

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

**IN RE: PHILIPS RECALLED CPAP,
BI-LEVEL PAP, AND MECHANICAL
VENTILATOR PRODUCTS
LITIGATION**

This Document Relates to:
*All Actions Asserting Economic Loss
Claims*

Master Docket: Misc. No. 21-mc-1230-JFC

MDL No. 3014

**BRIEF IN SUPPORT OF UNOPPOSED MOTION OF PROPOSED SETTLEMENT
CLASS REPRESENTATIVES FOR PRELIMINARY APPROVAL OF CLASS
SETTLEMENT AGREEMENT AND RELEASE OF ECONOMIC LOSS CLAIMS AND
TO DIRECT NOTICE TO THE PROPOSED SETTLEMENT CLASS**

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I. INTRODUCTION

Proposed Settlement Class Representatives seek preliminary approval of the Class Settlement Agreement and Release of Economic Loss Claims against the Philips Defendants and other Released Parties.¹ The Settlement confers substantial benefits upon the proposed Settlement Class,² was negotiated in good faith and at arm's length by experienced counsel, and should be preliminarily approved under Fed. R. Civ. P. 23(e)(1)(B) because the Court will likely be able to find after a Final Fairness Hearing that it is fair, reasonable, and adequate. The Court should also conditionally certify the proposed Settlement Class to which the Parties have stipulated.

The proposed Settlement resolves the Economic Loss Claims of Users and Payers³ with respect to approximately 10.8 million CPAPs, BiPAPs, and ventilator devices with polyester polyurethane ("PE-PUR") foam that were recalled by Philips RS beginning on June 14, 2021 due to potential health risks caused by the degradation of the foam. The Settlement is the result of a year of extensive negotiations that began in September 2022 when the first of four in-person mediation sessions was conducted by the highly experienced, Court-appointed Settlement Mediator, Hon. Diane M. Welsh (Ret.). As explained in her Declaration,⁴ the Parties were very

¹ The "Philips Defendants" are, collectively, Philips RS North America LLC ("Philips RS"), Koninklijke Philips N.V. ("KPNV"), Philips North America LLC, Philips Holding USA, Inc., and Philips RS North America Holding Corporation. The Released Parties also include, among others, Defendants Polymer Technologies, Inc. and Polymer Molded Products LLC.

² Unless otherwise noted, capitalized terms have the same meaning herein that they have in the proposed Class Settlement Agreement and Release of Economic Loss Claims, attached hereto as Ex. "A" ("Settlement Agreement" or "SA"), at §1.

³ "Users" are persons or entities who purchased, leased, rented, or paid for (in whole or part), or were prescribed a Recalled Device. *Id.* §§1.51, 1.59. "Payers" are entities that reimbursed (in whole or part) a User's payment to purchase, lease, rent, or otherwise pay for a Recalled Device, including insurers, self-funded employers, and other third-party payers. *Id.* §§1.34, 1.51.

⁴ The Declaration of Hon. Diane M. Welsh (Ret.) in Support of Proposed Economic Loss Claims Settlement dated July 26, 2023, is attached hereto as Ex. "B" ("Welsh Decl.").

well-informed before entering into the Settlement – they exchanged comprehensive mediation statements that addressed the many complex factual and legal issues relating to the Economic Loss Claims and engaged in targeted discovery of documents and information relevant to the mediation discussions. During this time, the Parties also engaged in extensive briefing on the Defendants’ motions to dismiss, further clarifying some of the key legal issues in this litigation.

Mediation efforts culminated in a signed Term Sheet on May 24, 2023. Thereafter, the Parties engaged in protracted negotiations over the complex terms of the Settlement Agreement and accompanying exhibits, with the Agreement ultimately executed on September 7, 2023. Importantly, the Parties’ negotiations focused solely on relief for the Settlement Class, and they did not negotiate attorneys’ fees during the mediation process or during their subsequent negotiations of the terms of the Settlement Agreement. Welsh Decl. ¶16.

Pursuant to this proposed Settlement, the Philips Defendants will pay a *minimum* of \$479 million into *non-reversionary* Settlement Funds, with a minimum of \$445,000,000 for Device Payment Awards and Device Return Awards to Eligible Users (“User Settlement Fund”) and \$34,000,000 for Payer Awards to Eligible Payers (“Payer Settlement Fund”). As necessary, the Philips Defendants will replenish the User Settlement Fund to pay additional Device Payment and Device Return Awards to Eligible Users that exceed the prefunded baseline thresholds. The Philips Defendants have also agreed to pay up to \$15,000,000 for Device Replacement Awards to Eligible Users.

Eligible Users will receive Device Return Awards of \$100 for each Recalled Device they return to Philips RS, and they will also receive Device Payment Awards ranging from \$55.63 to \$1,552.25 per Recalled Device, depending on the Recalled Device at issue. These cash payments will *not* be reduced, regardless of how many claims are filed. A fixed amount of \$34,000,000 will

be available for Payer Awards to pay Eligible Payers. This amount will not increase or decrease based on the number or amount of Eligible Payers or submissions for Payer Awards. SA §2.10.1.

In addition to the Settlement Funds for Settlement Class Members, the Philips Defendants have agreed to pay *separately* any attorneys' fees and costs that may be awarded by the Court to Settlement Class Counsel, as well as Service Awards of \$5,000 to each of the five Settlement Class Representatives, subject to Court approval. Accordingly, the payments to Settlement Class Counsel and the Settlement Class Representatives will not diminish the recovery of Settlement Class Members. Moreover, the Settlement Fund will not be reduced on account of the cost of Notice and Settlement Administration, as the Philips Defendants have likewise agreed to pay those reasonable expenses in addition to and separately from the payments to Settlement Class Members.

Another important feature of the Settlement is that Settlement Class Members who enroll their Recalled Devices in the Settlement (or register them in a Philips RS recall program) and timely return their Recalled Devices to Philips RS will *automatically* receive Device Payment Awards and Device Return Awards for each returned device without having to complete and submit a claim form. Another signature feature of the Settlement is the "Accelerated Implementation Option" ("AIO"), which enables Eligible Users who have enrolled or registered their Recalled Devices and returned them before the Claims Period Deadline to obtain their Device Payment Award and Device Return Award even *before* any appeals from the Final Judgment have been decided, and *regardless* of the outcome of those appeals.

In sum, the proposed Settlement confers very substantial benefits upon Settlement Class Members, was negotiated in good faith and at arm's length by highly experienced counsel on both sides, and avoids the considerable risks, delays, expense, and burdens of continued class action litigation of Plaintiffs' Economic Loss Claims. Significantly, Plaintiffs' Personal Injury claims and

Medical Monitoring claims are expressly excluded from the scope of this proposed settlement. Settlement Class Counsel respectfully submit that preliminary approval is warranted, and notice should be directed to the proposed Settlement Class.

II. HISTORY OF THE LITIGATION AND PROPOSED CLASS SETTLEMENT

A. The Litigation

On June 14, 2021, Philips RS announced recalls of approximately 10.8 million of its CPAP, BiPAP, and ventilator devices sold, leased, rented or otherwise distributed in the United States. Shortly thereafter, litigation related to the Recalled Devices was commenced against the Philips Defendants in various federal and state courts involving claims for economic loss, medical monitoring and personal injury. On October 8, 2021, the Judicial Panel on Multidistrict Litigation (“JPML”) granted a Motion for Transfer and Coordination or Consolidation Under 28 U.S.C. §1407 thereby establishing this MDL (“the MDL”), assigned the MDL to this Court (“the MDL Court”), and transferred all then-pending federal lawsuits to the MDL for coordinated or consolidated pretrial proceedings. ECF No. 1.

On October 10, 2022, Plaintiffs filed a Consolidated Third Amended Class Action Complaint for Economic Losses on behalf of themselves and all others similarly situated. ECF No. 785 (“Economic Loss Complaint” or “EL Compl.”).⁵ Plaintiffs alleged that the PE-PUR foam in the Recalled Devices is susceptible to hydrolysis, causing it to degrade and expose patients to toxic particles and VOCs, EL Compl. ¶¶214-17, 255-71, some of which are known or suspected carcinogens. *Id.* ¶¶272-88. As a result, Plaintiffs allege, among other things, the Recalled Devices were defective and worthless at the time of purchase. *Id.* ¶254. Plaintiffs allege that if Settlement

⁵ In subsequent weeks, Plaintiffs also filed a Consolidated Second Amended Class Action Complaint for Medical Monitoring (ECF No. 815) and an Amended Master Long Form Complaint for Personal Injuries and Damages and an accompanying Short Form Complaint (ECF No. 834). Medical Monitoring and Personal Injury Claims are excluded from this Settlement and preserved.

Class Members had been aware that the Recalled Devices were defective and worthless, they would not have spent money on them. *See, e.g., id.* ¶¶20, 22-150.

B. Motions to Dismiss

Five separate motions to dismiss were filed attacking Plaintiffs' Economic Loss Complaint. ECF Nos. 902, 911, 913, 915, 918. In particular, the Philips Defendants challenged Plaintiffs' allegations that they suffered economic harm because of the purchase or acquisition of Recalled Devices, arguing that Plaintiffs lacked standing and had failed to state a claim upon which relief may be granted. *See* ECF No. 912. The Philips Defendants, other than Philips RS, argued that Plaintiffs had not alleged specific conduct on the part of those entities and had not alleged sufficient facts to establish an alter ego or agency theory of liability. ECF No. 919. KPNV argued that the Court lacked personal jurisdiction on all claims other than in Pennsylvania on the negligent recall claim. ECF No. 914. Plaintiffs filed briefs in opposition to these motions, ECF Nos. 1527, 1531, 1566, 1743, and 1745, and the motions are still pending.

C. Discovery

Discovery began shortly after the litigation commenced. Plaintiffs served discovery requests in early March of 2022. The Rule 26(f) meeting was held on or about April 5, 2022, and in the months following, the Parties negotiated an ESI protocol, a Protective Order, search terms, and Plaintiffs otherwise continued to serve discovery. Beginning as early as April of 2022, the Philips Defendants began to produce documents, and periodic document productions have continued since that time.

To date, Plaintiffs have reviewed hundreds of thousands of documents, including emails, Microsoft Teams chats, and mobile text messages produced by the Philips Defendants and third parties, that are relevant to issues such as liability, organizational structure, insurance, and sales

and marketing. In addition, using various e-discovery tools, Plaintiffs have been able to prioritize review of the most highly relevant documents. Plaintiffs also engaged in discovery to develop a factual record related to KPNV's motion to dismiss for lack of personal jurisdiction and with respect to the liability of the various Philips Defendants. Finally, Plaintiffs engaged experts during the discovery process, including experts on class damages, providing further insight into the strengths and weaknesses of the Economic Loss Claims. Some of the experts provided substantial assistance to Settlement Class Counsel in connection with their Science Day presentation to the Court on September 1, 2022.

D. Mediation and Settlement

The proposed Settlement was the product of hard-fought, arm's-length negotiations and a mediation process that was ordered by the Court. On May 26, 2022, the Court appointed the Honorable Diane M. Welsh (Ret.) to serve as a Settlement Mediator in this litigation. ECF No. 588 (Pretrial Order No. 16). Shortly after her appointment, on June 24, 2022, Judge Welsh held a Zoom meeting with counsel for the Parties and subsequently corresponded with counsel to discuss the general issues in the case and the logistics for the mediation. *See* Welsh Decl. ¶6. Over the course of the next 13 months, Judge Welsh presided over an intensive mediation and settlement negotiation process that resulted in the proposed Settlement of the Economic Loss Claims. *Id.* ¶¶6-20.

Beginning before the first mediation session, the Parties exchanged detailed mediation statements that addressed the factual issues pertaining to the Economic Loss Claims and the key legal issues relating to those claims as well as initial settlement proposals. *Id.* ¶7. On September 15, 2022, under the supervision of Judge Welsh, the Parties held their first in-person mediation session, which was attended by Settlement Class Counsel, outside counsel for the Philips

Defendants, and senior representatives of the Philips Defendants with settlement authority. *Id.* ¶8. The mediation session consisted of joint sessions with all participants, and breakout sessions with each side individually where counsel for both sides made multiple presentations regarding various factual and legal issues. *Id.*

During the first mediation session, the Parties discussed how to prioritize targeted discovery to facilitate and inform the mediation discussions. *Id.* ¶9. As a result, certain document discovery, specific interrogatories, and other discovery requests were prioritized. *Id.* Responses to that discovery enabled the Parties to become fully informed of the relevant facts and allowed them to carefully evaluate the strengths and weaknesses of their respective positions. *Id.*

On November 15, 2022, the Parties held a second in-person mediation session where they continued to discuss the structure of a proposed settlement and a draft Settlement Term Sheet. *Id.* ¶11. During this time period, the Parties continued to exchange information and documents. Under the continued supervision and guidance of Judge Welsh, the Parties held two more in-person mediation sessions on February 23 and 24, 2023. *Id.* ¶12.

In addition to the in-person mediation sessions, the Parties negotiated extensively over the phone, via Zoom, by email, and in person, and involved Judge Welsh from time-to-time to help resolve disputes as they arose. *Id.* ¶¶13-15. Over the next three and a half months, the Parties engaged in extensive negotiations over the terms of the Settlement Agreement and the many exhibits thereto, exchanging numerous drafts, engaging in extensive back and forth, and calling upon Judge Welsh to resolve certain disputes from time to time. *Id.* ¶15. Ultimately, the Parties executed the Settlement Agreement on September 7, 2023.

Throughout the Settlement negotiation process, the Parties refrained from negotiating attorneys' fees and costs for Settlement Class Counsel. *Id.* ¶16. Settlement Class Counsel

aggressively sought meaningful and substantial benefits for the Settlement Class while recognizing both the risks that would be faced if litigation of the Economic Loss Claims proceeded and the substantial costs and delays in pursuing the matter through fact and expert discovery, class certification, summary judgment, trial, and appeal. *Id.* ¶18. For their part, counsel for the Philips Defendants pushed back on many of the demands advanced by Settlement Class Counsel and articulated the obstacles Plaintiffs and the putative class would face in litigation, while at the same time recognizing the risks, expenses, and burdens of such litigation for their own clients. *Id.* ¶19. Simply put, the proposed Settlement is one that is the result of good faith, fair, thorough, and fully-informed arm's-length negotiations. *Id.* ¶¶19-20.

III. NOTABLE SETTLEMENT TERMS

A. Proposed Settlement Class

The proposed Settlement Class consists of:

Plaintiffs and all other individuals or entities in the United States [including its Territories (American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands), and the District of Columbia], including individuals who are United States citizens, residents, United States military, diplomatic personnel and employees living or stationed overseas, who or which, prior to the announcement of the Recalls, either (a) purchased, leased, rented, or paid for (in whole or part), or were prescribed a Recalled Device (“Users”), or (b) reimbursed (in whole or part) a User’s payment to purchase, lease, rent, or otherwise pay for a Recalled Device, including insurers, self-funded employers, and other third-party payers (“Payers”). Individuals or entities whose payment obligations with respect to a particular Recalled Device preceded the announcement of the relevant Recall are part of the Settlement Class even if certain of their payment obligations post-dated the Recall (*e.g.*, certain renters and lessees).

EXCLUDED from the Settlement Class are: (a) Defendants and their officers, directors, and employees; (b) the MDL Court, Settlement Mediator, Claims Appeals Special Master, and Special Masters assigned to the MDL; (c) individuals who have already released Released Claims against one or more of the Defendants pursuant to individual settlements or other resolutions; (d) DMEs [Durable Medical Equipment providers]; (e) the federal government and any federal government payers, including the United States Department of Health and Human Services

Centers for Medicare & Medicaid Services, the Department of Defense, and the U.S. Department of Veterans Affairs; and (f) Settlement Class Counsel.

Settlement Agreement §1.51. *See also id.* §§ 1.15, 1.58.

B. Payments Available to Settlement Class Members

The Settlement will provide four categories of substantial monetary payments to Settlement Class Members: (1) compensation to Eligible Users for payments made to purchase, rent, or lease a Recalled Device (“Device Payment Awards”); (2) compensation to Eligible Users for returning a Recalled Device to Philips RS (“Device Return Awards”); (3) compensation to Eligible Users for money spent out-of-pocket to replace their Recalled Devices between the June 14, 2021 announcement of the Recall and the September 7, 2023 Execution Date of the Settlement (“Device Replacement Awards”); and (4) compensation to Eligible Payers for reimbursing (in whole or in part) Users for payments made to purchase, lease, rent or otherwise pay for a Recalled Device (“Payer Awards”). *Id.* §§3.2-3.4, 3.6. In addition, Users may be eligible for extended warranties on certain Remanufactured Devices (*i.e.*, the repaired, refurbished or new devices that Philips Respironics provided to Users under its recall programs with the FDA). *Id.* §3.5.

1. Device Payment Awards

All Users are eligible for Device Payment Awards if they purchased, leased, rented, or paid for (in whole or part) a Recalled Device and they did not receive their full payment back pursuant to a warranty before the Recall was announced. *Id.* §§3.2.1, 3.2.6, 6.4. The amounts of these Awards for Users vary for each type of Recalled Device. *Id.* §3.2. Significantly, these Device Payment Award amounts are fixed, and will not be reduced, regardless of how many claims are filed. *Id.* §2.7.1. In the event multiple Users make valid Device Payment Award claims with respect to the same Recalled Device (*e.g.*, a rented Recalled Device), the Device Payment Award for that Recalled Device will be allocated on a *pro rata* basis in accordance with each User’s total

payments for that device.⁶ *Id.* §3.2.5.

2. Device Return Awards

In addition to Device Payment Awards, the proposed Settlement provides for a Device Return Award of \$100 per Recalled Device for all Eligible Users who have either (1) already returned a Recalled Device to Philips RS pursuant to a Recall Program or (2) return a Recalled Device to Philips RS by the Claims Period Deadline pursuant to either the terms of the Settlement or a Recall Program.⁷ *Id.* §3.3. Only one Device Return Award is available for each Recalled Device. *Id.* As is the case with Device Payment Awards, the \$100 payment for Device Return Awards is fixed and will not be reduced, regardless of how many claims are filed. *Id.* §2.7.1. Receipt of a Device Return Award for a particular Recalled Device does not affect a User's eligibility to also receive a Device Payment Award. *Id.* §3.3.6. Users who receive a Device Return Award may also receive a Device Replacement Award under certain conditions. *Id.* §§3.4.6, 3.4.7.

3. Device Replacement Awards

The proposed Settlement also provides for Device Replacement Awards to Eligible Users. Users who paid out of pocket for a comparable Replacement Device on or after the Recall was announced on June 14, 2021 and prior to the September 7, 2023 Execution Date of the Settlement without having received, or prior to receiving, a Remanufactured Device from the Philips RS Recall Program are eligible for a Device Replacement Award. *Id.* §3.4. The amount of the Device Replacement Award for a particular User will be based on the amount actually paid by the User⁸

⁶ Receipt of a Device Payment Award does not affect a User's eligibility, if applicable, for a Device Return Award and/or a Device Replacement Award with respect to that same device. SA §3.2.7.

⁷ Philips RS agrees to make prepaid labels available on the Settlement website so as to allow Users to return their Registered or Enrolled Recalled Devices to Philips RS. *Id.* §3.3.4.

⁸ The amounts of a Device Replacement Award will not be based on any payment made by insurance or another third-party payer on behalf of or for the benefit of the User. *Id.* §1.46.

to purchase, lease, or rent the Replacement Device; the value of the replaced Philips RS Recalled Device; and the total valid claims for Replacement Awards that are submitted, subject to the funding limitations for this Award. *Id.* §3.4.1. Only one Device Replacement Award is available per Recalled Device. *Id.* §3.4.3.

4. Payer Awards

The proposed Settlement also provides for Payer Awards to Eligible Payers. Payer Awards will be determined based on each Eligible Payer's relative market share (aggregated among all Eligible Payers) based on the number of insured lives covered by the Eligible Payer in the United States and the dollar amount of direct premiums written by the Eligible Payer in the United States for Calendar Years 2021 and 2022. *Id.* §6.7, *et seq.* The Settlement Administrator will determine each Eligible Payer's Market Share Percentage based on industry data and the information provided in the Payer Declarations and Claim Forms. *Id.*

C. Funding of Settlement Payments

Pursuant to the terms of the Settlement Agreement, Settlement Funds will be established with payments made by the Philips Defendants. There will be a User Settlement Fund and a Payer Settlement Fund. *Id.* §1.54. Subject to Court approval, the Parties agree that Huntington Bank should serve as Settlement Fund Escrow Agent. *Id.* §1.55. Each Settlement Fund will be established and initially funded through deposits by, or on behalf of, the Philips Defendants, no later than 14 days after execution of the Settlement Agreement, of the Initial Payment for Class Notice and Settlement Administration, in the amounts of \$7,350,000 into the User Settlement Fund and \$100,000 into the Payer Settlement Fund. *Id.* §§2.3.2, 2.4.1. The Philips Defendants will make additional payments for Settlement Administration separate and apart from their payments for Settlement Awards. *Id.* §§2.4.2, 6.1.1.

Payments for Device Payment Awards, Device Return Awards, and Payer Awards will be a minimum of \$479 million, with no maximum for Device Payment Awards and Device Return Awards, and there will be no reversion of the prefunded payments to the Philips Defendants. *Id.* §§2.5.1, 2.7.1., 2.10.1., 2.12. In addition to the prefunded amounts, the Philips Defendants will pay up to \$15,000,000 for Device Replacement Awards. *Id.* §§2.8.1., 6.6.2.4. These funds will be paid as follows:

1. Device Payment Awards

The Initial Device Payment Amount will be calculated based on total Device Payment Awards for all Registered Recalled Devices as of the Execution Date plus an amount equal to the total Device Payment Awards for 5% of the remaining Recalled Devices that have not been registered by that time. *Id.* §2.5.1. The Initial Device Payment Amount will be paid in two installments by wire transfer into the User Settlement Fund: (1) 25% of the Initial Device Payment Amount (“first installment”) will be paid no later than 14 days following MDL Court Final Approval; and (2) 75% of the Initial Device Payment Amount (“second installment”) will be paid no later than 14 days following the Effective Date.⁹ *Id.* In the event the first installment of the Initial Device Payment Amount is insufficient to pay Device Payment Awards to Users electing the AIO, discussed below, the Philips Defendants shall deposit additional funds from the second installment to make sure the User Settlement Fund is large enough to make those payments. *Id.*

The combined first and second installment payments for the Initial Device Payment Amount will be no less than \$309 million. *Id.* The Settlement Agreement provides for additional

⁹ “Effective Date” is the date when the Settlement becomes Final (*i.e.*, after the MDL Court enters the Final Order and Judgment, and all appeals have been exhausted or resolved in a manner that upholds the Final Order and Judgment). SA §1.17.

payments to be made by the Philips Defendants, on a monthly basis, if the Initial Device Payment Amount and the Initial Device Return Amount are not sufficient to make all Device Payment Awards and Device Return Awards required by the Settlement. *Id.* §2.7, *et seq.*

2. Device Return Awards

The Initial Device Return Amount will be an amount equal to \$100 for each and every Registered and Enrolled Recalled Device returned by Users to Philips RS pursuant to the Recall Programs or the Settlement as of the date of MDL Court Final Approval.¹⁰ *Id.* §2.6.1. The Initial Device Return Amount will be paid in two installments by wire transfer into the User Settlement Fund: (1) 25% of the Initial Device Return Amount (“first installment”) will be paid no later than 14 days following MDL Court Final Approval; and (2) 75% of the Initial Device Return Amount (“second installment”) will be paid no later than 14 days following the Effective Date. *Id.* In the event the first installment of the Initial Device Return Amount is insufficient to pay Device Return Awards to Users electing the AIO, discussed below, the Philips Defendants shall deposit additional funds from the second installment to make sure the User Settlement Fund is large enough to make those payments. *Id.*

The combined first and second installment payments for the Initial Device Return Amount will be not less than \$136 million. *Id.*

3. Device Replacement Awards

The Philips Defendants will also pay up to \$10,000,000 (the “Device Replacement Amount”) by wire transfer into the User Settlement Fund no later than 14 days after the Settlement Administrator determines the total number and amount of valid claims for Device Replacement

¹⁰ Users who still possess Trilogy 100/200 Recalled Devices and wish to return them cannot “enroll” their devices in the Settlement. They need to register their Trilogy 100/200 with Philips RS pursuant to a Recall Program and follow the retrieval process under that program. *Id.* §3.3.4.

Awards. *Id.* §2.8.1. The determination of the Device Replacement Amount will not occur until after the Claims Period Deadline. *Id.* If the total amount needed to satisfy claims for Device Replacement Awards exceeds \$10,000,000, the balance of any funds remaining in the User Settlement Fund after payment of all Device Payment Awards and Device Return Awards (“Balance of Funds in User Settlement Fund”) will be used to make Device Replacement Awards. *Id.* §6.6.2.3. To the extent that the Device Replacement Amount plus the Balance of Funds in User Settlement Fund are insufficient to pay at least 50% of the total amount of claims for Device Replacement Awards, the Philips Defendants will pay an additional amount into the User Settlement Fund sufficient to pay 50% of the total amount of claims for Device Replacement Awards, up to a maximum of an additional \$5,000,000. *Id.* §6.6.2.4.

4. Payer Awards

The Philips Defendants will pay the Payer Amount of \$34,000,000 into the Payer Settlement Fund no later than 14 days following the Effective Date. *Id.* §2.10.1. The Payer Amount, plus accrued interest in the Payer Settlement Fund, will be used to pay Payer Awards (*id.* §2.11) and is non-reversionary (*id.* §2.12) and fixed, meaning it will not increase or decrease based upon the number of claims that are made by Payers (*id.* §2.10.1). In light of the calculations and allocations that must be made after all Payer claims are submitted, Payer Awards will not be paid until after the Claims Period Deadline or the Effective Date, whichever is later. *Id.* §6.7.2.

D. Additional Benefits

1. Accelerated Implementation Option (“AIO”)

A valuable aspect of the Settlement is that Users who return their Recalled Device before the Effective Date of the Settlement (including those who have already returned their Recalled Devices) may receive their Device Payment Award and Device Return Award on an accelerated basis before any appeals have been decided if they meet certain conditions set forth in Section

6.3.2 of the Settlement Agreement.¹¹ These payments will be made within 60 days after the later of (1) MDL Court Final Approval, (2) Philips RS's receipt of the Recalled Device, or (3) the completion of each of the steps identified in Section 6.3.2. *Id.* §§6.3.3., *et seq.*

Payments made under the AIO are non-reversionary, meaning that Users who elect AIO get their payments without having to wait for the appeals process to run its course, and get to keep the money even if the Settlement is not upheld on appeal. *Id.* §2.12.

2. Extended Warranties

Philips RS agrees to provide extended warranties to Users who receive (or have received) a Remanufactured Device from Philips RS as part of a Recall Program. *Id.* §3.5, *et seq.* Philips RS agrees to provide the following extended warranties: (1) two years for materials and workmanship for Remanufactured Devices that have a different Serial Number from the associated Recalled Device; and (2) two years for materials and workmanship on the repair work that was performed by Philips RS pursuant to the Recall Programs (not the entire Remanufactured Device) on Remanufactured Devices that have the same Serial Number as the associated Recalled Device (*i.e.*, the Remanufactured Device and the Recalled Device are the same device by Serial Number). *Id.*

E. Settlement Administration and Claims Submissions

1. Settlement Administration

The Philips Defendants are responsible for paying all reasonable costs of Notice and Settlement Administration. *Id.* §6.1.1. These payments are in addition to the Settlement Fund payments being made to Settlement Class Members, and thus will not reduce the amounts to be

¹¹ To participate in AIO, Users must complete an individual release and an individual assignment of their claims against manufacturers of ozone cleaning products to Philips RS. *Id.* §§6.3.2.1, 6.3.2.2. This is required because they will be receiving Settlement benefits before the class-wide release and class-wide assignment have gone into effect (*i.e.*, AIO benefits will be received before the period for appealing the Final Order and Judgment has expired). *Id.* §6.3.3. The form of each document is attached to the Settlement Agreement as Exhibit 6.

received by Class Members. Subject to Court approval, the Parties agree that Angeion Group, LLC (“Angeion”) should serve as the Settlement Administrator. *Id.* §1.50.

The Settlement Administrator will be responsible for disseminating notice, calculating payments (and withholdings) based on the plan of allocation set forth in the Settlement Agreement, determining Additional Amounts that the Philips Defendants need to pay into the Settlement Fund for Device Payment Awards and Device Return Awards, creating a Settlement website, reviewing the validity of claim submissions and distributing funds to Eligible Settlement Class Members, withholding and paying applicable taxes, and other duties as provided in any agreement entered into between the Parties and the Settlement Administrator. *See, e.g., id.* §6.1.2. The Settlement Administrator may make necessary adjustments to claims and notice processes as circumstances may dictate, subject to the approval of Settlement Class Counsel and the Philips Defendants. *Id.* §6.1.3. The Settlement Administrator will also receive and process objections and opt-out requests by Settlement Class Members, which must be submitted no later than 60 days after the dissemination of Notice to Settlement Class Members. *Id.* §§10.1-10.2.

2. Claims Submissions

The Claims Period will begin when the Settlement Administrator disseminates Notice to the Settlement Class (*i.e.*, 60 days following entry of this Court’s Preliminary Approval Order) and conclude on the Claims Period Deadline, which is 120 days after the date of the Final Fairness Hearing. *Id.* §§1.7, 6.2.1, 9.1.2.

Automatic Payments for Users who return their Registered or Enrolled Recalled Device.

To date, over 3 million Users have registered for the Philips RS Recall Programs, and over 1.3 million of the Users have returned their Registered Recalled Device to Philips RS pursuant to a Recall Program. All Users who have already returned or subsequently return their Registered or

Enrolled Recalled Device to Philips RS by the Claims Period Deadline will be paid the Device Payment Award associated with the returned Recalled Device and their \$100 Device Return Award, *without the need to submit a claim form*, within 60 days after the later of (1) the Effective Date or (2) receipt of the Recalled Device by Philips RS. *Id.* §6.4.1.1, 6.4.2.1.

Streamlined Online Confirmation Process for Users Who Previously Registered for a Recall Program but Who Do Not or Cannot Return their Registered Recalled Device. To receive a Device Payment Award, Users who registered for a Recall Program prior to the Settlement's Execution Date but do not or cannot return their Registered Recalled Device to Philips RS must, prior to the Claims Period Deadline, complete a simple process confirming their contact information and the Serial Number and Registration Number of their Recalled Device (if available), which may be done online (or, the User may complete a written confirmation form that is attached to the Settlement Agreement as Exhibit 7). *Id.* §6.4.2.2. Such Users will not be required to submit *any* supporting documentation as part of this process, and payment of their Device Payment Award will be made within 60 days after the latter of (1) the Effective Date, or (2) completion of the confirmation process. *Id.*

Claim Submission Process for all other Settlement Class Members (Users and Payers). To receive a Device Payment Award, all other Users must submit a completed Claim Form (attached to the Settlement Agreement as Exhibit 4) by the Claims Period Deadline and provide sufficient documentation that the User purchased, leased, rented, or otherwise paid for one or more Recalled Devices.¹² *Id.* §6.4.3.1. To receive a Payer Award, Payers must submit a Payer

¹² With respect to rental Recalled Devices, the Device Payment Award for that Device will be allocated by the Settlement Administrator (after the Claims Period Deadline) among Eligible Settlement Class Members on a *pro rata* basis, taking into consideration the number of Eligible Settlement Class Members for the rental Recalled Device and the respective portion of their payments for that rental Recalled Device. *Id.* §6.4.4.1. In light of the allocation that must be made

Footnote continued on next page

Declaration and Claim Form supported by sufficient information and documentation as to the number of insured lives in the United States covered by the Payer and the dollar amount of direct premiums written by the Payer in the United States in the Calendar Years 2021 and 2022 (attached to the Settlement Agreement as Exhibit 8) by the Claims Period Deadline. *Id.* §6.7.1. Users and Payers can make their submissions online via a custom portal developed by the Settlement Administrator, or by mailing paper claim forms and supporting documentation to the Settlement Administrator. All valid claims will be paid to Users after the Effective Date within 60 days after they are processed and approved by the Settlement Administrator. *Id.* §6.4.3.2. Valid claims for Eligible Payers will be paid within 180 days after the Claims Period Deadline or the Effective Date, whichever is later, following processing and approval by the Settlement Administrator and an opportunity for appeals of Payer Claims Determinations. *Id.* §§6.7.2, *et seq.*, 6.8.1, 6.8.2.

Users Seeking Device Replacement Awards. Device Replacement Awards are intended to compensate Eligible Users who, on or after June 14, 2021 and prior to the Execution Date, paid out of pocket (in whole or in part) for a Replacement Device without having received or prior to receiving from a Recall Program a Remanufactured Device associated with the User's Recalled Device. *Id.* §3.4. Users seeking a Device Replacement Award must submit a completed Device Replacement Award Claim Form (in the form attached to the Settlement Agreement as Exhibit 5), before the Claims Period Deadline, supported by the required documentation. *Id.* §6.6.1. After the Claims Period Deadline, the Settlement Administrator will calculate the total valid claims for Device Replacement Awards submitted during the Claims Period, which will trigger the payment

with respect to rental Recalled Devices, no Device Payment Award shall be made with respect to rental Recalled Devices until after the Effective Date. *Id.* §6.4.4.2.

obligations by the Philips Defendants as set forth above.¹³ *Id.* §6.6.2, *et seq.* Eligible Users will be paid Device Replacement Awards within 60 days after the Settlement Administrator performs that calculation. *Id.* §6.6.3.

Claims Appeals. Any Settlement Class Member whose claim is denied (in whole or in part) by the Settlement Administrator for any reason shall be provided with a written notice explaining the deficiency and a period of 30 days to resubmit the claim to attempt to cure the deficiency. *Id.* §6.8.1. The Settlement Agreement also provides a process by which any Settlement Class Member or Defendant who believes that a claim for a payment under the Settlement has not been paid or processed in accordance with the Agreement or with any applicable orders of the MDL Court, can appeal Claims Determinations by the Settlement Administrator to the Claims Appeals Special Master. *Id.* §6.8, *et seq.* Subject to Court approval, the Parties propose the Honorable Thomas J. Rueter (Ret.) as the Claims Appeals Special Master.¹⁴ *Id.* §1.5. The decision of the Claims Appeals Special Master with respect to such appeals shall be final and binding on the Class Member or Defendant without further appeal. *Id.* §6.8.5.

F. Releases

By virtue of the Settlement, the Parties agree to mutual releases. *Id.* §4, *et seq.* Settlement Class Members agree to release their Economic Loss Claims against the Released Parties. *Id.* §§1.16, 1.42, 1.43, 4.6. The Release does not include claims against Defendants or other Released Parties for Medical Monitoring and Personal Injury Claims. *Id.* §§4.1, 4.2. Also, Settlement Class Members do not release their Economic Loss Claims against Ozone Cleaning Companies. *Id.* §4.3.

¹³ Depending upon the amount of claims submitted for Device Replacement Awards and the amount of funds available to pay them from the User Settlement Fund, the Philips Defendants have agreed to pay up to \$15,000,000 to satisfy these claims. *Id.* §6.6.3.

¹⁴ Judge Rueter is a retired U.S. Magistrate Judge of the U.S. District Court for the Eastern District of Pennsylvania and is currently affiliated with JAMS in their Philadelphia office.

Instead, Settlement Class Members assign those claims to Philips RS. *Id.* §§4.3, 5.1.

G. Attorneys' Fees and Expenses

The Philips Defendants have agreed to pay separately the amount of attorneys' fees and costs awarded to Settlement Class Counsel in any final Order of the MDL Court in addition to the compensation provided to Settlement Class Members under this Settlement. *Id.* §18.1. Accordingly, any award of attorneys' fees and costs shall not diminish the recovery of Settlement Class Members. To date, the Parties have not reached agreement on the amount of attorneys' fees and costs to be paid to Settlement Class Counsel. Attorneys' fees and costs are discussed in detail in Section IV.B.3.c., *infra*.¹⁵

H. The Notice Plan

The proposed Notice is described in the Settlement, and the Notice Plan and Forms of Notice are attached to the Settlement Agreement as Exhibits 2 and 3(a)-3(h). *See also* Declaration of Steven Weisbrot, Esq. of Angeion Group, LLC dated September 5, 2023, attached hereto as Ex. "C" ("Angeion Decl."), at ¶¶17, 20-58. Details of the Notice are set forth in Section IV.D, *infra*.

IV. ARGUMENT

A. Legal Standards For Settlement Approval

Approval of a class action settlement involves a two-step process. First, at the preliminary approval stage, the Court decides whether it will be likely to ultimately approve the settlement and certify the settlement class, thus warranting the dissemination of notice to the proposed settlement class. *See* Fed. R. Civ. P. 23(e)(1)(B); *Cole's Wexford Hotel, Inc. v. UPMC & Highmark Inc.*

¹⁵ Settlement Class Counsel will recommend, subject to approval by the Court, that each Settlement Class Representative receive a Service Award in the amount of \$5,000 in recognition for their service as a Settlement Class Representative, and the Philips Defendants agree not to oppose such request. SA §18.2. If approved, these payments will be in addition to the compensation provided to Settlement Class Members under this Settlement and will not diminish the recovery of Settlement Class Members under the Settlement. *Id.*

(“*Cole’s Wexford I*”), 2016 WL 6919773, at *1-2 (W.D. Pa. Apr. 6, 2016) (Conti, J.) (finding that proposed settlement “falls within the range of reasonableness meriting possible final approval” and directing the dissemination of notice). Second, after notice has been disseminated and class members have had the opportunity to object to or opt out of the settlement, the Court conducts a final fairness hearing and decides whether to approve the settlement. Fed. R. Civ. P. 23(e)(2); *Hickton v. Enterprise Rent-A-Car Company*, 2013 WL 12137092, at *3 (W.D. Pa. Apr. 29, 2013) (Conti, J.) (same); *see also Calhoun v. Invention Submission Corp.*, 2023 WL 2411354, at *5-6 (W.D. Pa. Mar. 8, 2023) (describing two-step process).

The Third Circuit has a “strong judicial policy in favor of class action settlement.” *Ehrheart v. Verizon Wireless*, 609 F.3d 590, 595 (3d Cir. 2010). When reviewing a settlement, the Third Circuit has repeatedly stressed that “we favor the parties reaching an amicable agreement and avoiding protracted litigation. We do not wish to intrude overly on the parties’ hard-fought bargain.” *In re: Google Inc. Cookie Placement Consumer Priv. Litig.*, 934 F.3d 316, 326 (3d Cir. 2019) (“*In re: Google Inc.*”) (internal citation omitted). “Settlement agreements are to be encouraged because they promote the amicable resolution of disputes and lighten the increasing load of litigation faced by the federal courts.” *Ehrheart*, 609 F.3d at 595. Thus, “the settlement of class actions is preferred to protracted litigation: ‘there is an overriding public interest in settling class action litigation, and it should therefore be encouraged.’” *Murphy v. Le Sportsac, Inc.*, 2023 WL 375903, at *9 (W.D. Pa. Jan. 24, 2023) (quoting *In re Warfarin Sodium Antitrust Litig.* (“*In re Warfarin*”), 391 F.3d 516, 535 (3d Cir. 2004)).

To grant preliminary approval and disseminate notice of the proposed settlement to the Settlement Class, a court must find that it “will *likely* be able to: (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal.” Fed. R. Civ. P.

23(e)(1)(B) (emphasis added). Courts within this District recognize that “[a]t the preliminary approval stage, the bar to meet the fair, reasonable and adequate standard is lowered,” and a court’s focus should be on whether the proposed settlement “discloses grounds to doubt its fairness or other obvious deficiencies such as unduly preferential treatment of class representatives or segments of the class, or excessive compensation of attorneys, and whether it appears to fall within the range of possible approval.” *Torres v. BrandSafway Indus. LLC*, 2023 WL 346667, at *2 (W.D. Pa. Jan. 20, 2023) (internal quotation marks and citation omitted); *see also McRobie v. Credit Prot. Assoc.*, 2020 WL 6822970, at *3 (E.D. Pa. Nov. 20, 2020) (“Preliminary approval of a proposed class action settlement is not binding on the Court and is generally granted unless a proposed settlement is obviously deficient.”).

Under Rule 23(e)(2), in determining whether it will likely be able to find that a proposed settlement is “fair, reasonable, and adequate,” a court should consider whether:

(A) the class representatives and class counsel have adequately represented the class;

(B) the proposal was negotiated at arm’s length;

(C) the relief provided for the class is adequate, taking into account:

(i) the costs, risks, and delay of trial and appeal;

(ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;

(iii) the terms of any proposed award of attorney’s fees, including timing of payment; and

(iv) any agreement required to be identified under Rule 23(e)(3); and

(D) the proposal treats class members equitably relative to each other.

The 2018 Advisory Committee Notes to Subdivision 23(e)(2) explain that the “core concerns” listed in the text of Rule 23(e)(2) and set forth above do not “displace” a court’s consideration of

the other factors that have been adopted by each Circuit Court to assess the fairness of a class settlement.

In the Third Circuit, courts have traditionally considered nine factors when determining the fairness of a proposed settlement, as set forth in *Girsh v. Jepsen*, 521 F.2d 153, 157 (3d Cir. 1975). These *Girsh* factors significantly overlap with the Rule 23(e)(2) factors: “(1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; [and] (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.”¹⁶ *Id.* (internal quotation marks and citation omitted); *see also In re: Google Inc.*, 934 F.3d at 322 n.2 (quoting *Girsh* factors); *In re Prudential Ins. Co. Am. Sales Practice Litig.*, 148 F.3d 283, 323 (3d Cir. 1998), *cert. denied*, 525 U.S. 1114 (1999) (listing additional factors that court may apply if relevant).

In addition, the Third Circuit has stated clearly that “[w]e apply an initial presumption of fairness in reviewing a class settlement when: (1) the negotiations occurred at arm’s length; (2) there was sufficient discovery; (3) the proponents of the settlement are experienced in similar litigation; and (4) only a small fraction of the class objected.” *In re Nat’l Football League Players Concussion Injury Litig.*, 821 F.3d 410, 436 (3d Cir.), *cert. denied*, 137 S. Ct. 591 (2016) (“*In re*

¹⁶ Courts in this District have differed as to whether the *Girsh* factors should be considered at both the preliminary and final approval stages, or just at final approval. *Compare Murphy v. Hundreds is Huge, Inc.*, 2022 WL 2110202 at *8-13 (W.D. Pa. June 10, 2022) (applying *Girsh* at preliminary approval stage) with *Copley v. Evolution Well Servs. Operating LLC*, 2023 WL 1878581, at *2, n.1 (W.D. Pa. Feb. 10, 2023) (stating that *Girsh* applies only at final approval stage).

NFL II) (internal quotation marks and citation omitted); *see also In re: Google Inc.*, 934 F.3d at 326; *In re Railway Indus. Empl. No-Poach Antitrust Litig.*, 2020 WL 13852931, at *2 (W.D. Pa. Aug. 26, 2020) (Conti, J.) (“*In re Railway Antitrust*”); *Cole’s Wexford Hotel, Inc. v. UPMC & Highmark Inc.* (“*Cole’s Wexford II*”), 2016 WL 6236892, at *2 (W.D. Pa. July 29, 2016) (Conti, J.).

If the preliminary approval criteria are met, a court must also consider whether it is likely to certify a class for settlement purposes. *See* Fed. R. Civ. P. 23(e)(1)(B)(ii). The Third Circuit has long held that the certification of a settlement class serves “the core purpose of Rule 23(b)(3), which is to vindicate the claims of consumers and other groups of people whose individual claims would be too small to warrant litigation.” *See, e.g., Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 312 (3d Cir. 2011) (*en banc*), *cert. denied*, 566 U.S. 923 (2012) (internal quotation marks and citation omitted); *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prod. Liab. Litig.* (“*In re GMC*”), 55 F.3d 768, 777-78 (3d Cir.), *cert. denied*, 516 U.S. 824 (1995). The Manual for Complex Litigation advises that “[i]f the case is presented for both class certification and settlement approval, the certification hearing and preliminary fairness evaluation can usually be combined. The judge should make a preliminary determination that the proposed class satisfies the criteria set out in Rule 23(a) and at least one of the subsections of Rule 23(b).” Manual for Complex Litigation (Fourth) §21.632 (2004); *see also In re Nat’l Football League Players Concussion Injury Litig.*, 775 F.3d 570, 582 (3d Cir. 2014) (“*In re NFL I*”) (*quoting* §21.632 of Manual with approval).

B. Preliminary Approval of the Proposed Settlement Is Warranted

The Settlement should be preliminarily approved under Rule 23(e)(1)(B) because, upon consideration of all of the relevant factors, the Court will likely be able to approve the Settlement as “fair, reasonable, and adequate” after a Final Fairness Hearing. In addition, the Court should

find that a presumption of fairness applies because the proposed Settlement was negotiated at arm's length before Judge Welsh by experienced counsel who had the benefit of sufficient discovery and thus could fully evaluate the strengths and weaknesses of their respective positions. *See, e.g., In re Railway Antitrust*, 2020 WL 13852931, at *2.

1. Settlement Class Counsel and the Class Representatives have adequately represented the Class

Experienced Counsel. Settlement Class Counsel consist of Plaintiffs' Co-Lead Counsel and the Chair and Vice-Chairs of the Settlement Committee, who were appointed by the Court after a thorough interview and vetting process (ECF No. 395, Pretrial Order No. 8). They have decades of experience litigating complex products liability and other class action litigation, and have negotiated favorable settlements in many such cases. Since the inception of this litigation, the Court has been able to observe first-hand the vigorous and skilled litigation of this matter by Settlement Class Counsel. They used their skills, prior experience, and familiarity with the facts and law in this case to negotiate the best possible settlement for the Settlement Class, with the assistance of a Court-appointed Settlement Mediator. *See Rossini v. PNC Fin. Servs. Grp., Inc.*, 2020 WL 3481458, at *13 (W.D. Pa. June 26, 2020) ("The 'proponents' of the settlement—most significantly, Plaintiffs' counsel—are also experienced in similar litigation. . . . This generally supports a presumption that counsel knew what they were doing when negotiating the settlement."); *Zanghi v. Freightcar Am., Inc.*, 2016 WL 223721, at *15 (W.D. Pa. Jan. 19, 2016) ("[S]ignificant weight should be attributed to the belief of experienced counsel that settlement is in the best interest of the class.") (internal quotation marks and citation omitted).

Class Representatives. The proposed Settlement Class Representatives have fulfilled their responsibilities on behalf of the Settlement Class by working closely with Settlement Class Counsel on the litigation of the Economic Loss Claims, reviewing pleadings, and responding to

Defendants' document requests.

2. The proposed Settlement was negotiated at arm's length

Arm's-Length Negotiations. The proposed Settlement Agreement was the result of an arduous negotiation process, including mediation supervised by a well-respected and experienced Court-appointed mediator, that took a year from the initial negotiations to the time the Agreement was signed, as discussed in significant detail above. The Declaration of Judge Welsh independently corroborates that “the negotiations between the parties were protracted, hard fought and conducted at arm's-length and in good faith,” and the “highly capable and experienced parties and counsel [had] a strong command of relevant facts and legal principles.” Welsh Decl. ¶¶2, 19. Importantly, the Parties' negotiations “focused exclusively on benefits for the Settlement Class, and there was no discussion or negotiation of attorneys' fees for Settlement Class Counsel” during the mediation or in connection with the negotiations over the terms of the Settlement Agreement. *Id.* ¶16.

All relevant considerations demonstrate that these negotiations were at arm's length. *See* 4 William B. Rubenstein, *Newberg and Rubenstein on Class Actions* §13:50, Westlaw (6th ed. Database updated June 2023) (hereinafter “*Newberg and Rubenstein*”) (describing factors relevant to whether negotiations are arm's length); *In re All-Clad Metalcrafters, LLC v. Cookware Mktg. & Sales Practices Litig.*, 2023 WL 2071481 at *6 (W.D. Pa. Feb. 17, 2023) (“*In re All-Clad*”) (“[N]egotiation of a settlement through mediation suggests reasonableness and neutrality, not incompetence or self-dealing.”) (internal quotation marks and citation omitted) (alteration in original); *Cole's Wexford II*, 2016 WL 6236892, at *2 (“a presumption of fairness applies because the Settlement was negotiated at arm's length with an accomplished neutral at a Court-ordered mediation”) (Conti, J.); *Copley*, 2023 WL 1878581, at *4 (finding negotiations at arm's length when resolved by independent mediator); *Rossini*, 2020 WL 3481458, at *12 (same).

3. The relief provided to the Settlement Class is adequate

a. The costs, risks, and delay of trial and appeal

Complexity, Expense, Delay, and Risks of Continued Litigation. Absent a settlement, the Parties would remain engaged in motion practice, discovery, and adversarial litigation for years regarding the Economic Loss Claims. While Settlement Class Counsel believe their case is strong, they acknowledge the risks of continuing to litigate the numerous and complex legal and scientific issues in this litigation. *See, e.g., Solak v. Ford Motor Co.*, 2023 WL 4628456, at *3-5 (E.D. Mich. July 19, 2023) (dismissing claims for economic damages because the automaker conducted a voluntary recall to fix the defective airbags free of charge). The highly experienced counsel representing the Philips Defendants have vigorously defended this litigation every step of the way. To prevail, Plaintiffs would have to complete fact and expert discovery, obtain class certification, potentially litigate Rule 23(f) appeals regarding the certification order or subsequent motions for decertification, successfully defend against summary judgment or other dispositive motions, defeat *Daubert* motions, prevail at trial on liability and damages, and then prevail on any subsequent appeals. The litigation would be protracted and expensive, to say nothing of the inherent risks and uncertain outcomes attendant to each step along the way. In contrast to those risks, the proposed Settlement provides significant economic benefits in a much shorter timeframe. *See In re Mercedes-Benz Emissions Litig.*, 2021 WL 8053614, at *4 (D.N.J. July 12, 2021) (finding that settlement approval was appropriate where “[e]ven if [plaintiffs] did win at trial and on appeal, relief for the Class was likely years away as a result of the lengthy litigation process. The Mercedes Settlement eliminates these risks, cuts through the delay, and provides immediate and significant benefits to Class Members.”); *Calhoun*, 2023 WL 2411354, at *13 (finding that “certainty and immediacy of a recovery through settlement and the benefits that the Settlement Class Members

will receive” warranted preliminary approval).

Sufficient Discovery. Plaintiffs have engaged in substantial discovery, including document discovery, third-party discovery, jurisdictional discovery, and the targeted discovery related to the mediation process. In addition, Plaintiffs have engaged experts to help evaluate numerous aspects of the case. While these efforts are discussed in greater detail above, what is important is that the amount of discovery enabled Settlement Class Counsel to fully evaluate the strengths and weaknesses of the Parties’ respective positions. *See Calhoun*, 2023 WL 2411354, at *11 (granting preliminary approval where parties had “engaged in sufficient discovery to inform their negotiations before a settlement was reached”); *In re All-Clad*, 2023 WL 2071481, at *6 (granting preliminary approval where “[t]he record establishes extensive and costly investigation, research, and discovery have been conducted such that the attorneys for the parties are reasonably able to evaluate the benefits of settlement.”) (internal quotation marks and citation omitted).

Stage of the Proceedings. The MDL proceedings were far enough along that Settlement Class Counsel had an “adequate appreciation of the merits of the case before negotiating.” *In re Prudential Ins.*, 148 F.3d at 319 (internal quotation marks and citation omitted). In addition to the substantial discovery discussed above, the Parties extensively briefed five motions to dismiss, made comprehensive Science Day presentations to the Court, and exchanged comprehensive mediation statements at the outset of their negotiations. Welsh Decl. ¶¶7-8, 11-12. Thus, as confirmed by Judge Welsh, the parties were “fully informed” and able to carefully analyze the risk of future litigation in comparison to the substantial and prompt relief offered by the Settlement. *Id.* ¶19; *see In re All-Clad*, 2023 WL 2071481, at *7 (finding that this factor weighed in favor of preliminary approval where “class counsel worked with consulting experts to evaluate the alleged defect in All-Clad’s cookware. Some written discovery proceeded for over a year. And the motions

to dismiss and three days of mediation before retired judges provided ample insight into each side's positions, including strengths and weaknesses of claims and defenses.") (citations omitted).

Likelihood of Maintaining Class Certification. This factor "measures the likelihood of obtaining and keeping a class certification if the action were to proceed to trial," *In re Warfarin*, 391 F.3d at 537, and weighs heavily in favor of approval. As stated very recently by another court within this District when it granted preliminary approval of a settlement, "[e]ven if certification of a class is achieved, continued discovery and resolution of legal issues could lead to decertification or modification of the class. . . . In turn, this inevitably would result in further delay and expense, as well as an uncertain outcome. Moreover, if a class is not certified, it is uncertain that individual settlement class members possess the resources and financial ability to pursue their claims." *Calhoun*, 2023 WL 2411354, at *14 (citing *Carnegie v. Household Int'l, Inc.*, 376 F.3d 656, 661 (7th Cir. 2004) ("The realistic alternative to a class action is not 17 million individual suits, but zero individual suits . . .")); *see also In re All-Clad*, 2023 WL 2071481, at *7 (granting preliminary approval because, *inter alia*, "[m]aintaining [a class] throughout lengthy litigation would also be challenging, . . . If Plaintiffs failed at any stage, there would be no nationwide relief to the settlement class."). This is particularly true here, where the maximum out-of-pocket costs for any Recalled Device purchased, rented, or leased is a few thousand dollars, and in many cases, less than \$100.

Reasonableness of the Settlement. Courts in this Circuit consider "reasonableness in light of the best possible recovery and reasonableness in light of the risks the parties would face if the case went to trial." *In re Warfarin*, 391 F.3d at 538. To make that assessment, courts must compare "the present value of the damages plaintiffs would likely recover if successful, appropriately discounted for the risk of not prevailing" with "the amount of the proposed settlement." *In re GMC*,

55 F.3d at 806 (internal quotation marks and citation omitted); *see also In re Baby Products Antitrust Litig.*, 708 F.3d 163, 174 (3d Cir. 2013) (“The Court must determine whether the compromises reflected in the settlement – including those terms relating to the allocation of settlement funds – are fair, reasonable, and adequate when considered from the perspective of the class as a whole.”).

The proposed Settlement here plainly falls within the range of reasonableness “in light of the best possible recovery and attendant risks of litigation.” *Cole’s Wexford II*, 2016 WL 6236892, at *2; *see also Hickton*, 2013 WL 12137092 at *1 (same). The main measure of damages that Plaintiffs sought for their Economic Loss Claims was full restitution of the amount they paid to acquire a Recalled Device. *E.g.*, EL Compl. ¶660 (Recalled Devices had no value at time of purchase). The Philips Defendants fought this position vigorously, arguing, among other things, that Users had received a working device and got what they paid for, and lacked standing unless each User could plead and prove that the foam in their specific device had degraded. *See, e.g.*, ECF No. 912 at 5-8. Similarly, the Philips Defendants argued that hospitals and third-party payers (*i.e.*, insurers) were not injured because they either profited from the Recalled Devices (in the case of hospitals) or were required to pay for a device for the consumer under contractual obligations (third-party payers). *See, e.g., id.* at 8-10. While Plaintiffs vehemently disagree with the Philips Defendants’ position, there was substantial risk that even if Plaintiffs prevailed on liability, the Users’ and Payers’ damages would be significantly reduced from full restitution (and even possibly to zero). *See Solak*, 2023 WL 4628456, at *3-5. While it is impossible at this time to calculate the maximum amount Plaintiffs could receive if they were to achieve full restitution, there was a real risk of no recovery at all.

The Initial Device Payment Amount, Initial Device Return Amount, and Payer Amount are non-reversionary; they require a *minimum* payment by the Philips Defendants of \$479,700,812 that will not be reduced, regardless of the number of claims that are filed. Users' Device Payment Awards and Device Return Awards are set in fixed amounts and will *not* be reduced based on the number of claims filed.¹⁷ None of the User or Payer Awards will be reduced on account of an award of attorneys' fees and costs to Settlement Class Counsel or the cost of Notice and Settlement Administration, which are being paid by the Philips Defendants separately. In addition, Users who registered for a Recall Program or enroll in the Settlement and timely return their Recalled Devices to Philips RS will be paid automatically, without having to complete and submit a claim form; Eligible Users can receive Device Payment Awards for multiple Recalled Devices; Eligible Users can obtain Device Return Awards for multiple returned Devices, as well as Device Payment Awards and under certain circumstances, a Device Replacement Award; Eligible Users can take advantage of the "Accelerated Implementation Option," which enables them to obtain their Settlement payments after Final Approval of the Settlement by this Court but *before* and regardless of the resolution of any appeals, which would entail considerable delay and potential risk and uncertainty; and the Settlement also provides that certain Users will receive significant benefits in the form of Extended Two Year Warranties on all Remanufactured Devices provided by Philips RS.¹⁸ It also bears emphasis that the \$100 Device Return Awards incentivize Users to return their

¹⁷ There is an exception for rental Recalled Devices. See n.12, *supra*.

¹⁸ See *Granillo v. FCA US LLC*, 2019 WL 4052432, *9 (D.N.J. Aug. 27, 2019) ("Given the combined value of the extended warranty, . . . and cash payments, and the settlement's benefit was substantial"); *In re Volkswagen & Audi Warranty Extension Litig.*, 89 F. Supp. 3d 155, 169 (D. Mass. 2015) (finding the retail value of extended warranty "is a more sensible measure of what the class members gained from free extended coverage"); *Vaughn v. Am. Honda Motor Co.*, 627 F. Supp. 2d 738, 746 (E.D. Tex. 2007) (valuation of settlement benefits include "warranty extensions").

Recalled Devices to Philips RS, which serves the important public policy of promoting health and well-being. Payers will also be able to qualify for a Payer Award from the fixed \$34,000,000 non-reversionary fund, plus accrued interest.

On balance, the substantial monetary awards, along with additional benefits provided by the Settlement, militate strongly in favor of preliminary approval particularly when compared against the uncertainties, delays, expenses, and risks of continued litigation, including the risks associated with damages discussed above. *See In re NFL II*, 821 F.3d at 440 (finding that the “settlement represents a fair deal for the class when compared with a risk-adjusted estimate of the value of plaintiffs’ claims” where a “pending motion to dismiss and other available affirmative defenses could have left retired players to pursue claims in arbitration or with no recovery at all”); *Calhoun*, 2023 WL 2411354, at *15 (settlement in the range of reasonableness in light of uncertainty and risks of continued litigation); *Zanghi*, 2016 WL 223721, at *20 (same); *Palamara v. King’s Family Restaurants*, 2008 WL 1818453, at *4 (W.D. Pa. Apr. 22, 2008) (same).

b. The proposed method of distributing relief to the Settlement Class and processing Settlement Class Members’ Claims is easy, efficient, and effective

The method for distributing payments to Settlement Class Members is described in detail above. In short, the process is designed to get funds into the hands of Settlement Class Members quickly and efficiently. In the instance of the AIO, it would be shortly after Final Approval (and before the appellate process, if any, has run). SA §6.3, *et seq.* For those who do not, or cannot, elect the AIO, funds would be distributed shortly after the Effective Date of the Settlement. *Id.* §§6.4-6.7.

In addition, certain payments are automatic. Users who return their Registered or Enrolled Recalled Device to Philips RS do not need to submit a Claim Form to receive Device Payment

Awards or Device Return Awards. *Id.* §§6.4.1, 6.5.1. Users who do not return their Recalled Device to Philips RS can access a streamlined confirmation process (via the online Settlement website portal or in paper form) if they register prior to the Execution Date. *Id.* §6.4.2. Finally, a typical Claim Form process is available for all other Settlement Class Members. *Id.* §§6.4.3, 6.7.1.

c. The terms of a proposed award of attorneys' fees, including timing and payment, have not yet been negotiated

As discussed above, the Parties have not reached agreement on the amount of attorneys' fees and costs to be paid to Settlement Class Counsel subject to a final award by the Court but have agreed that those fees and costs will be paid by the Philips Defendants in addition to the Settlement Class relief and therefore, will not reduce the Settlement Class's recovery. *Id.* §18.1.

In addition, the Parties have agreed that they will use the assistance of Judge Welsh to attempt to reach an agreement on attorneys' fees and costs. *Id.* If the Parties reach such an agreement, Settlement Class Counsel will submit the negotiated amount to the Court for approval. *Id.* If no such agreement is reached, the Parties will litigate the fee issues, and each Party will present its respective position to the Court for determination. *Id.* In that event, the determination of the fee and cost issues will be subject to the Parties' agreement that: (1) the attorneys' fees and costs will be paid by, or on behalf of, the Philips Defendants in addition to the compensation provided to Settlement Class Members under this Settlement; (2) any award of attorneys' fees or costs shall not diminish the recovery of Settlement Class Members under the Settlement; (3) while fees will be based on the percentage of recovery methodology, with a lodestar cross-check, the Parties reserve all arguments as to how that recovery should be calculated, what the percentage should be, and the extent to which Settlement Class Counsel's prosecution of the Economic Loss Claims caused some or all of the recovery; and (4) the Parties shall have the right to appeal the Court's determination as to the amount of attorneys' fees and costs. *Id.* Settlement Class Counsel

represent they will not seek an award of attorneys' fees in excess of \$175,000,000, which Settlement Class Counsel contends represents a fair percentage of the value of the Settlement in terms of cash recoveries and other benefits to the Settlement Class, while the Philips Defendants fully reserve the right to challenge that amount, any percentage upon which it is based, and the items comprising the value of the Settlement. *Id.*

Settlement Class Counsel will file a motion for attorneys' fees and costs at least 30 days prior to the Opt-Out/Objection Deadline, and the deadline for the motion will be provided in the Notice. *Id.* The motion will be filed on the MDL Court docket and posted on the Settlement website, and Settlement Class Members will have the opportunity to submit written objections in the manner prescribed by the Settlement Agreement to the request for attorneys' fees and costs before the Final Fairness Hearing. *Id.* §§12.1, 12.4.

4. The proposed Settlement treats Settlement Class Members equitably relative to each other

The Settlement Class Members are treated equitably relative to each other under the Settlement based on their Economic Loss Claims related to the Recalled Devices. There are two separate Settlement Funds being established, one specific to Users and one specific to Payers. Each Settlement Fund provides compensation for each group's distinct alleged economic harm.

Users are eligible for Device Payment Awards, Device Return Awards, and/or Device Replacement Awards based on objective factors. Device Payment Awards are fixed in amount based on the type or model of the Recalled Device at issue to account for differences in the price of various types of Recalled Devices; Device Return Awards are \$100 for all Eligible Users regardless of the type or model of the Recalled Device; and Device Replacement Awards are based upon any given User's actual costs to purchase, lease, or rent a comparable Replacement Device. All Eligible Users are treated fairly relative to each other.

Payers, who are insurers, self-funded employers, or other third-party payers that reimbursed (in whole or in part) a User's payment to purchase, lease, rent or otherwise pay for a Philips RS Recalled Device will be eligible to receive a Payer Award that is based on the Eligible Payer's relative market share (aggregated among all Eligible Payers). That market share will be determined by the number of insured lives in the United States covered by the Eligible Payer and the dollar amount of direct premiums written by the Eligible Payer in the United States in the Calendar Years 2021 and 2022, based on industry data, including but not limited to, the National Association of Insurance Commissioners and the AIS Directory of Health Plans, as well as the information provided in each Eligible Payer's Declaration and Claim Form.

The allocation of the settlement funds as to each group (Users and Payers) resulted from informed discussions and negotiations between and among Settlement Class Counsel (on behalf of Users and Payers), additional representatives of Users and Payers, and the Philips Defendants, aided by the Court-appointed Settlement Mediator. Significantly, all proposed Settlement Class Representatives endorse and approve all terms of the Settlement, including the amount of settlement funds made available for both Users and Payers.

A. Certification of the Proposed Class for Purposes of Settlement Only is Appropriate

In Section 7.1 of the Settlement Agreement, Plaintiffs and the Philips Defendants stipulated, for purposes of the Settlement only and subject to this Court's approval, that the requirements of Rule 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure are satisfied.

The benefits of a proposed settlement of a class action can be realized only through the certification of a settlement class. *See Amchem Prods. v. Windsor*, 521 U.S. 591, 620 (1997); *see also Walker v. Highmark BCBSH Health Options, Inc.*, 2022 WL 17592067, at *5 (W.D. Pa. Dec. 13, 2022). For a court to certify a class for settlement, the "[s]ettlement [c]lass[]" must satisfy the

Rule 23(a) requirements of numerosity, commonality, typicality, and adequacy of representation, as well as the relevant 23(b) requirement.” *In re GMC*, 55 F.3d at 778. A number of courts have recognized the propriety of class certification in defective product cases where economic losses are sought. *See, e.g., In re Valsartan, Losartan & Irbesartan Prod. Liab. Litig.*, 2023 WL 1818922, at *20, *25 (D.N.J. Feb. 8, 2023) (certifying consumer and third-party payor economic loss classes for contaminated and defective Valsartan drugs); *In re JUUL Labs, Inc. Mktg. Sales Pracs. & Prod. Liab. Litig.*, 609 F. Supp. 3d 942, 957-58, 1002-03, 1023 (N.D. Cal. 2022) (certifying two nationwide RICO classes and state classes).

1. Numerosity Under Rule 23(a)(1)

Rule 23(a)(1) requires that the class be “so numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). Numerosity is easily met here, as there were close to 11 million Recalled Devices sold or otherwise distributed in the United States, and the number of proposed Settlement Class Members is in the millions.

2. Commonality Under Rule 23(a)(2)

The second prong of Rule 23(a) – commonality – “requires Plaintiffs to show that ‘there are questions of law or fact common to the class.’” *Calhoun*, 2023 WL 2411354, at *7 (quoting Fed. R. Civ. P. 23(a)(2)). This requirement is satisfied so long as the class members “share at least one question of fact or law in common with each other.” *Reinig v. RBS Citizens, N.A.*, 912 F.3d 115, 127 (3d Cir. 2018) (internal quotation marks and citation omitted). “[T]he bar is not a high one.” *Reyes v. Netdeposit, LLC*, 802 F.3d 469, 486 (3d Cir. 2015) (cleaned up) (internal quotation marks and citation omitted). The Third Circuit has “acknowledged commonality to be present even when not all plaintiffs suffered an actual injury, when plaintiffs did not bring identical claims, and, most dramatically, when some plaintiffs’ claims may not have been legally viable.” *Rodriguez v.*

Nat'l City Bank, 726 F.3d 372, 382 (3d Cir. 2013) (citations omitted); *see also In re Prudential Ins.*, 148 F.3d at 310 (all claims and facts do not need to be identical). Rather, “the focus of the commonality inquiry . . . is on whether the defendant’s conduct was common as to all of the class members.” *Rodriguez*, 726 F.3d at 382 (internal quotation marks and citation omitted).

In this case, there are numerous common questions of law and fact, including, but not limited to: whether the Recalled Devices were defective; if so, whether and when the Defendants knew they were defective; whether the Recalled Devices were marketed as, among other things, safe breathing assistance devices; whether Defendants violated RICO, numerous different state law duties, or were unjustly enriched; and whether the purchase, rental, or payment for the Recalled Devices caused economic losses to the Settlement Class Members. Commonality is, therefore, easily satisfied. *See In re All-Clad*, 2023 WL 2071481, at *3.

3. Typicality Under Rule 23(a)(3)

Rule 23(a)(3)’s typicality requirement is also met. The claims of the proposed Settlement Class Representatives are typical because they suffered substantially the same economic loss from the same conduct as every other Settlement Class Member. The Settlement Class Representatives and the Settlement Class Members all suffered financial harm arising out of, among other things, the Philips Defendants’ design, manufacture and sale of the allegedly defective Recalled Devices; their alleged failure to disclose or adequately remedy the alleged defect; and their alleged negligence in delaying the Recall. Typicality is satisfied. *See In re All-Clad*, 2023 WL 2071481, at *3 (typicality satisfied “because they suffered the same injury from identical conduct by All-Clad”); *Calhoun*, 2023 WL 2411354, at *7 (typicality “satisfied where there is a ‘strong similarity of legal theories or where the claim arises from the same practice or course of conduct.’”) (quoting *In re NFL II*, 821 F.3d at 428); *Newton v. Merrill Lynch*, 259 F.3d 154, 183-84 (3d Cir. 2001).

4. Adequacy of Representation Under Rule 23(a)(4)

The adequacy requirement of Rule 23(a)(4) ensures that that “the representative parties will fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). “Adequate representation depends on two factors: ‘(a) the plaintiff’s attorney must be qualified, experienced, and generally able to conduct the proposed litigation, and (b) the plaintiff must not have interests antagonistic to those of the class.’” *Calhoun*, 2023 WL 2411354, at *8 (quoting *Wetzel v. Liberty Mut. Ins. Co.*, 508 F.2d 239, 247 (3d Cir. 1975)). Both requirements are met here.

Counsel. As discussed above, Settlement Class Counsel are experienced in the prosecution of class actions, including products liability and consumer protection class actions and have diligently prosecuted the claims on behalf of Plaintiffs and the Settlement Class by investigating the claims prior to bringing suit, preparing complaints and other pleadings, responding to dispositive motions, making the Science Day presentation, conducting and responding to extensive discovery, reviewing and analyzing extensive information, documents, and data produced by Defendants and third parties, and engaging in lengthy and complex arm’s-length negotiations with Defendants that culminated in this beneficial Settlement. *See Calhoun*, 2023 WL 2411354, at *8.

Class Representatives. The proposed Settlement Class Representatives include individuals who paid for (in whole or in part) Recalled Devices that they used; Users who paid for Replacement Devices; a hospital that purchased Recalled Devices; and a third-party payer. As noted above, the Settlement Class Representatives, who are named Plaintiffs in the Economic Loss Complaint, have fulfilled their responsibilities on behalf of the Settlement Class by working closely with Settlement Class Counsel on the litigation of the Economic Loss Claims, reviewing pleadings, and responding to Defendants’ discovery requests. They “share common interests [with Class Members] in seeking compensation for the alleged harms suffered from Defendants’

conduct” and “[b]y advancing their claims, [the Settlement Class Representatives] have also advanced the claims of other Settlement Class Members.” *See id.* A finding of adequacy is appropriate here where “[t]here is no discernible conflict of interest in the record or otherwise between [the named representative] and the other class members” and there are substantial “factual and legal similarities between the claims.” *Vines v. Covelli Enterprises*, 2012 WL 5992114, at *4 (W.D. Pa. Nov. 30, 2012).

5. The Predominance and Superiority Requirements of Rule 23(b)(3)

Plaintiffs seek to certify the Settlement Class under Rule 23(b)(3), which has two components: predominance and superiority. In making these assessments, the Court may consider that the class will be certified for settlement purposes only, and there is no consideration of manageability for trial. *See Amchem*, 521 U.S. at 620 (citing Fed. R. Civ. P. 23(b)(3)(D)); *see also Calhoun*, 2023 WL 2411354, at *9.

Predominance. The focus of the predominance “inquiry is on whether the defendant’s conduct was common as to all of the class members, and whether all of the class members were harmed by the defendant’s conduct.” *Sullivan*, 667 F.3d at 298. As shown above, there are numerous common questions of fact and law that predominate over any questions that may affect individual Settlement Class Members. If the case were to proceed, the ultimate issues would center on the Philips Defendants’ common course of conduct; issues that are shared among all Settlement Class Members and are “capable of proof at trial through evidence that is common to the class rather than individual to its members.” *Calhoun*, 2023 WL 2411354, at *9 (quoting *Gonzalez v. Corning*, 885 F.3d 186, 195 (3d Cir. 2018)) (internal quotation marks omitted). Accordingly, the Rule 23(b)(3) predominance requirement is satisfied. *Calhoun*, 2023 WL 2411354, at *9 (finding predominance where “Plaintiffs and the Settlement Class have the same interest in establishing

liability, and they all seek damages for the same harm. Absent the proposed settlement, they would rely on the same evidence of Defendants’ violations of law and on class-wide damage models to show the fact and amount of harm.”).

Superiority. The second prong of Rule 23(b)(3) – that a class action be superior to other available methods for the fair and efficient adjudication of the controversy – is also readily satisfied. Superiority requires the Court to consider whether “a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.” *Sullivan*, 667 F.3d at 296 (internal quotation marks and citations omitted); *see also Calhoun*, 2023 WL 2411354, at *9. Here, the superiority requirement is satisfied because litigating the relatively small Economic Loss Claims of the Class Members on an individual basis against the Philips Defendants would not be economically feasible. *See, e.g., Abramson v. Agentra, LLC*, 2021 WL 3370057, at *9 (W.D. Pa. Aug. 3, 2021) (“[T]his class action is superior to other available methods because it is neither economically feasible, nor judicially efficient, for more than 2,000 class members who have submitted claims, let alone the more than 19,000 who were sold an Agentra product, to pursue individual claims against Agentra.”); *In re All-Clad*, 2023 WL 2071481, at *3.

Moreover, the Parties’ Settlement will avoid the needless duplication of effort, burdens, and other judicial inefficiencies that would result from repeated individual litigation of the same issues. *See Calhoun*, 2023 WL 2411354, at *9 (“A class-wide settlement will not only achieve resolution of the class members’ claims without multiple lawsuits and trials, but also ensures that similarly situated members are treated uniformly.”).

6. Ascertainability

In the Third Circuit, ascertainability is a “necessary prerequisite” of a Rule 23(b)(3) class, and the inquiry is two-fold, “requiring a plaintiff to show that: (1) the class is defined with

reference to objective criteria; and (2) there is a reliable and administratively feasible mechanism for determining whether putative class members fall within the class definition.” *Byrd v. Aaron’s Inc.*, 784 F.3d 154, 163 (3d Cir. 2015) (internal quotation marks and citation omitted). The inquiry does not require a plaintiff to be able to identify all class members at class certification, “instead, a plaintiff need only show that class members *can* be identified.” *Id.* (internal quotation marks and citation omitted) (emphasis in original).

Here, the Settlement Class has been defined with objective criteria, *i.e.*, it is comprised of individuals and entities who have paid for, rented, and/or were prescribed a Recalled Device prior to the Recall, plus Payers who paid for, or reimbursed for, Recalled Devices. Each Recalled Device has a unique Serial Number that is maintained in the Philips Defendants’ records. A substantial number of Settlement Class Members (over 3 million) can be identified through the Philips RS registration database associated with the Recall Programs and User information collected from DMEs and other sources as part of the Recall. In addition, User information was obtained from DMEs in discovery, data from the Census Registry Program, and Plaintiff Fact Sheets filed in support of Personal Injury Complaints filed in this MDL. The ascertainability requirement is therefore met. *See In re All-Clad*, 2023 WL 2071481, at *3 (“[T]he class is clearly ascertainable because the settlement class parameters present objective criteria, and the parties can . . . identif[y] members through detailed records.”).

Having satisfied all the requirements under Rule 23, the proposed Settlement Class Representatives respectfully submit that the Court should certify the proposed Settlement Class for settlement purposes. *See* Fed. R. Civ. P. 23(c)(1)(B).

B. The Notice Program is the Best Notice Practicable Under the Circumstances

Rule 23(e)(1)(B) requires the Court to “direct notice in a reasonable manner to all class members who would be bound by the proposal.” In an action certified under Rule 23(b)(3), the Court must “direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B). “Generally speaking, the notice should contain sufficient information to enable class members to make informed decisions on whether they should take steps to protect their rights, including objecting to the settlement or, when relevant, opting out of the class.” *In re NFL II*, 821 F.3d at 435 (internal quotation marks and citation omitted).

1. The Proposed Notice Plan is the most practicable under the circumstances

The proposed Notice Plan involves direct notice by both pre-paid first-class mail and email to all User and Payer Settlement Class Members with available address information. It seeks to provide notice through identifiable DMEs, notice to Users who elected to receive messages through the DreamMapper App, publication notice via an extensive proposed digital and print media notice program developed by the Settlement Administrator in consultation with the Parties, publication on a Settlement website, and publication on the Court’s website. SA §9.1, *et seq.*; *see also* SA Exhibits 2, 3(a)-(h); Angeion Decl. ¶¶18, 21-59. The proposed Notice Plan also takes into account and separately takes steps to target Users and Payers. *See, e.g.*, Angeion Decl. ¶¶18, 32-53. The media component of the Notice Plan alone is designed to reach 86.70% of the Target Audience, and that is over and above the reach of the comprehensive direct notice campaign (mail and email), settlement website, and toll-free telephone hotline. *Id.*, ¶19.

For purposes of direct notice, Users can be identified through numerous sources including information in the Philips RS registration database used for the Recall, information collected from

DMEs and other sources as part of the Recall, information obtained from DMEs in discovery, and User data from the Census Registry Program and Plaintiff Fact Sheets filed in support of Personal Injury Complaints. SA §9.1.2.1; *see also* Angeion Decl. ¶21. Hospitals and sleep labs in the United States can be identified from Philips RS’s own records. SA §9.1.2.2; Angeion Decl. ¶21. Angeion has already received contact information for approximately 5,000,000 members of the proposed Settlement Class. *See* Angeion Decl. ¶21.

With respect to Payers, Angeion can supplement the list of Settlement Class Members to provide Notice to Payers through its proprietary third-party payer database that consists of drug stores; pharmacies; insurance companies; and health, welfare and pension funds. *See* Angeion Decl. ¶22. In addition to the direct notice efforts with respect to Payers, Angeion has developed a Payer media plan that consists of digital advertisements, social media advertising via Facebook and LinkedIn, and an additional paid search campaign via Google, specific to Payers. *Id.* ¶52. Publication in HR Magazine (or a similar title) will be used to further disseminate Notice to Payers. *Id.* ¶53.

The proposed Notice is comprehensive, innovative, and robust, and it targets both Users and Payers. It includes “state-of-the-art internet advertising, a comprehensive social media campaign and a search engine marketing campaign.” Angeion Decl. ¶70. Further, the Notice Plan provides for the implementation of a dedicated settlement website and toll-free hotline to further inform Settlement Class Members of their rights and options. *Id.* It is clear that the proposed Notice Plan is the best notice practicable under the circumstances and fully meets the requirements of due process and Federal Rule of Civil Procedure 23. *See, e.g., Larson v. AT&T Mobility, Inc.*, 687 F.3d 109, 122-31 (3d Cir. 2012) (discussing importance of individual notice where reasonable); *In re Processed Egg Prods. Antitrust Litig.*, 284 F.R.D. 249, 266 (E.D. Pa. 2012) (individual mailings

discharges notice requirement); *In re All-Clad*, 2023 WL 2071481, at *5 (finding that notice plan, which utilized email, direct mail, digital notices, internet banners, social media notices, a settlement website, and a toll-free number constituted best notice practicable).

2. The Proposed Notice Clearly Explains Settlement Class Members' Rights

The proposed Notice presented here fully complies with Rule 23 and the Due Process mandates. The proposed forms of Notice are written in plain language and aim to inform Settlement Class Members of the Settlement and its key terms; and ensure that Settlement Class Members will be able to review the Long Form Notice, Settlement Agreement, and other relevant materials so that they understand their rights and options. *See* Advisory Committee Notes on 2018 Amendment to Rule 23(c)(2) (“The ultimate goal of giving notice is to enable class members to make informed decisions about whether to opt out or, in instances where a proposed settlement is involved, to object or to make claims.”); *see also* SA Exhibits 2, 3(a)-3(h); *Newberg and Rubenstein* §8:12 (notice “must contain information that a reasonable person would consider to be material in making an informed, intelligent decision of whether to opt out or remain a member of the class and be bound by the final judgment.”) (internal quotation marks and citation omitted). The proposed Notice program provides all information required under Rule 23(c)(2)(B) including Settlement Class Members’ right to object to the Settlement or opt out of the Settlement Class, or to participate in the Settlement and file a claim, if applicable. *See* SA Exhibits 2, 3(a)-3(h). The proposed notices will also provide the date and time of the Final Fairness Hearing, and how Settlement Class Members may appear at that hearing if they so choose. *See In re Rent-Way Sec. Litig.*, 305 F. Supp. 2d 491, 511 (W.D. Pa. 2003) (“[The due process] standard is met if the notice informs class members concerning: (i) the nature of the litigation; (ii) the general terms of the settlement; (iii) where complete information can be located; and (iv) the time and place of the

fairness hearing and that objectors may be heard.”) (citing *In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 962 F. Supp. 450, 527 (D.N.J. 1997) (notice must “afford [interested parties] an opportunity to present their objections.”)).

3. The Proposed Settlement Administrator Is Qualified

The Parties carefully evaluated detailed proposals from seven experienced settlement administrators and jointly agreed to retain (subject to the Court’s approval) Angeion Group to serve as Settlement Administrator. The Parties engaged in extensive discussions with Angeion and amongst themselves to reach agreement on the contours of the notice program and claims processes. The Parties jointly request that the Court appoint Angeion as the Settlement Administrator. Angeion is highly qualified and has significant experience administering settlements and notice in large class action cases, including the very recent *Calhoun* and *In re All-Clad* cases in this District. *Calhoun*, 2023 WL 2411354, at *5; *In re All-Clad*, 2023 WL 2071481, at *5. See Angeion Decl. ¶¶1-12 (describing Angeion qualifications and experience). Angeion’s duties and responsibilities are set forth in the Settlement Agreement. See, e.g., SA §6, *et seq.*

E. A Final Fairness Hearing Should be Scheduled.

The Court should schedule a Final Fairness Hearing for the following purposes: (1) to finally determine whether the proposed Settlement is a fair, reasonable, and adequate settlement as to the Settlement Class Members within the meaning of Rule 23(e)(2) of the Federal Rules of Civil Procedure; (2) to determine whether a Final Judgment should be entered dismissing the Economic Loss Claims of the Settlement Class against the Defendants with prejudice, as required by the Settlement Agreement; (3) to consider the proposed plan of allocation set forth in the Settlement Agreement; (4) to consider Settlement Class Counsel’s forthcoming Motion for Award of Attorneys’ Fees and Litigation Expenses; (5) to consider the Petition for Service Awards to the

Settlement Class Representatives; (6) to consider timely, written objections that conform to the requirements set forth in the Settlement Agreement; and (7) to consider such other matters as the Court may deem appropriate. *See* Manual for Complex Litigation (Fourth) §§21.633, 21.634; *In re NFL I*, 775 F.3d at 581-83. Plaintiffs propose, and Philips Defendants do not oppose, the following schedule for final approval:

Event	Date
Preliminary Approval Order	TBD
Dissemination of Notice Pursuant to Notice Plan	60 days after entry of Preliminary Approval Order
Claims Period begins	60 days after entry of Preliminary Approval Order
Deadline for Settlement Class Counsel to File Motion for Attorneys' Fees and Expenses	90 days after entry of Preliminary Approval Order
Deadline for Settlement Class Members to Opt Out of or Object to the Settlement	120 days after entry of Preliminary Approval Order
Motion for Final Approval (including list of Opt-Outs as an Exhibit)	21 days prior to Final Fairness Hearing
Response to Objections	7 days prior to Final Fairness Hearing
Final Fairness Hearing	At least 6 months after entry of Preliminary Approval Order
Claims Period Deadline	120 days after Final Fairness Hearing

V. CONCLUSION

For the foregoing reasons, proposed Settlement Class Representatives respectfully request that the Court enter an Order: (1) preliminarily certify the proposed Settlement Class; (2) preliminarily approve the Settlement; (3) determine that the Settlement appears fair, reasonable, and adequate within the meaning of Rule 23 of the Federal Rules of Civil Procedure and thus sufficient to promulgate notice of the Settlement to the Settlement Class; (4) order that notice be

provided to the Settlement Class pursuant to the terms of the Settlement Agreement; (5) give Settlement Class Members the right to object to or be excluded from the Settlement; (6) inform Settlement Class Members that they will be bound by the Final Order and Judgment unless they validly request exclusion; (7) stay and enjoin the continued pursuit of all Economic Loss Claims of Settlement Class Members against Defendants and the other Released Parties, whether in the MDL Court or in any other court or tribunal, until such time as the MDL Court has determined whether to enter the Final Order and Judgment; (8) schedule the Final Fairness Hearing not earlier than six months following entry of the Preliminary Approval Order; (9) appoint Angeion Group as the Settlement Administrator; (10) appoint Huntington Bank as the Settlement Funds Escrow Agent; (11) appoint the Honorable Thomas J. Rueter (Ret.) as the Claims Appeals Special Master; (12) appoint Settlement Class Representatives; (13) appoint Settlement Class Counsel; (14) preliminarily approve the plan of allocation of Settlement funds set forth in the Settlement Agreement; (15) order the establishment of the Settlement funds, as set forth in the Settlement Agreement; (16) order the payment of all reasonable costs of Settlement Administration, including the reasonable fees and costs of the Settlement Administrator, Settlement Funds Escrow Agent, Settlement Mediator, and Claims Appeals Special Master, as set forth in the Settlement Agreement; (17) find that the Settlement Funds are to be a “Qualified Settlement Fund” as defined in Section 468B-1(c) of the Treasury Regulations; and (18) provide that any objections by any Settlement Class Member to the Settlement shall be heard and any papers submitted in support of objections shall be considered by the MDL Court at the Final Fairness Hearing only if, on or before the conclusion of the Opt-Out/Objection Period, such Settlement Class Member follows the required procedures set forth in the Settlement Agreement.

Dated: September 7, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was filed via the Court's CM/ECF system on this 7th day of September 2023, and will be served to Counsel for Defendants via email.

/s/ D. Aaron Rihn

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**BRIEF IN SUPPORT OF
PRELIMINARY APPROVAL**

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

IN RE PHILIPS RECALLED CPAP,	:	
BI-LEVEL PAP, AND MECHANICAL	:	Master Docket: Misc. No. 21-mc-1230-JFC
VENTILATOR PRODUCTS	:	
LITIGATION	:	
	:	MDL No. 3014
This Document Relates to: All Actions	:	
Asserting Economic Loss Claims	:	

**CLASS SETTLEMENT AGREEMENT AND RELEASE
OF ECONOMIC LOSS CLAIMS**

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PREAMBLE

This Class Settlement Agreement and Release of Economic Loss Claims (this “Agreement” and the “Settlement,” as may be amended from time to time hereafter) is entered into by and among the Settlement Class Representatives, on the one hand, and Defendants Philips RS North America LLC (“Philips RS”), Koninklijke Philips N.V., Philips North America LLC, Philips Holding USA, Inc., and Philips RS North America Holding Corporation (collectively, the “Philips Defendants”), on the other (collectively, the “Parties”).

Following extensive negotiations between the Parties with the assistance of the Court-appointed mediator, the Honorable Diane M. Welsh (Ret.) (the “Settlement Mediator”), the Parties have reached this Settlement. By entering into this Settlement, the Philips Defendants do not admit any wrongdoing, liability, fault, injury, damages, or violation of any law whatsoever. The Settlement is to be construed solely as a reflection of the Parties’ desire to facilitate a resolution and release of all Economic Loss Claims on behalf of the Settlement Class against the Released Parties on the terms set forth below. The Settlement does not resolve or release Medical Monitoring and Personal Injury Claims. The Settlement will become effective only if it is approved by the MDL Court.

RECITALS

WHEREAS, beginning June 14, 2021, Philips RS announced Recalls of approximately 10.8 million Recalled Devices sold, leased, rented or otherwise distributed in the United States;

WHEREAS, the Philips Defendants have been named as defendants in various federal and state court actions and other proceedings in the United States and are alleged to be liable for damages and other relief for economic injuries related to the Recalled Devices;

WHEREAS, on October 8, 2021, the Judicial Panel on Multidistrict Litigation established the MDL, assigned the MDL to the MDL Court, and transferred all then-pending federal lawsuits to the MDL for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407;

WHEREAS, since then, the Judicial Panel on Multidistrict Litigation has transferred additional lawsuits to the MDL for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407, and additional lawsuits have been filed in and/or removed to the MDL;

WHEREAS, on October 10, 2022, Plaintiffs filed a Consolidated Third Amended Class Action Complaint for Economic Losses (“Economic Loss Complaint”), on behalf of themselves and all others similarly situated;

WHEREAS, on October 17, 2022, Plaintiffs filed a Consolidated Second Amended Class Action Complaint for Medical Monitoring, and on October 24, 2022, Plaintiffs filed an Amended Master Long Form Complaint for Personal Injuries and Damages and an accompanying Short Form Complaint (collectively, the “Medical Monitoring and Personal Injury Complaints”);

WHEREAS, the Philips Defendants deny all alleged liability, wrongdoing, fault, violation, and damages or injuries;

WHEREAS, Settlement Class Counsel have engaged in substantial discovery, investigation and fact gathering, including confirmatory discovery as part of the mediation process, to evaluate the Economic Loss Claims and Defendants' defenses;

WHEREAS, the Parties engaged in extensive good faith, arm's-length negotiations, over a period of many months, to resolve the Economic Loss Claims, with the assistance and oversight of the Settlement Mediator;

WHEREAS, without conceding the correctness of any of the other Parties' legal positions, claims and/or defenses, the Parties wish to avoid the delays, expense, and risks inherent in continued litigation of the Economic Loss Claims; and

WHEREAS, the Medical Monitoring and Personal Injury Claims are not the subject of this proposed resolution of the Economic Loss Claims, but any Economic Loss Claims asserted in the Medical Monitoring and Personal Injury Complaints are the subject of this proposed resolution of the Economic Loss Claims.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and intending to be legally bound, the Parties agree to resolve, release and settle the Economic Loss Claims against the Released Parties on the terms set forth below:

1. Definitions

For purposes of this Settlement, including the attached exhibits, the following terms (designated by initial capitalization throughout this Agreement) shall have the meanings set forth in this Section. Terms used in the singular shall include the plural.

- 1.1. **Accelerated Implementation Option** shall mean the option available to certain Users to receive a Device Payment Award and a Device Return Award on an accelerated basis, pursuant to the terms set forth in Section 6.3 below.
- 1.2. **Attorneys' Fees and Expenses** shall mean the final amounts approved by the MDL Court (following the conclusion of any appellate proceedings) in connection with Settlement Class Counsel's motion for attorneys' fees, costs and litigation expenses, as described in Section 18.1 below.
- 1.3. **BiPAP** shall mean Bi-level Positive Airway Pressure devices.

- 1.4. **Census Registry Program** shall mean the Census Registry Program established by the MDL Court in Pretrial Order #25, as modified in Pretrial Order #25(a) (ECF Nos. 739, 870).
- 1.5. **Claims Appeals Special Master** shall mean, subject to MDL Court approval, the Honorable Thomas J. Rueter (Ret.).
- 1.6. **Claims Period** shall mean the period during which the Settlement Administrator will accept claims that Settlement Class Members have submitted for Device Payment Awards, Device Return Awards, Device Replacement Awards and/or Payer Awards.
- 1.7. **Claims Period Deadline** shall mean 120 days after the date of the Final Fairness Hearing.
- 1.8. **Counsel** shall mean Settlement Class Counsel and Counsel for the Philips Defendants.
- 1.9. **Counsel for the Philips Defendants** shall mean:
 - 1.9.1. Counsel for Philips RS:
 - 1.9.1.1. John P. Lavelle, Jr. and Lisa C. Dykstra, Morgan, Lewis & Bockius LLP, 1701 Market Street, Philadelphia, PA 19103-2921; and
 - 1.9.1.2. Erik T. Koons and Andrew T. George, Baker Botts LLP, 700 K St. NW, Washington, DC 20001.
 - 1.9.2. Counsel for Koninklijke Philips N.V., Philips North America LLC, Philips Holding USA Inc., and Philips RS North America Holding Corporation:
 - 1.9.2.1. Michael H. Steinberg, Sullivan & Cromwell LLP, 1888 Century Park East, Los Angeles, CA 90067; and
 - 1.9.2.2. Tracy Richelle High, William B. Monahan, and Elizabeth N. Olsen, Sullivan & Cromwell LLP, 125 Broad Street, New York, NY 10004.
- 1.10. **CPAP** shall mean Continuous Positive Airway Pressure devices.

- 1.11. **Defendants** shall mean the defendants named in the Economic Loss Complaint, namely, the Philips Defendants, Polymer Technologies, Inc., and Polymer Molded Products LLC.
- 1.12. **Device Payment Award** shall mean the cash payment offered to Users relating to the Recalled Devices described in Section 3.2 below.
- 1.13. **Device Replacement Award** shall mean the cash payment offered to Users who qualify for a Device Replacement Award, as set forth in Section 3.4 below.
- 1.14. **Device Return Award** shall mean the cash payment offered to Users who return, or have returned, their Recalled Devices, as set forth in Section 3.3 below.
- 1.15. **DME** shall mean Durable Medical Equipment providers.
- 1.16. **Economic Loss Claims** shall mean any and all claims, demands, actions, or causes of action (whether for damages, fines, penalties, assessments, liens, injunctive, equitable or any other relief, whether direct, indirect or consequential, liquidated or unliquidated, past, present or future, or foreseen or unforeseen) relating in any way to the Recalled Devices or the Replacement Devices, including, but not limited to, payments, costs, reimbursements, and/or expenses incurred or made by Settlement Class Members in connection with the purchase, rental, lease or other acquisition of the Recalled Devices or the Replacement Devices, that have been asserted, could have been asserted, or could be asserted by any of the Settlement Class Members, whether known or unknown, in law or in equity, contingent or non-contingent, suspected or unsuspected, concealed or hidden, or past, present or future, including for attorneys' fees, expert fees, consultant fees, or other litigation fees or costs, except Economic Loss Claims expressly do not include Medical Monitoring and Personal Injury Claims.
- 1.17. **Effective Date** shall mean the date when the Settlement becomes Final, not the Execution Date or the date of MDL Court Final Approval. For avoidance of doubt, the Effective Date shall not have been reached until both the MDL Court enters the Final Order and Judgment and there has been the successful exhaustion of all appeal periods without appeal or resolution of any appeals or certiorari proceedings in a manner upholding the Final Order and Judgment.
- 1.18. **Eligible Payers** shall mean Payers who remain in the Settlement Class and who have taken the steps applicable to them, as determined by the Settlement Administrator, to receive a Payer Award under the Settlement.

- 1.19. **Eligible Users** shall mean Users who remain in the Settlement Class and who have taken the steps (if any) applicable to them, as determined by the Settlement Administrator, to receive one or more Device Payment, Device Return, and/or Device Replacement Awards under the Settlement.
- 1.20. **Enrolled Recalled Devices** shall mean Recalled Devices enrolled by Users in the Settlement pursuant to the Enrollment Process.
- 1.21. **Enrollment Process** shall mean the process for Users to enroll Recalled Devices in the Settlement to receive a Device Payment and/or a Device Return Award, provided they otherwise meet the requirements to receive those payments under the Settlement. The Enrollment Process is available only to Users who still possess the Recalled Device(s) that they want to enroll in the Settlement and that have not previously been registered in a Recall Program, and requires that Users provide at least (i) the Serial Number for the Recalled Device(s), (ii) the User's name, mailing address, telephone number, and if applicable, e-mail address, and (iii) information regarding the User's requested form of payment under the Settlement. All Recalled Devices except the Trilogy 100/200 Recalled Devices may be enrolled in the Settlement if they otherwise meet the requirements for enrollment. For those Users who still possess their Trilogy 100/200 Recalled Devices and wish to receive a Device Return Award, they should register their Trilogy 100/200 with Philips RS pursuant to a Recall Program. Philips RS will contact the DME to make arrangements for the DME to schedule a time to retrieve the User's Trilogy 100/200 and install a Remanufactured Device.
- 1.22. **Execution Date** shall mean September 7, 2023.
- 1.23. **Extended Warranties** shall mean those extended warranties provided by Philips RS to Users who receive or received a Remanufactured Device as part of a Recall Program, as set forth in Section 3.5 below.
- 1.24. **Final** shall mean the later of (1) the day after the deadline to appeal the Final Order and Judgment has expired with no appeal having been taken, or (2) if an appeal is filed, the latest of (i) the date of final affirmance of the Final Order and Judgment, (ii) the expiration of the time for a petition for writ of *certiorari* to review the Final Order and Judgment if affirmed, the denial of *certiorari*, or, if *certiorari* is granted, the date of final affirmance of the Final Order and Judgment following review pursuant to that grant; or (iii) the date of final dismissal of any appeal from the Final Order and Judgment or the final dismissal of any proceeding on *certiorari* to review the Final Order and Judgment that has the effect of confirming the Final Order and Judgment. An appeal from an award of Attorneys' Fees and Expenses or an award

of Service Awards to Settlement Class Representatives shall not affect the finality of the Settlement.

- 1.25. **Final Fairness Hearing** shall mean the final fairness hearing before the MDL Court, as described in Section 13 of the Agreement.
- 1.26. **Final Order and Judgment** shall mean the Final Approval Order and Judgment entered by the MDL Court following the Final Fairness Hearing, substantially in the form attached as **Exhibit 9** hereto.
- 1.27. **MDL** shall mean the above-captioned MDL, *In re Philips Recalled CPAP, Bi-Level PAP, and Mechanical Ventilator Prod. Litig.*, MDL No. 3014 (W.D. Pa.) (Conti, J.).
- 1.28. **MDL Court** shall mean the Honorable Joy Flowers Conti, or her successor, who presides over the MDL.
- 1.29. **MDL Court Final Approval** shall mean entry of the Final Order and Judgment by the MDL Court.
- 1.30. **Medical Monitoring and Personal Injury Claims** shall mean any claims for (1) medical monitoring damages or other medical monitoring relief and/or (2) personal injuries, including for pecuniary, non-pecuniary, and punitive damages for those personal injuries (including, but not limited to, past, present or future lost wages, lost earning capacity, or medical costs or expenses, and pain and suffering).
- 1.31. **Ozone Cleaning Companies** shall mean manufacturers of ozone cleaning devices for CPAP, BiPAP, ventilator or other similar devices, as well as their former, present, and future owners, shareholders, directors, officers, employees, attorneys, affiliates, parent companies, subsidiaries, predecessors and successors, including, but not limited to, SoClean Inc. and its affiliated and predecessor companies.
- 1.32. **Ozone Cleaning Products** shall mean devices claiming to use ozone to disinfect, clean, sanitize or otherwise employ ozone in connection with a CPAP, BiPAP, ventilator or other similar device, including, but not limited to, the Better Rest, the SoClean 1, the SoClean 2, the SoClean 2 Go, and the SoClean 3.
- 1.33. **Payer Award** shall mean the allocated portion of the Payer Amount that each Eligible Payer is eligible for under the Settlement, as set forth in Sections 3.6 and 6.7 below.
- 1.34. **Payers** shall have the meaning set forth in Section 1.51 below in the definition of Settlement Class.

- 1.35. **Plaintiffs** shall mean the Plaintiffs named in the Economic Loss Complaint.
- 1.36. **Preliminary Approval Order** shall mean an order of the MDL Court preliminarily approving the Settlement, substantially in the form attached as **Exhibit 1** hereto.
- 1.37. **Recalled Devices**, or **Philips RS Recalled Devices**, shall mean the following CPAP, BiPAP, ventilator, and/or other devices sold, leased, rented or otherwise distributed in the United States:
 - 1.37.1. C-series S/T, AVAPS (C-series and C-series HT);
 - 1.37.2. DreamStation ASV;
 - 1.37.3. DreamStation BiPAP;
 - 1.37.4. DreamStation CPAP;
 - 1.37.5. DreamStation Go;
 - 1.37.6. DreamStation ST, AVAPS;
 - 1.37.7. E30;
 - 1.37.8. OmniLab Advanced Plus;
 - 1.37.9. System One 50 Series ASV4 (Auto SV4);
 - 1.37.10. System One 50 Series Base;
 - 1.37.11. System One 50 Series BiPAP;
 - 1.37.12. System One 60 Series ASV4 (Auto SV4);
 - 1.37.13. System One 60 Series Base;
 - 1.37.14. System One 60 Series BiPAP;
 - 1.37.15. Trilogy 100/200, Garbin Plus, Aeris LiveVent; and
 - 1.37.16. V30 auto.
- 1.38. **Recall Programs** shall mean ongoing and future programs administered by Philips RS and overseen by the United States Food and Drug Administration relating to the Recalled Devices, including to repair, refurbish, remanufacture, and/or replace

Recalled Devices and/or that require the return of Recalled Devices to Philips RS for remediation, compensation or otherwise. To date, Philips RS has spent more than \$500 million toward the Recall Programs.

- 1.39. **Recall Registration Number** shall mean the unique registration number a User receives from Philips RS when the User registers his or her Recalled Device with Philips RS pursuant to a Recall Program.
- 1.40. **Recalls** shall mean the recalls of the Recalled Devices by Philips RS, beginning June 14, 2021.
- 1.41. **Registered Recalled Devices** shall mean Recalled Devices registered by Users pursuant to the Recall Programs.
- 1.42. **Released Claims** shall mean all Economic Loss Claims against Defendants and the other Released Parties. For the avoidance of doubt, Released Claims expressly does not include (1) Economic Loss Claims of Settlement Class Members against Ozone Cleaning Companies (which will be assigned to Philips RS as set forth in Section 5 below), (2) claims to enforce this Settlement, or (3) Medical Monitoring and Personal Injury Claims.
- 1.43. **Released Parties** shall mean any individual who, or entity that, is or could be responsible or liable in any way whatsoever, whether directly or indirectly, for Economic Loss Claims. Without in any way limiting the foregoing, the Released Parties include, without limitation, (1) Defendants, (2) any of their past, present, or future parents, owners, predecessors, successors, subsidiaries, divisions, affiliates/related entities, stockholders, officers, directors, board members, supervisors, members, partners, managers, and employees, (3) any of their current, former or future suppliers, agents, testing laboratories, attorneys, vendors, consultants, claim administrators, recall administrators, contractors and subcontractors, (4) any and all current, former or future distributors, sellers, insurers, reinsurers, resellers, lessors, retail dealers, and DME providers for the Recalled Devices, (5) any and all individuals and entities indemnified by any other Released Party with respect to Economic Loss Claims, and (6) all of their predecessors, successors, assigns, legatees, legal representatives, and any other stakeholders, as well as all other persons acting by, through, or under them, including those who are, may be, or are alleged to be jointly or jointly and severally liable with them, or any of them. For the avoidance of doubt, notwithstanding anything to the contrary above, the Released Parties expressly does not include Ozone Cleaning Companies.

- 1.44. **Remanufactured Devices** shall mean repaired, refurbished, remanufactured, and/or new replacement CPAP, BiPAP, ventilator or similar devices that Philips RS has provided to Users pursuant to the Recall Programs.
- 1.45. **Replacement Device** shall mean a CPAP, BiPAP, ventilator or similar device that is comparable to the replaced Philips RS Recalled Device and that was purchased, leased, rented, or otherwise paid for directly by a User (in whole or part), but only on or after June 14, 2021 and prior to the Execution Date, to replace the Philips RS Recalled Device, as set forth in Section 3.4 below.
- 1.46. **Replacement Device Claim Amount** shall mean the amount documented as actually paid by a User (*e.g.*, not any payment made by insurance or another third-party payer on behalf of or for the benefit of the User) to purchase, lease, or rent a Replacement Device, subject to Section 3.4.1.1 below.
- 1.47. **Representative Claimant** shall mean the guardian, estate, administrator, or other legal representative, including a person acting pursuant to a power of attorney for a Settlement Class Member, with authority to act on behalf of a Settlement Class Member. Representative Claimants do not include a Settlement Class Member's counsel unless that counsel is acting under a power of attorney from the Settlement Class Member. Representative Claimants also do not include persons or entities, such as claim aggregator companies, who purchase a User's claim(s), charge a User to submit a Claim Form, and/or seek to retain a portion of a User's claim(s) in exchange for submitting a Claim Form on behalf of such User.
- 1.48. **Serial Number** shall mean the unique identifying alphanumeric number located on the bottom of each Recalled Device or Remanufactured Device, or in the case of certain ventilators (such as the OmniLab Advanced Plus and Trilogy 100/200), on the device display.
- 1.49. **Service Awards** shall mean the final amounts approved by the MDL Court (following the conclusion of any appellate proceedings) for payment to Settlement Class Representatives for their service as a Settlement Class Representative, as described in Section 18.2 below.
- 1.50. **Settlement Administrator** shall mean, subject to MDL Court approval, Angeion Group, LLC ("Angeion Group"). The Settling Parties may jointly agree to replace Angeion Group with another mutually agreeable settlement administrator.
- 1.51. **Settlement Class or Settlement Class Members** shall include Plaintiffs and all other individuals or entities in the United States (as defined below), including individuals who are United States citizens, residents, United States military,

diplomatic personnel and employees living or stationed overseas, who or which, prior to the announcement of the Recalls, either (a) purchased, leased, rented, or paid for (in whole or part), or were prescribed a Recalled Device (“Users”), or (b) reimbursed (in whole or part) a User’s payment to purchase, lease, rent, or otherwise pay for a Recalled Device, including insurers, self-funded employers, and other third-party payers (“Payers”). Individuals or entities whose payment obligations with respect to a particular Recalled Device preceded the announcement of the relevant Recall are part of the Settlement Class even if certain of their payment obligations post-dated the Recall (*e.g.*, certain renters and lessees).

EXCLUDED from the Settlement Class are: (a) Defendants and their officers, directors, and employees; (b) the MDL Court, Settlement Mediator, Claims Appeals Special Master, and Special Masters assigned to the MDL; (c) individuals who have already released Released Claims against one or more of the Defendants pursuant to individual settlements or other resolutions; (d) DMEs; (e) the federal government and any federal government payers, including the United States Department of Health and Human Services Centers for Medicare & Medicaid Services, the Department of Defense, and the U.S. Department of Veterans Affairs; and (f) Settlement Class Counsel.

1.52. **Settlement Class Counsel** shall mean:

- 1.52.1. Christopher A. Seeger, Seeger Weiss, 55 Challenger Road, 6th Floor, Ridgefield Park, NJ 07660;
- 1.52.2. Sandra L. Duggan, Levin Sedran & Berman, 510 Walnut Street, Suite 500, Philadelphia, PA 19106;
- 1.52.3. Steven A. Schwartz, Chimicles Schwartz Kriner & Donaldson-Smith LLP, 361 West Lancaster Avenue, Haverford, PA 19041;
- 1.52.4. Kelly K. Iverson, Lynch Carpenter, LLP, 1133 Penn Avenue, 5th Floor, Pittsburgh, PA 15222;
- 1.52.5. Roberta D. Liebenberg, Fine, Kaplan and Black, R.P.C., One South Broad Street, 23rd Floor, Philadelphia, PA 19107;
- 1.52.6. Lisa Ann Gorshe, Johnson Becker PLLC, 444 Cedar Street, Suite 1800, Saint Paul, MN 55101; and
- 1.52.7. Arthur H. Stroyd, Jr., Del Sole Cavanaugh Stroyd LLC, 3 PPG Place, Suite 600, Pittsburgh, PA 15222.

- 1.53. **Settlement Class Representatives** shall mean the following Plaintiffs: Elizabeth Heilman; Ivy Creek of Tallapoosa LLC d/b/a Lake Martin Community Hospital; Peter Barrett; Julie Barrett; and ASEA/AFSCME Local 52 Health Benefits Trust.
- 1.54. **Settlement Funds** shall mean the accounts that will be opened with the Settlement Funds Escrow Agent, MDL 3014 EL User Settlement Fund (“User Settlement Fund”) and MDL 3014 EL Payer Settlement Fund (“Payer Settlement Fund”), as a Court-approved Qualified Settlement Fund pursuant to Section 1.468B-1, *et seq.* of the Treasury Regulations promulgated under Section 468B of the Internal Revenue Code of 1986, as amended. The Escrow Agreement establishing the Settlement Funds will be in a form mutually agreed upon by the Parties.
- 1.55. **Settlement Funds Escrow Agent** shall mean Huntington Bank, which will enter into an Escrow Agreement to carry out the tasks more fully detailed in that Escrow Agreement, including to receive, hold, invest, and disburse funds and pay notice-related costs and other reasonable administrative expenses authorized and approved by the Court. The Settling Parties may jointly agree to replace Huntington Bank with another mutually agreeable financial institution.
- 1.56. **Settling Parties** shall mean all Settlement Class Members and the Philips Defendants.
- 1.57. **Settling Party** shall mean any one of the Settling Parties.
- 1.58. **United States** shall mean the United States of America, its Territories (American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands), and the District of Columbia.
- 1.59. **Users** shall have the meaning set forth in Section 1.51 above in the definition of Settlement Class.

2. **Funding Obligations and Payments by the Philips Defendants**

- 2.1. The Philips Defendants shall be responsible to make, or to cause to be made, the payments and to perform, or to cause to be performed, the obligations set forth in this Agreement.
- 2.2. For purposes only of this Settlement and the enforcement of the payment and performance obligations under this Settlement, the Philips Defendants submit to the jurisdiction of the MDL Court.
- 2.3. **Establishment and Administration of the Settlement Funds**

- 2.3.1. The Settlement Funds will be a MDL Court-approved Qualified Settlement Fund pursuant to Section 1.468B-1, *et seq.* of the Treasury Regulations promulgated under Section 468B of the Internal Revenue Code of 1986, as amended.
- 2.3.2. The Settlement Funds will be established through a deposit or deposits by, or on behalf of, the Philips Defendants of the Initial Payments for Class Notice and Settlement Administration, as set forth in Section 2.4.1 below.
- 2.3.3. At the written direction of Settlement Class Counsel, the Settlement Funds Escrow Agent shall invest the Settlement Funds exclusively in instruments or accounts backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, including a U.S. Treasury Fund or a bank account that is either (a) fully insured by the Federal Deposit Insurance Corporation or (b) secured by instruments backed by the full faith and credit of the United States Government. The Philips Defendants shall not bear any responsibility for or liability related to the investment of the Settlement Funds by the Settlement Funds Escrow Agent.
- 2.3.4. Administrative expenses of the Settlement Funds will be paid from the Settlement Funds.

2.4. Payments for Class Notice and Settlement Administration

- 2.4.1. **Initial Payments for Class Notice and Settlement Administration.** No later than 14 days after the Execution Date, the Philips Defendants shall deposit, or cause to be deposited, \$7,350,000 into the User Settlement Fund and \$100,000 into the Payer Settlement Fund (collectively, the “Initial Payments for Class Notice and Settlement Administration”) by wire transfer into the respective Settlement Funds for purposes of paying notice-related costs, and other reasonable administrative expenses that may be incurred pursuant to this Settlement in conjunction with the retention and/or services of the Settlement Administrator, the Settlement Funds Escrow Agent, the Claims Appeals Special Master, and the Settlement Mediator.
- 2.4.2. Following MDL Court Final Approval, the Philips Defendants shall make, or cause to be made, additional payments for Settlement

Administration as set forth in Section 6.1.1 below and as required by the Settlement.

2.5. **Payments for Device Payment Awards**

- 2.5.1. **Initial Device Payment Amount.** The Philips Defendants shall pay, or cause to be paid, an amount equal to the total Device Payment Awards (as set forth in Section 3.2 below) for all Registered Recalled Devices as of the Execution Date, plus an amount equal to the total Device Payment Awards for 5% of the remaining Recalled Devices that have not been registered by Users for a Recall Program by the Execution Date (the “Initial Device Payment Amount”). The payment shall be made by wire transfer into the User Settlement Fund in two installments no later than 14 days following (i) MDL Court Final Approval (25% of the Initial Device Payment Amount) (“first installment”), and (ii) the Effective Date (75% of the Initial Device Payment Amount) (“second installment”). In the event the first installment of the Initial Device Payment Amount is insufficient to pay Device Payment Awards to Users electing the AIO option, the Philips Defendants shall deposit additional funds from the second installment to make those payments. The combined first and second installment payments for the Initial Device Payment Amount will be \$309,082,312.
- 2.5.2. Additional payments by, or on behalf of, the Philips Defendants into the User Settlement Fund for Device Payment Awards may be required as set forth further in Section 2.7 below.

2.6. **Payments for Device Return Awards**

- 2.6.1. **Initial Device Return Amount.** The Philips Defendants shall pay, or cause to be paid, an amount equal to \$100 for each and every Registered and Enrolled Recalled Device returned by Users pursuant to the Recall Programs or the Settlement as of the date of MDL Court Final Approval (the “Initial Device Return Amount”). The payment shall be made by wire transfer into the User Settlement Fund in two installments no later than 14 days following (i) MDL Court Final Approval (25% of the Initial Device Return Amount) (“first installment”), and (ii) the Effective Date (75% of the Initial Device Return Amount) (“second installment”). In the event the first installment of the Initial Device Return Amount is insufficient to pay Device Return Awards to Users electing the AIO option, the Philips Defendants shall deposit, or cause

to be deposited, additional funds from the second installment to make those payments. The combined first and second installment payments for the Initial Device Return Amount will be no less than \$136,618,500, but is subject to increase depending on the number of Registered and Enrolled Recalled Devices returned by Users pursuant to the Recall Programs or the Settlement as of the date of MDL Court Final Approval.

- 2.6.2. Additional payments by, or on behalf of, the Philips Defendants into the User Settlement Fund for Device Return Awards may be required as set forth further in Section 2.7 below.

2.7. Additional Payments for Device Payment Awards and Device Return Awards

- 2.7.1. To the extent the sum of the Initial Device Payment Amount and the Initial Device Return Amount is not sufficient to make all Device Payment Awards and Device Return Awards required by the Settlement, the Philips Defendants, on a monthly basis, will pay, or cause to be paid, an additional amount (the “Additional Amount”) into the User Settlement Fund necessary to make those payments.

- 2.7.2. The Settlement Administrator, in coordination with the Parties, shall determine within 10 days of the end of each month the Additional Amount necessary (if any) to make Device Payment Awards and Device Return Awards to all Eligible Users for the following month (the “Additional Amount Determination”). The Philips Defendants shall pay, or cause to be paid, the Additional Amount into the User Settlement Fund within 14 days after the Additional Amount Determination.

- 2.7.2.1. In the event either Party or the Settlement Administrator later identifies a miscalculation in the amount of any Additional Amount Determination, and the Parties are in agreement as to the miscalculation, that amount shall be taken into consideration by the Settlement Administrator to increase or decrease subsequent Additional Amount Determination(s), as appropriate. If the Parties cannot agree as to the existence or amount of a miscalculation, such dispute shall be resolved by the Claims Appeals Special Master, whose decision on the matter shall be final and unappealable by any Party.

2.7.2.2. In the event the Philips Defendants deposit excess amounts into the User Settlement Fund as a result of a miscalculation of Additional Amount Determination(s) and those amounts remain in the User Settlement Fund after all Device Payment Awards and Device Return Awards required under the Settlement have been made, the excess amounts shall be returned to the Philips Defendants within 14 days after all Device Payment Awards and Device Return Awards have been made to Eligible Users.

2.8. Payments for Device Replacement Awards

2.8.1. **Device Replacement Amount.** The Philips Defendants shall pay, or cause to be paid, up to \$10,000,000 (the “Device Replacement Amount”) by wire transfer into the User Settlement Fund no later than 14 days after the Settlement Administrator determines the total number and amount of valid claims for Device Replacement Awards, as set forth in Section 6.6.2 below. This determination will not occur until after the Claims Period Deadline, and the Philips Defendants do not have any payment obligation with respect to Device Replacement Awards prior to then.

2.8.2. Additional payments by, or on behalf of, the Philips Defendants into the User Settlement Fund for Device Replacement Awards may be required as set forth in Section 6.6.2.4 below.

2.9. The net interest earned on payments by, or on behalf of, the Philips Defendants into the User Settlement Fund, after payment of taxes and fees owed, Class Notice and Settlement Administration expenses (*see* Section 2.4 above), will accrue to the benefit of Users and may be used to make Device Payment Awards, Device Return Awards and/or Device Replacement Awards.

2.10. Payment for Payer Awards

2.10.1. **Payer Amount.** The Philips Defendants shall pay, or cause to be paid, \$34,000,000 for Payer Awards (the “Payer Amount”). The payment shall be made by wire transfer into the Payer Settlement Fund no later than 14 days following the Effective Date. The Payer Amount is fixed and will not increase based on the number or amount of Eligible Payers or Eligible Payer claims submitted.

- 2.11. The net interest earned on the payment by, or on behalf of, the Philips Defendants into the Payer Settlement Fund, after payment of taxes and fees owed, Class Notice and Settlement Administration expenses (*see* Section 2.4 above), will accrue to the benefit of Payers and may be used to make Payer Awards.
- 2.12. The payments by, or on behalf of, the Philips Defendants of the Initial Device Payment Amount, the Initial Device Return Amount, and the Payer Amount (collectively, the “Non-Reversionary Payments”) shall be non-reversionary, and the Philips Defendants shall not be entitled to return of the Non-Reversionary Payments; however, if the Settlement does not achieve MDL Court Final Approval and/or does not become Final, then the Non-Reversionary Payments and accrued interest (minus any payments made or owed for Class Notice and Settlement Administration and minus any payments made pursuant to the AIO as set forth in Section 6.3 below) will be returned to the Philips Defendants.

3. Settlement Benefits

3.1. Overview

- 3.1.1. The Settlement benefits set forth in this Agreement are separate and distinct from any relief provided under the Recall Programs; provided, however, that to the extent that the financial compensation to a particular User under this Settlement is greater than the financial compensation provided under the Recall Programs to the same User, or vice versa, nothing precludes that User from recovering the larger of the two but not both.
 - 3.1.1.1. As part of the claims process for this Settlement, the Settlement Administrator, in conjunction with the Parties, will determine whether a User has already received financial compensation under the Recall Programs greater than that which otherwise would have been provided to the User through the sum of the User’s Device Payment and Device Return Awards. If so, the User is not entitled to a Device Payment or Device Return Award under this Settlement.
 - 3.1.1.2. Provided they otherwise meet the requirements set forth herein for a Device Replacement Award, nothing in the Recall Programs precludes Users from recovering a Device Replacement Award.

3.1.2. Provided they otherwise meet the requirements to receive these payments under the Settlement, Users are eligible for the following cash payments under the Settlement: (a) Device Payment Awards, (b) Device Return Awards, and (c) Device Replacement Awards. As set forth in Section 3.4.6 below, with certain exceptions, a User is not eligible for both a Device Return Award and a Device Replacement Award with respect to the same Recalled Device.

3.1.2.1. Users who receive a Remanufactured Device from Philips RS also receive an Extended Warranty on the Remanufactured Device.

3.1.3. Provided they otherwise meet the requirements to receive this payment under the Settlement, Payers are eligible for Payer Awards. Payers are not eligible, directly or indirectly, for any Device Payment Awards, Device Return Awards or Device Replacement Awards, in whole or in part.

3.2. **Device Payment Awards.** Only one Device Payment Award is available per Recalled Device. The amount of each Device Payment Award will be based on the Recalled Device at issue as follows:

Recalled Device	User Device Payment Award (Per Device)
System One 50 Series ASV4 (Auto SV4)	\$469.14
System One 50 Series Base	\$69.14
System One 50 Series BiPAP	\$159.46
System One 60 Series ASV4 (Auto SV4)	\$424.32
System One 60 Series Base	\$68.24
System One 60 Series BiPAP	\$152.70
C-series S/T, AVAPS (C-series and C-series HT)	\$394.37
DreamStation CPAP	\$55.63
DreamStation ASV	\$379.50
DreamStation ST, AVAPS	\$329.05
DreamStation BiPAP	\$130.63
DreamStation Go	\$107.43
E30	\$453.83
OmniLab Advanced Plus	\$165.99
Trilogy 100/200, Garbin Plus, Aeris LiveVent	\$1,552.25
V30 auto	\$67.12

- 3.2.1. Device Payment Awards will be paid to those Users who complete the steps applicable to them, if any, in Section 6 below.
- 3.2.2. Payers are not eligible to receive Device Payment Awards, and no portion of a Device Payment Award will be allocated under the Settlement to Payers.
- 3.2.3. Users who purchased, leased, rented, or paid for multiple Recalled Devices are eligible to seek and receive multiple Device Payment Awards.
- 3.2.4. If a User purchased, leased, rented, or paid for (in whole or part) a Recalled Device, but then returned that Recalled Device to Philips RS under warranty (outside of a Recall Program) and received another Recalled Device for free pursuant to that warranty, the User is only eligible for a Device Payment Award for the Recalled Device provided to the User for free under warranty, not the original Recalled Device returned to Philips RS under warranty.
- 3.2.5. In the event multiple Users make valid Device Payment Award claims with respect to the same Recalled Device (*e.g.*, a Recalled Device that was rented), the Device Payment Award for that Recalled Device will be allocated by the Settlement Administrator after the Claims Period Deadline on a *pro rata* basis in accordance with each User's total payments for the Recalled Device.
- 3.2.6. Users who purchased, leased, rented, or paid for (in whole or part) a Recalled Device but who returned the Recalled Device under warranty (outside of a Recall Program) and received their full payment back are not eligible for a Device Payment Award for the Recalled Device they returned.
- 3.2.7. Receipt of a Device Payment Award does not affect a User's eligibility, if applicable, for a Device Return Award and/or a Device Replacement Award.
- 3.3. **Device Return Awards.** A Device Return Award, of \$100 per Recalled Device (irrespective of the type or model of Recalled Device), will be available to compensate eligible Users who have either already returned Recalled Devices pursuant to a Recall Program or who return Recalled Devices by the Claims Period Deadline pursuant to either the terms of the Settlement or a Recall Program. There shall be only one Device Return Award available for each Recalled Device.

- 3.3.1. Users are eligible to receive a separate Device Return Award for each Recalled Device they return.
 - 3.3.2. Payers are not eligible to receive Device Return Awards, and no portion of a Device Return Award will be allocated under the Settlement to Payers.
 - 3.3.3. To be eligible to receive a Device Return Award, Users must return (or already have returned after June 14, 2021) their Registered or Enrolled Recalled Device(s) pursuant to a Recall Program or under this Settlement.
 - 3.3.4. Philips RS agrees to make prepaid return labels available on the Settlement website maintained by the Settlement Administrator so as to allow Users to return their Registered or Enrolled Recalled Devices to Philips RS; provided, however, that for those Users who still possess their Trilogy 100/200 Recalled Devices and wish to receive a Device Return Award, they should register their Trilogy 100/200 with Philips RS pursuant to a Recall Program. Philips RS will contact the DME to make arrangements for the DME to schedule a time to retrieve the User's Trilogy 100/200 and install a Remanufactured Device.
 - 3.3.5. To receive a Device Return Award, the returned Recalled Device must have a complete and visible original Serial Number and must have all of its parts, other than a humidifier attachment, power cord, the memory card, the filters, and accessories like masks and tubing.
 - 3.3.6. Receipt of a Device Return Award for a particular Recalled Device does not affect a User's eligibility to receive a Device Payment Award for that Recalled Device.
 - 3.3.7. As set forth in Section 3.4.6 below, a User is not eligible for a Device Return Award if the User receives 100% of his or her Replacement Device Claim Amount with respect to the same Recalled Device. However, as set forth in Section 3.4.7 below, in the event that a User does not receive 100% of his or her Replacement Device Claim Amount, the User may be entitled to a Device Return Award (or a portion thereof) for the associated replaced and returned Recalled Device.
- 3.4. **Device Replacement Awards.** Device Replacement Awards are intended to compensate eligible Users who, on or after June 14, 2021 and prior to the Execution Date, paid out of pocket (in whole or in part) for a Replacement Device without

having received or prior to receiving from a Recall Program a Remanufactured Device associated with the User's Recalled Device.

3.4.1. Subject to Section 3.4.1.1 below, the Device Replacement Award for a particular User shall be based on the Replacement Device Claim Amount.

3.4.1.1. The Parties have agreed to a list of comparable Replacement Devices for each Philips RS Recalled Device ("Comparable Replacement Devices List"), attached hereto as **Exhibit 5(a)**. In the event a User purchased, leased, or rented a replacement device that is not identified on the Comparable Replacement Devices List, the Settlement Administrator, in consultation with the Parties, will determine whether the replacement device at issue can be considered a comparable Replacement Device. If the replacement device at issue is not comparable to the replaced Philips RS Recalled Device and the amount set forth on the User's Device Replacement Award Claim Form is greater than the value of a device that is comparable to the replaced Philips RS Recalled Device, as determined by the Parties in consultation with the Settlement Administrator, the User's Replacement Device Claim Amount will be reduced by the Settlement Administrator to the value of the comparable device, and the reduced amount will constitute the User's Replacement Device Claim Amount.

3.4.2. To be eligible to receive a Device Replacement Award, a User must, within the Claims Period, complete each of the following steps:

3.4.2.1. Submit a timely and valid claim, by completing the Device Replacement Award Claim Form in the form attached hereto as **Exhibit 5** and by providing sufficient documentation of (i) the Replacement Device, (ii) the expenses actually incurred and paid out of pocket by the User to acquire the Replacement Device, (iii) the purchase date for the Replacement Device, (iv) a sworn declaration that the Replacement Device was in fact used by the User to replace the Recalled Device, and (v) sufficient information regarding the Recalled Device that the Replacement Device was replacing so as to undertake the comparability analysis

required by Sections 1.45 and 3.4.1.1 above and to ensure that any Device Return Award for that Recalled Device is accounted for consistent with Sections 3.4.6 and 3.4.7 below.

- 3.4.2.2. Return the Recalled Device to Philips RS through the process set forth above in Section 3.3.4. If the User no longer possesses the Recalled Device, the User need not return the Recalled Device to Philips RS to be eligible for a Device Replacement Award. However, if the User still possesses the Recalled Device, the User must return it to Philips RS to be eligible for a Device Replacement Award.
- 3.4.2.3. In the event the User received a Remanufactured Device pursuant to a Recall Program, return that Remanufactured Device to Philips RS in reasonable working condition by obtaining a prepaid return label available on the Settlement website maintained by the Settlement Administrator. The User must return the Remanufactured Device to Philips RS to be eligible for a Device Replacement Award.
- 3.4.3. Only one Device Replacement Award is available per Recalled Device (*e.g.*, if a User purchased two Replacement Devices to replace a single Recalled Device, the User is only eligible for a Device Replacement Award for one of the Replacement Devices).
- 3.4.4. No Device Replacement Awards shall be paid until after the Claims Period Deadline or after the Effective Date, whichever is later.
- 3.4.5. If otherwise eligible, Users submitting a claim for a Device Replacement Award will also be entitled to a Device Payment Award associated with the replaced Recalled Device. In other words, receipt of a Device Replacement Award does not preclude a User from receiving a Device Payment Award, subject to the terms and conditions for receiving such an award.
- 3.4.6. Receipt of a Device Replacement Award will preclude a User from receiving a Device Return Award in the event that, after the Settlement Administrator calculates the Total Replacement Device Claim Amounts, as provided in Section 6.6.2 below, the User receives 100% of his or her Replacement Device Claim Amount.

- 3.4.6.1. Under that circumstance, if a particular User already received a Device Return Award for the associated replaced and returned Recalled Device, the Device Return Award amount will be deducted in full from that User's Device Replacement Award.
 - 3.4.7. In the event that a User does not receive 100% of his or her Replacement Device Claim Amount, the User may be entitled to a Device Return Award (or a portion thereof) for the associated replaced and returned Recalled Device.
 - 3.4.7.1. Under that circumstance, Users are entitled to a Device Return Award, or a portion thereof equal to the deficit in the Device Replacement Award (up to \$100), whichever is less.
 - 3.4.8. Payers are not eligible to receive Device Replacement Awards, and no portion of a Device Replacement Award is allocated under the Settlement to Payers.
- 3.5. **Extended Warranties.** Philips RS shall provide the following Extended Warranties to Users who receive or have received a Remanufactured Device from Philips RS as part of a Recall Program:
 - 3.5.1. Two years for materials and workmanship for Remanufactured Devices that have a different Serial Number from the associated Recalled Device.
 - 3.5.2. Two years for materials and workmanship on the repair work that was performed by Philips RS pursuant to the Recall Programs (not the entire Remanufactured Device) on Remanufactured Devices that have the same Serial Number as the associated Recalled Device (*i.e.*, the Remanufactured Device and the Recalled Device are the same device by Serial Number).
 - 3.5.3. The two-year warranties referenced above in Sections 3.5.1 and 3.5.2 shall begin on (i) the date of shipment to the User, for Remanufactured Devices shipped by Philips RS directly to the User, or (ii) the date the Remanufactured Device was set up by the DME for the User, for Remanufactured Devices shipped by Philips RS to the DME.
- 3.6. **Payer Awards.** Payer Awards will be paid from the Payer Amount to those Payers that qualify for such a payment based on the protocols and processes set forth in Section 6.7 below.

4. **Releases**

- 4.1. Through this Settlement, the Parties are settling and fully and forever resolving, with complete finality, any and all Released Claims of the Settlement Class Members against Defendants and the other Released Parties. The Settlement does not resolve any claims that Settlement Class Members may have, if any, against the Defendants or other Released Parties for Medical Monitoring and Personal Injury Claims, which are not released and are expressly excluded from the definition of Released Claims.
- 4.2. Other than as expressly set forth below, the Philips Defendants and any successors to their rights or interests under this Settlement warrant and represent that they will not challenge or oppose a Settlement Class Member's Medical Monitoring or Personal Injury Claims or ability to recover for those Medical Monitoring or Personal Injury Claims on the basis of this Settlement, any payments under this Settlement, or the Releases provided herein. Further, the Settlement does not preclude Settlement Class Members from seeking to present evidence of their alleged economic losses at a trial (if any) of their Medical Monitoring and/or Personal Injury Claims. Such evidence may be presented only (if applicable) to establish an element of their Medical Monitoring and/or Personal Injury Claims; however, in no event shall any Settlement Class Member seek at such trial to recover damages for those economic losses, seek to increase an exemplary or punitive damages award on account of economic losses, or recover twice for their economic losses. In the event a Settlement Class Member seeks to present evidence of their alleged economic losses at a trial (if any), the Philips Defendants shall have the right, in order to prevent double recovery of economic losses by the Settlement Class Member, to seek to present evidence relating to this Settlement, including, but not limited to, any/all money received by the Settlement Class Member pursuant to this Settlement, the determination by the MDL Court that the Settlement was fair, reasonable and adequate, and that the Settlement Class Member had the opportunity to opt out of the Settlement.
- 4.3. All Economic Loss Claims of Settlement Class Members against Ozone Cleaning Companies are expressly excluded from the definition of Released Claims and instead will be assigned to Philips RS in accordance with Section 5 below.
- 4.4. The releases set forth herein expressly exclude any claims for breach of this Agreement.
- 4.5. These terms are material terms of this Agreement and will be reflected in the Final Order and Judgment.

4.6. Release By Settlement Class

- 4.6.1. As of the Effective Date, each Settlement Class Member, on behalf of themselves and their agents, heirs, executors, administrators, successors, assigns, insurers, attorneys, representatives, shareholders, owner associations, and any other legal or natural persons who may claim by, through and/or on behalf of them (“Releasing Parties”), fully, finally, irrevocably, and forever releases, remises, waives, relinquishes, settles, surrenders, foregoes, gives up, abandons, cancels, acquits and forever discharges and covenants not to sue Defendants and the other Released Parties with respect to any and all Released Claims. Without in any way limiting the foregoing or its broad scope, this release covers (by example and without limitation) any and all claims for damages, statutory damages, equitable relief, injunctive relief, penalties, liens, and attorneys’, expert, consultant, or other litigation fees or costs other than fees and costs awarded by the Court in connection with this Settlement, but does not include Medical Monitoring and Personal Injury Claims.
- 4.6.2. This release is not conditional on receipt of any benefits provided under this Settlement or otherwise, and applies as a result of membership as a Settlement Class Member, the notice and MDL Court-approval process herein, the ability to opt out of the Settlement, and the occurrence of the Effective Date.
- 4.6.3. Settlement Class Members acknowledge and waive, and agree to waive, on behalf of themselves and the other Releasing Parties, Section 1542 of the California Civil Code, which provides that: **“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”** Settlement Class Members expressly waive and relinquish, on behalf of themselves and the other Releasing Parties, any and all rights and benefits that they may have under, or that may be conferred upon them by, the provisions of Section 1542 of the California Civil Code, or any other law of any state or territory that is similar, comparable or equivalent to Section 1542, to the fullest extent they may lawfully waive such rights or benefits pertaining to the Released Claims. In connection with such waiver and relinquishment, Settlement Class

Members acknowledge, on behalf of themselves and the other Releasing Parties, that they are aware that they or their attorneys may hereafter discover claims or facts in addition to or different from those that they now know or believe exist with respect to the Released Claims, but that it is their intention to fully, finally, and forever settle and release all of the Released Claims, known or unknown, suspected or unsuspected, asserted or unasserted, or past, present or future, that they have against the Released Parties. In furtherance of such intention, the release herein given by the Releasing Parties to the Released Parties shall be and remain in effect as a full and complete general release of the Released Claims notwithstanding the discovery or existence of any such additional or different claims or facts. Each Settlement Class Member expressly acknowledges, on behalf of themselves and the other Releasing Parties, that he, she, or it has been advised by their attorneys of the contents and effect of Section 1542, and with knowledge, expressly waives whatever benefits they may have had pursuant to such section. Settlement Class Members acknowledge, and the Releasing Parties shall be deemed to have acknowledged, that the foregoing waiver was expressly bargained for and a material element of this Settlement.

4.6.4. Settlement Class Representatives and each Settlement Class Member who receives any benefit under the Settlement represent and warrant that they are the sole and exclusive owners of any and all Released Claims that they are releasing under this Settlement, and further acknowledge that they have not assigned, pledged, or in any manner whatsoever, sold, transferred, assigned or encumbered any right, title, interest or claim arising out of or in any way whatsoever pertaining to the Released Claims, and that they are not aware of anyone other than themselves claiming any interest, in whole or in part, in any benefits, proceeds or values to which they may be entitled.

4.6.5. In addition, pursuant to the Final Order and Judgment, all Releasing Parties will be forever barred and enjoined from asserting against the Released Parties any and all Released Claims.

4.7. **Release by the Philips Defendants**

4.7.1. As of the Effective Date, the Philips Defendants fully, finally and forever release, remise, waive, surrender, forego, give up, abandon, cancel, acquit, and forever discharge and covenant not to sue Plaintiffs

and any of their heirs, executors, administrators, agents, attorneys, and legal representatives, and any of their past or present parents, subsidiaries, divisions, affiliates, stockholders, officers, directors, and employees, for any claims relating to the institution, maintenance or prosecution of the Economic Loss Claims.

5. Assignment to Philips RS of Economic Loss Claims Against Ozone Cleaning Companies

- 5.1. Settlement Class Members agree to assign, and upon the Effective Date, shall be deemed to have assigned, all of their Economic Loss Claims against Ozone Cleaning Companies to Philips RS, including any proceeds they would otherwise have been eligible for in any settlement with an Ozone Cleaning Company.
- 5.2. Without in any way limiting or narrowing the scope and effectiveness of the foregoing assignment, Settlement Class Members also agree that by endorsing and cashing or depositing a check or other payment from this Settlement (including accepting payments by Zelle, ACH, or Virtual Mastercard), or otherwise participating in the benefits of this Settlement, they thereby individually assign their Economic Loss Claims against Ozone Cleaning Companies to Philips RS.

6. Allocation of Settlement Funds, Claims Process, and Claims Period

6.1. Settlement Administration.

- 6.1.1. The Philips Defendants shall be responsible for paying all reasonable costs of Settlement Administration, including the reasonable fees and costs of the Settlement Administrator, on a monthly basis within 30 days of receipt of an itemized statement by the Settlement Administrator of authorized expenses undertaken pursuant to the administration of the Settlement.
- 6.1.2. The Settlement Administrator shall be responsible for the notice administration process as set forth in Section 9 below, calculation of payments (and withholdings) to Eligible Settlement Class Members, creation of a settlement website, distribution of funds to Eligible Settlement Class Members, withholding and payment of applicable taxes, and other duties as provided in any agreement entered into with the Settlement Administrator. The Settlement Administrator shall sign and be bound by the Protective Order entered by the MDL Court, as amended (ECF Nos. 104, 498, 765).

- 6.1.3. In conducting its duties and responsibilities, the Settlement Administrator may make necessary adjustments to claims and notice processes as circumstances may dictate, subject to the approval of Settlement Class Counsel and the Philips Defendants.

6.2. Claims Period.

- 6.2.1. The Claims Period will (a) begin 60 days after entry of the Preliminary Approval Order, and (b) end on the Claims Period Deadline.
- 6.2.2. Nothing herein precludes Users from returning Recalled Devices to Philips RS at their own expense after the Claims Period Deadline, but in that event, they will not be eligible for a payment under this Settlement based on that return; provided, however, in the event that a Recall Program for the User's specific Recalled Device is not yet in effect prior to the Claims Period Deadline, or Philips RS does not provide the User with the ability under the Recall Program to return his or her Registered Recalled Device prior to the Claims Period Deadline (or, in the case of Trilogy 100/200 Users, the User has attempted but not been able to make arrangements with the DME to schedule a time to retrieve the device), that User is eligible for a Device Return Award under this Settlement based on a return/retrieval after the Claims Period Deadline and before the conclusion of the applicable Recall Program.

6.3. Accelerated Implementation Option.

- 6.3.1. Users who return their Registered or Enrolled Recalled Device pursuant to the Recall Programs or the Settlement by the Claims Period Deadline may elect before the Effective Date to receive a Device Payment Award and a Device Return Award on an accelerated basis, on the terms set forth in this Section (the Accelerated Implementation Option ("AIO")).
 - 6.3.1.1. In the event that a Recall Program for the User's specific Recalled Device is not yet in effect prior to the Claims Period Deadline or Philips RS does not provide the User with the ability under the Recall Program to return his or her Registered Recalled Device prior to the Claims Period Deadline (or, in the case of Trilogy 100/200 Users, the User has attempted but not been able to make arrangements with the DME to schedule a time to retrieve the device), the User can still participate in the AIO based on a return/retrieval of

the Registered Recalled Device by the conclusion of the applicable Recall Program or the Effective Date, whichever is earlier.

- 6.3.2. To participate in the AIO, Users must take each of the following steps:
 - 6.3.2.1. Users must execute a signed, sworn declaration identifying whether or not they used an Ozone Cleaning Product with their Recalled Device.
 - 6.3.2.2. If the User used an Ozone Cleaning Product with their Recalled Device, the User must also execute a signed, sworn individual assignment to Philips RS of their Economic Loss Claims against the Ozone Cleaning Company.
 - 6.3.2.3. Users must provide Defendants with an individual release of their Released Claims. That individual release will remain valid even if the Settlement does not become Final.
 - 6.3.2.4. The form of the foregoing declaration, individual assignment, and individual release, all to be signed by the User or the User's Representative Claimant, under the penalty of perjury, is attached hereto as **Exhibit 6**. To be valid and effective, these materials must be personally signed by the User or the User's Representative Claimant, but not by the User's counsel, if any, or anyone else. User Representative Claimants must supply the Settlement Administrator with written proof that such person has legal authority to act in a representative capacity for the User.
- 6.3.3. No AIO payments will be made until after MDL Court Final Approval. AIO payments will be made only in the event the MDL Court issues the Final Order and Judgment.
 - 6.3.3.1. Users who return their Registered or Enrolled Recalled Device before MDL Court Final Approval will be paid (a) the Device Payment Award associated with the returned Recalled Device and (b) a Device Return Award, within 60 days after the later of (i) MDL Court Final Approval, and (ii) the completion of each of the steps identified in Section 6.3.2 above.

6.3.3.2. Users who return their Registered or Enrolled Recalled Device after MDL Court Final Approval but by the Claims Period Deadline, unless a later deadline applies pursuant to Section 6.3.1.1 above, will be paid (a) the Device Payment Award associated with the returned Recalled Device and (b) a Device Return Award, within 60 days after the later of (i) receipt of the Recalled Device by Philips RS (or, for Trilogy 100/200, retrieval of the Recalled Device), and (ii) the completion of each of the steps identified in Section 6.3.2 above.

6.3.4. Payers are not eligible to elect the AIO.

6.4. Device Payment Awards.

6.4.1. Automatic Payment to Users Who Return a Registered or Enrolled Recalled Device Prior to the Claims Period Deadline

6.4.1.1. Users who return their Registered or Enrolled Recalled Device pursuant to the Recall Programs or the Settlement by the Claims Period Deadline will be paid the Device Payment Award associated with the returned Recalled Device within 60 days after the later of (i) the Effective Date and (ii) receipt of the Recalled Device by Philips RS (or, for Trilogy 100/200, retrieval of the Recalled Device), without the need to submit a claim form.

6.4.2. Claims Process for Users Who Registered Their Recalled Device Prior to the Execution Date But Have Not Already Returned Their Recalled Device and Have Decided Not to or Cannot Return Their Recalled Device

6.4.2.1. In the event a User registered his or her Recalled Device prior to the Execution Date but (i) has not returned the Registered Recalled Device and (ii) has decided not to, or cannot, return the Registered Recalled Device, the User will still be paid the Device Payment Award associated with their Registered Recalled Device if, prior to the Claims Period Deadline, the User completes a confirmation process, which may be done online, of the User's name, current mailing address, telephone number, email (if any), electronic

payment information (if the User elects electronic payment), and also the Serial Number for the Registered Recalled Device and the Recall Registration Number, if the Settlement Class Member has that information. In the event the User is not able to complete the confirmation process online, a User Confirmation Form in the form attached hereto as **Exhibit 7** will be made available to the User by the Settlement Administrator at the User's request. The User will not be required to submit any documentation as part of this process. The Settlement Administrator will attempt to confirm the registration based on the information provided by the User, and will not reject a claim based on the User's failure to provide the Serial Number and/or the Recall Registration Number if the registration can be confirmed based on other information provided by the User. Payment of the Device Payment will be made within 60 days after the later of (i) the Effective Date, and (ii) completion of the confirmation process described in this Section, including confirmation by Philips RS of the User's registration.

6.4.3. Claims Process for All Other Users.

- 6.4.3.1. All other Users must submit a completed Device Payment Award Claim Form, in the form attached hereto as **Exhibit 4**, by the Claims Period Deadline, supported by sufficient documentation that the User purchased, leased, rented, or paid for one or more Recalled Devices, along with the Recalled Device's Serial Number.
- 6.4.3.2. All valid claims will be paid after the Effective Date by the Settlement Administrator within 60 days after they are processed and approved by the Settlement Administrator. To be valid and effective, the Device Payment Award Claim Form must be complete and must be personally signed by the User or the User's Representative Claimant, but not by the User's counsel, if any, or anyone else. Representative Claimants must supply the Settlement Administrator with written proof that such person has legal authority to act in a representative capacity for the User.

6.4.4. Rental Recalled Devices.

- 6.4.4.1. With respect to rental Recalled Devices, the Device Payment Award for that device will be allocated by the Settlement Administrator (after the Claims Period Deadline) among Eligible Users on a *pro rata* basis, taking into consideration the number of Eligible Users for the rental Recalled Device and the associated Device Payment Award for that rental Recalled Device.
- 6.4.4.2. Notwithstanding anything in this Agreement to the contrary, in light of the allocation that must be made with respect to rental Recalled Devices, no Device Payment Award shall be made with respect to rental Recalled Devices until after the Claims Period Deadline or after the Effective Date, whichever is later.

6.5. Device Return Awards.

- 6.5.1. Users who return their Registered or Enrolled Recalled Device pursuant to the Recall Programs or the Settlement by the Claims Period Deadline will be paid their Device Return Award, without the need to take further steps, within 60 days after the later of (i) the Effective Date or (ii) receipt of the Recalled Device by Philips RS (or, for Trilogy 100/200, retrieval of the Recalled Device); provided, however, that in the event that a Recall Program for the User's specific Recalled Device is not yet in effect prior to the Claims Period Deadline, or Philips RS does not provide the User with the ability under the Recall Program to return his or her Registered Recalled Device to Philips RS prior to the Claims Period Deadline (or, in the case of Trilogy 100/200 Users, the User has attempted but not been able to make arrangements with the DME to schedule a time to retrieve the device), that User is eligible for a Device Return Award under this Settlement based on a return/retrieval after the Claims Period Deadline and before the conclusion of the applicable Recall Program.
- 6.5.2. Receipt of a Device Return Award may impact the amount of a User's Device Replacement Award for the associated Recalled Device, as set forth in Sections 3.4.6 and 3.4.6.1 above.

6.6. Device Replacement Awards.

- 6.6.1. Users seeking a Device Replacement Award must submit a completed Device Replacement Award Claim Form, in the form attached hereto as **Exhibit 5**, before the Claims Period Deadline, supported by the required documentation, as set forth in Section 3.4.2.1 above.
- 6.6.2. No Device Replacement Awards will be paid until after the Claims Period Deadline. After the Claims Period Deadline, the Settlement Administrator will calculate the total valid Replacement Device Claim Amounts submitted in connection with claims for Device Replacement Awards during the Claims Period (the “Total Replacement Device Claim Amounts”).
 - 6.6.2.1. Within 14 days of the Settlement Administrator’s calculation of the Total Replacement Device Claim Amounts, the Philips Defendants shall pay, or have paid on their behalf, up to \$10,000,000 (the “Device Replacement Amount”) into the User Settlement Fund to pay the Total Replacement Device Claim Amounts, as provided in Section 2.8.1 above.
 - 6.6.2.2. In the event the Total Replacement Device Claim Amounts are less than \$10,000,000, the Philips Defendants’ payment obligation is limited to the amount of the Total Replacement Device Claim Amounts.
 - 6.6.2.3. In the event the Total Replacement Device Claim Amounts exceed \$10,000,000, the balance, if any, of any other funds remaining in the User Settlement Fund after the Device Payment Awards and Device Return Awards have been made to all Eligible Users (the “Balance of Funds in User Settlement Fund”) may be used to make Device Replacement Awards.
 - 6.6.2.4. In the event the Device Replacement Amount plus the Balance of Funds in User Settlement Fund are insufficient to pay at least 50% of the Total Replacement Device Claim Amounts, the Philips Defendants shall pay, or cause to be paid, additional monies sufficient to pay 50% of the Total Replacement Device Claim Amounts, but in no event shall the Philips Defendants’ additional such payment obligation exceed \$5,000,000.

6.6.3. The resulting net Device Replacement Awards, after taking into consideration the Total Replacement Device Claim Amounts, the Device Replacement Amount, the Balance of Funds in User Settlement Fund in the event the Total Replacement Device Claim Amounts exceed \$10,000,000, and if necessary, any additional payment by, or on behalf of, the Philips Defendants (up to \$5,000,000), will be paid to Eligible Users within 60 days after the Settlement Administrator calculates the Total Replacement Device Claim Amounts.

6.7. Payer Awards.

6.7.1. Payers must submit a completed Payer Declaration and Claim Form attached hereto as **Exhibit 8** by the Claims Period Deadline, supported by (a) sufficient information and documentation as to the number of insured lives in the United States covered by the Payer in the calendar years 2021 and 2022 (“Payer Covered Lives”), (b) the dollar amount of direct premiums written by the Payer in the United States in the calendar years 2021 and 2022, and (c) a preferred payment option with instructions for payment.

6.7.2. All Payer Awards will be paid by the Settlement Administrator within 180 days after the Claims Period Deadline or the Effective Date, whichever is later, following processing and approval by the Settlement Administrator and an opportunity for appeals of Payer Claims Determinations as set forth in Section 6.8 below. To be valid and effective, the Payer Declaration and Claim Form must be complete and must be signed by a person with legal authority to do so on behalf of the Payer, but not by the Payer’s counsel, if any, or anyone else. Payers must supply the Settlement Administrator with written proof that the person signing their Declaration and Claim Form has legal authority to act on behalf of the Payer.

6.7.3. Payer Eligibility, Market Share Percentage, and Preliminary Payer Award Determinations. The Settlement Administrator shall review the Payer Declarations and Claim Forms and supporting information and documentation following the Claims Period Deadline and, within 30 days of the Claims Period Deadline, make the following determinations for each submitting entity: (a) an Eligibility Determination, (b) if eligible, a Market Share Percentage Determination as set forth in Section 6.7.5 below for all Eligible Payers, and (c) a Preliminary Payer

Award Determination as set forth in Section 6.7.6 below for all Eligible Payers.

- 6.7.4. For Eligibility Determinations, the Settlement Administrator shall consider whether the submitting entity meets the definition of a Payer under the Settlement and whether the Payer Declaration and Claim Form is complete and timely.
- 6.7.5. For Market Share Percentage Determinations, the Settlement Administrator shall consider insurance industry data available through, including but not limited to, the National Association of Insurance Commissioners and the AIS Directory of Health Plans, as well as the information provided in the Payer Declarations and Claim Forms, and determine for each Eligible Payer the Eligible Payer's appropriate proportion of the universe of its insurance market segment in the United States in calendar years 2021 and 2022.
- 6.7.6. For Preliminary Payer Award Determinations, the Settlement Administrator shall conduct the following steps:
 - 6.7.6.1. First, calculate the Aggregate Market Share Percentage by totaling the Market Share Percentages of all Eligible Payers. By way of example only, assuming Payer A has a Market Share Percentage of 2%, Payer B has a Market Share Percentage of 10%, and Payer C has a Market Share Percentage of 8%, the Aggregate Market Share Percentage is 20% ($2\% + 10\% + 8\% = 20\%$).
 - 6.7.6.2. Second, the Settlement Administrator shall divide 100% (the universe of Payer Covered Lives) by the Aggregate Market Share Percentage to determine the multiplying factor to be used to calculate the Payer Award for each Eligible Payer. By way of the above example, assuming the Aggregate Market Share Percentage is 20%, the multiplying factor is 5 ($100\%/20\% = 5$).
 - 6.7.6.3. Third, the Settlement Administrator shall multiply the multiplying factor to each Eligible Payer's Market Share Percentage to determine the percentage of the Payer Amount to which each Eligible Payer is entitled ("Adjusted Payer Share Percentage"). By way of the above example, the

Adjusted Payer Share Percentage for Payer A is 10% ($2\% \text{ Market Share Percentage} * 5 = 10\%$), the Adjusted Payer Share Percentage for Payer B is 50% ($10\% \text{ Market Share Percentage} * 5 = 50\%$), and the Adjusted Payer Share Percentage for Payer C is 40% ($8\% \text{ Market Share Percentage} * 5 = 40\%$).

6.7.6.4. Fourth, the Settlement Administrator will determine the Preliminary Payer Award for each Eligible Payer by multiplying their Adjusted Payer Share Percentage by the Payer Amount. By way of the above example, assuming the Payer Amount is \$500, the Preliminary Payer Award for Payer A will be \$50 ($10\% \text{ Adjusted Payer Share Percentage} * \$500 = \$50$), the Preliminary Payer Award for Payer B will be \$250 ($50\% \text{ Adjusted Payer Share Percentage} * \$500 = \$250$), and the Preliminary Payer Award for Payer C will be \$200 ($40\% \text{ Adjusted Payer Share Percentage} * \$500 = \$200$).

6.7.7. Upon completion of the steps required to make Payer Eligibility, Market Share Percentage, and Preliminary Payer Award Determinations, the Settlement Administrator shall issue those determinations, setting forth the calculations made by the Settlement Administrator, to each submitting entity and inform Eligible Payers that their Preliminary Payer Award Determination may be adjusted following the conclusion of any and all appeals to the Claims Appeals Special Master.

6.7.8. Final Payer Award Determinations. Within 30 days following the conclusion of any and all appeals to the Claims Appeals Special Master from Claims Determinations as provided for and set forth in Section 6.8 below, the Settlement Administrator shall make Final Payer Award Determinations by following the steps set forth in Section 6.7.6 above, taking into consideration the results of the appeals process from Section 6.8 below. The Settlement Administrator shall distribute the Payer Awards to Eligible Payers based on the Final Payer Award Determinations within 30 days after making those determinations.

6.8. **Appeals from Determinations of the Settlement Administrator.**

6.8.1. Any Settlement Class Member whose claim is denied (in whole or in part) by the Settlement Administrator for any reason shall be provided

with a written notice explaining the deficiency and a period of 30 days to resubmit the claim to attempt to cure the deficiency.

- 6.8.2. Any Settlement Class Member or Defendant that believes that a Settlement Class Member's claim for a payment under the Settlement has not been processed in accordance with this Agreement or any applicable orders of the MDL Court shall have 30 days from the date of the Settlement Administrator's issuance of a determination on that claim ("Claims Determination") to present a written appeal, no longer than three-pages, double-spaced, to the Claims Appeals Special Master.
- 6.8.3. In support of any appeal from a Claims Determination, the Settlement Class Member shall be limited to presenting solely documents, evidence, or information submitted by the Settlement Class Member in connection with that Settlement Class Member's Claim for a payment under the Settlement or under the Section 6.8.1 cure provision above. Absent a request from the Claims Appeals Special Master for additional information or documentation, Settlement Class Members may not submit any new or additional evidence for purposes of appealing a Claims Determination.
- 6.8.4. Settlement Class Members, by their decision not to opt out of the Settlement Class, knowingly and intentionally waive any right of appeal from any decision of the Claims Appeals Special Master regarding appeals from Claims Determinations by the Settlement Administrator.
- 6.8.5. The decision of the Claims Appeals Special Master with respect to appeals from Claims Determinations shall be final and binding, and there shall be no appeal to any court, including the MDL Court or the U.S. Court of Appeals for the Third Circuit.
- 6.9. **Uncashed Checks or Other Payments.** In the event a Settlement Class Member does not cash his, her or its check or other payment after a period of 180 days from issuance, the check or other payment will be declared "void." The voidance shall not impact in any way the Release provided by that Settlement Class Member to the Released Parties. The funds associated with that check or other payment may be used to make other payments under the Settlement, including to other Settlement Class Members, and the Settlement Administrator will take sufficient steps to cancel the check or other payment; provided, however, that the Settlement Class Member shall have 30 days to request that the check or other payment be reissued, with no further requests permitted except for good cause shown within one year of

the original check's or other payment's issuance. In the event of a dispute between the Parties on whether good cause has been shown, the matter will be decided by the Claims Appeals Special Master, whose decision on the matter shall be final and unappealable by any Party or the Class Member.

6.10. **Remaining Funds.**

6.10.1. Subject to Section 6.10.2 below, in the event any funds remain in the User Settlement Fund after the Claims Period Deadline and after all Settlement payments have been made, including Device Replacement Awards ("Remaining Funds"), the Remaining Funds will be distributed by the Settlement Administrator *pro rata* to all Eligible Users based on the amount of each Eligible User's payment(s) under the Settlement. To the extent any funds still remain after the *pro rata* distribution, or in the event it would be economically inefficient to distribute Remaining Funds *pro rata* to Eligible Users, the Parties agree to consult with the Settlement Administrator in an effort to reach agreement on a fair and equitable distribution of those funds, subject to MDL Court approval, but in no event will the Parties seek approval from the MDL Court for *cy pres* distribution of Remaining Funds of more than \$20,000 to persons or entities other than Eligible Users.

6.10.2. In the event the Philips Defendants paid any Additional Amounts necessary to make Device Payment and/or Device Return Awards beyond the Initial Device Payment Amount and the Initial Device Return Amount, and checks or other payments to Users qualifying for Awards remain uncashed or uncollected after 180 days from issuance, pursuant to Section 6.9 above, the checks or other payments will be declared "void," and provided those Users do not timely request that the checks or other payments be reissued, the monies will be returned to the Philips Defendants within 14 days after the last day on which any such request for reissuance can be made. The total amount of money that may be returned to the Philips Defendants under this provision is limited to the Additional Amounts paid by them.

7. **Settlement Class Certification**

7.1. The Parties hereby stipulate, for purposes of this Settlement only, that the requirements of Rule 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure are satisfied, and, subject to MDL Court approval, the Settlement Class set forth in Section 1.51 shall be certified for settlement purposes only (with the understanding that, by stipulating to the proposed Settlement Class, the Philips Defendants do not

agree that Rule 23 requirements are met for purposes of a litigation class and reserve all rights to oppose class certification in the event the Settlement is not approved).

8. Preliminary Approval of Settlement Pursuant to Federal Rule of Civil Procedure 23(e) and Related Motions

- 8.1. This Settlement shall be subject to both preliminary and final approval of the MDL Court.
- 8.2. Within 10 days of the Execution Date, Settlement Class Counsel will move the MDL Court for the Preliminary Approval Order, in substantially the form annexed hereto as **Exhibit 1**, seeking, among other things, to:
 - 8.2.1. conditionally certify the Settlement Class;
 - 8.2.2. preliminarily approve the Settlement;
 - 8.2.3. determine that the Settlement appears fair, reasonable, and adequate within the meaning of Rule 23 of the Federal Rules of Civil Procedure and thus sufficient to promulgate notice of the Settlement to the Settlement Class;
 - 8.2.4. order that notice be provided to the Settlement Class pursuant to Section 9;
 - 8.2.5. give Settlement Class Members the right to object to or be excluded from the Settlement, as set forth in Sections 11 and 12;
 - 8.2.6. inform Settlement Class Members that they will be bound by the Final Order and Judgment unless such Settlement Class Member validly requests exclusion;
 - 8.2.7. stay and enjoin the continued pursuit of all Economic Loss Claims of Settlement Class Members against Defendants and the other Released Parties, whether in the MDL Court or in any other court or tribunal, until such time as the MDL Court has determined whether to enter the Final Order and Judgment;
 - 8.2.8. schedule the Final Fairness Hearing not earlier than 6 months following entry of the Preliminary Approval Order;

Section 8. Preliminary Approval of Settlement Pursuant to Federal Rule of Civil Procedure 23(e) and Related Motions

- 8.2.9. appoint Angeion Group as the Settlement Administrator;
 - 8.2.10. appoint the Honorable Thomas J. Rueter (Ret.) as the Claims Appeals Special Master;
 - 8.2.11. find that the Settlement Funds are to be a “Qualified Settlement Fund” as defined in Section 468B-1(c) of the Treasury Regulations; and
 - 8.2.12. provide that any objections by any Settlement Class Member to the Settlement shall be heard and any papers submitted in support of said objections shall be considered by the MDL Court at the Final Fairness Hearing only if, on or before the conclusion of the Opt-Out/Objection Period specified in the Settlement Notice and the Preliminary Approval Order, such Settlement Class Member follows the required procedures.
- 8.3. Settlement Class Counsel shall request that the MDL Court hold a hearing on the motion for the Preliminary Approval Order on a date to be determined by the MDL Court.
 - 8.4. The Philips Defendants shall cooperate to the extent reasonably necessary in connection with Settlement Class Counsel’s motions for Preliminary and MDL Court Final Approval of the Settlement and related documents necessary to effectuate and implement the terms and conditions of this Agreement.
 - 8.5. The Philips Defendants shall have the right to withdraw from the Settlement if the MDL Court does not issue the Preliminary Approval Order in substantially the form attached hereto as **Exhibit 1**.

9. Notice to Settlement Class Members

9.1. Type of Notice Required

- 9.1.1. The Class Notice Period shall commence upon the entry of the Preliminary Approval Order.
- 9.1.2. Within 60 days after entry of the Preliminary Approval Order, the Settlement Administrator will cause Class Settlement Notice (“Notice”), in the forms attached hereto as **Exhibit 3**, to be disseminated in the specific forms and manner set forth in the Notice Plan attached hereto as **Exhibit 2**, by:
 - 9.1.2.1. First class mail, postage prepaid, and email (if an email address is available) to the last known address of all known

Users based on information in the Philips RS registration database used for the Recall Programs, User information collected from DMEs and other sources as part of the Recall, User information obtained from DMEs in discovery, and User data from the Census Registry Program and Plaintiff Fact Sheets filed in support of Personal Injury Complaints pursuant to Pretrial Order #26, as amended in Pretrial Order #26(a) (ECF Nos. 766, 871);

- 9.1.2.2. First-class mail, postage prepaid, to those known hospitals and sleep labs in the United States to whom Philips RS previously sold, rented, supplied, or otherwise provided Recalled Devices;
- 9.1.2.3. First-class mail, postage prepaid (and via email, where available) to known Payers identified in the Settlement Administrator's proprietary database of insurers, self-funded employers, and other third-party payers;
- 9.1.2.4. First-class mail, postage prepaid, to those known DMEs in the United States that sold, rented, supplied, or otherwise provided Recalled Devices to Users, requesting that the DMEs notify their Users of the Settlement;
- 9.1.2.5. Posting a copy of the Notice on the Settlement website maintained by the Settlement Administrator;
- 9.1.2.6. Electronic upload to all Users who elected to receive messages through DreamMapper, which will refer them to the Settlement website only;
- 9.1.2.7. Providing a copy of the Notice and requesting that it be posted on the MDL Court's website for the MDL, <https://www.pawd.uscourts.gov/mdl-3014-re-philips-recalled-cpap-bi-level-pap-and-mechanical-ventilator-products-litigation>;
- 9.1.2.8. Publishing the Notice in media pursuant to the media notice program developed by the Settlement Administrator, as set forth in the Notice Plan attached hereto as **Exhibit 2**; and

9.1.2.9. As the MDL Court may otherwise direct, in accordance with the requirements of Federal Rule of Civil Procedure 23(c)(2).

9.2. **Payment of Costs of Notice:** The Philips Defendants shall be responsible for paying the reasonable costs of Class Notice agreed to by the Parties or required by the MDL Court. Any disputes regarding the reasonable cost of Class Notice shall be presented for resolution to the Settlement Mediator.

9.3. The Philips Defendants shall provide notice of the Settlement to the appropriate state and federal officials pursuant to 28 U.S.C. § 1715(b).

10. Right to Opt Out of or Object to the Settlement; Opt-Out/Objection Period

10.1. Settlement Class Members have the right to opt out of or object to the Settlement, but not both. Opting out from or objecting to the Settlement are mutually exclusive options. Any Settlement Class Member who elects to opt out pursuant to Section 11 below may not also object to the Settlement. Any Settlement Class Member who elects to object pursuant to Section 12 below may not also opt out of the Settlement. In the event a Settlement Class Member submits both an objection and an opt out request, the Settlement Administrator shall notify the Settlement Class Member that they can only elect one of those options, and must inform the Settlement Administrator of their decision. If the Settlement Class Member does not thereafter take corrective action within 10 days, the submission shall be invalid.

10.2. Settlement Class Members will have 120 days from entry of the Preliminary Approval Order (“Opt-Out/Objection Period”) to opt out of or object to the Settlement in accordance with Sections 11 and 12 below. The last day of the Opt-Out/Objection Period (the “Opt-Out/Objection Deadline”) will be included in the Notice and posted on the Settlement website and the MDL Court’s website for the MDL.

11. Opt-Outs

11.1. Settlement Class Members who wish to opt out of the Settlement must mail a written request to opt out stating that they seek exclusion from the Settlement. Settlement Class Members shall include their contact information, including name, address, telephone number, and email, if any, as well as the same information regarding their counsel (if applicable). Incomplete opt-outs are invalid.

11.1.1. In addition, Users must include in their opt-out request the following information regarding their Recalled Device(s): Serial Number(s), if

known; the type of Recalled Device; the approximate date(s) of acquisition; and the type of acquisition (*e.g.*, purchase, rental, etc.).

- 11.1.2. In addition, Payers must include in their opt-out request the following information: full name of Payer plan and whether the Payer reimbursed (in whole or part) Users' payments to purchase, lease, rent, or otherwise pay for Recalled Devices; number of lives insured by the Payer in each of the calendar years 2008 to 2022; and number of direct premiums written in each of the calendar years 2008 to 2022.
- 11.2. An original request to opt out signed by the Settlement Class Member must be mailed to the Settlement Administrator at:

Respironics CPAP Settlement
Attn: Exclusions
P.O. Box 58220
Philadelphia, PA 19102

The opt-out request must be postmarked no later than the Opt-Out/Objection Deadline. Untimely opt-outs are invalid.

- 11.3. To be valid and effective, the request to opt out must be personally signed by the Settlement Class Member or the Settlement Class Member's Representative Claimant, but not by the Settlement Class Member's counsel, if any, or anyone else. Representative Claimants must supply the Settlement Administrator with written proof that such person has legal authority to act in a representative capacity for the Settlement Class Member. A pleading or any other request to opt out made or signed only by counsel for the Settlement Class Member shall not be sufficient. Mass opt-outs also are not permitted, and each Settlement Class Member may only opt out on behalf of himself, herself, or itself. Electronic signatures (other than DocuSign) are not valid and effective, whether for Settlement Class Members or Representative Claimants.
- 11.4. The Settlement Administrator shall provide a copy by email of all requests to opt out to Counsel within 48 hours of receipt.
- 11.5. Settlement Class Counsel shall file all validated requests to opt out with the MDL Court as an attachment to the proposed Final Order and Judgment in support of their motion for MDL Court Final Approval of the Settlement.
- 11.6. If a Settlement Class Member submits both a Claim Form and a request to opt out prior to MDL Final Court Approval, the Settlement Class Member will be deemed

to have waived and withdrawn the request to opt out and shall be treated as a Settlement Class Member for all purposes, irrespective of the sequencing of the submission of the Claim Form and the request to opt out.

- 11.7. Valid requests to opt out from the Settlement will become effective only upon MDL Court Final Approval.
- 11.8. Settlement Class Members may revoke their opt-out request in writing at any time prior to MDL Court Final Approval.
- 11.9. Settlement Class Members who opt out of the Settlement Class and do not revoke their opt out request in writing prior to MDL Court Final Approval will be deemed to no longer be members of the Settlement Class.
- 11.10. Settlement Class Members who opt out of the Settlement Class may not receive benefits under the Settlement and may not object to any aspect of the Settlement or to an award of Attorneys' Fees and Expenses or payment of Service Awards to the Settlement Class Representatives.
- 11.11. The Parties agree and acknowledge that because any opt-out may be detrimental to the Settlement, the Philips Defendants will have the right, exercised in good faith, to terminate the Settlement on account of the existence of any opt-out by written notice to the MDL Court and Settlement Class Counsel 14 days after the conclusion of the Opt-Out/Objection Period.
- 11.12. Upon the Effective Date, all Settlement Class Members who have not timely and validly opted out will be bound by the Settlement, and the relief provided by the Settlement will be their sole and exclusive remedy for their Released Claims against the Released Parties.

12. Objections

- 12.1. Any Settlement Class Member who objects to the Settlement (in whole or in part), any terms hereof, or the approval process must make that objection by the following procedure:
 - 12.1.1. The objection must be in writing.
 - 12.1.2. The objection must state whether it applies only to the objector, to a specific subset of the Settlement Class, or to the entire Settlement Class, and also state with specificity the grounds for the objection. The objection must also include a statement whether the Settlement Class Member intends to appear at the Final Fairness Hearing either with or

without the objector's counsel (who shall be identified). The objection must identify any witnesses intended to be called, the subject area of the witnesses' testimony, and identify and attach a copy of all documents to be used or offered into evidence at the Final Fairness Hearing.

- 12.1.3. The objection must be signed by the Settlement Class Member and his, her or its counsel, if any. An objection signed by counsel alone shall be invalid.
- 12.1.4. The objection must contain the caption of the MDL and the caption of any other litigation, arbitration or proceeding involving the Recalled Devices in which the Settlement Class Member is a named party, and include the name, mailing address, email address, if any (an email address is not required), and telephone number of the objecting Settlement Class Member and his, her or its counsel (if any).
- 12.1.5. The objection must provide information regarding the Recalled Device(s) to which the Settlement Class Member's Economic Loss Claims relate. For Users, their Objection must include the Serial Number(s), if known, and the type of Recalled Device(s). For Payers, their Objection must include whether the Payer reimbursed (in whole or part) Users' payments to purchase, lease, rent, or otherwise pay for Recalled Devices; the number of lives insured by the Payer in each of the calendar years 2008 to 2022; and the number of direct premiums written in each of the calendar years 2008 to 2022.
- 12.1.6. The objection must state if the objector or the objector's counsel have objected to a class action settlement during the past 5 years, and if so, identify all cases in which the objector or the objector's counsel have filed an objection by caption, court and case number, and for each case, the disposition of the objection, including whether any payments were made to the objector or the objector's counsel, and if so, the incremental benefits, if any, that were achieved for the class in exchange for such payments.
- 12.1.7. The objection must be mailed to the Settlement Administrator at:

Respironics CPAP Settlement
Attn: Objections
P.O. Box 58220
Philadelphia, PA 19102

The objection must be postmarked no later than the Opt-Out/Objection Deadline. Untimely objections are invalid.

- 12.1.8. The Settlement Administrator shall provide a copy of all objections to Counsel by email within 48 hours of receipt.
- 12.1.9. Settlement Class Counsel shall file the objections, if any, received by the Settlement Administrator with the MDL Court no later than 21 days before the Final Fairness Hearing.
- 12.2. Any objection not submitted in full compliance with these terms and procedures are invalid and deemed waived.
- 12.3. Settlement Class Members who fail to file and serve timely written objections in accordance with Section 12.1 above shall be deemed to have waived any objections, shall not be heard at the Final Fairness Hearing, and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement.
- 12.4. Settlement Class Counsel and/or Counsel for the Philips Defendants shall file any response(s) to the objections with the MDL Court no later than 7 days before the Final Fairness Hearing.

13. Final Fairness Hearing

- 13.1. After the close of the Class Notice Period and the Opt-Out/Objection Period, but no later than 21 days before the Final Fairness Hearing, Settlement Class Representatives and Settlement Class Counsel shall move for MDL Court Final Approval of the Settlement and to enter the Final Order and Judgment, substantially in the form of **Exhibit 9** hereto, which shall do each of the following, among other things:
 - 13.1.1. Approve finally this Agreement and its terms as being a fair, reasonable, and adequate settlement as to the Settlement Class Members within the meaning of Rule 23 of the Federal Rules of Civil Procedure and directing its consummation according to its terms and conditions;
 - 13.1.2. Determine that the Class Notice constituted the best notice that was practicable under the circumstances, and constituted due and sufficient notice for all other purposes for all persons entitled to receive notice;
 - 13.1.3. Certify the Settlement Class and confirm the appointment of the Settlement Class Representatives and Settlement Class Counsel;

- 13.1.4. Direct that the Economic Loss Complaint be dismissed with prejudice as to all Defendants, without costs;
 - 13.1.5. Reserve to the MDL Court exclusive jurisdiction over the Settlement, this Agreement, including the interpretation, implementation, administration, consummation, and enforcement of this Settlement and this Agreement, and the “qualified settlement funds,” as defined under §1.468B-1 of the Treasury Regulations promulgated under Sections 461(h) and 468B of the Internal Revenue Code of 1986, as amended, created under the Agreement;
 - 13.1.6. Determine under Federal Rule of Civil Procedure 54(b) that there is no just reason for delay, and direct that the Final Order and Judgment be entered;
 - 13.1.7. Enjoin and finally and forever bar any and all Settlement Class Members from maintaining, continuing, pursuing and/or prosecuting the Released Claims in any action, arbitration or other proceeding, whether pending or filed in the future, against Defendants or the Released Parties, as well as entitling the Released Party or Parties to recover any and all reasonable costs and expenses from that Settlement Class Member arising from that Settlement Class Member’s violation of the injunction; and
 - 13.1.8. Enjoin and forever bar the Philips Defendants and any successors to the Philips Defendants’ rights or interests under the Settlement from challenging or opposing a Settlement Class Member’s Medical Monitoring and Personal Injury Claims or ability to recover for those claims on the basis of this Settlement, any payments under this Settlement, or the Releases provided herein, other than to prevent double recovery for economic losses related to the Recalled Devices or to prevent against the increase of an exemplary or punitive damages award on account of economic losses.
- 13.2. The Philips Defendants shall have the right to withdraw from the Settlement if the MDL Court does not enter a Final Order and Judgment substantially in the form of **Exhibit 9** hereto.
 - 13.3. At the Final Fairness Hearing, the MDL Court shall also be requested to, *inter alia*, (i) consider any timely and properly filed objections to the Settlement, (ii) certify the Settlement Class pursuant to Fed. R. Civ. P. 23(a) and (b)(3), (iii) determine whether the Settlement is fair, reasonable, and adequate, was entered into in good

faith and negotiated by the Parties at arm's length, and should be approved, (iv) provide findings in connection therewith, (v) enter the Final Order and Judgment, (vi) consider Service Awards to the Settlement Class Representatives, as described in Section 18.2 below, and (vii) consider Settlement Class Counsel's motion for Attorneys' Fees and Expenses, as described in Section 18.1 below.

14. Termination of this Settlement

14.1. This Settlement shall be terminated and cancelled upon any of the following events:

14.1.1. The MDL Court declines to enter the Preliminary Approval Order substantially in the form of **Exhibit 1** hereto;

14.1.2. The MDL Court declines to enter the Final Order and Judgment substantially in the form of **Exhibit 9** hereto; or

14.1.3. The Final Order and Judgment is reversed by a higher court.

14.2. The Philips Defendants may, at their sole and exclusive discretion and option, withdraw from and cancel their obligations under this Settlement, upon any of the following events:

14.2.1. The Notice does not comply with the Preliminary Approval Order;

14.2.2. Settlement Class Counsel, on behalf of the Settlement Class, materially breaches the Settlement and such breach materially frustrates the purposes of this Settlement;

14.2.3. The Economic Loss Complaint is not dismissed with prejudice as to all Defendants;

14.2.4. The Released Claims of the Releasing Parties against Defendants and the other Released Parties are not released on the terms set forth herein;

14.2.5. The MDL Court does not enter the preliminary injunction described in Section 8.2.7 above;

14.2.6. The MDL Court does not enter the permanent injunctions described in Sections 13.1.7 and 13.1.8 above; or

14.2.7. This Settlement is changed in any material respect, except by written agreement of the Parties.

14.3. In the event of a breach of the Agreement by the Philips Defendants, the Settlement Class Representatives may, at their sole discretion, seek to enforce the Settlement in the MDL Court (or, if the MDL Court does not have jurisdiction, any other court with jurisdiction to hear the matter).

14.4. In the event of a breach of the Agreement by the Settlement Class Representatives, the Philips Defendants may, at their sole discretion, seek to enforce the Settlement in the MDL Court (or, if the MDL Court does not have jurisdiction, any other court with jurisdiction to hear the matter).

15. MDL Court Retains Jurisdiction to Implement, Interpret and Enforce Agreement and Settlement

15.1. The MDL Court shall retain continuing and exclusive jurisdiction over the Philips Defendants, the Settlement Class, the Settlement Class Members, this Agreement, and the Settlement for the purposes of administering, supervising, implementing, interpreting, construing, consummating, and enforcing this Agreement and the Settlement, and the MDL Court shall also retain continuing and exclusive jurisdiction over the “qualified settlement funds,” as defined under §1.468B-1 of the Treasury Regulations promulgated under Sections 461(h) and 468B of the Internal Revenue Code of 1986, as amended, created under the Agreement, and the distribution of same to Eligible Settlement Class Members.

16. Choice of Law

16.1. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, including all matters of construction, validity, performance, and enforcement, and without giving effect to the principles of conflict of laws.

17. Recall Programs

17.1. Settlement Class Counsel and the Philips Defendants shall cooperate with each other, and with governmental regulatory officials (where and if appropriate), with respect to implementing the relief provided for in this Settlement in coordination with any Recall Programs and to ensure that the Recall Programs are carried out to completion in an efficient manner; provided, however, that Settlement Class Counsel shall not have standing to participate directly or indirectly in any Recall Programs, except to the extent necessary to enforce the terms of this Settlement and the rights of Settlement Class Members under this Settlement.

18. Attorneys' Fees and Expenses, and Service Awards

- 18.1. The Parties, with the assistance of the Settlement Mediator, will attempt to reach agreement on the amount of attorneys' fees and costs that Settlement Class Counsel will seek from the Court and which the Philips Defendants will not oppose. If the Parties reach agreement, Settlement Class Counsel will submit the negotiated amount to the Court for approval, either as part of, or subsequent to, the Final Fairness Hearing, and the Philips Defendants will not oppose the application of Settlement Class Counsel. If the Parties do not reach agreement, the Parties will litigate the matter, and each Party will present its respective position to the Court for determination. In that event, the determination of the fee and cost issues will be subject to the Parties' agreement that: (1) the attorneys' fees and costs will be paid by, or on behalf of, the Philips Defendants in addition to the compensation provided to Settlement Class Members under this Settlement; (2) any award of attorneys' fees or costs shall not diminish the recovery of Settlement Class Members under the Settlement; (3) while fees will be based on the percentage of recovery methodology, with a lodestar cross-check, the Parties reserve all arguments as to how that recovery should be calculated, what the percentage should be, and the extent to which Settlement Class Counsel's prosecution of the Economic Loss Claims caused some or all of the recovery; and (4) the Parties shall have the right to appeal the Court's determination as to the amount of attorneys' fees and costs. Settlement Class Counsel represent they will not seek an award of attorneys' fees in excess of \$175,000,000, which Settlement Class Counsel contend represents a fair percentage of the value of the Settlement in terms of cash recoveries and other benefits to the Settlement Class. The Philips Defendants fully reserve the right to challenge that amount, any percentage upon which it is based, and the items comprising the claimed value of the Settlement. Settlement Class Counsel's motion for attorneys' fees and costs will be due 30 days before the Opt-Out/Objection Deadline, and the deadline for the motion will be provided in the Notice. Settlement Class Members shall have the opportunity to submit objections.
- 18.2. **Service Awards:** Settlement Class Counsel will recommend to the MDL Court that service awards be made, subject to MDL Court approval, to the Settlement Class Representatives in the amount of \$5,000 each in recognition for their service as a Settlement Class Representative, and the Philips Defendants agree not to oppose such request. Settlement Class Representatives certify and agree that they had no expectation of a service award when agreeing to this Settlement, and that the decision of whether or not to award a service award will be left to the discretion of the Court. With that understanding, the Philips Defendants agree to pay Service Awards, if any, within 30 days of the date of a final order awarding Service Awards or within 30 days of the Effective Date, whichever is later. These payments are in

addition to the compensation provided to Settlement Class Members under this Settlement and shall not diminish the recovery of Settlement Class Members under the Settlement. The Parties agree that the Philips Defendants shall not pay, or be obligated to pay or cause to be paid, any amounts in excess of \$5,000 for each Settlement Class Representative for Service Awards. Settlement Class Representatives shall provide W-9 Forms prior to such payment.

- 18.3. The Parties agree that the amount of any award of attorneys' fees and expenses and the amount of any service awards are intended to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement. No order of the Court, or modification, reversal, or appeal of any order of the Court, concerning the amount(s) of attorneys' fees and expenses or service awards shall affect whether the Final Order and Judgment is entered, or constitute grounds for termination of the Settlement.

19. Dispute Resolution.

- 19.1. Any dispute between the Parties relating to the interpretation or application of any provision of the Settlement will be discussed between Settlement Class Counsel and Counsel for the Philips Defendants in the first instance in an effort to resolve the matter. If they reach an impasse, the matter shall be presented to and discussed with the Claims Appeals Special Master. In the event an impasse remains after presenting the dispute to the Claims Appeals Special Master, the dispute will be resolved by appeal to the MDL Court (with the potential for further appeal to the U.S. Court of Appeals for the Third Circuit).
- 19.2. This appeal process applies only to disputes between the Parties relating to the interpretation or application of a provision of the Settlement and does not apply to decisions by the Claims Appeals Special Master concerning disputes by Settlement Class Members regarding their claims or Claims Determinations as set forth in Section 6.8 above.

20. Miscellaneous

- 20.1. The headings in this Agreement are included for convenience only and shall not be deemed to constitute part of this Agreement or to affect its construction.
- 20.2. If the last day of any period mentioned in this Settlement falls on a weekend or legal holiday, the period shall include the next business day. To the extent any timeframe set out in this Settlement Agreement is ambiguous, said ambiguity shall be resolved by applying the convention contained in Rule 6 of the Federal Rules of Civil Procedure.

- 20.3. All persons shall be on notice of their continuing duty to monitor the MDL Court's docket for the most current filings and information. The MDL Court, in its discretion, may alter, postpone or amend any deadlines or hearing dates scheduled by the MDL Court in connection with the approval of this Settlement without additional formal notice. Orders concerning any such changes are expected to be docketed on the MDL Court's website:

<https://www.pawd.uscourts.gov/mdl-3014-re-philips-recalled-cpap-bi-level-pap-and-mechanical-ventilator-products-litigation>.

- 20.4. The Settlement Administrator shall post on the Settlement website this Agreement (including all of its exhibits), as well as relevant pleadings by the Parties and orders entered by the MDL Court in connection with the Settlement, including relevant scheduling orders.
- 20.5. Nothing expressed or implied in this Agreement is intended to or shall be construed to confer upon or give any person or entity, other than Settlement Class Members, the Philips Defendants, and the other Released Parties, any right or remedy under or by reason of this Agreement.
- 20.6. Settlement Class Members (or their counsel, if any) who submit false or intentionally misleading information, through any form of deception, dishonesty or fraud, shall be subject to appropriate sanctions (including monetary sanctions and costs).
- 20.7. Unless otherwise specified, any written notices and other communications under this Settlement shall be in writing and shall be sent to Settlement Class Counsel and Counsel for the Philips Defendants. Routine communications may be made by email. Communications asserting a breach of this Settlement shall be made by email and by hand delivery or overnight courier (*e.g.*, Express Mail, Overnight UPS, or FedEx).
- 20.8. Other than as provided for in Orders of the MDL Court, there are no restrictions upon the Philips Defendants with respect to any returned Recalled Devices, including, but not limited to, whether or how they can be retained, used, tested, remediated, and/or discarded.
- 20.9. This Settlement is the product of arms'-length negotiations between Settlement Class Counsel, the Philips Defendants, and Counsel for the Philips Defendants. None of the Parties or their Counsel shall be deemed to be the drafter of this Agreement or any provision thereof. No presumption shall be deemed to exist in

favor of or against anyone on account of who drafted any particular portion of this Agreement.

- 20.10. This Settlement constitutes the entire agreement between the Parties with respect to the matters set forth herein and supersedes any and all prior and contemporaneous undertakings in connection therewith, including any prior term sheets. In entering into this Agreement, the Parties have not received or relied upon any agreements or promises other than as contained in writing in this Agreement.
- 20.11. This Settlement may not be modified or amended unless such modification or amendment is in writing executed by all Parties, and (upon the Final Order and Judgment) approved by the MDL Court.
- 20.12. This Settlement may be executed in multiple counterparts, all of which taken together shall constitute one and the same Settlement.
- 20.13. If there is any conflict as between the Agreement and any exhibits, the language and terms in the Agreement shall prevail.
- 20.14. In the event this Agreement is not preliminarily or finally approved by the MDL Court, or in the event that the Order and Final Judgment approving the Settlement is entered but later reversed or vacated, or the Philips Defendants exercise their right to terminate the Agreement pursuant to Section 11.11, the pre-settlement status of this MDL shall be restored (including without limitation any applicable tolling of any statute of limitations), and the Agreement shall have no effect on the rights of the Parties to prosecute or defend the Economic Loss Claims in the MDL or elsewhere in any respect, including without limitation the right to fully litigate the issues related to class certification, raise personal jurisdiction defenses, or any other defenses. The Parties will negotiate and submit to the MDL Court for Court approval a modified case schedule at such time.
- 20.15. Settlement Class Members should consult their personal tax advisor for assistance regarding any tax ramifications of this Settlement. Settlement Class Counsel, the Philips Defendants, and their Counsel are not providing any opinion, representation or advice as to the tax consequences or liabilities of Settlement Class Members as a result of any payments or benefits under this Settlement. Nothing in this Agreement should be relied upon by any Settlement Class Member as the provision of tax advice. Settlement Class Members shall hold the Philips Defendants and their Counsel harmless from any federal, state, or foreign tax assessments, interest, and/or penalties that result for any amounts paid or benefits provided under this Agreement, and the Philips Defendants shall not be liable for the payment of any

additional amounts now or in the future for any amount related to a Settlement Class Member's tax consequences

- 20.16. Each of the undersigned signatories represents that he or she is fully authorized to enter into the terms and conditions of, and to execute this Agreement, subject to Court approval.

21. Federal Rule of Evidence 408

- 21.1. The Parties specifically acknowledge and agree that this Settlement, along with all related drafts, motions, pleadings, conversations, negotiations and correspondence, shall be considered a compromise within the meaning of Federal Rules of Evidence Rule 408, and any equivalent rule of evidence or procedure of any state, and shall not (i) constitute, be construed, be offered, or be received into evidence as an admission of the validity of any claim or defense, or the truth of any fact alleged or other allegation in the MDL, or in any other pending or subsequently filed action, arbitration or other proceeding, or of any wrongdoing, fault, violation of law, or liability of any kind on the part of any Party, except as permitted in Sections 4.2 and 21.3 of this Settlement; or (ii) be used to establish a waiver of any defense or right, or to establish or contest jurisdiction or venue. As set forth in Section 2.2 above, the Philips Defendants submit to the jurisdiction of the MDL Court solely for purposes of the Settlement and the enforcement of the payment and performance obligations thereunder.
- 21.2. The Parties agree that this Settlement, any orders, pleadings, or other documents entered in furtherance of this Settlement, and any acts in the performance of this Settlement are not intended to be, nor shall they in fact be, admissible, discoverable, or relevant in any case or other proceeding against the Defendants as evidence of any obligation that any Party hereto has or may have to anyone, except with regard to the obligations and rights under the Settlement.
- 21.3. The provisions of this Settlement, and any orders, pleadings or other documents entered in furtherance of this Settlement, may be offered or received in evidence solely (i) to enforce the terms and provisions hereof or thereof, (ii) as may be specifically authorized by a court of competent jurisdiction after a hearing upon application of a Party hereto, (iii) in order to establish payment, prior payment for a claimed loss, set-off, counterclaim or an affirmative defense of exception in a subsequent case, including *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim, (iv) in connection with any motion to dismiss, enjoin or stay a Released Claim, (v) to establish an assignment

to Philips RS of Economic Loss Claims against Ozone Cleaning Companies, or (vi) to obtain MDL Court approval of the Settlement.

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The Parties have executed this Settlement Agreement, by their duly authorized representatives, on the Execution Date.

PHILIPS RS NORTH AMERICA, LLC:

/s/ John P. Lavelle, Jr.

John P. Lavelle, Jr.

Lisa C. Dykstra

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SETTLEMENT AGREEMENT

EXHIBIT 1

WHEREAS, on September 7, 2023, the Settlement Class Representatives filed a Motion for Preliminary Approval of Proposed Class Action Settlement Agreement and to Direct Notice to the Proposed Settlement Class pursuant to Rule 23(e) of the Federal Rules of Civil Procedure (the “Motion”); and

WHEREAS, on _____, 2023, the Court held a hearing on the Motion and heard argument on whether to preliminarily approve the Settlement.

NOW, THEREFORE, THIS ____ DAY OF ____, 2023, IT IS HEREBY ORDERED AS FOLLOWS:

A. The Settlement Is Preliminarily Approved

1. The Court has conducted a preliminary assessment of the fairness, reasonableness, and adequacy of the Settlement pursuant to Rule 23(e)(1)(B) of the Federal Rules of Civil Procedure. The Court hereby finds that the Settlement falls within the range of reasonableness meriting possible final approval and has key indicia of fairness, including that (1) the Parties have reached the Settlement after investigating the strengths and weaknesses of the Economic Loss Claims and the defenses thereto, (2) the extensive settlement negotiations were arm’s-length and consisted of multiple mediation sessions overseen by the Settlement Mediator, (3) there is no evidence of collusion in reaching this Settlement, and (4) the proponents of the Settlement are experienced in similar litigation.

2. The Court therefore preliminarily approves the Settlement on the terms set forth in the Agreement, subject to further consideration at the Final Fairness Hearing. Settlement Class Members shall have the right to object to, or be excluded from, the Settlement, as set forth in the Agreement and this Order.

3. Pursuant to Rule 23(e)(1)(B), the Court orders that Notice be provided to the Settlement Class Members pursuant to the terms of the Agreement and as set forth herein. The Notice shall inform Settlement Class Members that they will be bound by the Settlement and Final Order and Judgment unless, on or before the end of the Opt-Out/Objection Period specified in the Notice and this Order (“Opt-Out/Objection Deadline”), they follow the required procedures to make a written request for exclusion as set forth in the Agreement and Notice, which procedures are hereby approved.

4. Any objections by any Settlement Class Member to the Settlement (in whole or in part) shall be heard and any papers submitted in support of said objections shall be considered by the Court at the Final Fairness Hearing only if, on or before the Opt-Out/Objection Deadline, such Settlement Class Member follows the required objection procedures set forth in the Agreement and Notice, which procedures are hereby approved.

5. The Court preliminarily approves the plan of allocation of Settlement funds set forth in the Agreement, subject to further consideration at the Final Fairness Hearing.

B. Appointments of Settlement Administrator, Settlement Funds Escrow Agent, and Claims Appeals Special Master

6. The Court hereby appoints Angeion Group LLC as the Settlement Administrator. It shall be responsible for the duties set forth in the Settlement Agreement assigned to the Settlement Administrator, including, but not limited to, (a) the notice dissemination process set forth in the Agreement; (b) calculation of payments to Settlement Class Members; (c) creation of a Settlement website; (d) processing and reviewing Claim Forms; (e) collecting and forwarding to Settlement Class Counsel and Counsel for the Philips Defendants any requests to be excluded from the Settlement Class; (f) collecting and forwarding to Settlement Class Counsel and Counsel for the Philips Defendants any objections to the Settlement or to requests for attorneys’ fees or Service

Awards; and (g) any other duties as provided in any agreement entered into between Counsel and the Settlement Administrator. The Settlement Administrator shall sign and be bound by the Protective Order entered by this Court, as amended (ECF Nos. 104, 498, 765).

7. Pursuant to the Agreement, the Philips Defendants shall deposit, or cause to be deposited, the Initial Payments for Class Notice and Settlement Administration into the Settlement Funds within 14 days of execution of the Settlement Agreement. The Philips Defendants shall be responsible for paying all reasonable costs of Settlement Administration, including the reasonable fees and costs of the Settlement Administrator, Settlement Funds Escrow Agent, Settlement Mediator, and Claims Appeals Special Master, as set forth in the Settlement Agreement.

8. The Court approves Huntington Bank as the Settlement Funds Escrow Agent pursuant to the Settlement Agreement.

9. The Court hereby appoints Hon. Thomas J. Rueter (Ret.) as the Claims Appeals Special Master and authorizes him to perform the duties assigned to the Claims Appeals Special Master specified in the Settlement Agreement.

C. The Settlement Notice and Notice Plan Are Approved

10. The Court approves the forms of Notice, substance, and requirements attached as Exhibit 3 to the Settlement Agreement (the “Settlement Notice”).

11. The Court finds that the method of giving notice to the Settlement Class (“Notice Plan”), attached to the Settlement Agreement as Exhibit 2, and the forms and content of notice, attached to the Settlement Agreement as Exhibit 3, as described in the Settlement Agreement, (a) constitute the best notice practicable under the circumstances, (b) are reasonably calculated, under the circumstances, to apprise the Settlement Class Members of the pendency of the Action, the terms and benefits of the proposed Settlement, including automatic payments under certain

circumstances, how to file a claim and the deadline for filing a claim, and their rights under the proposed Settlement, including, but not limited to, their rights to object to or exclude themselves from the proposed Settlement, as well as of the scope of the release of the Philips Defendants and other Released Parties and the binding effect of a Final Judgment, (c) are reasonable and constitute due, adequate, and sufficient notice to all Settlement Class Members and any other persons entitled to receive notice, (d) meet all applicable requirements of law, including, but not limited to, 28 U.S.C. § 1715, Rule 23(c), the Due Process Clause(s) of the United States Constitution, and any other applicable laws, and (e) fairly and adequately inform Settlement Class Members that if they do not comply with the specified procedures and the deadline for objections, they will lose any opportunity to have any objection considered at the Final Fairness Hearing or to otherwise contest approval of the Settlement or appeal from any order or judgment entered by the Court in connection with the Settlement.

12. The Parties will attempt to reach agreement on the amount of attorneys' fees and costs that Settlement Class Counsel will seek to be awarded by this Court and which the Philips Defendants will not oppose. If the Parties reach an agreement, Settlement Class Counsel will file an unopposed motion with the Court seeking an award in this amount to be considered as part of the Final Fairness Hearing. If the Parties do not reach agreement, Settlement Class Counsel will file their motion seeking an award of attorneys' fees and costs, and the Philips Defendants will submit their opposition. In that event, the litigation of the fee and cost issues will be subject to the Parties' agreement that: (1) the attorneys' fees and costs will be paid by, or on behalf of, the Philips Defendants in addition to the compensation provided to Settlement Class Members under the Settlement Agreement; (2) any award of attorneys' fees or costs shall not diminish the recovery of Settlement Class Members under the Settlement; (3) while fees will be based on the percentage

of recovery methodology, with a lodestar cross-check, the Parties reserve all arguments as to how that recovery should be calculated, what the percentage should be, and the extent to which Settlement Class Counsel's prosecution of the Economic Loss Claims caused some or all of the recovery; (4) the Court will issue an Order setting forth the amount of attorneys' fees and costs to be paid by the Philips Defendants; and (5) the Parties shall have the right to appeal the Court's determination as to the amount of attorneys' fees and costs.

13. The Parties have agreed that the Philips Defendants will pay Service Awards of \$5,000 to each of the five Settlement Class Representatives, subject to approval of this Court after the Final Fairness Hearing. The Settlement Notice shall apprise Settlement Class Members of these requested Service Awards.

14. Within 60 days after entry of this Order, the Settlement Notice will be disseminated to Settlement Class Members pursuant to the terms of the Settlement Agreement.

D. The Settlement Class

15. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court conditionally certifies, for settlement purposes only, the following Settlement Class:

Settlement Class or Settlement Class Members shall include Plaintiffs and all other individuals or entities in the United States, including its Territories (American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands), and the District of Columbia, including individuals who are United States citizens, residents, United States military, diplomatic personnel and employees living or stationed overseas, who or which, prior to the announcement of the Recalls, either (a) purchased, leased, rented, or paid for (in whole or part), or were prescribed a Recalled Device ("Users"), or (b) reimbursed (in whole or part) a User's payment to purchase, lease, rent, or otherwise pay for a Recalled Device, including insurers, self-funded employers, and other third-party payers ("Payers"). Individuals or entities whose payment obligations with respect to a particular Recalled Device preceded the announcement of the relevant Recall are part of the Settlement Class even if certain of their payment obligations post-dated the Recall (*e.g.*, certain renters and lessees).

EXCLUDED from the Settlement Class are: (a) Defendants and their officers, directors, and employees; (b) the MDL Court, Settlement Mediator, Claims Appeals Special Master, and Special Masters assigned to the MDL; (c) individuals who have already released Released Claims against one or more of the Defendants pursuant to individual settlements or other resolutions; (d) Durable Medical Equipment providers; (e) the federal government and any federal government payers, including the United States Department of Health and Human Services Centers for Medicare & Medicaid Services, the Department of Defense, and the U.S. Department of Veterans Affairs; and (f) Settlement Class Counsel.

16. The Court finds that, for settlement purposes only, the Settlement Class meets all prerequisites for class certification under Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure, including that: (a) the Settlement Class is so numerous that joinder of all members is impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) the Settlement Class Representatives' claims are typical of the claims of the Settlement Class Members they seek to represent for purposes of the Settlement; (d) Settlement Class Representatives and their counsel are capable of fairly and adequately protecting the interests of the Settlement Class; (e) common questions of law and fact predominate over questions affecting only individual Settlement Class Members; (f) certification of the Settlement Class is superior to other available methods for the fair and efficient resolution of the Economic Loss Claims of Settlement Class Members; and (g) the Settlement Class is ascertainable.

17. For settlement purposes only, the Court appoints Elizabeth Heilman; Ivy Creek of Tallapoosa LLC d/b/a/ Lake Martin Community Hospital; Peter Barrett; Julie Barrett; and ASEA/AFSCME Local 52 Health Benefits Trust as the five Settlement Class Representatives.

18. The Court appoints the following as Settlement Class Counsel:

- a. Christopher A. Seeger, Seeger Weiss, 55 Challenger Road, 6th Floor, Ridgefield Park, NJ 07660;

- b. Sandra L. Duggan, Levin Sedran & Berman, 510 Walnut Street, Suite 500, Philadelphia, PA 19106;
- c. Steven A. Schwartz, Chimicles Schwartz Kriner & Donaldson-Smith LLP, 361 West Lancaster Avenue, Haverford, PA 19041;
- d. Kelly K. Iverson, Lynch Carpenter, LLP, 1133 Penn Avenue, 5th Floor, Pittsburgh, PA 15222;
- e. Roberta D. Liebenberg, Fine, Kaplan and Black, R.P.C., One South Broad Street, 23rd Floor, Philadelphia, PA 19107;
- f. Lisa Ann Gorshe, Johnson Becker PLLC, 444 Cedar Street, Suite 1800, Saint Paul, MN 55101; and
- g. Arthur H. Stroyd, Jr., Del Sole Cavanaugh Stroyd LLC, 3 PPG Place, Suite 600, Pittsburgh, PA 15222.

19. The Court hereby approves the establishment of the Settlement Funds. The Settlement Funds shall be governed by Section 468B-1 through 468B-5 of the Treasury Regulations and maintained as a “qualified settlement fund.” The Parties agree to work in good faith to maintain such status. The Court shall retain continuing jurisdiction over the Settlement Funds, pursuant to Section 468B-1I(1) of the Treasury Regulations.

E. Schedule for Motion for Final Approval and Final Fairness Hearing

20. Settlement Class Counsel shall file their motion for attorneys’ fees, reimbursement of costs and expenses incurred in connection with prosecuting the Economic Loss Claims, and for Service Awards of no more than \$5,000 for each of the five Settlement Class Representatives, at least 30 days prior to the Opt-Out/Objection Deadline. The Settlement Administrator shall publish the motion and supporting materials on the Settlement website.

21. The deadline for Settlement Class Members to submit claims is 120 days after the Final Fairness Hearing.

22. The deadline for Settlement Class Members to opt out of the Settlement, or object to the Settlement, the proposed plan for allocating Settlement funds, the proposed Service Awards, or the request for an award of attorneys' fees and reimbursement of costs and expenses shall be 120 days after entry of this Order. Opt-out requests and objections must be made in writing and must be made in accordance with the requirements set forth in the Settlement Agreement and Notices, and must be postmarked no later than Opt-Out/Objection Deadline.

23. Settlement Class Counsel shall file a list of all timely and valid opt-outs as an attachment to their motion for final approval of the Settlement.

24. No later than 21 days before the Final Fairness Hearing, Settlement Class Counsel shall file with the Court the objections, if any, received by the Settlement Administrator.

25. At least 7 days prior to the Final Fairness Hearing, Settlement Class Counsel and/or Counsel for the Philips Defendants shall file any response to the objections with the Court.

26. At least 21 days prior to the Final Fairness Hearing, Settlement Class Counsel shall file a Motion for Final Approval of the Settlement and to enter the Final Order and Judgment. The Settlement Administrator shall publish the motion and supporting materials on the Settlement website.

27. At least 21 days prior to the Final Fairness Hearing, Settlement Class Counsel shall file with the Court proof that Notice was provided in accordance with the plan of Notice set forth in the Agreement, the terms of this Order, and any other Order regarding Notice that the Court shall have issued.

28. At least 21 days prior to the Final Fairness Hearing, the Philips Defendants shall file with the Court proof of their compliance with the provisions of the Class Action Fairness Act, 28 U.S.C. § 1715(b).

29. If the last day of any period mentioned hereto falls on a weekend or legal holiday, the period shall include the next business day.

30. The Court will hold a hearing on _____, 2024 at ____ a.m./p.m. at the United States District Court for the Western District of Pennsylvania, 700 Grant Street, Pittsburgh, PA 15219, in Courtroom 5A (the “Final Fairness Hearing”) for the following purposes:

- a. To finally determine whether the proposed Settlement is a fair, reasonable, and adequate settlement as to the Settlement Class Members within the meaning of Rule 23I(2) of the Federal Rules of Civil Procedure;
- b. To determine whether a Final Judgment should be entered dismissing the Economic Loss Claims of the Settlement Class against the Defendants with prejudice, as required by the Settlement Agreement;
- c. To consider the proposed plan of allocation of Settlement funds;
- d. To consider Settlement Class Counsel’s Motion for Award of Attorneys’ Fees and Litigation Expenses;
- e. To consider the Petition for Service Awards to the Settlement Class Representatives;
- f. To consider timely, written objections that conform to the requirements set forth in the Settlement Agreement;
- g. To enter the injunctions contemplated by Sections 13.1.7 and 13.1.8 of the Settlement Agreement; and

h. To consider such other matters as the Court may deem appropriate.

31. The Final Fairness Hearing may be continued without further notice to Settlement Class Members, other than an update posted on the MDL 3014 Court docket and Settlement website.

F. Miscellaneous

32. This Preliminary Approval Order shall become null and void and shall not prejudice the rights of the Parties, all of whom shall be restored to their respective positions existing immediately before this Court entered this Order, if the Settlement is not finally approved by the Court, or does not become final and effective for any reason. In such event, the Settlement Agreement shall become null and void and be of no further force and effect, and neither the Settlement Agreement nor the Court's orders relating to the Settlement, including this Preliminary Approval Order, shall be used or referred to for any purpose. The conditional certification of the Settlement Class provided for herein for settlement purposes only will be vacated, and the Economic Loss Claims shall proceed as though the Settlement Class had never been conditionally certified, without prejudice to any party's position on the issues of class certification, personal jurisdiction or any other issue. In such event, the Philips Defendants retain all rights to assert that the Economic Loss Claims may not be certified as a class action.

33. Pending the Final Fairness Hearing, the Court hereby stays the continued pursuit or prosecution of all Released Claims, in this Court or in any other court, tribunal or proceeding, other than those proceedings necessary to carry out or enforce the terms and conditions of the Settlement. Pursuant to 28 U.S.C. §§ 1651(a) and 2283, the Court finds that issuance of this preliminary injunction is necessary and appropriate in aid of the Court's continuing jurisdiction and authority.

Such injunction shall remain in force until the Final Fairness Hearing or until such time as the Parties notify the Court that the Settlement has been terminated.

34. This Court shall maintain continuing jurisdiction over these settlement proceedings to assure the effectuation thereof for the benefit of the Settlement Class. For purposes only of this Settlement, the Philips Defendants have submitted to the jurisdiction and venue of this Court.

35. Settlement Class Counsel and Counsel for the Philips Defendants are hereby authorized to use all reasonable procedures in connection with approval and administration of the Settlement that are not materially inconsistent with this Preliminary Approval Order or the Settlement Agreement, including making, without further approval of the Court, minor changes to the Settlement Agreement, to the form or content of the Settlement Notice, or to the form or content of any other exhibits attached to the Settlement Agreement, that the Parties jointly agree are reasonable or necessary, and which do not limit the rights of Settlement Class Members under the Settlement Agreement.

IT IS SO ORDERED.

BY THE COURT:

The Honorable Joy Flowers Conti
Senior United States District Judge

SETTLEMENT AGREEMENT

EXHIBIT 2

NOTICE PLAN

I. GENERAL

- A. The Settlement Administrator shall have discretion to employ best practices in carrying out its responsibilities in a manner consistent with the Settlement Agreement,¹ this Notice Plan, and the Declaration of Steven Weisbrot, Esq. of Angeion Group, LLC Re: Proposed Notice Plan, and with its experience to provide the best notice that is practicable under the circumstances, consistent with Federal Rule of Civil Procedure 23.
- B. The Parties shall provide reasonable cooperation with the Settlement Administrator and shall make all reasonable efforts to accept recommendations from the Settlement Administrator with respect to the Notice Plan.
- C. Consistent with the Settlement Agreement, the Philips Defendants shall be responsible for paying reasonable notice-related costs and other reasonable administrative expenses that may be incurred by the Settlement Administrator.
- D. In conducting its duties and responsibilities, the Settlement Administrator may make necessary adjustments to the notice processes as circumstances may dictate, subject to the approval of Settlement Class Counsel and the Philips Defendants and, as necessary, the MDL Court.
- E. The Settlement Administrator shall ensure that all notices and communications it sends are HIPAA-compliant.

II. NOTICE TO SETTLEMENT CLASS MEMBERS

- A. **Compilation of Notice List:** The Settlement Administrator shall compile and integrate information in its database and web portal regarding Users from the sources identified in Sections 9.1.2.1 and 9.1.2.2 of the Settlement Agreement, and shall cross-check, update and supplement that information by employing best practices using, among other things, the National Change of Address (“NCOA”) database and other methods, including, as appropriate, skip tracing.
- B. **Direct Notice:** Within 60 days after entry of the Preliminary Approval Order, the Settlement Administrator shall disseminate notice, in forms approved by the MDL Court, as follows:
 - 1. First-class postal mail of the long-form FAQ Notice to all known Users with postal addresses.
 - a. For Users who Registered for a Philips Respironics Recall Program but did not return their Recalled Device(s) before the Execution

¹ Unless otherwise noted, capitalized terms have the same meaning herein that they have in the Class Settlement Agreement and Release of Economic Loss Claims (the “Settlement Agreement”).

Date, the mailing referenced above will include an additional targeted notice in the form agreed to by the Parties.

2. Emails of the summary notice form to all known Users with email addresses.
3. First-class postal mail of the long-form FAQ Notice to known Payers on the Settlement Administrator's proprietary database of insurers, self-funded employers, and other third-party payers.
4. Emails of the summary notice form to known Payers on the Settlement Administrator's proprietary database of insurers, self-funded employers, and other third-party payers.

C. Notice to Users through DMEs:

1. First-class postal mail (and email, if available) of a summary notice form for DMEs, in the form agreed to by the Parties, to those known DMEs in the United States that sold, rented, supplied, or otherwise provided Recalled Devices to Users.

D. Media Plan:

1. The Parties jointly selected Angeion Group to serve as the Settlement Administrator. Based on extensive discussions and consultation between and among Settlement Class Counsel, the Philips Defendants and the Settlement Administrator, the Parties have agreed to accept the recommendation of the Settlement Administrator to supplement the direct notice (outlined above) with a comprehensive Media Plan developed by the Settlement Administrator that is designed to reach approximately 86.70% of the target audience.
2. The Parties agree that the Settlement Administrator shall have discretion to implement its Media Plan in a manner consistent with best practices and designed to provide the best notice that is practicable under the circumstances, consistent with Federal Rule of Civil Procedure 23.

E. Other Forms of Notice:

1. The Settlement Administrator shall post the long-form FAQ Notice on the Settlement website along with the Settlement Agreement (including all of its exhibits), as well as relevant pleadings of the Parties and orders entered by the MDL Court in connection with the Settlement, including relevant scheduling orders relating to the Settlement.
2. The Settlement Administrator shall issue press releases via PR Newswire at the outset of the Notice program and at least once thereafter as a claims filing reminder.

3. The Settlement Administrator shall maintain a toll-free call center (English and Spanish) with live operators trained with respect to the Settlement and conversant with scripts prepared by the Parties in consultation with the Settlement Administrator.
4. Philips RS shall provide an electronic upload through DreamMapper to all Users who elected to receive messages through DreamMapper, which will refer them to the Settlement website for more information about the Settlement.
5. The Parties shall take the steps necessary so that a copy of the FAQ Notice is posted on the MDL Court's website for the MDL, <https://www.pawd.uscourts.gov/mdl-3014-re-philips-recalled-cpap-bi-level-pap-and-mechanical-ventilator-products-litigation>.
6. The Settlement Administrator and the Parties shall provide any additional Notice as the MDL Court may otherwise direct, in accordance with the requirements of Federal Rule of Civil Procedure 23(c)(2).
7. The Settlement Administrator shall provide any additional Notice that may be agreed to by the Parties.

F. Reminder Email Notice to Users with Email Addresses: Prior to the Claims Period Deadline, the Settlement Administrator shall send one reminder email notice to known Users with email addresses consistent with best practices about claims deadlines and other relevant information, as determined by the Settlement Administrator.

III. SETTLEMENT WEBSITE/CLAIMS PORTAL

- A. The Settlement Administrator shall develop a state-of-the-art Settlement Website (including a Spanish language version) which includes a custom claims portal with Search Engine Optimization that is ADA-compliant.
- B. The claims portal on the Settlement Website shall, among other things:
 1. permit Users to input their assigned unique Claim ID number and/or the Serial Number of their Recalled Devices to facilitate the submission of claims, continuation of claims submissions, verify and monitor the status of their claims and receive status and other notifications;
 2. provide a process to provide or confirm information/documentation and to choose their preferred method of payment and, if they qualify, sign up for the Accelerated Implementation Option, enroll any unregistered Recalled Devices (other than Trilogy 100 or 200 devices), and the ability to get free

return labels for Registered or Enrolled devices to be returned to Philips Respironics (other than Trilogy 100 or 200 devices);

3. provide a dedicated Tab for Payers that provides the information and instructions necessary for Payers to submit claims consistent with the Settlement Agreement, as well as access to the Payer Declaration and Claim Form attached to the Settlement Agreement as Exhibit 8;
4. provide a dedicated Tab for information about Device Replacement Awards, as well as access to the Device Replacement Award Claim Form attached to the Settlement Agreement as Exhibit 5;
5. provide Settlement Class Members with the ability to download paper claims forms;
6. to the extent not yet already in the Settlement Administrator's database, provide prompts to collect Serial Number and Recall Registration Number information from Users submitting claims;
7. for those Users who have not yet registered their Recalled Device(s) for a Philips Respironics Recall Program and still have their Recalled Device, provide a link to the page on which they can register their Recalled Device in order to obtain the separate and distinct benefits provided under the applicable Recall Program (*e.g.*, a Remanufactured Device); and
8. otherwise provide for all processes consistent with best practices and as required or contemplated by the MDL Court's Preliminary Approval Order, the Settlement Agreement, the plan for allocating Settlement funds and claims processing, and the Notice Plan, and as necessary to provide Settlement Class Members with information about the Settlement and the ability to efficiently submit claims and satisfy the standards for payment.

SETTLEMENT AGREEMENT

EXHIBIT 3

FORMS OF NOTICE

SETTLEMENT AGREEMENT

EXHIBIT 3(a)

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

United States District Court for the Western District of Pennsylvania

A court authorized this Notice. This is not a solicitation from a lawyer.

If you paid for a Philips Respironics CPAP, BiPAP or Ventilator that was recalled, you may be eligible for a cash award from a proposed class action settlement.

- A proposed Settlement has been reached in a U.S. class action lawsuit alleging Economic Loss Claims related to the purchase, lease, or rental of recalled CPAPs, BiPAPs, and ventilators manufactured by Philips Respironics between 2008 and 2021. Philips Respironics recalled these devices in the United States beginning in June 2021.
- Under the proposed Settlement:
 - a minimum of \$445 million will be paid to “Users” who purchased, leased, or rented a Recalled Device;
 - up to an additional \$15 million will be paid to “Users” who paid out of pocket for a Replacement Device; and
 - \$34 million will be paid to “Payers” who reimbursed a payment for a Recalled Device, including insurers, self-funded employers, and other third-party payers.
- **The Settlement does *not* affect or release any claims for alleged personal injuries or medical monitoring relief, which continue to be litigated.**
- Users may qualify for:
 - a **Device Payment Award** for each Recalled Device they purchased, leased, or rented;
 - a **Device Return Award of \$100** for each Recalled Device they return (or already returned) to Philips Respironics by **Claims Period Deadline**; and/or
 - a **Device Replacement Award** for money Users paid to purchase a Replacement Device *on or after* June 14, 2021 and *before* September 7, 2023 to replace a Recalled Device with a comparable CPAP, BiPAP, or ventilator.
- **If you are a User and still have your Recalled Device but have not yet returned it to Philips Respironics, visit www.RespironicsCPAP-ELSettlement.com for instructions on how to get a prepaid label to return your Recalled Device. Doing so will help you maximize your payment from the proposed Settlement.**
- **You have several choices to make depending on the options available to you. Review the Chart on the ensuing pages and go to www.RespironicsCPAP-ELSettlement.com for more information.**
- **Payers may qualify for a Payer Award by submitting a claim with the required information and documentation.**

QUESTIONS? CALL 1-855-912-3432 OR VISIT:
www.RespironicsCPAP-ELSettlement.com

- Your rights are affected whether you act or don't act. If the proposed Settlement is approved, and you do not opt out, you will release your Economic Loss Claims against the Philips Defendants and the other Released Parties and assign to Philips Respironics your Economic Loss Claims against manufacturers of ozone cleaners. Please read this Notice carefully.

QUESTIONS? CALL 1-855-912-3432 OR VISIT:
www.RespironicsCPAP-ELSettlement.com

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS

This table summarizes the forms of relief available and your other rights and options, depending on whether you are a User or a Payer, whether you Registered your Recalled Device(s) in a Philips Respironics Recall Program prior to September 7, 2023, whether you have already returned your Recalled Device(s) to Philips Respironics, and whether you wish to participate in, opt out of, or object to the Settlement. Please read each option carefully to see which one applies to you.

You will be bound by the Settlement unless you opt out.

IF YOU ARE A:	THEN:
User who registered your Recalled Device in a Recall Program and you already returned it to Philips Respironics -AND- You wish to participate in the Settlement	You are eligible for an automatic Device Payment Award and a \$100 Device Return Award for each Recalled Device you returned, without the need to submit a claim (“Automatic Payment”). Go to www.RespironicsCPAP-ELSettlement.com: • to verify your eligibility for payment; • confirm or update your contact information; and • choose your preferred payment option. By this Deadline: Claims Period Deadline
User who registered your Recalled Device in a Recall Program, but you have not yet returned it to Philips Respironics, and you would like to do so now to get a \$100 Device Return Award -AND- You wish to participate in the Settlement	You are eligible for a Device Payment Award and \$100 Device Return Award, without the need to submit a claim, if you return your Recalled Device to Philips Respironics. Go to www.RespironicsCPAP-ELSettlement.com: • get a prepaid label to return your Recalled Device to Philips Respironics for free; • confirm or update your contact information; and • choose your preferred payment option. By this Deadline: Claims Period Deadline

QUESTIONS? CALL 1-855-912-3432 OR VISIT:
www.RespironicsCPAP-ELSettlement.com

User who did <i>not</i> register your Recalled Device in a Recall Program and you still have your Recalled Device and would like to return it to Philips Respironics to get a \$100 Device Return Award -AND- You wish to participate in the Settlement	You are eligible for a Device Payment Award and \$100 Device Return Award, without the need to submit a claim, if you Enroll in the Settlement and return your Recalled Device to Philips Respironics. Go to www.RespironicsCPAP-ELSettlement.com: • Enroll in the Settlement, including by identifying the Serial Number of the Recalled Device and providing your contact information; • get a prepaid label to return your Recalled Device to Philips Respironics for free; and • choose your preferred payment option. By this Deadline: Claims Period Deadline
User who registered your Recalled Device in a Recall Program before September 7, 2023, but you have not returned it and you do not intend to (or you cannot) return your Recalled Device to Philips Respironics -AND- You wish to participate in the Settlement	You are eligible for a Device Payment Award without the need to submit a claim if you confirm or update your contact information. This option is only available for Recalled Device(s) registered before September 7, 2023. Go to www.RespironicsCPAP-ELSettlement.com: • confirm or update your contact information; and • choose your preferred payment option. By this Deadline: Claims Period Deadline
User who did <i>not</i> register your Recalled Device in a Recall Program before September 7, 2023 and you do not intend to (or you cannot) return your Recalled Device to Philips Respironics -AND- You wish to participate in the Settlement.	You are eligible for a Device Payment Award if you submit a valid claim. Go to www.RespironicsCPAP-ELSettlement.com: • complete a Device Payment Award Claim Form; • provide the Serial Number of the Recalled Device and the required documentation; and • choose your preferred payment option. By this Deadline: Claims Period Deadline

QUESTIONS? CALL 1-855-912-3432 OR VISIT:
www.RespironicsCPAP-ELSettlement.com

User who spent your own money to purchase a comparable Replacement CPAP, BiPAP or ventilator to replace a Recalled Device on or after June 14, 2021 and before September 7, 2023 -AND- You wish to participate in the Settlement.	You are eligible for a Device Replacement Award if you submit a valid claim. Go to www.RespironicsCPAP-ELSettlement.com: • complete a Device Replacement Award Claim Form; • provide the required documentation and complete the required steps; and • choose your preferred payment option. By this Deadline: Claims Period Deadline
Payer -AND- You wish to participate in the Settlement.	You are eligible for a Payer Award if you submit a valid claim. Go to www.RespironicsCPAP-ELSettlement.com: • complete a Payer Declaration and Claim Form; and • provide the required documentation. By this Deadline: Claims Period Deadline
User or Payer -AND- You wish to exclude yourself from the Settlement.	You must mail to the Settlement Administrator a valid request to opt out of the Settlement. Follow the instructions below in Question 27 or go to www.RespironicsCPAP-ELSettlement.com for more information. If you opt out of the Settlement, you will get no Settlement payment or other Settlement benefits. You also cannot object to the Settlement. By this Deadline: Opt-Out/Objection Deadline
User or Payer -AND- You wish to object to the Settlement.	You must mail to the Settlement Administrator a valid objection to the Settlement. Follow the instructions below in Question 31 or go to www.RespironicsCPAP-ELSettlement.com for more information. If you object to the Settlement, you cannot also opt out of the Settlement. By this Deadline: Opt-Out/Objection Deadline

QUESTIONS? CALL 1-855-912-3432 OR VISIT:
www.RespironicsCPAP-ELSettlement.com

User or Payer -AND- You want to do nothing.	If you take no action at all, you will get no Settlement payment unless you are a User and you qualify for an Automatic Payment. If the Settlement is approved by the Court, you will still be bound by the Settlement and be giving up your Economic Loss Claims against the Philips Defendants and the other Released Parties and assigning to Philips Respironics your Economic Loss Claims against manufacturers of ozone cleaners.
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<u>ACCELERATED IMPLEMENTATION OPTION</u>	
IF YOU ARE A:	THEN:
User who enrolls in the Settlement or registered your Recalled Device and you already returned it to Philips Respironics or you return it before Claims Period Deadline -AND- You wish to participate in the Settlement and get paid quicker.	If you return your Recalled Device to Philips Respironics by Claims Period Deadline, you are also eligible for the Accelerated Implementation Option (“AIO”) to get your Device Payment Award and \$100 Device Return Award quicker and without having to wait for the completion or outcome of any appeals. Go to www.RespironicsCPAP-ELSettlement.com: • elect the AIO; • sign the sworn attestation regarding whether you used ozone cleaning with your Recalled Device; • if you used ozone cleaning, sign the assignment to Philips Respironics of your Economic Loss Claims against the manufacturer of your ozone cleaner; • sign the individual release of your Economic Loss Claims against the Philips Defendants and the other Released Parties; and • choose your preferred payment option. AIO Election By this Deadline: Claims Period Deadline or the completion of any appeals, whichever is later

- These rights and options—and the deadlines to exercise them—are explained in more detail in the rest of this Notice and in the Settlement Agreement.
- The proposed Settlement benefits are separate and distinct from any benefits provided under the Philips Respironics Recall Programs. If you are a User who did not register your Recalled Device in a Recall Program and you still have your Recalled Device, you may be eligible to receive a free Remanufactured Device or other benefits from Philips Respironics

QUESTIONS? CALL 1-855-912-3432 OR VISIT:
www.RespironicsCPAP-ELSettlement.com

under the Recall Programs. Go to www.philips.com/src-update for more information about the Recall Programs and instructions on how to register under the Recall Programs.

- The Court in charge of this case still has to decide whether to approve the Settlement. Payments will be made if the Court approves it and (except for the AIO) after any appeals are denied. This process can take time. Please be patient.

QUESTIONS? CALL 1-855-912-3432 OR VISIT:
www.RespironicsCPAP-ELSettlement.com

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QUESTIONS? CALL 1-855-912-3432 OR VISIT:

www.RespironicsCPAP-ELSettlement.com

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QUESTIONS? CALL 1-855-912-3432 OR VISIT:
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BASIC INFORMATION

1. Why did I get this Notice?

A court authorized this Notice because individuals and entities residing in the United States (including its Territories and the District of Columbia), including military and diplomatic personnel stationed overseas, who either (a) purchased, leased, rented, paid for (in whole or in part), or were prescribed a Recalled Device (“**Users**”), or (b) reimbursed (in whole or part) a payment to purchase, lease, rent, or otherwise pay for a Recalled Device, including insurers, self-funded employers, and third-party payers (“**Payers**”), have the right to know about a proposed legal Settlement affecting them. The Recalled Devices are the CPAP, BiPAP, ventilator, and/or other devices sold, leased, rented or otherwise distributed in the United States identified in Question 9 below.

This Notice explains the lawsuit, the Settlement, your legal rights, what benefits are available, who is eligible for those benefits, and how to get them. A full copy of the Settlement Agreement (along with other relevant documents) is available at www.RespironicsCPAP-ELSettlement.com. Capitalized terms in this Notice have the same meaning as defined in the Settlement Agreement.

Judge Joy Flowers Conti of the United States District Court for the Western District of Pennsylvania is presiding over this litigation. The litigation is called: *In re Philips Recalled CPAP, BI-LEVEL PAP, and Mechanical Ventilator Products Litigation*, Master Docket No. 21-mc-1230-JFC, MDL No. 3014 (W.D. Pa.).

If the Settlement is approved, Judge Conti (or her successor) will retain jurisdiction over the Settlement, including the interpretation, implementation, administration, consummation, and enforcement of the Settlement and the Settlement Agreement.

2. What is this lawsuit about?

Plaintiffs assert Economic Loss Claims relating to the approximately 10.8 million Continuous Positive Airway Pressure (“CPAP”) devices, Bi-Level Positive Airway Pressure (“BiPAP”) devices, ventilators, and other devices sold or otherwise distributed in the United States (including its Territories and the District of Columbia) that were subsequently recalled (the “Recalled Devices”) by Philips RS North America LLC (“Philips Respironics”). Plaintiffs allege that the particular type of noise-reducing foam used in the Recalled Devices was defective. Philips Respironics announced the Recall on June 14, 2021 and began the “Recall Programs” in September 2021 to replace certain of the Recalled Devices with remanufactured CPAPs, BiPAPs and ventilators that do not include the challenged foam (the “Remanufactured Devices”) and/or to provide other compensation.

This proposed Settlement is about the Recalled Devices, not the Remanufactured Devices.

This Settlement does not resolve claims for personal injury or medical monitoring. Those claims continue to be litigated.

The Philips Defendants (Philips Respironics, Koninklijke Philips N.V., Philips North America LLC, Philips Holding USA, Inc., and Philips RS North America Holding Corporation) deny all of the allegations made in the litigation. They have also asserted numerous defenses to the claims in this case. The proposed Settlement is not an admission of liability or wrongdoing of any kind by the Philips Defendants. The Court also has not decided that the Philips Defendants have done anything wrong.

QUESTIONS? CALL 1-855-912-3432 OR VISIT:

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3. What is a class action?

In a class action, one or more individuals and/or entities called “class representatives” sue on behalf of themselves and others who have similar claims. This group of individuals and/or entities is called the “class,” and the individuals and/or entities in the class are called “class members.” The resolution of the class representatives’ lawsuit resolves the claims for all class members, except those who exclude themselves from (*i.e.*, opt out of) the class.

4. Why is there a proposed Settlement?

Both sides agreed to a proposed Settlement after extensive litigation and negotiations before a Court-appointed mediator with substantial experience mediating economic loss claims. Both sides agreed to this Settlement to avoid the costs, delays, and risks of a trial. Settlement Class Members can get compensation or other benefits from the Settlement. The class representatives and their attorneys think the Settlement is a good result for the Class. The Court did not decide in favor of the Plaintiffs or the Philips Defendants. There has been no determination that the Philips Defendants did anything wrong, and the Philips Defendants continue to deny any wrongdoing, liability or damage to class members. The Settlement is subject to approval by the Court.

WHO IS IN THE PROPOSED SETTLEMENT CLASS?

5. How do I know if I am in the Settlement Class?

You are a member of the Settlement Class if you are a natural person or entity residing in the United States (including its Territories and the District of Columbia), including military and diplomatic personnel stationed overseas, who either: (a) purchased, leased, rented, paid for (in whole or in part), or were prescribed a Recalled Device (“Users”), or (b) reimbursed (in whole or in part) a payment to purchase, lease, rent, or otherwise pay for a Recalled Device, including insurers, self-funded employers, and third-party payers. The Recalled Devices are listed below at Question 9 and defined in the Settlement Agreement at Section 1.37.

Excluded from the Settlement Class are: (a) the Philips Defendants and their employees, officers, and directors; (b) the Judge, mediator and Special Masters assigned to the case; (c) individuals who have already released the Released Claims against one or more of the Philips Defendants pursuant to individual settlements or other resolutions; (d) Durable Medical Equipment (“DME”) providers; (e) federal government payers; and (f) Settlement Class Counsel.

6. What should I do if I am still not sure whether I am included in the Class?

If you are not sure whether you are included in the Settlement Class, you can ask for free help by calling the Settlement Administrator at 1-855-912-3432 for more information. You can also visit www.RespironicsCPAP-ELSettlement.com for more information or send an email to Info@RespironicsCPAP-ELSettlement.com. You can also look at the sticker with the Serial Number and other identifying information on your CPAP device, BiPAP device, or ventilator to see if it is one of the Recalled Devices.

QUESTIONS? CALL 1-855-912-3432 OR VISIT:
www.RespironicsCPAP-ELSettlement.com

THE PROPOSED SETTLEMENT BENEFITS AND HOW TO GET A PAYMENT

7. How much will the Philips Defendants pay under the proposed Settlement?

The Philips Defendants have agreed to pay a minimum of \$445 million to compensate eligible Users for Device Payment Awards and Device Return Awards. To the extent this amount is not sufficient to pay all Device Payment Awards and Device Return Awards required by the Settlement, the Philips Defendants will make additional payments to pay all eligible Users who qualify for those payments under the Settlement.

The Philips Defendants will also pay Users up to an additional \$15 million for Device Replacement Awards.

The Philips Defendants have agreed to pay \$34 million for Payer Awards to eligible Payers.

In addition to making the payments described above, the Philips Defendants will also separately pay the reasonable costs to administer the Settlement, the amount the Court awards with respect to the motion for attorneys' fees and litigation expenses that will be filed by Settlement Class Counsel in connection with the Settlement, and any Service Awards the Court approves for the five Settlement Class Representatives. These payments will not reduce the amounts paid to Settlement Class Members.

The benefits provided by the proposed Settlement are separate and distinct from any relief provided under the Philips Respironics Recall Programs. However, if the financial compensation to a particular User under the Settlement is greater than the financial compensation provided under the Recall Programs to the same User, or vice versa, nothing precludes that User from recovering the larger of the two *but not both*. Go to www.RespironicsCPAP-ELSettlement.com for further information and details.

8. What is the easiest way for Users who still have their Recalled Devices to maximize their Settlement payment?

The easiest way for Users who still have their Recalled Devices to get a payment and maximize their payment is to return their Recalled Devices to Philips Respironics. If you return your Recalled Device, you will get an automatic Device Payment Award and a \$100 Device Return Award. Go to www.RespironicsCPAP-ELSettlement.com to enroll in the Settlement and receive a prepaid label to return your Recalled Device to Philips Respironics for free.

The Enrollment Process is available for all Recalled Devices *except the Trilogy 100/200 Recalled Devices*; for those Users who still possess their Trilogy 100/200 Recalled Devices and wish to receive a Device Return Award, they should register their Trilogy 100/200 with Philips Respironics pursuant to a Recall Program and follow the process under the Recall Program. The User's DME will reach out to the User to schedule a time to pick up the Trilogy 100/200 and install a Remanufactured Device.

9. How much are the Device Payment Awards for Users?

If you are a **User**, you may be eligible for a **Device Payment Award** for each Recalled Device you purchased, leased, or rented. The amount of the award depends on the specific model of your Recalled Device:

Recalled Device	User Device Payment Award (Per Device)
-----------------	--

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System One 50 Series ASV4 (Auto SV4)	\$469.14
System One 50 Series Base	\$69.14
System One 50 Series BiPAP	\$159.46
System One 60 Series ASV4 (Auto SV4)	\$424.32
System One 60 Series Base	\$68.24
System One 60 Series BiPAP	\$152.70
C-series S/T, AVAPS (C-series and C-series HT)	\$394.37
DreamStation CPAP	\$55.63
DreamStation ASV	\$379.50
DreamStation ST, AVAPS	\$329.05
DreamStation BiPAP	\$130.63
DreamStation Go	\$107.43
E30	\$453.83
OmniLab Advanced Plus	\$165.99
Trilogy 100/200, Garbin Plus, Aeris LifeVent	\$1,552.25
V30 auto	\$67.12

If more than one User makes a claim for a Device Payment Award with respect to the same Recalled Device (*e.g.*, a rental Recalled Device), the Device Payment Award will be allocated among those Users by the Settlement Administrator on a *pro rata* basis following the **Claims Period Deadline**.

If a User returned their Recalled Device to Philips Respironics under warranty (outside of a Recall Program) and received another Recalled Device for free pursuant to that warranty, the User is *only* eligible for a Device Payment Award for the Recalled Device provided to the User for free under warranty, not the original Recalled Device returned to Philips Respironics under warranty.

If a User returned his or her Recalled Device under warranty (outside of a Recall Program) and received his or her full payment back, the User is not eligible for a Device Payment Award for the Recalled Device the User returned.

Please keep in mind that if you returned a Recalled Device to Philips Respironics and received a Remanufactured Device from Philips Respironics, your potential claim for Settlement benefits is for the Recalled Device, not the Remanufactured Device.

10. How much are the Device Return Awards for Users?

If you are a User, you are eligible for a **\$100 Device Return Award** for each Recalled Device you return (or already returned) to Philips Respironics. The return deadline is **Claims Period Deadline**. The amount of the Device Return Award does not depend on the specific model of the Recalled Device.

QUESTIONS? CALL 1-855-912-3432 OR VISIT:
www.RespironicsCPAP-ELSettlement.com

11. How much are the Device Replacement Awards for Users?

If you are a User, you may be eligible for a **Device Replacement Award** for money you spent to replace a Recalled Device with a comparable CPAP, BiPAP, or ventilator Replacement Device *on or after* June 14, 2021 and *before* September 7, 2023. To qualify, you had to purchase the Replacement Device before you received, or without receiving, a Remanufactured Device from Philips Respironics.

To receive a Device Replacement Award, you must submit a claim supported by the required information and documentation. Go to www.RespironicsCPAP-ELSettlement.com to obtain and complete a copy of the Device Replacement Award Claim Form and submit the required information and documentation. You must also return your Recalled Device (if you still have it) to Philips Respironics, and if you received a Remanufactured Device from Philips Respironics, you must return that as well.

The amount of a Device Replacement Award will depend on the amount paid by the User (not any payment made by insurance or a third-party payer) to purchase, lease, or rent the Replacement Device, the value of a device that is comparable to the replaced Philips Respironics Recalled Device, as well as the number of valid Device Replacement Award claims submitted.

Users who receive Device Replacement Awards are also eligible for Device Payment Awards. However, except in certain circumstances, Users who receive Device Replacement Awards are not eligible for Device Return Awards.

Visit the **Device Replacement Award Tab** at www.RespironicsCPAP-ELSettlement.com for more details.

12. What is the Extended Warranty on Remanufactured Devices?

If you are a User and you received or receive a Remanufactured Device as part of a Philips Respironics Recall Program, you will receive the following **extended warranty** from Philips Respironics:

- 2 years for materials and workmanship for Remanufactured Devices that have a different Serial Number from the associated Recalled Device; or
- 2 years for materials and workmanship on the repair work that was performed by Philips Respironics pursuant to the Recall Programs (not the entire Remanufactured Device) on Remanufactured Devices that have the same Serial Number as the associated Recalled Device.

The extended warranty begins (i) for Remanufactured Devices shipped by Philips Respironics directly to the User, on the date of shipment to the User, and (ii) for Remanufactured Devices shipped by Philips Respironics to the DME, on the date the Remanufactured Device was set up by the DME for the User.

13. What is the Accelerated Implementation Option for Users?

Users who return (or already returned) their Recalled Devices to Philips Respironics by **Claims Period Deadline** can get paid more quickly – *i.e.*, before the completion and outcome of any appeals – *if* they complete the necessary forms for the Accelerated Implementation Option (“AIO”). To get an accelerated payment, go to www.RespironicsCPAP-ELSettlement.com and complete the necessary AIO forms. The deadline to elect the AIO is the **Claims Period Deadline** or the completion of any appeals from MDL Court Final Approval, whichever is later. To be eligible for the AIO, you must return your Recalled Device to Philips Respironics by **Claims Period Deadline**.

QUESTIONS? CALL 1-855-912-3432 OR VISIT:
www.RespironicsCPAP-ELSettlement.com

In exchange for an accelerated Device Payment and Device Return Award, Users will be required to (a) provide the Philips Defendants and the other Released Parties with an individual release of their Economic Loss Claims, including both known and unknown claims, (b) make a sworn attestation as to whether they used ozone cleaning with their Recalled Device, and (c) if they used ozone cleaning, submit a signed individual assignment to Philips Respironics of all their Economic Loss Claims against the manufacturer of their ozone cleaner.

Users who rented a Recalled Device are not eligible for accelerated payments. Device Replacement Awards are also not subject to an accelerated payment option.

14. What are the Settlement Benefits for Payers? (Payer Awards)

If you are a Payer, you may qualify for a **Payer Award** from the \$34 million fund established for Payer Awards. Payer Awards will be calculated based on each Eligible Payer's relative market share (aggregated among all Eligible Payers) based on the number of insured lives covered by the Eligible Payer and the dollar amount of direct premiums written by the Eligible Payer in the Calendar Years 2021 and 2022 ("Market Share Percentage"). The Settlement Administrator will determine each Eligible Payer's Market Share Percentage based on industry data and the information provided in the Eligible Payer's Declaration and Claim Form.

Payers are **not** eligible for Device Payment, Device Return or Device Replacement Awards, and are not eligible for accelerated payments.

Go to www.RespironicsCPAP-ELSettlement.com and click on the **Payer Tab**, or call 1-855-912-3432, for more details.

15. How can I get a payment? What steps do I need to take?

The chart on pages 3-6 above summarizes the steps that must be taken by Users, and the deadlines, to get a Device Payment Award, Device Return Award, and/or Device Replacement Award under the Settlement. Go to www.RespironicsCPAP-ELSettlement.com for more information and to submit a claim, if necessary. **The easiest way for Users who still have their Recalled Devices to get a payment and maximize that payment is to return their Recalled Devices(s) to Philips Respironics.**

Payers must submit a Declaration and Claim Form supported by the required information and documentation to get a payment. Visit the **Payer Tab at www.RespironicsCPAP-ELSettlement.com for details.**

16. I already registered my Recalled Device in a Recall Program. Do I also need to enroll in the Settlement for that Recalled Device?

No. If you already registered your Recalled Device in a Philips Respironics Recall Program, you do not separately need to enroll that device in this Settlement. The information from your registration will be provided to the Settlement Administrator. However, please go to www.RespironicsCPAP-ELSettlement.com to confirm or update your contact information, as well as to choose your preferred payment option.

17. Where can I obtain more information about the Settlement and obtain a Claim Form?

QUESTIONS? CALL 1-855-912-3432 OR VISIT:
www.RespironicsCPAP-ELSettlement.com

You can obtain more information about the Settlement and submit a claim, if necessary, by going to www.RespironicsCPAP-ELSettlement.com. You can also submit a paper claim by downloading a claim form from www.RespironicsCPAP-ELSettlement.com and mailing it, along with any necessary supporting documentation, to Respironics CPAP Settlement, c/o Settlement Administrator, 1650 Arch Street, Suite 2210, Philadelphia, PA 19103. You can also call the Settlement Administrator at 1-855-912-3432 and they will mail you a paper claim form.

18. What is the deadline for submitting a claim?

The deadline for taking any steps required under the Settlement to receive a payment is **Claims Period Deadline**.

19. When will I get my payment?

It is too early to answer this question. The Court will hold a hearing on , 2024 at a.m., to decide whether to approve the Settlement. The Court may move the Final Approval Hearing to a different date or time without providing further notice to the Settlement Class. The date and time of the Final Approval Hearing can be confirmed at www.RespironicsCPAP-ELSettlement.com. Please check it regularly for updates.

However, even if the Court approves the Settlement, there may be appeals that further delay payments unless you are a User who qualifies for and elects the Accelerated Implementation Option. Please be patient.

20. What am I giving up if I stay in the Class?

Unless you timely exclude yourself from the Settlement Class with a valid opt-out request (see Questions 27-30), your Economic Loss Claims will be released, and you **cannot** sue, continue to sue, or be part of any other lawsuit against the Philips Defendants or the other Released Parties seeking to recover for Economic Loss Claims. Any such Economic Loss Claims by you will be barred whether or not you complete the steps necessary to receive a payment under the proposed Settlement. **You may, however, pursue claims for personal injury or medical monitoring; those claims are not released by this proposed Settlement.**

In addition, if you do not timely and validly opt out of the Settlement, you will assign to Philips Respironics any Economic Loss Claims you may have against Ozone Cleaning Companies.

Details regarding the “Releases” and “Assignment” are in Sections 4 and 5 of the Settlement Agreement, which can be viewed at www.RespironicsCPAP-ELSettlement.com.

WHAT OTHER STEPS CAN I TAKE?

21. How can I monitor the progress of the proposed Settlement?

Updates regarding the proposed Settlement, including the timing of the Final Fairness Hearing, will be posted at www.RespironicsCPAP-ELSettlement.com. If you visit that website and input your Claim ID number (which can be found on the Notice you received via postal mail and/or email notifying you about the Settlement), you will get automatic updates regarding the proposed Settlement.

QUESTIONS? CALL 1-855-912-3432 OR VISIT:
www.RespironicsCPAP-ELSettlement.com

22. How can I verify or update my contact information and choose my payment option?

All Settlement Class Members can update their contact information and choose their preferred payment option by visiting www.RespironicsCPAP-ELSettlement.com, or by sending an email to Info@RespironicsCPAP-ELSettlement.com, or by calling 1 855-912-3432.

Payment options for Users are Zelle, Virtual Mastercard, or paper check. Payers may choose ACH payment or paper check. Processing times for paper check will be longer.

THE LAWYERS REPRESENTING THE CLASS**23. Do I have a lawyer in connection with the Economic Loss Claims that are the subject of this Settlement?**

Yes. The Court appointed the following lawyers to represent you and the other Settlement Class Members: Christopher A. Seeger of Seeger Weiss; Sandra L. Duggan of Levin Sedran & Berman; Steven A. Schwartz of Chimicles Schwartz Kriner & Donaldson-Smith LLP; Kelly K. Iverson of Lynch Carpenter, LLP; Roberta D. Liebenberg of Fine, Kaplan and Black, R.P.C.; Lisa Ann Gorshe of Johnson Becker PLLC; and Arthur H. Stroyd, Jr. of Del Sole Cavanaugh Stroyd LLC.

These firms are called Settlement Class Counsel. You will not be charged for their services.

24. How will the lawyers who served as Class Counsel be paid?

In addition to the payments described above to Settlement Class Members, the Philips Defendants have agreed to pay the amount the Court awards with respect to the motion for attorneys' fees and costs that will be filed by Settlement Class Counsel, with the attorneys' fees being calculated based on the percentage of recovery methodology, with a lodestar cross-check, and paid apart from and in addition to the payments to Settlement Class Members. Settlement Class Counsel will not seek an award of attorneys' fees in excess of \$175,000,000, which Settlement Class Counsel contend represents a fair percentage of the value of the Settlement in terms of cash recoveries and other benefits to the Settlement Class. The Philips Defendants fully reserve the right to challenge that amount, any percentage upon which it is based, and the items comprising the claimed value of the Settlement. Settlement Class Counsel will also ask the Court for an award of litigation expense reimbursements of up to \$2,500,000. The Philips Defendants fully reserve the right to challenge that amount.

The Philips Defendants have not agreed to pay these amounts. Instead, Settlement Class Counsel and the Philips Defendants, with the assistance of the Settlement Mediator appointed by the Court, will attempt to reach agreement on the amount of attorneys' fees and costs that Settlement Class Counsel will submit for approval from the Court. If Settlement Class Counsel and the Philips Defendants do not reach agreement on the amount of attorneys' fees and costs, they will litigate the matter and will present their respective positions to the Court. Whether the parties are able to reach agreement or not, the Court will determine what is the fair and reasonable amount of attorneys' fees and costs.

The final amount of attorneys' fees and costs awarded by the Court will not reduce the payments to Settlement Class Members.

A copy of Settlement Class Counsel's Motion for Attorneys' Fees and Expenses will be available 30 days prior to the **Opt-Out/Objection Deadline** at www.RespironicsCPAP-ELSettlement.com.

QUESTIONS? CALL 1-855-912-3432 OR VISIT:
www.RespironicsCPAP-ELSettlement.com

25. Should I get my own lawyer?

You do not need to hire your own lawyer because Settlement Class Counsel are working on your behalf in connection with the Economic Loss Claims. If you want your own lawyer, you may hire one at your own expense. For example, you can ask your own lawyer to appear in Court if you want someone other than Settlement Class Counsel to speak for you, and you follow the necessary steps to appear. You may also appear for yourself without a lawyer if you follow the necessary steps to do so discussed in Question 35 below.

26. Who are the Settlement Class Representatives and what will they get from the Settlement?

The Settlement Class Representatives are: Elizabeth Heilman, Peter and Julie Barrett, and Ivy Creek of Tallapoosa LLC d/b/a Lake Martin Community Hospital, who are Users; and ASEA/AFSCME Local 52 Health Benefits Trust, which is a Payer. Settlement Class Counsel will ask the Court to award each Settlement Class Representative \$5,000 as a Service Award for their efforts in serving as a class representative in connection with this proposed Settlement. Other than this potential award, the Settlement Class Representatives will be eligible for the same Settlement benefits as every other Settlement Class Member in the same situation. Settlement Class Counsel will assert to the Court that the Service Awards are reasonable because the Settlement Class Representatives agreed to serve in that capacity and spent significant time consulting with counsel in connection with this proposed Settlement.

The Service Awards approved by the Court will be paid by the Philips Defendants separate and apart from the other Settlement payments described in this notice and will not reduce the payments to Settlement Class Members.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you don't want a payment or any other benefits from the Settlement and you want to keep your ability to sue the Philips Defendants or the other Released Parties or Ozone Cleaning Companies for any Economic Loss Claims, then you must take steps to get out of the Settlement. This is called excluding yourself from—or “opting out” of—the Settlement Class.

27. How do I get out of the Settlement?

You may opt out of the Settlement by mailing an opt out request to the Claims Administrator at:

Respironics CPAP Settlement
Attn: Exclusions
P.O. Box 58220
Philadelphia, PA 19102

Users who desire to opt out of the Settlement must mail a written request to opt out stating that they seek exclusion from the Settlement and identifying their Recalled Device(s) by Serial Number, if known, and including information regarding the type of Recalled Device, the approximate date of acquisition, and the type of acquisition (*e.g.*, purchase, rental, etc.). The Settlement Class Member shall also include their contact information, including name, address, telephone number, and email, if any, as well as the same

QUESTIONS? CALL 1-855-912-3432 OR VISIT:
www.RespironicsCPAP-ELSettlement.com

information regarding the Settlement Class Member's counsel (if applicable). **Incomplete opt-outs are invalid.**

Payers who desire to opt out of the Settlement must mail a written request to opt out stating that they seek exclusion from the Settlement and must include the full name of Payer plan and whether the Payer made payments to reimburse (in whole or part) Users' payments to purchase, lease, rent, or otherwise pay for Recalled Devices; number of lives insured by the Payer in each of the calendar years 2008 to 2021; and number of direct premiums written in each of the calendar years 2008 to 2021.

To be valid and effective, an original request to opt-out must be signed by the Settlement Class Member or the Settlement Class Member's Representative Claimant, but not by the Settlement Class Member's counsel, if any, or anyone else. Representative Claimants must supply the Settlement Administrator with written proof that such person has legal authority to act in a representative capacity for the Settlement Class Member. A pleading or any other request to opt out made or signed only by counsel for the Settlement Class Member shall not be sufficient. **Mass opt-outs also are not permitted**, and each Settlement Class Member may only opt out on behalf of himself, herself, or itself. **Electronic signatures (other than DocuSign) are not valid and effective, whether for Settlement Class Members or Representative Claimants.**

The opt-out request must be postmarked no later than **Opt-Out/Objection Deadline or it will be denied as untimely and invalid.**

28. If I don't opt out, can I sue the Philips Defendants for Economic Loss Claims later?

No. Unless you submit a timely and valid opt out, if the Settlement is approved, you give up the right to bring any Economic Loss Claims against the Philips Defendants or the other Released Parties. Any such Economic Loss Claims by you will be barred whether or not you complete the steps necessary to receive a settlement payment. You must exclude yourself from the Settlement Class if you want to try to pursue your own lawsuit for Economic Loss Claims against the Philips Defendants or the other Released Parties.

Remaining in the Settlement Class does not affect any personal injury or medical monitoring claims you may have.

29. If I don't opt out, can I sue Ozone Cleaning Companies for Economic Loss Claims?

No. If you do not opt out and the Settlement is approved, you will assign to Philips Respironics your Economic Loss Claims against Ozone Cleaning Companies.

30. What happens if I opt out?

If you submit a timely and valid request to opt out of the Settlement, you will not have any rights as a member of the Settlement Class under the Settlement; you will not receive any payment or other benefits provided by the Settlement; you will not be able to object to the Settlement; and you will keep the right, if any, to sue on any Economic Loss Claims.

OBJECTING TO THE SETTLEMENT

31. How do I tell the Court that I have an objection to the Settlement?

QUESTIONS? CALL 1-855-912-3432 OR VISIT:
www.RespironicsCPAP-ELSettlement.com

If you are a Settlement Class Member and do not opt out of the Settlement, you can object to the Settlement (or any aspect of it) by mailing an objection to the Settlement Administrator. You can also object to the amount sought in the motion for attorneys' fees and costs that will be filed by Settlement Class Counsel, or the proposed Service Awards to the Settlement Class Representatives. The Court will consider your views. You can't ask the Court to compel the parties to agree to a different Settlement; the Court can only approve or reject the proposed Settlement as presented and explain its reasons for doing so. If the Court denies approval, no Settlement payments will be made, and the lawsuit will continue unless the parties negotiate a revised Settlement.

Any objection to the proposed Settlement must be in writing and mailed to the Settlement Administrator at the following address: Respironics CPAP Settlement, Attn: Objections, P.O. Box 58220, Philadelphia, PA 19102. **The postmark deadline for any objection is Opt-Out/Objection Deadline. Any objections that are not postmarked by Opt-Out/Objection Deadline are untimely and invalid.**

All objections must state that you object to the proposed Settlement in *In re Philips Recalled CPAP, BI-LEVEL PAP, and Mechanical Ventilator Products Litigation*, Master Docket No. 21-mc-1230-JFC, MDL No. 3014 (W.D. Pa.).

All objections also must state whether the objection asserted applies only to the objector, to a specific subset of the Settlement Class, or to the entire Settlement Class, and must also state with specificity the grounds for the objection and include all supporting evidence and documentation. Any objection must include a statement whether the Settlement Class Member intends to appear at the Final Fairness Hearing either with or without the objector's counsel (who must be identified). Any objection must also identify any witnesses intended to be called, the subject area of the witnesses' testimony, and identify and attach a copy of all documents to be used or offered into evidence at the Final Fairness Hearing. Failure to do so may result in the exclusion of such appearances, documents, witnesses, and/or evidence from the Final Fairness Hearing.

Any objection must provide information sufficient to show the objector's membership in the Settlement Class. Users must include in their objection the Serial Number(s), if known, and the type of their Recalled Device(s). Payers must include in their objection whether the Payer reimbursed (in whole or part) Users' payments to purchase, lease, or rent Recalled Devices; the number of lives insured by the Payer in each of the calendar years 2008 to 2022; and the number of direct premiums written in each of the calendar years 2008 to 2022.

The objection must state if the objector or the objector's counsel have objected to a class action Settlement during the past 5 years, and if so, identify all cases in which the objector or the objector's counsel have filed an objection by caption, court and case number, and for each case, the disposition of the objection, including whether any payments were made to the objector or the objector's counsel, and if so, the incremental benefits, if any, that were achieved for the class in exchange for such payments.

The objection must be signed by the Settlement Class Member and his, her, or its counsel, if any. An objection signed by counsel alone is not valid. Any objection not submitted in full compliance with these terms and procedures are invalid and deemed waived.

If you make a timely and valid written objection, you may (but are not required to) appear at the Final Approval Hearing, either in person or through your own attorney, provided that you state that intention to appear in the objection itself. If you appear through your own attorney, you are responsible for hiring and paying that attorney.

QUESTIONS? CALL 1-855-912-3432 OR VISIT:
www.RespironicsCPAP-ELSettlement.com

32. What's the difference between objecting and opting out?

Objecting is telling the Court that you don't like something about the proposed Settlement. You can object to the proposed Settlement only if you do not exclude yourself from the Settlement Class. You can still get the Settlement benefits if it is approved over your objection.

Excluding yourself from the proposed Settlement is opting out and telling the Court that you don't want to be part of the Settlement. If you opt out of the Settlement, you cannot object to it because it no longer affects you.

You cannot opt out of the Settlement and object to it.

THE COURT'S FINAL APPROVAL HEARING**33. When and where will the Court decide whether to approve the proposed Settlement?**

The Court will hold a Final Approval Hearing on _____, 2024 at _____m., in Courtroom 5A of the Joseph F. Weiss, Jr. U.S. Courthouse, 700 Grant Street, Pittsburgh, PA 15219.

At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court will listen to Settlement Class Members (or their counsel) who have timely and properly asked to speak at the hearing. The Court will then decide whether to approve the Settlement.

The Court may also decide how much should be awarded with respect to the motion for attorneys' fees and costs that will be filed by Settlement Class Counsel, and how much the Settlement Class Representatives should receive in Service Awards.

The Court may reschedule the Final Approval Hearing or change any of the deadlines described in this Notice. The date of the Final Approval Hearing may change without further notice to Settlement Class Members. Be sure to check the website, www.RespironicsCPAP-ELSettlement.com, for news of any such changes. You can also access the case docket 21-mc-1230 via the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.pawd.uscourts.gov> or access the Court's public information website for the litigation at: <https://www.pawd.uscourts.gov/mdl-3014-re-philips-recalled-cpap-bi-level-pap-and-mechanical-ventilator-products-litigation>.

34. Do I have to come to the Final Approval Hearing?

No. Settlement Class Counsel will answer any questions the Court may have. You may attend at your own expense if you wish. If you mail an objection to the Settlement Administrator, you do not have to come to the hearing to talk about it. As long as you meet the requirements for objections, the Court will consider it. You may also pay your own lawyer to attend, but that is not necessary.

35. May I speak at the hearing?

You may ask the Court for permission for you or your own lawyer (hired at your own expense) to speak at the Final Approval Hearing. To do so, you must include a statement in your written objection (see Question 31) that you and/or your lawyer intend to appear at the hearing. Be sure to meet all the objection requirements (see Question 31).

QUESTIONS? CALL 1-855-912-3432 OR VISIT:
www.RespironicsCPAP-ELSettlement.com

You cannot speak at the hearing or send your own lawyer to speak on your behalf if you exclude yourself from the Settlement Class.

IF I DO NOTHING

36. What happens if I do nothing at all?

If you take no action at all, you will get no Settlement payment unless you are a User and you qualify for an Automatic Payment. If you are a User who qualifies for an Automatic Payment, you will be sent a check for your automatic Device Payment Award and Device Return Award to your last known address if you do nothing further. But to ensure your information is up to date, please go to www.RespironicsCPAP-ELSettlement.com to verify or update your contact information, provide the Serial Number of your Recalled Device and Recall Registration Number to expedite your payment, and confirm your preferred payment option.

All other Settlement Class Members must take further action to receive a payment. See Question 15 above. If you do nothing, you'll be a Settlement Class Member but you won't get a payment from this Settlement.

If you are a Settlement Class Member and you do not exclude yourself as explained in Question 27, you will give up your right to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against the Philips Defendants, the other Released Parties, and/or Ozone Cleaning Companies for Economic Loss Claims. Any such Economic Loss Claims by you will be barred whether or not you complete the steps necessary to receive a Settlement payment. **However, any claim you may have for personal injury or medical monitoring will not be affected even if you do nothing.**

GETTING MORE INFORMATION

37. Are more details about the Settlement available?

Yes. This Notice simply summarizes the proposed Settlement. The specific details are in the Settlement Agreement and other case documents. You can get a copy of these and other documents at www.RespironicsCPAP-ELSettlement.com, by emailing Info@RespironicsCPAP-ELSettlement.com, by calling 1-855-912-3432, by accessing the docket in this case through the Court's Public Access to Court Electronic Records (PACER) system at: <https://ecf.pawd.uscourts.gov> or access the Court's public information website for the litigation at: <https://www.pawd.uscourts.gov/mdl-3014-re-philips-recalled-cpap-bi-level-pap-and-mechanical-ventilator-products-litigation>, or by visiting the office of the Clerk of the Court for the United States District Court for the Western District of Pennsylvania located at Joseph F. Weiss, Jr. U.S. Courthouse, 700 Grant Street, Pittsburgh, PA 15219 between 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding Court holidays.

PLEASE DO NOT CALL THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.

38. How do I get more information?

The Settlement Website, www.RespironicsCPAP-ELSettlement.com, has relevant information about the Settlement, including claim forms, answers to questions about the Settlement and relevant pleadings

QUESTIONS? CALL 1-855-912-3432 OR VISIT:
www.RespironicsCPAP-ELSettlement.com

filed with the Court. These documents will tell you more about the Settlement and help you determine whether you are eligible for a payment.

You can also call 1-855-912-3432 or write to the Claims Administrator at:

Respironics CPAP Settlement
c/o Settlement Administrator
1650 Arch Street, Suite 2210
Philadelphia, PA 19103

Settlement Class Counsel can also be reached using the following contact information:
ClassCounsel@RespironicsCPAP-ELSettlement.com.

QUESTIONS? CALL 1-855-912-3432 OR VISIT:
www.RespironicsCPAP-ELSettlement.com

SETTLEMENT AGREEMENT

EXHIBIT 3(b)

**A PROPOSED CLASS ACTION SETTLEMENT WILL PAY YOU
\$100 TO RETURN YOUR CPAP, BiPAP, OR VENTILATOR
RECALLED BY PHILIPS RESPIRONICS**

As explained in more detail in the enclosed Notice of Proposed Class Action Settlement, a proposed settlement has been submitted for approval by the Court.

You are receiving this additional notification because you have already registered your CPAP, BiPAP or Ventilator device in the Philips Respironics Recall Program, but you have not yet returned your Recalled Device.

If the proposed settlement is approved, in addition to receiving a **Device Payment Award**, you can also receive a **\$100 Device Return Award** if you return your Recalled Device before **[Claims Period Deadline]**.

Please visit www.RespironicsCPAP-ELSettlement.com or call toll-free 1-855-912-3432 for more information about the proposed settlement and instructions on how to get a prepaid label to return your Recalled Device so that you qualify for the \$100 Device Return Award.

SETTLEMENT AGREEMENT

EXHIBIT 3(c)

**A PROPOSED CLASS ACTION SETTLEMENT WILL PAY YOU
\$100 AFTER YOUR DME REPLACES YOUR RECALLED
TRILOGY 100/200 VENTILATOR WITH A FREE
REMANUFACTURED VENTILATOR**

As explained in more detail in the enclosed Notice of Proposed Class Action Settlement, a proposed settlement has been submitted for approval by the Court.

You are receiving this additional notification because you have already registered your Trilogy 100/200 Ventilator in the Philips Respironics Recall Program. At the appropriate time, your DME will be reaching out to you to schedule a time to retrieve your Trilogy 100/200 and install a Remanufactured Device. If you allow the DME to do this, and the proposed settlement is approved, you will receive a **\$100 Device Return Award** and also a **Device Payment Award**.

Please visit www.RespironicsCPAP-ELSettlement.com or call toll-free 1-855-912-3432 for more information about the proposed settlement.

SETTLEMENT AGREEMENT

EXHIBIT 3(d)

To: User Email Address
From: Settlement Administrator
Subject: Notice of Proposed Class Action Settlement – *In re Philips Recalled CPAP, Bi-LEVEL PAP, and Mechanical Ventilator Products Litigation*

Claim ID: <<Claim ID>>

Confirmation Code: <<Confirmation Code>>

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT
UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA
A court authorized this Notice. This is not a solicitation from a lawyer.

If you paid for a Philips Respironics CPAP, BiPAP or Ventilator that was recalled, you may be eligible for a cash award from a proposed class action settlement.

- A proposed Settlement has been reached in a U.S. class action lawsuit alleging Economic Loss Claims related to the purchase, lease, or rental of recalled CPAPs, BiPAPs, and ventilators manufactured by Philips Respironics between 2008 and 2021. Philips Respironics recalled these devices in the United States beginning in June 2021.
- Under the proposed Settlement:
 - a minimum of \$445 million will be paid to “Users” who purchased, leased, or rented a Recalled Device;
 - up to an additional \$15 million will be paid to “Users” who paid out of pocket for a Replacement Device.
- **The Settlement does *not* affect or release any claims for alleged personal injuries or medical monitoring relief, which continue to be litigated.**
- Users may qualify for:
 - a **Device Payment Award** for each Recalled Device they purchased, leased, or rented. The amount for each specific device model is listed in the table below;
 - a **Device Return Award of \$100** for each Recalled Device they return (or already returned) to Philips Respironics by **Claims Period Deadline**; and/or
 - a **Device Replacement Award** for money Users paid to purchase a Replacement Device *on or after* June 14, 2021 and *before* September 7, 2023 to replace a Recalled Device with a comparable CPAP, BiPAP, or ventilator.
- **If you are a User and you still have your Recalled Device but have not yet returned it to Philips Respironics, visit www.RespironicsCPAP-ELSettlement.com for instructions on how to get a prepaid label to return your Recalled Device. Doing so will help you maximize your payment from the proposed Settlement.**

- The chart below summarizes your rights and options. More details, including a full copy of the Notice, which has Frequently Asked Questions (“FAQs”), the full Settlement Agreement, and other relevant documents, are available at www.RespironicsCPAP-ELSettlement.com. Capitalized terms in this Notice have the same meaning as defined in the Settlement Agreement.

IF YOU ARE A USER WHO :	THEN:
Registered your Recalled Device in a Recall Program and you already returned it to Philips Respironics -AND- You wish to participate in the Settlement	You are eligible for an automatic Device Payment Award and a \$100 Device Return Award for each Recalled Device you returned, without the need to submit a claim (“Automatic Payment”). Go to www.RespironicsCPAP-ELSettlement.com: • to verify your eligibility for payment; • confirm or update your contact information; and • choose your preferred payment option. By this Deadline: Claims Period Deadline
Registered your Recalled Device in a Recall Program, but you have not yet returned it to Philips Respironics, and you would like to do so now to get a \$100 Device Return Award -AND- You wish to participate in the Settlement	You are eligible for a Device Payment Award and a \$100 Device Return Award, without the need to submit a claim, if you return your Recalled Device to Philips Respironics. Go to www.RespironicsCPAP-ELSettlement.com: • get a prepaid label to return your Recalled Device to Philips Respironics for free; • confirm or update your contact information; and • choose your preferred payment option. By this Deadline: Claims Period Deadline

Did <i>not</i> register your Recalled Device in a Recall Program and you still have your Recalled Device and would like to return it to Philips Respironics to get a \$100 Device Return Award -AND- You wish to participate in the Settlement	You are eligible for a Device Payment Award and a \$100 Device Return Award, without the need to submit a claim, if you Enroll in the Settlement and return your Recalled Device to Philips Respironics. Go to www.RespironicsCPAP-ELSettlement.com: • Enroll in the Settlement, including by identifying the Serial Number of the Recalled Device and providing your contact information; • get a prepaid label to return your Recalled Device to Philips Respironics for free; and • choose your preferred payment option. By this Deadline: Claims Period Deadline
Registered your Recalled Device in a Recall Program before September 7, 2023, but you have not returned it and you do not intend to (or you cannot) return your Recalled Device to Philips Respironics -AND- You wish to participate in the Settlement	You are eligible for a Device Payment Award without the need to submit a claim if you confirm or update your contact information. This option is only available for Recalled Devices that were registered before September 7, 2023. Go to www.RespironicsCPAP-ELSettlement.com: • confirm or update your contact information; and • choose your preferred payment option. By this Deadline: Claims Period Deadline
Did <i>not</i> register your Recalled Device in a Recall Program before September 7, 2023 and you do not intend to (or you cannot) return your Recalled Device to Philips Respironics -AND- You wish to participate in the Settlement.	You are eligible for a Device Payment Award if you submit a valid claim. Go to www.RespironicsCPAP-ELSettlement.com: • complete a Device Payment Award Claim Form; • provide the Serial Number of the Recalled Device and the required documentation; and • choose your preferred payment option. By this Deadline: Claims Period Deadline

Spent your own money to purchase a comparable Replacement CPAP, BiPAP or ventilator to replace a Recalled Device <i>on or after</i> June 14, 2021 and <i>before</i> September 7, 2023 -AND- You wish to participate in the Settlement.	You are eligible for a Device Replacement Award if you submit a valid claim. Go to www.RespironicsCPAP-ELSettlement.com: • complete a Device Replacement Award Claim Form; • provide the required documentation and complete the required steps; and • choose your preferred payment option. By this Deadline: Claims Period Deadline
Wishes to exclude yourself from the Settlement.	You must mail to the Settlement Administrator a valid request to opt out of the Settlement. Follow the instructions in Question 27 of the FAQs or go to www.RespironicsCPAP-ELSettlement.com for more information. If you opt out of the Settlement, you will get no Settlement payment or other Settlement benefits. You also cannot object to the Settlement. By this Deadline: Opt-Out/Objection Deadline
Wishes to object to the Settlement.	You must mail to the Settlement Administrator a valid objection to the Settlement. Follow the instructions in Question 31 of the FAQs or go to www.RespironicsCPAP-ELSettlement.com for more information. If you object to the Settlement, you cannot also opt out of the Settlement. By this Deadline: Opt-Out/Objection Deadline
Wants to do nothing.	If you take no action at all, you will get no Settlement payment unless you are a User and you qualify for an Automatic Payment. If the Settlement is approved by the Court, you will still be bound by the Settlement and be giving up your Economic Loss Claims against the Philips Defendants and the other Released Parties and assigning to Philips Respironics your Economic Loss Claims against manufacturers of ozone cleaners.

- **Your rights are affected whether you act or don't act. If the proposed Settlement is approved, and you do not opt out, you will release your Economic Loss Claims against the Philips Defendants and the other Released Parties and assign to Philips Respironics your Economic Loss Claims against manufacturers of ozone cleaners. Please read this Notice carefully.**

Why am I receiving this Notice?

A court authorized this Notice because individuals and entities in the United States (including its Territories and the District of Columbia), including military and diplomatic personnel stationed overseas, who purchased, leased, rented, paid for (in whole or in part), or were prescribed a Recalled Device (called "Users") have the right to know about a proposed legal Settlement affecting them. The Recalled Devices are the CPAP, BiPAP, ventilator, and/or other devices sold, leased, rented or otherwise distributed in the United States identified in the chart below.

If you are a User, you can get a payment if you meet the standards to qualify for a payment.

What are the Settlement Benefits?

Users may be eligible for a **Device Return Award**, a **Device Payment Award**, and/or a **Device Replacement Award**.

The **Device Return Awards** are **\$100** for each Recalled Device a User returns to Philips Respironics by **Claims Period Deadline**. The amount of the Device Return Award does not depend on the specific model of the Recalled Device. You can get a prepaid label at www.RespironicsCPAP-ELSettlement.com to return your Recalled Devices for free. That is the easiest way to get paid and maximize your payment because you will qualify for both a Device Payment Award and a Device Return Award for each Recalled Device you return.

Please note that for those Users who still possess their Trilogy 100/200 Recalled Devices and wish to get a \$100 Device Return Award, they should register their Trilogy 100/200 with Philips Respironics pursuant to its Recall Program and follow the process under the Recall Program. The User's DME will reach out to the User to schedule a time to pick up the Trilogy 100/200 and install a Remanufactured Device.

The amount of the **Device Payment Awards** for Users depends on the specific model of the Recalled Device, as reflected in the following table:

Recalled Device	User Device Payment Award (Per Device)
System One 50 Series ASV4 (Auto SV4)	\$469.14
System One 50 Series Base	\$69.14
System One 50 Series BiPAP	\$159.46
System One 60 Series ASV4 (Auto SV4)	\$424.32
System One 60 Series Base	\$68.24

System One 60 Series BiPAP	\$152.70
C-series S/T, AVAPS (C-series and C-series HT)	\$394.37
DreamStation CPAP	\$55.63
DreamStation ASV	\$379.50
DreamStation ST, AVAPS	\$329.05
DreamStation BiPAP	\$130.63
DreamStation Go	\$107.43
E30	\$453.83
OmniLab Advanced Plus	\$165.99
Trilogy 100/200, Garbin Plus, Aeris LifeVent	\$1,552.25
V30 auto	\$67.12

Users who paid out of pocket for a CPAP, BiPAP, or ventilator device to replace a Recalled Device **on or after June 14, 2021 and prior to September 7, 2023** and either (a) did not obtain a Remanufactured Device from a Philips Respironics Recall Program, or (b) replaced a Recalled Device prior to receiving a Remanufactured Device from a Philips Respironics Recall Program, may qualify for a **Device Replacement Award**. Visit the Device Replacement Award Tab at www.RespironicsCPAP-ELSettlement.com for details.

In addition to making the payments described above, the Philips Defendants will also separately pay the reasonable costs to administer the Settlement, the amount the Court awards with respect to the motion for attorneys' fees and litigation expenses that will be filed by Settlement Class Counsel, and any Service Awards the Court approves for the five Settlement Class Representatives.

The Court in charge of this case still has to decide whether to approve the proposed Settlement. Payments will be made if the Court approves the proposed Settlement and after any appeals are resolved in favor of upholding the Settlement. This process can take time. Please be patient.

What are My Other Options?

You may **Opt-Out** of or **Object** to the Settlement by **Opt-Out/Objection Deadline**. Please visit www.RespironicsCPAP-ELSettlement.com for more information on how to Opt-Out of or Object to the Settlement. You cannot both Opt-Out of and Object to the Settlement.

If you submit a timely and valid request to opt out of the Settlement, you will not have any rights as a member of the Settlement Class under the proposed Settlement; you will not receive any payment or other benefits provided by the Settlement; you will not be able to object to the Settlement; and you will keep the right, if any, to sue for any Economic Loss Claims.

If you **Do Nothing**, you will be legally bound by the terms of the Settlement, and you will release your Economic Loss Claims against the Philips Defendants and the other Released Parties. In addition, you will also assign to Philips Respironics any Economic Loss Claims you may have against Ozone Cleaning Companies.

Do I have a Lawyer for these Economic Loss Claims?

Yes. The Court appointed the following lawyers to represent you and the other Users: Christopher A. Seeger of Seeger Weiss LLP; Sandra L. Duggan of Levin Sedran & Berman LLP; Steven A. Schwartz of Chimicles Schwartz Kriner & Donaldson-Smith LLP; Kelly K. Iverson of Lynch Carpenter, LLP; Roberta D. Liebenberg of Fine, Kaplan and Black, R.P.C.; Lisa Ann Gorshe of Johnson Becker PLLC; and Arthur H. Stroyd, Jr. of Del Sole Cavanaugh Stroyd LLC.

These firms are called Settlement Class Counsel. You will not be charged for their services.

The Court's Final Approval Hearing.

The Court will hold a Final Approval Hearing on _____, 2024 at _____m., in Courtroom 5A of the Joseph F. Weiss, Jr. U.S. Courthouse, 700 Grant Street, Pittsburgh, PA 15219.

At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court will listen to Users who have timely and properly asked to speak at the hearing. The Court will then decide whether to approve the Settlement.

The Court may also decide how much should be awarded with respect to the motion for attorneys' fees and costs that will be filed by Settlement Class Counsel, and how much the Settlement Class Representatives should receive in Service Awards.

The Court may reschedule the Final Approval Hearing or change any of the deadlines described in this Notice. Be sure to check the website, www.RespironicsCPAP-ELSettlement.com, for news of any such changes.

This notice is only a summary.

For more information, visit www.RespironicsCPAP-ELSettlement.com or call toll-free 1 (855) 912-3432.

[Unsubscribe](#)

SETTLEMENT AGREEMENT

EXHIBIT 3(e)

To: Payer Email Address
From: Settlement Administrator
Subject: Notice of Proposed Class Action Settlement – *In re Philips Recalled CPAP, Bi-LEVEL PAP, and Mechanical Ventilator Products Litigation*

Claim ID: <<Claim ID>>

Confirmation Code: <<Confirmation Code>>

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT
UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA
A court authorized this Notice. This is not a solicitation from a lawyer.

If you reimbursed (in whole or in part) a payment for a Philips Respironics CPAP, BiPAP or Ventilator that was recalled, you may be eligible for a cash award from a proposed class action settlement.

- A proposed Settlement has been reached in a class action lawsuit alleging Economic Loss Claims related to the purchase, lease, or rental of recalled CPAPs, BiPAPs, and ventilators manufactured by Philips Respironics between 2008 and 2021. Philips Respironics recalled these devices beginning in June 2021.
- The Settlement Class includes insurers, self-funded employers, and other third-party payers (but not federal government payers) (“Payers”) that paid for or reimbursed (in whole or in part) a payment to purchase, lease, rent, or otherwise pay for a Recalled Device sold, leased, rented or otherwise distributed in the United States.
- Under the proposed Settlement, the Philips Defendants will pay \$34 million into a Payer Settlement Fund to settle and resolve all Economic Loss Claims by Payers.
- **In order to receive a payment (called a “Payer Award”) from the Settlement, Payers must complete and submit a Payer Declaration and Claim Form. The deadline to submit a claim is Claims Period Deadline.**
- Payer Awards will be determined based on each Eligible Payer’s relative market share (aggregated among all Eligible Payers) based on the number of insured lives in the United States covered by the Eligible Payer and the dollar amount of direct premiums written by the Eligible Payer in the United States for Calendar Years 2021 and 2022.
- Payers can submit their Payer Declaration and Claim Form with supporting information and documentation electronically on the Settlement website, www.RespironicsCPAP-ELSettlement.com, or by downloading a copy of the Claim Form from the website and mailing to the Settlement Administrator at: Respironics CPAP Settlement, c/o Settlement Administrator, 1650 Arch Street, Suite 2210, Philadelphia, PA 19103.

More details, including information regarding the claims submission process, a full copy of the Notice, which has Frequently Asked Questions (“FAQs”), the full Settlement Agreement, and other relevant documents, are available at www.RespironicsCPAP-ELSettlement.com.

- **Your rights are affected whether you act or don't act. If the proposed Settlement is approved, and you do not opt out, you will release your Economic Loss Claims against the Philips Defendants and the other Released Parties and assign to Philips Respironics your Economic Loss Claims against manufacturers of ozone cleaners. Please read this Notice carefully and visit www.RespironicsCPAP-ELSettlement.com.**

Why am I receiving this Notice?

A court authorized this Notice because Payers, including insurers, self-funded employers, and other third-party payers, who reimbursed (in whole or in part) a payment for a Recalled Device, have the right to know about a proposed legal Settlement affecting them.

What are the Recalled Devices?

The Recalled Devices are the following CPAP, BiPAP, ventilator, and/or other devices sold, leased, rented or otherwise distributed in the United States:

Recalled Devices
System One 50 Series ASV4 (Auto SV4)
System One 50 Series Base
System One 50 Series BiPAP
System One 60 Series ASV4 (Auto SV4)
System One 60 Series Base
System One 60 Series BiPAP
C-series S/T, AVAPS (C-series and C-series HT)
DreamStation CPAP
DreamStation ASV
DreamStation ST, AVAPS
DreamStation BiPAP
DreamStation Go
E30
OmniLab Advanced Plus
Trilogy 100/200, Garbin Plus, Aeris LifeVent
V30 auto

With respect to Payers, in addition to paying \$34 million into the Payer Settlement Fund, the Philips Defendants will also separately pay the reasonable costs to administer the Settlement, the

amount the Court awards with respect to the motion for attorneys' fees and litigation expenses that will be filed by Settlement Class Counsel, and any Service Awards the Court approves for the Settlement Class Representatives.

The Court in charge of this case still has to decide whether to approve the proposed Settlement. Payments will be made if the Court approves the proposed Settlement and after any appeals are resolved in favor of upholding the Settlement. This process can take time. Please be patient.

What are My Other Options?

You may **Opt-Out** of or **Object** to the Settlement by **Claims Period Deadline**. Please visit www.RespironicsCPAP-ELSettlement.com for more information on how to Opt-Out of or Object to the Settlement. You cannot both Opt-Out of and Object to the Settlement.

If you submit a timely and valid request to opt out of the Settlement, you will not have any rights as a member of the Settlement Class under the proposed Settlement; you will not receive any payment or other benefits provided by the Settlement; you will not be able to object to the Settlement; and you will keep the right, if any, to sue for any Economic Loss Claims.

If you **Do Nothing**, you will be legally bound by the terms of the Settlement, and you will release your Economic Loss Claims against the Philips Defendants and the other Released Parties. In addition, you will also assign to Philips Respironics any Economic Loss Claims you may have against Ozone Cleaning Companies.

Do I have a Lawyer for these Economic Loss Claims?

Yes. The Court appointed the following lawyers to represent you and the other Settlement Class Members: Christopher A. Seeger of Seeger Weiss LLP; Sandra L. Duggan of Levin Sedran & Berman LLP; Steven A. Schwartz of Chimicles Schwartz Kriner & Donaldson-Smith LLP; Kelly K. Iverson of Lynch Carpenter, LLP; Roberta D. Liebenberg of Fine, Kaplan and Black, R.P.C.; Lisa Ann Gorshe of Johnson Becker PLLC; and Arthur H. Stroyd, Jr. of Del Sole Cavanaugh Stroyd LLC.

These firms are called Settlement Class Counsel. You will not be charged for their services.

The Court's Final Approval Hearing.

The Court will hold a Final Approval Hearing on _____, 2024 at _____ m., in Courtroom 5A of the Joseph F. Weiss, Jr. U.S. Courthouse, 700 Grant Street, Pittsburgh, PA 15219.

At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court will listen to Settlement Class Members who have timely and properly asked to speak at the hearing. The Court will then decide whether to approve the Settlement.

The Court may also decide how much should be awarded with respect to the motion for attorneys' fees and costs that will be filed by Settlement Class Counsel, and how much the Settlement Class Representatives should receive in Service Awards.

The Court may reschedule the Final Approval Hearing or change any of the deadlines described in this Notice. Be sure to check the website, www.RespironicsCPAP-ELSettlement.com, for news of any such changes.

This notice is only a summary.

**For more information, visit www.RespironicsCPAP-ELSettlement.com or call toll-free
1 (855) 912-3432.**

[*Unsubscribe*](#)

SETTLEMENT AGREEMENT

EXHIBIT 3(f)

To: **DME Address (Postal or Email)**
From: Settlement Administrator
Subject: Notice of Proposed Class Action Settlement – *In re Philips Recalled CPAP, BI-LEVEL PAP, and Mechanical Ventilator Products Litigation*

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT
UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA
A court authorized this Notice. This is not a solicitation from a lawyer.
You are not being sued.

Your patients who purchased, leased or rented a Philips Respironics CPAP, BiPAP, or Ventilator that was Recalled may be eligible for a cash award and other benefits from a proposed class action Settlement

DMEs are NOT eligible for benefits under the proposed Settlement

**The terms of the proposed Settlement are available at
www.RespironicsCPAP-ELSettlement.com**

If you previously provided patient contact information to Philips Respironics as part of its recall programs, the Settlement Administrator will be notifying those patients directly

If you did not, please notify your patients about the proposed Settlement and ask them to visit www.RespironicsCPAP-ELSettlement.com, email info@RespironicsCPAP-ELSettlement.com, and/or call 1-(855) 912-3432 if they have any questions

DMEs may email the Settlement Administrator at DME@RespironicsCPAP-ELSettlement.com or call the Settlement Administrator at 1-(855) 779-0331 if DMEs have any questions

[Unsubscribe](#)

SETTLEMENT AGREEMENT

EXHIBIT 3(g)

To: Targeted Non-Trilogy User Email Address
From: Settlement Administrator
Subject: **\$100 Device Return Award Reminder** –
Philips Recalled CPAP, BiPAP, and Ventilator Class Action Settlement

Claim ID: <<Claim ID>>

Confirmation Code: <<Confirmation Code>>

**PHILIPS RESPIRONICS WILL PAY YOU \$100 CASH FOR
YOUR RECALLED CPAP, BIPAP OR VENTILATOR
MACHINE**

We are the court-appointed Settlement Administrator. Our records indicate that you registered your CPAP, BiPAP or Ventilator machine in the Philips Respironics Recall Program, but you have not yet returned your Recalled Device to Philips Respironics. You will get a \$100 Device Return Award if you return your Recalled Device before [Claims Period Deadline]. Please visit **www.RespironicsCPAP-ELSettlement.com** or call toll-free 1-855-912-3432 for instructions on how to get a prepaid label to return your Recalled Device to Philips Respironics so that you qualify for the \$100 payment, as well as more information about the class action settlement.

[Unsubscribe](#)

SETTLEMENT AGREEMENT

EXHIBIT 3(h)

To: Targeted Trilogy User Email Address
From: Settlement Administrator
Subject: **\$100 Device Return Award Reminder** –
Philips Recalled CPAP, BiPAP, and Ventilator Class Action Settlement

Claim ID: <<Claim ID>>

Confirmation Code: <<Confirmation Code>>

**PHILIPS RESPIRONICS WILL PAY YOU \$100 CASH FOR
YOUR RECALLED TRILOGY 100/200 VENTILATOR
MACHINE**

We are the court-appointed Settlement Administrator. Our records indicate that you registered your Trilogy 100/200 Ventilator machine in the Philips Respironics Recall Program, but you have not yet had your Trilogy 100/200 replaced by your DME. You will get a \$100 Device Return Award if you allow your DME to retrieve your Trilogy 100/200 and replace it with a free Remanufactured Device before [Claims Period Deadline]. Please visit www.RespironicsCPAP-ELSettlement.com or call toll-free 1-855-912-3432 if you need any assistance or additional information.

[Unsubscribe](#)

SETTLEMENT AGREEMENT

EXHIBIT 4

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

IN RE: PHILIPS RECALLED CPAP,	)	
BI-LEVEL PAP, AND MECHANICAL	)	
VENTILATOR PRODUCTS LITIGATION	)	Master Docket: Misc. No. 21-mc-1230-JFC
	)	
This Document Relates to: All Actions	)	
Asserting Economic Loss Claims	)	MDL No. 3014

DEVICE PAYMENT AWARD CLAIM FORM

If you are a User who purchased, leased, rented or paid for (in whole or part) a Recalled Device (“User”) and you have *not* returned your Recalled Device to Philips Respironics and you do *not* intend to (or cannot) return it, you can receive a Device Payment Award if you submit this Claim Form and provide all required documentation to the Settlement Administrator by no later than **Claims Period Deadline**.

To obtain more information regarding the eligibility criteria and the Device Payment Award amounts, please see the Class Notice, the Settlement website, www.RespironicsCPAP-ELSettlement.com, or call toll-free 1-855-912-3432.

You can receive a separate Device Payment Award for each Recalled Device you purchased, leased, rented or paid for (in whole or in part). **Fill out and timely submit this Claim Form for each Recalled Device and provide the required documentation for each Recalled Device. Failure to submit all required documentation will result in the denial of your claim.**

You can submit your Claim Form and documentation electronically on the Settlement website, or by mail to the Settlement Administrator at: Respironics CPAP Settlement, c/o Settlement Administrator, 1650 Arch Street, Suite 2210, Philadelphia, PA 19103. If you are the User’s guardian, estate, administrator, or other legal representative, or you are acting pursuant to a power of attorney for a User, and you are submitting this Claim on behalf of that User, you must also supply the Settlement Administrator with written proof that you have legal authority to act in a representative capacity for the User.

This Claim Form and all required documentation must be submitted electronically or postmarked by **Claims Period Deadline. Untimely or incomplete submissions are invalid and will not result in a payment.**

It is your responsibility to notify the Settlement Administrator of any change of address that occurs after you submit your Claim Form.

1. Your name:		
2. Your Claim ID (if available): <i>Claim IDs were included on the top of emailed or mailed notices</i>		
3. Your current mailing address:		
4. Your current telephone number:		
5. Your current email:		
6. Would you like your payment to be sent by Zelle or Virtual Mastercard, instead of by paper check? <i>[Processing times for paper checks will be longer.]</i>		Zelle Virtual Mastercard Paper Check <i>[Please circle your preferred payment method]</i>
7. For Zelle		
	Email or Mobile Phone Number:	
8. For Virtual Mastercard		
	Email:	

*If you are submitting this Device Payment Award Claim Form for multiple Recalled Devices, please complete this chart **separately** for each Recalled Device and provide the required documentation for each Recalled Device. If you need additional copies of this chart, please contact the Settlement Administrator or print additional copies.*

You must submit sufficient documentation showing that you purchased, leased, rented or paid for (in whole or part) the Recalled Device, as well as the date you acquired the Recalled Device. Sufficient documentation can include a combination of the following, so long as all required information is provided: • Materials you received from the DME at the time of acquisition, such as the invoice, purchase agreement, lease agreement, or rental agreement; and • Statement of claim from your insurance company showing your payment(s) and date(s) of payment.	
9. Serial Number of Recalled Device: <i>[You must provide the Serial Number. If you do not still have your Recalled Device, you can obtain the Serial Number by referring to the paperwork you received when you obtained the Recalled Device, or contact the DME or other company from which you obtained the Recalled Device to ask for the Serial Number.]</i>	
10. Did you rent your Recalled Device? <i>[If you rented your Recalled Device, please provide the dates of rental and also attach a copy of the rental agreement or other evidence showing dates and amount of payment of the rent.]</i>	Yes or No <i>[Please circle one]</i>
11. Did you receive your Recalled Device for free pursuant to a warranty from Philips Respironics <i>before</i> June 14, 2021? <i>[If so, please identify when (approximately) you received this Recalled Device prior to June 14, 2021.]</i>	Yes or No <i>[Please circle one]</i> Approximate Date: (MM/DD/YYYY : ___/___/____

12. Did you return the Recalled Device identified above in #8 to Philips Respironics pursuant to a warranty <i>before</i> June 14, 2021 and receive a free replacement from Philips Respironics?	Yes or No <i>[Please circle one]</i>
13. Did you return the Recalled Device identified above in #8 to Philips Respironics pursuant to a warranty <i>before</i> June 14, 2021 and receive your full payment back?	Yes or No <i>[Please circle one]</i>

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Date: _____

Signature

Name

Address

Email address

Telephone number

SETTLEMENT AGREEMENT

EXHIBIT 5

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

IN RE: PHILIPS RECALLED CPAP,	)	
BI-LEVEL PAP, AND MECHANICAL	)	
VENTILATOR PRODUCTS LITIGATION	)	Master Docket: Misc. No. 21-mc-1230-JFC
	)	
This Document Relates to: All Actions	)	
Asserting Economic Loss Claims	)	MDL No. 3014

DEVICE REPLACEMENT AWARD CLAIM FORM

If you are a User who used your own money to purchase, lease, or rent a comparable replacement CPAP, BiPAP or ventilator to replace your Philips Respironics Recalled Device on or after June 14, 2021 and before September 7, 2023, you can receive a Device Replacement Award if you complete this Claim Form and Declaration, provide all required documentation, and return all of the paperwork to the Settlement Administrator by no later than **[Claims Period Deadline]**. The Class Notice and Settlement website describe the criteria you must meet to be eligible for a Device Replacement Award. To obtain more information regarding the Settlement, please visit the Settlement website at www.RespironicsCPAP-ELSettlement.com, or call toll-free 1-855-912-3432.

Failure to submit all required documentation will result in the denial of your claim. You will also need to sign and return the attached sworn Declaration with your Claim Form.

Only one Replacement Device (and associated Device Replacement Award) is available for each Philips Respironics Recalled Device that you replaced using your own money.

You are eligible for a Device Replacement Award only if:

- You were using a Philips Respironics Recalled Device as of June 14, 2021 (*i.e.*, if you had previously been using a Philips Respironics Recalled Device, but had stopped using it prior to June 14, 2021, you are *not* eligible for a Device Replacement Award);
- You paid out of pocket (in whole or in part) to buy, lease, or rent a comparable CPAP, BiPAP, ventilator or similar device to replace your Philips Respironics Recalled Device *on or after* June 14, 2021 and *before* September 7, 2023;
- At the time you purchased, leased, rented or otherwise paid out of pocket for the Replacement Device, you had *not* received a repaired, refurbished, remanufactured, and/or new replacement device from Philips Respironics pursuant to a Philips Respironics Recall Program (“Remanufactured Device”);

- You return the Recalled Device to Philips Respironics if you still have it (a pre-paid return label is available on the Settlement website); and
- You return to Philip Respironics any Remanufactured Device you received from Philips Respironics, if you received one (a pre-paid return label is available on the Settlement website).

You can submit your Claim Form and documentation electronically on the Settlement website at www.RespironicsCPAP-ELSettlement.com, by email to info@RespironicsCPAP-ELSettlement.com, or by mail to the Settlement Administrator at: Respironics CPAP Settlement, c/o Settlement Administrator, 1650 Arch Street, Suite 2210, Philadelphia, PA 19103. If you are the User's guardian, estate, administrator, or other legal representative, or you are acting pursuant to a power of attorney for a User, and you are submitting this claim for a Device Replacement Award on behalf of that User, you must also supply the Settlement Administrator with written proof that you have legal authority to act in a representative capacity for the User.

Claim Forms must be submitted electronically or postmarked by [Claims Period Deadline]. Untimely or incomplete Claim Forms are invalid and will not result in a payment.

In the chart below, please identify the Replacement Device that you purchased, leased, rented or otherwise paid out of pocket for *on or after* June 14, 2021 and *before* September 7, 2023 to replace your Philips Respironics Recalled Device. If you replaced two (or more) Philips Respironics Recalled Devices with two (or more) Replacement Devices, please complete separate charts and separate declarations for each replacement.

	Required Information – Please Fill In
1. Your name	
2. Your Claim ID (if available): <i>Claim IDs were included on the top of emailed or mailed notices</i>	
3. Your current mailing address	
4. Your current telephone number	
5. Your current email:	
6. The manufacturer and model of the Replacement Device.	
7. The date you purchased, leased, rented, or otherwise paid out of pocket for the Replacement Device. (MM/DD/YYYY)	___/___/____
8. The amount actually incurred and paid <u>by you</u> out-of-pocket to purchase, lease, or rent the Replacement Device. Do not include any amounts paid by insurance or another third-party payer on your behalf. You must submit sufficient documentation of (1) your out-of-pocket expense(s) and (2) the date(s) you incurred those out-of-pocket expense(s). Sufficient documentation can include a combination of the following, so long as all required information is provided: • Invoice, lease, or rental agreement for the Replacement Device	

• Credit card statement showing payment and payment date(s) • Bank account statement showing payment and payment date(s)	
9. Identification of the Philips Respironics Recalled Device that you replaced. • If you have the Serial Number, you must include it. • If you do not have the Serial Number, you must include the model of the Philips Respironics Recalled Device.	
10. Did you receive a Remanufactured Device from Philips Respironics as part of its Recall Program? <i>[If yes, continue to question 6. If no, skip to question 9.]</i>	
11. Identify date of receipt of the Philips Respironics Remanufactured Device, if known. (MM/DD/YYYY)	___/___/____
12. Do you still possess the Philips Respironics Remanufactured Device? <i>[If yes, you must return it to Philips Respironics to be eligible for a Device Replacement Award. A prepaid return label is available on the Settlement website.]</i>	
13. If you do not still possess the Philips Respironics Remanufactured Device, did you previously return it to Philips Respironics? <i>[If the Remanufactured Device is not returned to Philips Respironics, you are not eligible for a Device Replacement Award.]</i>	
14. Do you still possess your Philips Respironics Recalled Device? <i>[If yes, you must return it to Philips Respironics to be eligible for a Device Replacement Award. A prepaid return label is available on the Settlement website.]</i>	

15. If applicable and if known, identify approximate date of return of your Philips Respironics Recalled Device to Philips Respironics. (MM/DD/YYYY)	____/____/____
16. Would you like your payment to be sent by Zelle or Virtual Mastercard, instead of by paper check? <i>[Processing times for paper checks will be longer.]</i>	Zelle Virtual Mastercard Paper Check <i>[Please circle your preferred payment method]</i>
17. For Zelle:	
Email or Mobile Phone Number	
18. For Virtual Mastercard:	
Email	

Sworn Declaration For Device Replacement Award

I _____ [fill in your name]
declare the following under penalty of perjury:

1. I am over the age of eighteen.
2. I was using a Philips Respironics Recalled Device as of June 14, 2021.
3. I used the Replacement Device that is identified in the Claim Form as a replacement for my Philips Respironics Recalled Device.
4. I ☐ have / ☐ do not have my Philips Respironics Recalled Device. [check the correct answer]
5. I ☐ have / ☐ have not returned my Philips Respironics Recalled Device to Philips Respironics. [check the correct answer]
6. I ☐ did / ☐ did not receive a Remanufactured Device from Philips Respironics pursuant to its Recall Program. [check the correct answer]
7. (Answer No. 7 only if you received a Remanufactured Device from Philips Respironics)
I ☐ have / ☐ have not returned the Remanufactured Device to Philips Respironics in reasonable working condition. [check the correct answer]

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Date: _____

Signature

Name

Address

Email address

Telephone number

SETTLEMENT AGREEMENT

EXHIBIT 5(a)

Comparable Replacement Devices List

Recalled Device Type	Comparable Replacement Device(s)
System One 50 Series ASV4 (Auto SV4)	ResMed Aircurve 10 ASV
System One 50 Series Base	ResMed Airsense 10, ResMed AirSense 11, React Health Luna II CPAP, React Health Luna G3 CPAP, Philips DreamStation 2
System One 50 Series BiPAP	ResMed Aircurve 10 S, ResMed AirCurve 10 VAuto, React Health Luna G3 BiLevel 25A
System One 60 Series ASV4 (Auto SV4)	ResMed Aircurve 10 ASV
System One 60 Series Base	ResMed Airsense 10, ResMed AirSense 11, React Health Luna II CPAP, React Health Luna G3 CPAP, Philips DreamStation 2
System One 60 Series BiPAP	ResMed Aircurve 10 S, ResMed AirCurve 10 VAuto, React Health Luna G3 BiLevel 25A
C-series S/T, AVAPS (C-series and C-series HT)	ResMed Aircurve 10 ST, ResMed Aircurve 10 ST-A, React Health Luna II CPAP, React Health Luna G3 BiLevel ST30VT
DreamStation CPAP	ResMed Airsense 10, ResMed AirSense 11, React Health Luna G3 CPAP, Philips DreamStation 2
DreamStation ASV	ResMed Aircurve 10 ASV
DreamStation ST, AVAPS	ResMed Aircurve 10 ST, ResMed Aircurve 10 ST-A, React Health Luna G3 BiLevel ST30VT
DreamStation BiPAP	ResMed Aircurve 10 S, ResMed AirCurve 10 VAuto, React Health Luna G3 BiLevel 25A
DreamStation Go	ResMed AirMini, Z1/Z2 Travel CPAP, Transcend Travel CPAP
E30	ResMed Astral, Lowenstein LUISA
OmniLab Advanced Plus	ResMed S9 VPAP Tx Lab System
Trilogy 100/200, Garbin Plus, Aeris LiveVent	ResMed Astral 100, React VOCSN
V30 auto	ResMed Astral, ResMed S9 VPAP Tx Lab System

SETTLEMENT AGREEMENT

EXHIBIT 6

Please refer to the Settlement website, www.RespironicsCPAP-ELSettlement.com, the Class Notice, or call toll free 1-855-912-3432 for additional information regarding AIO eligibility criteria, the Release, the Assignment, and the terms used in the Release and the Assignment.

Please note that to be valid and effective, these AIO forms must be personally signed by you, not by your counsel (if any). If you are the User's guardian, estate, administrator, or other legal representative, or you are acting pursuant to a power of attorney for a User, and you are electing the AIO and submitting the required forms on behalf of that User, you must supply the Settlement Administrator with written proof that you have legal authority to act in a representative capacity for the User.

Untimely or incomplete submissions are invalid and will not result in an accelerated payment.

**Sworn Declaration Regarding Use of an Ozone Cleaning Product or Products
with My Philips Respironics Recalled Device or Devices**

I _____ [fill in your name] declare the following under penalty of perjury:

1. I am over the age of eighteen.
2. I ☐ **did** ☐ **did not** [please check one] use an Ozone Cleaning Product with my Philips Respironics Recalled Device(s).

[If you answered "Did Not" to No. 2, you should skip to the end of this form and provide your signature, name, address, telephone number, email address, and date. You do not need to complete the attached Individual Assignment form. However, you still need to complete the attached Individual Release form and Payment Preference form.]

[If you answered "Did" to No. 2, please complete the chart in No. 3 below and the rest of this form. In addition, you also need to complete the attached Individual Assignment form, Individual Release form, and Payment Preference form.]

3. In the chart below, please identify the Ozone Cleaning Product and your Philips Respironics Recalled Device (by Serial Number, if available to you; if not, by Model) on which you used the Ozone Cleaning Product.

[If you used more than one Ozone Cleaning Product, or more than one Philips Respironics Recalled Device, please identify that information separately in the chart below.]

Ozone Cleaning Product and Manufacturer	Philips Respironics Recalled Device On Which I Used the Ozone Cleaning Product

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Date: _____

Signature

Name

Address

Email address

Telephone number

Individual Assignment to Philips Respironics of My Economic Loss Claims
Against Ozone Cleaning Company(ies)

[To be completed only if you used an Ozone Cleaning Product or Products
with Your Philips Respironics Recalled Device or Devices]

I _____ [fill in your name] hereby assign to Philips RS North America LLC any Economic Loss Claims I may have against the Ozone Cleaning Company(ies) whose product(s) I used with my Philips Respironics Recalled Device(s), including any proceeds I would otherwise have been eligible for in any settlement with that Ozone Cleaning Company(ies).

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Date: _____

Signature

Name

Address

Email address

Telephone number

Individual Release of My Economic Loss Claims Against the Released Parties

I _____ [fill in your name], on behalf of myself and my agents, heirs, executors, administrators, successors, assigns, insurers, attorneys, representatives, shareholders, owner associations, and any other legal or natural persons who may claim by, through and/or on behalf of me (“Releasing Parties”), fully, finally, irrevocably, and forever release, remise, waive, relinquish, settle, surrender, forego, give up, abandon, cancel, acquit and forever discharge and covenant not to sue Defendants and the other Released Parties with respect to any and all Released Claims. Without in any way limiting the foregoing or its broad scope, this release covers (by example and without limitation) any and all claims for damages, statutory damages, equitable relief, injunctive relief, penalties, liens, and attorneys’, expert, consultant, or other litigation fees or costs other than fees and costs awarded by the Court in connection with the Settlement, but does not include Medical Monitoring and Personal Injury Claims.

I acknowledge and waive, and agree to waive, on behalf of myself and the other Releasing Parties, Section 1542 of the California Civil Code, which provides that: **“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”** I expressly waive and relinquish, on behalf of myself and the other Releasing Parties, any and all rights and benefits that I and they may have under, or that may be conferred upon me or them by, the provisions of Section 1542 of the California Civil Code, or any other law of any state or territory that is similar, comparable or equivalent to Section 1542, to the fullest extent I may lawfully waive such rights or benefits pertaining to the Released Claims. In connection with such waiver and relinquishment, I hereby acknowledge, on behalf of myself and the other Releasing Parties, that I and they are aware that my or their attorneys may hereafter discover claims or facts in addition to or different from those that I or they now know or believe exist with respect to the Released Claims, but that it is my and their intention to fully, finally, and forever settle and release all of the Released Claims, known or unknown, suspected or unsuspected, asserted or unasserted, or past, present or future, that I or they have against the Released Parties. In furtherance of such intention, the release herein shall be and remain in effect as a full and complete general release of the Released Claims notwithstanding the discovery or existence of any such additional different claims or facts. I expressly acknowledge, on behalf of myself and the other Releasing Parties, that I and they have been advised by my and/or their attorneys of the contents and effect of Section 1542, and with knowledge, expressly waive whatever benefits I or they may have had pursuant to such section. I acknowledge, on behalf of myself and the other Releasing Parties, that the foregoing waiver was expressly bargained for and a material element of this Settlement.

I represent and warrant that I am the sole and exclusive owner of any and all Released Claims, and further acknowledge that I and the other Releasing Parties have not assigned, pledged, or in any manner whatsoever, sold, transferred, assigned or encumbered any right, title, interest or claim arising out of or in any way whatsoever pertaining to the Released Claims, and that I am not

aware of anyone other than myself claiming any interest, in whole or in part, in any benefits, proceeds or values.

I understand that, unless otherwise specified herein, the defined terms in this Individual Release have the meaning set forth in the Settlement Agreement.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Date: _____

Signature

Name

Address

Email address

Telephone number

Accelerated Implementation Option Payment Preference Form

1. Your name:	
2. Your Claim ID (<i>if available</i>): <i>Claim IDs were included on the top of emailed or mailed notices</i>	
3. Serial Number for your Philips Respironics Recalled Device (providing this will expedite your payment):	
4. Would you like your payment to be sent by Zelle or Virtual Mastercard, instead of by paper check? <i>[Processing times for paper checks will be longer.]</i>	Zelle Virtual Mastercard Paper Check <i>[Please circle your preferred payment method]</i>
5. For Zelle:	
Email or Mobile Phone Number:	
6. For Virtual Mastercard:	
Email:	

Date: _____

Signature

Name

Address

Email address

Telephone number

SETTLEMENT AGREEMENT

EXHIBIT 7

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

IN RE: PHILIPS RECALLED CPAP,	)	
BI-LEVEL PAP, AND MECHANICAL	)	
VENTILATOR PRODUCTS LITIGATION	)	Master Docket: Misc. No. 21-mc-1230-JFC
	)	
This Document Relates to: All Actions	)	
Asserting Economic Loss Claims	)	MDL No. 3014

CONFIRMATION FOR DEVICE PAYMENT AWARD

(Only For Recalled Devices Registered in a Philips Respironics Recall Program Prior to September 7, 2023, But the User Has Not Returned, and Has Decided Not to or Cannot Return, the Recalled Device to Philips Respironics)

Please complete this Confirmation Form only if, for a particular Philips Respironics Recalled Device:

1. You registered that Recalled Device for a Recall Program prior to September 7, 2023;
2. You did not previously return that Recalled Device to Philips Respironics; and
3. You have decided not to or cannot return that Recalled Device to Philips Respironics.

If you have already returned your Recalled Device to Philips Respironics, or will be returning your Recalled Device to Philips Respironics by the [Claims Period Deadline], do not complete this form. If you return your Recalled Device to Philips Respironics by the [Claims Period Deadline], you will automatically receive an additional payment of \$100 as a Device Return Award.

If you did not register your Recalled Device in a Philips Respironics Recall Program prior to September 7, 2023, do not complete this form.

Consult the Class Notice, Settlement website, www.RespironicsCPAP-ELSettlement.com, or call toll-free 1-855-912-3432 to learn more information.

You can receive a separate Device Payment Award for each Recalled Device you purchased, leased, rented or paid for (in whole or in part).

You can submit this form electronically on the Settlement website at www.RespironicsCPAP-ELSettlement.com, or by mail to the Settlement Administrator at: Respironics CPAP Settlement, c/o Settlement Administrator, 1650 Arch Street, Suite 2210,

Philadelphia, PA 19103. **This Confirmation Form must be submitted electronically or postmarked by the [Claims Period Deadline].** Untimely or incomplete forms are invalid and will not result in a payment.

1. Your name:	
2. Your Claim ID (if available): <i>Claim IDs were included on the top of emailed or mailed notices</i>	
3. Serial Number for your Philips Respironics Recalled Device (providing this will expedite your payment):	
4. Recall Registration Number for your Philips Respironics Recalled Device (providing this will expedite your payment):	
5. Your current mailing address (it is your responsibility to notify the Settlement Administrator of any change of address that occurs after you return this form):	
6. Your current telephone number:	
7. Your current email:	
8. Would you like your payment to be sent by Zelle or Virtual Mastercard, instead of by paper check? <i>[Processing times for paper checks will be longer.]</i>	Zelle Virtual Mastercard Paper Check <i>[Please circle your preferred payment method]</i>

9. For Zelle:		
	Email or Mobile Phone Number:	
10. For Virtual Mastercard:		
	Email:	

Date: _____

Signature

Name

Address

Email address

Telephone number

SETTLEMENT AGREEMENT

EXHIBIT 8

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

IN RE: PHILIPS RECALLED CPAP,	)	
BI-LEVEL PAP, AND MECHANICAL	)	
VENTILATOR PRODUCTS LITIGATION	)	Master Docket: Misc. No. 21-mc-1230-JFC
	)	
This Document Relates to: All Actions	)	
Asserting Economic Loss Claims	)	MDL No. 3014

PAYER DECLARATION AND CLAIM FORM

If you are an insurer, a self-funded employer, or other third-party payer that reimbursed (in whole or in part) a payment for a Philips Respironics Recalled Device (“Payer”), **you can receive a Payer Award** if you submit this Declaration and Claim Form and provide all required documentation and information to the Settlement Administrator by no later than **Claims Period Deadline**. **Failure to submit all required documentation will result in the denial of your claim.**

To obtain more information regarding the eligibility criteria and the Settlement, please see the Class Notice, the Settlement website, www.RespironicsCPAP-ELSettlement.com, or call toll-free 1-855-912-3432.

You can submit your Payer Declaration and Claim Form with supporting documentation electronically on the Settlement website, or by mail to the Settlement Administrator at: Respironics CPAP Settlement, c/o Settlement Administrator, 1650 Arch Street, Suite 2210, Philadelphia, PA 19103.

You must also supply the Settlement Administrator with written proof that you have legal authority to act on behalf of the Payer to sign the Payer Declaration and Claim Form.

The Payer Declaration and Claim Form and all required documentation and information must be submitted electronically or postmarked by Claims Period Deadline. Untimely or incomplete forms are invalid and will not result in a payment.

It is your responsibility to notify the Settlement Administrator of any change of address that occurs after you submit your Declaration and Claim Form.

I, _____ *[fill in your name]*, declare the following under penalty of perjury:

1. I am over the age of eighteen.
2. I am submitting this Payer Declaration and Claim Form on behalf of a *[select one]*:
 - (a) Payer
 - (b) Third-Party Recovery Agent
 - (c) Other (including assignee with irrevocable assignment of Economic Loss Claims of a Payer)
3. Provide the name, address, email and phone number of the entity on whose behalf you are submitting this Declaration and Claim Form:

4. My title and/or position is as follows: _____.
5. I have the legal authority to make this Declaration and Claim Form on behalf of the entity identified above in # 3.

[Provide written proof of your legal authority to act on behalf of the entity identified above in # 3].

6. Provide the Federal Tax Identification Number of the entity identified above in # 3:

7. Would you like your payment to be sent by electronic payment (ACH deposit to your bank account), instead of by paper check? *[ACH deposit will expedite your payment]*

- a) Please state your preferred payment option:

8. For ACH deposit to your bank account:

Name of Bank: _____

Account Number: _____

Routing Number: _____

*If you are submitting this Declaration and Claim Form based on information and documentation for multiple Payers, please complete this chart **separately** for each Payer and provide the required documentation for each Payer. If you need additional copies of this chart, please contact the Settlement Administrator or print additional copies.*

9. Payer Plan name and address is:	_____ _____ _____ _____
10. The Payer reimbursed (in whole or in part) a payment to purchase, lease, rent, or otherwise pay for a Philips Respironics Recalled Device.	Yes or No <i>[Please circle one]</i>
11. The number of insured lives in the United States covered by the Payer in Calendar Years 2021 and 2022 ("Payer Covered Lives") was:	2021: _____ 2022: _____ <i>[Please provide supporting documentation of Payer Covered Lives for each Calendar Year]</i>
12. The number of Direct Premiums written by the Payer in the United States in Calendar Years 2021 and 2022 ("Direct Premiums") was:	2021: _____ 2022: _____ <i>[Please provide supporting documentation of Direct Premiums for each Calendar Year]</i>

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Date: _____

 Signature

 Name

Address

Email address

Telephone number

SETTLEMENT AGREEMENT

EXHIBIT 9

directed Notice to Settlement Class Members, and approved the retention of Angeion Group LLC as Settlement Administrator, Huntington Bank as Settlement Fund Escrow Agent, and Hon. Thomas J. Rueter (Ret.) as Claims Appeals Special Master (ECF No. ____).

4. On _____, 2024, the Settlement Class Representatives filed a Motion for Final Approval of Class Settlement of Economic Loss Claims[, and on _____, 2024, they filed a brief in response to the objections to the Settlement filed by certain Settlement Class Members].

5. On _____, 2024, the Court held a Final Fairness Hearing to consider whether the Settlement should be finally approved under Rule 23(e)(2) as fair, reasonable and adequate.

6. The Court has reviewed the terms and conditions set forth in the Settlement Agreement, including all exhibits thereto, and finds that they are fair, reasonable, and adequate under Rule 23(e)(2) of the Federal Rules of Civil Procedure. The Court finds that the Settlement is in full compliance with all requirements of the Federal Rules of Civil Procedure, the Class Action Fairness Act, the United States Constitution (including the Due Process Clause), and any other applicable law.

7. The Court finds that the Settlement was negotiated at arm's-length before the Court-appointed Settlement Mediator, Hon. Diane M. Welsh (Ret.) (ECF No. ____); there was sufficient formal and informal discovery; the Parties and counsel were knowledgeable about the facts relevant to the Economic Loss Claims and potential risks of continued litigation of the Economic Loss Claims; and the Parties were represented by highly capable counsel with substantial experience in class action and products liability litigation.

8. The Court also specifically considered the *Girsh* factors, including the complexity, expense, and likely duration of litigation of the Economic Loss Claims; [the favorable reaction of

the Settlement Class]; the stage of proceedings; the risks of establishing liability, damages, and class certification; and the range of reasonableness of the Settlement in light of the best possible recovery and attendant risks of litigation. *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975). The Court finds that these factors weigh in favor of approving the Settlement.

9. [The Court has carefully considered the objections to the Settlement filed by certain Settlement Class Members, and hereby finds that none of those objections is meritorious.]

10. The Court finds that the dissemination of Notice as set forth in the Declaration of Steven Weisbrot was in compliance with the Court's _____, 2023 Preliminary Approval Order, and that notice has been given in an adequate and sufficient manner, constitutes the best notice practicable under the circumstances, and satisfies Federal Rule of Civil Procedure 23(e) and due process.

11. A full opportunity has been offered to Settlement Class Members to object to or opt out of the Settlement and to participate in the Final Fairness Hearing.

12. The Philips Defendants properly and timely notified the appropriate officials of the Settlement pursuant to the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1715. More than ninety (90) days have elapsed since the Philips Defendants provided notice of the Settlement pursuant to CAFA. (ECF No. ____.)

13. Pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure, the Court grants final class certification, for settlement purposes only, of the Settlement Class that it conditionally certified in its _____, 2023 Preliminary Approval Order.

14. The Court finds that the requirements of Rule 23 are satisfied, solely for the purpose of effectuating the Settlement, as follows:

- a. Pursuant to Rule 23(a)(1), the Court determines that the members of the Settlement Class are so numerous that their joinder before the Court would be impracticable;
 - b. Pursuant to Rule 23(a)(2), the Court determines that there are questions of law and fact that are common to the Settlement Class;
 - c. Pursuant to Rule 23(a)(3), the Court determines that the Settlement Class Representatives' claims are typical of the claims of the Settlement Class Members;
 - d. Pursuant to Rule 23(a)(4), the Court determines that Settlement Class Representatives and Settlement Class Counsel have fairly and adequately represented the interests of the Settlement Class and will continue to do so;
 - e. Pursuant to Rule 23(b)(3), the Court determines that common questions of law and fact predominate over questions affecting any individual Settlement Class Member;
 - f. Pursuant to Rule 23(b)(3), the Court determines that a class resolution provides a fair and efficient method for settling the Economic Loss Claims and is superior to other available methods; and
 - g. Pursuant to Rule 23(b)(3), the Court determines that the Settlement Class is ascertainable.
15. The Court confirms the appointment of Elizabeth Heilman; Ivy Creek of Tallapoosa LLC d/b/a/ Lake Martin Community Hospital; Peter Barrett; Julie Barrett; and ASEA/AFSCME Local 52 Health Benefits Trust as Settlement Class Representatives.
16. The Court confirms the appointment of the following as Settlement Class Counsel:
- a. Christopher A. Seeger, Seeger Weiss, 55 Challenger Road, 6th Floor, Ridgely Park, NJ 07660;

- b. Sandra L. Duggan, Levin Sedran & Berman, 510 Walnut Street, Suite 500, Philadelphia, PA 19106;
- c. Steven A. Schwartz, Chimicles Schwartz Kriner & Donaldson-Smith LLP, 361 West Lancaster Avenue, Haverford, PA 19041;
- d. Kelly K. Iverson, Lynch Carpenter, LLP, 1133 Penn Avenue, 5th Floor, Pittsburgh, PA 15222;
- e. Roberta D. Liebenberg, Fine, Kaplan and Black, R.P.C., One South Broad Street, 23rd Floor, Philadelphia, PA 19107;
- f. Lisa Ann Gorshe, Johnson Becker PLLC, 444 Cedar Street, Suite 1800, Saint Paul, MN 55101; and
- g. Arthur H. Stroyd, Jr., Del Sole Cavanaugh Stroyd LLC, 3 PPG Place, Suite 600, Pittsburgh, PA 15222.

17. The list of persons and entities who timely and properly opted out of the Settlement Class was filed by Settlement Class Counsel on _____, 2024. (ECF No. ____). The release and other provisions of the Settlement Agreement shall not apply to them, and they shall not be entitled to any compensation or other relief or benefits provided by the Settlement.

18. The Court grants final approval of the plan for allocating Settlement funds as being fair, reasonable, adequate, and in the best interest of the Settlement Class. The Court further finds that the plan of allocation of Settlement funds treats Class Members equitably relative to each other as required by Federal Rule of Civil Procedure 23(e)(2)(D).

19. Accordingly, the Court hereby grants the Settlement Class Representatives' Motion for Final Approval of Class Settlement of Economic Loss Claims.

20. The Court hereby dismisses the Economic Loss Complaint (ECF No. 785) and any other Economic Loss Claims as to all Released Parties, on the merits, with prejudice and, except as explicitly provided for in the Settlement Agreement, without costs.

21. The Court finds and confirms that the Settlement Funds are a “qualified settlement fund” as defined in Section 1.468B-1 through 1.468B-5 of the Treasury Regulations.

22. The Settlement Administrator shall perform the duties and responsibilities set forth in the Settlement Agreement, including, but not limited to, making monthly determinations of any Additional Amounts that need to be paid by, or on behalf of, the Philips Defendants into the User Settlement Fund, and distributing settlement funds to Eligible Settlement Class Members.

23. The Philips Defendants shall make all payments required by the Settlement Agreement in the amounts and at the times set forth in the Settlement Agreement. All valid and timely claims shall be paid by the Settlement Administrator in the amounts and at the times set forth in the Settlement Agreement. Disputes over the validity and sufficiency of claims shall be resolved by the Settlement Administrator and the Claims Appeals Special Master pursuant to the terms set forth in the Settlement Agreement, with no further right of appeal.

24. The Claims Period shall end on _____, 2024, *i.e.*, 120 days after the Final Fairness Hearing.

25. All of the Released Claims of the Settlement Class Members and the other Releasing Parties against Defendants and the other Released Parties are hereby fully, finally, irrevocably, and forever released, remised, waived, relinquished, settled, dismissed, surrendered, and forever discharged.

26. Settlement Class Members and the other Releasing Parties are hereby enjoined and finally and forever barred from filing, commencing, maintaining, continuing, pursuing and/or

prosecuting the Released Claims in any action, arbitration or other proceeding, whether pending or filed in the future, against Defendants and the other Released Parties. Defendants and the other Released Parties may recover any and all reasonable costs and expenses from a Settlement Class Member arising from that Settlement Class Member's violation of this injunction. Pursuant to 28 U.S.C. §§ 1651(a) and 2283, the Court finds that issuance of this permanent injunction is necessary and appropriate in aid of its continuing jurisdiction and authority over the Settlement.

27. The Court hereby approves the assignment of Economic Loss Claims by the Settlement Class Members against Ozone Cleaning Companies to Philips RS North America LLC, pursuant to the Settlement Agreement, including any proceeds Settlement Class Members would otherwise have been eligible for in any settlement with an Ozone Cleaning Company.

28. The Philips Defendants and any successors to the Philips Defendants' rights or interests under the Settlement are hereby enjoined and finally and forever barred from challenging or opposing a Settlement Class Member's Medical Monitoring and Personal Injury Claims or ability to recover for those claims on the basis of the Settlement, any payments under the Settlement, or the Releases provided therein, other than to prevent double recovery for economic losses related to the Recalled Devices or to prevent against the increase of an exemplary or punitive damages award on account of economic losses.

29. The finality of this Final Order and Judgment shall not be affected by any order entered regarding the Settlement Class Counsel's motion for an award of attorneys' fees and reimbursement of expenses and/or any order entered regarding the Service Awards to the Settlement Class Representatives, which shall be considered separate from this Final Order and Judgment.

30. The Court shall retain continuing and exclusive jurisdiction over the Settlement Funds and the distribution of same to Eligible Settlement Class Members.

31. Without affecting the finality of this Final Order and Judgment, and solely for purposes of this Settlement, the Philips Defendants and each Settlement Class Member hereby irrevocably submit to the exclusive jurisdiction of the Court for any suit, action, proceeding, or dispute arising out of or relating to the Settlement Agreement and/or the applicability, interpretation, administration, validity or enforcement of the Settlement Agreement.

32. The Parties are hereby directed to implement and consummate the Settlement according to the terms and provisions of the Settlement Agreement, which are hereby approved and incorporated herein by reference.

33. Without further order of the Court, the Parties may agree to reasonably necessary extensions of time to carry out any of the provisions of the Settlement Agreement.

34. This is the Final Order and Judgment as defined in the Settlement Agreement. In the event that this Final Judgment is not otherwise final and appealable, pursuant to Federal Rule of Civil Procedure 54(b), the Court finds and directs that there is no just reason for delaying enforcement or appeal, and judgment should be entered.

IT IS SO ORDERED.

BY THE COURT:

The Honorable Joy Flowers Conti
Senior United States District Judge

**BRIEF IN SUPPORT OF
PRELIMINARY APPROVAL**

EXHIBIT B

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

**IN RE PHILIPS RECALLED CPAP,
BI-LEVEL PAP, AND MECHANICAL
VENTILATOR PRODUCTS
LITIGATION**

Master Docket: Misc. No. 21-mc-1230-JFC

:

: MDL No. 3014

:

**This Document Relates to: All Actions
Asserting Economic Loss Claims**

**DECLARATION OF HON. DIANE M. WELSH (RET.)
IN SUPPORT OF PROPOSED ECONOMIC LOSS CLAIMS SETTLEMENT**

I, Diane M. Welsh, hereby declare as follows:

1. I submit this Declaration in my capacity as the Court-appointed Settlement Mediator in this litigation. In that capacity, I mediated a proposed class settlement of the Economic Loss Claims in the above-captioned putative class action against Defendants Philips RS North America LLC, Koninklijke Philips N.V., Philips North America LLC, Philips Holding USA, Inc., and Philips RS North America Holding Corporation (collectively, the “Philips Defendants”).

2. I have been asked to provide this Declaration in support of preliminary approval of the proposed class action settlement that was negotiated under my supervision between the representatives of Settlement Class Counsel¹ and the Philips Defendants. As will be described in more detail below, the negotiations between the parties were protracted, hard fought, and conducted at arm’s-length and in good faith. Based on my extensive experience as a mediator and as a former Magistrate Judge, I believe the proposed settlement is fair, reasonable and adequate.

¹ Representatives of Settlement Class Counsel involved in the mediation process were comprised of Christopher Seeger and David Buchanan; Sandra Duggan; Steve Schwartz; Kelly Iverson and Gary Lynch; Roberta Liebenberg; Arthur Stroyd; and Lisa Gorshe (“Settlement Class Counsel”).

3. I have personal knowledge of the facts stated herein from my role as mediator of the settlement negotiations between the Settlement Class Counsel and the Philips Defendants concerning the Economic Loss Claims, and I am competent to testify to the matters set forth in this Declaration.

4. I served as a Magistrate Judge in the U.S. District Court for the Eastern District of Pennsylvania from 1994-2005. Thereafter, I became a mediator with JAMS. As a Magistrate Judge and JAMS neutral, I have successfully resolved over 5,000 matters covering virtually every type of complex dispute. Most relevant here, I have substantial experience resolving class actions and MDL litigation of all types, including consumer class actions, product liability actions, mass torts, and economic loss claims.

5. I set forth my background to provide context for the statements that follow, and to demonstrate that my perspective on the settlement in this matter is based upon significant experience in the resolution of complex litigation of this type.

6. On May 26, 2022, I was appointed by the Court to serve as a Settlement Mediator in this case (Dkt. No. 588, Pretrial Order No. 16). Shortly after I was appointed and before the first remote mediation session on June 24, 2022, I had a Zoom call with the parties' counsel and subsequently corresponded with them to discuss the general issues in the case, discovery in aid of mediation, and the logistics for the mediation.

7. The parties worked cooperatively to negotiate and exchange initial targeted discovery that would help in the mediation process. At my request, the parties exchanged detailed mediation statements in advance of the first mediation. Their submissions addressed the factual issues pertaining to the Economic Loss Claims; key legal issues, including standing, damages, class certification, and precedent in this Circuit and beyond; and the parties' settlement proposals. I closely reviewed the mediation statements and the Consolidated Third Amended

Class Action Complaint, and became familiar with the nature of the claims and defenses asserted.

8. The first in-person mediation session took place on September 15, 2022. The mediation was attended by Settlement Class Counsel and outside counsel for the Philips Defendants, as well as senior client representatives with settlement authority. Throughout the day I conducted joint sessions with all participants, as well as individual breakout sessions with the parties. During the sessions, counsel made multiple presentations regarding various factual and legal issues. There were extensive discussions of the strengths and weaknesses of the parties' respective positions concerning the merits, damages, and a possible structure for a settlement of the Economic Loss Claims.

9. In addition, the parties discussed how to prioritize additional targeted discovery to facilitate the mediation discussions. As a result, subsequent to the first mediation there were numerous further exchanges of documents, and information was provided in response to specific interrogatories and other requests in order to ensure that the parties were fully informed of the relevant facts.

10. Prior to the second mediation session, Settlement Class Counsel drafted a proposed settlement term sheet that focused on a structure for a class settlement and exchanged numerous drafts with the Philips Defendants.

11. A second in-person mediation session was held on November 15, 2022. The parties continued to discuss the structure of a proposed settlement and revisions to a draft term sheet. The parties also continued to exchange information and documents.

12. Two more in-person mediation sessions were conducted on February 23 and 24, 2023. The session on February 23rd lasted until 7:30 pm and involved resolving outstanding

issues, including with respect to payments to class members. On February 24, the parties continued to finalize certain outstanding issues.

13. Apart from the four in-person mediation sessions, the parties negotiated extensively over the phone and by e-mail, and I became involved from time-to-time to help resolve disputes as they arose.

14. Thereafter, the parties continued to work on negotiating a term sheet. There was extensive back and forth, and a term sheet setting forth some of the terms of the settlement was ultimately signed on May 24, 2023.

15. The parties then engaged in extensive negotiations for several months over the terms of the Settlement Agreement, and once again I was called upon by the parties periodically to help them resolve disputes over certain issues.

16. The parties' negotiations during the mediation sessions and in connection with the settlement were focused exclusively on benefits for the Settlement Class, and there was no discussion or negotiation of attorneys' fees for Settlement Class Counsel.

17. In sum, the negotiations of the Economic Loss Claims entailed numerous competing offers and demands between the parties. Throughout the mediation process, the parties engaged in extensive adversarial negotiations over all core issues. The facilitated negotiations were lengthy, principled, exhaustive, informed, and sometimes contentious but always professional.

18. The negotiations were conducted by highly qualified attorneys with extensive experience and expertise in complex class actions in general, and economic loss, product liability, and consumer litigation in particular. At all times, Settlement Class Counsel zealously represented the interests of the proposed Settlement Class. They demonstrated a commitment to provide meaningful and substantial benefits to the Settlement Class while at the same time

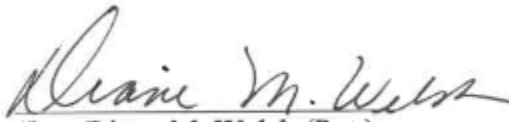
recognizing the significant risks they faced if they proceeded with the litigation of Economic Loss Claims, as well as the substantial costs and delays in pursuing the matter through fact and expert discovery, class certification, trial, and appeal. Internal and external counsel for the Philips Defendants likewise zealously represented their clients. They pushed back on many of the demands advanced by Settlement Class Counsel and articulated the obstacles Plaintiffs and the putative class would face in litigation, while at the same time recognizing the risks, expenses, and burdens of such litigation for their clients.

19. As a result of the extensive negotiations that I mediated, the parties reached a comprehensive compromise and settlement, which confers significant benefits upon the Settlement Class. In my opinion, the proposed settlement was the result of good faith, fair, thorough, and fully-informed arm's-length negotiations between highly capable and experienced parties and counsel with a strong command of relevant facts and legal principles. The settlement represents the parties' and counsel's best efforts and judgments after thoroughly investigating the case, considering the risks, strengths, and weaknesses of their respective positions on the myriad factual and legal issues; the substantial risks, burdens, delays and costs of continued litigation; and the best interests of their respective clients.

20. Based on my extensive experience in mediating complex litigation of this type, I believe that the proposed settlement fairly reflects the strengths and weaknesses of the Economic Loss Claims being settled. Although the Court will need to make its own determination as to the proposed settlement's fairness under Fed. R. Civ. P. 23(e)(2), I can attest that, from an experienced mediator's perspective, the negotiated settlement produced by the extensive mediation process represents a thorough, deliberative, and comprehensive resolution that will benefit Settlement Class Members through meaningful and timely relief, and avoids the considerable risks, delays, and costs inherent in class action litigation.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to be best of my knowledge.

Executed on July 26th, 2023.



Hon. Diane M. Welsh (Ret.)

**BRIEF IN SUPPORT OF
PRELIMINARY APPROVAL**

EXHIBIT C

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA**

**IN RE: PHILIPS RECALLED CPAP,
BI-PAP, AND MECHANICAL
VENTILATOR PRODUCTS
LITIGATION**

Master Docket No. 21-mc-1230-JFC
MDL No. 3014

*This Document Relates to:
All Actions Asserting Economic Loss Claims*

**DECLARATION OF STEVEN WEISBROT, ESQ. OF ANGEION GROUP, LLC
RE: PROPOSED NOTICE PLAN**

I, Steven Weisbrot, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. I am the President and Chief Executive Officer at the class action notice and claims administration firm Angeion Group, LLC (“Angeion”). Angeion specializes in designing, developing, analyzing, and implementing large-scale, un-biased, legal notification plans.
2. I have personal knowledge of the matters stated herein. In forming my opinions regarding notice in this action, I have drawn from my extensive class action experience, as described below.
3. I have been responsible in whole or in part for the design and implementation of hundreds of court-approved notice and administration programs, including some of the largest and most complex notice plans in recent history. I have taught numerous accredited Continuing Legal Education courses on the Ethics of Legal Notification in Class Action Settlements, using Digital Media in Due Process Notice Programs, as well as Claims Administration, generally. I am the author of multiple articles on Class Action Notice, Claims Administration, and Notice Design in publications such as Bloomberg, BNA Class Action Litigation Report, Law360, the ABA Class Action and Derivative Section Newsletter, and I am a frequent speaker on notice issues at conferences throughout the United States and internationally.
4. I was certified as a professional in digital media sales by the Interactive Advertising Bureau (“IAB”) and I am co-author of the Digital Media section of Duke Law’s *Guidelines and Best*

Declaration of Steven Weisbrot re: Proposed Notice Plan

Practices—Implementing 2018 Amendments to Rule 23 and the soon to be published George Washington Law School Best Practices Guide to Class Action Litigation.

5. I have given public comment and written guidance to the Judicial Conference Committee on Rules of Practice and Procedure on the role of direct mail, email, broadcast media, digital media, and print publication, in effecting Due Process notice, and I have met with representatives of the Federal Judicial Center to discuss the 2018 amendments to Rule 23 and offered an educational curriculum for the judiciary concerning notice procedures.

6. Prior to joining Angeion's executive team, I was employed as Director of Class Action Services at Kurtzman Carson Consultants, an experienced notice and settlement administrator. Prior to my notice and claims administration experience, I was employed in private law practice.

7. My notice work comprises a wide range of class actions that include product defect and false advertising matters, data breach, mass disasters, employment discrimination, antitrust, tobacco, banking, firearm, insurance, and bankruptcy cases.

8. I have been at the forefront of infusing digital media, as well as big data and advanced targeting, into class action notice programs. Courts have repeatedly recognized and approved of my work in the design of class action notice programs. A comprehensive summary of judicial recognition Angeion has received is attached hereto as **Exhibit A**.

9. By way of background, Angeion is an experienced class action notice and claims administration company formed by a team of executives that have had extensive tenures at five other nationally recognized claims administration companies. Collectively, the management team at Angeion has overseen the notice and administration of more than 2,000 class action settlements and distributed over \$15 billion to class members. The executive profiles as well as the company overview are available at www.angeiongroup.com.

10. Angeion has regularly been approved by both federal and state courts throughout the United States and abroad to provide notice of class actions and claims processing services.

11. Angeion has extensive experience administering landmark settlements involving some of the world's most prominent companies, including:

In re: Facebook, Inc Consumer Privacy User Profile Litigation

Case No. 3:18-md-02843-VC

Meta agreed to pay \$725 million to settle allegations that the social media company allowed third parties, including Cambridge Analytica, to access personal information. Angeion is currently undertaking an integrated in-app notification and media campaign to a class in the hundreds of millions of individuals and businesses.

In re Apple Inc. Device Performance Litigation

Case No. 3:18-cv-02843 (N.D. Cal.)

Apple agreed to pay \$310 million to settle allegations of diminished performance in iPhone 6's and 7's. Angeion's direct notification efforts were recognized as satisfying due process for a settlement class consisting of the current and former owners of 129 million class devices. Millions of claims were processed.

City of Long Beach, et al. v. Monsanto, et al.

Case No. 2:16-cv-03492-FMO-AS

Bayer agreed to pay \$650 million to settle allegations of waterbodies impaired by PCBs. Angeion's notice administration was extraordinarily successful. The claims administration includes multiple complex claims filing workflows for different funding allocations, including separate fund for "special needs" claimants.

Beckett v. Aetna Inc.

Case No. 2:17- CV-3864-JS (E.D. Pa.)

A consolidated data breach class action that arose from the alleged improper disclosure of Protected Health Information by a health insurer and previous claims administrator, including confidential HIV-related information. Angeion provided specialized training to our support team concerning the sensitive nature of the case and underlying health information. Angeion implemented robust privacy protocols to communicate with and verify the claims of the affected class members, including anonymized notice packets and allowing claimants to lodge objections under pseudonyms.

12. Relevant product defect, product recall, and matters involving medical products for which Angeion has been appointed or retained are included in the chart below:

Case Name	Case No.	Court
In re: Chrysler-Dodge-Jeep EcoDiesel Marketing, Sales Practices, and Products Liability Litigation	3:17-cv-02777	N.D. Cal.
In re: Novartis and Par Antitrust Litigation	1:18-cv-04361	SD.N.Y.
Cole et al. v. NIBCO Inc.	3:13-cv-07871	D.N.J.
Matson et al. v. NIBCO Inc.	5:19-cv-00717	W.D. Tex.
In re: Glumetza Antitrust Litigation	3:19-cv-05822	N.D. Cal.
Baker v. Sorin Group Duetschland GMBH and Sorin Group USA, Inc.	1:16-cv-00260	M.D. Pa.
In re: Solodyn (Minocycline Hydrochloride) Antitrust Litigation	1:14-md-02503	D. Mass.
Corcoran v. CVS Pharmacy, Inc.	4:15-cv-03504	N.D. Cal.
In re: Surescripts Antitrust Litigation	1:19-cv-06627	N.D. Ill.
Delcid et al. v. TCP Hot Acquisition LLC & Idelle Labs, LTD.	1:21-cv-09569	S.D.N.Y.
Bangoura et al. v. Beiersdorf Inc. and Bayer Healthcare LLC	1:22-cv-00291	E.D.N.Y.
Goldstein v. Henkel Corporation and Thriving Brands LLC	3:22-cv-00164	D. Conn.

13. This declaration will describe the Notice Plan for the Settlement Class that, if approved by the Court, Angeion will implement in this matter, including the considerations that informed the development of the plan and why we believe it will provide due process to members of the Settlement Class. In my professional opinion, the proposed Notice Plan described herein is the best practicable notice under the circumstances and fulfills all due process requirements, fully comporting with Fed. R. Civ. P. 23.

SETTLEMENT CLASS

14. The Settlement Agreement defines the Settlement Class as: All persons or entities in the United States (including its Territories and the District of Columbia) who either (a) purchased, leased, rented, paid for (in whole or part), or were prescribed a Recalled Device (“Users”), or (b) reimbursed (in whole or part) a payment to purchase, lease, rent, or otherwise pay for a Recalled Device, including insurers, self-funded employers, and third-party payers (“Payers”) (the “Settlement Class”).

15. Excluded from the Settlement Class are: (a) Defendants and their officers, directors, and employees; (b) the MDL Court, Settlement Mediator, Claims Appeals Special Master, and Special Masters assigned to the MDL; (c) individuals who have already released Released Claims against one or more of the Defendants pursuant to individual settlements or other resolutions; (d) Durable

Medical Equipment (“DME”) providers; (e) the federal government and any federal government payers, including the United States Department of Health and Human Services Centers for Medicare & Medicaid Services, the Department of Defense, and the U.S. Department of Veterans Affairs, and (f) Settlement Class Counsel.

16. Angeion has been informed that the Settlement Class is comprised of Users and Payers who have purchased, leased, rented, or otherwise paid for (in whole or in part) approximately 10.8 million Recalled Devices.

OVERVIEW OF THE NOTICE PLAN

17. The parties have agreed that, as Settlement Administrator, we shall have discretion to employ best practices in carrying out responsibilities in a manner consistent with the Settlement Agreement including all of its Exhibits, this Declaration, and with our experience to provide the best notice that is practicable under the circumstances, consistent with Federal Rule of Civil Procedure 23 and the MDL Court’s Preliminary Approval Order.

18. The proposed Notice Plan provides for direct notice via both pre-paid first class mail and email to all User and Payer Settlement Class Members with available addresses or email addresses, combined with a robust media campaign consisting of state-of-the-art targeted internet notice, social media notice utilizing some of the largest social media platforms in the United States, a paid search campaign via Google, an extensive print publication campaign, video advertising, streaming radio advertisements, and Sirius XM radio advertisements designed to reach Users in the Settlement Class. The proposed Notice Plan also contemplates one reminder email (prior to the expiration of the Claims Period) to all known Users with email addresses, as well as email updates to Users in Angeion’s discretion in the event of material updates to the Settlement. The Notice Plan provides for additional media notice tactics specifically designed to reach Payers in the Settlement Class, and includes two (2) press releases, notice to known hospitals and sleep labs contained in the contact records produced by Philips, and media monitoring. The Notice Plan further provides for the implementation of a dedicated settlement

website and toll-free telephone line where Settlement Class Members can learn more about their rights and options pursuant to the terms of the Settlement. I also understand that pursuant to Section 9.1.2.6 of the Settlement Agreement, Philips RS will refer Users on the DreamMapper App to the Settlement website maintained by Angeion.

19. As discussed in greater detail below, the media campaign component of the Notice Plan is designed to deliver an approximate 86.70% reach separate and apart from a comprehensive direct notice campaign, settlement website, and toll-free telephone hotline. What this means in practice is that 86.70% of our Target Audience will see a digital advertisement concerning the Settlement. The direct notice efforts (discussed in greater detail below), dedicated website, and toll-free telephone line are difficult to measure in terms of reach percentage but will nonetheless provide awareness and further diffuse news of the Settlement to members of the Settlement Class. Based on sophisticated media software and calculation engines that cross reference which media is being purchased with the media habits of our specific Target Audience (defined in paragraph 30 below), the media campaign is designed and expected to reach 86.70% of the Target Audience multiple times each.

20. The Federal Judicial Center states that a publication notice plan that reaches 70% of class members is one that reaches a “high percentage” and is within the “norm.” Barbara J. Rothstein & Thomas E. Willging, Federal Judicial Center, “Managing Class Action Litigation: A Pocket Guide for Judges,” at 27 (3d Ed. 2010).

DIRECT NOTICE

Class List & Noticing Data

21. Angeion has or will receive extensive contact information for members of the Settlement Class (collectively, the “Class List”). We have already received data from Philips Respironics for Users who registered in its Recall Programs, as well as other User information collected by Philips Respironics from DME providers as part of the Recall. We expect to also receive data relating to hospitals and sleep labs in the United States to whom one or more of the Philips Defendants

previously sold, rented, supplied, or otherwise provided Recalled Devices. Moreover, we are expecting to receive information obtained by Plaintiffs from DMEs in discovery, and User data from the Census Registry Program and Plaintiff Fact Sheets filed in support of Personal Injury Complaints. Subject to receipt of additional data sources, Angeion has received contact information for approximately 5 million potential members of the Settlement Class.

22. As part of the direct notice efforts, the Class List will be supplemented by Angeion's proprietary third-party payer database that consists of drug stores, pharmacies, insurance companies, and health, welfare, and pension funds, that Angeion has obtained and manages.

23. Angeion will perform a thorough analysis to identify duplicative records, as well as missing/incomplete data fields. Angeion will then assign an identification number to each unique record.

Mailed Notice

24. As part of the Notice Plan, Angeion will send the notice via first class U.S. mail, postage pre-paid to all Users included on the Class List provided to Angeion with available addresses, as well as all entities contained in Angeion's proprietary third-party payer database. The notice mailed to Users on the Class List will consist of the long form Notice and will be mailed in a HIPAA-compliant security envelope, which contains a pattern printed on the inside to shield the contents of the envelope. Users on the Class List who have registered their Recalled Device for a Recall Program, but not yet returned their device, will also receive an additional, targeted notification as part of the same mailing. The notice mailed to Payers from Angeion's proprietary third-party payer database will consist of the long form Notice.

25. Angeion will employ best practices to increase the deliverability rate of the mailed notices. Angeion will cause all mailing address information to be updated utilizing the United States Postal Service's ("USPS") National Change of Address database, which provides updated address information for individuals or entities who have moved during the previous four years and filed a change of address with the USPS. In addition, the addresses will be certified via the Coding

Accuracy Support System to ensure the quality of the zip code and verified through Delivery Point Validation to verify the accuracy of the addresses.

26. Notices returned to Angeion by the USPS with a forwarding address will be re-mailed to the new address provided by the USPS. Notices returned to Angeion by the USPS without forwarding addresses will be subjected to an address verification search (commonly referred to as “skip tracing”) utilizing a wide variety of data sources, including public records, real estate records, electronic directory assistance listings, etc., to locate updated addresses. Notices will be re-mailed to the updated addresses obtained via the skip tracing process.

Email Notice

27. As part of the Notice Plan, Angeion will send direct email notice to Users who have valid email addresses included on the Class List and to Payers for whom Angeion has email addresses. Angeion follows best practices to both validate emails and increase deliverability.

28. Specifically, prior to distributing the email notice, Angeion subjects the email addresses on the Class List to a cleansing and validation process. The email cleansing process removes extra spaces, fixes common typographical errors in domain names, and corrects insufficient domain suffixes (e.g., gmal.com to gmail.com, gmail.co to gmail.com, yaho.com to yahoo.com, etc.). The email addresses will then be subjected to an email validation process whereby each email address will be compared to known bad email addresses.¹ Email addresses that are not designated as a known bad address will then be further verified by contacting the Internet Service Provider (“ISP”) to determine if the email address exists.

29. Further, Angeion designs the email notice to avoid many common “red flags” that might otherwise cause an email recipient’s spam filter to block or identify the email notice as spam. For example, Angeion does not include attachments like the Long Form Notice to the email notice, because attachments are often interpreted by various Internet Service Providers (“ISP”) as spam.

¹ Angeion maintains a database of email addresses that were returned as permanently undeliverable, commonly referred to as a hard bounce, from prior campaigns. Where an address has been returned as a hard bounce within the last year, that email is designated as a known bad email address.

30. Angeion also accounts for the real-world reality that some emails will inevitably fail to be delivered during the initial delivery attempt. Therefore, after the initial noticing campaign is complete, Angeion, after an approximate 24- to 72-hour rest period (which allows any temporary block at the ISP level to expire) causes a second round of email noticing to continue to any email addresses that were previously identified as soft bounces and not delivered. In our experience, this minimizes emails that may have erroneously failed to deliver due to sensitive servers and optimizes delivery.

31. Before the Final Approval Hearing, Angeion will submit a supplemental declaration providing the Court with, among other things, a detailed, verified account of the success rate of the direct email notice campaign.

MEDIA NOTICE - USERS

Programmatic Display Advertising

32. Angeion will utilize a form of internet advertising known as Programmatic Display Advertising, which is the leading method of buying digital advertisements in the United States.² In laymen's terms, programmatic advertising uses demographic profiles and advanced technology to place advertisements on the websites where members of the audience are most likely to visit (these websites are accessible on computers, mobile phones and tablets). The media notice outlined below is strategically designed to provide notice of the Settlement to these individuals ("Users") by driving them to the dedicated website where they can learn more about the Settlement, including their rights and options.

33. To develop the media notice campaign and to verify its effectiveness, our media team analyzed data from 2022 comScore Multi-Platform/MRI Simmons USA Fusion³ to profile the

² Programmatic Display Advertising is a trusted method specifically utilized to reach defined target audiences. In 2023, programmatic digital display ad spending is expected to reach nearly 142 billion U.S. dollars. <https://www.insiderintelligence.com/chart/255070/us-programmatic-digital-display-ad-spending-2019-2023-billions-of-total-digital-display-ad-spending>

³ GfK MediaMark Research and Intelligence LLC ("GfK MRI") provides demographic, brand preference and media-use habits, and captures in-depth information on consumer media choices, attitudes, and consumption of products and

class and arrive at an appropriate Target Audience based on criteria pertinent to this Settlement. Specifically, the following syndicated research definition was used to profile potential Settlement Class Members: **Individuals that have been or are diagnosed with sleep apnea.**

34. Based on the target definition used, the size of the Target Audience for the media notice campaign is approximately 15,833,000 individuals. Digital media platforms provide numerous data segments dedicated to consumer package goods brands. We will rely heavily on that data to help us ensure we are reaching users of machines of the types at issue.

35. It is important to note that the Target Audience is distinct from the class definition, as is commonplace in class action notice plans. Utilizing an overinclusive proxy audience maximizes the efficacy of the notice plan and is considered a best practice among media planners and class action notice experts alike. Using proxy audiences is also commonplace in both class action litigation and advertising generally⁴.

36. Additionally, the Target Audience is based on objective syndicated data, which is routinely used by advertising agencies and experts to understand the demographics, shopping habits and attitudes of the consumers that they are seeking to reach. Using this form of objective data will allow the parties to report the reach to the Court, with the confidence that the reach percentage and the number of exposure opportunities complies with due process and exceeds the Federal Judicial Center's threshold as to reasonableness in notification programs. Virtually all professional advertising agencies and commercial media departments use objective syndicated data tools, like the ones described above, to quantify net reach. Sources like these guarantee that advertising placements can be measured against an objective basis and confirm that reporting statistics are not

services in nearly 600 categories. comSCORE, Inc. ("comSCORE") is a leading cross-platform measurement and analytics company that precisely measures audiences, brands, and consumer behavior, capturing 1.9 trillion global interactions monthly. comSCORE's proprietary digital audience measurement methodology allows marketers to calculate audience reach in a manner not affected by variables such as cookie deletion and cookie blocking/rejection, allowing these audiences to be reach more effectively. comSCORE operates in more than 75 countries, including the United States, serving over 3,200 clients worldwide.

⁴ Duke Law School, GUIDELINES AND BEST PRACTICES IMPLEMENTING 2018 AMENDMENTS TO RULE 23 CLASS ACTION SETTLEMENT PROVISIONS, at 56.

overstated. They are ubiquitous tools in a media planner's arsenal and are regularly accepted by courts in evaluating the efficacy of a media plan, or its component parts. Understanding the socio-economic characteristics, interests and practices of a target group aids in the proper selection of media to reach that target. Here, the Target Audience has been reported to have the following characteristics:

- 73.79% are ages 45+, with a median age of 57.9 years old;
- 57.40% are male;
- 56.56% are married;
- 24.99% have children;
- 34.81% have received a bachelor's or post-graduate degree;
- 41.11% are currently employed full time;
- The average household income is \$80,890; and
- 83.93% have used social media in the last 30 days.

37. To identify the best vehicles to deliver messaging to the Target Audience, the media quintiles, which measure the degree to which an audience uses media relative to the general population were reviewed. Here, the objective syndicated data shows that members of the Target Audience spend an average of approximately 28.1 hours per week on the internet.

38. Given the strength of digital advertising, as well as our Target Audience's consistent internet use, we plan to utilize a robust internet advertising campaign to reach Settlement Class Members. This media schedule will allow us to deliver an effective reach level and a vigorous frequency, which will provide due and proper notice to the Settlement Class.

39. Multiple targeting layers will be implemented into the programmatic campaign to help ensure delivery to the most appropriate users, inclusive of the following tactics:

- **Look-a-like Modelling**: This technique uses data methods to build a look-a-like audience against known members of the Settlement Class.

- **Predictive Targeting**: This technique allows technology to “predict” which users will be best served by advertisements about the Settlement.
- **Site Retargeting**: This technique is a targeting method used to reach potential members of the Settlement Class who have already visited the dedicated case website while they browse other pages. This allows for sufficient exposure to an advertisement about the Settlement.
- **Geotargeting**: The campaign will be targeted nationwide. If sufficient data is available, the campaign will use a weighted delivery based on the geographic spread of the Target Audience throughout the country.
- **Site Targeting**: The programmatic strategy will also focus activity on key sites such as Nextdoor.com and WebMD.com.

40. To combat the possibility of non-human viewership of digital advertisements and to verify effective unique placements, Angeion employs Oracle’s BlueKai, Adobe’s Audience Manager and/or Lotame, which are demand management platforms (“DMP”). DMPs allow Angeion to learn more about the online audiences that are being reached. Further, online ad verification and security providers such as Comscore Content Activation, DoubleVerify, Grapeshot, Peer39 and Moat will be deployed to provide a higher quality of service to ad performance.

Social Media Advertising

41. The social media campaign component of the proposed Notice Plan will utilize several of the leading social media platforms in the United States: Facebook, Instagram, Twitter, and Reddit.⁵ The social media campaign uses an interest-based approach which focuses on the interests that users exhibit while on the social media platforms, capitalizing on the Target Audience’s propensity to engage in social media (83.93% of the Target Audience have used social media in the last 30

⁵ In the United States in 2023, Facebook has a reported 243.58 million users, and Instagram has a reported 150.99 million users, Twitter has a reported 64.9 million users, and Reddit has a reported 190.77 million users. See <https://www.statista.com/statistics/408971/number-of-us-facebook-users>
<https://www.statista.com/statistics/293771/number-of-us-instagram-users>
<https://www.statista.com/forecasts/1145591/reddit-users-in-the-united-states>
<https://www.oberlo.com/statistics/number-of-twitter-users-by-country>.

days), while specifically targeting users who demonstrate an interest in sleep apnea and/or the types of devices at issue in this litigation.

42. The social media campaign will utilize specific tactics to further qualify and deliver impressions⁶ to the Target Audience. For example, we will use Facebook Marketing platform and its technology to serve ads on both Facebook and Instagram against the Target Audience. Look-a-like modeling allows the use of consumer characteristics to serve ads. Based on these characteristics, we can build different consumer profile segments to ensure the notice plan messaging is delivered to the proper audience. The social media ads will be targeted nationwide. If sufficient data is available, the campaign will leverage a weighted delivery based on the geographic spread of the Target Audience throughout the country.

43. The social media campaign will engage with the Target Audience via Facebook, Instagram, Twitter, and Reddit on desktop sites, mobile sites, and mobile apps. Additionally, Angeion will monitor these social media platforms (“active listening”) for discussion of the Settlement, and will, where appropriate, provide the official Settlement Website URL and/or provide answers to frequently asked questions.

44. The digital and social media advertising is designed to deliver an approximate 91 million impressions.

Search Engine Marketing

45. The Notice Plan also includes a paid search campaign on Google to help drive members of the Settlement Class who are actively searching for information about the Settlement to the dedicated Settlement Website. Paid search ads will complement the programmatic and social media campaigns, as search engines are frequently used to locate a specific website, rather than a person typing in the URL. Search terms would relate to not only the Settlement itself but also the subject-matter of the litigation. In other words, the paid search ads are driven by the individual user’s search activity, such that if that individual searches for (or has recently searched for) the

⁶ An impression is when an advertisement reaches a user’s screen

Settlement, litigation or other terms related to the Settlement, that individual could be served with an advertisement directing them to the Settlement Website.

Publication

46. To complement the digital advertising notice efforts and to reach Settlement Class Members who ingest news via print, the Notice Plan includes publication notice in titles such as *People* magazine, *Readers Digest* and *Southern Living*. The chart below demonstrates the circulation, total audience size and number of insertions per publication.⁷

Publication	Circulation	Total Audience	# of Insertions
People	2.5 Million	26.2 Million	2
Reader's Digest	2.5 Million	14.2 Million	1
Southern Living	2.8 Million	12.6 Million	1

47. These publications were specifically selected due to the overlap between the Target Audience and each publication's audience.

Video Advertising

48. Digital video advertising will also be used to disseminate notice of the Settlement. Video advertisements help increase web traffic by 87% and have a 30% higher audience reach than static digital advertisements.⁸

49. The video advertisement campaign will feature thirty (30) second advertisements displayed on YouTube and programmatically across websites contextually targeting members of our Target Audience. The advertisements will be accessible on computers, mobile phones, and tablets. The video campaign is designed to deliver nearly 2,777,000 impressions.

Streaming Radio Advertising

50. Top streaming radio services such as Spotify and Pandora will be used to further provide notice of the Settlement and complement the digital advertising efforts, as radio has been shown

⁷ Alternative, similar titles may be utilized for publication based on timing, availability, and content acceptance by the publications.

⁸ <https://www.brid.tv/video-vs-image-ads/>

to stimulate increased online browsing for the subject matter of the advertisement.⁹ Radio advertisements of fifteen (15) and thirty (30) seconds will be used to deliver an approximate 1,785,000 impressions.

Sirius XM Advertising

51. Advertisement of the Settlement in thirty (30) and sixty (60) second spots will air on Sirius XM satellite radio throughout news and entertainment stations. Sirius XM advertisements are designed to deliver approximately 16,923,000 impressions.

MEDIA NOTICE - PAYERS

52. The Notice Plan includes tactics specific to the Payer members of the Settlement Class. The Payer media plan consists of digital advertisements, social media advertising via Facebook and LinkedIn, and an additional paid search campaign via Google, specific to Payers.

53. Additionally, publication in *HR Magazine* or a similar title will be used to further disseminate news of the Settlement.

INDUSTRY OUTREACH

54. Angeion will also send notice of the Settlement via first-class mail, postage prepaid, to known DMEs in the United States that sold, rented, supplied, or otherwise provided Recalled Devices to Users, requesting that the DMEs notify their Users of the Settlement, to further promote dissemination of news and notice of the Settlement.

PRESS RELEASE

55. The Notice Plan includes issuing two press releases, once at the outset of the notice program and once as a claim filing reminder, to be distributed over PR Newswire (or a similar press release distribution service) to further diffuse news of the Settlement. The press releases will help garner “earned media” (i.e., other media outlets and/or publications will report the story) to supplement the comprehensive notice efforts outlined herein, which will lead to increased awareness and participation amongst members of the Settlement Class.

⁹ <https://www.radiocentre.org/our-research/radio-the-online-multiplier/>

MEDIA MONITORING

56. Angeion will also aggregate data across multiple platforms and systems to quantify the output of print, online, and broadcast coverage of this Settlement. Before the Final Approval Hearing, Angeion will submit a supplemental declaration that quantifies and assigns a value to garnered press coverage.

SETTLEMENT WEBSITE & TOLL-FREE TELEPHONE SUPPORT

57. The Notice Plan will also implement the creation of a case-specific website in English and Spanish, where Settlement Class Members can easily view general information about this Settlement, review relevant Court documents, and view important dates and deadlines pertinent to the Settlement. The Settlement Website will be designed to be user-friendly and make it easy for members of the Settlement Class to securely submit a claim form and upload documentation online via the Settlement Website. The Settlement Website will also include a chat bot to stream Settlement Class member questions. Additionally, members of the Settlement Class can send an email with any additional questions to a dedicated email address. The Settlement Website will be customized to include serial number lookup functionality for the Recalled Devices.

58. The Settlement Website will be ADA-compliant and optimized for mobile visitors so that information loads quickly on mobile devices. Additionally, the Settlement Website will be designed to maximize search engine optimization through Google and other search engines. Keywords and natural language search terms will be included in the Settlement Website's metadata to maximize search engine rankings.

59. A toll-free hotline devoted to this case will be implemented to further apprise Settlement Class Members of their rights and options pursuant to the terms of the Settlement in both English and Spanish. The toll-free hotline will utilize an interactive voice response ("IVR") system to provide members of the Settlement Class with responses to frequently asked questions and provide essential information regarding the Settlement. This hotline will be accessible 24 hours a day, 7 days a week. Additionally, members of the Settlement Class will be able to request a copy of the

Notice or Claim Form via the toll-free hotline. Live operators will be available during normal business hours, Monday through Friday.

NOTICE PURSUANT TO THE CLASS ACTION FAIRNESS ACT OF 2005

60. Within ten days of the filing of the Class Action Settlement Agreement and Release with this Court, Angeion will cause notice to be disseminated to the appropriate state and federal officials pursuant to the requirements of the Class Action Fairness Act, 28 U.S.C. §1715.

PLAIN LANGUAGE NOTICE DESIGN

61. The proposed Notice forms used in this matter are designed to be “noticed,” reviewed, and by presenting the information in plain language, understood by members of the Settlement Class. The design of the notices follows the principles embodied in the Federal Judicial Center’s illustrative “model” notices posted at www.fjc.gov. The Notice forms contain plain-language summaries of key information about the rights and options of members of the Settlement Class pursuant to the terms of the Settlement. Consistent with normal practice, prior to being delivered and published, all notice documents will undergo a final edit for accuracy.

62. Rule 23(c)(2) of the Federal Rules of Civil Procedure requires class action notices to be written in “plain, easily understood language.” Angeion Group maintains a strong commitment to adhering to this requirement, drawing on its experience and expertise to craft notices that effectively convey the necessary information to Settlement Class Members in plain language.

DATA SECURITY & INSURANCE

63. Angeion recognizes the critical need to secure our physical and network environments and protect data in our custody. It is our commitment to these matters that has made us the go-to administrator for many of the most prominent data security matters of this decade. We are ever improving upon our robust policies, procedures, and infrastructure by periodically updating data security policies as well as our approach to managing data security in response to changes to physical environment, new threats and risks, business circumstances, legal and policy implications, and evolving technical environments.

64. Angeion's privacy practices are compliant with the California Consumer Privacy Act, as currently drafted. Consumer data obtained for the delivery of each project is used only for the purposes intended and agreed in advance by all contracted parties, including compliance with orders issued by State or Federal courts as appropriate. Angeion imposes additional data security measures for the protection of Personally Identifiable Information (PII) and Personal Health Information (PHI), including redaction, restricted network and physical access on a need-to-know basis, and network access tracking. Angeion requires background checks of all employees, requires background checks and ongoing compliance audits of its contractors, and enforces standard protocols for the rapid removal of physical and network access in the event of an employee or contractor termination.

65. Data is transmitted using Transport Layer Security (TLS) 1.3 protocols. Network data is encrypted at rest with the government and financial institution standard of AES 256-bit encryption. Angeion maintains an offline, air-gapped backup copy of all data, ensuring that projects can be administered without interruption.

66. Further, our team stays on top of latest compliance requirements, such as GDPR, HIPAA, PCI DSS, and others, to ensure that our organization is meeting all necessary regulatory obligations as well as aligning to industry best practices and standards set forth by frameworks like CIS and NIST. Angeion is cognizant of the ever-evolving digital landscape and continually improves its security infrastructure and processes, including partnering with best-in-class security service providers. Angeion's robust policies and processes cover all aspects of information security to form part of an industry leading security and compliance program, which is regularly assessed by independent third parties. Angeion is also committed to a culture of security mindfulness. All employees routinely undergo cybersecurity training to ensure that safeguarding information and cybersecurity vigilance is a core practice in all aspects of the work our teams complete.

67. Angeion currently maintains a comprehensive insurance program, including sufficient Errors & Omissions coverage.

REACH

68. This declaration describes the reach evidence which courts systemically rely upon in reviewing class action publication notice programs for adequacy. The reach percentage exceeds the guidelines as set forth in the Federal Judicial Center's Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide to effectuate a notice program which reaches a high degree of class members.

69. Specifically, the User media campaign of the Notice Plan are designed to reach 86.70% of the Target Audience multiple times each. The 86.70% reach approximation is independent from direct notice efforts, Payer media efforts, outreach efforts, press releases, Settlement Website, and the toll-free hotline.

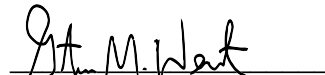
CONCLUSION

70. The Notice Plan outlined above includes direct notice via email combined with a robust media campaign consisting of state-of-the-art internet advertising, a comprehensive social media campaign and a search engine marketing campaign. Further, the Notice Plan provides for the implementation of a dedicated settlement website and toll-free hotline to further inform members of the Settlement Class of their rights and options in the Settlement.

71. It is my opinion that the Notice Plan described herein meets the requirements of due process, and Fed. R. Civ. P. 23, and will provide the best notice practicable under the circumstances, incorporating contemporary media and best practices to alert and engage the participation of Settlement Class Members in the proposed Settlement. Moreover, it is my opinion that this multi-faceted and innovative Notice Plan will provide full and proper notice to Settlement Class Members before the claims, opt-out and objection deadlines.

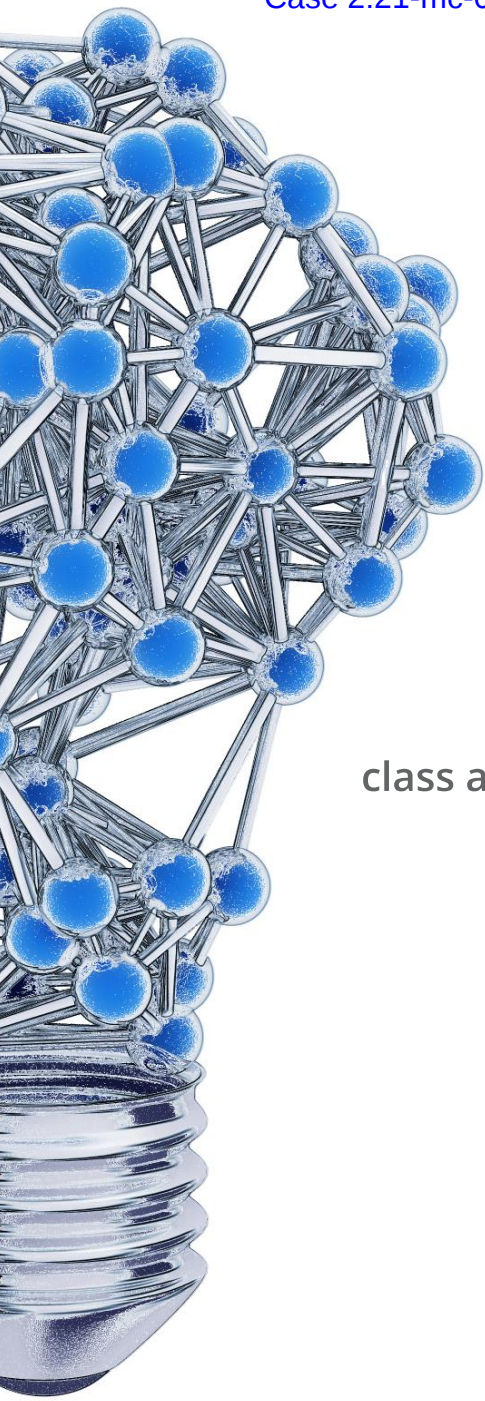
I hereby declare under penalty of perjury that the foregoing is true and correct.

Dated: September 5, 2023


STEVEN WEISBROT

Declaration of Steven Weisbrot re: Proposed Notice Plan

Exhibit A



INNOVATION

IT'S PART OF OUR DNA

class action | mass tort | legal noticing | litigation support



Judicial Recognition

JUDICIAL RECOGNITION



IN RE: FACEBOOK, INC. CONSUMER PRIVACY USER PROFILE LITIGATION

Case No. 3:18-md-02843

The Honorable Vincent Chhabria, United States District Court, Northern District of California (March 29, 2023): The Court approves the Settlement Administration Protocol & Notice Plan, amended Summary Notice (Dkt. No. 1114-8), second amended Class Notice (Dkt. No. 1114-6), In-App Notice, amended Claim Form (Dkt. No. 1114-2), Opt-Out Form (Dkt. No. 1122-1), and Objection Form (Dkt. No. 1122-2) and finds that their dissemination substantially in the manner and form set forth in the Settlement Agreement and the subsequent filings referenced above meets the requirements of Federal Rule of Civil Procedure 23 and due process, constitutes the best notice practicable under the circumstances, and is reasonably calculated, under the circumstances, to apprise members of the Settlement Class of the pendency of the Action, the effect of the proposed Settlement (including the releases contained therein), the anticipated motion for Attorneys' Fees and Expenses Award and for Service Awards, and their rights to participate in, opt out of, or object to any aspect of the proposed Settlement.

LUNDY v. META PLATFORMS, INC.

Case No. 3:18-cv-06793

The Honorable James Donato, United States District Court, Northern District of California (April 26, 2023): For purposes of Rule 23(e), the Notice Plan submitted with the Motion for Preliminary Approval and the forms of notice attached thereto are approved...The form, content, and method of giving notice to the Settlement Class as described in the Notice Plan submitted with the Motion for Preliminary Approval are accepted at this time as practicable and reasonable in light of the rather unique circumstances of this case.

IN RE: APPLE INC. DEVICE PERFORMANCE LITIGATION

Case No. 5:18-md-02827

The Honorable Edward J. Davila, United States District Court, Northern District of California (March 17, 2021): Angeion undertook a comprehensive notice campaign...The notice program was well executed, far-reaching, and exceeded both Federal Rule of Civil Procedure 23(c)(2)(B)'s requirement to provide the "best notice that is practicable under the circumstances" and Rule 23(e)(1)(B)'s requirement to provide "direct notice in a reasonable manner."

IN RE: TIKTOK, INC., CONSUMER PRIVACY LITIGATION

Case No. 1:20-cv-04699

The Honorable John Z. Lee, United States District Court, Northern District of Illinois (August 22, 2022): The Class Notice was disseminated in accordance with the procedures required by the Court's Order Granting Preliminary Approval...in accordance with applicable law, satisfied the requirements of Rule 23(e) and due process, and constituted the best notice practicable...

JUDICIAL RECOGNITION



IN RE: GOOGLE PLUS PROFILE LITIGATION

Case No. 5:18-cv-06164

The Honorable Edward J. Davila, United States District Court, Northern District of California (January 25, 2021): The Court further finds that the program for disseminating notice to Settlement Class Members provided for in the Settlement, and previously approved and directed by the Court (hereinafter, the “Notice Program”), has been implemented by the Settlement Administrator and the Parties, and such Notice Program, including the approved forms of notice, is reasonable and appropriate and satisfies all applicable due process and other requirements, and constitutes best notice reasonably calculated under the circumstances to apprise Settlement Class Members...

MEHTA v. ROBINHOOD FINANCIAL LLC

Case No. 5:21-cv-01013

The Honorable Susan van Keulen, United States District Court, Northern District of California (August 29, 2022): The proposed notice plan, which includes direct notice via email, will provide the best notice practicable under the circumstances. This plan and the Notice are reasonably calculated, under the circumstances, to apprise Class Members of the nature and pendency of the Litigation, the scope of the Settlement Class, a summary of the class claims, that a Class Member may enter an appearance through an attorney, that the Court will grant timely exclusion requests, the time and manner for requesting exclusion, the binding effect of final approval of the proposed Settlement, and the anticipated motion for attorneys’ fees, costs, and expenses and for service awards. The plan and the Notice constitute due, adequate, and sufficient notice to Class Members and satisfy the requirements of Rule 23 of the Federal Rules of Civil Procedure, due process, and all other applicable laws and rules.

ADTRADER, INC. v. GOOGLE LLC

Case No. 5:17-cv-07082

The Honorable Beth L. Freeman, United States District Court, Northern District of California (May 13, 2022): The Court approves, as to form, content, and distribution, the Notice Plan set forth in the Settlement Agreement, including the Notice Forms attached to the Weisbrot Declaration, subject to the Court’s one requested change as further described in Paragraph 8 of this Order, and finds that such Notice is the best notice practicable under the circumstances, and that the Notice complies fully with the requirements of the Federal Rules of Civil Procedure. The Court further finds that the Notice is reasonably calculated to, under all circumstances, reasonably apprise members of the AdWords Class of the pendency of this Action, the terms of the Settlement Agreement, and the right to object to the Settlement and to exclude themselves from the AdWords Class. The Court also finds that the Notice constitutes valid, due and sufficient notice to all persons entitled thereto, and meets the requirements of Due Process. The Court further finds that the Notice Plan fully complies with the Northern District of California’s Procedural Guidance for Class Action Settlements.

JUDICIAL RECOGNITION

***IN RE: FACEBOOK INTERNET TRACKING LITIGATION*****Case No. 5:12-md-02314**

The Honorable Edward J. Davila, United States District Court, Northern District of California (November 10, 2022): The Court finds that Plaintiffs' notice meets all applicable requirements of due process and is particularly impressed with Plaintiffs' methodology and use of technology to reach as many Class Members as possible. Based upon the foregoing, the Court finds that the Settlement Class has been provided adequate notice.

CITY OF LONG BEACH v. MONSANTO COMPANY**Case No. 2:16-cv-03493**

The Honorable Fernando M. Olguin, United States District Court, Central District of California (March 14, 2022): The court approves the form, substance, and requirements of the class Notice, (Dkt.278-2, Settlement Agreement, Exh. I). The proposed manner of notice of the settlement set forth in the Settlement Agreement constitutes the best notice practicable under the circumstances and complies with the requirements of due process.

STEWART v. LEXISNEXIS RISK DATA RETRIEVAL SERVICES, LLC**Case No. 3:20-cv-00903**

The Honorable John A. Gibney Jr., United States District Court, Eastern District of Virginia (February 25, 2022): The proposed forms and methods for notifying the proposed Settlement Class Members of the Settlement and its terms and conditions meet the requirements of Fed. R. Civ. P. 23(c)(2)(B) and due process, constitute the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons and entities entitled to notice...Based on the foregoing, the Court hereby approves the notice plans developed by the Parties and the Settlement Administrator and directs that they be implemented according to the Agreement and the notice plans attached as exhibits.

WILLIAMS v. APPLE INC.**Case No. 3:19-cv-0400**

The Honorable Laurel Beeler, United States District Court, Northern District of California (February 24, 2022): The Court finds the Email Notice and Website Notice (attached to the Agreement as Exhibits 1 and 4, respectively), and their manner of transmission, implemented pursuant to the Agreement (a) are the best practicable notice, (b) are reasonably calculated, under the circumstances, to apprise the Subscriber Class of the pendency of the Action and of their right to object to or to exclude themselves from the proposed settlement, (c) are reasonable and constitute due, adequate and sufficient notice to all persons entitled to receive notice, and (d) meet all requirements of applicable law.

CLEVELAND v. WHIRLPOOL CORPORATION**Case No. 0:20-cv-01906**

The Honorable Wilhelmina M. Wright, United States District Court, District of Minnesota (December 16, 2021): It appears to the Court that the proposed Notice Plan described herein, and detailed in the Settlement Agreement, comports with due process, Rule 23, and all other applicable law. Class Notice consists of email notice and postcard notice when email

JUDICIAL RECOGNITION



addresses are unavailable, which is the best practicable notice under the circumstances...The proposed Notice Plan complies with the requirements of Rule 23, Fed. R. Civ. P., and due process, and Class Notice is to be sent to the Settlement Class Members as set forth in the Settlement Agreement and pursuant to the deadlines above.

RASMUSSEN v. TESLA, INC. d/b/a TESLA MOTORS, INC.

Case No. 5:19-cv-04596

The Honorable Beth Labson Freeman, United States District Court, Northern District of California (December 10, 2021): The Court has carefully considered the forms and methods of notice to the Settlement Class set forth in the Settlement Agreement ("Notice Plan"). The Court finds that the Notice Plan constitutes the best notice practicable under the circumstances and fully satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure, the requirements of due process, and the requirements of any other applicable law, such that the terms of the Settlement Agreement, the releases provided for therein, and this Court's final judgment will be binding on all Settlement Class Members.

CAMERON v. APPLE INC.

Case No. 4:19-cv-03074

The Honorable Yvonne Gonzalez Rogers, United States District Court, Northern District of California (November 16, 2021): The parties' proposed notice plan appears to be constitutionally sound in that plaintiffs have made a sufficient showing that it is: (i) the best notice practicable; (ii) reasonably calculated, under the circumstances, to apprise the Class members of the proposed settlement and of their right to object or to exclude themselves as provided in the settlement agreement; (iii) reasonable and constitute due, adequate, and sufficient notice to all persons entitled to receive notice; and (iv) meet all applicable requirements of due process and any other applicable requirements under federal law.

RISTO v. SCREEN ACTORS GUILD-AMERICAN FEDERATION OF TELEVISION AND RADIO ARTISTS

Case No. 2:18-cv-07241

The Honorable Christina A. Snyder, United States District Court, Central District of California (November 12, 2021): The Court approves the publication notice plan presented to this Court as it will provide notice to potential class members through a combination of traditional and digital media that will consist of publication of notice via press release, programmatic display digital advertising, and targeted social media, all of which will direct Class Members to the Settlement website...The notice plan satisfies any due process concerns as this Court certified the class under Federal Rule of Civil Procedure 23(b)(1)...

JENKINS v. NATIONAL GRID USA SERVICE COMPANY, INC.

Case No. 2:15-cv-01219

The Honorable Joanna Seybert, United States District Court, Eastern District of New York (November 8, 2021): Pursuant to Fed. R. Civ. P. 23(e)(1) and 23(c)(2)(B), the Court approves the proposed Notice Plan and procedures set forth at Section 8 of the Settlement, including the form and content of the proposed forms of notice to the Settlement Class attached as Exhibits C-G to the Settlement and the proposed procedures for Settlement Class Members to exclude themselves from the Settlement Class or object. The Court finds that the proposed

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Notice Plan meets the requirements of due process under the United States Constitution and Rule 23, and that such Notice Plan—which includes direct notice to Settlement Class Members sent via first class U.S. Mail and email; the establishment of a Settlement Website (at the URL, www.nationalgridtcpasettlement.com) where Settlement Class Members can view the full settlement agreement, the detailed long-form notice (in English and Spanish), and other key case documents; publication notice in forms attached as Exhibits E and F to the Settlement sent via social media (Facebook and Instagram) and streaming radio (e.g., Pandora and iHeart Radio). The Notice Plan shall also include a paid search campaign on search engine(s) chosen by Angeion (e.g., Google) in the form attached as Exhibits G and the establishment of a toll-free telephone number where Settlement Class Members can get additional information—is the best notice practicable under the circumstances and shall constitute due and sufficient notice to all persons entitled thereto.

NELLIS v. VIVID SEATS, LLC

Case No. 1:20-cv-02486

The Honorable Robert M. Dow, Jr., United States District Court, Northern District of Illinois (November 1, 2021): The Notice Program, together with all included and ancillary documents thereto, (a) constituted reasonable notice; (b) constituted notice that was reasonably calculated under the circumstances to apprise members of the Settlement Class of the pendency of the Litigation...(c) constituted reasonable, due, adequate and sufficient notice to all Persons entitled to receive notice; and (d) met all applicable requirements of due process and any other applicable law. The Court finds that Settlement Class Members have been provided the best notice practicable of the Settlement and that such notice fully satisfies all requirements of law as well as all requirements of due process.

PELLETIER v. ENDO INTERNATIONAL PLC

Case No. 2:17-cv-05114

The Honorable Michael M. Baylson, United States District Court, Eastern District of Pennsylvania (October 25, 2021): The Court approves, as to form and content, the Notice of Pendency and Proposed Settlement of Class Action (the “Notice”), the Proof of Claim and Release form (the “Proof of Claim”), and the Summary Notice, annexed hereto as Exhibits A-1, A-2, and A-3, respectively, and finds that the mailing and distribution of the Notice and publishing of the Summary Notice, substantially in the manner and form set forth in ¶¶7-10 of this Order, meet the requirements of Rule 23 and due process, and is the best notice practicable under the circumstances and shall constitute due and sufficient notice to all Persons entitled thereto.

BIEGEL v. BLUE DIAMOND GROWERS

Case No. 7:20-cv-03032

The Honorable Cathy Seibel, United States District Court, Southern District of New York (October 25, 2021): The Court finds that the Notice Plan, set forth in the Settlement Agreement and effectuated pursuant to the Preliminary Approval Order: (i) was the best notice practicable under the circumstances; (ii) was reasonably calculated to provide, and did provide, due and sufficient notice to the Settlement Class regarding the existence and nature

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of the Action...and (iii) satisfied the requirements of the Federal Rules of Civil Procedure, the United States Constitution, and all other applicable law.

QUINTERO v. SAN DIEGO ASSOCIATION OF GOVERNMENTS

Case No. 37-2019-00017834-CU-NP-CTL

The Honorable Eddie C. Sturgeon, Superior Court of the State of California, County of San Diego (September 27, 2021): The Court has reviewed the class notices for the Settlement Class and the methods for providing notice and has determined that the parties will employ forms and methods of notice that constitute the best notice practicable under the circumstances; are reasonably calculated to apprise class members of the terms of the Settlement and of their right to participate in it, object, or opt-out; are reasonable and constitute due, adequate, and sufficient notice to all persons entitled to receive notice; and meet all constitutional and statutory requirements, including all due process requirements and the California Rules of Court.

HOLVE v. MCCORMICK & COMPANY, INC.

Case No. 6:16-cv-06702

The Honorable Mark W. Pedersen, United States District Court for the Western District of New York (September 23, 2021): The Court finds that the form, content and method of giving notice to the Class as described in the Settlement Agreement and the Declaration of the Settlement Administrator: (a) will constitute the best practicable notice; (b) are reasonably calculated, under the circumstances, to apprise the Settlement Class Members of the pendency of the Action...(c) are reasonable and constitute due, adequate, and sufficient notice to all Settlement Class Members and other persons entitled to receive notice; and (d) meet all applicable requirements of law, including but not limited to 28 U.S.C. § 1715, Rule 23(c) and (e), and the Due Process Clause(s) of the United States Constitution.

CULBERTSON T AL. v. DELOITTE CONSULTING LLP

Case No. 1:20-cv-03962

The Honorable Lewis J. Liman, United States District Court, Southern District of New York (August 27, 2021): The notice procedures described in the Notice Plan are hereby found to be the best means of providing notice under the circumstances and, when completed, shall constitute due and sufficient notice of the proposed Settlement Agreement and the Final Approval Hearing to all persons affected by and/or entitled to participate in the Settlement Agreement, in full compliance with the notice requirements of Rule 23 of the Federal Rules of Civil Procedure and due process of law.

PULMONARY ASSOCIATES OF CHARLESTON PLLC v. GREENWAY HEALTH, LLC

Case No. 3:19-cv-00167

The Honorable Timothy C. Batten, Sr., United States District Court, Northern District of Georgia (August 24, 2021): Under Rule 23(c)(2), the Court finds that the content, format, and method of disseminating Notice, as set forth in the Motion, the Declaration of Steven Weisbrot filed on July 2, 2021, and the Settlement Agreement and Release, including notice by First Class U.S. Mail and email to all known Class Members, is the best notice practicable

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under the circumstances and satisfies all requirements provided in Rule 23(c)(2)(B) and due process.

IN RE: BROILER CHICKEN GROWER ANTITRUST LITIGATION (NO II)

Case No. 6:20-md-02977

The Honorable Robert J. Shelby, United States District Court, Eastern District of Oklahoma (August 23, 2021): The Court approves the method of notice to be provided to the Settlement Class as set forth in Plaintiffs' Motion and Memorandum of Law in Support of Motion for Approval of the Form and Manner of Class Notice and Appointment of Settlement Administrator and Request for Expedited Treatment and the Declaration of Steven Weisbrot on Angeion Group Qualifications and Proposed Notice Plan...The Court finds and concludes that such notice: (a) is the best notice that is practicable under the circumstances, and is reasonably calculated to reach the members of the Settlement Class and to apprise them of the Action, the terms and conditions of the Settlement, their right to opt out and be excluded from the Settlement Class, and to object to the Settlement; and (b) meets the requirements of Federal Rule of Civil Procedure 23 and due process.

ROBERT ET AL. v. AT&T MOBILITY, LLC

Case No. 3:15-cv-03418

The Honorable Edward M. Chen, United States District Court, Northern District of California (August 20, 2021): The Court finds that such Notice program, including the approved forms of notice: (a) constituted the best notice that is practicable under the circumstances; (b) included direct individual notice to all Settlement Class Members who could be identified through reasonable effort, as well as supplemental notice via a social media notice campaign and reminder email and SMS notices; (c) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of the nature of this Action ... (d) constituted due, adequate and sufficient notice to all persons entitled to notice; and (e) met all applicable requirements of Federal Rule of Civil Procedure 23, Due Process under the U.S. Constitution, and any other applicable law.

PYGIN v. BOMBAS, LLC

Case No. 4:20-cv-04412

The Honorable Jeffrey S. White, United States District Court, Northern District of California (July 12, 2021): The Court also concludes that the Class Notice and Notice Program set forth in the Settlement Agreement satisfy the requirements of due process and Rule 23 and provide the best notice practicable under the circumstances. The Class Notice and Notice Program are reasonably calculated to apprise Settlement Class Members of the nature of this Litigation, the Scope of the Settlement Class, the terms of the Settlement Agreement, the right of Settlement Class Members to object to the Settlement Agreement or exclude themselves from the Settlement Class and the process for doing so, and of the Final Approval Hearing. Accordingly, the Court approves the Class Notice and Notice Program and the Claim Form.

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***WILLIAMS ET AL. v. RECKITT BENCKISER LLC ET AL.*****Case No. 1:20-cv-23564**

The Honorable Jonathan Goodman, United States District Court, Southern District of Florida (April 23, 2021): The Court approves, as to form and content, the Class Notice and Internet Notice submitted by the parties (Exhibits B and D to the Settlement Agreement or Notices substantially similar thereto) and finds that the procedures described therein meet the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process, and provide the best notice practicable under the circumstances. The proposed Class Notice Plan -- consisting of (i) internet and social media notice; and (ii) notice via an established a Settlement Website -- is reasonably calculated to reach no less than 80% of the Settlement Class Members.

NELSON ET AL. v. IDAHO CENTRAL CREDIT UNION**Case No. CV03-20-00831, CV03-20-03221**

The Honorable Robert C. Naftz, Sixth Judicial District, State of Idaho, Bannock County (January 19, 2021): The Court finds that the Proposed Notice here is tailored to this Class and designed to ensure broad and effective reach to it...The Parties represent that the operative notice plan is the best notice practicable and is reasonably designed to reach the settlement class members. The Court agrees.

IN RE: HANNA ANDERSSON AND SALESFORCE.COM DATA BREACH LITIGATION**Case No. 3:20-cv-00812**

The Honorable Edward M. Chen, United States District Court, Northern District of California (December 29, 2020): The Court finds that the Class Notice and Notice Program satisfy the requirements of due process and Rule 23 of the Federal Rules of Civil Procedure and provide the best notice practicable under the circumstances.

IN RE: PEANUT FARMERS ANTITRUST LITIGATION**Case No. 2:19-cv-00463**

The Honorable Raymond A. Jackson, United States District Court, Eastern District of Virginia (December 23, 2020): The Court finds that the Notice Program...constitutes the best notice that is practicable under the circumstances and is valid, due and sufficient notice to all persons entitled thereto and complies fully with the requirements of Rule 23(c)(2) and the due process requirements of the Constitution of the United States.

BENTLEY ET AL. v. LG ELECTRONICS U.S.A., INC.**Case No. 2:19-cv-13554**

The Honorable Madeline Cox Arleo, United States District Court, District of New Jersey (December 18, 2020): The Court finds that notice of this Settlement was given to Settlement Class Members in accordance with the Preliminary Approval Order and constituted the best notice practicable of the proceedings and matters set forth therein, including the Litigation, the Settlement, and the Settlement Class Members' rights to object to the Settlement or opt out of the Settlement Class, to all Persons entitled to such notice, and that this notice satisfied the requirements of Federal Rule of Civil Procedure 23 and of due process.

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IN RE: ALLURA FIBER CEMENT SIDING PRODUCTS LIABILITY LITIGATION

Case No. 2:19-mn-02886

The Honorable David C. Norton, United States District Court, District of South Carolina (December 18, 2020): The proposed Notice provides the best notice practicable under the circumstances. It allows Settlement Class Members a full and fair opportunity to consider the proposed settlement. The proposed plan for distributing the Notice likewise is a reasonable method calculated to reach all members of the Settlement Class who would be bound by the settlement. There is no additional method of distribution that would be reasonably likely to notify Settlement Class Members who may not receive notice pursuant to the proposed distribution plan.

ADKINS ET AL. v. FACEBOOK, INC.

Case No. 3:18-cv-05982

The Honorable William Alsup, United States District Court, Northern District of California (November 15, 2020): Notice to the class is "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Tr. Co.*, 399 U.S. 306, 314 (1965).

IN RE: 21ST CENTURY ONCOLOGY CUSTOMER DATA SECURITY BREACH LITIGATION

Case No. 8:16-md-02737

The Honorable Mary S. Scriven, United States District Court, Middle District of Florida (November 2, 2020): The Court finds and determines that mailing the Summary Notice and publication of the Settlement Agreement, Long Form Notice, Summary Notice, and Claim Form on the Settlement Website, all pursuant to this Order, constitute the best notice practicable under the circumstances, constitute due and sufficient notice of the matters set forth in the notices to all persons entitled to receive such notices, and fully satisfies the of due process, Rule 23 of the Federal Rules of Civil Procedure, 28 U.S.C. § 1715, and all other applicable laws and rules. The Court further finds that all of the notices are written in plain language and are readily understandable by Class Members.

MARINO ET AL. v. COACH INC.

Case No. 1:16-cv-01122

The Honorable Valerie Caproni, United States District Court, Southern District of New York (August 24, 2020): The Court finds that the form, content, and method of giving notice to the Settlement Class as described in paragraph 8 of this Order: (a) will constitute the best practicable notice; (b) are reasonably calculated, under the circumstances, to apprise the Settlement Class Members of the pendency of the Action, the terms of the proposed Settlement, and their rights under the proposed Settlement, including but not limited to their rights to object to or exclude themselves from the proposed Settlement and other rights under the terms of the Settlement Agreement; (c) are reasonable and constitute due, adequate, and sufficient notice to all Settlement Class Members and other persons entitled to receive notice; and (d) meet all applicable requirements of law, including but not limited to 28 U.S.C. § 1715, Rule 23(c) and (e), and the Due Process Clause(s) of the United States

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Constitution. The Court further finds that all of the notices are written in plain language, are readily understandable by Settlement Class Members, and are materially consistent with the Federal Judicial Center's illustrative class action notices.

BROWN v. DIRECTV, LLC

Case No. 2:13-cv-01170

The Honorable Dolly M. Gee, United States District Court, Central District of California (July 23, 2020): Given the nature and size of the class, the fact that the class has no geographical limitations, and the sheer number of calls at issue, the Court determines that these methods constitute the best and most reasonable form of notice under the circumstances.

IN RE: SSA BONDS ANTITRUST LITIGATION

Case No. 1:16-cv-03711

The Honorable Edgardo Ramos, United States District Court, Southern District of New York (July 15, 2020): The Court finds that the mailing and distribution of the Notice and the publication of the Summary Notice substantially in the manner set forth below meet the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process and constitute the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all Persons entitled to notice.

KJESSLER ET AL. v. ZAAPPAAZ, INC. ET AL.

Case No. 4:18-cv-00430

The Honorable Nancy F. Atlas, United States District Court, Southern District of Texas (July 14, 2020): The Court also preliminarily approves the proposed manner of communicating the Notice and Summary Notice to the putative Settlement Class, as set out below, and finds it is the best notice practicable under the circumstances, constitutes due and sufficient notice to all persons and entities entitled to receive such notice, and fully satisfies the requirements of applicable laws, including due process and Federal Rule of Civil Procedure 23.

HESTER ET AL. v. WALMART, INC.

Case No. 5:18-cv-05225

The Honorable Timothy L. Brooks, United States District Court, Western District of Arkansas (July 9, 2020): The Court finds that the Notice and Notice Plan substantially in the manner and form set forth in this Order and the Agreement meet the requirements of Federal Rule of Civil Procedure 23 and due process, is the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all Persons entitled thereto.

CLAY ET AL. v. CYTOSPORT INC.

Case No. 3:15-cv-00165

The Honorable M. James Lorenz, United States District Court, Southern District of California (June 17, 2020): The Court approves the proposed Notice Plan for giving notice to the Settlement Class through publication, both print and digital, and through the establishment of a Settlement Website, as more fully described in the Agreement and the Claims Administrator's affidavits (docs. no. 222-9, 224, 224-1, and 232-3 through 232-6). The Notice

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Plan, in form, method, and content, complies with the requirements of Rule 23 and due process, and constitutes the best notice practicable under the circumstances.

GROGAN v. AARON'S INC.

Case No. 1:18-cv-02821

The Honorable J.P. Boulee, United States District Court, Northern District of Georgia (May 1, 2020): The Court finds that the Notice Plan as set forth in the Settlement Agreement meets the requirements of Fed. R. Civ. P. 23 and constitutes the best notice practicable under the circumstances, including direct individual notice by mail and email to Settlement Class Members where feasible and a nationwide publication website-based notice program, as well as establishing a Settlement Website at the web address of www.AaronsTCPASettlement.com, and satisfies fully the requirements the Federal Rules of Civil Procedure, the U.S. Constitution, and any other applicable law, such that the Settlement Agreement and Final Order and Judgment will be binding on all Settlement Class Members.

CUMMINGS v. BOARD OF REGENTS OF THE UNIVERSITY OF NEW MEXICO, ET AL.

Case No. D-202-CV-2001-00579

The Honorable Carl Butkus, Second Judicial District Court, County of Bernalillo, State of New Mexico (March 30, 2020): The Court has reviewed the Class Notice, the Plan of Allocation and Distribution and Claim Form, each of which it approves in form and substance. The Court finds that the form and methods of notice set forth in the Agreement: (i) are reasonable and the best practicable notice under the circumstances; (ii) are reasonably calculated to apprise Settlement Class Members of the pendency of the Lawsuit, of their rights to object to or opt-out of the Settlement, and of the Final Approval Hearing; (iii) constitute due, adequate, and sufficient notice to all persons entitled to receive notice; and (iv) meet the requirements of the New Mexico Rules of Civil Procedure, the requirements of due process under the New Mexico and United States Constitutions, and the requirements of any other applicable rules or laws.

SCHNEIDER, ET AL. v. CHIPOTLE MEXICAN GRILL, INC.

Case No. 4:16-cv-02200

The Honorable Haywood S. Gilliam, Jr., United States District Court, Northern District of California (January 31, 2020): Given that direct notice appears to be infeasible, the third-party settlement administrator will implement a digital media campaign and provide for publication notice in People magazine, a nationwide publication, and the East Bay Times. SA § IV.A, C; Dkt. No. 205-12 at ¶¶ 13–23. The publication notices will run for four consecutive weeks. Dkt. No. 205 at ¶ 23. The digital media campaign includes an internet banner notice implemented using a 60-day desktop and mobile campaign. Dkt. No. 205-12 at ¶ 18. It will rely on “Programmatic Display Advertising” to reach the “Target Audience,” Dkt. No. 216-1 at ¶ 6, which is estimated to include 30,100,000 people and identified using the target definition of “Fast Food & Drive-In Restaurants Total Restaurants Last 6 Months [Chipotle Mexican Grill],” Dkt. No. 205-12 at ¶ 13. Programmatic display advertising utilizes “search targeting,” “category contextual targeting,” “keyword contextual targeting,” and “site targeting,” to place ads. Dkt. No. 216-1 at ¶¶ 9–12. And through “learning” technology, it continues placing ads on websites where the ad is performing well. Id. ¶ 7. Put simply, prospective Class Members

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will see a banner ad notifying them of the settlement when they search for terms or websites that are similar to or related to Chipotle, when they browse websites that are categorically relevant to Chipotle (for example, a website related to fast casual dining or Mexican food), and when they browse websites that include a relevant keyword (for example, a fitness website with ads comparing fast casual choices). *Id.* ¶¶ 9–12. By using this technology, the banner notice is “designed to result in serving approximately 59,598,000 impressions.” Dkt. No. 205-12 at ¶ 18.

The Court finds that the proposed notice process is “‘reasonably calculated, under all the circumstances,’ to apprise all class members of the proposed settlement.” *Roes*, 944 F.3d at 1045 (citation omitted).

HANLEY v. TAMPA BAY SPORTS AND ENTERTAINMENT LLC

Case No. 8:19-cv-00550

The Honorable Charlene Edwards Honeywell, United States District Court, Middle District of Florida (January 7, 2020): The Court approves the form and content of the Class notices and claim forms substantially in the forms attached as Exhibits A-D to the Settlement. The Court further finds that the Class Notice program described in the Settlement is the best practicable under the circumstances. The Class Notice program is reasonably calculated under the circumstances to inform the Settlement Class of the pendency of the Action, certification of a Settlement Class, the terms of the Settlement, Class Counsel’s attorney’s fees application and the request for a service award for Plaintiff, and their rights to opt-out of the Settlement Class or object to the Settlement. The Class notices and Class Notice program constitute sufficient notice to all persons entitled to notice. The Class notices and Class Notice program satisfy all applicable requirements of law, including, but not limited to, Federal Rule of Civil Procedure 23 and the Constitutional requirement of Due Process.

CORCORAN, ET AL. v. CVS HEALTH, ET AL.

Case No. 4:15-cv-03504

The Honorable Yvonne Gonzalez Rogers, United States District Court, Northern District of California (November 22, 2019): Having reviewed the parties’ briefings, plaintiffs’ declarations regarding the selection process for a notice provider in this matter and regarding Angeion Group LLC’s experience and qualifications, and in light of defendants’ non-opposition, the Court APPROVES Angeion Group LLC as the notice provider. Thus, the Court GRANTS the motion for approval of class notice provider and class notice program on this basis.

Having considered the parties’ revised proposed notice program, the Court agrees that the parties’ proposed notice program is the “best notice that is practicable under the circumstances.” The Court is satisfied with the representations made regarding Angeion Group LLC’s methods for ascertaining email addresses from existing information in the possession of defendants. Rule 23 further contemplates and permits electronic notice to class members in certain situations. See Fed. R. Civ. P. 23(c)(2)(B). The Court finds, in light of the representations made by the parties, that this is a situation that permits electronic notification via email, in addition to notice via United States Postal Service. Thus, the Court

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APPROVES the parties' revised proposed class notice program, and GRANTS the motion for approval of class notice provider and class notice program as to notification via email and United States Postal Service mail.

PATORA v. TARTE, INC.

Case No. 7:18-cv-11760

The Honorable Kenneth M. Karas, United States District Court, Southern District of New York (October 2, 2019): The Court finds that the form, content, and method of giving notice to the Class as described in Paragraph 9 of this Order: (a) will constitute the best practicable notice; (b) are reasonably calculated, under the circumstances, to apprise the Settlement Class Members of the pendency of the Action, the terms of the Proposed Settlement, and their rights under the Proposed Settlement, including but not limited to their rights to object to or exclude themselves from the Proposed Settlement and other rights under the terms of the Settlement Agreement; (c) are reasonable and constitute due, adequate, and sufficient notice to all Settlement Class Members and other persons entitled to receive notice; and (d) meet all applicable requirements of law, including but not limited to 28 U.S.C. § 1715, Rule 23(c) and (e), and the Due Process Clauses of the United States Constitution. The Court further finds that all of the notices are written in simple terminology, are readily understandable by Settlement Class Members, and are materially consistent with the Federal Judicial Center's illustrative class action notices.

CARTER, ET AL. v. GENERAL NUTRITION CENTERS, INC., and GNC HOLDINGS, INC.

Case No. 2:16-cv-00633

The Honorable Mark R. Hornak, United States District Court, Western District of Pennsylvania (September 9, 2019): The Court finds that the Class Notice and the manner of its dissemination described in Paragraph 7 above and Section VII of the Agreement constitutes the best practicable notice under the circumstances and is reasonably calculated, under all the circumstances, to apprise proposed Settlement Class Members of the pendency of this action, the terms of the Agreement, and their right to object to or exclude themselves from the proposed Settlement Class. The Court finds that the notice is reasonable, that it constitutes due, adequate and sufficient notice to all persons entitled to receive notice, and that it meets the requirements of due process, Rule 23 of the Federal Rules of Civil Procedure, and any other applicable laws.

CORZINE v. MAYTAG CORPORATION, ET AL.

Case No. 5:15-cv-05764

The Honorable Beth L. Freeman, United States District Court, Northern District of California (August 21, 2019): The Court, having reviewed the proposed Summary Notice, the proposed FAQ, the proposed Publication Notice, the proposed Claim Form, and the proposed plan for distributing and disseminating each of them, finds and concludes that the proposed plan will provide the best notice practicable under the circumstances and satisfies all requirements of federal and state laws and due process.

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***MEDNICK v. PRECOR, INC.*****Case No. 1:14-cv-03624**

The Honorable Harry D. Leinenweber, United States District Court, Northern District of Illinois (June 12, 2019): Notice provided to Class Members pursuant to the Preliminary Class Settlement Approval Order constitutes the best notice practicable under the circumstances, including individual email and mail notice to all Class Members who could be identified through reasonable effort, including information provided by authorized third-party retailers of Precor. Said notice provided full and adequate notice of these proceedings and of the matter set forth therein, including the proposed Settlement set forth in the Agreement, to all persons entitled to such notice, and said notice fully satisfied the requirements of F.R.C.P. Rule 23 (e) and (h) and the requirements of due process under the United States and California Constitutions.

GONZALEZ v. TCR SPORTS BROADCASTING HOLDING LLP, ET AL.**Case No. 1:18-cv-20048**

The Honorable Darrin P. Gayles, United States District Court, Southern District of Florida (May 24, 2019): The Court finds that notice to the class was reasonable and the best notice practicable under the circumstances, consistent with Rule 23(e)(1) and Rule 23(c)(2)(B).

ANDREWS ET AL. v. THE GAP, INC., ET AL.**Case No. CGC-18-567237**

The Honorable Richard B. Ulmer Jr., Superior Court of the State of California, County of San Francisco (May 10, 2019): The Court finds that (a) the Full Notice, Email Notice, and Publication constitute the best notice practicable under the circumstances, (b) they constitute valid, due, and sufficient notice to all members of the Class, and (c) they comply fully with the requirements of California Code of Civil Procedure section 382, California Rules of Court 3.766 and 3.769, the California and United States Constitutions, and other applicable law.

COLE, ET AL. v. NIBCO, INC.**Case No. 3:13-cv-07871**

The Honorable Freda L. Wolfson, United States District Court, District of New Jersey (April 11, 2019): The record shows, and the Court finds, that the Notice Plan has been implemented in the manner approved by the Court in its Preliminary Approval Order. The Court finds that the Notice Plan constitutes: (i) the best notice practicable to the Settlement Class under the circumstances; (ii) was reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of this..., (iii) due, adequate, and sufficient notice to all Persons entitled to receive notice; and (iv) notice that fully satisfies the requirements of the United States Constitution (including the Due Process Clause), Fed. R. Civ. P. 23, and any other applicable law.

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DIFRANCESCO, ET AL. v. UTZ QUALITY FOODS, INC.

Case No. 1:14-cv-14744

The Honorable Douglas P. Woodlock, United States District Court, District of Massachusetts (March 15, 2019): The Court finds that the Notice plan and all forms of Notice to the Class as set forth in the Settlement Agreement and Exhibits 2 and 6 thereto, as amended (the "Notice Program"), is reasonably calculated to, under all circumstances, apprise the members of the Settlement Class of the pendency of this action, the certification of the Settlement Class, the terms of the Settlement Agreement, and the right of members to object to the settlement or to exclude themselves from the Class. The Notice Program is consistent with the requirements of Rule 23 and due process, and constitutes the best notice practicable under the circumstances.

IN RE: CHRYSLER-DODGE-JEEP ECODIESEL MARKETING, SALES PRACTICES, AND PRODUCTS LIABILITY LITIGATION

Case No. 3:17-md-02777

The Honorable Edward M. Chen, United States District Court, Northern District of California (February 11, 2019): Also, the parties went through a sufficiently rigorous selection process to select a settlement administrator. See Proc. Guidance for Class Action Sett. ¶ 2; see also Cabraser Decl. ¶¶ 9-10. While the settlement administration costs are significant – an estimated \$1.5 million – they are adequately justified given the size of the class and the relief being provided.

In addition, the Court finds that the language of the class notices (short and long-form) is appropriate and that the means of notice – which includes mail notice, electronic notice, publication notice, and social media "marketing" – is the "best notice...practicable under the circumstances." Fed. R. Civ. P. 23(c)(2)(B); see also Proc. Guidance for Class Action Sett. ¶¶ 3-5, 9 (addressing class notice, opt-outs, and objections). The Court notes that the means of notice has changed somewhat, as explained in the Supplemental Weisbrot Declaration filed on February 8, 2019, so that notice will be more targeted and effective. See generally Docket No. 525 (Supp. Weisbrot Decl.) (addressing, inter alia, press release to be distributed via national newswire service, digital and social media marketing designed to enhance notice, and "reminder" first-class mail notice when AEM becomes available).

Finally, the parties have noted that the proposed settlement bears similarity to the settlement in the Volkswagen MDL. See Proc. Guidance for Class Action Sett. ¶ 11.

RYSEWYK, ET AL. v. SEARS HOLDINGS CORPORATION and SEARS, ROEBUCK AND COMPANY

Case No. 1:15-cv-04519

The Honorable Manish S. Shah, United States District Court, Northern District of Illinois (January 29, 2019): The Court holds that the Notice and notice plan as carried out satisfy the requirements of Rule 23(e) and due process. This Court has previously held the Notice and notice plan to be reasonable and the best practicable under the circumstances in its Preliminary Approval Order dated August 6, 2018. (Dkt. 191) Based on the declaration of Steven Weisbrot, Esq. of Angeion Group (Dkt. No. 209-2), which sets forth compliance with the Notice Plan and related matters, the Court finds that the multi-pronged notice strategy

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as implemented has successfully reached the putative Settlement Class, thus constituting the best practicable notice and satisfying due process.

MAYHEW, ET AL. v. KAS DIRECT, LLC, and S.C. JOHNSON & SON, INC.

Case No. 7:16-cv-06981

The Honorable Vincent J. Briccetti, United States District Court, Southern District of New York (June 26, 2018): In connection with their motion, plaintiffs provide the declaration of Steven Weisbrot, Esq., a principal at the firm Angeion Group, LLC, which will serve as the notice and settlement administrator in this case. (Doc. #101, Ex. F: Weisbrot Decl.) According to Mr. Weisbrot, he has been responsible for the design and implementation of hundreds of class action administration plans, has taught courses on class action claims administration, and has given testimony to the Judicial Conference Committee on Rules of Practice and Procedure on the role of direct mail, email, and digital media in due process notice. Mr. Weisbrot states that the internet banner advertisement campaign will be responsive to search terms relevant to “baby wipes, baby products, baby care products, detergents, sanitizers, baby lotion, [and] diapers,” and will target users who are currently browsing or recently browsed categories “such as parenting, toddlers, baby care, [and] organic products.” (Weisbrot Decl. ¶ 18). According to Mr. Weisbrot, the internet banner advertising campaign will reach seventy percent of the proposed class members at least three times each. (Id. ¶ 9). Accordingly, the Court approves of the manner of notice proposed by the parties as it is reasonable and the best practicable option for confirming the class members receive notice.

IN RE: OUTER BANKS POWER OUTAGE LITIGATION

Case No. 4:17-cv-00141

The Honorable James C. Dever III, United States District Court, Eastern District of North Carolina (May 2, 2018): The court has reviewed the proposed notice plan and finds that the notice plan provides the best practicable notice under the circumstances and, when completed, shall constitute fair, reasonable, and adequate notice of the settlement to all persons and entities affected by or entitled to participate in the settlement, in full compliance with the notice requirements of Fed. R. Civ. P. 23(c)(2)(B) and due process. Thus, the court approves the proposed notice plan.

GOLDEMBERG, ET AL. v. JOHNSON & JOHNSON CONSUMER COMPANIES, INC.

Case No. 7:13-cv-03073

The Honorable Nelson S. Roman, United States District Court, Southern District of New York (November 1, 2017): Notice of the pendency of the Action as a class action and of the proposed Settlement, as set forth in the Settlement Notices, was given to all Class Members who could be identified with reasonable effort, consistent with the terms of the Preliminary Approval Order. The form and method of notifying the Class of the pendency of the Action as a class action and of the terms and conditions of the proposed Settlement met the requirements of Rule 23 of the Federal Rules of Civil Procedure, due process, and any other applicable law in the United States. Such notice constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

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***HALVORSON v. TALENTBIN, INC.*****Case No. 3:15-cv-05166**

The Honorable Joseph C. Spero, United States District Court, Northern District of California (July 25, 2017): The Court finds that the Notice provided for in the Order of Preliminary Approval of Settlement has been provided to the Settlement Class, and the Notice provided to the Settlement Class constituted the best notice practicable under the circumstances, and was in full compliance with the notice requirements of Rule 23 of the Federal Rules of Civil Procedure, due process, the United States Constitution, and any other applicable law. The Notice apprised the members of the Settlement Class of the pendency of the litigation; of all material elements of the proposed settlement, including but not limited to the relief afforded the Settlement Class under the Settlement Agreement; of the res judicata effect on members of the Settlement Class and of their opportunity to object to, comment on, or opt-out of, the Settlement; of the identity of Settlement Class Counsel and of information necessary to contact Settlement Class Counsel; and of the right to appear at the Fairness Hearing. Full opportunity has been afforded to members of the Settlement Class to participate in the Fairness Hearing. Accordingly, the Court determines that all Final Settlement Class Members are bound by this Final Judgment in accordance with the terms provided herein.

IN RE: ASHLEY MADISON CUSTOMER DATA SECURITY BREACH LITIGATION**MDL No. 2669/Case No. 4:15-md-02669**

The Honorable John A. Ross, United States District Court, Eastern District of Missouri (July 21, 2017): The Court further finds that the method of disseminating Notice, as set forth in the Motion, the Declaration of Steven Weisbrot, Esq. on Adequacy of Notice Program, dated July 13, 2017, and the Parties' Stipulation—including an extensive and targeted publication campaign composed of both consumer magazine publications in *People* and *Sports Illustrated*, as well as serving 11,484,000 highly targeted digital banner ads to reach the prospective class members that will deliver approximately 75.3% reach with an average frequency of 3.04—is the best method of notice practicable under the circumstances and satisfies all requirements provided in Rule 23(c)(2)(B) and all Constitutional requirements including those of due process.

The Court further finds that the Notice fully satisfies Rule 23 of the Federal Rules of Civil Procedure and the requirements of due process; provided, that the Parties, by agreement, may revise the Notice, the Claim Form, and other exhibits to the Stipulation, in ways that are not material or ways that are appropriate to update those documents for purposes of accuracy.

TRAXLER, ET AL. v. PPG INDUSTRIES INC., ET AL.**Case No. 1:15-cv-00912**

The Honorable Dan Aaron Polster, United States District Court, Northern District of Ohio (April 27, 2017): The Court hereby approves the form and procedure for disseminating notice of the proposed settlement to the Settlement Class as set forth in the Agreement. The Court finds that the proposed Notice Plan contemplated constitutes the best notice practicable under the circumstances and is reasonably calculated, under the circumstances, to apprise

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Settlement Class Members of the pendency of the Action and their right to object to the proposed settlement or opt out of the Settlement Class in full compliance with the requirements of applicable law, including the Due Process Clause of the United States Constitution and Rules 23(c) and (e). In addition, Class Notice clearly and concisely states in plain, easily understood language: (i) the nature of the action; (ii) the definition of the certified Settlement Class; (iii) the claims and issues of the Settlement Class; (iv) that a Settlement Class Member may enter an appearance through an attorney if the member so desires; (v) that the Court will exclude from the Settlement Class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3).

IN RE: THE HOME DEPOT, INC., CUSTOMER DATA SECURITY BREACH LITIGATION **Case No. 1:14-md-02583**

The Honorable Thomas W. Thrash Jr., United States District Court, Northern District of Georgia (March 10, 2017): The Court finds that the form, content, and method of giving notice to the settlement class as described in the settlement agreement and exhibits: (a) constitute the best practicable notice to the settlement class; (b) are reasonably calculated, under the circumstances, to apprise settlement class members of the pendency of the action, the terms of the proposed settlement, and their rights under the proposed settlement; (c) are reasonable and constitute due, adequate, and sufficient notice to those persons entitled to receive notice; and (d) satisfy the requirements of Federal Rule of Civil Procedure 23, the constitutional requirement of due process, and any other legal requirements. The Court further finds that the notice is written in plain language, uses simple terminology, and is designed to be readily understandable by settlement class members.

ROY v. TITFLEX CORPORATION t/a GASTITE and WARD MANUFACTURING, LLC **Case No. 384003V**

The Honorable Ronald B. Rubin, Circuit Court for Montgomery County, Maryland (February 24, 2017): What is impressive to me about this settlement is in addition to all the usual recitation of road racing litanies is that there is going to be a) public notice of a real nature and b) about a matter concerning not just money but public safety and then folks will have the knowledge to decide for themselves whether to take steps to protect themselves or not. And that's probably the best thing a government can do is to arm their citizens with knowledge and then the citizens can make decision. To me that is a key piece of this deal. ***I think the notice provisions are exquisite*** [emphasis added].

IN RE: LG FRONT LOADING WASHING MACHINE CLASS ACTION LITIGATION **Case No. 2:08-cv-00051**

The Honorable Madeline Cox Arleo, United States District Court, District of New Jersey (June 17, 2016): This Court further approves the proposed methods for giving notice of the Settlement to the Members of the Settlement Class, as reflected in the Settlement Agreement and the joint motion for preliminary approval. The Court has reviewed the notices attached as exhibits to the Settlement, the plan for distributing the Summary Notices to the Settlement Class, and the plan for the Publication Notice's publication in print periodicals and on the internet, and finds that the Members of the Settlement Class will

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receive the best notice practicable under the circumstances. The Court specifically approves the Parties' proposal to use reasonable diligence to identify potential class members and an associated mailing and/or email address in the Company's records, and their proposal to direct the ICA to use this information to send absent class members notice both via first class mail and email. The Court further approves the plan for the Publication Notice's publication in two national print magazines and on the internet. The Court also approves payment of notice costs as provided in the Settlement. The Court finds that these procedures, carried out with reasonable diligence, will constitute the best notice practicable under the circumstances and will satisfy.

FENLEY v. APPLIED CONSULTANTS, INC.

Case No. 2:15-cv-00259

The Honorable Mark R. Hornak, United States District Court, Western District of Pennsylvania (June 16, 2016): The Court would note that it approved notice provisions of the settlement agreement in the proceedings today. That was all handled by the settlement and administrator Angeion. The notices were sent. The class list utilized the Postal Service's national change of address database along with using certain proprietary and other public resources to verify addresses. the requirements of Fed.R.Civ.P. 23(c)(2), Fed.R.Civ.P. 23(e) (l), and Due Process....

The Court finds and concludes that the mechanisms and methods of notice to the class as identified were reasonably calculated to provide all notice required by the due process clause, the applicable rules and statutory provisions, and that the results of ***the efforts of Angeion were highly successful and fulfilled all of those requirements*** [emphasis added].

FUENTES, ET AL. v. UNIRUSH, LLC d/b/a UNIRUSH FINANCIAL SERVICES, ET AL.

Case No. 1:15-cv-08372

The Honorable J. Paul Oetken, United States District Court, Southern District of New York (May 16, 2016): The Court approves, as to form, content, and distribution, the Claim Form attached to the Settlement Agreement as Exhibit A, the Notice Plan, and all forms of Notice to the Settlement Class as set forth in the Settlement Agreement and Exhibits B-D, thereto, and finds that such Notice is the best notice practicable under the circumstances, and that the Notice complies fully with the requirements of the Federal Rules of Civil Procedure. The Court also finds that the Notice constitutes valid, due and sufficient notice to all persons entitled thereto, and meets the requirements of Due Process. The Court further finds that the Notice is reasonably calculated to, under all circumstances, reasonably apprise members of the Settlement Class of the pendency of the Actions, the terms of the Settlement Agreement, and the right to object to the settlement and to exclude themselves from the Settlement Class. The Parties, by agreement, may revise the Notices and Claim Form in ways that are not material, or in ways that are appropriate to update those documents for purposes of accuracy or formatting for publication.

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***IN RE: WHIRLPOOL CORP. FRONTLOADING WASHER PRODUCTS LIABILITY LITIGATION*****MDL No. 2001/Case No. 1:08-wp-65000**

The Honorable Christopher A. Boyko, United States District Court, Northern District of Ohio (May 12, 2016): The Court, having reviewed the proposed Summary Notices, the proposed FAQ, the proposed Publication Notice, the proposed Claim Form, and the proposed plan for distributing and disseminating each of them, finds and concludes that the proposed plan for distributing and disseminating each of them will provide the best notice practicable under the circumstances and satisfies all requirements of federal and state laws and due process.

SATERIALE, ET AL. v. R.J. REYNOLDS TOBACCO CO.**Case No. 2:09-cv-08394**

The Honorable Christina A. Snyder, United States District Court, Central District of California (May 3, 2016): The Court finds that the Notice provided to the Settlement Class pursuant to the Settlement Agreement and the Preliminary Approval Order has been successful, was the best notice practicable under the circumstances and (1) constituted notice that was reasonably calculated, under the circumstances, to apprise members of the Settlement Class of the pendency of the Action, their right to object to the Settlement, and their right to appear at the Final Approval Hearing; (2) was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to receive notice; and (3) met all applicable requirements of the Federal Rules of Civil Procedure, Due Process, and the rules of the Court.

FERRERA, ET AL. v. SNYDER'S-LANCE, INC.**Case No. 0:13-cv-62496**

The Honorable Joan A. Lenard, United States District Court, Southern District of Florida (February 12, 2016): The Court approves, as to form and content, the Long-Form Notice and Short-Form Publication Notice attached to the Memorandum in Support of Motion for Preliminary Approval of Class Action Settlement as Exhibits 1 and 2 to the Stipulation of Settlement. The Court also approves the procedure for disseminating notice of the proposed settlement to the Settlement Class and the Claim Form, as set forth in the Notice and Media Plan attached to the Memorandum in Support of Motion for Preliminary Approval of Class Action Settlement as Exhibits G. The Court finds that the notice to be given constitutes the best notice practicable under the circumstances, and constitutes valid, due, and sufficient notice to the Settlement Class in full compliance with the requirements of applicable law, including the Due Process Clause of the United States Constitution.

IN RE: POOL PRODUCTS DISTRIBUTION MARKET ANTITRUST LITIGATION**MDL No. 2328/Case No. 2:12-md-02328**

The Honorable Sarah S. Vance, United States District Court, Eastern District of Louisiana (December 31, 2014): To make up for the lack of individual notice to the remainder of the class, the parties propose a print and web-based plan for publicizing notice. The Court welcomes the inclusion of web-based forms of communication in the plan. The Court finds that the proposed method of notice satisfies the requirements of Rule 23(c)(2)(B) and due process. The direct emailing of notice to those potential class members for whom Hayward and Zodiac have a valid email address, along with publication of notice in print and on the web, is reasonably calculated to apprise class members of the settlement. Moreover, the

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plan to combine notice for the Zodiac and Hayward settlements should streamline the process and avoid confusion that might otherwise be caused by a proliferation of notices for different settlements. Therefore, the Court approves the proposed notice forms and the plan of notice.

SOTO, ET AL. v. THE GALLUP ORGANIZATION, INC.

Case No. 0:13-cv-61747

The Honorable Marcia G. Cooke, United States District Court, Southern District of Florida (June 16, 2015): The Court approves the form and substance of the notice of class action settlement described in ¶ 8 of the Agreement and attached to the Agreement as Exhibits A, C and D. The proposed form and method for notifying the Settlement Class Members of the settlement and its terms and conditions meet the requirements of Fed. R. Civ. P. 23(c)(2)(B) and due process, constitute the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons and entities entitled to the notice. The Court finds that the proposed notice is clearly designed to advise the Settlement Class Members of their rights.

OTT v. MORTGAGE INVESTORS CORPORATION OF OHIO, INC.

Case No. 3:14-cv-00645

The Honorable Janice M. Stewart, United States District Court, District of Oregon (July 20, 2015): The Notice Plan, in form, method, and content, fully complies with the requirements of Rule 23 and due process, constitutes the best notice practicable under the circumstances, and is due and sufficient notice to all persons entitled thereto. The Court finds that the Notice Plan is reasonably calculated to, under all circumstances, reasonably apprise the persons in the Settlement Class of the pendency of this action, the terms of the Settlement Agreement, and the right to object to the Settlement and to exclude themselves from the Settlement Class.

