UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

SEAN ROSE and JAIME ROSE, Plaintiffs, v. THE TRAVELERS HOME AND MARINE INSURANCE COMPANY and THE TRAVELERS INDEMNITY COMPANY, Defendants.	:	Case No. 2:19-cv-00977-GJP

PLAINTIFFS' UNOPPOSED MEMORANDUM IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

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I. INTRODUCTION

Plaintiffs Sean Rose and Jaime Rose (hereinafter, "Plaintiffs"), by and through undersigned counsel, respectfully move for Final Approval of the proposed Settlement (*see* D.E. # 46-1, attached to the Preliminary Approval papers and hereinafter referred to as the "Settlement Agreement"), and certification of the Settlement Class, which will resolve Plaintiffs' and all proposed settlement class members' (hereinafter, "Settlement Class Members") claims in this action. Defendants The Travelers Home and Marine Insurance Company and The Travelers Indemnity Company (hereinafter, "Defendants") do not oppose this motion.[1] The Court should grant Final Approval because the proposed Settlement Agreement affords substantial relief for Plaintiffs and the Settlement Class, and because the terms of the Settlement are fair, adequate, and reasonable. The Settlement entails Defendants' disbursement of cash payments to Settlement Class Members who submit valid and timely claims, as well as modifications to Defendants' practice. In short, the Settlement provides a tremendous result for the Settlement Class while also avoiding the riskiness and costliness of prolonged litigation.

Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, Plaintiffs respectfully request this Court grant Final Approval of the proposed terms of the Settlement Agreement previously filed with this Court on January 10, 2020. As detailed herein and in the accompanying Joint Declaration of Kenneth J. Grunfeld, Esq., and Anthony DiUlio, Esq., in Support of Motion for Final Approval of Class Action Settlement (hereinafter, "Joint Decl. of Counsel," attached as Exhibit A), the Settlement Agreement is the product of extensive research and investigation, and aggressive and arms-length negotiations. Further, the Supplemental Declaration of Cameron R.

[1] Plaintiffs' Unopposed Motion and Memorandum for Preliminary Approval of Class Action Settlement (Docket Entry No. 46) is hereby incorporated by reference herein and includes further background and detail regarding the settlement.

Azari, Esq. on Implementation of Settlement Notice Plan ("Epiq Decl.", attached as Exhibit B) establishes the unmitigated success of the notice and claims program. In consideration of the foregoing, Plaintiffs and Class Counsel believe that the Settlement Agreement clearly satisfies the standards for approval set forth by the Third Circuit in *Girsh v. Jepson*, 521 F.2d 153 (3d Cir. 1975), and is unquestionably fair, reasonable and adequate. Accordingly, this Settlement Agreement is in the best interests of the Settlement Class, and this Court should grant Final Approval of the settlement in this action.

II. FACTUAL BACKGROUND

A. Nature of the Case

On February 1, 2019, Plaintiffs commenced the instant putative class action against Defendant The Travelers Home and Marine Insurance Company (hereinafter, "Travelers Home") in the Philadelphia Court of Common Pleas. Shortly thereafter, on March 8, 2019, Travelers Home successfully removed the case to the Eastern District of Pennsylvania. The action arises out of Plaintiff, Sean Rose's discovery in August 2018 of a small water stain on the kitchen ceiling of Plaintiffs' property in Blue Bell, Pennsylvania. The Complaint asserts that Plaintiffs' house is insured by Travelers Home, and that Plaintiffs' insurance policy includes coverage for rot damage. *See* Amended Complaint at ¶¶ 8-10. Because the visible damage appeared minor, Mr. Rose consulted a plumber to diagnose and remediate the issue. Upon investigation, the plumber found the visible damage stemmed from a shower leak, which caused the wood subfloor below the shower to rot. *Id.* Following this discovery, Mr. Rose submitted a claim to Travelers Home, which was denied based on the alleged existence of a long-term leak. *Id*. at ¶¶ 15-23.

Defendants' coverage denial prompted Mr. Rose to examine the terms of the insurance policy. As a result, Mr. Rose discovered that Travelers Home, as a matter of business practice,

apparently was not providing rot damage coverage in adjusting claims under *any* of its insurance policies based on an exclusion for long-term seepage or leakage, although at least some of the policies, including Mr. Rose's policy, included a provision entitled "Limited 'Fungi', Other Microbes or Rot Remediation" that appeared to provide coverage for rot damage. Mr. Rose subsequently filed this class action Complaint seeking monetary damages and other relief in connection with and stemming from Travelers Home's methodical denial of claims for rot damage. The original Complaint sounds in Breach of Contract, Bad Faith, and a violation of the Unfair Trade Practices and Consumer Protection Act (hereinafter, "UTPCPA") and seeks damages for the breach of contract, attorney's fees and punitive damages under the Bad Faith claim, and treble damages under the UTPCPA claim.

On March 14, 2019, Travelers Home filed an Answer to Plaintiffs' Complaint (*see* D.E. # 3), and the parties submitted a Joint Status Report on April 30, 2019 (*see* D.E. # 14).

B. The Parties' Settlement Negotiations

The parties initiated settlement negotiations on a conference call with Magistrate Judge Hey on May 10, 2019. Shortly thereafter, the parties exchanged relevant data to prepare for an in-person settlement conference before Judge Hey on June 14, 2019. *See* Exhibit A at ¶¶ 4, 6, 9. Settlement was not achieved at this conference, but the parties accomplished significant progress by way of defining the scope of a potential settlement class and establishing a preliminary framework for class-wide relief. *Id.* On July 11, 2019, Counsel for the parties had another in-person meeting to exchange additional information, leading to Plaintiffs' submission of a second proposal on August 9, 2019. Following Travelers Home's submission of a counterproposal on September 5 and Plaintiffs' submission of a third proposal on September 24, the parties agreed to a joint submission on October 2, 2019. Travelers Home provided another responsive proposal on

October 9, 2019, and the parties consulted Judge Hey again via phone call on October 11. On October 23, Plaintiffs provided a new revised settlement proposal to Travelers Home, and the parties conducted another in-person meeting before Judge Hey on October 30.

The parties' meeting on October 30, 2019 gave rise to the parties' resolution of mostly all of the substantive issues regarding class-wide relief and the process of claim filing. *Id*. Thereafter, the parties agreed to a Stipulation staying all deadlines in the case, which was denied by Order by Judge Pappert. Your Honor's Order set new class certification deadlines, which led to the parties' continued negotiations on the terms for class-wide settlement. The parties provided Judge Hey with status updates regarding settlement negotiations on November 8 and again on November 18. With Judge Hey's guidance and direction, the parties exchanged offers and demands to resolve outstanding issues, including attorneys' fees and costs, which were not negotiated until after agreement was reached on all essential terms of the class relief. Although Judge Hey scheduled another in-person settlement conference for December 2, 2019, the parties sought to expedite the process and agreed to meet in-person in New York City on November 20, 2019. *Id*. At that meeting, the parties resolved all the remaining issues, including attorneys' fees and costs. *Id*. Additionally, the parties made final revisions to a written Settlement Agreement and compiled multiple notice materials. On November 26, 2019, the parties filed a Joint Notice of Settlement with the Court. On January 10, 2020, the parties executed the Settlement Agreement, memorializing the agreement reached subject to Preliminary Approval and Final Approval as required by Federal Rule of Civil Procedure 23. *See id.* at ¶ 5; *see also* Settlement Agreement at D.E. # 46-1.

C. The Primary Terms of Settlement

The terms most pertinent to the Settlement Agreement, as well as this Motion for Final

Approval of Class Action Settlement, are discussed below.

1. The Settlement Class

As set forth more fully below, the Settlement Agreement contemplates a nationwide Settlement Class consisting of persons or entities who satisfy the following requirements (capitalized terms are defined in the Settlement Agreement at ¶¶ 1-37):

(a) the policyholder made a claim for Structural Damage to an Insured Structure located in the United States of America under a Policy;

(b) the claim falls within the Settlement Class Period;

(c) the Policy included Rot Remediation Coverage;

(d) the claim included Rot Damage; and

(e) the Rot Damage portion of the claim was denied by Travelers.

See Settlement Agreement at ¶ 3. The Settlement Class does not include those policyholders whose insurance claims, as of the date of the Preliminary Approval Order:

(f) remained open according to Travelers' records;

(g) were the subject of an assignment of rights to payment by the policyholder to any third party;

(h) were the subject of a pending lawsuit, other than the Civil Action;

(i) were the subject of a final judgment in a lawsuit against Travelers or release executed by the policyholder in favor of Travelers; and/or

(j) were the subject of an ongoing or completed appraisal proceeding under the terms of an appraisal provision in a Policy.

Id. The number of potential Settlement Class members that received notice is 32,243. *See* Epiq Decl. at ¶ 9. Other those, 21,925 members fit into the Policy Period category, receiving Claim Form A (of which approximately 1,546 are business insurance claims), and 10,306 fit into the Statutory Period category, receiving Claim Form B (of which approximately 663 are business insurance claims). *See* Epiq Decl. at ¶ 6.

2. The Notice Provided and Settlement Administration

The parties have selected Epiq Class Action & Claims Solutions, Inc. as the Settlement Administrator for this settlement arrangement. *See* Settlement Agreement at ¶ 23. Defendants will pay all costs reasonably incurred by the Settlement Administrator. *Id*. at ¶ 53. The costs are estimated to be between $280,000 and $350,000. Epiq Decl. at ¶ 15. Class Notice was designed to give the best notice practicable, is tailored to reach members of the Class, and is reasonably calculated under the circumstances to apprise the Class of the settlement and, specifically, each member's rights (i) to make claims, (ii) to exclude themselves from the settlement, or (iii) to object to the settlement's terms or Settlement Class Counsel's anticipated fee application and request for Plaintiffs' service awards. *See* Settlement Agreement at ¶ 42 and Exs. D, E and F thereto. Here, the notice provided to the class met each of these requirements. *See* Epiq Decl. at ¶¶ 17-20.

The Class Notice program had four parts: (i) CAFA notice; (ii) direct mail notice; (iii) direct email notice for Class Members whose e-mail address Defendants have; and (iv) notice available on the settlement website. *See* Settlement Agreement at ¶¶ 41, 42, 45 and Exs. D, E and F thereto. Each part has been satisfied. *See* Epiq. Decl. The Class Notice plan constitutes sufficient notice to persons entitled to receive it, and satisfies all applicable requirements of law, including Federal Rule of Civil Procedure 23 and the constitutional requirement of due process.

i. <u>CAFA Notice</u>

Within 10 days after the filing of the Motion for Preliminary Approval, the Settlement Administrator provided notice to the Attorney General of the United States, and the primary insurance regulatory or supervisory official of each state and territory of the United States in which, based on a preliminary list prepared by Defendants, a Potential Class Member resides, serving on them the documents described in 28 U.S.C. § 1715(b)(1) through (8), as applicable. *See* Settlement

Agreement at ¶ 41; Epic Decl. for Preliminary Approval, at D.E. # 46-15. CAFA notice was accomplished successfully. Significantly, there have been no objections or other notifications or communications regarding the settlement from these numerous governmental entities.

ii. Email and Mail Notice

Defendants provided the Settlement Administrator a list of all Potential Class Members identified through its records as set forth in the Settlement Agreement. *See* Settlement Agreement at ¶ 42; *see also* D.E. # 46-15. On April 13, 2020, Epiq disseminated all of the mail and email notices to all Potential Class Members. Epiq. Decl. at ¶¶ 6-8. For Notice Packets returned as undeliverable, Epiq took all required steps to promptly re-mail packages. Settlement Agreement at ¶ 42(b); Epiq Decl. at ¶¶ 6-8. As of June 11, 2020, 600 unique Settlement Class Members' Notice packages are currently known to be undeliverable. *Id.* at ¶ 9. Considering the total number of 32,243 unique records, this amounts to a 98.1% deliverable rate. *Id.*

iii. Settlement Website and Telephone Number

Epiq established a settlement website (www.RoseSettlement.com) and a toll-free telephone number (866-977-0336) as a means for Potential Class Members to obtain notice of, and information about, the settlement. *See* Settlement Agreement at ¶ 45; Epiq Decl. at ¶¶ 10-2. Both continue to be available to Settlement Class Members and have been significantly accessed and utilized by the class. *Id.*

3. Class Member Opt-Out and Objection Rights

Requests for exclusion are sent directly to the Settlement Administrator. *See* Settlement Agreement at ¶¶ 41-6 and Ex.'s B and C thereto. Objections were to be filed with the Court. *See id*. at ¶ 44 and Ex. E. The deadline for Settlement Class Members to request exclusion from the Settlement or to object to the Settlement was May 13, 2020. *See* Epiq Decl. at ¶ 13. As of June

11, 2020, Epiq has received requests for exclusion for 39 Settlement Class Members. *Id.* and Exclusion Report attached thereto. Only three objections to the Settlement have been filed with the Court, submitted by less than one-one-hundredth of the Potential Class Members. *See* D.E. #'s 54, 55 and 60, addressed in detail *infra* Section B.3.

4. The Relief Offered and Claims Made

Relating to monetary relief, the parties have negotiated a claims-made settlement. Class Members' relief is dependent on when they suffered injury and the jurisdiction in which they reside and is predicated on the submission of a valid Claim Form. The amounts of the settlement payments available on timely Policy Period Claims made on Claim Form A are set forth in Paragraph 50 of the Settlement Agreement, and range from $200 to $3,750, depending on the amount of Claimed Rot Damage. The Settlement Agreement also provides for a payment floor in the amount of $2,250,000, such that "[i]f the total valid claims made for all Settlement Class Members for both Policy Period Claims and Statutory Period Claims does not exceed $2,250,000 in the aggregate, the amounts to be paid on valid Policy Period Claims will be increased proportionally…" *See* Settlement Agreement at ¶ 52.

The deadline for Settlement Class Members to file a claim was May 28, 2020. Epiq. Decl. at ¶ 14. As of June 11, 2020, Epiq has received 6,705 Claim Forms, including 4,815 Claim Form A's and 1,890 Claim Form B's. The claims received are subject to continued review and further auditing by Epiq and then by Travelers as claims processing is still ongoing. *Id.* Regardless, as of now, the claims rate stands at over 20%. *See Brown v. Rita's Water Ice Franchise Co. LLC*, No. CV 15-3509, 2017 WL 4102586, at *2 (E.D. Pa. Sept. 14, 2017) (referring to 20% as "the gold standard").

5. The Release of Claims Offered by the Settlement Class

If the Settlement Agreement receives Final Approval, settlement payments will be issued to Class Members and this action will be dismissed with prejudice. Other than the 39 class Members that have opted out of the settlement, the remaining Class Members will release claims as consideration for the settlement in the manner specifically delineated in the Settlement Agreement. The scope of release is appropriately focused on claims arising from or relating to Rot Damage. *See* Settlement Agreement at ¶¶ 18-20.

6. Service Award and Attorneys' Fees and Expenses

Subject to Court approval, Defendants have agreed to pay Settlement Class Counsel reasonable attorneys' fees and expenses of $1,900,000. *Id*. at ¶ 60; *see also* Exhibit A at ¶ 8; Motion for Attorneys' Fees and Incentive Award, at D.E. 53. Defendants have not opposed this request, nor has any Class Member or government entity. Further, Settlement Class Counsel has sought a reasonable service award of $10,000 to be paid jointly to Plaintiffs—the Settlement Class Representatives. *See* D.E. # 53. No objection to this amount has been raised. The service award, attorneys' fees and expenses will be remitted by Defendants in a manner separate and apart from the monetary relief available to the Settlement Class. *See* Exhibit A at ¶ 8.

III. THE SETTLEMENT SHOULD BE GIVEN FINAL APPROVAL

A. The Legal Standard for Judicial Approval of Class Action Settlements

1. The Policy Favoring Settlement

As a general matter, the settlement of class action suits, as well as compromises of disputed claims, is favored by the courts. *Williams v. First Nat'l Bank,* 216 U.S. 582, 595 (1910); *City of Detroit v. Grinnell Corp.*, 495 F.2d 448 (2d Cir. 1974). It is, therefore, "the policy of the law generally to encourage settlements." *Sherin v. Gould*, 679 F. Supp. 473, 474 (E.D. Pa. 1987)

(quoting *Florida Trailer and Equip. Co. v. Deal*, 284 F.2d 567, 571 (5th Cir. 1960)). Indeed, particularly in class action suits, there is a "strong public policy favoring settlement." *Lazy Oil Co. v. Witco Corp.*, 95 F. Supp. 2d 290, 330 (W.D. Pa. 1997); *see also Ehrheart v. Verizon Wireless*, 609 F.3d 590, 594-5 (3d Cir. 2010) (stating that the "strong presumption in favor of voluntary settlement agreements" is "especially strong in class actions and other complex cases where substantial resources can be conserved by avoiding formal litigation." (internal quotations omitted)); *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 535 (3d Cir. 2004) ("[T]here is an overriding public interest in settling class action litigation, and it should therefore be encouraged.")

2. Presumption of Fairness

An "'initial presumption of fairness' may apply when reviewing a proposed settlement where: '(1) the settlement 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.'" *Sullivan v. DB Investments, Inc.*, 667 F.3d 273, 320 (quoting *Warfarin*, 391 F.3d at 535) (3d Cir. 2011). In its Order granting Preliminary Approval (D.E. # 48, 2/4/2020), the Court has already made a finding that the proposed settlement is presumptively fair. *See, e.g., Armstrong v. Board of School Directors of City of Milwaukee*, 616 F.2d 305, 314 (7th Cir. 1980) (The purpose of the pre-notification hearing is "to determine whether the proposed settlement is 'within the range of possible approval.'").

At least one court has stated if the terms of the settlement on their face suggest the settlement is the result of bona fide compromise, a presumption of regularity in the course of negotiations arises. *See Jones v. Amalgamated Warbasse House, Inc.*, 97 F.R.D. 355, 359 (E.D.N.Y. 1982), *aff'd,* 721 F.2d 881 (1st Cir. 1983). In other words, the very fairness of the settlement terms, in and of themselves, is evidence of arms-length negotiations, such as those

conducted here. Based on an evaluation of the strengths and weaknesses of the claims and defenses of the parties as explained further below, the proposed Settlement provides a mechanism to fairly, adequately and reasonably resolve all viable claims of the Class.

3. Factors to Consider for Final Approval

In assessing the fairness of a proposed settlement, Rule 23(e)(2), as amended in 2018, sets forth the following factors for courts to consider:

> (A) the class representatives and class counsel have adequately represented the class;
>
> (B) the proposal was negotiated at arm's length;
>
> (C) the relief provided for the class is adequate, taking into account:
>
> > (i) the costs, risks, and delay of trial and appeal;
> >
> > (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
> >
> > (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
> >
> > (iv) any agreement required to be identified under Rule 23(e)(3); and
>
> (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P.23(e)(2).

Prior to the 2018 amendment to Rule 23, the Third Circuit articulated nine well-established primary factors for a district court to consider in conducting its inquiry, which largely overlap with the Rule 23 factors adopted in 2018:

> (1) the complexity, expense and likely duration of the litigation;
> (2) the reaction of the class to the settlement;
> (3) the stage of the proceedings and the amount of discovery completed;
> (4) the risks of establishing liability;
> (5) the risks of establishing damages;
> (6) the risks of maintaining the class action through the trial;

> (7) the ability of the defendants to withstand a greater judgment;
> (8) the range of reasonableness of the settlement fund in light of the best possible recovery; [and]
> (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

Sullivan, 667 F.3d at 319-320 (quoting *In re Pet Food Products Liab. Litig.*, 629 F.3d 333, 350 (3d. Cir. 2010) (quoting *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975)). Furthermore, a district court may consider several other factors, including:

> (10) [T]he maturity of the underlying substantive issues, as measured by experience in adjudicating individual actions, the development of scientific knowledge, the extent of discovery on the merits, and other factors that bear on the ability to assess the probable outcome of a trial on the merits of liability and individual damages;
> (11) the existence and probable outcome of claims by other classes and subclasses;
> (12) the comparison between the results achieved by the settlement for individual class or subclass members and the results achieved—or likely to be achieved—for other claimants;
> (13) whether class or subclass members are accorded the right to opt out of the settlement;
> (14) whether any provisions for attorneys' fees are reasonable; and
> (15) whether the procedure for processing individual claims under the settlement is fair and reasonable.

Sullivan, 667 F.3d at 320 (quoting *Pet Food*, 629 F.3d at 350) (quoting *In re Prudential Ins. Co. America Sales Practice Litig.*, 148 F.3d 283, 323 (3d Cir. 1998)). The court may also consider the following four factors justifying "an initial presumption of fairness," which is found where:

> (16) the settlement negotiations occurred at arm's length;
> (17) there was sufficient discovery;
> (18) the proponents of the settlement are experienced in similar litigation; and
> (19) only a small fraction of the class objected.'"

Sullivan, 667 F.3d at 320 (quoting *Warfarin*, 391 F.3d at 535).

B. The Settlement Satisfies the Standards for Judicial Approval

Rule 23(e) of the Federal Rules of Civil Procedure provides for judicial approval of the compromise of claims brought on a class basis if the proposed class action is "fair, reasonable, and adequate." Approval of class action settlements is committed to the sound discretion of the district court. *See* Fed. R. Civ. P. 23(e). Assessing the above "Factors to Consider for Final Approval" in conjunction with the facts of the instant matter, the Court should find it well within its discretion to grant Final Approval to the proposed Settlement Agreement.

1. The Risks and Expense of Continued Litigation Coupled with the Probability and Range of Possible Recovery by the Settlement Class, Measured Against the Relief Offered by the Settlement, Favor Final Approval

The reasonableness of the settlement (factor 9) must also be viewed against the complexity, expense, and potential duration of litigation (factor 1) and the likelihood of success at trial (factors 4, 5, 6). *See, e.g.*, *In re Pet Food Prods. Liab. Litig.*, 629 F.3d 333, 350 (3d Cir. 2010); *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975); *In re Foundation for New Era Philanthropy Litig.*, 175 F.R.D. 202, 205 (E.D. Pa. 1997). These considerations weigh in favor of the Court's Final Approval of the instant Settlement Agreement.

The negotiation process has already required substantial resources, and continued litigation of this matter would require the expenditure of exponentially more resources. *See* Exhibit A at ¶ 10. The amount of litigation-related work that would need to be completed is high, and includes, but is not limited to, defending a potential dispositive motion, as well as performing substantial, formal fact discovery in this case. *Id.* Fact discovery will require, *inter alia*, depositions, along with the production, extraction, and analysis of various data from Defendants. *Id*. Significantly, in-depth fact discovery may also unearth potential third parties, which will spark separate cascades of litigation-related work and other resource expenditures. *Id.*

Additionally, the parties have yet to brief class certification, which would likely require expert disclosures and depositions, and dispositive motions that have yet to be filed. *Id.* Thus, Plaintiffs face the conceivable threat that the Court could plausibly deny certification of the instant litigation class. If this threat were to come to fruition, the potential recovery by the Settlement Class Members would become improbable. By way of illustration, Defendants might argue that each insurance claim would require an individual trial to determine whether a Rot Remediation Coverage provision applies to each claim, whether an exception to that provision applies, and whether other policy provisions preclude coverage. While Plaintiffs are confident that they could ultimately succeed on this issue, there is a significant issue that they might not if class certification is denied, and the terms of the settlement avoid that potential obstacle to class certification. *See In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 529 (3d Cir. 2004) (in a class action settlement, "a district court need not inquire whether the case, if tried, would present intractable management problems…for the proposal is that there be no trial") (quoting *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997)). By way of further illustration, Defendants may also argue in opposition to class certification that determination of damages would necessitate individual adjudication. The proposed Settlement Agreement precludes the uncertainty engendered by such an assertion, as it provides a mechanism whereby class members may submit Claim Forms attesting to the amount and extent of their claimed Rot Damage. *See* Settlement Agreement at ¶ 44. The Settlement Agreement further provides that Claim Forms must include supporting documentation if the Class Member seeks one of the larger settlement payments available under the proposed settlement. *Id*. In sum, the settlement's Final Approval would secure the probability of Plaintiffs' recovery, as well as the recovery of the entire Settlement Class.

Additionally, there is a concurrent risk that, were this case to be fully litigated to

conclusion, Plaintiffs—or, at least, some Class Members—could possibly be foreclosed from some or any recovery at all as a result of summary judgment or other motions-related practice. Plaintiffs unequivocally maintain that the Rot Remediation Coverage would be illusory if there were no circumstances in which Defendants would pay for damage caused by rot because of the long-term seepage/leakage exception. *See* Am. Compl. ¶¶ 30-31. Defendants maintain that there are circumstances under which such coverage would be triggered, and the threshold for Plaintiffs to establish that coverage was illusory potentially could be difficult to satisfy. *See, e.g.*, *PNC Fin. Servs. Grp. Inc. v. Hous. Cas. Co.*, 647 F. App'x 112, 119 (3d Cir. 2016) (under Pennsylvania law, coverage is "only illusory where [the policy] 'would not pay benefits under any reasonably expected set of circumstances' and 'is not illusory simply because of a potentially wide exclusion'"). The instant Settlement Agreement provides that Settlement Class Members will be paid a large percentage of what they might have recovered if they were successful on this issue. *See* Factor 8, *the range of reasonableness of the settlement fund in light of the best possible recovery*. Thus, this settlement secures relief for Plaintiffs and Class Members, which may be minimized or wholly precluded if this case were to be made subject to the rigors and practices of full litigation.

Lastly, all of the above-mentioned matters and risk factors would necessitate significant time and expense, and while Plaintiffs and Class Counsel remain unwaveringly committed to their claims, they are also practical in remaining cognizant that there is no guarantee of success and that substantial obstacles exist at the summary judgment, class certification, and trial phases. Therefore, the significant risks and expenses imposed by continued litigation, coupled with the probability of Settlement Class recovery and measured against the relief secured by the Settlement Agreement, overwhelmingly weigh in favor of this Court's Final Approval.

2. Additional Factors Weigh in Favor of Approval, or are Neutral

Factor 3 - *the stage of the proceedings and the amount of discovery completed*, and Factor 10 - *the maturity of the underlying substantive issues* – weigh in favor of Settlement. Although settlement negotiations began prior to formal discovery, there was a significant amount of information exchanged between the parties. This information was exchanged both informally and confidentially, the content of which was sufficient to provide a foundation for a thorough determination regarding the fairness and adequacy of settlement. Ex. A at ¶¶ 6, 9. In fact, the parties' exchanged information was pivotal in understanding the scope of the Class and the potential reach of Potential Class Members. *Id.* Significantly, the parties' cooperation and exchange of information developed an informed view of the strengths and weaknesses of their respective positions, the risks of continued litigation, and an appreciation for the enormous value this settlement delivers to the Settlement Class and all Potential Class Members. *Id*. at ¶¶ 9-10.

Factor 13 - *whether class or subclass members are accorded the right to opt out of the settlement*; Factor 14 - *whether any provisions for attorneys' fees are reasonable*; Factor 15 - *whether the procedure for processing individual claims under the settlement is fair and reasonable*, and Rule 23(e)(2)(D) - *the proposal treats class members equitably relative to each other* – have all been addressed previously and herein, and all weigh in favor of settlement. The opt-out right is well established and has been utilized by class members. *See* Epiq. Decl. at ¶ 13. Class Counsel has submitted a separate brief establishing the fairness and reasonableness of the requested fee award, which is to be paid separately from any recovery of the class members. *See* D.E. # 53. Finally, the Settlement Agreement establishes, and Epiq has implemented, fair and reasonable process for assessing and paying class claimants. *See generally*, Settlement Agreement; Epiq Decl.; *In re Comcast Corp. Set-Top Cable Television Box Antitrust Litig.*, 333 F.R.D. 364, 373 (E.D. Pa. 2019) (approving a "claims-made" settlement); 4 William B. Rubenstein, Newberg on Class Actions § 13:7 (5th ed.). The Individual Payments treat class members

equitably relative to each other, by reasonably reflecting differences in amounts of Claimed Rot Damage for Policy Period Claims, and are consistent with the fact that Statutory Period Claims would be considerably more difficult claims for Settlement Class Members to establish class certification and to prevail on the merits.

Other factors that are to be considered by the Court, including # 3 - *the ability of the defendants to withstand a greater judgment*, and #11 and #12, regarding the existence of other classes, are neutral in that they do not influence the Court's decision making on this front. Finally, with respect to adequacy of representation, it is important to note that both parties are represented by qualified and competent class action litigators, well-positioned to evaluate the strengths and weaknesses of continued litigation, as well as the reasonableness of the settlement. *See* Class Counsel Decl. in Support of Attorney Fees, at D.E. # 53-2 and Firm Resumes attached thereto. Settlement Class Counsel was well-equipped to manage and carry out a case like the one at bar. *Id.* Golomb and Honik has successfully handled national, regional, and statewide class actions, as well as other complex mass or multi-party actions, throughout the United States in both federal and state courts. *Id.* Wheeler, DiUlio & Barnabei is a law firm which specializes in insurance property damage, which was unquestionably suffered by Plaintiffs and all Class Members. *Id*. As such, these two firms offer thorough, tested expertise and resources to litigate this nationwide class action regarding insurance property damage coverage. Working in conjunction, this team has allowed Settlement Class Counsel to work efficiently and effectively, prioritizing the maximization of value to be delivered to Class Members.

3. The Opinions of Class Counsel and Reaction of the Settlement Class Favors Final Approval

Factor 7 - *the reaction of the class to the settlement* – supports this Settlement. In weighing the propriety of final approval, the Court should also consider the opinions of Class Counsel.

Leverso v. Southtrust Bank of Ala.., Nat. Assoc. , 18 F.3d 1527, 1530 n.6 (11th Cir 1994); *accord Greco v. Ginn Devel. Co., LLC*, 635 F. App'x 628, 632 (11th Cir. 2015) (in reviewing a class action settlement for final approval, courts may "rely upon the judgment of experienced counsel for the parties."); *Holmes v. Cont'l Can Co*., 706 F.2d 1144, 1149 (11th Cir. 1983) ("Courts often accord great weight to the opinions of counsel for the class in approving class action settlements"). In fact, courts typically "defer to the judgment of experienced trial counsel who has evaluated the strength of his case." *Carpenters Health & Welfare Fund v. Coca-Cola Co*., No. 1:00-CV-2838-WBH, 2008 WL 11336122, at *10 (N.D. Ga. Oct. 20, 2008) (quotation omitted).

Here, Class Counsel are qualified, competent and have extensive experience prosecuting complex class actions, including consumer actions similar to the instant case. Class Counsel have been investigating and litigating this case for a long time. *See* D.E. # 53-2. Based upon their investigation in this case and their experience generally in litigating class action lawsuits, Class Counsel believe that the Settlement is fair, reasonable, adequate, and in the best interests of the Settlement Class. This supports the Settlement's final approval.

Equally influential is the overwhelmingly favorable reaction of the Settlement Class Members. It is "extremely unusual not to encounter objections" of some sort or number in response to a proposed class action settlement. *In re Nasdaq Mkt.-Makers Antitrust Litig*., 187 F.R.D. 465, 478 (S.D.N.Y. 1998). A low number of opt-outs and objections weighs heavily in favor of granting final approval to the Settlement. *See, e.g., Saccoccio v. JP Morgan Chase Bank, N.A.*, 297 F.R.D. 683, 694 (2014), ("[L]ow resistance to the settlement [through opt-outs and objections] … weighs in favor of approving the settlement."); *Wyatt By and Through Rawlins v. Horsley*, 793 F. Supp. 1053, 1056 (M.D. Ala. 1991) ("[A] court may properly interpret the absence of objections from a majority of the plaintiff class as indicating support for the proposed

modification or settlement"). Put simply, "the fact that the overwhelming majority of the class willingly approved the offer and stayed in the class" favors final approval. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998).

Here, Epiq's website has tracked over 5,348 unique visitors as well as over 13,275 page-views. Epiq Decl. at ¶ 10. The toll-free telephone number has handled 2,976 calls representing 30,661 minutes of use and service agents have handled 2,085 incoming calls representing 24,622 minutes of use, and agents have also made 505 outbound calls representing 1,251 minutes of use. *Id.* at ¶ 11. Class Counsel has received and responded to over 100 calls from class members during the claims period as well. *See* Ex. A at ¶ 10. Only 39 class members have excluded themselves, amounting to about 1 tenth of 1 percent of the class, and only three (3) objections have been filed, which are addressed separately below. These metrics indicate a strong rate of approval from the class.

i. Mr. Rockefeller's Objection Should Be Denied

John Rockefeller is a class member and has filed a timely objection, complaining that Travelers "willfully misled me on the definition of rot." D.E. # 54. He had property damage insurance with Travelers and filed a rot claim in 2015 based on damage to his kitchen. *Id.* Despite having $5,000 in coverage (he has attached page one of his policy's Declaration page), his claim was denied. *Id.* Mr. Rockefeller writes that he intends to appear but not personally testify at the final approval hearing. *Id.* On May 22, 2020, Class Counsel spoke to Mr. Rockefeller on the phone. *See* Joint Decl. of Counsel at ¶ 18. He said that he was frustrated that Travelers "lied" to him about coverage that he had, and he suffered significant damages that were never paid for by Travelers. *Id.* He understood that his claim was not within the Policy Period and had accordingly received a Claim Form B, which he filed to recover $150.00 as part of the settlement. *Id.* On June 9, 2020, Class Counsel reached out to Mr. Rockefeller and told him about the dial-in information for the Final Approval Hearing taking place on June 23, 2020. *Id.* at ¶ 21.

Mr. Rockefeller's complaints about what Travelers did do not amount to an objection to the settlement itself. Being frustrated with the defendant and believing he was misled are concerns he shares with Class Representatives Mr. and Mrs. Rose, but his only real balk with the settlement is that he believes the amount he is receiving is too small. After having spoken to Mr. Rockefeller, Class Counsel believes he understands why the amount he received was based not on the damages he suffered, but rather was limited because of the fact that the time he had to bring a breach of contract coverage action had elapsed when this class action was filed. *Id.* at ¶ 18. The only potential claim that Mr. Rockefeller (a Pennsylvania resident) could assert, given that his contractual claims are time-barred, would be a UTPCPA claim, which would be difficult to prove the merits on, and on which class certification would be very difficult to obtain. As such, how the settlement contemplates compensating Statutory Period Claims like his is a fair and reasonable accommodation.

ii. Mr. Azzolina's Objection Should Be Denied

Salvatore Azzolina is a class member and has filed a valid objection. He wrote that his rot claim was denied by Travelers and he did not believe that receiving $150.00 on his Statutory Period Claim was sufficient to address the sizable losses he suffered. D.E. # 54. He said the claim denial had "far reaching and lasting negative impact" on him, and he switched insurance carriers after this negative experience. *Id.* He acknowledges that he considered bringing a timely legal action but lacked the resources and experience to do so at the time. *Id.* Class Counsel sent Mr. Azzolina a letter on May 22, 2020 seeking to talk to him about his objection. *See* Joint Decl. of Counsel at ¶ 19. On June 4, 2020, Kasia Azzolina, Mr. Azzolina's wife, called Class Counsel and expressed her frustration with the defendant for denying their claim. *Id.* Mrs. Azzolina understood why the settlement compensation was limited to $150.00 based on the time her claim was denied. *Id.*

Nevertheless, she simply wanted her concerns to be heard by the Court. *Id.* The Azzolinas have filed Claim Form B to receive $150.00 as part of the settlement. *Id.* On June 9, 2020, Class Counsel reached out to the Azzolinas and told them about the dial-in information for the Final Approval Hearing taking place on June 23, 2020. *Id.* at ¶ 21.

Like Mr. Rockefeller, the Azzalinas' issue with the settlement is limited to the amount they will receive. As with Mr. Rockefeller, the only potential claim that the Azzolinas (Pennsylvania residents) could assert, given that their contractual claims are time-barred, would be a UTPCPA claim, which would be difficult to prove the merits on, and on which class certification would be very difficult to obtain. The Azzolinas have the right to express their frustration and understand their right to do so. *Id.* at ¶ 19. The Azzalinas can exercise this right, but the settlement itself is fair and reasonable as set forth herein and nothing in the objection sufficiently challenges the settlement.

iii. The Kings' Objection Should Be Denied

On June 11, 2020, a third objection was posted by the Court, this one from Ms. Byrde King. D.E. # 60. Ms. King and her late husband are class members and have filed a timely objection, which is dated May 12, 2020. *Id.* The Kings complain that Travelers denied their claim even they allege the policy covers the loss, in this instance, rot damage to their shed. *Id.* On June 11, 2020, Class Counsel spoke to Mrs. King on the phone. *Id.* at ¶ 20. She explained that she was never paid for this loss and she has not had it repaired to date. *Id.* She has never gotten an estimate of the amount of damages and she did not file a claim using Claim Form A after receiving notice of the settlement. Class Counsel has provided Mrs. King with the dial-in information for the Final Approval Hearing taking place on June 23, 2020. *Id.* at ¶ 21. We believe she is going to obtain an estimate of the damage and attend the hearing by phone.

While Mrs. King could not articulate her specific objection, we interpret her concern as being unable to place a value on her loss. This issue does not amount to an objection to the Settlement itself because it can easily and accurately be remedied by the homeowner. Travelers does not have this information; only the homeowner can estimate their potential loss at this point. This can be done with a free estimate from a contractor, or even by the homeowner herself in the form of an approximation of loss. Nothing in the Settlement prevented Mrs. King from inserting the amount of loss in Claim Form A and submitting her claim. The negotiated terms of the Settlement contemplated this issue and handled in a fair and reasonable manner.

4. The Four Factors Justifying "an Initial Presumption of Fairness" have been Met

In deciding whether a class action settlement agreement warrants Final Approval, a Court may consider the veracity of the settlement's presumption of fairness. As noted above, such initial presumption of fairness is found where: "'[(16)] the settlement negotiations occurred at arm's length; [(17)] there was sufficient discovery; [(18)] the proponents of the settlement are experienced in similar litigation; and [(19)] only a small fraction of the class objected.'" *Sullivan*, 667 F.3d at 320 (quoting *Warfarin*, 391 F.3d at 535). Here, the Settlement Agreement is unquestionably the product of arms-length negotiations. *See* Exhibit A at ¶¶ 4. The parties commenced negotiations in May 2019 and did not reach agreement until November 2019. In the interim, the parties exchanged countless written and electronic correspondence, engaged in dozens of telephone calls, and met in-person for mediation sessions with and without Magistrate Judge Hey multiple times. *Id*. at ¶¶ 4-8. "That the parties were assisted by an experienced mediator over multiple mediation sessions evidences the settlement's fairness and non-collusive nature." *See, e.g., Adams v. Inter-Con Sec. Sys., Inc.*, No. C-06-5428, 2007 U.S. Dist. LEXIS, at *9-10 (N.D. Cal. Oct. 30, 2007). Class Counsel would like to additionally note that their ability to coordinate

and expedite a mediation session in New York signals a degree of cooperation and class-prioritization which precludes collusion and coercion. *Id*. at ¶ 7. These factors are met.

IV. CERTIFICATION OF THE CLASS SHOULD BE MADE FINAL

"In order to approve a class settlement agreement, a district court must determine that the requirements for class certification under Federal Rule of Civil Procedure 23(a) and (b)" are met. *In re Ins. Brokerage Antitrust Litig.*, 579 F.3d 241, 257 (3d Cir. 2009). "The requirements of Rule 23(a) and (b) are designed to insure that a proposed class has sufficient unity so that absent class members can fairly be bound by decisions of class representatives." *Id.* (internal quotations and citation omitted). In doing so, courts have expressed "an overriding interest in settling class action litigation, and it should therefore be encouraged." *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d at 535. With this in mind, the settlement plainly satisfies Rules 23(a) and (b).

A. The Settlement Class Satisfies Rule 23(a)

"Rule 23(a) lays out four threshold requirements for certification of a class action: (1) numerosity; (2) commonality; (3) typicality; and (4) adequacy of representation." *In re NFL Players Concussion Injury Litig.*, No. 15-2206, *et seq.*, 2016 U.S. App. LEXIS 6908, at *22 (3d Cir. 2016); *see* Fed. R. Civ. P. 23(a). The Settlement Agreement satisfies each of these requirements.

1. The Class is so Numerous that Joinder is Impracticable

According to Rule 23(a), a class must be "so numerous that joinder of all members is impracticable." *See* Fed. R. Civ. P. 23(a). Although no magic number exists, courts typically find the numerosity requirement to be satisfied if there are more than 40 class members. *In re NFL*, 2016 U.S. App. LEXIS 6908, at *22. The instant Settlement Class easily exceeds this threshold, and, as a result, joinder is impracticable. There are 32,243 Potential Class Members who received notice of the settlement, as discovered by targeted searches in Defendants' records. *See* Epiq

Decl. at ¶ 9. Therefore, numerosity is clearly met here.

2. Questions of Law and Fact are Common to the Class

Rule 23(a) also requires commonality of the class, which is also satisfied here by way of commonality among legal and factual questions. "A putative class satisfies Rule 23(a)'s commonality requirement if the named plaintiffs share at least one question of fact or law with the grievances of the prospective class." *In re NFL*, 2016 U.S. App. LEXIS at *22 (internal quotations and citation omitted). Thus, commonality is "easily met" in most instances. *Baby Neal v. Casey*, 43 F.3d 48, 56 (3d Cir. 1994).

The commonality threshold is easily met here, as well. Plaintiffs' and other Settlement Class Members' claims stem from a common course of conduct. Plaintiffs' home was insured by Travelers Home. *See* Exhibit A at ¶ 15. They suffered losses as a direct result of rot damage to their property. They filed a claim with Travelers Home to recover the loss and remediate the issue, but their claim was denied. The same is true of all members of the proposed Settlement Class; thus, common—if not identical—questions of fact and law exist here. Additionally, there is commonality as to Travelers Home's anticipated potential defenses asserted in response to the claims of Plaintiffs and Class Members. Some of the pertinent factual and legal questions include whether rot damage was covered by Travelers Home's policies, whether class members suffered rot damage, whether Travelers Home's denial of claims violated state laws, and whether the same constituted bad faith under those laws. In sum, the commonality threshold requirement set forth in Rule 23(a) is clearly met in the instant matter.

3. Plaintiffs' Claims are Typical of the Claims of the Class

The typicality requirement aims to assure that the interests of named class representatives aligns with the interests of the class. *See In re NFL*, 2016 U.S. App. LEXIS, at *25. The Third Circuit has "set a low threshold for typicality." *Id.* (internal quotations and citation omitted). To

this end, "even relatively pronounced factual differences will generally not preclude a finding of typicality where there is a strong similarity of legal theories or where the claim arises from the same practice or course of conduct." *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 311 (3d Cir. 1998) (internal quotations and citation omitted).

The claims asserted by Plaintiffs, as the proposed class representatives, are identical to those of the Settlement Class. As alleged in Plaintiffs' Amended Complaint, Plaintiffs allege the same type of injury arising out of the same course of conduct taken by the rest of the Settlement Class. Just like each Settlement Class Member, Plaintiffs paid Travelers Home for insurance coverage. *See, e.g.*, Am. Compl. at ¶¶ 8, 11. Plaintiffs purchased a Travelers Home insurance policy providing coverage for rot damage. *Id*. Plaintiffs then suffered losses as a result of rot damage to their property. *Id*. at ¶ 12. They filed a claim for this damage, and their claim was denied. *Id*. at ¶¶ 15-24. Thus, the proposed class representatives clearly meet the typicality requirement, and are well-suited to represent other Settlement Class Members.

4. Class Representatives and Class Counsel will Fairly and Adequately Protect the Interests of the Class

In addition to the requirements enunciated above, Rule 23(a) also requires class representatives to "fairly and adequately protect the interests of the class." *See* Fed. R. Civ. P. 23(a)(4). This requirement focuses on whether the representatives have any conflicts of interest with the interests of the class, and whether class counsel is capable of representing the class. *See Gen'l Tel. Co. of S.W. v. Falcon*, 457 U.S. 147, 157 n.13 (1982).

Plaintiffs' interests are coextensive with, and not antagonistic to, the interests of the Settlement Class because they have an equal interest in the relief offered by the settlement. There are no diverging interests between Plaintiffs and the Settlement Class. *Id*. As noted above, Plaintiffs' and Settlement Class Members' claims arise from the same types of events and conduct,

turn on the same actions taken by Travelers Home, and Plaintiffs seek remedies equally applicable and beneficial to themselves and all Settlement Class Members. Furthermore, Plaintiffs, as the proposed class representatives, are represented by qualified and competent Class Counsel with extensive experience and expertise in prosecuting complex class actions. *See* D.E. 53-2.

B. The Settlement Class Satisfies Rule 23(b)(3)

Rule 23(b)(3) requires that common questions of law or fact predominate over individual questions, and that class action treatment is superior to other available methods of adjudication. Further, any potential manageability concerns are not pertinent here because this is a proposed settlement class. *See Sullivan*, 667 F.3d at 303-304. Predominance "'tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation.'" *In re NFL*, 2016 U.S. App. LEXIS 6908, at *42 (quoting *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 623 (1997)). Courts are "more inclined to find the predominance test met in the settlement context." *Sullivan*, 667 F.3d at 304 n.29 (internal quotations and citation omitted). As it relates to the instant matter, Rule 23(b)(3) is most pertinent to the Settlement Agreement's proposed monetary relief.

Here, Plaintiffs satisfy the predominance requirement because liability questions common to the Settlement Class substantially outweigh any possible individual issues. The claims of Plaintiffs and the Settlement Class are based on identical legal theories, and they stem from the same, uniform conduct exhibited by Travelers Home. In particular, Plaintiffs' claims present a common, overarching question of law with respect to whether the rot coverage in the policies at issue was illusory in light of the long-term seepage/leakage exclusion, and whether that not only provides a basis for a breach of contract, but also the alleged extra-contractual claims. These questions predominate. Furthermore, the resolution of Class Members' claims through the settlement of a class action is far superior to individual lawsuits because it promotes consistency

and efficiency of adjudication. *See* Fed. R. Civ. P. 23(b)(3). Absent class certification, any Potential Class Member would lack incentive to pursue individual claims due to the relatively small individual amounts at issue.

C. Certification of a National Class is Appropriate

Plaintiffs, in conjunction with Class Counsel, have litigated and settled this case as a national class. The parties have agreed to national treatment for purposes of settlement. The Third Circuit has held that "'variations [in state laws] are irrelevant to certification of a settlement class' since a settlement would eliminate the principal burden of establishing the elements of liability under disparate laws." *Sullivan v. DB Investments, Inc.*, 667 F.3d 273, 303 (3d Cir. 2011) (*quoting In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 529 (3d Cir. 2004)); *see also id.* at 304 ("we can find no persuasive authority for deeming the certification of a class for settlement purposes improper based on differences in state law"). The Third Circuit further held that allocation of proceeds in a class action settlement is not required to take into account potential "varying strengths and weaknesses" under different states' law. *Id.* at 328. Here, the Settlement Agreement goes further than anything the Third Circuit has required in this regard, and achieves fairness for class members in different jurisdictions, by taking into account the specific time period in which contractual claims may be brought in a particular jurisdiction, for Policy Period Claims (see Settlement Agreement, ¶ 15 and Ex. G thereto), and the specific time period in which extracontractual claims may be brought in a particular jurisdiction, for Statutory Period Claims (*see id.* ¶ 33 & Ex. G thereto). The Settlement is also tailored to the specific policy forms that are relevant in each jurisdiction. *See id.* and Ex. H attached thereto. The nationwide Settlement Agreement thus appropriately and reasonably tailors the relief to Settlement Class Members in each jurisdiction.

V. CONCLUSION

For the above stated reasons, Plaintiffs respectfully request that the Court: (1) grant Final Approval to the Settlement Agreement; (2) certify for settlement purposes the Settlement Class pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(2), 23(b)(3), and 23(e); (3) appoint Plaintiffs Sean Rose and Jaime Rose as Settlement Class Representatives; (4) appoint Anthony DiUlio of Wheeler, DiUlio & Barnabei, P.C. and Kenneth J. Grunfeld of Golomb & Honik, P.C., as Class Counsel; (5) appoint Joseph F. Hoag, P.E. as the Neutral Evaluator; (6) approve the requested Service Award for Plaintiffs; and (7) award Class Counsel attorneys' fees and expenses. A proposed Final Approval Order is attached hereto.

Respectfully submitted,

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Dated: June 12, 2020

CERTIFICATE OF SERVICE

I, Kenneth J. Grunfeld, Esq., hereby certify that a true and correct copy of the foregoing was served to all parties via electronic filing.

/s/ Kenneth J. Grunfeld, Esq.
Kenneth J. Grunfeld, Esq.
Attorney for Plaintiffs

Date: June 12, 2020