IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MINNESOTA

TIM GEORGE; CHARLES and JAMIE GIBBS; WILLIAM and CORIE CONNELLY; GALEN and LESLIE SATTERLEE; GAIL HENRICHSEN; DUSTIN and MARTHA BARNETT; DAVE and HOLLY MARCUS; KELLY BABB and GARY AND ELSA OVERSTREET, individually and on behalf of those similarly situated, Plaintiffs, v. UPONOR CORPORATION; UPONOR GROUP; UPONOR, INC.; WIRSBO COMPANY; and UPONOR WIRSBO COMPANY, Defendants.	Civ. No. 12-249 (ADM/JJK)

MEMORANDUM IN SUPPORT OF JOINT MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND APPROVAL OF FORM AND DISSEMINATION OF CLASS NOTICE

Introduction

After years of litigating this class action and many related lawsuits against various parties in the state and federal courts, and substantial discovery efforts, the parties have reached a proposed settlement to resolve all claims related to high-zinc brass plumbing fittings (and other brass components) designed and/or sold by Uponor and installed in residential and non-residential properties throughout the United States from 2002 through the present time as part of Uponor/Wirsbo PEX Systems[1] ("Uponor Yellow Brass

[1] Including, but not limited to, valves, manifold connectors and hose bibs, designed and/or sold by the Uponor Defendants in the United States as complying with the ASTM Standards F1960, F2080 and/or F877, and manufactured with/from UNS C36000, C37700 or C35330 brass alloys (but excluding those fittings bearing the markings "F1960 C314", "F1960LF" and/or "F1960

Fittings"). The proposed settlement provides class members with an enhanced and extended warranty for dezincification-related problems with Uponor Yellow Brass Fittings, substantial reimbursement for past and future damages and repairs covered under the enhanced warranty, and coverage for complete system replacement in structures experiencing multiple product failures.

Within 10 days prior to the date of the earlier of the Final Fairness Hearings in the instant case and the Las Vegas Class Action, Uponor and the other participating settling entities known as the Materially Contributing Entities ("MCEs), as defined in the Settlement Agreement, shall pay into escrow accounts the initial funds to cover the settlement obligations. Notice costs and claims administration costs will be borne wholly by Uponor. All eligible claims, as set forth in the Settlement Agreement, submitted by members of the Class will be paid from the Settlement Fund pursuant to the Settlement Agreement. Class Counsel will seek fees, costs and expenses from the Defendants, separate from the obligations of Uponor and the MCEs with respect to the payment of Class Member claims.

Class to be Certified

In moving for preliminary approval of the settlement, Plaintiffs Tim George, *et al.* ("Plaintiffs") seek certification of the following class:

All Persons that own (have owned or subsequently purchase/own) buildings, homes, residences, Common Areas, Residential Units, or Non-Residential Properties located in the United States, built on or after January 1, 2002, which contain Uponor Yellow Brass Fittings.

This Settlement Class includes, without limitation all individuals and entities, including those in active litigation, the Complaints, and/or arbitration, seeking arbitration or ordered to arbitration by any state or federal court, as well as their spouses, joint

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C693"), whether or not the fitting in fact complied with such standard(s).

owners, heirs, executors, administrators, subrogated insurance companies, insurers, mortgagees, tenants, creditors, lenders, predecessors, successors, subsequent owners or occupants, trusts and trustees, attorneys, agents, and assigns and all Persons who have legal standing and are entitled to assert a claim on behalf thereof. This Settlement Class does not include the Excluded Persons as identified in Paragraph 55 of the Settlement Agreement. The Settlement Class includes, without limitation, all Persons who subsequently purchase or otherwise obtain an interest in a property covered by this Agreement without the need of any formal assignment by contract or court order.

Excluded from the class are the following:

a. All settlement class members encompassed within the settlement class proposed for certification in the lawsuit styled *In Re Wirsbo Non-F1807 Yellow Brass Litigation*, Case No. 08-cv-1223, pending in the United States District Court for the District of Nevada ("Las Vegas Class Action"), including any lawsuits and/or arbitration proceedings consolidated within the Las Vegas Class Action or seeking relief for, Residential Units, Common Areas and/or Non-Residential Properties encompassed within the settlement class in the Las Vegas Class Action. To the extent any Las Vegas Class Action settlement class members own structures containing Uponor Yellow Brass Fittings that fall outside the class definition in the Las Vegas Class Action, claims related to such structures shall be included in this Agreement.

b. All Persons, including owners of Residential Units, Non-Residential Properties and/or Common Areas (such as homeowners association) who/which, on a timely basis, exercised their rights under Rule 23 of the Federal Rules of Civil Procedure to: i) opt out of the Settlement Class pursuant to the terms of the Settlement Agreement; and ii) all persons defined as "Excluded Persons" in the settlement agreement entered into related to the Las Vegas Class Action;

c. All Persons who previously filed an individual lawsuit concerning Uponor Yellow Brass Fittings in any court of law, provided that claim has been resolved with a

final judgment or settlement, whether or not favorable to the Person;

d. The Uponor Defendants, any entity in which the Uponor Defendants have a controlling interest, any entity which has a controlling interest in the Uponor Defendants, and the Uponor Defendants' legal representatives, assigns, and successors;

e. The presiding judge in the instant case and any member of the judge's immediate family;

f. All Persons who own or have owned a structure containing Uponor Yellow Brass Fittings installed before January 1, 2002; and

g. All those persons/claims identified on Exhibit "1" to the Settlement Agreement, which contains a listing of the claims encompassed within the "California/Arizona Class Action Excluded Uponor Yellow Brass Fitting Claims" (hereinafter the "35 Evolved Case List") which is covered by a separate Settlement Agreement.

Benefits to the Class

All Class Members will have an additional two-year warranty for eligible Property Damage Claims relating to Uponor Yellow Brass Fittings. For warranties regarding low flow and replacement failures, depending on whether the covered property was sold within ten years after the Uponor Yellow Brass Fittings installation, Class Members will receive either a five-year warranty running from the Effective Date (sold more than ten years after installation) or twenty-five year warranty running from the installation date (sold within ten years of installation) which benefits take effect following the Effective Date.

For both past and future property damage claims, Class Members will receive up to $60,000 per claim for residential units, non-residential and common areas. For non-low flow fitting replacement claims (during original or extended warranty), Class Members with residential units can recover 60% of covered costs up to $7,000 per unit for one failure and 60% of costs to complete re-fit of all Uponor Yellow Brass fittings in

Uponor/Wirsbo PEX System up to $7,000 for two or more failures. For non-residential and common areas, the benefits are 60% of covered costs up to $2,500 per unit (maximum recovery: $100,000 per building) for one failure and 60% of costs to complete re-fit of all Uponor Yellow Brass fittings in Uponor/Wirsbo PEX System up to $2,500 per unit (maximum recovery: $100,000 per building) for failures in 30% of units. For low flow claims, Class Members will receive 60% of covered costs, up to $7,000 per unit for residential and up to $2,500 per unit (maximum recovery: $100,000 per building) for non-residential and common areas.

Finally, for re-fit/re-plumb claims, Class Members will also receive 60% of covered costs up to $7,000 per unit for residential units. Non-residential and common area claims will receive 60% of costs of replacement of all Uponor Yellow Brass fittings in the Uponor/Wirsbo PEX System up to $2,500 per unit (maximum recovery: $100,000 per building) if there are failures in 30% of units.

Uponor and the MCEs are funding the settlement and claims process described above, as set forth in the Settlement Agreement and the Addendum attached as Exhibit B to the Settlement Agreement.

In other words, for residences experiencing more than one leak, Uponor will pay 60% of the costs to refit or replace the entire systems. Uponor will also pay to repair and possibly replace components and systems that have a significant reduction in water flow due to dezincification of Uponor Yellow Brass Fittings. And multi-unit commercial structures, such as apartments and hotels, will receive similar warranty coverage and benefits under the proposed settlement.

The settlement, as part of a multi-part global set of agreements, resolves all claims applicable to dezincification of Uponor Yellow Brass Fittings in structures throughout the United States. The settlement extends Uponor's original 10-year warranty by two years for most class members, creates a two-year warranty for those whose warranties already expired, and provides enhanced warranty benefits for all class members. For example,

Uponor will pay all property damage caused by a leak up to a maximum of $60,000 for residences and non-residential properties. Uponor will also, as set forth in the Settlement Agreement pay 60% of the costs associated with replacing failed Uponor Yellow Brass Fittings and replacing the system, if justified under the warranty. In exchange, the settlement class members will release all claims relating to dezincification of Uponor Yellow Brass Fittings against Uponor and the MCEs.

Related Cases

In conjunction with this settlement, Uponor and the MCEs seek to simultaneously buy their peace for all pending litigation related to Uponor Yellow Brass Fittings around the country. Therefore, the proposed settlement is contingent on the final resolution of the case styled *In re: Wirsbo Non-F1807 YBFs*, pending in the U.S. District Court for the District of Nevada and a separate group of claims by California and Arizona homeowners (the "CA/AZ Claims" or "35 Evolved Case List"). *See* Ex. 1 at ¶ 166.[2] The *In re: Wirsbo Non-F1807 YBFs* parties seek approval of a settlement before the Nevada court, and Uponor and the MCEs have reached an agreement to resolve the specific CA/AZ Claims identified on Ex. 1 to the Settlement Agreement. Therefore, should this Court and the Nevada court both grant final approval of the respective settlements—and those orders withstand any potential appeals—Uponor and the other participating parties will resolve all litigation involving Uponor Yellow Brass Fittings.[3]

The proposed settlement is an excellent result that merits this Court's preliminary approval. It provides all class members with substantial benefits and protections related

[2] All references to "Ex." Mean the exhibits attached to the Affidavit of Robert K. Shelquist, filed concurrently herewith.

[3] The members of either settlement class and the owners of the CA/AZ Claims have the right to opt out and pursue claims against any of the settling parties. Should a sufficient number of class members and claimants submit opt-outs, Uponor and the MCEs have the right to withdraw from all three settlements. *See* Ex. 1 at ¶ 58. MCE withdrawals will not impact the settlements unless Uponor loses a minimum percentage of the MCE funding. At that point, Uponor has the right to withdraw from all three settlements. *See* Ex. 1 at ¶ 133(e).

to the alleged dezincification of Uponor Yellow Brass Fittings. For the past several years, the parties have extensively litigated this class action, as well as numerous related actions and engaged in significant fact and expert discovery. The parties also participated in nearly a year of arm's-length settlement discussions and mediations with a professional mediator that resulted in this settlement. Under the circumstances, the settlement falls "within the range of possible approval" and warrants preliminary approval by the Court.

Factual and Procedural Background

I. The Procedural History of this Class Action and Related Actions.

On January 31, 2012, Plaintiffs filed the original complaint in this action which alleges a nationwide class against various Uponor entities related to the dezincification of Uponor's F1960 high-zinc brass plumbing fittings installed in structures located throughout the United States. ECF 1, ¶ 81. Similar state-specific class action complaints were filed for the following states: (1) Pennsylvania (*Fofi*, filed on January 25, 2012); (2) Arizona (*Gibbs*, filed on April 5, 2012); (3) Texas (*Patel*, originally filed on January 23, 2012, and refiled on August 1, 2012); (4) Oklahoma (*Shons*, filed on January 25, 2012); and (5) California (*Overstreet*, filed on February 7, 2013). All of the state-specific cases are now pending before this Court.

On March 23, 2012, Defendants filed a motion to dismiss, set for hearing on July 26, 2012. ECF 7, 15. On July 2, 2012, the parties filed a motion to stay, which the Court granted pending a decision by the JPML regarding the transfer of Related Cases and consolidation of this litigation. ECF 19, 23. The Court lifted this stay on December 17, 2012. ECF 54.

In late 2012, various cases were reassigned to this Court. ECF 28-31. On December 4, 2012, Plaintiffs Curtis and Tina Smith filed a motion to intervene. ECF 33. On January 14, 2013, the Court had a hearing on the motion and ultimately denied the motion on February 28, 2013. ECF 65, 79. On March 6, 2013, this Court appointed Interim Class Counsel pursuant to Plaintiff's unopposed motion. ECF 80.

On April 22, 2013, the parties appeared before the Hon. Jeffrey J. Keyes for a case management conference. ECF 94.

On May 24, 2013, Plaintiffs filed an amended complaint. ECF 103. On June 24, 2013, Defendants filed a motion to dismiss the amended complaint. ECF 107. On August 9, 2013, one of the Defendants filed a motion to dismiss for lack of jurisdiction. ECF 131. The Court held a hearing on October 3, 2013. ECF 147.

On December 23 2013, this Court issued an order granting in part and denying in part Uponor's motion to dismiss under Rule 12(b)(1) and 12(b)(6). ECF 155. The Court found it had personal jurisdiction over Uponor Corporation, the Finnish parent entity. *Id.* The court also determined a number of named plaintiffs did not allege facts sufficient to have standing.[4] *Id.* The Court declined to dismiss the New Mexico subclass's claims under that state's consumer protection statute but did dismiss similar claims by the Arizona subclass. *Id.* The Court held that the California subclass failed only due to the standing issue, which has since been corrected. *Id.*

On February 13, 2014, Uponor Corporation filed a motion for reconsideration of the district court's jurisdictional decision in light of the Supreme Court's recent opinion clarifying a court's exercise of general jurisdiction over a foreign entity. ECF 172; *see Daimler AG v. Bauman*, __ U.S. __ (2014). Plaintiffs responded, in part, by pointing out that *Bauman* does not apply here because the Court's finding of jurisdiction over Uponor Corporation was based on the nature of the parent-subsidiary relationship rather than general jurisdiction. ECF 179. On April 14, 2014, the Court issued an order denying Uponor Corporation's motion to reconsider. ECF 181.

On April 21, 2014, Defendants filed a motion to dismiss Plaintiffs' Second Amended Complaint. ECF 182. Plaintiffs responded to that motion, and Uponor replied. ECF 207, 212. The motion remains pending.

[4] Plaintiffs corrected those issues in their Second Amended Complaint by including photographs of the Uponor yellow brass fittings in their homes.

II. The Parties' Discovery Efforts.

On May 24, 2013, Plaintiffs filed a motion to compel production of Uponor's excess insurance policies, for which the Court held a hearing on July 18, 2013. ECF 97, 123. The Court granted that motion. ECF 122. On July 8, 2013, Defendants filed a motion for protective order, which the Court granted the next day. ECF 113, 117. On February 13, 2014, Plaintiffs filed a motion to compel Uponor Defendants to respond in full to outstanding discovery requests. ECF 161. On April 2, 2014, Plaintiffs filed another motion to compel. ECF 187. On April 24, 2014, the parties filed a Stipulated Protective Order for Non-Party Discovery, which the court entered the same day. ECF 193, 195. The Court heard and granted in part Plaintiffs' motion to compel. ECF 203. During discovery, Uponor produced more than 500,000 pages of documents, and Plaintiffs produced more than 200,000 pages of documents. *See* Shelquist Aff., ¶ 3.

III. The Parties' Arm's-Length Settlement Negotiations.

At times throughout this litigation, Class Counsel engaged in informal discussions with Uponor about resolving the class members' claims. These early settlement discussions helped lay the groundwork for future discussions, which yielded the proposed Settlement. After the Court's orders on Uponor's motions to dismiss and Plaintiffs' motions to compel, Class Plaintiffs and Uponor suspended the expert disclosure deadlines and focused all their efforts on reaching a settlement.

In February 2014 Class Counsel and the Uponor Defendants began formal mediation efforts with mediator Ross Hart, Esq. In July 2014, Class Counsel and the Uponor Defendants reached agreement on the framework for the settlement of the class claims including the terms relating to the rights and benefits that would be afforded to the class members. That agreement provided for the resolution of the Uponor Yellow Brass Fitting claims for structures located throughout the United States, excluding Las Vegas, Nevada and certain specific claims pending in California and Arizona. The agreement contained all major deal points except for the amount of attorney's fees and expenses Uponor would agree to pay. In the weeks after arriving at

agreement on the deal points which afforded benefits to class members, the parties engaged in further negotiations related to the fee and expense amounts and then signed a Memorandum of Understanding ("MOU") memorializing the full terms of the settlement. *See id.* at ¶ 7.

After signing this MOU and a subsequent MOU for the Las Vegas class action, Uponor began mediating with the MCEs (non-Uponor entities interested in resolving the class members' claims regarding the Uponor Yellow Brass Fittings). The inclusion of the MCEs was intended to further effectuate the desire to arrive at a global resolution of the Uponor Yellow Brass Fitting claims by including as many entities with any potential exposure to such claims as possible. These entities would also receive the benefit of a class-wide release in exchange for making material contributions to the settlement funding. Due to the number of parties, counsel, and insurance carriers involved, the Uponor/MCE settlement negotiations continued for approximately four months. *See id.* at ¶ 8.The Court held numerous status conferences during the course of the parties' settlement discussions. In November 2014—once Uponor reached a tentative agreement with the MCEs—Uponor and Class Counsel began drafting and negotiating the settlement documents. Class Counsel and Uponor agreed on a substantial amount of the language in the settlement documents and then solicited comments on the documents from the MCEs. At that point, unanticipated issues emerged and threatened the continued viability of the settlement. From January 2015 to March 2015, the parties participated in additional in-person mediation sessions and, separately, counsel attended several in-person meetings to address resolution of the remaining settlement issues. The parties exchanged literally hundreds of calls and emails during this process before finalizing the proposed settlement language. *See id.* at ¶¶ 7–9.

V. Summary of the Settlement Benefits for Class Members.

The Class Action Settlement Agreement and Release (the "Settlement Agreement") contains the complete terms of the proposed settlement. *See* Ex. 1. In accordance with the Settlement Agreement, the Class Representatives, individually and

as representatives of the proposed settlement class, have agreed to settle, release, and dismiss all claims against Uponor and the MCEs related to the dezincification of Uponor Yellow Brass Fittings.

The key provisions of the Settlement Agreement include:

- Uponor will provide class members with an additional two-year warranty for eligible Property Damage Claims relating to Uponor Yellow Brass Fittings;
- Uponor will provide class members with a five or twenty-five-year warranty for eligible claims regarding low flow and replacement failures from the Effective Date of the Settlement Approval for the five year warranty and from the date of installatioin for the 25 year warranty;
- For eligible non-low flow fitting replacement claims, Uponor will pay for 60% of costs for residential units up to $7,000 per unit for one failure and as specified in the Settlement Agreement 60% of costs to complete a re-fit all Uponor Yellow Brass fittings in an Uponor/Wirsbo PEX System up to $7,000 for two or more failures;
- For eligible non-low flow fitting replacement claims in non-residential and common areas, Uponor will pay for 60% of costs up to $100,000 per building;
- For re-plumb and replacement claims, Uponor will pay 60% of covered costs up to $7,000 per unit for residential units and up to $2,500 per unit (maximum recovery: $100,000 per building) for non-residential and common area claims for replacement of all Uponor Yellow Brass fittings in Uponor/Wirsbo PEX System if there are failures in 30% of units.
- Uponor will pay 60% of the resulting property damage from failed fittings up to a maximum of $60,000 per residential claim and per non-residential claim;
- All existing express warranties, not otherwise addressed in the Settlement Agreement, from Uponor, the MCEs, and/or third-parties, to the extent they have not already expired, will remain in place for the remainder of their express terms, and are unaffected in scope or duration by the Settlement;
- Uponor will deposit funds into a class claim fund in the amounts identified in the Agreement to pay class members' claims and replenish the claim fund to a minimum balance as claims are paid;
- The claim fund will remain in place and be administered by a neutral third-party for five years and, thereafter, Uponor will directly administer and pay all eligible claims;
- Uponor's liability is capped at the amount identified in the Agreement for payment of the class benefits provided under this enhanced warranty;

- Uponor, Inc. and its successors will guaranty Uponor's settlement obligations;
- Uponor will fund the entire claim administration process and class notice;
- Uponor will pay attorney's fees and costs up to the amount identified in the Agreement, as awarded and approved by the Court;
- Uponor will pay up to $5,000 per home to the Class Representatives, as awarded and approved by the Court; and
- Pursuant to an addendum to the settlement agreement, the MCEs will contribute funding of approximately $18 million to the settlement claims fund to be used toward the items described above as well as similar items in the Las Vegas class action.

See generally Ex. 1.

VI. Plan for Dissemination of Notice to Class Members.

Uponor sold and distributed Uponor Yellow Brass Fittings throughout the United States from approximately 1996 to approximately 2012. *See* Shelquist Aff., ¶ 5. The settling parties do not know how many homes or buildings contain Uponor Yellow Brass Fittings or where they are located. Based on the available information, the number of potential class homes and buildings may be in the hundreds of thousands or more. *See id.*

The parties propose a multi-faceted notice program to provide the best practicable notice of the settlement. Uponor has retained Rust Consulting ("RC") and Kinsella Media ("KM"), two knowledgeable and experienced class-notice consultants, to assist in designing and implementing the notice plan. RC and KM propose a notice plan with the following components:

- Direct-mail notice to reasonably ascertainable potential Settlement Class Members;
- Publication notice via two print sources (*People* and *Parade*) and numerous online sources with millions of estimated impressions;
- Media efforts through a press release and the settlement website; and
- Notice to state and federal officials as required by the Class Action Fairness Act, 28 U.S.C. § 1715(a).

See generally, Ex. 2. The parties expect this notice plan to reach at least 75% of potential class members on an average of 3.5 times each. *See* Ex. 2 at 37.

Standard of Review of Proposed Settlement

The district court must approve the settlement of a class action brought in federal court.[5] Under Rule 23(e) of the Federal Rules of Civil Procedure, preliminary approval is the first of a two-stage process where the court determines whether the settlement appears to fall within the range of reasonableness and whether the proposed notice plan meets the requirements of due process. If a class has not yet been certified, a district court must first find that the settlement class meets the requirements of Rule 23, and "may take the proposed settlement into consideration when examining the question of certification."[6]

Certification of settlement classes is routine, and the certification hearing and preliminary fairness evaluation are usually combined.[7] The second and last step is a final approval hearing, at which the parties may present evidence concerning the fairness, adequacy, and reasonableness of the settlement, and the Court may consider class-member reaction to the settlement.[8]

Although the decision to approve a proposed settlement is committed to the Court's sound discretion, courts attach "[a]n initial presumption of fairness ... to a class settlement reached in arm's length negotiations between experienced and capable counsel

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[5] Fed. R. Civ. P. 23(e); *see also In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 148 F.3d 283, 307 (3d Cir. 1998) (cited by 2003 Amendments to Rule 23(e)).

[6] *In re Prudential*, 148 F.3d at 308.

[7] *See* MANUAL FOR COMPLEX LITIGATION (FOURTH) § 21.632 (West/Fed. Jud. Ct. 2004) (hereinafter referred to as "MANUAL"). Neither formal notice nor a hearing is required for the Court to grant preliminary approval or provisional certification; instead, the Court may grant such relief upon an informal presentation by the settling parties, and may conduct any necessary hearing in Court or in chambers, at the Court's discretion. *Id; accord* Joseph M. McLaughlin, 2 MCLAUGHLIN ON CLASS ACTIONS § 6:6 (3d ed. 2006).

[8] *See* David F. Herr, ANNOTATED MANUAL FOR COMPLEX LITIGATION (FOURTH) § 21.662 (2005) (hereinafter referred to as "ANN. MANUAL").

after meaningful discovery."[9] "The Court is entitled to rely on the judgment of experienced counsel in its evaluation of the merits of a class action settlement."[10] In the same vein, a court considering a motion for preliminary approval neither decides the merits of the underlying case, nor crafts a settlement for the parties.[11]

Legal Analysis

At the preliminary-approval stage, courts must determine whether the settlement falls "'within the range of possible approval.'"[12] Courts should preliminarily approve a class settlement and direct notice to the class members where "'the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval.'"[13] A proposed settlement need not provide ideal class relief to gain preliminary court approval but merely be fair and free of collusion.[14]

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[9] *Grier v. Chase Manhattan Auto. Fin. Co.*, No. 99-180,2000 WL 175126, *5 (B.D. Pa. Feb. 16, 2000) (citation omitted); *see also Grunin v. Int'1 House of Pancakes*, 513 F.2d 114, 123 (8th Cir. 1975); *White v. Nat'l Football League*, 836 F. Supp. 1458, 1476-77 (D. Minn. 1993); 4 Herbert B. Newberg & Alba Conte, NEWBERG ON CLASS ACTIONS ("NEWBERG") § 11.24 (4th ed. 2002).

[10] *In re Emplqyee Benefit Plans Sec. Litig.*, No. 3-92-708, 1993 WL 330595, *5 (D. Minn. June 2, 1993); *see also Welsch v. Gardebring*, 667 F. Supp. 1284, 1295 (D. Minn. 1987) (giving "great weight" to opinions of experienced counsel); *In re Coordinated Pretrial Proceedings in Antibiotic Antitrust Actions*, 410 F. Supp. 659, 667 (D. Minn. 1974) (same).

[11] *See Grunin*, 513 F.2d at 124 ("neither the trial court in approving the settlement nor this Court in reviewing the approval have the right or duty to reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute" (internal quotation omitted)); *see also White*, 836 F. Supp. at 1477 ("the court does not have the responsibility of trying the case or ruling on the merits of the matters resolved by agreement . . . . Rather, 'the very purpose of compromise is to avoid the delay and expense of such a trial'" (internal quotation omitted)); *Holden v. Burlington Northern, Inc.*, 665 F. Supp. 1398, 1403 (D. Minn. 1987) (recognizing district court's approval was not expression of its opinion about merits).

[12] *In re Tableware Antitrust Litig.*, 484 F.Supp.2d 1078, 1080 (N.D. Cal. 2007) (quoting *Schwartz v. Dallas Cowboys Football Club, Ltd.*, 157 F.Supp.2d 561, 570 (E.D. Pa. 2001)); *see also* MANUAL § 21.632, at 432–433.

[13] *In re Tableware*, 484 F.Supp.2d at 1079 (quoting MANUAL (Second) at § 30.44 (1985)).

[14] *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 ("Settlement is the offspring of compromise;

Settlement is the preferred means of resolving litigation.[15] Settlement of class actions is particularly appropriate because the costs, delays, risks, and uncertainties inherent in complex litigation might overwhelm any recovery the class stands to obtain.[16] By supporting the settlement of complex class-action disputes, the judicial system can minimize litigation expenses on both sides, reduce the strain on scarce judicial resources, and avoid the risks of trial to both parties.[17]

I. The Court Should Certify the Proposed Settlement Under Rule 23.

Pursuant to the parties' Settlement Agreement, the proposed Settlement Class is defined as set forth *supra* in the Introduction. In light of the parties' agreement, the Court's threshold task is to determine whether the proposed settlement class satisfies the requirements of Rule 23(a).[18]

A. The Proposed Class Satisfies The Rule 23(a) Criteria.

Rule 23(a) requires the proponents of certification to establish that: (1) members of the proposed classes are so numerous that joinder of all members is impracticable; (2) commonality exists among issues of law or fact raised by the class members; (3) the claims of the proposed class representatives are typical of the claims of the absent class members; and (4) the proposed class representatives will fairly and adequately represent the interests of the classes.[19]

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the question we address is not whether the final product could be prettier, smarter or snazzier, but whether it is fair, adequate and free from collusion.").

[15] *See Williams v. Nat'l Bank*, 216 U.S. 582, 595 (1910); *Liddell v. Bd of Educ*., 126 F.3d 1049, 1056 (8th Cir. 1997).

[16] *See White*, 836 F. Supp. at 1476-77 ("The policy in federal court favoring the voluntary resolution of litigation through settlement is particularly strong in the class action context."); NEWBERG § 11.41.

[17] *In re Gen. Motors Corp*., 55 F.3d 768, 784 (3d Cir. 1995) (citing cases); NEWBERG §11.41.

[18] Fed. R. Civ. P. 23.

[19] Fed. R. Civ. P. 23(a).

1. Members Of The Settlement Class Are So Numerous That Joinder Of All Members Is Impracticable.

Minnesota district courts have cited both NEWBERG ON CLASS ACTIONS and MOORE'S FEDERAL PRACTICE for the proposition that putative class sizes of 40 will support a finding of numerosity.[20] Here, the Settlement Class clearly satisfies this threshold. The proposed Class is estimated to include at least hundreds of thousands of individuals and entities who own properties across the entire country. *See* Shelquist Aff., ¶ 5. Joinder is impracticable.

2. Common Issues Of Law Or Fact Unite The Class Member Claims.

The threshold for finding commonality under Rule 23(a)(2) is low. It requires only that there are "other members of the class who have the same or similar grievances as the plaintiff."[21] The standard is "easily met" in most cases.[22] Common issues such as whether the Uponor Yellow Brass Fittings are defective or whether they comply with the applicable warranties are sufficient to establish compliance with this requirement.[23] For purposes of settlement Uponor does not dispute the commonality issue.

3. The Claims Of The Proposed Class Representatives Are Typical Of The Class.

Rule 23(a) also requires that the "claims or defenses of the representative parties [be] typical of the claims or defenses of the class."[24] The typicality inquiry works

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[20] *Lockwood v. Gen. Motors, Inc.*, 162 F.R.D. 569, 574 (D. Minn. 1995). Indeed, much smaller classes have been certified by the federal courts. *See, e.g., Paxton v. Union Nat'l Bank,* 688 F.2d 552, 561 (8th Cir. 1982) (citing with approval cases certifying classes of sixteen and eighteen members).

[21] *Donaldson v. Pillsbury Co.*, 554 F.2d 825, 830 (8th Cir. 1977); *see also Wal-Mart Stores, Inc. v. Dukes,* 131 S.Ct. 2541, 2550-52 (2011).

[22] *Lockwood,* 162 F.R.D. at 575 (citing NEWBERG).

[23] *In re Zurn Pex Plumbing Prods. Liab. Litig.*, 644 F.3d 604, 618-620 (8th Cir. 2011).

[24] Fed. R. Civ. P. 23(a)(3). *See also Wal-Mart Stores,* 131 S.Ct. at 2551 n.5.

"to align the interests of the class and the class representatives so that the latter will work to benefit the entire class through the pursuit of their own goals."[25] Accordingly, the typicalityrequirement focuses the district court on whether the representative plaintiffs' claims arise from the same practice or course of conduct that gives rise to the claims of other classmembers or whether their claims are based on the same legal theory.[26]

Typicality is satisfied when "the claims of the named Plaintiffs emanate from the same event or are based upon the same legal theory as the claims of the class members."[27] Even a "strong similarity of legal theories" will satisfy Rule 23's typicality requirement despite substantial factual differences.[28] Thus, the typicality inquiry tends to merge with the commonality analysis.

Here, the Class Representatives' claims are typical of the claims of the members of the proposed Settlement Class. Each of the Class Representatives owns a property containing Uponor Yellow Brass Fittings. The claims of these plaintiffs are identical to the claims of other members of the proposed settlement classes. For

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[25] *Krell v. Prudential Ins. Co. of Am.*, 148 F.3d 283, 311(3d Cir. 1998); *see also In re Control Data Corp. Sec. Litig.*, 116 F.R.D. 216, 220 (D. Minn. 1986) (citations omitted).

[26] *See E. Tex. Motor Freight Sys., Inc. v. Rodriguez* 431 U.S. 395, 403 (1977). Courts following these precepts have held that any differences between the class representative and the putative class must be material to the claims and defenses pled-not merely "incidental" to the allegations. *Lockwood*, 162 F.R.D. at 575-76. Accordingly, courts have held that "the burden of demonstrating typicality is fairly easily met." *DeBoer v. Mellon Mortgage Co*., 64 F.3d 1171, 1174 (D. Minn. 1995). As the typicality inquiry often merges with the commonality analysis, the Eighth Circuit has given typicality an "independent meaning" by holding that Rule 23(a)(3) "requires a demonstration that there are other members of the class who have the same or similar grievances as the [class representative]." *Paxton*, 688 F.2d at 562 (citation omitted); *Rexam Inc. v. United Steel Workers of Am.*, No. 03-2998, 2005 WL 1260914, *6 (D. Minn. May 25, 2005).

[27] *In re Workers' Compensation,* 130 F.R.D. 99, 105 (D. Minn. 1990).

[28] *In re Hartford Sales Practices Litig.*, 192 F.R.D. 592, 603 (D. Minn. 1999); *see also Donaldson v. Pillsbury Co*., 554 F.2d 825, 831 (8th Cir. 1977) (''When the claim arises out of the same legal or remedial theory, the presence of factual variations is normally not sufficient to preclude class action treatment'').

purposes of this settlement, Uponor does not dispute the typicality requirement.

4. Counsel And The Class Representatives Are Adequate.

Under Rule 23(a)(4), the representative parties must fairly and adequately protect the interests of the class. To fulfill this requirement, two factors must be satisfied: (a) "the representatives and their attorneys are able and willing to prosecute the action competently and vigorously", and (b) "each representative's interests are sufficiently similar to those of the class such that it is unlikely that their goals and viewpoints will diverge."[29]

The question of competent and vigorous representation has been met. Counsel for the proposed settlement classes are experienced complex litigation firms with significant resources and a national presence. Proposed Class Counsel have a breadth and depth of experience in certifying, trying, and settling class actions. Many of these firms have experience in similar litigation involving brass insert fittings made by other manufacturers like Zurn Pex and Ipex (Kitec system). Additionally, this and other federal courts have repeatedly found the firms to be adequate class and MDL counsel. The proposed Class Counsel satisfy the adequacy requirement.[30]

The Class Representatives' interests are identical to the proposed Settlement Class Members' interests. The Class Representatives stand in the same factual and legal shoes—and seek the same form of relief—as every other class member. Further, each Class Representative has demonstrated a commitment to prosecuting

[29] *Lockwood*, 162 F.R.D. at 576; *see also DeBoer*, 64 F.3d at 1175 (stating that there was "no indication that [Plaintiff's] interest was antagonistic to the remainder of the class or that the claims were not vigorously pursued").

[30] Plaintiffs request that the Court appoint the following attorneys as Class Counsel: Robert Shelquist of Lockridge Grindal Nauen, PLLP; Shanon J. Carson of Berger & Montague, PC; J. Randall Jones of Kemp, Jones & Coulthard, LLP; and Scott K. Canepa of Canepa, Riedy, Abele & Costello.

this matter by supplying essential factual information concerning legal claims, responding to discovery, and committing to testifying at depositions and trial. The adequacy requirement of Rule 23(a) is satisfied here. For purposes of this settlement Uponor does not dispute the adequacy requirement.

II. The Settlement Merits Preliminary Approval Because it is Presumptively Fair.

Before the proposed settlement binds any class members, the Court must make a preliminary determination of whether the settlement is "fair, reasonable, and adequate."[31] The Court's analysis should begin with the presumption that the settlement is fair and valid. A presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.[32]

Before reaching the proposed settlement, all Class Plaintiffs and Uponor engaged in extensive factual and expert investigation and contentious discovery over the course of several years. Uponor produced more than 500,000 pages of documents. Class Counsel gathered and produced more than 200,000 pages of documents and photographs related to the dezincification phenomenon. Class Counsel participated in home inspections,

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[31] FED. R. CIV. P. 23(e); as described in the MANUAL:

> Fairness calls for a comparative analysis of the treatment of class members vis-à-vis each other and vis-à-vis similar individuals with similar claims who are not in the class. Reasonableness depends on an analysis of the class allegations and claims and the representativeness of the settlement to those claims. Adequate of the settlement involves a comparison of the relief granted relative to what class members might have obtained without using the class action process.

MANUAL § 21.62, at 428.

[32] NEWBERG at § 11.41; *see also Little Rock Sch. Dist. V. Pulaski Cty. Special Sch. Dist. No.1,* 921 F.2d 1371, 1391 (8th Cir. 1990) (recognizing that settlements are presumptively valid); *Ellis v. Naval Air Rework Facility,* 87 F.R.D. 15, 18 (N.D. Cal. 1980) (analyzing above-cited factors); *accord Grierv Chase Manhattan Auto. Fin. Co.,* No. 99-180, 2000 WL 175126, *5 (B.D. Pa. Feb. 16, 2000) (same); MANUAL § 21.662.

harvested and stored large numbers of Uponor Yellow Brass Fittings, metallurgically tested many of those fittings, and retained experts in this action (metallurgists, master plumbers, building code experts, statisticians, and warranty analyst). *See* Shelquist Aff., ¶ 4.

Over the years this litigation has been pending, the parties have engaged in substantial motion practice. The parties have briefed several motions to dismiss, motions to compel discovery, and a handful of other motions. All of these efforts shaped the litigation and helped the parties reach the proposed settlement.

The parties negotiated the settlement in good faith and at arm's length. Class Plaintiffs and Uponor began formal mediation efforts with mediator Ross Hart, Esq. in February 2014 after the Court ruled on Uponor's motion to dismiss. After additional rulings from the court and shortly before the expert disclosure deadlines, the parties requested an extension of the expert disclosure deadlines to focus efforts on further settlement discussions. After several in-person mediations and numerous other meetings and telephone conferences, Class Plaintiffs and Uponor agreed on the initial deal terms which would be incorporated into a Memorandum of Understanding ("MOU") memorializing the agreement. At that point, Class Plaintiffs and Uponor negotiated the amount of attorney's fees. Those efforts culminated in the parties signing the MOU. *See* Shelquist Aff., ¶ 7.

Thereafter, Uponor spent the next several months mediating with the MCEs regarding their participation in and contribution towards the proposed settlement. Uponor, the MCEs, and their respective insurance carriers participated in numerous mediation sessions with Mediator Hart during that time period. Those complex negotiations—involving literally dozens of parties, attorneys, and insurance carriers—yielded an agreement, whereby the MCEs will fund a significant portion of the Settlement, which agreement the parties now reference as the Addendum to the Settlement Agreement. Even after agreeing to all major deal points, Class Counsel,

Uponor, and the MCEs engaged in days of in-person conferences, scores of telephone conferences, and hundreds of emails to complete their negotiations and finalize the settlement documents. *See* Shelquist Aff., ¶¶ 7–9. Mediator Hart remained involved throughout the process to resolve major disputes that arose.

The attorneys involved on all sides of this action have extensive experience with similar plumbing system litigation, including prior cases involving similar systems. Counsel for all parties—who are experienced plaintiffs' class action and defense attorneys—have fully evaluated the evidence and the strengths and weaknesses of the parties' respective positions and have done so in light of their experience in similar litigation. Courts and commentators have noted this factor as support for the fairness and reasonableness of a class action settlement.[33]

In addition, the settlement does not give undue preferential treatment to the Class Representatives or other members of the proposed settlement class. All class members must present claims through the same process and, if approved, those claims will entitle all similarly situated class members to the same benefits. *See generally* Ex. 1.

Finally, the settlement provides for reasonable attorney's fees and costs based on the amount of work performed and the results achieved. Uponor has agreed to pay Class Plaintiffs' attorney's fees and expenses, which Class Counsel will seek by separate motion before the final fairness hearing. Class Counsel, through the final-approval process and their application for Court approval of fees and expenses, will demonstrate the agreed-upon amount is reasonable based on the scope and duration of this litigation, the work already completed, and the work that will be done to finalize this settlement and the claims process.[34]

In light of the significant amount of work done by Class Counsel over the three-

[33] *Ellis*, 87 F.R.D. at 18 (citing cases and authorities).

[34] *In re NVIDIA GPU Litig.*, 539 Fed.Appx. 822, 826 (9th Cir. 2013) (affirming award of fees proportional to time spent in vigorous, lengthy litigation).

plus years this litigation has been pending, the amount of risk and costs associated with continued prosecution of these actions, and the substantial benefits provided to the Settlement Class, the parties' agreement on fees and costs is well within the range of reasonableness. Therefore, on preliminary evaluation, the settlement is presumptively fair and should be preliminarily approved.

III. Other Factors Support the Conclusion that the Settlement is a Fair, Reasonable, and Adequate Resolution of the Settlement Class Members' Claims.

In addition to being presumptively valid, the proposed Settlement meets the Eighth Circuit's additional fairness criteria. These criteria include: (1) the merits of the plaintiff's case, weighed against the terms of the settlement; (2) the defendant's financial condition; (3) the complexity and expense of further litigation; and (4) the amount of opposition to the settlement.[35]

Under the Eighth Circuit's test, "[t]he most important consideration in deciding whether a settlement is fair, reasonable, and adequate is 'the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement."[36] Although the Court must weigh the merits, the Court is not to "go beyond 'an

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[35] *In re Wireless Tel. Fed Cost Recovery Fees Litig.,* 396 F.3d 922, 932-33 (8th Cir. 2005) (citing *Grunin v. Int'l House of Pancakes*, 513 F.2d 114, 124 (8th Cir. 1975)). The factors parallel the nine-factor balancing test described by the Third Circuit, which is embraced by both the annotations to Rule 23(3) and the MANUAL FOR COMPLEX LITIGATION. *See Prudential,* 148 F.3d at 317. Although not controlling in this Circuit, those factors include:

> 1) the complexity, expense, and likely duration of the litigation; 2) the reaction of the class to the settlement; 3) the stage of the proceedings and the amount of discovery completed; 4) the risks of establishing liability; 5) the risks of establishing damages; 6) the risks of maintaining the class action through trial; 7) the ability of the defendants to withstand a greater judgment; 8) the range of reasonableness of the settlement fund in light of the best possible recovery; [and] 9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

Id.

[36] *In re Wireless Tel Fed Cost Recovery Fees Litig.*, 396 F.3d at 933 (citing *Petrovic v. Amoco Oil Co.,* 200 F.3d 1140, 1150 (8th Cir. 1999) (internal quotations omitted)).

amalgam of delicate balancing, gross approximations, and rough justice.'"[37]

The proposed settlement provides class members with substantial relief directly related to the dezincification-related allegations and claims. Uponor will pay 60% of the costs to replace any dezincified Uponor Yellow Brass Fittings causing problems—leaks or substantial water flow restriction—and pay 60% of any resulting property damage up to $60,000.[38] In addition, due to the claim cap provided for in the Settlement Agreement, the parties propose a Distribution Plan to protect the interests of all class members regardless of when they file claims. *See* Ex. 3. Attorney's fees and expenses, cost of claims administration, and the cost of notice will all be borne by Uponor. These costs are being paid separate from, and will not reduce, the class members' recoveries. The settlement, by any measure, provides an excellent result for the class members. Additional litigation and the associated risks would serve no purpose in this case.

All fairness factors weigh heavily in favor of approving the settlement. The settlement provides all class members with immediate and substantial relief and avoids all of the risks, expenses, and resources associated with continuing to litigate this complex class action. Accordingly, the proposed settlement falls well within the range of reasonableness for this type of case.

IV. The Court Should Approve the Content and Distribution of the Proposed Notice to the Settlement Class.

The Settlement Agreement provides that Uponor will pay for the cost of the notice plan. *See* Ex. 1 at ¶ 158. The Uponor Yellow Brass Fittings were sold, distributed, and installed throughout the nation from approximately 1996 to approximately 2011.

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[37] *White*, 836 F. Supp. at 1477 (internal quotations omitted) (citing *Welsch v. Gardebring*, 667 F. Supp. 1284, 1290 (D. Minn. 1987).

[38] In class actions involving allegedly defective products, a settlement that requires replacement of products exhibiting problems and reimbursement for related repairs provides class members with "'fundamentally fair, adequate, and reasonable' relief." *In re NVIDIA*, 539 Fed.Appx. at 824 (quoting *Torrisi v. Tucson Electric Power Co.*, 8 F.3d 1370, 1375 (9th Cir. 1993)).

However, the proposed class includes only structures built on or after January 1, 2002. Uponor and the other settling parties do not have address lists for Settlement Class structures. However, Class Counsel and Uponor have limited address information reflecting potential class members based on the reasonably available information and will provide direct-mail notice to these individuals.

A. The Notice Program Provides the Best Practicable Notice Under the Circumstances.

Before approving a proposed settlement, Rule 23(e)(1) requires courts to "direct notice in a reasonable manner" to the class members. The settlement notice protects class members' due-process rights by providing an opportunity to request exclusion from any subsequent judgment.[39] Constitutional due-process requires courts to provide absent class members with the best notice practicable, reasonably calculated to apprise them of the pendency of the action, and affording them the opportunity to opt out or object.[40] The "best notice practicable" does not mean actual notice to all class members.[41]

However, individual notice must be given when reasonable. Where addresses of known or potential class members are reasonably available, direct-mail notice should be provided.[42] Notice by publication, particularly when done in conjunction with direct-mail notice to reasonably identifiable potential class members, is sufficient to satisfy the absent class members' due-process requirements where names and addresses cannot be identified by reasonable efforts.[43] Due-process is satisfied even if all class members do not receive actual notice, so long as class counsel acted reasonably in selecting means

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[39] *Peters v. Nat'l R.R. Passenger, Corp.*, 966 F.2d 1483, 1486 (D.C. Cir. 1992) (citing *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173–174 (1974)).

[40] *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985).

[41] *In re Domestic Air Transp. Antitrust Litig.*, 141 F.RD. 534, 548-53 (N.D. Ga. 1992); MANUAL § 21.311, at 288.

[42] *See Eisen*, 417 U.S. at 175–176; MANUAL § 21.311, at 395.

[43] *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 317-18 (1950); *Carlough v. Amchem Prods.*, 158 F.RD. 314, 325 (R.D. Pa. Oct. 27, 1993).

likely to inform the persons affected.[44] Whether a notice dissemination plan is reasonable is a function of the notice plan's anticipated results.[45]

The proposed notice plan contains direct-mail, online, and media components in an effort to provide the best notice practicable under the circumstances of this case. Uponor has retained Rust Consulting and Kinsella Media, class notice experts, to develop the notice plan with the following elements:

- Direct-mail notice to the reasonably identifiable potential Settlement Class Members;
- Publication notice via two print sources (*People* and *Parade*) and numerous online sources with millions of estimated impressions;
- Media efforts through a press release and the settlement website; and
- Notice to state and federal officials as required by the Class Action Fairness Act, 28 U.S.C. § 1715(a).

See generally, Exs. 2–3. The parties expect this notice plan to reach at least 75% of potential class members on an average of 3.5 times each. *See* Ex. 2 at 37.

B. The Notice Contains All Essential Settlement Terms and Information.

Adequate class notice should explain that the settlement will bind all class members who do not timely opt out, disclose whether the class has been certified only for settlement purposes, and include the following additional information: (1) the class definition; (2) the class members' options and the applicable deadlines; (3) the essential terms of the proposed settlement including the scope of the release by the class members; (4) any benefits received by the class representatives; (5) any attorney's fees and costs requested; (6) the time and location of the final fairness hearing; (7) the methods for opting out of or objecting to the settlement; (8) the procedures for distributing settlement

[44] *See, e.g., Weigner v. The City of New York*, 852 F.2d 646, 649 (2d Cir. 1988).

[45] *In re Domestic Air Transp.*, 141 F.RD. at 539; *see also Berland v. Mack*, 48 F.RD. 121, 129-30 (S.D. N.Y. 1969).

funds to the class members; (9) the basis for valuing any non-monetary components of class relief; and (10) display the name, address, and phone number of class counsel and explain how to make settlement inquiries.[46]

Here, the proposed Notice contains all the necessary information regarding the settlement, the certification of the class solely for purposes of settlement, class membership, and the class members' options. It informs class members of their right to opt out of or object to the proposed settlement. The notice plan includes mailings to the individuals who opted out of the certified liability class and allows them the opportunity to opt back into the class to receive the settlement benefits.

V. The Court Should Set Dates for the Final Approval Process.

As explained in the proposed Notice, the parties contemplate that after providing the Settlement Class with notice and an opportunity to review the settlement terms, the Court will hold a final approval hearing to make a final determination on whether the settlement is fair, reasonable, and adequate. The parties have requested the following schedule:

Class Notice (Direct Mailing and Publication)	Completed by June 15, 2015
Objection and Opt-Out Deadlines	Received by August 19, 2015
Parties to File Motion for Final Approval and Motion for Attorney's Fees and Costs	August 24, 2015
Final Fairness Hearing	September 9, 2015 at 9:00 a.m. PST

See ECF 220. The parties ask the Court to confirm these dates and deadlines in the preliminary approval order.

VI. The Court Should Stay and Enjoin All Lawsuits that Could Impede Final Approval of the Proposed Settlement.

A federal court has the power to enjoin or stay other court proceedings under the

[46] *See* MANUAL § 21.312, at 400.

All Writs Act (28 U.S.C. §1651) and the Anti-Injunction Act (28 U.S.C. §2283) in order to protect its jurisdiction.[47] Should the Court preliminarily approve the proposed settlement, it should exercise this authority and enter an order staying all existing claims and enjoining all prospective claims (with the exception of certain claims as set forth *infra*) involving Uponor Yellow Brass Fittings to protect the integrity of this Court's jurisdiction to preside over the settlement class and approval process.[48] The Settlement Agreement sets forth that the parties shall request an injunction and stay of Legal Claims (defined at ¶ 19 of the Settlement) against the Settling Defendants related to the Uponor Yellow Brass Fittings, except (a) there shall be no injunction or stay of the lawsuit styled *In Re Wirsbo Non-F1807 Yellow Brass Litigation*, Case No. 08-cv-1223 pending in the United States District Court for the District of Nevada identified at ¶ 55(a) of the Settlement; (b) there shall be no injunction or stay of the California/Arizona Class Action Excluded Uponor Yellow Brass Fittings Claims at identified at ¶ 55(g) and Exhibit 1 of the Settlement; and (c) there shall be no injunction or stay of any matters necessary to implement, advance, or further approval of the Agreement or settlement process, are stayed pending the Final Fairness Hearing and the issuance of a Final Order and Judgment. Without such an order, competing claims could interrupt or even derail this Court's consideration of the proposed settlement to the parties' substantial detriment. The parties recognized these issues and agreed to request such an order related to all Settlement Class Members' claims involving Uponor Yellow Brass Fittings.

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[47] *Hanlon*, 150 F.3d at 1025 (". . . the temporary approval of the nationwide settlement stayed the state class actions"), *Liles v. Del Campo*, 350 F.3d 742, 746 (8th Cir. 2003) (a district court may enjoin proceedings in related litigation pending final approval of a class settlement in order to "preserve the settlement fund, eliminate the risk of inconsistent or varying adjudications that would deplete the fund, to avoid confusion among the class members, and to save scarce juridical resources").

[48] *Hanlon*, 150 F.3d at 1025 (holding Rule 23 "vests a district court with authority and discretion to protect the interests and rights of class members and to ensure its control over the integrity of the settlement approval process." (citing *Gulf Oil Co. v. Bernard*, 452 U.S. 89, 100 (1981))).

Conclusion

All evidence presented to the Court demonstrates the proposed settlement merits preliminary approval. After years of hotly contested litigation and in-depth fact and expert discovery, experienced counsel on all sides negotiated the proposed settlement at arm's length through a professional mediator during repeated in-person mediation sessions and countless other communications spanning nearly a year. The class members receive substantial, tangible benefits and protections, while Uponor and the MCEs obtain releases and resolution of all Uponor Yellow Brass Fittings litigation.

The parties respectfully request that the Court enter the proposed Order to preliminarily approve the proposed settlement, endorse the form and content of the proposed Notice, direct the dissemination of the Notice to the Settlement Class, and confirm the schedule for the final approval process.

DATED this 26th day of May, 2015.

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