no recovery.

While the Class Representatives here originally sought more than $700 million for the Class, consideration of various risk factors ultimately tempered their expectations and analysis. The settlement applies an appropriate litigation risk discount that is consistent with the fail rate estimated fail rate for the cooling units.[7]

[7] Defendants' Incident Log contained approximately 2,900 entries of reported, but not confirmed, leaks from 2002 through June 2013. Even if all reported leaks were confirmed, over a population of 1,293,688 total N6, N8 and 1200 Series units sold during that same 2002-2013 time period (as depicted on Exh. 18 to Doc. 118), the fail rate would be 2.24%. (2900/1,293,688 = 2.24%). *See also* Roberts Decl. (Doc. 144), at ¶9, 12 (describing that the incident rate is likely overstated on the Incident Log). The litigation discount and $36 million Monetary Fund secured, therefore, is consistent with and actually exceeds the reported fail rate. ($702M x 2.24% = $15.7M) ($36 million / $702 million > 2,900 / 1,293,688).

"It is well-settled law that a cash settlement amounting to only a fraction of the potential recovery does not *per se* render the settlement inadequate or unfair." *See Officers for Justice*, 688 F.2d at 628. "'That a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved." "There is no reason, at least in theory, why a satisfactory settlement could not amount to a hundredth or even a thousandth part of a single percent of the potential recovery.'" *Teachers' Ret. Sys. v. A.C.L.N., Ltd.*, 2004 U.S. Dist. LEXIS 8608, 14-16 (S.D.N.Y. May 14, 2004). Given the risks presented here, the settlement is reasonable.

2. The Risk, Expense, Complexity and Duration of Further Litigation.

Additional risks were presented which threatened the Class's recovery, and at the very least to delay the time before class members could expect any payment. Among these were arguments that: class members lacked standing where alleged defects did not manifest a leak; NHTSA had primary jurisdiction over the dispute; the prudential mootness doctrine applied; statutes of limitation barred class members' claims and could not be tolled; warranties expired; the cooling units were not the cause and origin of incidents; the recalls addressed the alleged defect and remaining issues were caused by improper installation of the retrofits; damage theories were speculative; and, alter-ego liability could not be established so to hold Thetford or DKM responsible. These risks and examples where they materialized in other cases, are summarized in ¶¶ 24-44 of the Robinovitch Declaration (Doc. 480). During the mediation, additional facts were learned pertaining to Defendants finances, and lack of insurance for the class claims which increased the risks facing the Class. Possible bankruptcy proceedings or appeals threatened to add years to an already mature case. Additional risks were presented by objectors whose attitude towards these risks materializing were more cavalier. *Id.* ¶95.

As the Ninth Circuit held in *Torrisi*, the financial condition of a settling defendant is a predominating factor in considering the fairness of a proposed settlement when a larger award carries with it the real threat of bankrupting the defendant, leaving "little if

anything for the class members." 8 F.3d at 1376. While in some cases an argument can be made that a larger award to the class is possible should the case proceed, such an argument is based on "a best case result" and shouldn't detract from the fairness of a settlement based on "reality…[when] the settlement had to be negotiated based upon assets which could be called upon to fund it." *Id.*[8] Further, it cannot be ignored that the party most likely to be found liable here should the case proceed is Norcold – the smallest Defendant with the shallowest finances. The claims against the two parent companies, originally believed to have "deeper pockets," are more remote and more difficult to establish liability on due to the need to establish additional elements of proof required to pierce the corporate veil. Under similar circumstances, the court in *In re Catfish Antitrust Litig*, 939 F. Supp. 493, 498 (N.D. Miss. 1996) approved a settlement considering that "the defendants who were the 'deep pockets' in this cause were also those defendants who were most likely to avoid liability" ultimately, concluding that "a judgment against defendants who cannot pay is worthless."

The proposed settlement also avoids delay. It guarantees a substantial recovery for the Class now while obviating the need for lengthy and complex litigation procedures, including appeals. This factor weighs in favor of settlement approval.

3. The Risk of Maintaining Class Action Status Throughout The Trial;

The settlement in this case was reached on the eve of the class certification motion in July 2014 – a point when the risks facing both parties were at their pinnacle. While certain product defect cases asserting similar claims have been certified, others have not.[9]

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[8] *See also In re Washington Pub. Power Supply Sys. Sec. Litig.*, 720 F. Supp. 1379, 1399-400, 1404 (D. Ariz. 1989), *aff'd sub nom. Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1295 (9th Cir. 1992); *Hester v. Vision Airline, Inc.*, 2014 WL 3547643 at *8 (D.Nev., July 17, 2014); *Maine State Retirement System v. Countrywide Financial Corp.*, 2013 WL 6577020 at *13 (C.D. Cal., Dec. 5 2013)

[9] Compare *Wolin v. Land Rover*, 619 F.3d 1168 (9th Cir. 2010)(affirming class certification); *Keegan v. American Honda Motor Co.*, 284 F.R.D. 504 (C.D. Cal. 2012); and *Tait v. BSH Home Appliances*, 289 F.R.D. 466 (C.D. Cal., 2012) *with Torres v. Nissan North America*, 2015 WL 5170539 (C.D.Cal., Sept 1, 2015)(denying class certification); *Marcus v BMW*, 687 F.3d 583 (3rd Cir. 2012); *Martin v. Ford Motor Co.*, 292 F.R.D. 252 (E.D.Pa. 2013)(denying class certification); *In re Bridgestone / Firestone Tires Prods. Liab. Litig.*, 288 F.3d 1012 (7th Cir. 2002) and *Landen v. Electrolux Home Products*, No. 13-cv-1033 (C.D. Cal., July 1, 2014)(all same).

Others initially certified, have been decertified. After learning new facts regarding Defendants' finances and lack of insurance, the risks increased and with significant money on the table, Class Counsel did not believe it was prudent to reject the settlement offer without first providing the Class an opportunity to be notified of the opportunity to secure those funds and be heard. In short, class members faced the risk of a potential lose-lose situation: either lose on class certification, completely gutting the value of the Class's claims, or; prevail both on the certification motion and then at trial, after great time and additional expense, but eventually get "aced-out" if Norcold then simply turned around and filed for bankruptcy protection to avoid any judgment. As the Ninth Circuit recognized in similar circumstances: "[I]it is a double contingency; first, they must prevail on the class claims, and then they must find some way to collect what they win." *Torrisi*, 8 F.3d at 1376. This factor weighs in favor of settlement approval.

4. The Amount Offered In Settlement.

The settlement in this case represents a sound outcome given the significant risks that Plaintiffs faced in both proving their claims, obtaining class certification, and securing the settlement benefits. The settlement achieved in this case creates a common pool of monetary and non-monetary benefits for the members of the settlement Class which can be valued at more than $50 million in the aggregate. Any litigation discount off the maximum possible recovery applied in relation to the settlement is reasonable due to the facts learned in discovery, the significant litigation risks presented, and is also consistent with the fail rate shown on Defendants' Incident Log. *See* Robinovitch Decl. ¶¶ 96-97, 101, 105 (Doc. 480).

5. The Extent Of Discovery Completed And The Stage of Proceedings.

The parties conducted considerable discovery before commencing mediation discussions in June 2014. Robinovitch Decl. ¶¶ 11-14 (Doc. 480). During the mediation, additional fact finding occurred when Defendants brought their outside restructuring consultant to explain Defendants' financial situation to Class Counsel and the expert CPA that they retained, Mr. Brandlin. (Docs. 181, 334.) Thereafter, further document

production occurred. Mr. Brandlin submitted a supplemental declaration confirming his opinions. (Doc. 334.) Non-Settling Plaintiffs also submitted their accountant's report. (Docs. 318, 319.) Given the advanced stage of the proceedings and information obtained, there can be no question that Class Counsel have a clear view of the strengths and weaknesses of the Class's claims and damage approaches.

6. Class Counsel Fully Support the Settlement.

Class Counsel have considerable class action experience, including prior cases that addressed many of the types of risks presented here, and support the settlement. (Docs. 185, 186, 266-268, 464-467, 480.) The recommendation of counsel is entitled to "great weight," as counsel is best positioned to evaluate and produce a fair settlement. *National Rural*, 221 F.R.D. at 528; *Staton*, 327 F.3d at 959-60. In recommending the Settlement, Class Counsel exercised their judgment based on extensive knowledge of the facts of the case and legal issues facing the Class. They carefully weighed the strengths and weaknesses of the case and acted prudently to first secure and then preserve a sizable asset for the Class. In the absence of fraud or collusion of the parties, courts typically defer to the views of counsel. *Id.* Here, there is no indication that the settlement is the product of collusion. *See* Order, March 29, 2016 at *23 (Doc. 468). Negotiations with Defendants were conducted at arms-length, under the supervision of an experienced mediator and former judge, who also supports the settlement. *See* West Decl. (Doc. 191).

While Non-Settling Plaintiffs' counsel have filed a series of objections to the settlement, those objections are inconsistent, based on proposals that are not viable and have been overruled by the Court. (Doc. 468). Their remaining objections are tied to fees. Courts do not require that all named plaintiffs agree with a class settlement in order for it to be approved.[10] Further, not all lawyers for the named plaintiffs in a class action

[10] *Rodriguez v. West Publ. Corp.*, 2007 WL 2827379, at *10 (C.D. Cal. Sept. 10, 2007) *aff'd in part, rev'd in part sub nom.*, 563 F.3d 948 (9th Cir. 2009); *Class Plaintiffs*, 688 F.2d at 632 (affirming approval of settlement in class action over objection of named plaintiff and class representative); *Marshall v. Holiday Magic, Inc.*, 550 F.2d 1173, 1177 (9th Cir. 1977) (affirming approval class action settlement over objection of cross-plaintiffs, noting that "they should not now be allowed to play the role of spoilers for a class of more than 31,000 people when they could have chosen not to be bound by the

need to support a proposed settlement. *In re Ivan F. Boesky Sec. Litig.*, 948 F.2d 1358, 1366 (2d Cir.1991)("To empower each representative of a named plaintiff or subclass to veto the very proposal of a settlement to the district court would generally not serve the purposes of Rule 23.") Class Counsel, "ultimately owe their fiduciary responsibility to the class as a whole and are therefore, not bound by the views of particular named plaintiffs regarding any settlement." *Staton*, 327 F.3d at 960. Therefore, this factor weighs in favor of settlement approval. The Court should approve the settlement if it determines it is in the best interests of the Class as a whole.

7. The Presence of a Governmental Participant.

Following the Court's Preliminary Approval order, Defendants served the notice required under the Class Action Fairness Act, 28 U.S.C. §1715 on the U.S. Attorney General and Attorneys General of all 50 states. *See* T. Akerblom Decl. The response period has passed and to date, no objections or other response has been made to suggest that a governmental participant intends to become involved in these proceedings. This factor weighs in favor of settlement approval.

8. The Reaction of the Class Members to the Proposed Settlement.

The period for class members to file claims, objections and exclusions from the Class remains open until August 26, 2016, so the final figures are not yet known. Preliminary reports, however, show that the class' reaction to the settlement has been favorable and that the per-share payout will be meaningful. Documents available online, such as postings on RV forum boards, show that to the extent class members did not file claims, it is not necessarily because they disagree with the settlement terms. Rather, class member posts show that claims were not submitted for a variety of reasons including that they did not experience any problem with their refrigerator. For example, postings under

settlement");*White v. Experian Info. Solutions, Inc.*, 803 F. Supp. 2d 1086, 1112 (C.D. Cal. 2011) *rev'd and remanded sub nom. Radcliffe v. Experian*,715 F.3d 1157 (9th Cir. 2013)("Nor should a settlement be rejected merely because certain named plaintiffs object."); *Adoma v. Univ. of Phoenix, Inc.*, 913 F. Supp. 2d 964, 979-81 (E.D. Cal. 2012) (approving settlement over sole class representative's objection "a class representative cannot alone veto a settlement, especially one that has been presented to and approved by the court").

the "Norcold Class Action" thread on one site which the notice appeared (irv2.com), reveals the following explanations in response to the inquiry: "For those who have not joined the class action what's your reason?" (posted by "tmw188" on July 30, 2016)

- "I've had four Norcold refrigerators over the past several years and never had a problem so I'm not joining." (posted by "Arch Hoagland" on July 30, 2016);
- "Never heard of anything, but 12 years on and my fridge is awesome so dunno what issue is anyway." (posted by "Civdiv99" on July 30, 2016);
- "We've had 2 Norcold refrigerators over the past 16 years and neither of them have given is a problem. No harm, no foul no need to join a class action." (posted by "Hikerdogs" on July 31, 2016);
- "If this was their a/c units I'd sign up…but I haven't had issues with three of their refers so…" (posted by "dwhit" on July 31, 2016); and
- "No problems with my 10 year old Norcold fridge so what harm has occurred to me to justify joining?" (posted by "Sweetbriar" August 1, 2016).

Exhibit 2 to Supp. Robinovitch Decl. filed Aug. 19, 2016

C. Balancing All Applicable Factors Shows the Settlement Should Be Approved.

Fair consideration and balancing all of the above factors leads to the conclusion that the Settlement should be approved as fair, adequate and reasonable to the Class.

VI. THE NOTICE PROGRAM SATISFIES DUE PROCESS.

A. The Notice Forms Provided Individual Notice to Class Members

For a class judgment to bind an absent class member, Rule 23 requires that the absent class members receive adequate notice. Fed. R. Civ. P. 23(c)(2)(B), 23(e)(1). *See Hanlon*, 150 F.3d at 1025; *Moralez v. Whole Foods Mkt., Inc.*, 897 F. Supp. 2d 987, 997 (N.D. Cal. 2012). Under Rule 23(c)(2), notice to the Class must be "the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort," although actual notice is not required. *Silber v. Mabon*, 18 F.3d 1449, 1454 (9th Cir. 1994). The notice must state "clearly and concisely …in plain, easily understood language" the following: the nature of the action; the

definition of the class; the class claims, issues, or defenses; that class members may appear through counsel; that class members may exclude themselves; and the binding effect of a class judgment on class members. Fed. R. Civ. P. 23(c)(2)(B).

An extensive effort was undertaken to make sure that the notice of the proposed settlement sent to Class Members was more than adequate. The notice program employed was multi-faceted. As described in Section III of the Settlement Agreement it included: (i) a short-form mailer to class members; (ii) publication notice in a national newspaper as well as in RV magazines; (iii) a long-form notice; (iv) internet banner notices on websites aimed at RV owners; (v) a website providing comprehensive settlement information; (vi) social media; and (vii) a call center. The notice program was modeled after those approved by this Court in other vehicle defect cases and easily satisfies the requirements of Rule 23. *See*, *e.g.*, *In re Toyota*, 2013 WL 3224585 at *6 (finding similar notice program "meets the requirements of both Rule 23(e) and due process of law.").

Following the parties' agreement to the Revised Addendum on November 6, 2015, updated versions of all notices were filed with the Court. (Doc. 447, Exhibits A-E.) The Court approved the form of all notices, except the Short Form Notice, in the March 29, 2016 Order Granting Preliminary Approval. After certain revisions, the Short Form Notice was approved on April 8, 2016. (Doc. 473.) As shown below, the notice forms sent to class members here continue to fulfill each of the requirements in Rule 23.

1. Short-Form Notice. Class members whose last-known addresses Defendants possessed were mailed (or emailed) short-form notices generally describing the settlement benefits, informing them that they may be entitled to compensation under the proposed settlement and had the ability to file a simple claim to receive shares in the Monetary Fund. E. Robin Decl. ¶3-12. Vehicle searches at state DMVs were conducted through a third-party vendor to maximize the scope of the mailings. Among other things, the notice described the nature of the case, the limited release, directed class members to the settlement website, provided a phone number and email addresses where additional information could be obtained, stated the deadlines to submit exclusions, objections or

claim forms, and announced the date and location of the Fairness Hearing. The Short Form Notice also contained the safety warning.

2. Publication of the Summary Settlement Notice. The Summary Settlement Notice, containing the same basic information as the Short Form Notice, was published in two editions of the *USA Today* newspaper (national edition), as well as three RV-related periodicals, *Coast*, *MotorHome* and *TrailerLife*. E. Robin Decl. at ¶¶13-17.

3. Internet Notice. The parties also used a robust internet banner campaign to further extend exposure among Settlement Class Members. E. Robin Decl. at ¶¶18-20, 25-33. Fifty million internet banner impressions were purchased to appear on a variety of RV related websites. Fifty-nine million internet banner impressions ran on social media sites like Facebook. In addition, relevant keywords for the Google search engine were bought. By clicking on one of these ads, class members were automatically directed to the settlement website where they would see the Long Form Notice, Claim Form, warning, and other critical information about the settlement.

4. Settlement Website. Each of the notices directed class members to settlement website located at https://www.norcoldclassaction.com. Robin Decl. at ¶36. The website contained: (i) an online claim submission platform; (ii) the long-form class notice; (iii) status updates on the litigation; (iv) answers to frequently asked questions; (v) a hard copy claim form to print and mail or fax; (vi) the settlement agreement; (vii) a list of key deadlines, including those by which to submit claims, file objections or to opt-out of the Class; and, (vii) other information about the settlement and Allocation Plan.

5. Long-Form Notice. The Long-Form Notice was available for class members on the settlement websites, by mail or email. E. Robin Decl ¶34. Class members were directed to this notice by the short-form mailer, summary publication notices and internet banner notices. The Notice is written in plain English and is easy to read and includes information such as the case caption; a description of the Class; a description of the claims; a description of the Settlement and Allocation Plan; the safety warning, the names of Class Counsel; a statement of the maximum amount of attorneys' fees and service awards that may be sought; the Fairness Hearing date; a description of

Class Members' opportunity to appear at the hearing; a statement of the procedures and deadlines for requesting exclusion and filing objections to the Settlement. The notice also provided a toll-free number and email address at which class members could obtain additional information from either the Claims Administrator or Class Counsel. Id ¶35.

6. Supplemental Procedures. As the notice period progressed, Class Counsel worked diligently with KCC to enhance the distribution through press releases, e-newsletters, posting of additional internet banners, social media posts and mailings. Robin Decl. ¶¶ 21-33. Throughout, Class Counsel carefully managed the costs related to the notice program with KCC and it is anticipated that less than the $2 million advanced will ultimately be spent on notice and claims administration, saving funds for the Class.

In sum, the form notices are clear, precise, informative, and the notice program more than satisfies meet the requisite standards under Rule 23(e) and for due process.

B. The Claim Form Provided a Simple Process to Share the Settlement.

The Claim Form was made available both electronically online and in hard form and was relatively simple for class members to complete. By providing certain general information (name, address etc.), as well as the cooling unit owned and range of any repair costs, if any, class members were able to quickly register their claims.

C. The Claims Administrator Has Fulfilled Its Duties to Distribute the Notice.

As described in the Declaration of Eric Robin from KCC, the Claims Administrator has fulfilled its duties to disseminate the various forms of notice to the Class and handle claims. Thus, the best practicable notice has been accomplished.

VII. CONCLUSION

For all of the foregoing reasons the Class Representatives and Class Counsel request that the Court: (a) grant final approval to the proposed Settlement; (b) certify the settlement Class; (c) find the notice plan satisfies all requirements of Rule 23 and for due process; (d) overrule all objections; (e) instruct the parties and Claims Administrator to implement the Settlement; and, (f) grant all other relief that is just in the circumstances.

Respectfully submitted,

ZIMMERMAN REED, LLP

Dated: August 19, 2016

/s/Hart L. Robinovitch

MHART L. ROBINOVITCH (Admitted *Pro Hac Vice*)
E-Mail: Hart.Robinovitch@zimmreed.com
14646 N. Kierland Blvd., Suite 145
Scottsdale, AZ 85254
(480) 348-6400 Telephone

ZIMMERMAN REED, LLP
CHRISTOPHER P. RIDOUT
E-Mail: Christopher.Ridout@zimmreed.com
CALEB MARKER
E-Mail: Caleb.Marker@zimmreed.com
2381 Rosecrans Ave., #328
Manhattan Beach, CA 90245
(562) 216-7380 Telephone

ZIMMERMAN REED, LLP
J. GORDON RUDD, JR. (Admitted *Pro Hac Vice*)
E-Mail: Gordon.Rudd@zimmreed.com
1100 IDS Center
80 South 8th Street
Minneapolis, MN 55402
(612) 341-0400 Telephone

Counsel for Settlement Class / Class Counsel