UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

AL'S DISCOUNT PLUMBING; ACCURATE BACKFLOW AND PLUMBING SERVICES, INC.; HOMESTEAD HEATING & PLUMBING, LLC; AIRIC'S HEATING & AIR CONDITIONING, INC.; PRIME SOURCE PLUMBING & HEATING CORP.; RYAN PLUMBING, INC.; MAZZOLA PLUMBING HEATING & GAS FITTING, INC.; SOUTH SHORE HEATING AND PLUMBING, INC.; ALL KNIGHT PLUMBING, HEATING AND AIR CONDITIONING, INC.; PLUMB PERFECTION, LLC, individually and on behalf of all others similarly situated, Plaintiffs, v. VIEGA LLC, Defendant.	Case No: 19-cv-00159 Honorable Christopher C. Conner Electronically Filed

INDIRECT PURCHASER PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND APPROVAL OF SETTLEMENT ADMINISTRATOR AND CLASS NOTICE PLAN

TABLE OF CONTENTS

TABLE OF AUTHORITIES

I. INTRODUCTION

Plaintiffs are plumbers who purchased Viega LLC-branded copper press fittings from wholesale distributors, and hence not directly from Viega LLC ("Viega"). Plaintiffs filed a class action lawsuit alleging that Viega, since 2015, had made wholesaler/distributor access to its carbon steel press fittings contingent upon distributor agreements not to sell Viega's competitors' copper press fittings and charged higher prices to distributors that stocked competitor press fittings. Plaintiffs allege this caused plumbers to pay more for Viega ProPress® copper press fittings. Viega denies all allegations, denies that it acted improperly or that its actions were unlawful or harmed anyone, and has asserted various defenses. Discovery has resulted in extensive document and transactional data productions by Viega, document productions by the named Plaintiffs, and completion of inventory inspections and depositions of all but three of the named Plaintiffs. Plaintiffs also retained the services of an expert economist.

Armed with this discovery and information, the parties engaged an experienced neutral to assist in determining if negotiations would result in settlement. With the mediator, the parties engaged in two full days of protracted arms'-length negotiations. The result is a proposed class-wide Settlement. Plaintiffs, interim class counsel, and liaison counsel believe the Settlement provides reasonable, adequate and beneficial relief to class members.

Accordingly, pursuant to Fed. R. Civ. P. 23, Plaintiffs and interim class counsel respectively request that the Court: (1) preliminarily approve the Settlement; (2) certify the proposed Class for settlement purposes; (3) approve the retention of Epiq LLC as the third-party Settlement Administrator; (4) approve the form and manner of giving notice of the Settlement to the proposed Class; (5) approve the proposed claim form; (6) preliminarily approve the plan for allocation of the Settlement, and (7) schedule a Fairness Hearing to decide whether the Settlement should be finally approved and judgment entered. Plaintiffs also seek the appointment of Class Representatives and of

Class Counsel for settlement purposes. A proposed Preliminary Settlement Approval Order accompanies this memorandum.

II. BACKGROUND & PROCEDURAL HISTORY

This antitrust class action involves alleged anticompetitive conduct in the pipe press fitting industry. Press fittings join pipes without flame or heat, instead using a crimp tool that instantly crimps the press fitting to the pipe it joins, and seals it with an elastomer gasket.. Plaintiffs allege that, beginning in 2015, Viega made wholesaler/distributor access to its carbon steel press fittings contingent upon distributor agreements not to sell Viega's competitors' copper press fittings and charged higher prices to distributors that stocked competitor press fittings. Plaintiffs allege this caused plumbers to pay more for Viega ProPress® copper press fittings. Specifically, Plaintiffs allege that Viega leveraged its position in the carbon steel press fittings market to increase wholesaler/distributor purchases of Viega copper press fittings over competitor brand copper press fittings, resulting in higher prices to distributors who continue to stock competitors' copper press fittings and to plumber customers of distributors, such as the Plaintiffs here.

In 2019, Plaintiffs brought separate actions in various jurisdictions on behalf of plumbers like themselves who indirectly purchased defendant's press fittings. Those actions were informally transferred and consolidated before this Court on July 2, 2019 (ECF 36), and Plaintiffs' First Amended Consolidated Class Complaint was filed on December 20, 2019 (ECF 72) asserting violations of the Sherman and Clayton Acts, as well as violations of the antitrust and consumer protection laws in 26 states whose laws permit indirect purchasers to bring claims for violation of the antitrust laws.[1] Viega moved to dismiss. The motion has been fully briefed by the parties (ECF 47, 50, 56),

[1] Alabama, Arizona, California, Connecticut, Iowa, Kansas, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, Rhode Island, South Dakota, Tennessee, Utah, Vermont, West Virginia, Wisconsin, and the District of Columbia.

including supplemental briefing. (ECF 77, 78); Declaration of Elizabeth C. Pritzker in Support of Preliminary Approval of Settlement ("Pritzker Decl.") ¶11.

The parties exchanged discovery starting in June 2019. Viega responded to Plaintiffs requests for production of documents by producing more than 350,000 pages of documents as well as state-specific transactional sales data for copper press fitting sales, starting in October 2019. *See* Pritzker Decl. ¶12. Plaintiffs each responded to Viega's written discovery, and together produced approximately 10,000 documents. *Id*. ¶14. At the time of mediation, all but three of the named Plaintiffs submitted to a physical inventory inspection and were deposed by Viega's counsel. *Id*. A third party competitor also produced roughly 175,000 documents under subpoena, which Plaintiffs' counsel fully reviewed and analyzed. *Id.*, ¶13. Having received transactional data from Viega, Plaintiffs also consulted with an economist. *Id.*, ¶16.

III. HISTORY OF SETTLEMENT NEGOTIATIONS

Preliminary settlement negotiations with Defendant began informally in March 2020. Pritzker Decl. ¶17. Over the following weeks, the parties engaged in initial discussions about the potential for a settlement. The parties then engaged experienced mediator, Robert Meyer Esq. of JAMS, to assist them in the process. *Id*. The first full-day mediation session before Mr. Meyer took place on May 18, 2020. Having made progress but not reaching agreement on principle settlement terms, the parties had *various* discussions through the mediator, and then participated in a second mediation session on June 1, 2010. *Id*. The second mediation resulted in a mediator's proposal for a settlement in principle that all parties ultimately accepted. *Id*. The parties and mediator Meyer continued to negotiate specific settlement terms. *Id.* As a result of these efforts, Plaintiffs and Viega reached an agreement. *Id.* The parties' Settlement Agreement ("Agreement") appears as **Exhibit 1** to the accompanying declaration of interim co-lead counsel ("Pritzker Decl.").

IV. MATERIAL TERMS OF THE PROPOSED SETTLEMENT

A. The Proposed Settlement Classes

Plaintiffs seek certification for a Nationwide Injunctive Class and Multi-State Settlement Subclasses. *See* Pritzker Decl. Ex. 1 at ¶¶1.18, 1.19.

B. Monetary Relief to the State Subclass

1. Cash Payment Settlement Fund of $10 million

Viega agrees to pay $10 million to create a Cash Settlement Fund for payment of class notice and settlement administration expenses, Class Counsel's attorneys' fees and litigation costs, service awards to the Named Plaintiffs, and cash distribution to eligible Multi-State Settlement Subclass Members. *Agreement*, at ¶¶3.2.1, 4.1. All sums remaining in the Settlement Fund after such fees and expenses are paid shall be disbursed to eligible Class members in accordance with a Plan of Allocation to be approved by the Court. *Agreement*, at ¶3.2.1. Sums from the Fund that are not distributed, e.g., from uncashed checks, if any, will be added to the amount of $5 million for the Rebate Program, discussed below, and will not revert to Viega. Plan of Allocation proposals are discussed in in Section VII, below. In no event shall cash from the Settlement Fund revert to Viega. *Id.*, ¶3.2.1(b).

2. $5 million Rebate Program

Viega will provide a rebate on future purchases of their ProPress copper press fittings ("Rebate Program"). Eligible Multi-State Settlement Subclass members will receive a 4% rebate on purchases of ProPress copper press fittings, with a maximum rebate per claimant of no more than $500.[2] *See Agreement*, ¶¶3.2.2; 3.2.5. The rebate program will be capped at $5 million ("Rebate Program Cap"), subject to upward adjustment resulting from the rollover of undistributed funds from the $10 million Settlement Fund for past purchases. *Id.,* ¶¶3.2.3; 3.2.4. Viega will administer the Rebate Program in accordance with its existing rebate and reward programs, at no cost to the

[2] Rebates exclude purchases of press tools and ProPress valves.

Settlement Fund. *Id.* at ¶3.2.2(b).

C. Business Terms and Changes: National Settlement Class

Viega also agrees to revise certain pricing policies for the sale of press fittings to wholesalers/distributors. For at least eight (8) consecutive calendar quarters from final approval (defined as the "Settlement Period"), Viega will continue to make its MegaPress® carbon steel press fittings available for purchase to authorized wholesale distributors, including those that stock Viega products exclusively, those that stock competitors' brand of copper press fittings, and non-stocking distributors (subject to product availability). *See Agreement* at ¶3.1.1. Further, Viega will make MegaPress® available to any authorized wholesale distributor at a price no more than five percent (5%) greater than the price charged to a wholesaler/distributor that stocks exclusively Viega ProPress® copper press fittings. *Id*.

D. Release

Plaintiffs and Settlement Class and Sub-Class Members will release certain litigation-related claims against Viega. *See Ex. Agreement* at ¶1.36 (National Settlement Class release); ¶1.37 (Multi-State Settlement Subclasses Release). If the Settlement becomes final, Class Members who do not opt out will release Viega from claims relating to the purchase of Viega ProPress® copper press fittings during the Class Period which were alleged or could have been alleged. *Id*.

V. ARGUMENT

"[T]here is an overriding public interest in settling class action litigation, and it should therefore be encouraged." *In re Warfarin Sodium Antitrust Litig*., 391 F.3d 516, 535 (3d Cir. 2004). The proposed Settlement serves this interest admirably, and this Court should enter the proposed preliminary approval order submitted herewith under established law, the proposed Settlement Classes and notice plan qualify for approval.

Preliminary approval "is granted unless a proposed settlement is obviously deficient." *Mylan Pharms., Inc. v. Warner Chilcott Pub. Ltd. Co.*, No. 12-v-3824, 2014

WL 631031 at *2 (E.D. Pa. Feb. 18, 2014). Settlement classes are commonly certified in this Circuit in antitrust cases. *See, e.g., Warfarin*, 391 F.3d at 535. The proposed Settlement is clearly not deficient, and the resolution obtained here is an excellent result for Class Members.

A. The Settlement Should Be Preliminarily Approved

A court's determination to preliminarily approve a proposed class action settlement does not require the court to approve the final settlement. It is a determination that "there are no obvious deficiencies and the settlement falls within the range of reason." *Noye v. Yale Assoc., Inc.*, No. 15-cv-2253, 2019 WL 3837507 at *3 (M.D. Pa. Aug. 15, 2019).

A settlement is considered fair, reasonable, and adequate, though "the standard for preliminary approval is far less demanding[]" *Gates v. Rohm & Haas Co*., 248 F.R.D. 434, 444 (E.D. Pa. 2008). Preliminary approval "is granted unless a proposed settlement is obviously deficient." *Mylan*, 2014 WL 631031 at *2. The "preliminary determination establishes an initial presumption of fairness when the court finds that: (1) the negotiations occurred at arm's length; (2) there was sufficient discovery; (3) the proponents of the settlement are experienced in similar litigation; and (4) only a small fraction of the class objected." *In re GMC Pick-Up Truck Fuel Tank Prods. Liab. Litig*., 55 F.3d 768, 785 (3d Cir. Pa. 1995) ("GMC").

B. The Settlement Satisfies the Standards for Preliminary Approval

Throughout this litigation, counsel demonstrated vigorous and independent lawyering in all respects. This is decidedly true as the parties negotiated the terms over two full days of remote mediation sessions with Robert Meyer, a well-regarded JAMS mediator in Los Angeles. *See* Pritzker Decl. ¶17; *Basile v. Stream Energy Pa. LLC*, No. 15-cv-1518, 2018 WL 2441363 at *5 (M.D. Pa. May 31, 2018)(concluding the settlement agreement arose out of serious, informed, non-collusive negotiations, since they had engaged in a year of discovery. and held a full day mediation with JAMS);

Gates, 248 F.R.D. at 444.

Second, the parties engaged in substantial discovery. *See Basile*, 2018 WL 2441363 at *5 (determining one year of discovery satisfies the *Gate's* requirement); *See also, Acevedo v. Brightview Landscapes, LLC*. No. 13-cv-2529, 2017 WL 4354809 **10-11 (MD. Pa. Oct. 2, 2017)(finding the information exchanged during the mediation process was sufficient). Here the parties' discovery efforts were extensive. Viega produced more than 350,000 pages of documents; the named Plaintiffs also produced documents, and all but three named Plaintiffs submitted to an on-site inventory inspection and full-day deposition, which were pending at time of mediation. *See* Pritzker Decl. ¶¶12-14. Plaintiffs also analyzed over 175,000 pages of documents produced by a competitor. *Id*. And, with the assistance of an expert economist, Plaintiffs analyzed Viega's transactional data and commerce information. *Id.*, ¶16.

Third, Co-Lead Counsel, Ms. Pritzker, Mr. Isquith, and Mr. Burt, and Liaison Counsel, Mr. Cohen, appointed by this Court are highly experienced in similar litigation. *See* ECF 38, at ¶ 2. The fact that "highly experienced counsel after years of litigation" concluded that the proposed settlements were fair, reasonable, and adequate further supports preliminary approval of the Settlement. *Mylan.,* 2014 WL 631031, at *4.

C. The National Settlement Class and State Subclass Satisfy Rule 23

The proposed settlement classes easily satisfy the standards of Fed. R. Civ. P. 23(a) and both 23(b)(2) and 23(b)(3). Where, as here, the Court has not certified a class, it should "make a *preliminary determination* that the proposed class satisfies the criteria set out in Rule 23(a) and at least one of the subsections of Rule 23(b)." *In re NFL Players Concussion Injury Litig*., 775 F.3d 570, 582 (3d Cir. 2014) (citations omitted; emphasis in original). This "*preliminary* analysis of a proposed class is . . . a tool for settlement used by the parties to fairly and efficiently resolve litigation." *Id.*

1. The Settlement Classes Satisfy Rule 23(a)

Rule 23(a) requires the parties moving for class certification to show the following: **(1) Numerosity:** The class is so numerous that joinder of all members is impracticable yet ascertainable; **(2) Commonality:** There are questions of law or fact common to the class; **(3) Typicality:** The claims or defenses of the representative parties are typical of the claims or defenses of the class ("Typicality"); and **(4) Adequacy:** The representative parties will fairly and adequately protect the interests of the class. *Basile,* 2018 WL 2441363 at *3 (citing F.R.C.P. 23(a)).

a. The Settlement Classes Are Sufficiently Numerous

Numerosity "requires a finding that the putative class is 'so numerous that joinder of all members is impracticable.'" *Gates*, 248 F.R.D. at 439-440. "[G]enerally if the named plaintiff demonstrates that the potential number of plaintiffs exceeds 40, the first prong of Rule 23(a) has been met." *Stewart v. Abraham*, 275 F.3d 220, 226-227 (3d Cir. Pa. 2001). While Plaintiffs and the Defendant cannot state the exact number of class members, it is estimated that in the 26 repealer State Sub-Class consists of approximately 50,000 to 80,000 plumbers; and that the Nationwide Class consists of approximately double those number of plumbers. Numerosity is satisfied.

b. Questions of Law and Fact Are Common to the Classes

"To satisfy the commonality requirement, the purported class's claims must depend upon a common contention . . . . capable of class-wide resolution." *Mylan*, 2014 WL 631031, at *2. Courts have commonly certified settlement classes in antitrust case, where that questions of violation, antitrust impact, and aggregate damages are all common to the Class. *See Sullivan v. DB Investments, Inc.*, 667 F.3d 273, 292 (3d. Cir. 2011)(commonality is "readily met in certain cases alleging consumer or securities fraud or violations of antitrust law".) The same is true here. Plaintiffs' allegations focus on the illegality of the conduct of Defendant – an issue that, by definition, does not vary for any class member. The commonality requirement is accordingly satisfied.

c. Plaintiffs' Claims are Typical

To evaluate typicality, "the Court must inquire 'whether the named plaintiffs' claims are typical, in common-sense terms, of the class, thus suggesting that the incentives of the plaintiffs are aligned with those of the class.'" *Gates*, 248 F.R.D. at 440 (quoting *Beck v. Maximus, Inc*., 457 F.3d 291, 295-296 (3d Cir. 2006)). "[F]actual differences will not render a claim atypical if the claim arises from the same event or practice or course of conduct that gives rise to the claims of the class members, and if it is based on the same legal 'theory.'" *Id.* (citations omitted). The "typicality requirement is designed to align the interests of the class and the class representatives so that the latter will work to benefit the entire class through the pursuit of their own goals." *In Re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 311 (3d Cir. 1998). Here, "[t]he named Plaintiffs allege on behalf of the Class and themselves the same manner of injury from the same course of conduct and assert on their own behalf the same legal theory that they assert for the Class. Any probable factual differences relate to damages rather than to liability." *Mylan*, 2014 WL 631031, at *3. Indeed, "[t]he claims of the class representatives are virtually identical to those of the class members." *Gates*, 248 F.R.D. at 441. "[T]hus the interests of the class representatives are aligned with those of the class members," satisfying typicality. *Id.*

d. Plaintiffs Will Fairly And Adequately Represent the Classes

The "adequacy of representation" prong requires "representative parties [must] fairly and adequately protect the interests of the class. This requires a determination of (1) whether the representatives' interests' conflict with those of the class and (2) whether the class attorney is capable of representing the class." *Basile*, 2014 WL 2441363 at *4 (citing, *Newton v. Merrill Lynch, Pierce, Fenner & Smith Inc*., 259 F.3d 154,185 (3d. Cir. 2001). Here, "[a]ll Class Members seek to prove Defendants' alleged anticompetitive conduct, and to recover overcharge damages." *Mylan*, 2014 WL 631031, at *3. Proposed class representatives have precisely the same goal, and have

standing to do so. Thus, the class representatives' "interests do not conflict with the interests of absent members of the Class," and they are adequate. *Id.* Each of the proposed class representatives has actively participated in discovery and producing documents with three having their deposition taken and inventories inspected. The final 23(a) factor weighs in favor of conditionally certifying a settlement class.

2. The National Settlement Class Satisfies the 23(b)(2) Standards

Plaintiffs seek certification of the National Settlement Class under Fed. R. Civ. P. 23(b)(2). Rule 23(b)(2) requires that "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Rule 23(b)(2). "Important to the analysis 'is that the relief sought . . . should benefit the entire class,' and 'the putative class [must] 'demonstrate that the interests of the class members are so like those of the individual representatives that injustice will not result from their being bound by such judgment in the subsequent application of principles of res judicata.'" *Sullivan*, 667 F.3d at 317-318; *see Gates*, 248 F.R.D. at 442.

This Court should have no difficulty in finding the National Settlement Class satisfies this standard. Indeed, in *Sullivan*, the Third Circuit upheld certification of a settlement class under remarkably similar circumstances, noting that the defendant's "anticompetitive behavior 'caused the entire membership of all classes to pay artificially inflated prices,' and that, in the absence of injunctive relief, all classes would continue to pay artificial premiums." *Id*. at 318. Here, Plaintiffs have demonstrated a "shared interests between the members of the putative class, and, these allegations, if proven, would support injunctive relief respecting the class as a whole." *Id.*

Under the Settlement, Viega changes its pricing policies in ways that are intended to ameliorate the alleged anticompetitive pricing and its impacts, which Viega denies. *See* §IV.C. above; *Agreement*, ¶3.1.1. These changes provide non-monetary benefits to all Class Members – including those who reside or made relevant purchases of Viega's

copper press fittings in "non-repealer" states with antitrust and consumer protections laws do not allow indirect purchases to claim monetary damages *See Illinois Brick Co. v. Illinois,* 431 U.S. 720 (1977).

3. The State Sub-Class Satisfies the 23(b)(3) Standards

Plaintiffs seek certification of the monetary relief Multi-State Sub-Class. "In order to certify an opt-out class under Rule 23(b)(3), the Court must make two additional findings: predominance and superiority." *Gates*, 248 F.R.D. at 442. Plaintiffs show both here.

a. Predominance

Predominance exists when "[i]ssues common to the class . . . predominate over individual issues." *Gates*, 248 F.R.D. at 442-443. "[T]he focus of the predominance inquiry is on whether the defendant's conduct was common as to all of the class members. "There may be many legal and factual differences among the members of a class, as long as all were subjected to the same harmful conduct by the defendant." *Rodriquez v. National City Bank*, 726 F.3d 372, 383 (3d Cir. 2013). "Predominance is a test readily met in certain cases alleging . . . violations of the antitrust laws." *Amchem Prods. v. Windsor*, 521 U.S. 591, 625 (1997).

Predominance-based challenges to indirect purchaser antitrust settlement classes are routinely rejected by the Third Circuit. *Sullivan*, 667 F.3d at 299; *Warfarin*, 391 F.3d at 529. In each of these cases, courts have rejected challenges to "predominance" on grounds identically present in this case: because the defendants' "asserted price-fixing and monopolization conduct lies at the core of plaintiffs' claims, as do the common injuries which all class members suffered as a result." *Sullivan*, 667 F.3d at 300 (citing *Insurance Brokerage* and *Warfarin*). Here, as in *Sullivan*, each Class Member shares a similar legal question arising from whether Viega allegedly engaged in non-competitive activities and whether those actions commonly artificially fixed, maintained, or stabilized prices of copper press fittings charged to Class Members

during the Class Period. *See* First Am. Consolidated Complaint (ECF 72) at ¶¶ 6, 7, 9, 11-13, 50, 72-77. And, Class Members allegedly suffered common harm by paying higher prices for Viega's ProPress® copper press fittings during the Class Period. *Id.,* at ¶¶13, 14, 109-111, 115. Predominance is satisfied. *Sullivan,* 667 F.3d at 300.

b. Superiority

The superiority requirement "asks the court to balance, in terms of fairness and efficiency, the merits of a class action against those of alternative available methods of adjudication." *In re Cmty Bank of N. Virginia Mortgage Lending Practices Litig.*, 795 F.3d 380, 409 (3d. Cir. 2015); *Basile,* 2018 WL 2441363 at *5. In this matter, the other available method of adjudication is individual suits challenging Defendants' conduct through multiple cases, in multiple states – or no cases at all, given that the small purchases of many class members would make such cases economically inefficient. *See*, *GMC,* 55 F.3d at 796 (considering the amount of alleged lass class action resolution is a more desirable outcome than individualized actions). A single class action is therefore not just the superior alternative, but likely the only alternative. As such, the final requirement of 23(b)(3) is satisfied. This Court should preliminarily certify the Indirect Purchaser State Class.

VI. THE NOTICE AND ALLOCATION PLANS SHOULD BE APPROVED

Prior to final approval, Fed. R. Civ. P. 23(c)(2) and 23(e) requires that the Court authorize the sending of court approved notice to the class including of the nature of the claims, preliminary certification, settlement, and final approval hearing. The court should review and prove the notice and the way the parties propose to distribute that notice. "The Rule 23(e) notice is designed to summarize the litigation and the settlement and 'to apprise class members of the right and opportunity to inspect the complete settlement documents, papers, and pleadings filed in the litigation.'" *In Re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d at 327.

A. The Proposed Form of Class Notice Adequately Informs Class Members of Their Rights in This Litigation

Rules 23(c)(2) and 23(e) govern the contents of notice, and require it adequately inform class members of the terms of the Settlement. *See,* Fed. R. Civ. P. 23(c)(2); (e). Consistent with these requirements, Plaintiffs propose several methods for notifying the Class Members of the Settlement and their rights.

First, Plaintiffs' notice program relies on both mailing and emailing direct notice of the Settlement to Multi-State Subclass Members using mailing and email address information derived from the relevant state licensing boards prepared by third-party vendors. Declaration of Cameron R. Azari on behalf of the Settlement Administrator ("Azari Decl."), at, ¶¶16-21. Using plain language, the mailed and emailed notice describe the terms of the Settlement, and their right to share in the recovery, to opt out of the Class, to comment on or object to the Settlement, and to appear before the Court at the Final Approval Hearing. *Id.* The mailed and email notice also includes physical or links to the online Claim Form, and provides details regarding the Cash Settlement Payment Plan of Allocation and Rebate Program, as well as Class Counsel's anticipated motion for attorneys' fees and reimbursement of litigation expenses and for service awards to Plaintiffs *Id*., *see also Agreement*, Exhs. A and B.

Second, Plaintiffs' notice program provides supplemental publication notice in trade publications with nationwide reach, and an online publication notice campaign geared toward reaching Multi-State Settlement Subclass purchasers of Viega copper press fittings that will employ banner ads on Facebook, and make use of algorithms to optimize the campaign based on which ads trigger the most "clicks" to the Claim Form and Settlement website, as well as a press release. *Id*., ¶¶22-28.

The proposed forms of direct and publication notice, Claim Form, Cash Settlement Plan of Allocation, and Rebate Program Claim Form are all annexed to the Settlement Agreement. *See Agreement* (Ex. 1), Exhs. A-E. The Plan of Allocation, Exh. D, contains information about how cash settlement payments will be distributed *pro*

rata, how to cure claim form deficiencies, and available dispute resolution procedures.

B. The Proposed Method of Distributing Class Notice Provides the Best Notice Practicable Under the Circumstances

A plan for distributing notice is satisfactory when it is "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Basile*, 2018 WL 2441363 at *7. Despite all practical efforts to do so, notice need not reach each class member. Here the notice program will include numerous forms of communication – all designed to reach at least 85% of the class members. *See* Azari Decl.¶¶32, 37.

In *Warfarin*, the Third Circuit affirmed a district court's approval of a plan of notice for an indirect purchaser class action consisting of "publishing summary notice in publications likely to be read by consumer claimants along with a call-center and a website with information and downloadable forms." *Warfarin*, 391 F.3d at 536. Here, the proposed notice plan exceeds the minimum standards of *Warfarin*. The parties propose for the Court's approval a respected and qualified Settlement Administrator – Epiq LLC[3] – and propose an extensive, targeted notice plan that is more than adequate. A description of the notice plan is attached. *See* Azari Decl.¶¶16-33.[4]

VII. APPOINTMENT OF CLASS REPRESENTATIVES AND COUNSEL

Plaintiffs seek to be appointed as representatives of the Settlement Class, and Interim Co-Lead Counsel and Liaison Counsel seek appointment as Settlement Class Counsel. *See* Fed. R. Civ. P. 23(c)(1)(B). Plaintiffs are appropriate Class Representatives. They have standing to represent absentee Class Members,[5] possess no

[3] Epiq was selected by Plaintiffs and Viega as the proposed Settlement Administrator from among five experienced class action administrators. Pritzker Decl, ¶28.

[4] The Class Action Fairness Act, 28 U.S.C. § 1715, requires notice of the proposed settlement to be served on appropriate State and Federal officials. Epiq, if approved, will provide such notice.

[5] *See Sullivan*, 667 F.3d at 311-312 (approving settlement of nationwide indirect purchaser class with class representatives from fewer than all 50 states); *Accord In re*

conflicts, and have actively participated in the litigation for the Classes' benefit. Pritzker Decl., ¶27. The Court has already found that Interim Co-Lead Class Counsel and Liaison Counsel are well-experienced, qualified, and sufficiently skilled to litigate the case for Class Members. ECF 38, at ¶ 2. Since their original appointment, Interim Co-Lead Class Counsel and Liaison Counsel have worked diligently to prepare pleadings, undertake and analyze discovery, conduct motion practice, and negotiate settlement terms that provide fair, reasonable and adequate relief to Class Members. These counsel request that the Court appoint them as Settlement Class Counsel.

VIII. CONCLUSION

For the forgoing reasons, the Court should grant preliminary approval of the Agreement, certify the Settlement Classes, approve the notice plan and schedule a final fairness hearing.

Dated: August 24, 2020

Respectfully Submitted,
OBERMAYER REBMANN MAXWELL & HIPPEL LLP

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Plastic Additives Antitrust Litigation, 2009 WL 405522, at *1 (3d. Cir. 2009)("There is no requirement, in the context of a class settlement, that named class members hail from the same states as absentee class members").

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CERTIFICATE OF SERVICE

I hereby certify that on August 24, 2020, I electronically filed the foregoing document with the Clerk of the Court using the ECF system which sent notification of such filing to all counsel of record.

/s/ *Walter W. Cohen*