UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

GAYL JACKSON, *et al.*

Plaintiffs

v.

VIKING GROUP, INC., *et al.*

Defendants.

Civil Action No. 8:18-cv-02356-PJM

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

Plaintiffs Gayl Jackson, Michelle Ebner, and Denise Turner (collectively "Plaintiffs"), by and through their respective counsel of record, submit this Memorandum of Law in support of their Motion for Final Approval of Class Action Settlement.

I. INTRODUCTION

Plaintiffs respectfully request that the Court issue an order granting final approval to the Settlement Agreement (the "Settlement") and certifying a class for settlement purposes only, and enter a final judgment dismissing the case with prejudice.[1] A copy of the Proposed Final Approval Order[2] is attached as Exhibit A and a copy of the Proposed Final Judgment as Exhibit B. Consistent with the terms of the Settlement, Defendants do not oppose this requested relief.

The Settlement was preliminarily approved on December 30, 2019 after the Court held a hearing on Plaintiffs' motion. (Dkt No. 32.) As discussed below, the terms of the Settlement create

[1] The Settlement was submitted with Plaintiffs' Motion for Preliminary Approval of Class Action Settlement and is set forth at Dkt No. 28-2. The capitalized terms used in this Memorandum are defined in Section A of the Settlement.

[2] The Proposed Final Approval Order also includes an exhibit listing all persons who submitted opt-out requests, timely and valid or otherwise.

substantial benefits for the Settlement Class; are fair, reasonable and adequate; and meet all of the requisite criteria under Fed. R. Civ. P. 23(e) for receiving final approval. Indeed, the overwhelmingly positive response by Settlement Class Members confirms that granting final approval is warranted. As discussed below, **there are no objections to the Settlement.** As such, Plaintiffs respectfully request that the Court grant Plaintiffs' motion for final approval of the Settlement.

II. FACTUAL BACKGROUND

A. History of the Litigation

This Lawsuit was first commenced on July 31, 2018. It was filed after an extensive pre-suit investigation by Plaintiffs' counsel that began in approximately August of 2017. This investigation included, *inter alia*, speaking with members of the potential class, reviewing documents provided by class members, reviewing the design of Viking's VK457 sprinklers in conjunction with consulting experts, and investigating potential legal claims applicable to the class.

Prior to filing suit, Plaintiffs sent pre-suit notice to Defendants regarding Defendants' alleged violations of the California Consumers Legal Remedies Act, Cal. Civ. Code § 1782. On August 31, 2018, Defendants sent a substantive response to the notice detailing their anticipated defenses in the Lawsuit. Shortly thereafter, the parties began to informally exchange information and discussed the possibility of mediation. In February of 2019, Plaintiffs requested, and Defendants produced, discovery pursuant to Fed. R. Evid. 408 in anticipation of mediation.

On March 20, 2019, the parties mediated the Lawsuit with the Honorable Diane Welsh (Ret.) at JAMS in Philadelphia, Pennsylvania. Prior to the mediation, both parties submitted confidential mediation statements that addressed the strengths and weaknesses of Plaintiffs' claims

and the defenses thereto. With the assistance of Judge Welsh, the parties negotiated the material terms of the structure of relief to the proposed Settlement Class set forth in a Memorandum of Understanding ("MOU") and, over the course of the next several months, negotiated the Settlement Agreement.

Viking's production of documents, materials, and information was significant. Class Counsel reviewed 80,000 pages of documents related to the design and manufacturing of the Subject Sprinklers, warranty and product liability claims made to Viking for non-fire activations, Viking's internal communications regarding the activation of the Subject Sprinklers without the presence of a fire, and Viking's internal analysis of claims made to Viking. In addition, Plaintiffs interviewed scores of class members, Homeowners' Associations, and contractors to understand the damages. Plaintiffs also interviewed an employee of Viking concerning the Subject Sprinklers and the 80,000 pages of documents produced by Viking. In addition to the topics related to the Subject Sprinklers identified above, the interview also confirmed the VK494 Sprinkler to be a suitable replacement sprinkler.

B. Terms of the Settlement Agreement

The proposed Settlement Class has been provisionally certified to include:

> All Persons that currently or at any time previously have owned a residential or commercial structure in the United States while it contains or contained Subject Sprinklers or while the structure sustained water damage from a non-fire activation of a Subject Sprinkler, including their spouses, joint owners, heirs, executors, administrators, mortgagees, residents, tenants, creditors, lenders, predecessors, successors, trusts and trustees, and assigns ("Occupant Persons"); as well as all Persons who have standing and are entitled to assert a claim on behalf of any such Occupant Persons, such as, but not limited to, a builder, contractor, installer, distributor, seller, subrogated insurance carrier, or other Person who has claims for contribution, indemnity or otherwise against Viking based on claims for a non-fire activation of a Subject Sprinkler with respect to such residential or commercial structures. The Settlement Class includes all Persons who subsequently purchase or otherwise obtain an interest in a

> property covered by this Settlement without the need of a formal assignment by contract or court order.[3]

As described further below, the proposed Settlement will provide substantial benefits and value to the Settlement Class Members if the Court enters the Final Approval Order.

Plaintiffs initially brought this Lawsuit on behalf of all persons in the United States who purchased VK457 fire sprinklers or purchased structures with Viking VK457 fire sprinklers installed in them. (Dkt No. 1, ¶ 42.) Between the pre-mediation and post-mediation discovery efforts, Viking produced approximately 80,000 pages of documents in response to Plaintiffs' discovery requests. These documents related to, among other topics, the design and manufacture of the VK457 fire sprinklers, including production dates for fire sprinklers that activated without the presence of a fire. After a comprehensive review of these materials, Plaintiffs and Class Counsel concluded that the VK457 sprinklers sold by Viking between January 1, 2013 and March 31, 2015 were manufactured in production lots in the upper range of the allowable load on the solder link, thus making them susceptible to activation without the presence of a fire. Thus, Plaintiffs and Class Counsel concluded that the claims in the Lawsuit and the Settlement were appropriately confined to the sprinklers sold within the January 1, 2013 to March 31, 2015 date range (defined for purposes of the Settlement as the "Subject Sprinklers") that were made differently than other VK457 sprinklers produced before and after this date range. After completing their review of the documents and information produced, Plaintiffs filed a First Amended Complaint limiting the class to the Subject Sprinklers. (Dkt. No. 24.)

[3] Excluded from the Settlement Class are: (i) Viking, its officers, directors, affiliates, legal representatives, employees, successors, and assigns, and entities in which Viking has a controlling interest; (ii) the judge presiding over the Lawsuit; and (iii) local, municipal, state, and federal governmental entities.

1. The Replacement Program

Significantly, Settlement Class Members are eligible to submit a claim for the no-cost replacement and installation of all Subject Sprinklers in their residential or commercial structure with a different model sprinkler, referred to as the Viking VK494 (the "Replacement Sprinklers").[4] Viking estimates that the average structure contains approximately 35 Subject Sprinklers. Settlement Class Members will be given ample opportunity to request a replacement -- the Replacement Claim Period extends for eighteen months after the Effective Date. The Replacement Sprinklers will be installed by contractors selected and retained by Defendants at no cost to the Settlement Class Member. The Replacement Sprinklers also will be accompanied by Viking's standard warranty.

Settlement Class Members who had already paid to replace Subject Sprinklers prior to the Notice Date (April 6, 2020) will be eligible to submit a claim for reimbursement of out-of-pocket costs associated with the replacements, up to a maximum amount of $35.00 per Subject Sprinkler replaced, inclusive of materials and labor.

To participate in the Replacement Program, Settlement Class Members simply will need to submit a straightforward Claim Form. Among other information, the Claim Form will require Settlement Class Members seeking reimbursement to submit documentation and other information supporting their Claim.

2. Claims for Future Activations

In addition to having all of the Subject Sprinklers replaced, thus mitigating against the potential for a future non-fire activation, the Settlement provides that Settlement Class Members

[4] The Settlement provides in the alternative that replacement sprinklers of equal or greater quality to the VK494 may be used, and also confirms that the Subject Sprinklers (which no longer are being manufactured) will not be used in the replacement program.

who do happen to incur property damage caused by the non-fire activation of a Subject Sprinkler that occurs on or after June 6, 2020 may submit a Claim for payment of 70% of their Reasonably Proven Recoverable Damages. The Activation Claim Period will extend for two years after the Effective Date, and Settlement Class Members will be given 180 days from the date of the qualifying activation to submit a Claim.

The Activation Claim remedy will reimburse Settlement Class Members for a wide range of reasonably proved out-of-pocket losses consisting of: (a) proven expenses paid to remediate water damage as a direct result of the non-fire activation, (b) proven expenses paid to repair or replace property damaged as a direct result of the non-fire activation, (c) the material and labor costs reasonably necessary to bring the structure and its contents back to the same finish and quality as existed before the non-fire activation, and (d) reasonable costs of alternative lodging and meals for those displaced by the non-fire activation for a reasonable duration not to exceed the amount of time reasonably necessary to return the home to a condition for reasonable occupancy (together, "Reasonably Proven Recoverable Damages").[5] Defendants will pay 70% of the Settlement Class Member's Reasonably Proven Recoverable Damages.[6] Settlement Class Members have been

[5] Reasonably Proven Recoverable Damage does not include, *inter alia*: (a) any claimed economic losses arising from the loss of value of the property, (b) lost wages, or (c) any amounts paid by a Person other than the Claimant or that were paid by the Claimant and then reimbursed or refunded by another Person, *i.e.*, there shall be no double recovery.

[6] The proposed settlement payment of 70% likely exceeds the result the class member would obtain if he or she successfully litigated the case to judgment. To recover damages without this settlement, the class member would have to hire an attorney, file a lawsuit, retain experts, and successfully litigate the case. The possibility remains that the individual would not prevail, and take nothing. Even if they do prevail, the typical attorney's contingency fee in these circumstances would fall between 33 and 40 percent, and the client would also have to deduct the costs of litigation. Thus, the 70% recovery the settlement provides is an excellent result for the class members, who can recover their damages without having to incur the delay, expense, and risk of litigation.

instructed to retain and submit the activated sprinkler and components with their Activation Claim, including for purposes of establishing the installation and qualifying activation of a Subject Sprinkler.[7]

III. ARGUMENT

A. The Settlement Meets the Requirements of Rule 23

Under Federal Rule of Civil Procedure 23, to certify a class action, the class must meet the four Rule 23(a) prerequisites and fit within one of the three Rule 23(b) categories. *Decohen v. Abbasi, LLC*, 299 F.R.D. 469, 476 (D. Md. 2014) (citing *Boyd v. Coventry Health Care Inc.*, 299 F.R.D. 451, 457-58 (D. Md. 2014)). Here, the parties seek certification for settlement under Rule 23(b)(3). Because the parties are moving for certification through settlement, the "district court need not inquire whether the case, if tried, would present intractable management problems" *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 620 (1997). The other Rule 23 requirements, however, "demand undiluted, even heightened, attention." *Id.*

As discussed below, these requirements are met for purposes of settlement in this case.

1. Numerosity

Rule 23(a)(1) requires that the class be "so numerous that joinder of all members is impracticable." The Fourth Circuit has held that "[t]here is no mechanical test for determining whether in a particular case the requirement of numerosity has been satisfied." *Kelley v. Norfolk & W. Ry. Co.*, 584 F.2d 34, 35 (4th Cir. 1978). Classes with as few as 25 to 30 members "have been found to raise the presumption that joinder would be impracticable." *Stanley v. Cent. Garden*

[7] Proof of eligibility for an Activation Claim shall be made by a Claimant through the Claimant's submission of a Claim Form to the Settlement Administrator that shall include the failed Subject Sprinkler or a reason why it is not available for submission, and any valid reason (*e.g.*, the reason the failed Subject Sprinkler is not available for submission) shall be acceptable to the Settlement Administrator.

& Pet Corp., 891 F. Supp. 2d 757, 770 (D. Md. 2012). Here, approximately 1.86 million Subject Sprinklers were sold in the United States, of which approximately 518,000 have been replaced or are in line for replacement. The Subject Sprinklers were installed in an estimated 30,000 to 40,000 structures (assuming an average of 35 sprinklers per structure). As such, there is no question that numerosity is met here.

2. Commonality

Rule 23(a)(2) requires that "there are questions of law or fact common to the class." "Commonality requires the plaintiff to demonstrate that the class members have suffered the same injury." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349-50 (2011) (citation and internal quotation marks omitted). The Rule, however, "does not require that all, or even most issues be common, nor that common issues predominate, but only that common issues exist." *Central Wesleyan College v. W.R. Grace & Co.*, 143 F.R.D. 628, 636 (D.S.C. 1992) (citing *Holsey*, 743 F.2d at 216-217). "When the party opposing the class has engaged in some course of conduct that affects a group of persons and gives rise to a cause of action, one or more of the elements of that cause of action will be common to all of the persons affected." Newberg on Class Actions § 3:10. Commonality "must be of such a nature that it is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Alloways v. Cruise Web, Inc.*, No. 17-cv-2811-CBD, 2019 WL 1902813, at *7 (D. Md. Apr. 29, 2019) (internal citation and quotation marks omitted).

Here, there are numerous common questions of law and fact that will resolve issues central to the validity of Plaintiffs' and the Settlement Class' claims, including whether the Subject Sprinklers are defective and whether Defendants knew of the defect. As such, commonality is easily satisfied here

3. Typicality

Rule 23(a)(3) requires that "the claims or defenses of the representative parties are typical of the claims or defenses of the class." To be typical, the plaintiff's "interest in prosecuting his own case must simultaneously tend to advance the interests of the absent class members." *Deiter v. Microsoft Corp.*, 436 F.3d 461, 466 (4th Cir. 2006). In other words, the plaintiff's claim "cannot be so different from the claims of absent class members that their claims will not be advanced by plaintiff's proof of his own individual claim." *Id.* at 466-67. Here, all Plaintiffs purchased or otherwise had Defendants' Subject Sprinklers installed in their structures. As such, Plaintiffs' claims are typical of those of the Settlement Class Members that they seek to represent. *In re Serzone Prod. Liab. Litig.*, 231 F.R.D. 221, 238 (S.D.W. Va. 2005) (holding "the claims of the named plaintiffs and the Class Members arise from a single product and identical conduct—BMS's course of conduct in the development and marketing of Serzone").

4. Adequacy

Rule 23(a)(4) requires "the representative parties [to] fairly and adequately protect the interests of the class." "To meet this requirement, a plaintiff must demonstrate that he or she (1) 'will vigorously prosecute the interests of the class through qualified counsel' and (2) that they have 'common interests with unnamed members of the class.'" *Beaulieu*, 2009 WL 2208131, at *15 (quoting *Olvera–Morales v. Int'l Labor Mgmt. Corp.*, 246 F.R.D. 250, 258 (M.D.N.C. 2007). The importance of the adequacy requirement is based on the principle of due process, which "requires that named plaintiffs possess undivided loyalties to absent class members." *Broussard*, 155 F.3d at 338.

As the Court recognized when appointing Class Counsel, Class Counsel possess substantial experience in product defect class action litigation and have successfully resolved product defect

and other class action litigation across the country. (Dkt. No. 32.) Plaintiffs also have common interests with the unnamed members of the Settlement Class, as discussed in the preceding section analyzing typicality. As such, adequacy is easily satisfied here. *See, e.g.*, *Decohen*, 299 F.R.D. at 477 ("Decohen's interests are not opposed to the other class members, and class counsel have shown by their vigorous prosecution of this litigation for three and a half years that they are qualified, experienced, and able to conduct the litigation."); *Alloways*, 2019 WL 1902813, at *7 (finding adequacy satisfied by plaintiffs with the same interest in resolving the core legal issues in the case and by counsel with sufficient experience in the relevant area of law).

5. Predominance and Superiority

Rule 23(b)(3) requires the Court to find "that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy."). Predominance "tests 'whether proposed classes are cohesive enough to warrant adjudication by representation.'" *In re Serzone Prods. Liab. Litig.*, 231 F.R.D. at 239. (quoting *Gariety v. Grant Thornton*, 368 F.3d 356, 362 (4th Cir.2004)).

First, the predominance inquiry focuses on whether liability issues are subject to class-wide proof or require individualized and fact-intensive determinations. *Cuthie v. Fleet Reserve Ass'n*, 743 F. Supp. 2d 486, 499 (D. Md. 2010). "Deciding whether common questions predominate over individual ones involves a qualitative, rather than quantitative, inquiry." *Singleton v. Domino's Pizza, LLC*, 976 F. Supp. 2d 665, 677 (D. Md. 2013) (citing *Gunnells v. Healthplan Servs., Inc.*, 348 F.3d 417, 429 (4th Cir. 2003)). Here, the overriding questions at the core of Plaintiffs' claims are whether the Subject Sprinklers are defective, whether Defendants had a duty to disclose the

defect, whether Defendants knowingly concealed the defect, and whether the defect is a material fact. These questions all go to the core of Plaintiffs' claims.

Second, resolving all Settlement Class Members' claims through a single class action is undoubtedly superior to a series of individual lawsuits. The superiority inquiry weights the following factors:

> (i) the strength of the individual class members' interest in controlling the prosecution and defense of a separate action, (ii) the extent and nature of existing litigation already begun by or against class members, (iii) the desirability or undesirability of concentrating the litigation in the single forum selected by the class plaintiffs, and (iv) the likely difficulties in managing the class action.

Lloyd v. Gen. Motors Corp., 275 F.R.D. 224, 228 (D. Md. 2011). Each of these factors demonstrate superiority is satisfied. First, there is no advantage to individual members controlling the prosecution of separate actions. There would be less litigation or settlement leverage, significantly reduced resources, and no greater prospect for successful resolution. Given the sheer number of Subject Sprinklers sold, concentrating the litigation and the Settlement in front of one Judge lessens the strain on judicial resources and conserves the resources of all involved. *In re Serzone Prods. Liab. Litig.*, 231 F.R.D. at 240 ("In contrast, if certification of this settlement class were denied, litigating the similar issues in individual lawsuits would consume many more judicial resources than addressing them together in this class action."). Finally, in the settlement context, there can be no objection here that class proceedings would present the sort of intractable management problems that sometimes override the collective benefits of class actions, "for the proposal is that there be no trial." *Amchem*, 521 U.S. at 620.

B. The Settlement is Fair, Reasonable, and Adequate

Before granting final approval to a class action settlement, courts are directed to evaluate whether the settlement is fair, reasonable, and adequate. Fed. R. Civ. P. 23(e)(2); *see also In re: Lumber Liquidators Chinese-Manufactured Flooring Prods. Marketing, Sales Practices and Prods. Liab. Litig.*, 952 F.3d 471, at 484 (4th Cir. 2020) ("*In re: Lumber Liquidators*"). The primary concern addressed by Rule 23(e) is the protection of class members whose rights may not have been given adequate consideration during the settlement negotiations." *In re Jiffy Lube Sec. Litig.*, 927 F.2d 155, 158 (4th Cir. 1991) (citing cases). "The 'fairness' prong is concerned with the procedural propriety of the proposed settlement agreement, while the 'adequacy' prong focuses on the agreement's substantive propriety." *Alloways*, 2019 WL 1902813, *8.

1. Fairness of the Settlement

Courts look to four factors when analyzing the fairness of a proposed class action settlement: "(1) the posture of the case at the time settlement was proposed, (2) the extent of discovery that had been conducted, (3) the circumstances surrounding the negotiations, and (4) the experience of counsel in the area of class action litigation." *Decohen*, 299 F.R.D. at 478; *In re: Lumber Liquidators*, 952 F3d at 484. The court must determine whether "the settlement was reached as a result of good-faith bargaining at arm's length, without collusion." *Alloways*, 2019 WL 1902183, at *9 (citing *In re Jiffy Lube*, 927 F.2d at 158-59.) The fairness factors weighs in favor of final approval of the Settlement.

Regarding the first two factors, the posture of the case at the time Plaintiffs proposed the settlement and the amount of discovery conducted, both support final approval. The parties exchanged confidential discovery pursuant to Fed. R. Evid. 408 for nearly nine months. Plaintiffs reviewed approximately 80,000 pages of documents produced by Defendants, including warranty

and product liability claims made to Viking, Viking's internal communications regarding the activation of the Subject Sprinklers without the presence of a fire, manufacturing information related to the Subject Sprinklers, and Viking's internal analysis of claims made to Viking. In addition, Plaintiffs conducted an interview of Viking's Vice President of Warranty Management concerning the Subject Sprinklers and the 80,000 pages of documents produced by Viking. In addition to the topics related to the Subject Sprinklers identified above, the interview also confirmed the VK494 Sprinkler to be a suitable replacement sprinkler.

Regarding the third factor, the circumstances surrounding the negotiations also support final approval. The parties' engaged in a mediation before the Honorable Diane Welsh (Ret.) of JAMS. Judge Welsh is an experienced mediator and only after a full day of mediation did the parties agree to a proposed MOU setting forth the material terms of the relief to the Settlement Class. The subsequent settlement negotiations that resulted in the Settlement were all conducted at arms'-length by experienced counsel for the parties and took an additional eight months. *See, e.g.*, *Beaulieu v. EQ Indus. Servs., Inc.*, No. 5:06-CV-400-BR, 2009 WL 2208131, at *24 (E.D.N.C. July 22, 2009) (observing the "extended nature" of the settlement negotiations supported fairness of settlement).[8] As such, the circumstances surrounding the negotiations supports preliminarily approving the Settlement. *See, e.g.*, *In re Am. Capital Shareholder Derivative Litig.*, 2013 WL 3322294, at *4 (noting negotiations between counsel were "appropriately adverse and at arms' length"); *G. F. v. Contra Costa Cty.*, No. 13-CV-03667-MEJ, 2015 WL 4606078, at *13 (N.D. Cal. July 30, 2015) ("[T]he assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive").

[8] The amount of attorneys' fees was negotiated only after the substantive relief for the Settlement Class was agreed upon, and the amount of fees did not and does not reduce the benefits made available to the Settlement Class.

The final factor, the experience of counsel in class action litigation, also supports final approval of the Settlement. As detailed in Plaintiffs' motion for preliminary approval, Class Counsel have substantial experience in class action litigation involving product defects. (Dkt. No. 28-2, Exhibit B (attaching firm resumes of Class Counsel).) Class Counsel believe the Settlement offers substantial relief to the Settlement Class Members and that the prompt and certain relief of the Settlement outweighs the years of contested litigation that will result in the absence of settlement. Recently the District of New Jersey granted final approval to a $43.5 million settlement related to allegedly defective plumbing products in which Sauder Schelkopf served as class counsel. *Cole v. NIBCO, Inc.*, No. 13-7871, ECF No. 227 (D.N.J. April 12, 2019). Thus, Class Counsel's experience supports final approval of the settlement. *McDaniels v. Westlake Servs.*, LLC, No. 11-cv-1837-ELH, 2014 WL 556288, at *9 (D. Md. Feb. 7, 2014) (finding class counsel's experience in similar cases weighed in favor of approving settlement); *In re: Lumber Liquidators*, 952 F.3d at 485 (affirming approval of settlement and finding "many of the lawyers involved in these MDLs have extensive experience in complex civil litigation" weighed in favor of affirmation).

2. Adequacy of the Settlement

Regarding adequacy, courts evaluate the following factors: "(1) the relative strength of the plaintiffs' case on the merits; (2) the existence of any difficulties of proof or strong defenses the plaintiffs are likely to encounter if the case goes to trial; (3) the anticipated duration and expense of additional litigation; (4) the solvency of the defendant[] and the likelihood of recovery on a litigated judgment; and (5) the degree of opposition to the settlement." *In re: Lumber Liquidators*, 952 F.3d at 484 (citing *In re Jiffy Lube*, 927 F.2d at 159).

Regarding the first three factors, if Plaintiffs were to continue to pursue litigation, Plaintiffs believe they could demonstrate that the Subject Sprinklers were sold with a common defect that renders them prone to activation without the presence of a fire. Plaintiffs also believe they could present evidence suggesting that Defendants knew about the defect before Subject Sprinklers were made available for purchase. Plaintiffs would thus be in a position to mount a case that Defendants violated numerous state consumer protection statutes, breached state and federal warranty laws, and engaged in fraud by failing to disclose a known defect. Nevertheless, Class Counsel are seasoned in product defect class litigation, and recognize that even seemingly strong cases can sometimes fail on liability or be whittled down after trial and appeals. Defendants may argue that the Subject Sprinklers were manufactured within the allowable load on the solder link, carried all necessary industry certifications, and that any non-fire activations were caused by exposure to ambient heat beyond the Subject Sprinklers' specifications. A victory at trial, coming several years from now, would likely not deliver results superior to the Settlement before the Court.

In addition, class actions typically entail a high level of risk, expense, and complexity, which is one reason that judicial policy so strongly favors resolving class actions through settlement. *Reed v. Big Water Resort*, LLC, No. 2:14-CV-01583-DCN, 2016 WL 7438449, at *5 (D.S.C. May 26, 2016 ("There is a 'strong judicial policy in favor of settlements, particularly in the class action context.'") (quoting *In re PaineWebber Ltd. P'ships Litig.*, 147 F.3d 132, 138 (2d Cir. 1998)). If the parties had been unable to resolve this case through settlement, the litigation would likely have been protracted and costly. Class Counsel have litigated many product defect class actions that have taken several years to conclude, and some have lasted over a decade factoring in appeals. Before ever approaching a trial in this case, the parties likely would have briefed at least one motion to dismiss, class certification (along with a potential Rule 23(f) appeal),

and summary judgment, in addition to expending considerable resources on electronic discovery, depositions, and expert witnesses. It is therefore unlikely that the case would have reached trial before early 2021, with post-trial activity to follow. By that time, many more class members may have incurred non-fire activations that could have been avoided by the Replacement Program provided for as part of the proposed Settlement.

Regarding the fourth factor, Defendants' solvency and ability to perform its duties under the Settlement are not in question. As such, Plaintiffs respectfully submit that this factor is neutral. *See*, *e.g.*, *Decohen*, 299 F.R.D. at 480.

Last, the degree of opposition to the settlement strongly supports final approval. As courts within the Fourth Circuit have recognized, the response by the class is entitled to great weight. *In re Serzone Prods. Liab. Litig.*, 231 F.R.D. 221, 245 (S.D. W. Va. 2005) (citation omitted). Here, **there are no objections to the Settlement** and a total of twenty-seven opt-outs that were timely post-marked on or before June 5, 2020, with an additional four opt-outs post-marked after the June 5 deadline.[9] In the aggregate, the number of actual and attempted opt-outs equates to approximately 0.0009% of the Settlement Class (31 out of the approximately 35,000 class members). In addition, a total of 536 claims have already been submitted which, if approved, will result in the additional replacement of an estimated 14,488 more Subject Sprinklers. Settlement Class Members will have 18 months from the Effective Date to submit Replacement Claims, and 24 months from the

[9] Class Counsel received a letter from counsel for three insurance carriers expressing a desire to opt out of the Settlement, and purporting to include objections as well. After conferring with counsel for the insurance carriers and counsel for Defendants, it was agreed the letter would be treated as an opt-out pursuant to Section E(1)(h) of the Settlement, which provides that "[a]ny statement or submission purporting or appearing to be both an objection and opt-out shall be treated as a Request for Exclusion." These insurance carriers are thus included in the list of opt-outs attached as Exhibit A to the Proposed Final Approval Order. A copy of the parties' agreement with the insurance carriers can be made available for inspection should the Court deem it necessary.

Effective Date to submit Activation Claims. In addition, approximately 2,084 notices were mailed to insurance companies, and the dearth of objections in response demonstrates overwhelming support for the Settlement.

In sum, the lack of opposition to the Settlement weighs in favor or final approval. *In re Lumber Liquidators*, 952 F.3d at 485 ("Finally, only 94 of the 178,859 class members who responded to the class-action settlement notice opted out of the settlement (about 0.05%), and 12 class members objected thereto (about 0.006%). Those figures provide further support for the settlement's adequacy."); *Alloways*, 2019 WL 1902813, at *10 (finding no objection and small number of opt-outs favored approval of settlement); *McDaniels*, 2014 WL 556288, at *10 (same); *Edelen v. Am. Residential Servs.*, LLC, No. 11-cv-2744-DKC, 2013 WL 3816986, at *10 (D. Md. July 22, 2013) ("The lack of objections provides further support for final approval of the Settlement Agreement as fair, adequate, and reasonable.").

C. The Notice Satisfied Due Process

The Settlement Administrator has successfully implemented the Notice Plan as described in the Settlement. The Settlement Administrator sent the Court-approved settlement information by U.S. mail to all Settlement Class Members who were able to be identified.[10] In addition, the Settlement Administrator established a dedicated website, www.vk457sprinklersettlement.com, which provides the Notice and other pertinent documents, including the Claim Form and the Settlement Agreement, "frequently asked questions," and contact information if potential Settlement Class Members have additional questions, as well as instructions how to submit a Claim

[10] Viking and Class Counsel provided the Settlement Administrator with reasonably available information that identifies possible Settlement Class members from their existing records. The Notice of Settlement was also sent by the Settlement Administrator to all homeowners' insurance companies that the Settlement Administrator was able identify.

Form, an objection, or a request for exclusion. Further, the Settlement Administrator established a toll-free telephone number that Settlement Class Members are able to utilize if they have questions about the Settlement and/or need assistance completing their Claim Forms.

As set forth in the accompanying Declaration of Cameron R. Azari, attached hereto as Exhibit C, approximately 30,000 notices were mailed directly Settlement Class Members. (Ex. C, ¶ 15.) In addition to the mailed notices, the Settlement Administrator engaged in a successful internet notice campaign that generated 272,917,213 impressions. (*Id.*) 536 Claim Forms have already been returned by Settlement Class Members seeking to partake in the benefits offered by the Settlement. (*Id.*) In addition, the Settlement Website has already been visited approximately 100,000 times. (*Id.*)

This Notice program unquestionably meets the due process requirements of Fed. R. Civ. P. 23, which calls for "the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974) (emphasis omitted); *see also Brunson v. Louisiana-Pac. Corp.*, 818 F. Supp. 2d 922, 926 (D.S.C. 2011) (granting final approval to settlement and noting notice provided for in preliminary approval order satisfied due process). In this regard, potential Settlement Class Members have been (i) provided with notice of the Settlement Agreement; (ii) fully informed of their rights and obligations under the Settlement Agreement; and (iii) provided with the resources to ask questions and, to the extent necessary, receive assistance in submitting Claim Forms. As such, the notice was reasonably calculated to apprise the Settlement Class of their rights in this Lawsuit.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court enter the accompanying Proposed Order Granting Final Approval to the Settlement and Proposed Final Judgment.

Dated: July 10, 2020

/s/ James P. Ulwick
James P. Ulwick (Fed. Bar. No. 00536)
Kramon & Graham, P.A.
One South Street, Suite 2600
Baltimore, Maryland 21202
(410) 752-6030 (telephone)
(410) 539-1269 (facsimile)
julwick@kg-law.com

Joseph G. Sauder (*pro hac vice*)
Matthew D. Schelkopf
Joseph B. Kenney
SAUDER SCHELKOPF LLC
1109 Lancaster Avenue
Berwyn, Pennsylvania 19312
(888) 711-9975 (telephone)
jgs@sstriallawyers.com
mds@sstriallawyers.com
jbk@sstriallawyers.com

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I, James P. Ulwick, hereby certify that on this 10th day of July, 2020, I caused the foregoing to be filed using the Court's CM/ECF system, and thereby electronically served it upon all registered ECF users in this case.

/s/ James P. Ulwick
James P. Ulwick