

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA**

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

**PLAINTIFFS' UNOPPOSED MOTION AND  
MEMORANDUM FOR PRELIMINARY  
APPROVAL OF CLASS ACTION SETTLEMENT**

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## I. INTRODUCTION

Plaintiffs Sean Rose and Jaime Rose, by and through undersigned counsel, respectfully move for Preliminary Approval of the proposed Settlement Agreement attached hereto as Exhibit A (the “Settlement Agreement”), and certification of the Settlement Class, which will resolve Plaintiff’s and all proposed settlement class members’ (“Settlement Class Members”) claims in this action.<sup>1</sup> Defendants The Travelers Home and Marine Insurance Company and The Travelers Indemnity Company do not oppose this motion. The Court should grant preliminary approval because the proposed settlement provides substantial relief for the Settlement Class and because the terms of the settlement are fair, adequate, and reasonable. The settlement consists of cash payments to Settlement Class Members who submit valid and timely claims, as well as practice changes. It is a tremendous result for the Settlement Class. Plaintiffs and their counsel were able to fully appreciate the relative strengths of the parties’ respective claims and defenses, and the significant risks presented by continued litigation.

As set forth in further detail herein, the settlement meets the standard for preliminary approval. Thus, Plaintiffs move the Court to enter the [Proposed] Order Granting Preliminary Approval of Class Action Settlement, attached as Exhibit I to the Settlement Agreement which is attached as Exhibit 1 hereto. That order contemplates: (1) the preliminary approval of the settlement’s terms; (2) the certification of the Settlement Class, for settlement purposes only; (3) the appointment of Plaintiffs as Class Representatives; (4) the appointment of Golomb & Honik and Wheeler, DiUlio & Barnabei as Settlement Class Counsel; (5) the appointment of Epiq Class Action & Claims Solutions, Inc. (“Epiq”) as the Settlement Administrator responsible for Class

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<sup>1</sup> Capitalized terms used herein are defined in the Settlement Agreement attached hereto as Exhibit A.

Notice and Claim administration; (6) the approval of the form, method, and plan of Class Notice; (6) the entry of procedures and deadlines for Settlement Class Members to make claims, object, or exclude themselves from the Settlement; and (7) the scheduling of a Final Approval Hearing and related deadlines.

## **II. PROCEDURAL HISTORY AND BACKGROUND**

### **A. The Civil Action**

Plaintiffs commenced this proposed class action on February 1, 2019 against The Travelers Home and Marine Insurance Company (“Travelers Home and Marine”) in Philadelphia Common Pleas Court. Travelers Home and Marine removed the case to the Eastern District of Pennsylvania on March 8, 2019. The Complaint asserts that the house owned by Mr. and Mrs. Rose in Blue Bell, Pennsylvania is insured by Travelers Home and Marine, and that Plaintiffs’ policy includes coverage for rot damage. *See* Amended Complaint at ¶¶ 8-10. On August 7, 2018, Mr. Rose discovered a small water stain on the kitchen ceiling of their property. The visible damage was minor and as a result, Rose called a plumber to diagnose and fix the issue. Upon investigation, the plumber found the issue was a leak from the shower which caused the wood subfloor below the shower to rot. A claim was made and denied based on the alleged existence of a long-term leak. *Id.* at ¶¶ 15-23.

As a result, Mr. Rose discovered that Travelers Home and Marine was not providing rot damage coverage and he filed his class action Complaint seeking monetary damages and other relief in connection with Travelers’ denial of claims for rot damage. The Complaint asserts claims for Breach of Contract, Bad Faith, and a violation of the Unfair Trade Practices and Consumer Protection Act (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. The

defendant filed an Answer on March 14, 2019 and the parties submitted a Joint Status Report on April 30, 2019.

**B. Settlement Negotiations**

On May 3, 2019, for the first time, the parties discussed the possibility of an early resolution of the case on a phone call with Judge Pappert. The case was then referred to Magistrate Judge Hey for a settlement status conference call on May 10. The parties then exchanged relevant data and prepared for an in-person settlement conference before Judge Hey on June 14. *See* Declaration of Plaintiffs' Class Counsel Anthony DiUlio and Kenneth J. Grunfeld in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement (Class Counsel Decl.) at ¶ 4, attached hereto as Exhibit 2. The case was not resolved at the settlement conference, but significant progress was made in defining the scope of a potential settlement class and establishing the beginning of a framework for class-wide relief. *Id.*

Counsel for the parties met again in person July 11, 2019. *Id.* at ¶ 5. Following the exchange of additional information, Plaintiffs submitted a second proposal on August 9, 2019. The parties spoke to Judge Hey again on August 26, 2019. *Id.* The Defendant then submitted another counter proposal on September 5 and the parties met in person again on September 6, 2019. *Id.* The parties spoke to Judge Hey on September 11, 2019 and Plaintiffs submitted a third proposal on September 13, 2019. *Id.* Defendants then provided a responsive proposal on September 24 and Plaintiffs responded with a revised proposal on September 30. The parties then agreed to a joint submission to Judge Hey on October 2, 2019. Defendants then provided another responsive proposal on October 9, 2019 and the parties had a call with Judge Hey on October 11. *Id.* An in-person meeting before Judge Hey was scheduled for the end of the month. On October 23, Plaintiffs provided a new revised settlement proposal to Defendants.

On October 30, 2019, another in-person meeting before Judge Hey was conducted. *Id.* at ¶ 6. This time, mostly all of the substantive issues regarding class-wide relief and the process of claim filing were resolved. *Id.* Thereafter, the parties agreed to a Stipulation staying all the deadlines in the case and submitted it to Judge Pappert. The Stipulation was denied by Order [D.E. #39] and class certification deadlines were set by Your Honor. The parties continued to negotiate the terms of class-wide settlement and reported to Judge Hey on the status of 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 most notably that of attorneys' fees and costs. Judge Hey scheduled an in-person settlement conference with the parties to take place on December 2, 2019 if needed. To expedite the process, the parties agreed to meet in person in New York City on November 20, 2019. *Id.* at ¶ 7. At that meeting, the parties resolved all the remaining issues, including attorneys' fees and costs. *Id.* At the meeting, the final revisions to a written Settlement Agreement and multiple notice materials were made. The parties then filed a Joint Notice of Settlement with the Court on November 26, 2019. The parties executed the Settlement Agreement on January 10, 2020, memorializing the agreement reached subject to Preliminary Approval and Final Approval as required by Federal Rule of Civil Procedure 23. *See id.* at ¶ 8; *see also* Settlement Agreement.

### **III. SUMMARY OF THE PROPOSED SETTLEMENT TERMS**

The terms most pertinent to this Motion are discussed below.

#### **A. The Settlement Class**

As set forth more fully below, the Settlement Agreement contemplates a nationwide 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<sup>2</sup>;
- (b) the claim falls within the Settlement Class Period<sup>3</sup>;
- (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.

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

- (f) remain open according to Travelers' records;
- (g) are the subject of an assignment of rights to payment by the policyholder to any third party;
- (h) are the subject of a pending lawsuit, other than the Civil Action;
- (i) are the subject of a final judgment in a lawsuit against Travelers or release executed by the policyholder in favor of Travelers; and/or
- (j) are the subject of an ongoing or completed appraisal proceeding under the terms of an appraisal provision in a Policy.

*Id.* The number of Potential Class Members will be approximately 31,907 members based on current estimates. 21,559 fit into the Policy Period category, of which 1,546 are business insurance claims, and 10,348 fit into the Statutory Period category, of which 663 business insurance claims.

Class Counsel Decl. at ¶ 9.

## **B. Monetary Relief**

The Parties have negotiated a claims-made settlement. Settlement Class Members who submit a valid Claim Form may receive relief as set forth below depending on when they suffered injury and the jurisdiction in which they reside. While no amount certain has been agreed upon,

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<sup>2</sup> The insurance policies at issue, defined in the Settlement Agreement as “Policy,” are listed on Exhibit H to the Settlement Agreement.

<sup>3</sup> There are two separate time periods specified in the Settlement Agreement, for Policy Period Claims and Statutory Period Claims. These are specified on Exhibit G to the Settlement Agreement. *See* Settlement Agreement, ¶¶ 15, 27, 33 & Ex. G thereto.

the Settlement Agreement 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. . . .” Settlement Agreement at ¶ 52.

i. Policy Period Claims

Approximately 21,559 Potential Class Members fit into the Policy Period category. Class Counsel Decl. at ¶ 9. This category includes insurance claims with Rot Damage “where the insurance claim falls within the identified applicable suit limitation period for a breach of contract claim.” *Id.* at ¶ 15. The time periods are set forth by jurisdiction on Exhibit G to the Settlement Agreement. Policy Period Claims will be submitted on Claim Form A. Ex. B to the Settlement Agreement. The following chart reflects the amount each claimant will receive, which depends in part on how much rot damage is claimed, how much coverage the claimant had for rot damage, and whether the claimant submits documentation of their loss:

<u>Claimed Rot Damage</u>	<u>Settlement Payment</u>
Less than \$1,000.00	\$200
\$1,000 to \$2,499.99	\$700
\$2,500.00 to \$4,999.99	\$1,350 (without documentation) \$1,750 (with documentation)
\$5,000.00 or more <b>without documentation</b>	\$1,750
\$5,000.00 or more <b>with documentation</b> (for Settlement Class Members who have Rot Remediation Coverage subject to a limit of \$5,000)	\$2,375
\$5,000.00 to \$9,999.99 <b>with documentation</b> (for Settlement Class	\$3,000

Members who have Rot Remediation Coverage subject to a limit of \$10,000 or more)	
\$10,000 or more <b>with documentation</b> (for Settlement Class Members who have Rot Remediation Coverage subject to a limit of \$10,000 or more)	\$3,750

Settlement Agreement at ¶ 50.

ii. Statutory Period Claims

Approximately 10,348 Potential Class Members fit into the Statutory Period category. Class Counsel Decl. at ¶ 9. This category includes insurance claims with Rot Damage “where the insurance claim does not fall within the identified applicable suit limitation period for breach of contract claims but falls within the longest potentially-applicable statute of limitations for common law bad faith, statutory bad faith, unfair trade practice, consumer protection law or other similar statutory claims against Travelers in the applicable jurisdiction.” *Id.* at ¶ 15. The time periods are set forth by jurisdiction on Exhibit G to the Settlement Agreement. Policy Period Claims will be submitted on Claim Form B. Ex. C to the Settlement Agreement. Valid Statutory Period Claims will be paid in the amount of \$150. Settlement Agreement at ¶ 51. In addition, if amounts paid previously on a Policy Period Claim would cause the total payments on the Policy Period Claim (including the settlement payment) to exceed the applicable insurance policy limit or sublimit, Defendants have agreed to pay the claim as a Statutory Period Claim, in the amount of \$150. *Id.* at ¶ 50.

C. Practice Change

The Civil Action served as a catalyst to significant changes in practices by Defendants going forward. As a result, Travelers implemented a change in practice with respect to claims under homeowners or condominium unit owners insurance policies “claim professionals have been

instructed not to apply the long-term seepage/leakage provision if the seepage/leakage and resulting damage were unknown to all insureds and hidden within the walls or ceilings or beneath the floors or above the ceilings of a structure (although other exclusions and any other applicable policy provisions still apply).” *Id.* at ¶ 59. With respect to claims that involve Rot Damage under business insurance policies, “Travelers claim professionals have been instructed not to apply the long-term seepage/leakage provision to the Rot Remediation Coverage (although other exclusions and any other applicable policy provisions still apply).” *Id.* Settlement Class Counsel has reviewed certain written communications to confirm these changes in practice, and have been provided with a declaration confirming that the practice changes have been implemented and setting forth reasonable specifics as to how the changes were implemented, including who was notified and how the notification was provided. *See* Travelers’ Declaration, attached hereto as Exhibit 3; Class Counsel Decl. at ¶ 10.

**D. Class Release**

If the settlement receives final approval, settlement payments will be issued and this action will be dismissed with prejudice. As consideration for the settlement payments provided for in the Settlement Agreement, Settlement Class members will release claims, as specifically delineated in the Settlement Agreement, with respect to any timely property insurance claim with respect to any and all Rot Damage. Settlement Agreement at ¶ 18 (“Released Claims”). The “Released Entities” include “(a) Travelers; (b) all of the past and present divisions, parent entities, affiliates, and subsidiaries of Travelers; (c) all past and present officers, directors, agents, attorneys, employees, stockholders, successors, assigns, insurers, reinsurers, independent contractors, and legal representatives of the entities and/or Persons listed in Subparagraphs (a)-(b); and (d) all

of the heirs, estates, successors, assigns, and legal representatives of any of the entities or persons listed in this Paragraph.” *Id.* at ¶ 20.<sup>4</sup>

**E. The Notice Program and Settlement Administration**

Defendants will pay all costs reasonably incurred by the Settlement Administrator. *Id.* at ¶ 53. This is an added benefit to the Settlement Class as these costs will be paid separately from, and in addition to, the payments to the Settlement Class, as well as payment of an Incentive Award, attorneys’ fees, and costs. Class Counsel Decl. at ¶ 11. The parties have selected Epiq Class Action & Claims Solutions, Inc. as the Settlement Administrator for this Settlement. *Id.* at ¶ 23. Class Notice has been 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, e.g., id.* at ¶ 42 and Exs. D, E and F to Settlement Agreement; Class Counsel Decl. at ¶ 12.

The Class Notice program has 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. *Id.* at ¶¶ 41, 42, 45. All forms of notice will include, among other information: (i) a context-appropriate description of the settlement; (ii) the date by which Class Members may make a claim, exclude themselves from the Settlement Class, or object to the settlement; and (iii) the address of the settlement website. *Id.* and Exs. D, E and F to Settlement Agreement. The Class Notice plan constitutes sufficient notice to persons entitled to receive it,

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<sup>4</sup> The term “Travelers” is defined in Paragraph 35 of the Settlement Agreement as all of the companies that issued the relevant insurance policies.

and satisfies all applicable requirements of law, including Federal Rule of Civil Procedure 23 and the constitutional requirement of due process. Class Counsel Decl. at ¶ 12.

Requests for exclusion and Claim Forms must be sent to the Settlement Administrator and postmarked before their respective deadlines. *See, e.g., id.* at ¶¶ 41-46 and Exs. B and C to Settlement Agreement. Objections must be filed with the Court by the objection deadline. *See id.* at ¶ 44 and Ex. E. The deadlines for objections, requests for exclusion, and claims are all before the Fairness Hearing (*see* chart at Part VII, *infra*).

i. CAFA Notice

Within 10 days after the filing of the Motion for Preliminary Approval, the Settlement Administrator shall give 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. *Id.* at ¶ 41.

ii. Email and Mail Notice

Defendants will provide the Settlement Administrator a list of all Potential Class Members identified through its records as set forth in the Settlement Agreement. *Id.* at ¶ 42. Contact information will include Potential Class Members' last known available mailing address information and email address if known. *Id.* The Settlement Administrator will disseminate both mail and email notice to all Potential Class Members. *Id.* The Settlement E-mail Notice is located at Exhibit D to the Settlement Agreement. *Id.* at ¶ 30. It will include a hyperlink to the settlement website. Potential Class Members who are sent the Settlement E-mail Notice will also be mailed the Settlement Long-Form Notice. *Id.* at ¶ 42(c).

Mail notice will include a Settlement Cover Letter, located at Exhibit F to the Settlement Agreement (*id.* at ¶ 31) and Settlement Long-Form Notice, located at Exhibit E to the Settlement Agreement (*id.* at ¶ 32). If the mailing to a Potential Class Member is returned undeliverable, the Settlement Administrator will make reasonable efforts to identify a new address for that Potential Class Member and promptly re-send the materials to that Potential Class Member. *Id.* at ¶ 42(b). Mail notice will also include a Claim Form<sup>5</sup> and a self-addressed, postage prepaid envelope enabling the return of a Claim Form with any accompanying documentation to the Settlement Administrator without cost to the Potential Class Member. *Id.* at ¶ 32. Mail and Email notice will also include the address for the settlement website, and a toll-free number where Class Members may contact the Settlement Administrator. Mail and Email notice must be sent out within 30 days of entry of the Preliminary Approval Order. *Id.* at ¶42(b) and (c). All Claim Forms must be postmarked by 75 days from the date of the Preliminary Approval Order. *Id.* at ¶ 46.

iii. Settlement Website

The Settlement Administrator will establish a settlement website as a means for Potential Class Members to obtain notice of, and information about, the settlement. *Id.* at ¶ 45. The settlement website will include an electronic and printable copy of the Long Form Notice, information about the litigation and the settlement, and important court documents. *Id.* It will also include Claim Forms, which may be printed and mailed by Settlement Class Members. *Id.* It will include Spanish translations of the Settlement Long-Form Notice and the Claim Forms. The settlement website shall be activated before the date on which the Settlement Long-Form Notice

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<sup>5</sup> The Settlement Long-Form Notice will be accompanied by Claim Form A (Exhibit B to the Settlement Agreement) if the claim, according to Travelers' records, falls within the time period for a Policy Period Claim. The Settlement Long-Form Notice will be accompanied by Claim Form B (Exhibit C to the Settlement Agreement) if the claim, according to Travelers' records, falls within the time period for a Statutory Period Claim. *Id.* at ¶¶ 32, 46.

is mailed and be maintained through 90 days after the date of the final disposition of all payments to Class Members. *Id.*

**F. Settlement Administration**

The Settlement Administrator is Epiq Class Action & Claims Solutions, Inc. *Id.* at ¶ 23; Class Counsel Decl. at ¶ 13. Its duties and responsibilities include, among other things: (1) sending out all the forms of Notice as set forth in the Settlement Agreement, (2) establishing and maintaining a Post Office box for Claim Forms and Opt-Outs from the Settlement Class; (3) establishing and maintaining a settlement website; (4) responding to any mailed Class Member inquiries; (5) processing Opt-Outs; (6) tracking and processing Claim Forms and investigating any suspected fraudulent claims; (7) tracking and processing disputes submitted to the Neutral Evaluator, (8) escheating uncashed funds to applicable States, (9) calculating and distributing appropriate funds to the Settlement Class; (10) performing any other settlement and claims administration-related functions at the instruction of Settlement Class Counsel and Travelers Counsel to effectuate the terms of the settlement. *See, e.g., id.* at ¶¶ 41-50, 57-8.

**G. Attorneys' Fees, Costs and Incentive Award**

Defendants have agreed to pay Settlement Class Counsel reasonable attorneys' fees and expenses of \$1,900,000 subject to court approval. *Id.* at ¶ 60; Class Counsel Decl. at ¶ 14. This amount includes any and all actual out-of-pocket expenses in the case incurred by Settlement Class Counsel. *Id.* Settlement Class Counsel will seek an order from the Court awarding this amount and Defendants will not oppose the request. *Id.* Settlement Class Counsel has agreed this is the maximum amount of fees and costs it can recover here. *Id.*

Finally, Settlement Class Counsel will seek a reasonable incentive award of \$10,000 to be paid jointly to Mr. and Mrs. Rose, the Settlement Class Representatives. Defendants will not

oppose the request and the Roses will not accept an award in excess of \$10,000. *Id.* at ¶ 61. The incentive award will compensate the Roses for their time and effort in the action, for their participation in the settlement process, and for the risks they undertook in prosecuting this action. *See generally* Rose Declaration, Ex. 4. The incentive award, attorneys' fees and costs will be paid by Defendants separate and apart from the monetary relief available to the Settlement Class. Class Counsel Decl. at ¶ 11.

#### **IV. THE SETTLEMENT SATISFIES THE PRELIMINARY APPROVAL STANDARD**

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 settlement 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). In exercising its discretion, a district court should be mindful of the strong judicial policy favoring settlements. *See, e.g., In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 535 (3d Cir. 2004). Rule 23(e), as amended in 2018, provides for the court to grant preliminary approval of a class action settlement and direct that notice be given to class members of the proposed settlement “if giving notice is justified by the parties’ showing that the court will likely be able to: (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal.” Fed. R. Civ. P. 23(e)(1)(B).

At the preliminary approval stage, “the court need not reach any ultimate conclusions on the issues of fact and law that underlie the merits of the dispute.” *Mack Trucks, Inc. v. Int’l Union, UAW*, Civ. A. No. 07-3737, 2011 U.S. Dist. LEXIS 51514, at \*7 (E.D. Pa. May 12, 2011) (internal quotations and citation omitted). Rather, a court should determine whether the “proposed settlement discloses grounds to doubt its fairness or other obvious deficiencies[.]” *Id.* (internal quotations and citations omitted). A district court’s evaluation of a request to preliminarily

approve a class action settlement focuses on whether the proposed settlement is the result of the parties' good-faith negotiations, whether there was sufficient information available to the parties to make a determination regarding settlement, whether experienced counsel negotiated and support the settlement, and if the settlement is within the range of reasonableness. *See, e.g., In re GMC Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 785 (3d Cir. 1995); *Glaberson v. Comcast Corp.*, Civ. A. No. 03-6604, 2014 U.S. Dist. LEXIS 172040, at \*14 (E.D. Pa. Dec. 12, 2014); *see also Manual for Complex Litigation (Fourth)* § 21.61-21.62; Fed. R. Civ. P. 23(e)(2) (Dec. 2018 amendment) (setting forth factors for final approval). Each of these factors exists here and warrant preliminary approval of the settlement.

**A. The Settlement Was the Result of Arms' Length, Informed Negotiations**

Typically, “[t]here is a presumption of fairness when a proposed class settlement, which was negotiated at arm’s-length by counsel for the class, is presented to the Court for approval.” *Newberg on Class Actions* § 11.41 (4th ed. 2002); *see, e.g., Glaberson*, 2014 U.S. Dist. LEXIS at \*14 (“Preliminary approval analysis often focuses on whether the settlement is the product of arms-length negotiations.”) (internal quotations and citation omitted). Here, the parties certainly engaged in protracted arms’ length negotiations. *See, e.g., Counsel Decl.* at ¶¶ 4, 14. The parties began negotiations in May and did not resolve the case until November after countless letter and email exchanges, dozens of telephone calls and multiple in-person mediation sessions with and without Magistrate Judge Hey.<sup>6</sup> *Id.* at ¶¶ 4-8.

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<sup>6</sup> 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) (“The assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive.”); *In re Indep. Energy Holdings PLC*, No. 00 Civ. 6689, 2003 U.S. Dist. LEXIS 17090, at \*13 (S.D.N.Y. Sept. 29, 2003).

**B. There Was A Significant Amount of Information Exchanged**

Even though settlement discussions commenced prior to any formal discovery being concluded, there was sufficient information informally and confidentially exchanged and made available to the parties in order for there to be a thorough determination regarding the fairness and adequacy of settlement. *See, e.g.*, Counsel Decl. at ¶ 9. The information exchanged was pivotal for understanding the scope of the Class. *Id.* Thus, the parties and their counsel had an informed view of the strengths and weaknesses of their respective positions, the risks of continued litigation, and an appreciation for the remarkable value this settlement delivers to the Settlement Class when evaluated in this context. *See, e.g.*, Counsel Decl. at ¶ 15.

**C. Counsel Are Experienced in Similar Litigation**

Both sides' counsel are qualified and competent class actions litigators, well-positioned to evaluate the strengths and weaknesses of continued litigation, as well as the reasonableness of the Settlement. *Id.* at ¶ 17. Settlement Class Counsel was well-equipped to handle a case like this one. 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.* at ¶ 18. Wheeler, DiUlio & Barnabei specialize in insurance property damage cases like this one. *Id.* As such, the team of these two firms combining in expertise and resources to litigate this nationwide class action regarding insurance property damage coverage makes sense and allowed Settlement Class Counsel to work efficiently and effectively.

**D. The Settlement is Well Within the Range of Reasonableness**

In preliminarily assessing whether a settlement falls within the range of reasonableness, courts examine the potential relief to the class. *See, e.g., Mack Trucks*, 2011 U.S. Dist. LEXIS at \*8. Here, the settlement provides benefit in the form of significant monetary relief - checks to be sent to each eligible Settlement Class Member. *See Settlement Agreement* at ¶ 57. The cash

benefit will be funded by Defendants and paid through the Settlement Administrator directly to Settlement Class Members; it will not be reduced by notice or settlement administration costs, attorneys' fees and costs, or service awards. *See* Class Counsel Decl. at ¶ 11.

The amounts that will be paid to eligible Settlement Class Members have been carefully and thoroughly negotiated and agreed upon. *Id.* at ¶¶ 4, 19. The first consideration is when the claim was filed, the Settlement Class Period. *See* Settlement Agreement at ¶ 27. Claims filed within the time period that a breach of contract claim could be timely brought have more value. *See, e.g.,* Class Counsel Decl. at ¶ 19. The time periods for such "Policy Period Claims" (Agreement at ¶¶ 15, 50) depends on the law of the jurisdiction where the property is located, and those states have considered, among other factors, whether a limiting time period in the policy is permitted, whether the period runs from date of loss or date of denial of the insurance claim, and the applicable breach of contract statute of limitations. *See* Ex. G to the Settlement Agreement. If the claim was not filed within the time period that a breach of contract claim could be brought, the class member may still have a viable claim if it fits within the longest potentially-applicable statute of limitations for common law bad faith, statutory bad faith, unfair trade practice, consumer protection law or other similar statutory claims against Travelers in the applicable jurisdiction. *See* Agreement at ¶¶ 33, 51. The agreed upon time periods for "Statutory Period Claims" are set forth separately by jurisdiction in Ex. G to the Settlement Agreement. Individual Payments on valid Statutory Period Claims submitted on Claim Form B will be paid in the amount of \$150 each. *See* Agreement at ¶ 51; Class Counsel Decl. at ¶ 19. Settlement Class Members with Statutory Period Claims only need to fill out the simplified Claim Form B (attached as Ex. C to the Settlement Agreement) and as long as they are a Settlement Class Member with a Rot Damage claim, their claim will not be challenged or denied. *See* Settlement Agreement at ¶¶ 33, 46-8.

A number of factors have been considered in determining how much money Settlement Class Members who file Policy Period Claims will be paid. *See, e.g.*, Counsel Decl. at ¶ 19. The most significant consideration given is how much was their loss. *Id.* This will be provided by each Settlement Class Member on Claim Form A (attached as Ex. B to the Settlement Agreement) broken down into categories from \$1 to greater than \$10,000. *See* Agreement at ¶ 50. Other considerations included the amount of the Settlement Class Member's Rot Damage sublimit (i.e., the maximum amount available under the applicable insurance policy for a Rot Damage claim) and whether the Settlement Class Member provides supporting documentation of their loss. *Id.*; *see also* Counsel Decl. at ¶ 19. The below chart sets forth the amounts Settlement Class Members may recover:

<u>Claimed Rot Damage</u>	<u>Settlement Payment</u>
Less than \$1,000.00	\$200
\$1,000 to \$2,499.99	\$700
\$2,500.00 to \$4,999.99	\$1,350 (without documentation) \$1,750 (with documentation)
\$5,000.00 or more <b>without documentation</b>	\$1,750
\$5,000.00 or more <b>with documentation</b> (for Settlement Class Members who have Rot Remediation Coverage subject to a limit of \$5,000)	\$2,375
\$5,000.00 to \$9,999.99 <b>with documentation</b> (for Settlement Class Members who have Rot Remediation Coverage subject to a limit of \$10,000 or more)	\$3,000
\$10,000 or more <b>with documentation</b> (for Settlement Class Members who have Rot Remediation Coverage subject to a limit of \$10,000 or more)	\$3,750

*See* Agreement at ¶ 50. Based on the above, it is clear that the settlement provides ample benefit to eligible Settlement Class Members.

Because the settlement is negotiated as claims-made with no specified fund, there is no risk in a reduction to the amounts eligible Settlement Class Members will receive regardless of a potentially high claims rate. Counsel Decl. at ¶ 19. But as security in the unlikely event of a low claims rate, the parties have negotiated a “Payment Floor” so if the amount Defendants have to pay does not exceed \$2,250,000 in the aggregate, the amounts to be paid on valid Policy Period Claims will be increased proportionally up to the \$2,250,000. *Id.* at ¶ 52.<sup>7</sup>

Further, the practice change relief assures policyholders and Settlement Class Counsel that the allegations at issue in the Civil Action have been remedied. *Id.* at ¶ 59. Travelers has implemented a practice change for both homeowners or condominium unit owner insurance policies as well as entities with business insurance policies. *Id.* Settlement Class Counsel has reviewed certain written communications to confirm this change in practice, and the attached declaration confirms that this practice change was implemented. *See* Travelers’ Declaration, Ex. 3; Counsel Decl. at ¶ 10. The practice changed achieved as a result of the Civil Action and confirmed by the Settlement is concrete and robust. Agreement at ¶ 59. The impact of the practice change is significant and provides important value to the Settlement Class. *See* Class Counsel Decl. at ¶ 10.

The reasonableness of the settlement must also be viewed against the complexity, expense, and duration of litigation and the likelihood of success at trial. *See, e.g., In re Pet Food Prods.*

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<sup>7</sup> Settlement Class Counsel is confident the total amount that Defendants will end up paying Settlement Class Members will be well in excess of the Payment Floor. *See* Counsel Decl. at ¶ 20. Rather than guess at the claims rates for particular categories of claimants at this time, Settlement Class Counsel will provide a more robust description of the amount of the Settlement along with detailed estimates in the Motion for Final Approval of the Settlement. *Id.*

*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) (Dalzell, J.).<sup>8</sup> These considerations weigh in favor of the settlement.

The continued litigation of this matter would require (and has already required) substantial resources. Counsel Decl. at ¶ 16. There would be a significant amount of work to be done, including defending a potential dispositive motion and performing substantial, formal fact discovery in this case, including depositions and the production, extraction, and analysis of various data from Travelers and potentially other third parties.<sup>9</sup> *Id.*

The parties have not yet briefed class certification, which likely would require expert disclosures and depositions, and dispositive motions have not yet been filed. *Id.* Plaintiffs face the very real prospect that the Court could deny certification of a litigation class. Defendants would 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. Although Plaintiffs believe they could ultimately succeed on this issue, there is a significant risk that they might not, 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

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<sup>8</sup> As this motion only requests preliminary approval, not all of the *Girsh* factors are pertinent. Plaintiffs reserve the right to present additional argument or evidence about the *Girsh* factors as appropriate.

<sup>9</sup> Even though no formal discovery has been conducted, a plethora of informal discovery has been exchanged here, enabling Settlement Class Counsel to thoroughly evaluate with confidence the strengths and weaknesses of Plaintiffs’ claims and Defendants’ potential defenses. *See* Counsel Decl. at ¶¶ 5, 9, 15, 19.

(1997)). In addition, Defendants likely would argue in opposing class certification that determination of damages would require individual adjudication. The proposed settlement provides a mechanism whereby class members may submit claim forms attesting to the amount of their claimed Rot Damage, with supporting documentation if they seek one of the larger settlement payments available under the proposed settlement.

There is also a risk that if this case were fully litigated to conclusion, Plaintiffs or some members of any certified class could be foreclosed from some or any recovery at all as a result of summary judgment or other motions practice. Plaintiffs 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 proposed settlement provides for the Settlement Class Members to be paid a large percentage of what they might have recovered if they were successful on this issue.

Further, all of these matters would require significant time and expense, and while Plaintiffs and Class Counsel remain committed to their claims, they are also pragmatic that there is no guarantee of success and that substantial obstacles exist at the summary judgment, class certification, and trial phases. *Id.*

**V. THE SETTLEMENT SATISFIES RULES 23(a) AND 23(b)**

“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 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 satisfies each of these requirements.

i. The Class is Numerous

A class must be “so numerous that joinder of all members is impracticable.” 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. This settlement easily exceeds this threshold. As a result of targeted searches in Travelers’ records, there are approximately 31,907 Potential Class Members who will receive notice of the settlement. Class Counsel Decl. at ¶ 9. Numerosity is clearly met here.

ii. Common Questions of Fact and Law Exist

Rule 23(a)'s commonality requirement also is satisfied here. "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).

Such is the case here. Plaintiffs' and other Settlement Class Members' claims stem from a common course of conduct. The Roses' home was insured by Travelers. Class Counsel Decl. at ¶ 21. They suffered losses as a result of rot damage to their property. *Id.* They filed a claim with Travelers and their claim was denied. *Id.* The same is true of all members of the proposed Class. Common questions of fact and law exist here. *Id.* The same is true as to Travelers' anticipated potential defenses. Some of the pertinent factual and legal questions include whether rot damage was covered by Travelers' policies, whether class members suffered rot damage, whether Travelers' denial of claims violated state laws, and whether the same constituted bad faith under those laws.

iii. Plaintiffs' Claims are Typical

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 of the Roses, the proposed class representatives, are identical to those of the Settlement Class. As alleged in the recently filed Amended Complaint, the Roses allege the same type of injury arising out of the same course conduct as the rest of the Settlement Class. Class Counsel Decl. at ¶ 21. Just like each Settlement Class Member, the Roses paid Travelers Home and Marine for insurance coverage. *See, e.g.*, Am. Compl. at ¶¶ 8, 11. They purchased a Travelers Home and Marine insurance policy providing coverage for rot damage. *See id.* The Roses then suffered losses as a result of rot damage to their property. *See id.* at ¶ 12. They filed a claim for this damage, and their claim was denied. *See id.* at ¶¶ 15-24. Thus, the proposed class representatives clearly meet the typicality requirement, and are well-suited to represent other Settlement Class Members.

iv. The Adequacy Requirement is Met

Rule 23(a)(4) requires class representatives to “fairly and adequately protect the interests of the class.” 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).

The Roses’ interests are coextensive with, and not antagonistic to, the interests of the Settlement Class because they have an equally great interest in the relief offered by the settlement, and there are no diverging interests between them and the Settlement Class. Counsel Decl. at ¶ 18. *See generally* Rose Decl., Ex. 4. As noted above, the Roses’ and Settlement Class Members’ claims arise from the same types of events and conduct, turn on the same actions taken by Travelers, and the Roses seek remedies equally applicable and beneficial to themselves and all Settlement Class Members. *Id.* at ¶ 22. Further, the proposed class representatives are represented

by qualified and competent Class Counsel with extensive experience and expertise in prosecuting complex class actions. *Id.* at ¶¶ 18, 22.

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

Pertinent to the settlement's proposed monetary relief, 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 v. DB Investments, Inc.*, 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).

Plaintiffs here satisfy the predominance requirement because liability questions common to the Settlement Class substantially outweigh any possible individual issues. The claims of the Roses and the Settlement Class are based on the same legal theories and the same uniform conduct. Counsel Decl. at ¶ 21. 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 extracontractual claims. These questions, among others, predominate. Further, resolution of the claims of class members 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 certification, potential class member would lack incentive to

pursue individual claims due to the relatively small individual amounts at issue. *See* Class Counsel Decl. at ¶ 23.

## **VI. THE NOTICE PLAN IS APPROPRIATE AND SHOULD BE APPROVED**

For due process purposes, “notice to class members must be 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.” *Glaberson*, 2014 U.S. Dist. LEXIS 172040, at \*18; *see Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). Notice should be the best practicable under the circumstances, including notice to all members who can be identified through reasonable efforts. *See Eisen*, 417 U.S. at 173.

The proposed Class Notice plan here satisfies due process. *See* Class Counsel Decl. at ¶ 12. The plan, set forth as simply as possible, is to provide direct mail and email notice and a dedicated settlement website. As the insurance carrier for all members of the Settlement Class, Travelers maintains records that include a physical mailing address for its current insured as well as at least last known mailing addresses for its former insureds. *Id.* Further, Travelers has active email addresses for many Settlement Class Members and has agreed to provide direct notice using both methods. *Id.* The Settlement Administrator will take reasonable efforts to identify new addresses if notice is returned undeliverable and promptly re-send the materials to that Potential Class Member. Agreement at ¶ 42(b) and (c). The parties have conferred with experienced notice experts with the Settlement Administrator and believe the steps will result in a high reach rate for this particular population. *See* Class Counsel Decl. at ¶¶ 12-3.

As noted in the proposed forms of notice (Exhibits D and E to the Agreement), the Class Notice will inform members of the Settlement Class of their options for filing a claim (including Claim Forms attached as Exhibits B and C to the Agreement), opting-out of or objecting to the

Settlement, the time and location of the Final Approval Hearing, the pertinent terms of the Settlement, and how to obtain additional information. The language of the proposed notices has been carefully negotiated during numerous arms-length meetings and confirmed by notice experts; it is plain and easy to understand and provides neutral and objective information about the nature of the Settlement. *See generally* Decl. of Cameron Azari, Esq. on Settlement Notice Plan (attached hereto as Exhibit 5); *see also* Class Counsel Decl. at ¶ 12.

Accordingly, the proposed plan to disseminate notice to the Class satisfies due process requirements. *Id.*; *see, e.g., Hanlon v. Palace Enmt. Holdings, LLC*, Civ. A. No. 11-987, 2012 U.S. Dist. LEXIS 364, at \*17 (W.D. Pa. Jan. 3, 2012) (use of summary notice via email or postcard, based on defendant’s databases, “provides a direct avenue to the persons most likely to be potential class members. The court finds this is the best notice practicable under the circumstances.”); *Esslinger v. HSBC Bank Nevada, N.A.*, Civ. A. No. 10-3213, 2012 U.S. Dist. LEXIS 165773, at \*19 (E.D. Pa. Nov. 2012) (“[F]irst-class mail and publication regularly have been deemed adequate under the stricter notice requirements . . . of Rule 23(c)(2).”) (alteration in original) (quoting *Zimmer Paper Prods., Inc. v. Berger & Montague, P.C.*, 758 F.2d 86, 91 (3d Cir. 1985)).

## VII. THE PROPOSED SCHEDULE OF EVENTS

The proposed schedule of events depends on the date this Court may enter a Preliminary Approval Order and schedules a Final Approval Hearing. For sake of illustration only, if a Preliminary Approval Order (“Order”) is entered on January 10, 2020, the parties propose the following deadlines:

<b>Event</b>	<b>Deadline</b>
Deadline for Commencement of Class Notice	Monday, February 10, 2020 (30 days from the date of the Order)
Deadline to File Motion for Fee, Cost and Incentive Awards	Monday, February 24, 2020 (45 days from the date of the Order)

Deadline for Class Members to Object or to Opt-Out	Tuesday, March 10, 2020 (must be postmarked no later than 60 days from the date of the Order)
Deadline for Class Members to Submit Claims	Wednesday, March 25, 2020 (75 days from the date of the Order)
Deadline for Settlement Administrator to file a declaration regarding notice and opt outs	Thursday, April 9, 2020 (90 days from the date of the Order)
Deadline to file Motion for Final Approval	Thursday, April 9, 2020 (90 days from the date of the Order)
Final Approval Hearing	To be determined for a date after Thursday, April 9, 2020 (must be at least 90 days after notice is served on federal and state officials under the Class Action Fairness Act, <i>see</i> 28 U.S.C. § 1715(d))

### VIII. CONCLUSION

For the reasons set forth herein, Plaintiffs respectfully request that the Court preliminarily approve the class action settlement, conditionally certify the Settlement Class, approve the proposed Notice plan, and schedule a final approval hearing.

**Respectfully submitted,**

BY: <u>      /s/ Anthony DiUlio      </u> ANTHONY DiULIO, ESQUIRE Attorney I.D. No.: 312763 One Penn Center - Suite 1270 1617 JFK Boulevard Philadelphia, PA 19103	BY: <u>      /s/ Kenneth J. Grunfeld      </u> Kenneth J. Grunfeld, Esquire Attorney I.D. No.: 84121 GOLOMB & HONIK 1835 Market Street, Suite 2900 Philadelphia, PA 19103 <a href="mailto:kgrunfeld@golombhonik.com">kgrunfeld@golombhonik.com</a>
<i>Attorneys for Plaintiffs and the Proposed Class</i>	

**Dated: January 10, 2020**

**CERTIFICATE OF SERVICE**

I, Kenneth Grunfeld, Esquire, hereby certify that a true and correct copy of the foregoing was served via electronic filing.

Date: **January 10, 2020**

*/s/ Kenneth J. Grunfeld*  
\_\_\_\_\_  
**KENNETH GRUNFELD, ESQUIRE**  
*Attorney for Plaintiff*