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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

SETTLING PLAINTIFFS' REPLY IN FURTHER SUPPORT OF MOTION FOR FINAL APPROVAL OF PROPOSED CLASS ACTION SETTLEMENT AND CONDITIONAL CERTIFICATION OF SETTLEMENT CLASS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Date: September 23, 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. INTRODUCTION

The Settling Plaintiffs, Class Representatives, and Class Counsel seek final approval of a settlement that represents a tremendous result for the Class. Of the class members that reacted to the settlement, more than 45,000 Norcold refrigerator owners across the country expressed approval of its terms by submitting claims during the past several months. Other than the Non-Settling Plaintiffs ("NSP"), only a single individual objected to the settlement. Forty-one class members excluded themselves, representing less than a tenth of a percent of those who reacted to the settlement in comparison to the 99.9% who supported it by submitting a claim. No state attorneys general objected, nor have any professional objectors or other organizations as they often do. Class Counsel believe that this speaks highly of the non-reversionary nature of the settlement in which no part of the $36 million Monetary Fund will revert to the Defendants.

Class Counsel have diligently worked with the claims administrator to notify as many as class members as possible pursuant to the Court approved notice program. *See* Eric Robin Decls. (Docs. 505, 510, 517). First-class notice, the class notice gold standard, was mailed to more than 250,000 class members. A robust publication notice program was complemented by an extensive online advertising campaign that resulted in more than 126 million impressions around the United States. Later, the claims administrator mailed a supplemental postcard notice and expanded the online advertising campaign on Facebook, bolstering the notice to class members. Even after such a comprehensive notice program, the claims administrator now estimates that the fees for its services will be $900,000 less than its $2 million budget, making additional funds available to class members. That the reaction of the Class has been positive is an understatement.

Other than the Class demonstrating strong support for this settlement, nothing has materially changed since the Court preliminarily approved the settlement last March. The Court extensively analyzed the evidence and the settlement then, finding it to be within the range of reasonableness. Unsurprisingly, Non-Settling Plaintiffs

maintain their prior objections, all of which this Court overruled when it preliminarily approved the settlement.

Sworn testimony from high-level executives confirm that Defendants could not pay more than $36 million towards a settlement before authorizing Norcold's officers to proceed with a bankruptcy filing. Yet, Non-Settling Plaintiffs say the settlement is not enough. That 45,000 class members will receive a monetary benefit under the settlement is not enough. But that number far exceeds the 32,000 class members who might receive a replacement unit under NSP's imaginary "alternative" proposal was already shown to be infeasible. They are also unmoved by the fact that hundreds of thousands of N6 and N8 model class members will receive a valuable extended warranty for their cooling units.

In sum, NSP's most recent objections present nothing new for the Court to consider. The Court should grant final approval of the settlement so that its benefits may flow to the Class without further delay.

II. ARGUMENT

A. THE CLASS HAS SHOWN STRONG SUPPORT FOR THE SETTLEMENT.

On March 29, 2014, the Court preliminarily approved the settlement, overruled the objections filed by NSP, directed notice to the Class, and scheduled a fairness hearing. Order, March 29, 2016 (Doc. 468). The Court-appointed claims administrator, KCC, has diligently carried out its duties to disseminate the settlement notice to the Class via mail, newspaper and magazine publication, and Internet advertising so that class members could evaluate their options and respond. *See* Eric Robin Decl., August 19, 2016 (Doc. 505).

A four-month response period ensued and the Class has now had the opportunity to file claims, to demonstrate their support of the settlement, to voice objections, or to exclude themselves from the Settlement Class. The Class's response has been overwhelmingly positive. More than 45,000 class members have now filed claims seeking immediate distribution of the settlement funds, while only 41 class members

have elected to exclude themselves, and (other than the NSP) only one class member (Paul L. Oxley) has objected. That sole objection would not have even been filed but for the delay caused by NSP. That delay caused Mr. Oxley to lose the benefits of the extended warranty that the settlement provides when his N6 unit required replacement earlier this year. These low objection and opt-out rates confirm the "overwhelming support" by the Class for the settlement and Class Counsel's work, despite NSP Counsel's continued objections.[1]

Based on the preliminary analysis of the claims data provided by the claims administrator, the 45,000 claims represent 785,152 total shares in the Settlement's $36 million Monetary Fund resulting in a gross per share value of approximately $45.85. E. Robin Declaration filed Sept. 6, 2016 at ¶ 4. (Doc. 517.) Thus, a current 1200 series owner who submitted a timely claim stands to receive gross settlement proceeds of approximately $1,146.27 under the settlement (25 shares x $45.85 per share). *Id.*[2] This is fair and reasonable compensation for class members' claims considering the costs of a replacement cooling unit and risks presented in the litigation.

Despite this, NSP persist in repeating objections to the settlement on various

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[1] "The relatively low number of opt-outs and objections indicates that the class generally approves of the settlement." *Keegan v. American Honda*, No. 2:10-cv-09508 (C.D. Cal. Jan 21, 2014)(order granting final approval to class action settlement), citing *Churchill Vill., LLC v. General Electric*, 361 F.3d 566, 577 (9th Cir. 2004) (affirming the approval of a class action settlement where 90,000 members received notice and 45 objections were received); *Chun-Hoon v. McKee Foods Corp.*, 716 F. Supp. 2d 848, 852 (N.D. Cal. 2010) (concluding, in a case where "[a] total of zero objections and sixteen opt-outs (comprising 4.86% of the class) were made from the class of roughly three hundred and twenty-nine (329) members," that the reaction of the class "strongly supports settlement"); *Garner v. State Farm Mut. Auto Ins.*, No. CV 08 1365 CW (EMC), 2010 WL 1687832, at *15 (N.D. Cal. Apr. 22, 2010)(finding that an opt-out rate of 0.4 percent supported "the fairness of the Settlement"); *Glass v. UBS Financial Services*, 2007 WL 221862, at *5 (N.D. Cal. Jan. 26 2007) (approving a settlement where the opt-out rate was 2%); *Mangone v. First USA Bank*, 206 F.R.D. 222, 227 (S.D. Ill. 2001) (finding that an opt-out rate of .10614 percent and an objection rate of .0052 percent represented "overwhelming support" for the settlement by class members and that it was "strong circumstantial evidence supporting the fairness of the Settlement").

[2] The net per share payout is currently unknown as it is dependent on the final attorneys' fees, costs and service awards approved by the Court. If the maximum fee request were approved, the net payout to the current 1200 series owner would exceed $824. ([25,884,261 /785,152 shares] x 25 = $824.18).

grounds that have already been overruled by the Court after receiving extensive briefing from the parties. As demonstrated below, there is no merit to their continued objections and they should be overruled again. This is shown by the fact the Court overruled these same objections in its March 29, 2016 Order (Doc. 468). Yet, NSP do not even attempt to address the Court's prior findings and rebut them with credible evidence or legal authority demonstrating that they were erroneous.

B. NSP'S OBJECTIONS ARE DESIGNED TO EXTRACT FEES ON THREAT OF FURTHER DELAYS TO THE DETRIMENT OF THE CLASS.

While Non-Settling Plaintiffs ("NSP") recently filed their eighth objection to the settlement in this case (Doc. 506), in reality there are no more substantive objections.[3] The only objection that NSP and their Counsel really have left is that Class Counsel did not agree to pay them the fees they demanded to end further delay of the distribution of settlement benefits to the Class through objections and appeals. This was made clear on April 7, 2016 when NSP Counsel contacted Class Counsel and proposed a private arrangement to secure fees for both himself and the NSPs in exchange for foregoing any further objections or appeals designed to create further delay. Robinovitch Decl. ¶84-85 and Exhibits D through G (Doc. 480). As Mr. Beard wrote:

> "… Finally, the benefit of the NSP's agreement not to perfect and pursue meritorious appeals remedies is obvious. If the NSP do not pursue an appeal, it is extremely unlikely that anyone else will have the breadth of appellate issues, supporting documentation and financial resources to pursue one of their own. ... I've done the math. Whether we agree to a 60/40 split of a $9M fee, or I and HBSS fight to get a 50% or more share of a smaller fee – I'm good either way. Can ZR say the same? So instead of pretending

[3] Mr. Beard has filed at least eight objections to the settlement: September 20, 2014 (Docs. 200, 202); November 21, 2014 (Doc. 259); March 13, 2015 (Doc. 319); October 2, 2015 (Doc. 429); October 29, 2015 (Doc. 441); November 3, 2015 (Doc. 445); November 23, 2015 (Doc. 451) and August 26, 2016 (Docs. 506, 508). While the NSP style now their objections as oppositions, they never withdrew their original objections nor submitted the procedurally effective objections required by the Settlement Agreement.

> like you don't know what I am talking about, I suggest that you sit down with your partners and a calculator, and play out the alternate scenarios outlined above. Then get back to me by close of business next Friday with a serious response to my proposal."

T. Beard e-mail to H. Robinovitch dated April 17, 2016 (Exh. D to Robinovitch Decl. (Doc. 480)). The rest of the objections now presented are nothing more than as Mr. Beard refers, "continuing our past trajectory of us objecting and we churning up a whole lot of paperwork and all the rest of that". Robinovitch Decl. at ¶7, filed Sept. 9, 2016.

Threatening to pursue further objections and appeals for self-gain in this way, to the detriment of the Class who bears the burden of the resulting delays, is improper. Tellingly, not a single class member has supported the positions taken by NSP or NSP Counsel, while over 45,000 class members have filed claims seeking immediate payment. The reasoning in the Court's order granting preliminary approval continues to apply and warrants final approval of the settlement. Should NSP Counsel appeal the final approval order, Class Counsel are willing and able to defend the settlement's approval before the Ninth Circuit.

C. THE OBJECTIONS PRESENTED BY NON-SETTLING PLAINTIFFS LACK MERIT AND SHOULD BE OVERRULED.

Each of NSP's Objections is addressed, followed by the single objection of the only class member who filed a timely objection, Paul L. Oxley. Initially, it should be noted that the objections previously filed by NSP with the Court are procedurally ineffective. *See* Settlement Agreement, Section V(A) (objections must be personally signed and any objector's counsel must list all objections filed in any case during the past five years).

1. The Class Definition is Proper and Does Not Prejudice Anyone as Non-Class Members Claims are Tolled and Not Affected by the Release.

NSP revive their objection at preliminary approval that the settlement is unfair because the Settlement Class, consistent with the *Chow* Complaint, is on behalf of a national class but the class period fails to extend back to include 1996 model

refrigerators.[4] This objection is misplaced for several reasons.

First, courts routinely allow the expansion or contraction of class definitions for purposes of settlement. *Spann v. J.C. Penney Co.*, 314 F.R.D. 312, 318 (C.D. Cal. 2016) citing *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions v. Prudential Ins. Co. of Am.*, 148 F.3d 283, 326 (3rd Cir. 1998) (a district court is permitted to expand the scope of a settlement class so long as it generally corresponds to the allegations set forth in the complaint); *see also Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1018 (9th Cir. 1998) (expanding case to national class for purposes of settlement).

Second, the class period in the *Etter* Complaint never actually dated back to 1996 – the class period start date that NSP Counsel claim should apply. Instead, the class period was only defined in the *Etter* First Amended Complaint to date back the length of the longest statute of limitations from the initial filing date in December 2012, none of which extend back more than 16 years to 1996. FAC ¶ 78 (Doc. 40). Further, there was no litigation class certified in *Etter* binding any class members who NSP Counsel now claim are excluded from the Settlement Class.

Third, it is unrealistic to expect class settlements to date back to cover replacement of products purchased up to 20 years ago when evidence did not show every unit failed.[5]

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[4] NSP Counsel's contention that the class definition in the final term sheet that was agreed to on July 22, 2014 did not call for a national class is incorrect. The final term sheet dated July 22, 2014 most certainly defined the settlement class with a national class and a class period dating back to 2002 for 1200 series units and to 2009 for N6 and N8 units.

Further, contrary to his current objection, Mr. Beard is actually the one who suggested adding language to the class definition that defined class membership by the unit's manufacturing date in his redline comments circulated the day before (July 21, 2014). His current objection questioning that the settling parties "have never explained the 'manufacturing date' restriction – which is not necessary to a national class…" therefore, lacks merit. *See* NSP Objection, Aug. 26, 2016 at p. 3 (Doc. 506).

Finally when commenting to the term sheet on July 21, 2014 he also approved of the (now terminated) individual settlements of certain named plaintiffs' who presented non-class claims, only to now object. Class Counsel have been dealing with these types of inconsistent positions and objections from Mr. Beard throughout the two year settlement period.

[5] *See Alin v. Honda Motor Co. Ltd.*, No 08- cv-4825, 2012 WL 8751045, at *15 (D.N.J. Apr. 13, 2012) ("The parties weighed the obligation to cover those damages against the

Finally, there is no prejudice to any person outside the definition of the Settlement Class as all claims arguably asserted in *Etter* remains tolled under *Crown Cork and Seal* and *American Pipe* and the release in the Settlement Agreement does not affect non-class members.[6] Like class members who elect to opt-out of a settlement class, the settlement and release has no effect on persons who were never part of a certified class in the first place. The Court recognized this in its March 29, 2016 Order stating: "Each of these arguments is unconvincing. Current or former owners of a Series 1200 unit manufactured between 1997 and 2002 are excluded from the settlement and retain all their rights against Defendants. As a result, their exclusion from the proposed settlement is a neutral factor." Order, March 29, 2016 at p. 20-21 (Doc. 468). Yet, NSP Counsel raise the same objection again without offering any explanation as to how the Court's prior ruling was erroneous.

As the Proposed Order (Doc. 502-2) shows, the Court continues to retain jurisdiction over the claims of named plaintiffs who are not members of the Settlement Class and the settlement has no effect on their claims. Other persons who are not class members and have never been class members, retain all rights they always had to pursue claims they may have should they desire, while Defendants, of course, retain all their defenses. Contrary to NSP Counsel's contention, Section VIII(B)(5) on page 59 of the Settlement Agreement only calls for "*Released Claims*" of class members to be dismissed with prejudice, *not* claims that fall outside that definition as the claims of all non-class members would be. Therefore, just like any other class action that has been granted final approval, the settlement here creates no prejudice for non-class members

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reality that Honda cannot act as a perpetual insurer for all compressor breakdowns, and they ultimately settled on a sliding scale that ends at eight years and 96,000 miles. . . . It was reasonable to exclude older, more traveled vehicles from coverage").

[6] *See American Pipe & Const. Co. v. Utah*, 414 U.S. 538 (1974) and *Crown, Cork & Seal Co., Inc. v. Parker*, 462 U.S. 345 (1983)(The timely filing of a purported class action in federal court tolls the running of the applicable statute of limitations as to the individual claims asserted on behalf of all putative members of the class until a decision is reached whether to certify the class or the case comes to an end other than through voluntary dismissal).

and the NSP objection (Doc. 506 at 2-3) should be overruled.

2. The Relief Provided to Class Members Is Significant.

The basis for the size of settlement fund has been explained at length in Settling Plaintiffs' Motions for Preliminary Approval (Docs. 411, 433), Motion for Final Approval (Doc. 502-1), and other filings. NSP offer nothing new to alter the Court's basis for overruling their previous challenge when at preliminary approval (Doc. 468). Nevertheless, Non-Settling Plaintiffs forge ahead, regurgitating the same objection that the settlement does not provide 100% of the relief sought, namely the removal and replacement of all class member's cooling units at a cost estimated to exceed $732 million (or over $1.6 billion if the expanded class dating back to 1996 that NSP's prefer were to be adopted). NSP Objection at 4-7 (Doc. 506). But as shown, that result was not feasible and would have caused Defendant to seek bankruptcy protection. *See* J. Brandlin Decl. ¶¶ 38-48 (Doc. 334); J. Farnan Decl. ¶ 6 (Doc. 419); K. Phillips Decl. ¶¶ 6-9 (Doc. 418). Further, numerous other risks and defenses stood in the way of securing such relief. *See generally* Robinovitch Decl. at ¶¶ 26-44 (Doc. 480) (discussing risk factors and citing other cases where similar risks materialized).[7] Moreover, while Non-Settling Plaintiffs criticize the litigation risk discount, they ignore the fact that it is consistent with the fail rate as reported on Defendants' Incident Log. *See* Robinovitch Decl. ¶ 105. (Doc. 480). Other than to outright dismiss these issues, NSP simply choose

[7] For instance, just last week the Ninth Circuit refused to revive a proposed class action against Toyota that accused the company of installing faulty brakes in second-generation Prius models finding that the drivers had not sufficiently demonstrated through expert witness reports that the vehicles shared a common defect. .*Kramer and Gelber v. Toyota Motor Corp.*, No 12-56433, 2016 WL 4578370 (9th Cir. Sept. 2, 2016)(affirming summary judgment in favor of Toyota and denial of class certification). It appears that the appellants in that case were objectors to the settlement in *In re Toyota Motor Corp. Unintended Acceleration Mktg., Sales Practices, & Products Liab. Litig.*, No. 8:10ML 02151 JVS, 2013 WL 3224585 *17 (C.D. Cal. June 17, 2013) (discussing Kramer's and Gelber's objections to the scope of the release). While the technical issues pertaining to the alleged brake defect in the Toyota cases is beyond the scope of this motion, the critical point is that risk is presented in product defect cases like this and that objecting class members who fail to appreciate litigation risks can often find themselves on the outside looking in. *See In re Toyota Motor Corp. Hybrid Brake Marketing, Sales Practices and Product Liability Litig.*, 959 F. Supp. 2d. 1244 (C.D. Cal., 2013), *aff'd.*

not to address them.

The $36 million fund is a tremendous result given Defendants' sworn testimony regarding their financial circumstances. As discussed below, the gross distribution to a current 1200 series owner (before deductions for attorney fees and costs) will amount to approximately $1,140. While that amount is less than the $1,700 cost for a replacement unit, the settlement still represents a good result that is more than adequate under the circumstances. *See Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1242 (9th Cir. 1998).[8] As the Court explained when granting final approval in *Browne v. American Honda Motor Co., Inc.*, No. CV 09–06750 MMM (DTBx), 2010 WL 9499072, at *13 (C.D. Cal. July 29, 2010), a class action challenging defective brake pads alleged to create a safety risk: "While the proposed settlement does not perfectly compensate every member of the class, it is unlikely that any settlement of the claims of a class of more than 740,000 members would achieve such a result. Despite the reasonable concerns raised by the objectors, the settlement represents a compromise that fairly compensates class members who chose to remain in the class. *See Hanlon*, 150 F.3d at 1027 ("Settlement is the offspring of compromise; the question we address is not whether the final product could be prettier, smarter or snazzier, but whether it is fair, adequate and free from collusion….").

Again, NSP's recycled objections have already been overruled by the Court after careful consideration. Order, March 29, 2016, at 20 (Doc. 468) ("While the final recovery available to individual claimants is contingent on the claims rate, the Court finds that the aggregate size of the settlement – and, relatedly, each individual claimant's

[8] *See In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (holding that, given the difficulties inherent in complex securities litigation, one-sixth of the potential recovery was fair and adequate); *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 628 (9th Cir. 1982) ("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"); *Jaffe v. Morgan Stanley & Co.*, No. C 06-3903 TEH, 2008 WL 346417, at *9 (N.D. Cal. Feb. 7, 2008) ("The settlement amount could undoubtedly be greater, but it is not obviously deficient, and a sizeable discount is to be expected in exchange for avoiding the uncertainties, risks, and costs that come with litigating a case to trial").

recovery – is fully supported by the reality of Defendants' financial position."); *see also* Order, June 15, 2015 at 27 (Doc. 402) ("And the Court does not agree with Non-Settling Plaintiffs that Defendant are capable of paying $20 million to $40 million more per year.").

NSP do not bother to address the Court's prior determinations let alone introduce any new evidence or legal authority to refute them now. NSP offer no evidence that Defendants can actually fund the replacement of every single product manufactured over the last 20 years, at a cost exceeding $730 million (much less $1.6 billion), despite not having gross revenues even close to that amount. *See* Brandlin Decl. ¶¶ 15-28, 39, 45-48 (Doc. 334). As the Court recognized, Defendants' officers and directors declarations establish that they could address the class claims in other ways should this settlement not be approved. While Defendants completely discount the declaration submitted by the Hon. Joseph J. Farnan, Jr. (Retired), a former judge of the United States District Court for the District of Delaware who now serves as an independent director for Norcold, they offer nothing to establish that his testimony was unreliable or untruthful.

Further, while NSP cite continuing safety risks, they rely on facts that are not in the record regarding the examples provided (which Defendants would likely dispute) and fail to address the fact that the settlement here only provides a *limited* release that does not bar any personal injury or property claims. The fact is that in many cases, Defendants established that that they were not liable for alleged leaks and/or resolved cases for a small percentage of the total claimed damages due to difficulties establishing liability.

3. The Court Has Already Confirmed The Settlement's Monetary Fund Is Reasonable.

The $36 million monetary fund represents the upper limit of the maximum recovery possible given the risk factors discussed and the facts attested to in the Phillips, Farnan, and Brandlin Declarations (Docs. 334, 418, 419). The $36 million monetary fund represents several years of Norcold's net revenue and is close to the upper limit of what Defendants could fund on an annual basis and still comply with their financial

agreements' loan covenants. Brandlin Decl. ¶¶ 21-28, 38-48, 52-53, 58, 63-66 (Doc. 334). Further, the settlement fund is consistent with the fail rate reported on the Incident Log and was recommended by an experienced mediator, the Hon. Carl West. Robinovitch Decl . ¶105-107 (Doc. 480); West Decl. (Doc. 191). Non-Settling Plaintiffs fail to refute these facts. While NSP continue to rely on the report of their consultant, Mr. Lesch, they conveniently omit that Mr. Lesch failed to consider and offer any conclusion regarding compliance with the critical FCCR loan covenant in Defendants' financing agreement under which all their assets were pledged as security. *See* Brandlin Decl. ¶¶ 45-48 and Exhs. B and C (Doc. 334)(explaining flaws and shortcomings in Mr. Lesch's analysis). In short, nothing has changed since the March 29, 2016 Order when the Court concluded that the size of the Monetary Fund was reasonable based on the evidence presented of Defendants' financial circumstances.

4. The Proposed Settlement Properly Addresses the Central Remedial Purpose of the Lawsuit

Contrary to Non-Settling Plaintiffs' contentions, the proposed settlement squarely addresses the lawsuit's central remedial purpose. While the lawsuit initially sought replacement refrigerators or cooling units, certain risks became more acute as the case proceeded, which resulted in the current settlement. Settlement Agreement, Section II (A), (B) (Doc. 412-1). The proposed settlement does not fund the complete replacement of every refrigerator at issue, because Defendants lack the ability to fund such an amount. However, it does provide cash payments to class members making claims with the ability to use those funds to help purchase replacement units if they so choose. Settlement Agreement, Section II (D)(3) ("The Allocation Plan is a reasonable mechanism to allocate the Monetary Fund among class members, and an attempt to direct funds to Claimants with potentially larger and/or stronger claims, taking into account several relevant factors….").

Based on the preliminary claims figures provided by the claims administrator, more than 45,000 claims have been filed resulting in approximately 785,149 shares in the monetary fund. Therefore, the gross distribution to a current 1200 series owner who

filed a claim, before deductions for attorneys' fees and settlement costs, exceeds $1140.[9] These amounts are significant and will certainly help offset a large portion of the replacement cost should the claimant so elect.[10] *See Browne*, 2010 WL 9499072, at *13 (finding a settlement of defective brake pad case fair and adequate where "the compensation provided by the settlement will cover a good portion of the reasonable expenses incurred"); *Glass v. UBS Financial Services*, 2007 WL 221862, at *6 (N.D. Cal. Jan. 26 2007) ("Settlements by their very nature are not intended to provide full compensation for the claimed losses and consequently cannot be calculated with the same precision as actual damages"). The goal of the settlement, however, remains to help drive the replacement of Norcold units.

Again, the settlement here must be evaluated against the worst-case scenario, not only the best case scenario. Non-Settling Plaintiffs' most recent objections ignore the risks, including that of a bankruptcy filing where class members would be left as unsecured creditors, with priority beneath secured creditors. As noted previously, many companies such as AH Robins, Johns Manville, and Dow Corning, while not completely insolvent, have limited their liability through bankruptcy protection. If that were done here, class members would stand to receive far less than this settlement provides them. Brandlin Decl., at ¶¶ 51-62. Non-Settling Plaintiffs' objections continue to present an unrealistic appreciation of the actual risks that could materialize. They refuse to appreciate these risks because, in direct conflict with the 45,000 class members who have now filed claims seeking immediate payment, Non-Settling Plaintiffs have stated that they would prefer a bankruptcy filing to this settlement even it means that the $36 million monetary fund is withdrawn and class ultimately recovers much less (or

[9] The reduced payments to class members owning N6 and N8 series units are also reasonable (5 x $45.85 = $229.25) given that the Incident Log shows that there was a reduced risk of a leak, as described in the Marker Declarations (Docs. 187, 413) and these class members also receive the extended warranty.

[10] These figures are subject to minor changes as the claims administrator reviews the claims submitted.

nothing). *See* Robinovitch Decl. ¶¶21, 94-95 and Exh. I (Doc. 480)(Mr. Etter continuing to disregard the threat of bankruptcy and risk of losing the settlement fund by commenting "So what?"); s*ee also* Docs. 181-182, 203 (Mr. Etter stating "Personally I would prefer to see Norcold / DKM in bankruptcy and out of business and just forget about accepting a check for $15 to $50 dollars."). *See also* NSP Objection to Third Motion for Preliminary Approval, Oct. 2, 2015 at p. 4 (Doc. 429)(NSP and NSP Counsel indicating a preference for litigating this case in the bankruptcy courts over approval of this $36 million settlement).

5. The Court Has Already Ruled That The Allocation Plan Is Reasonable; Non-Settling Plaintiffs' Inconsistent Objections Should Be Rejected.

NSP continue to complain that the Allocation Plan is unfair on two grounds. First, NSP criticize that the Allocation Plan unfairly provides former 1200 series owners who did not incur repair expenses one (1) share in the Monetary Fund and argue that instead they should be completely excluded from the settlement. Second, NSP object that the five shares awarded N6 and N8 series owners in the Class should be increased. Neither of these challenges have merit, especially in light of NSP Counsel's inconsistent positions with regard to both these groups of class members in the past.

With regard to the former 1200 owners, those claims were included in the First Amended Complaint. *See* First Amended Complaint ¶¶ 1 ("The Class, defined below, consists of all persons, who during the Class Period, purchased and/or *owned* a Norcold N6, N8 and/or 1200 Series gas absorption refrigerator…."), 29 (Doc. 40) ("29… Regardless of a manifested defect, each Plaintiff has been injured, *inter alia*, because his or her injuries consist of economic losses, which include the diminished value of their RV that results once the full truth regarding the ongoing Norcold defective gas absorption refrigerators is made public…."). Certain named Plaintiffs, including the NSP, addressed the diminished resale value of RV's with Norcold refrigerators or cooling units in them in discovery.[11] Because such claims were alleged in the complaint,

[11] For instance, Mr. Etter testified at his deposition as to the diminished value of an RV with a 1200 series refrigerator as they were less attractive to dealers and prospective owners and more difficult to sell. J. Etter Dep. at p. 123 (copy attached to Ridout Decl.

Defendants demanded that the diminished value claims of class members who had previously owned Norcold 1200 series refrigerators be included in any settlement. By now objecting to the inclusion of these claims in the Settlement, NSP take an inconsistent position from what they said earlier, going so far as to argue that persons who formerly owned 1200 series units lack standing to even appear in this case. *See* NSP Objection filed Oct. 2, 2015 at 12 (Doc. 429). In light of this dispute, it was reasonable for the Settling Parties to include such claims in the settlement but to allocate the lowest number of shares (1 share) to these claims. *See*, Order, March 29, 2016 at p. 21 (Doc. 468)("Moreover, the rationale for including former Series 1200 owners in the settlement is to resolve their potential claims for economic loss, which is a reasonable objective for both parties.")

Similar inconsistencies arise with respect to the Non-Settling Plaintiffs' latest objections toward the five (5) shares that N6 and N8 class members are allotted under the settlement. The five shares allocated to the N6 and N8 owners is rational for the reasons explained in the Marker Declarations (Docs. 187, 413). As explained there, the difference in the shares allocated to claimants with N6 and N8 units in relation to 1200 Series units is due to the lower cost of N6 and N8 refrigerators and cooling units, and lower incident rates in those units as reflected on the Incident Log.

The NSP offer no facts showing that the relative allocation to N6 and N8 owners under the settlement on this basis is misplaced and necessitates that N6 and N8 claimants receive more than five shares. In fact, in their October 2, 2015 objection (Doc. 429), NSP took exactly the *opposite* position arguing that N6 and N8 owners should not receive *any* share the in the monetary fund at all so that an even higher proportion of the settlement benefits can be directed to 1200 series owners. At that time, NSP argued that

filed Sept. 9, 2016) ("Somebody says, "Well, how much value have you lost in it?" In Florida, we have a law that says if you sell a house that has an inherent defect in it and you know about that, then at any point in the future if that defect comes back and the person says, "Well, they knew about that," you're liable for it. I'm sitting here with a unit that RV dealers publicly state is a rolling hydrogen bomb, that they won't allow it on their lots.").

the extended warranties, along with right to obtain an inspection, were more than sufficient compensation for the release of N6 and N8 owners' claims. *See* NSP Objection filed Oct. 2, 2015 at 20-21 (Doc. 429)("Non-Settling Plaintiffs agree with Settling Plaintiffs and Defendants that the fire risk associated with N6/N8 units is significantly less than the risk for Series 1200 units… Non-Settling Plaintiffs agree that a blanket replacement program for N6/N8 Series refrigerators is not necessary".) As such, in their "alternative" settlement model, they took the position that N6 and N8 need only receive the warranty and an inspection, but not a monetary benefit or a replacement unit. *Id.* Given their prior position, the current objection by the NSP that the settlement should be rejected unless N6 and N8 owners receive more than five shares lacks merit.

Finally, the precision in the Allocation Plan and supporting expert reports that NSP now raise is not necessary to approve this settlement. Tiered relief is common in class action settlements, and when "[f]ashioning relief this way, lines are inevitably drawn." *Careccio v. BMW of. Am. LLC,* No. 08–2619, 2010 WL 1752347, at *6 (D.N.J. Apr. 29, 2010). Under a class action settlement, class members with claims of different strength may receive different compensation.[12] *In re Oracle Sec. Litig.*, 1994 U.S. Dist. LEXIS 21593, at *3, No. 90-0931-VRW (N.D. Cal. June 16, 1994). The Court need not resolve disputed issues to evaluate a proposed allocation plan as if it were a trial. *Curtiss-Wright Corp. v. Helfand* 687 F.2d 171, 174-75 (7th Cir. 1982) ("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")(emphasis added). Rather, "[a]n 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 court's principal obligation is simply to

[12] *See also In re Holocaust Victim Assets Litig.*, 413 F.3d 183, 186 (2d Cir. 2005) (same); *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1378 (9th Cir. 1993); *In re Toyota*, 2013 WL 3224585, at *19-20.

ensure that the fund distribution is fair and reasonable ...."; *Walsh v. Great Atlantic & Pacific Tea Co., Inc.*, 726 F.2d 956, 964 (3d Cir.1983).

The Allocation Plan presented here plainly has a "reasonable, rational basis" as it equitably allocates shares to class members based on their "relative deservedness." Given the inconsistent positions taken by NSP with regard to both the former 1200 series owners and N6 and N8 owners, their objections lack merit and should be overruled.

6. The Warranty Provides Additional Value To All N6 And N8 Owners And Is Automatically Provided Without The Need To File A Claim.

Next, NSP unjustly criticize the warranties provided to N6 and N8 owners in the Class. Tellingly, in continuing to present objections regardless of consistency, NSP ignore the fact NSP themselves previously argued that the provision of an extended warranty and an inspection was more than sufficient consideration to provide N6 and N8 owners for a release of their class claims without the need to supplement it with any shares in the Monetary Fund or the provision of replacement units under their alternative proposal. *See* NSP Objection, Oct. 2, 2015 at 20-22 (Doc. 429). Given these inconsistencies, it is difficult to see how NSP can credibly argue that the N6 and N8 owners in the Class stand undercompensated for their release here.

As previously explained, Defendants sell three-year extended warranties of N6 and N8 refrigerators at a retail cost of $199.95. D. Roberts. Decl. at ¶14 (Doc. 420). The value ascribed to the warranties under the settlement (20% of the retail price) is based on a conservative allocation of the total cost that should be attributed to coverage for cooling unit leaks. Given that the cooling unit is the primary mechanical part of the refrigerator, using a 20% figure for the valuation is conservative. The value of the warranty provided to N6 and N8 owners in the Class is therefore significant, especially since filing a claim is not required to receive the benefit of the warranty.

The value provided to the Class is calculated based on the retail price of the warranty provided, not the still-unknown payout on future claims. This, of course, cannot be known at this time and Non-Settling Plaintiffs' objection that calculating future payouts on claims not yet made is the only proper way to value the warranty is

misplaced. Defendants' contractual responsibility to cover future cooling problems under the extended warranty provision of the Settlement Agreement has value to N6 and N8 owners whether or not a claim is actually made.

The benefit of such a warranty to class members is demonstrated by Mr. Oxley whose objection reports that his N6 cooling unit broke down earlier in 2016 and needed to be replaced at significant cost. Had this settlement have already been in place, he would have been able to make a claim and receive a new unit for free instead of incurring the out of pocket expenses about which he now complains.

7. The Safety Warning is Clear, Concise, and Effective.

The warning in this case alerts class members of the need to get an immediate inspection by a trained technician if they are experiencing a cooling performance issue because there may be a fire risk. Settlement Agreement, Section II (D)(1)(iii). The warning supplements what the NHSTA required and is an added benefit as class members may have missed previous recall notices. The warning was not designed to serve as an admission of liability on still-disputed issues as NSP contend it should. As such, this objection should be overruled.

8. The Claims-Made Feature of the Settlement is Necessary Given Defendants' Records And More Than 45,000 Claims Were Successfully Filed.

The claims administrator was able to locate mailing address information for at least 255,479 class members from Defendants, IHS Automotive using DMV records, and other public sources. Robin Decl. dated August 19, 2016, at ¶¶ 5, 11 (Doc. 505). A robust publication and online advertising notice program supplemented direct mail. *Id.* The 45,000 claims submitted speak well of the claims administrator's notice efforts.

In their supplemental brief filed September 2, 2016 (Doc. 514), NSP criticize the claims-made distribution feature of the settlement and the claims rate. NSP erroneously suggest that the only conclusion one can draw from the fact 45,000 claims were made is that that the notice program had to be deficient. This objection is misplaced as the claims rate here falls well within the accepted standards and similar cases and warrants final approval.

Claims-made settlements are commonly employed in cases like this. *See 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). *See also Parkinson v. Hyundai Motor America*, 796 F. Supp. 2d 1160 (C.D. Cal. 2010))(granting final approval to claims made settlement); *Keegan v. American Honda*, No. 2:10-cv-09508 (C.D. Cal. Jan. 21, 2014)(same); *Tait v BHS Home Appliances*, 2015 WL 4537463, at *3 (C.D. Cal. July 27, 2015); *Browne*, 2010 WL 9499072, at *7-8. This is because in situations like this where many class members may have moved from previous addresses, did not purchase their product directly from the Defendants, purchased their RV used or a replacement refrigerator without registering it with the defendants, the defendant lacks a complete mailing list of all members of the class. *See* Settlement Agreement at Section II(D)(3) (Doc. 412-1). A notice and claims process, of the type employed here, allows class members to self-identify themselves and file claims.

Notice in such situations is accomplished by several means including mail to those whose addresses are possessed, publication in newspapers and targeted magazines, banner advertisements on the Internet, advertisements on social media sites, the creation of a settlement website with frequently asked questions, and a toll-free telephone number. *See e.g.*, *In re Toyota*, at *5-6 (notice provided by short form postcard notice, long form notice, Internet banner ads and creation of website, resulting in 4-5% claims rate); *Browne*, 2010 WL 9499072, at *6-7, 13 (approving claims-made settlement where notice was mailed to 743,000 potential class members, as well as via Internet and creation of website with a long form notice, resulting in 5% claims rate and 480 opt-outs); *Tait*, 2015 WL 4537463 at *3 (approving claims-made settlement where "[n]otice of the settlement was provided by mail or email to over 140,000 out of an estimated 650,000 class members", as well as through Internet banner ads and a website, resulting in 30 opt outs and a 3% claims rate); *Keegan* at *14-17, 27-35 (approving notice program accomplished by mail of over 1.2 million short form postcard notice, creation

of website, and toll free number, resulting in 133 opt-outs, 38 objections and approximately 50,000 claims). As shown in the claims administrator's declarations, notice here was accomplished through a number of means pursuant to the Court's directions and included a number of supplemental procedures aimed at making class members aware of their rights such as through a supplemental postcard mailing, enhanced Internet advertisements, and social media postings. Robin Decls. (Docs. 505, 510, 517).

Contrary to Non-Settling Plaintiffs' contentions, "there is nothing inherently objectionable with a claims-submission process, as class action settlements often include this process, and courts routinely approve claims-made settlements." *Shames v. Hertz Corp*., 2012 WL 5392159, *9 (S.D. Cal. Nov. 5, 2012).[13] Notably here, there is no reversion of unclaimed funds to Defendants. Rather, the entire $36 million Monetary Fund is distributed to the Class based on allocated shares. Thus, the most common criticism of claims-made settlements is not present here.[14] Class Counsel believes that the non-reversionary nature of the settlement is why it did not draw objections from any state attorneys general or any professional organizations.

The claims rate here is consistent with other settlements that have been approved and in no manner demonstrates deficiencies with the notice program. *See Rodriguez v. West Publishing*, 563 F.3d, 948, 967 (9th Cir. 2010) ("The court had discretion to find a favorable reaction to the settlement among class members given that, of 376,301

[13] *See also, Guschausky v. Am. Family Life Assur. Co.*, 851 F. Supp. 2d 1252, 1259 (D. Mont. 2012); *Pelletz v. Weyerhaeuser Co.*, 255 F.R.D. 537, 544 (W.D. Wash. 2009) (approving claims-made process where class members were required to "answer two reasonable claim forms and submit a total of 10 photographs of the mold spotting."); *Lemus v. H & R Block Enters. LLC*, 2012 U.S. Dist. LEXIS 119026, 2012 WL 3638550 (N.D. Cal. Aug. 22, 2012) (approving claims-made settlement where unclaimed funds reverted to the defendants); *Morales v. Stevco, Inc.*, 2012 U.S. Dist. LEXIS 68640, 2012 WL 1790371 (E.D. Cal. May 16, 2012) (recommending final approval of claims-made settlement); *Harris v. Vector Mktg. Corp.*, 2012 WL 381202 (N.D. Cal. Feb. 6, 2012) (granting final approval of claims-made settlement).

[14] *See Tait*, 2015 WL 4537463, at *8 (approving settlement despite concern over reversion of unclaimed funds to the defendant noting "BSH's agreement up front to be on the hook for all valid claims is worth something greater than simply the value of the actual payment that will be made to class members.").

putative class members to whom notice of the settlement had been sent, 52,000 submitted claims forms and only fifty-four submitted objections."). Class members choose not to submit claims for a number of reasons ranging from satisfaction with the product to forgetfulness. Some examples of class members' explanations for not filing claims were submitted with Settling Plaintiffs' Motion for Final Approval, filed August 19, 2016. (Doc. 502 at 22.)

Case law and academic literature acknowledge that response rates in consumer class actions are often low, and unequivocally support the conclusion that the response rate here shows strong support for the settlement.[15] As the court noted in *Tait*, "A case like this one presents challenges to actually notifying all class members and making sure that they all submit claims. It is patently unrealistic to expect that all—or close to all—class members would submit a claim." 2015 WL 4537463, at *7.

It is an "economic reality" that not all class members will file proofs of claim, and this alone is no basis for rejecting an otherwise fair and equitable settlement. *See 2 Newberg on Class Actions* §10.14 (3d ed. 1992), *Sylvester v. CIGNA Corp.*, 369 F. Supp. 2d 34, 52 (D. Me. 2005) (" '[C]laims made' settlements regularly yield response rates of 10 percent or less."). So too here. Though some class members will decide not to participate for reasons of their own choosing, generating over 45,000 claims here supports final approval under the factors set forth in *Hanlon v. Chrysler Corp.*, 150 F.3d 1011 (9th Cir. 1998).

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[15] *See, e.g., Stoner v. CBA Info. Servs.*, 352 F. Supp. 2d549, 552 (E.D. Pa. 2005) ("Over 16% of 11,980 class members notified have submitted claim forms seeking to participate in the settlement. Only 18 members have chosen to opt out and only five have filed what could be considered objections to the proposed settlement. This relatively high response rate indicates a more than favorable class reaction."); *Moore v. Verizon Commc'n Inc.*, 2013 WL 4610764, at *8 (N.D. Cal. Aug. 28, 2013) (granting final approval of class action settlement with 3% claims rate); *In re New Motor Vehicles Canadian Export Antitrust Litig.*, 2011 WL 1398485 (D. Me. April 13, 2011) (finding favorable class reaction in a 3.9% response rate); *In re Compact Disc Minimum Advertised Price Antitrust Litig.*, 370 F.Supp.2d 320, 321 (D. Me. 2005) (two percent submission rate); *Walter v. Hughes Commc'ns, Inc.*, 2011 WL 2650711, at *13 (N.D. Cal. 2011) (using a "generous" ten percent response rate to calculate reasonable attorneys' fees).

Non-Settling Plaintiffs' criticism of the settlement and notice due to the claims rate is therefore unfounded. Notably, NSP themselves proposed a claims-made feature as part of their "alternative proposal." (Doc. 429; s*ee also* Transcript of October 23, 2015 hearing at 34-35 (discussing hypothetical claims-rates under alternative claims-made settlement proposal) .) There is no evidence that had such a proposal been adopted here that the claims rate would have been any greater. If adopted, it very well could have been lower. Further, Non-Settling Plaintiffs' claims-made proposal offered nothing new in terms of modifying or enhancing the notice program previously proposed by the settling parties. The notice program here followed what Judge Selna approved in *In Re Toyota*, which coincidentally NSP Counsel (Hagens Berman) supported in that case despite initially returning a claims-rate far lower than here.

Class Counsel wishes that more class members had filed claims. But Class Counsel cannot force class members to do so. The fact that some class members do not wish to submit a simple claim form by mail or online does not make the settlement any less credible. It is no different than voter participation in a democracy like ours. For example, in a recent Los Angeles County Superior Judge election, the incumbent won more than 70% of the vote with more than a million votes. The incumbent's decisive majority ensures their continued service as a jurist without a general election contest. The 1.4 million total votes cast, however, represent only a fraction of the 4.8 million voters registered for the 2016 primary election. It's an even smaller fraction of the 6.2 million eligible to vote. Is the integrity of any judicial decision in question because only 22% of eligible voters participated in the process of selecting the judge? Of course not. The same is true here.

9. The Four Payment (Three Year) Distribution Schedule Is Reasonable.

The four payment (three year) distribution schedule is a reasonable compromise between the parties because the FCCR covenant in Defendants' financing agreement restricted the amount Defendants could agree to pay out each year and avoid being in default. As such, the four payment schedule was necessary to secure a larger settlement

fund for the Class. Mr. Brandlin discussed this important issue extensively in his March 2015 declaration. *See* Brandlin Decl. at ¶¶ 28-50 (Doc. 334). The $36 million fund that was negotiated had to be distributed out over a period of years and could not possibly be paid a single year. NSP offer nothing to refute this. While they again cite to Mr. Lesch's report, they ignore the critical fact that Mr. Lesch failed to analyze the FCCR covenant at all and therefore, offered no conclusions as to it in his report. *See* Lesch Report at ¶¶ 20-24 (Doc. 319-1). Ironically, while NSP criticize the four payment distribution period in this settlement (actually made over three years from the Effective Date of the settlement), they ignore the fact their own alternative settlement proposal described in their October 2, 2015 objection (Doc. 429) had a similar four-year timeline.

10. Short Form Notice Is Reasonable and Consistent with Numerous Other Class Action Settlements, Which Have Been Approved.

Finally, NSP complain that the short-form notice was mailed on a postcard instead of an 8½ x 11 full sized piece of paper. But as the declaration of the claims administrator shows, postcard sized mailers are commonly employed in class action settlements of this type. *See* E. Robin Decl., filed Sept. 6, 2016 at ¶¶ 6-9 (Doc. 517) (listing certain cases where KCC sent postcard notices, attaching examples). As the claims administrator explains, postcard short-form notices have benefits that longer notices in sealed envelopes do not. *Id.* The postcard short-form notice here followed the same form approved by Judge Selna in *In re Toyota*, as well as the courts in *Keegan, Tait, Browne* among other cases. In moving for final approval in *In re Toyota* NSP Counsel had no difficulty arguing "direct, mailed postcard notice" met "the requirements of due process and Fed. R. Civ. P. 23(c) and (e)." Plaintiffs' Motion for Final Approval in *In re Toyota* at 5-11(Doc. 3556). For NSP Counsel to complain that the notice was deficient because it was sent on a postcard, therefore, is disingenuous and only would have resulted in greater notice costs. *See also, Trabakoolas v. Watts Water Technologies*, Case No. 3:12-CV-01172 (N.D. Cal.)(final approval granted Aug. 5, 2014)(final approval of class action granted approving postcard notice sent). Lastly, the 45,000 claims successfully submitted confirm that the postcard notice was effective.

D. THE OBJECTIONS OF MR. OXLEY SHOULD BE OVERRULED.

Only one non-NSP class member timely objected to the settlement. Mr. Paul L. Oxley of Cummings, Georgia complains of the allocation plan because his 2013 N6 series cooling unit failed earlier in 2016 and had to be replaced at substantial cost to him. (Doc. 512.) Mr. Oxley complains that N6 and N8 owners receive less than 1200 series owners under the settlement. This objection does not warrant rejecting the settlement.

First, as shown in the Marker Declaration, the Allocation Plan, which provided less shares in the monetary fund to N6 and N8 owners than 1200 series owners, was rational given the lower replacement costs and lower incident rates of N6 and N8 units, as compared to 1200 series units, given reports on the Incident Log.

Second, Mr. Oxley does not acknowledge that N6 and N8 owners also receive the three year extended warranty under the settlement. Had the settlement process not been delayed, Mr. Oxley would have had the benefit of the warranty and would have been in a position to receive a replacement unit for free instead of having to incur the out-of-pocket cost he did. Mr. Oxley's objection, therefore, actually confirms the benefit that N6 and N8 owners will receive if the settlement is finally approved. Rather, than justify disapproval of the settlement, Mr. Oxley's objection actually supports approving the settlement without further delay.

III. CONCLUSION

This Settlement represents a significant result for the Class and has received overwhelming support. Despite these facts, NSP repeat their already overruled objections only to delay the implementation of this settlement for improper reasons. 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) finally certify the Settlement Class under Fed. R. Civ. P. 23, continuing to appoint the undersigned as Class Counsel and the Settling Plaintiffs as Class Representatives; (c) find the notice plan satisfies all requirements of Rule 23 and for due process; (d) overrule any and all objections; (e) instruct the parties and Claims Administrator to implement the Settlement

without delay; and, (f) grant all other relief that is just and equitable in the circumstances.

Respectfully submitted,

ZIMMERMAN REED, LLP

Dated: September 9, 2016

/s/Hart L. Robinovitch

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Responses, Replies and Other Motion Related Documents

8:13-cv-00081-JLS-RNB Jeffery Etter, et al. v. Thetford Corporation, et al.

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UNITED STATES DISTRICT COURT for the CENTRAL DISTRICT OF CALIFORNIA

Notice of Electronic Filing

The following transaction was entered by Robinovitch, Hart on 9/9/2016 at 9:03 AM PDT and filed on 9/9/2016

Case Name: Jeffery Etter, et al. v. Thetford Corporation, et al.
Case Number: 8:13-cv-00081-JLS-RNB
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Craig Post
John Robinson
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Document Number: 518

Docket Text:
REPLY in support of NOTICE OF MOTION AND MOTION for Order for Final Approval of Proposed Class Action Settlement and Certification of Settlement Class [502] filed by Plaintiffs Ray Burkhead, Charles Chow, Randy Dupree, George Frederick, Kathleen Frederick, James Pearce, Linda Pierson, Craig Post, John Robinson, Gordon Williamson. (Robinovitch, Hart)

8:13-cv-00081-JLS-RNB Notice has been electronically mailed to:

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[STAMP cacdStamp_ID=1020290914 [Date=9/9/2016] [FileNumber=22149084-0] [619217656f4140e3f6e90564643a49f303fddb3f0cbc42346d566384e7b39c5bd26d 5bc5a5d56c8c866cc02f3f202cf0cda552fbfb704ef27917c1d42a4be175]]