IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ROBERT THOMAS, SCOTT PATRICK HARRIS, MICHAEL BELL, SANDRA PALUMBO, FRANK KARBARZ, and THOMAS DAVIS on behalf of themselves and all others similarly situated, Plaintiffs, v. LENNOX INTERNATIONAL, INC., Defendant.	Case No. 1:13-cv-07747 Hon. Sara L. Ellis Class Action

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THE MOTION FOR CERTIFICATION OF THE SETTLEMENT CLASS AND FINAL APPROVAL OF THE SETTLEMENT

TABLE OF CONTENTS

I. INTRODUCTION

Plaintiffs, on behalf of themselves and all other members of the proposed settlement class, respectfully submit this Memorandum of Law in support of their Motion for Final Approval of the Settlement Agreement, as set forth in the Stipulation and Agreement of Settlement ("Settlement Agreement" or "Settlement") between Plaintiffs and Defendant Lennox Industries Inc. ("Lennox" or "Defendant"), as fair, reasonable and adequate pursuant to Federal Rule of Civil Procedure 23. To facilitate the Settlement, Plaintiffs also ask the Court to certify for settlement purposes only the provisionally certified Settlement Class (the "Class"), appoint Plaintiffs as the Class representatives, appoint Jonathan Shub of Kohn, Swift & Graf, P.C. and Jeffrey Leon of Quantum Legal Group as Lead Class Counsel, and find that the Parties' dissemination and publication of the previously approved notice to the members of the Settlement Class (the "Notice") comports with due process.

This litigation concerns uncoated copper evaporator coils manufactured by Lennox (the "Coils") and installed in Class Members' homes as part of their climate cooling systems. Plaintiffs allege that the Coils are defective because they are susceptible to formicary corrosion that can cause the Coils to leak refrigerant. Lennox denies that the Coils are defective and maintains that formicary corrosion is rare and that when it does occur it is typically the result of unique concentrations of various chemicals found and used in individual homes, including construction materials and household cleaners. Nevertheless, after considerable discussions, negotiations, four mediation sessions, information exchanges and discovery, Plaintiffs and Lennox entered into the Settlement Agreement to resolve the claims of Plaintiffs and the Settlement Class. The Court preliminarily approved the Settlement Agreement in an order dated July 9, 2015.

The Settlement provides all Settlement Class Members with relief. Every single one of the nearly 3.2 million class members receives the broad protective benefits of the Settlement, which operates much like an extended warranty program. Any Class member whose Original or Replacement Coil fails while it is covered by either the Original Warranty or the newly created Replacement Coil Warranty will be able to claim benefits that exceed those available under their existing Original Warranties.. The Settlement is not merely a mechanism to award benefits for past Coil failures; it is forward looking protection given to all Class Members for up to ten years. There is no need to file a claims form to obtain this enhanced protection, it is built into the Settlement's structure.. Of course, if a Coil has failed, or in fails in the future, the Class Member must submit a timely Claim Form or Request for Benefits. But the Program itself is something provided automatically upon final approval.

In addition to this forward looking benefit, the Settlement provides benefits to Class members who have already suffered coil failures on a claims-made basis. The Expanded Warranty and Reimbursement Program includes: (1) a one-time $75 service rebate to help defray the cost for future service or maintenance on the system; (2) an aluminum or coated copper replacement Coil after the first replacement; (3) up to $550 as reimbursement for labor and refrigerant charges for each replacement after the first replacement; and (4) up to $550 as a retroactive reimbursement for labor and refrigerant charges for the first replacement of the original Coil in the event there are repeat failures. These benefits are available to Class Members who have experienced or will in the future experience a Coil failure without regard to whether their coil failure was caused by formicary corrosion or some other cause. The Settlement thus covers the entire Class with respect to past and future Coil failures, without any

need to prove the cause of the Coil failure, and it provides significant labor reimbursement not provided under existing Original Warranty coverage (which expressly excludes labor).

The Settlement is adequate, fair and reasonable and delivers to the Class meaningful relief and future protection, without having to assume the legal risks of proceeding forward. Plaintiffs respectfully submit that final approval of the Settlement and certification of the Class is appropriate.

II. FACTUAL BACKGROUND, PROCEDURAL BACKGROUND, SETTLEMENT NEGOTIATIONS AND NOTICE

Lennox manufactures uncoated copper evaporator Coils, a critical part of air conditioning systems. Lennox sells evaporator Coils separately, as part of an air handler, or as part of a packaged unit under various brands.[1] Lennox does not sell directly to homeowners and Lennox does not install or repair its products. Evaporator coils remove heat from air passing across their tubing, which contains refrigerant. Lennox has traditionally used and continues to use copper for the tubing. Although Lennox does sell some evaporator coils with aluminum tubing, Lennox maintains that there are advantages and disadvantages to both copper and aluminum.

Evaporator coils occasionally leak refrigerant for a number of reasons, including manufacturing defects, improper installation, and several forms of corrosion. This lawsuit concerns one type of corrosion, formicary corrosion, which affects uncoated copper evaporator coils. Aluminum tube evaporator coils are not subject to formicary corrosion. Formicary corrosion results from a chemical reaction between copper, oxygen, water, and organic acids. Common sources of these organic acids include adhesives, plywood, particle boards, laminates, paints, foam insulation, cleaning solvents and disinfectants. As homes have been built with

[1] The brands covered by the Settlement are: Lennox; Air-Flo; Armstrong Air; AirEase, Ducane; and Concord.

greater insulation, they have become less 'breathable,' so that these organic acids may accumulate in sufficiently high concentrations to cause coils to corrode. When this occurs, microscopic pits and pores may damage the structural integrity of the copper tubing, leading to refrigerant leakage.

When refrigerant leaks from a coil, the cause is typically difficult to ascertain. Defective welding seams and small holes are sometimes apparent through careful observation, but many causes go undiagnosed. Formicary corrosion is extremely difficult to detect because the tiny pinholes it produces are not visible to the naked eye. Consequently, coils must be removed from the system and expensive microscopy must be employed to examine each coil, in order to rule out other possible causes and identify the characteristic, interconnecting "ant's nest" pitting unique to formicary corrosion.

Although difficult to diagnose, formicary corrosion manifests relatively quickly, typically within one to four years after a coil's installation.[2] Moreover, because the source of the corrosion may persist in the environment in which the coil is installed, replacement coils may also fail at higher than expected rates. These probabilities do not definitively pinpoint formicary corrosion as the cause of any particular coil's failure, but air conditioning systems with multiple coil failures within five years of each coil's installation may indicate the possibility of the existence of environmental conditions that create a risk of formicary corrosion. Plaintiffs and Defendant have, therefore, agreed for purposes of the Settlement that an air conditioning system that has experienced more than one Coil failure, with each Coil failing within five years of installation, shall be a proxy for formicary corrosion, the sole cause of Coil failure alleged in the

[2] *See, e.g.*, Carrier Corporation, *Industry Research Report: Indoor Coil Corrosion, Identifying Common Sources*, at 1 (last retrieved on October 4, 2010 from http://www.hydro-temp.com/help/drawings/Formicary_Corrosion.pdf).

Complaint to constitute a product defect. As explained below, these criteria are, thus, critical aspects of the Settlement's structure.

Generally, a leaking coil must be replaced for the air conditioning system to function properly. The Lennox manufacturer's limited warranty ("Original Warranty") covers evaporator coils for five years from the date of installation. Some models are covered by or eligible for a ten-year warranty. The Original Warranty is a parts only warranty and expressly limits the remedy for any defective part to a free replacement part. No coverage for labor is provided. The warranty also expressly excludes coverage for corrosion and further excludes all implied warranties and any other express warranties. Thus, even when the Coil is still under the Original Warranty (entitling the homeowner to a free replacement Coil), a homeowner can incur hundreds of dollars in labor and refrigerant costs to replace the Coil if she or he has not purchased a separate labor warranty. Some homeowners may have to replace defective Coils more than once, incurring additional replacement costs each time. Moreover, replacement Coils are not provided with any separate warranty; instead, warranty coverage for a replacement Coil is limited to whatever period of time, if any, remains on the Original Warranty.

Plaintiffs filed their Complaint on October 29, 2013, alleging that the Coils are defective because they are susceptible to formicary corrosion. The Complaint alleges, among other things, that Lennox knew, or had reason to know, of this product defect and that it failed to notify homeowners of the problem or to provide adequate warranty service to address it. The Complaint asserts claims for breach of express and implied warranty, and seeks declaratory, compensatory, and other forms of relief.

Plaintiffs filed an Amended Complaint on January 14, 2014, and Lennox filed its Answer on March 28, 2014, denying Plaintiffs' allegations. On April 3, 2014, the Court entered a

scheduling order that, among other things, established a May 15, 2015 deadline for Plaintiffs' motion for class certification. On April 23, 2014, the Court appointed Jonathan Shub and Jeffrey Leon as Interim Class Counsel.

Around the time the Court established the pretrial schedule and appointed Interim Class Counsel, the parties began more than a year of information exchanges, discussions, negotiations[3] and mediation.[4] In addition, during that period Interim Class Counsel continued their independent investigation of the problem of defective Coils, including engaging the services of an expert and researching available literature on formicary corrosion. The entire process was arms-length and, indeed, adversarial at times, leading to a mutual decision to replace the first mediator when, after three sessions, counsel for the parties were still struggling to find enough common ground to reach a mutually acceptable settlement agreement. After a fourth mediation, on January 7, 2015, Defendant circulated to Interim Class Counsel a Term Sheet providing the framework for extensive subsequent negotiations which ultimately led to the Settlement Agreement.

Defendant has always vigorously denied that the Coils are defective. Defendant maintains that the majority of the Class has not and never will experience a coil leak for any reason, much less due to formicary corrosion. Defendant maintains that Coil leakage can be caused by a number of conditions, and that Plaintiffs will be unable to prove at trial that formicary corrosion is the cause of the leaky Coils for all (or even most) Settlement Class Members. Some literature estimates that formicary corrosion is responsible for approximately

[3] There were in-person settlement negotiations on April 3, 2014 and October 13, 2014.
[4] There were three mediation sessions before the Honorable Richard Neville, on May 16, 2014, June 3, 2014, and August 26, 2014. A fourth and final mediation session was held on December 22, 2014 before the Honorable Edward Infante.

10% of early copper coil failures. Lennox estimates (based on a cumulative five-year weighted average) that the warranty claim rate for its evaporator coil leaks (due to any cause, including causes that have nothing to do with the coil, such as improper installation by dealers) is approximately 5.5%. Accordingly, Lennox would argue at trial that formicary corrosion would impact less than 0.6% of all of the Coils it sells. Lennox maintains that figure is consistent with data it has provided to Plaintiffs showing that the incidence rate of repeat Coil failures, which may tend to indicate an environmental issue that might implicate the possibility of formicary corrosion, is even lower.

Defendant also maintains that, in addition to being rare, formicary corrosion is not visible to the naked eye and thus cannot be positively identified without expensive, destructive laboratory testing on a Coil after it has been removed from the home. As a result, Defendant contends that Plaintiffs will face significant hurdles attempting to prove their case.

Moreover, because formicary corrosion is caused by high concentrations of organic acids emitted from household products and building materials, combined with high humidity, Defendant argues that formicary corrosion is not the result of an alleged defect, but rather depends on the individual circumstances and actions of each homeowner. Therefore, Defendant contends, individual issues would predominate if this case were to go to trial.

Defendant also challenges the viability of Plaintiffs' warranty claims, given that the manufacturer's limited warranty expressly excludes coverage for corrosion and labor costs. Additionally, as a nationwide consumer class action, the questions of law in this case will require an analysis of the many differences in state warranty laws and state consumer protection laws, casting doubt on whether class certification is appropriate. Lennox further maintains that

Plaintiffs will be unable to secure any expert whose opinion could withstand a *Daubert* challenge.

For these and other reasons, Lennox asserts that Plaintiffs will be unable to demonstrate that a class may be certified and, even if one were, that Plaintiffs will be unable to prove the merits of their claims. Defendant nevertheless wishes to avoid the uncertainties, burden and expense of continued litigation and wishes through the Settlement to put to rest the claims of Plaintiffs and the Class. Furthermore, Lennox asserts that it would rather find ways to assist and support its customers regarding this rare issue, than expend substantial time and money on litigation.

Plaintiffs strongly disagree with Defendant, and believe they have a convincing case that meets the requirements for class certification. After studying the literature, consulting an expert, reviewing publicly available data, reviewing data supplied by Lennox, and taking the deposition of the Vice President and General Manager of Lennox's residential business, Plaintiffs maintain that their claims are meritorious and that there is sufficient evidence to prove each element of their claims. Plaintiffs believe they can demonstrate that all uncoated copper Coils are defective insofar as they are all susceptible to formicary corrosion. However, Plaintiffs acknowledge that there are obstacles to certification and success on the merits, including the low incidence of formicary corrosion, the difficulty in proving formicary corrosion in any given case, challenges to causation, and the potential number and significance of individual issues. Given these and other risks inherent in litigation of this nature, Plaintiffs bear a broader responsibility to members of the Settlement Class to settle this litigation on meaningful terms that provide Settlement Class members with relief proportionate to the risk of experiencing a Coil leak due to formicary corrosion, rather than assume the risks of proceeding to trial.

On July 9, 2015 the Court held a hearing and entered an Order preliminarily approving the Settlement Agreement, provisionally certifying the Settlement Class, appointing Plaintiffs Settlement Class Representatives, appointing Interim Class Counsel as Settlement Class Counsel, and directing the parties to disseminate notice substantially in the forms and according to the plans set forth in the Motion for Preliminary Approval and its exhibits. With the assistance of their designated notice program expert and claims administrator, Kurtzman Carson Consultants, LLC ("KCC"), the parties disseminated a short-form notice, published a long-form notice, and otherwise complied with all aspects of the previously approved Notice Plan. As discussed in more detail below, and as set forth in the Declaration of Gina M. Intrepido-Bowden on Implementation and Overall Adequacy of Settlement Notice Plan ("Intrepido-Bowden Declaration"), attached hereto as Exhibit A, Plaintiffs submit that the Notice exceeded what due process requires and represents the best practicable Notice in light of all of the circumstances.

III. THE SETTLEMENT

The Settlement is structured to maximize benefits to the largest number of homeowners with covered Coils.[5] To that end, even though the Amended Complaint is directed at formicary corrosion, Lennox has agreed not to contest certification of the Settlement Class, and Class Members are alleviated of the burden of proving that formicary corrosion is the cause of their respective Coils' failure.

The Settlement creates an Expanded Warranty and Reimbursement Program (the "Program"). The Program is designed to provide labor reimbursements and expanded warranty coverage for those homeowners whose Coils may have leaked due to formicary corrosion and

[5] As described more completely below, the settlement covers all Coils installed in residential air conditioning systems during the Class Period, regardless of the particular system or installation configuration.

protection against future leaks. The Program consists of a rebate program, a replacement Coil warranty, and a reimbursement program.

The Program is necessarily over-inclusive because Lennox will not require homeowners to actually prove that their Coil leaked due to formicary corrosion. Such testing is costly, burdensome, and destructive in nature, and thus would prove unworkable for Lennox and the Settlement Class. Alternatively, the Program relies on a proxy for determining which homeowners may have formicary corrosion issues, namely those who experience a repeat failure (as multiple failures in the same home may indicate the possibility of the existence of environmental conditions that create a risk of formicary corrosion).[6]

Every person who is a resident of the United States and who purchased on or after October 29, 2007 through July 9, 2015 (the "Class Period") at least one Lennox brand, Aire-Flo brand, Armstrong Air brand, AirEase brand, Concord brand, or Ducane brand evaporator coil for their personal, their family or their household purposes, that was installed in a house, apartment or condominium unit or other residential dwelling located in the United States is a Class Member, regardless of whether their Coil was purchased separately or as part of an air handler or packaged unit. Because the Settlement Agreement concerns allegations of premature failure of defective Coils, the particular benefits to which a Class member is or may become entitled are keyed to the failure of one or more Coils. Likewise, the mechanics of the claims submission and administration process, including submission deadlines, are keyed to Coil failure and

[6] There is one exception to the two-leak proxy. As explained below, Settlement Class Members are eligible for a service rebate after their first Coil replacement. This accounts for the extremely low incidence of repeat Coil failures as well as the fact that some Settlement Class Members may receive an aluminum tube coil as their first replacement. The other benefits, including reimbursement for labor and refrigerant charges and an entitlement to an aluminum or coated copper tube Coil, require at least two Coil replacements.

Replacement Coil installation dates. The Settlement process may last for as long as ten years.[7] There is no cap on the number of claims Lennox will accept or the total aggregate amount of money it will expend to satisfy all timely and valid claims. The Settlement Agreement's benefits to Class members can be broken down, roughly, into five categories: (1) broad protections provided to every Class Member; (2) service rebates; (3) expanded warranty coverage for replacement coils; (4) reimbursement of labor and refrigerant costs; and (5) provision of special, corrosion-resistant replacement coils. In addition, Lennox will distribute information to its customers about the possible risk of formicary corrosion in uncoated copper tube Coils. Lennox has also undertaken to pay 100% of the costs of the Notice Program and Claims Administration process, and all of Plaintiffs' litigation expenses and attorneys' fees up to $1.25 million.[8]

A. Expansion of Original Warranty Coverage, New Replacement Coil Warranty Coverage and Corrosion-Resistant Replacement Coils

The Original Warranty provided with a Lennox air conditioning system covers parts, including Coils, for a period of five years (in some cases ten years) from the date the Coil was first installed. If the Coil fails, the homeowner is entitled to a free uncoated copper Replacement Coil. However, because the warranty is parts-only, the homeowner has to pay the labor and refrigerant costs for installation of the replacement Coil. Further, the Replacement Coil is only covered to the extent of the Original Warranty coverage; once the Original Warranty expires, the replacement Coil is no longer covered by a warranty. For example, if the Replacement Coil were

[7] As explained below, because of the new, five-year warranty on Replacement Coils, Class Members who purchased a new Lennox air conditioning system on July 9, 2015 (the last date of the Class Period), and whose system's Original Coil does not leak until precisely five years after installation, would receive a Replacement Coil covered by a five-year Replacement Coil Warranty, ensuring them continuous warranty coverage for up to ten years.

[8] Plaintiffs' application for attorneys' fees is being filed separately at the same time as their Motion for Final Approval of the Settlement.

installed in year four of a five-year Original Warranty period, and fails two or three years later, the homeowner would have to pay for both the cost of a Replacement Coil and the labor and refrigerant charges for its installation.

The Settlement substantially strengthens Original Warranty coverage by providing enhanced protections to each and every one of the nearly 3.5 million Class Members. The Settlement ensures that, if an Original Coil fails due to leakage while it is covered by an Original Warranty, and it is replaced by another uncoated copper Coil, that Replacement Coil is covered by a new, expanded five-year warranty (the "Replacement Coil Warranty") that runs from the Replacement Coil's installation date, rather than the date of the Original Coil's installation. If a Replacement Coil covered by the Replacement Coil Warranty fails within the new five-year period, the homeowner will be entitled to another free Replacement Coil, except this time the Coil will be made of coated copper tubes or aluminum tubes, both of which are more resistant to formicary corrosion than are uncoated copper tubes.[9] This is a significant benefit to Class Members who already have or will in the future suffer multiple Coil failures.

B. Service Rebates

Class members who replace or have replaced their Original Coil because of a leak within five years after it was installed and timely file claims are eligible for a $75 rebate certificate for service, including routine maintenance, performed after the date the rebate certificate is issued, on the replacement coil or any Lennox brand, Aire-Flo brand, Armstrong Air brand, AirEase brand, Concord brand, or Ducane brand HVAC products installed in the same residence as the replacement coil. This is not a coupon – it is a Rebate Certificate that, when

[9] As discussed above, a single Coil failure can be attributed to any of a number of causes and, thus, does not without more necessitate installation of a corrosion-resistant Replacement Coil.

redeemed, entitles the Settlement Class member to a $75 check from Lennox. Indeed, the Rebate is for service or maintenance performed by an independent Lennox dealer, so, unlike coupons, Lennox receives no benefit from this aspect of the program, which is to Lennox strictly a Settlement expense. The Rebate is a valuable Settlement benefit. Routine maintenance is required under the terms of the Original Warranty to preserve that warranty, and it helps prevent and identify problems before a Coil fails. Thus, the rebate is intended to promote preventative maintenance and defray part of the costs the homeowner should already be incurring; it does not encourage additional spending. The rebate, therefore, is both a direct financial benefit to the homeowner, and an incentive to bring in a qualified professional to look for early warning signs of potential future problems.

Therefore, Plaintiffs believe that both the number of Class members who request this benefit and the redemption rates of the Rebate Certificates themselves will be relatively high. Plaintiffs hope this will also contribute to a higher number of subsequent claims or requests for Settlement benefits made by Class members, because fewer leaking Coils will go undetected beyond the applicable Class Period.

C. Coil Installation Cost Reimbursement

The Settlement Agreement sets forth terms and conditions governing circumstances in which Lennox is obligated now and in the future to reimburse Class members for labor and refrigerant costs related to the installation of Replacement Coils. For this purpose, a distinction is drawn: Coils installed to replace Original Coils are known as “First Replacement Coils,” while Coils installed to replace First Replacement Coils are known simply as “Replacement Coils” (as are subsequent Coils replacing Replacement Coils).

If a Class member qualifies for reimbursement of Replacement Coil installation costs, Lennox will pay the Settlement Class member's actual costs for labor and refrigerant up to a maximum of $550.

Whether (and when) a Class member is entitled to coil installation cost reimbursement is dependent upon how many Coil failures that Class member has experienced. Again, this is intended to serve as a proxy for the probability of formicary corrosion causing any particular Coil failure. No Class member who experiences one, and only one, Original Coil leak during the Original Warranty's five-year period will receive any Replacement Coil installation cost reimbursement. A Class Member who experiences just one leak and submits a timely claim, however, will receive the $75 service or maintenance rebate, and the First Replacement Coil will be covered by the new five-year Replacement Coil Warranty. Thus, even those Class members who experience only one leak and whose Original Warranties cover their Original Coil failures will receive additional valuable benefits from the Settlement without the need for prohibitively expensive testing to determine the cause of their Original Coil's failure.

A Class member whose First Replacement Coil then fails within five years of its installation, also becomes eligible for installation cost reimbursement under the Settlement. Every Class Member who had to replace one or more than one Replacement Coil prior to the date of Preliminary Approval can submit a claim for reimbursement of their actual labor and refrigerant costs up to a maximum of $550 *for each* Replacement Coil installation. Furthermore, if a Class member has to replace a Replacement Coil, and the Class member first replaced the Original Coil more than one year but less than or equal to five years after its installation, that Settlement Class member may also submit a claim for retroactive reimbursement for the cost of replacing their Original Coil with the First Replacement Coil, which will be paid out on the same

basis of actual costs up to the maximum of $550.[10] In this way, the Settlement Agreement retroactively confers upon these Class Members added benefits commensurate with the increased probability that the environment in which their Coils are installed presents a risk of formicary corrosion.

Finally, every Class member who replaces a Replacement Coil during the effective period of their Replacement Coil Warranty, and who thus receives a coated copper tube or aluminum tube Replacement Coil, is entitled to the same benefit of reimbursement of up to $550 for installation of the coated copper tube or aluminum tube Replacement Coil.

The Settlement thus provides a plan of relief that will last up to ten years.[11] The Settlement claims administration process will not be discontinued until the last benefits have been provided after the expiration of the time in which to make a request for benefits pursuant to the last-issued Replacement Coil Warranty. A Court-appointed Settlement Administrator will be responsible for administering all claims submitted through February 1, 2016, the first phase of the process, and then Lennox will be responsible for the continued administration of the program, always under the supervision of Class Counsel and subject to the Court's continuing jurisdiction. Lennox will bear all of the costs of administering the claims program through its termination.

IV. NOTICE AND CLAIMS PROGRAMS

A. Notice Plan

[10] Labor costs for replacement within the first year of installation of the Original Coil are generally covered by the dealer in accordance with industry practice.

[11] For example, if a homeowner purchased an Original Coil on the Preliminary Approval Date, and if that Original Coil is first replaced with an uncoated copper Coil five years after installation, the replacement Coil would be covered for up to five years under the Replacement Coil Warranty.

The Notice Plan previously approved by the Court was administered by KCC, the Notice Expert approved by the Court. Notice was implemented using several forms that were designed to maximize the probability of reaching all or substantially all Class members, as well as increasing the likelihood that a significant number will timely submit claims. The forms of notice included:

a. Direct U.S. first class mail notice to more than 988,800 recipients -- all persons that Defendant and Plaintiffs identified in Defendant's records as likely falling within the Class definition and for whom postal addresses were available. Defendant does not sell directly to the general public and, therefore, does not have records for all purchasers of the covered products. However, Defendant does have records of purchasers who have filed a warranty claim or registered their product, which were used to reach a significant number of Class Members.[12]

b. Publication of Notice in the October 2015 issue of *Cooking Light* magazine (on sale September 11, 2015), with a circulation of 1,788,528 and an adult audience of 11,131,000, and the August 31, 2015 issue of *People* magazine (on sale August 21, 2015), with a circulation of 3,537,318 and an adult audience of 42,726,000. These periodicals were chosen by the Notice Expert because their readership is likely to include many Class Members.[13]

c. Online notice, including banner ads, a dedicated Settlement Website, and information about the Settlement on the websites of the covered brands, each with a link to the Settlement Website. According to the Notice Expert, as of September 11, 2015, a total of 127,288,655 unique internet banner impressions were delivered, reaching approximately 62 percent of the Settlement Class.[14] In addition, there have already been 98,800 unique visitors to the Settlement Website; 16,123 downloads of the claim form; 18,139 online claim submissions submitted claims; and uploads of supporting documentation for 10,788 unique individual claims.[15]

d. Communication about the settlement by Lennox to independent dealers via DaveNet (a closed system used by Lennox to provide information to dealers,

[12] Of the approximately 988,800 total, approximately 38,000 were ultimately undeliverable, leaving 950,067 as the total number of Postcard Notices that the Notice Administrator believes to have been successfully delivered to Settlement Class Members. *Intrepido-Bowden Declaration*, at ¶ 9.
[13] *See Intrepido-Bowden Declaration*, at ¶ 10, 11.
[14] *Id.*, at ¶ 12.
[15] *Id.*, at ¶ 14.

including information relating to parts, pricing, and warranty coverage) and via email to Allied distributors. Declaration of Gary Bedard, attached hereto as Exhibit B.

e. An automated telephone hotline maintained by the Settlement Administrator, providing information concerning the Settlement, the web address for the Settlement Website, and a means to order copies of the notice and other Settlement related documents. As of October 30, 2015, there were 61,624 calls to the Settlement hotline, of which 16,139 requested delivery of the Notice.[16]

f. Notice to appropriate government officials in all 50 states, in compliance with the Class Action Fairness Act 28 U.S.C. § 1715. As of October 30, 2015, Counsel have received inquiries and discussed the Settlement with representatives of the Attorneys General for Texas and California. None have registered an objection to the Settlement Agreement to date.[17]

Notice was first given to the Settlement Class with the mailing of the first Postcard Notices on August 17, 2015. Of the 988,859 Postcard Notices mailed, 15,885 were returned by the Postal Service with forwarding addresses and remailed, 78,093 were returned with no forwarding address and processed by KCC, and 39,340 were successfully updated and remailed. Thus, based on a class size of approximately 2.9 million, the individual mailing effort reached approximately 32.8% of the Settlement Class. Based on a class size of approximately 3.2 million, the individual mailing effort reached approximately 29.7% of the Settlement Class.[18]

On August 14, 2015, the Settlement Hotline and the Settlement Website went live. On August 19, 2015 Lennox published information about the Settlement on the websites of the covered brands, each with a link to the Settlement Website.[19] The links were placed on pages containing warranty information to increase the probability that class Members experiencing

[16] *Id.*, at ¶ 15.
[17] *Id.*, at ¶ 5.
[18] The reach of the mailed notice is calculated by dividing the total number of successful mailings (950,067) by the total estimated class size (2.9 million or 3.2 million).
[19] *Bedard Declaration*, at ¶ 5.

leaks would find the information. Additionally, KCC has maintained an email address to which Settlement Class Members may send information inquiries.[20]

The Settlement Website itself has several components. At this website, Settlement Class Members were and are able to download a Notice, Claim Form, Settlement Agreement, Preliminary Approval Order, Amended Class Action Complaint, and Defendant's Answer to Plaintiffs' Amended Class Action Complaint. The Settlement Website has readily available short-form and long-form Notices, general information and explanations, and a section containing frequently asked questions and answers compiled or approved by Counsel. As potential Class Members made inquiries, the FAQ was revised to respond to trending questions, in order to improve the quantity and quality of available information for all Class Members.[21] As mentioned above, as of October 30, 2015, there were more than 98,800 unique visitors to the Settlement Website.

Finally, the Notice has provided Class Members with information on how, when and where to object to the Settlement. The Notice also provided instructions on how to opt-out of the Settlement and the deadline for doing so. Counsel will address objections and opt-outs in a subsequent filing with the Court after the November 11, 2015 deadline for submitting them. As of October 30, 2015, only 70 exclusions and 15 objections were received. As of the same date, 27,642 claims have been submitted through the mail, forms uploaded to the Settlement Website, and electronic claims submissions completed on the Website.

B. Claims Process

[20] As of October 30, 2015, approximately 5,800 emails had been received.
[21] *Intrepido-Bowden Declaration*, at ¶ 13, 14.

No Class Member has been or is required to submit a Claim Form until his or her eligibility for a benefit under the Settlement becomes ripe. Class members must submit claims by the later of February 1, 2016 or 60 days after the replacement of their Original Coil. Accordingly, Class Members who have not yet experienced a leak have the option to file a claim now or can wait until they replace their Original Coil. This flexibility makes it easier for Class Members to submit a claim and is consistent with the Settlement framework, which is designed to provide coverage to all Class Members if and when their Coil fails. Claim Forms can be submitted online or through the mail along with supporting documentation. Upon validation by the Claim Administrator, and pending Final Approval, those Settlement Class members will receive a Certificate of benefits (described below). Those Class Members that have already replaced their Original Coil will also receive the $75 Rebate Certificate.

Claim forms themselves are available through several means, including: (1) a toll-free telephone number established for the purpose of and dedicated to the Settlement claims process; (2) a postal address to which Class Members may send requests for Claim Forms; and (3) the Settlement Website, which offers both an online and a downloadable Claim Form. Class Members have the option of either mailing completed Claim Forms (along with supporting documentation), or filling out the online Claim Form and either uploading or mailing supporting materials to the Settlement Administrator.

As of October 30, 2015, 27,642 Claim Forms have been submitted. Of these, 18,139 submissions were via the Settlement Website's online form, and 9,503 were downloaded, filled out and mailed back to the Settlement Administrator. Because the Settlement covers replacements that have yet to occur and because Class Members have until sixty days after replacement of their Original Coil to submit a valid Claim Form, Plaintiffs do not know at this

time, and will not know for approximately five years, how many valid Claims will ultimately be submitted.[22] Given that Class Members whose Original Coil has already been replaced still have several months before the deadline to submit their initial Claim Form, and other Class Members may have years before they experience an Original Coil failure necessitating the submission of a Claim Form, Plaintiffs believe the number of early claims submissions to be a measure of success of the Notice Program and a significant measure of acceptance of the Settlement by the Class as fair, reasonable and adequate.

For each Class Member who submits a timely and valid Claim Form, the Settlement Administrator or Lennox will provide the Class Member with a Certificate containing information on the benefits under the Expanded Warranty and Reimbursement Program, including benefits the Class Member may first become eligible for in the future, and instructions about when and how to request those benefits. Such requests will not require submission and verification of a new Claim Form, but rather can be made by simply filling out and mailing a Request for Benefits form (that will be provided with the Certificate), or by going online to the Settlement Website and filling out an electronic Request for Benefits form. Further, the Certificate will include a toll-free number to call if the Replacement Coil covered by the Replacement Coil Warranty leaks during the Replacement Coil Warranty's effective period, so that Lennox can more quickly arrange for delivery of a coated copper tube or aluminum tube replacement Coil.

The Settlement Agreement establishes procedures and criteria to protect the due process rights of all Class members. Those procedures include specific details for determining the validity of Claims; requirements that Class members whose claims are deemed invalid are

[22] And Requests for Benefits may be submitted for up to another five years beyond that.

contacted prior to final rejection and that steps be taken to assist those Class members in correcting deficient Claims, unless they are incurable; the right for Parties' Counsel to waive technical defects or formalities if they determine that doing so would achieve substantial justice; and a process for reviewing rejected claims and for rejected Claimants and Class Counsel to challenge denials of Claims, including through presentation of unresolved disputes to the Court (submission of a Claim Form will constitute consent to the Court's jurisdiction over the Claim and the Claimant), whose decisions on disputed Claims will be final and conclusive.

V. VALUATION OF THE SETTLEMENT

Because the Settlement is not a closed or limited fund, its value cannot be stated in simple or precise terms. The Settlement is open-ended with no cap, and it provides benefits to Coil failures that have not yet manifested. Thus Lennox will satisfy every valid claim submitted for past coil failures submitted through the claims process as well as future claims for coil failures without regard to the number of valid claimants. Lennox is also paying all of the costs of Settlement plan administration, which extends approximately ten years from July 9, 2015, the end of the Class Period. In addition, there are cash and non-cash components, as well as unknown variables with respect to future Coil failure rates and Claims submission rates, making quantification of the Settlement's value far more than a straightforward exercise in simple arithmetic.

Lennox has fairly robust data on warranty claims for Coil failures to date, but it does not have any way of identifying with certainty the number of actual Coil failures that Class Members have experienced because it only knows about failures reported to it, through such warranty claims. Lennox estimates there to be approximately 3.2 million Class Members, based upon unit sales records for coils, air handlers and package units. However, because Lennox does not sell

its products directly to homeowners, it can identify only 988,800 Class Members who have filed a warranty claim or registered their system.[23] Further, while historical failure rates provide a solid foundation on which to make projections regarding the number of potential future failures, such projections remain only estimates, which could depend on changing conditions, for example variations in installed Coils' environmental conditions.[24] Moreover, not every Class member who experiences one or more Coil failures will submit a claim. And because the period in which to submit Claims extends for up to five years for future first Coil failures and another five years beyond that to request benefits related to future subsequent Coil failures, determination of the number of Claims submissions is dependent on multiple future variables. Under any reasonable scenario, however, the Settlement is fair, reasonable, and adequate.

Settlement Class Counsel engaged the services of Lisa Snow of Duff & Phelps, a well-known and highly regarded damages and settlement valuation expert, to assist them in quantifying the value of the Settlement. As set forth in the Declaration of Lisa Snow, attached hereto as Exhibit C, a rigorous analysis of unit sales and warranty claims data for Lennox and Allied was performed and a valuation for the Service Rebates, labor and refrigerant reimbursements, and Replacement Coil Warranty was made. This analysis yielded, for the period of time covered by the warranty claims data--October 2007 to March 2015--the numbers of *actual* Coil failures for the Coils, air handlers and packaged units, respectively, that had been installed during that period, broken down on a calendar year basis by date of installation (i.e., those installed in 2007, those installed in 2008, and so forth up to those installed in 2015); and

[23] These persons were sent the Postcard Notice.

[24] As discussed above, environmental conditions are believed to be the single most significant contributing factor to formicary corrosion. Changes to those environmental conditions over time could either increase or decrease the risk of formicary corrosion.

broken down further by the time in service after installation that the failure occurred, i.e., failures that occurred during the first year after installation of the Original Coil, during the second year after installation, during the third year, the fourth year, the fifth year and so forth. For example, the actual coil failures compilation by Ms. Snow shows the total number of air handlers installed in 2009, and the number of coil failures for those air handlers that occurred within one year after installation, which would be within the period 2009-2010 (e.g., for an air handler installed on June 1, 2009, the first year of service is from June 1, 2009 to May 31, 2010), the number of failures that occurred within the second year after installation, i.e., during 2010-11, and so forth. From those actual failures compilations and the unit sales data, Ms. Snow computed the percentage of failures per unit sold broken down on the same basis, i.e., by year installed and by time in service after installation on a yearly basis that the failures occurred. Ms Snow then used those percentages and unit sales data to project future failures for each product, again broken down on the same basis. Those actual and projected coil failure figures were then applied to relevant categories of benefits in order to calculate actual and projected values of those benefits to the Class. As described more fully below, and as set forth in Ms. Snow's Declaration and its exhibits, the total potential monetary value of the Settlement to the Class based on actual coil failures to date would be more than $35 million, a substantial portion of which is cash reimbursements paid by Lennox to Class members who experience Coil failures.[25]

The Parties designed and implemented the Notice Plan and structured the Settlement in order to achieve high claims rates. Nevertheless, even assuming claims rates of 50%, 25%, and 10%, the total value of the Settlement would be $17.5 million, $8.75 million, and $3.5 million

[25] As discussed below, this $35 million value excludes the significant value of the Settlement's overarching protective features.

respectively. However, added to these numbers would be the value of the Settlement's protective features themselves, perhaps an additional $15 million or more, which is not subject to diminution by claims rates because it is a benefit provided automatically by the settlement.

The overall value of the Settlement can best be expressed as consisting of the sum of the values of its components: (1) the value to the entire Class of the added protection of a Settlement structure that makes available to them benefits contingent only upon their experiencing an actual Coil failure or failures; (2) the $75 cash service rebate; (3) the $550 installation labor and refrigerant reimbursement per eligible replacement; (4) the five year Replacement Coil Warranty; and (5) the coated copper or aluminum tube Replacement Coils.[26]

The Settlement offers something of value to the entire Class: a protective structure, in place for ten years, that ensures that if they have a Coil failure for any reason within five years of installation of the Original Coil, they will receive valuable benefits, and if they have a subsequent Coil failure, they will receive yet additional benefits. The entire Settlement functions as a widening of warranty protections to all Class members, with additional benefits contingent on having one or more Coil failures. Plaintiffs believe that it might be possible to quantify this added protection in monetary terms, because the Settlement bestows upon each Class Member a contingent right to Settlement benefits and is, in effect, a warranty that assures them a $75 Service Rebate and a valuable Replacement Coil Warranty[27] should their Original Coil fail, as well as reimbursement for labor and refrigerant to replace Coils in the event of multiple failures. Indeed, although the package of benefits differs in some respects, expanded warranties and labor

[26] The uncoated copper tube Replacement Coils provided when an Original Coil fails are already covered by the Original Warranty and are, therefore, not a Settlement benefit.

[27] Plaintiffs' expert has estimated that the Replacement Coil Warranty adds between $15 million and $22 million to the Settlement's value, based upon a range of $107.99 to $159.99 for similar warranties offered by Lennox to its customers.

coverage options are sold to consumers for substantial amounts to protect against the possibility (but not the certainty) that they will require repairs in the future, which could be indicative of the value the market places on this type of right to benefits. These are rights that some consumers would be willing to pay for. However, Plaintiffs' valuation expert opined that it would be difficult to offer a reliably precise quantification due to limitations in methodology and data. Because this Settlement structure offers obvious qualitative value enhancements to the Class, Plaintiffs have therefore chosen not to include a particular monetary figure in their quantitative analysis. However, Plaintiffs observe that even a nominal monetary value of $5 per Class Member multiplied by 3.2 Class Members would result in a very substantial enhancement of $16 million, increasing the Settlement's potential value to over $51 million.

The coated copper or aluminum tube Replacement Coil component was not included in the quantitative valuation for several reasons. First, the Replacement Coils provided pursuant to the Replacement Coil Warranty will also be covered by the Original Warranty if installation occurs *within the term* of the Original Warranty. Second, while those Replacement Coils provided under the Replacement Coil Warranty *after* the expiration of the term of the Original Warranty *are* a Settlement benefit, the number of such coils, while difficult to estimate, is expected to be low based on historical failure rates. The value added by this benefit is thus expected to be small compared to the overall quantified value of the other benefits, and therefore was not estimated. This benefit, however, does have real value to eligible Class Members.

Class Members whose Original Coil failed or will fail within five years of installation, are entitled to claim and redeem the $75 service rebate. The number of Class Members eligible for this benefit thus includes the sum of Class Members who have already had actual Original Coil failures and Class Members who are projected to have Original Coil failures in the future.

Using the number of actual Original Coils, Ms. Snow projected the number of estimated future coil failures through the last date on which an Original Coil failure would be covered by the Settlement. Because there is no cap on Settlement funds, and because the service rebate is not a coupon but a check, Ms. Snow calculated that (depending on the final claims rate in 2020) Lennox might distribute more than $10 million to eligible Class members who redeem their Service Rebate certificates after receiving qualifying service on their air conditioner systems.

Under the Settlement, when Class members experience Original Coil failures, their Replacement Coils will be covered by a new, five-year expanded Replacement Coil Warranty. If they have already replaced one or more Replacement Coils, the most recently installed one is covered by this expanded warranty. Although a non-cash component of the Settlement, warranty values can be quantified and expressed in monetary terms. One way to do so is by examination of similar warranties for which there is an established market and/or market price. Plaintiffs' expert, Ms. Snow, examined information concerning additional warranty protections that Lennox offers for sale to purchasers of its equipment and systems at the time of such purchases, identified several extended warranties with similar (but more limited) benefits, and calculated the value of this Settlement benefit based upon the lowest priced option multiplied by the number of actual and projected eligible Coils. Ms. Snow has concluded that a reasonable valuation of the Replacement Coil Warranty is potentially $15,387,792.

When Class members experience Coil failures subsequent to their Original Coil's failure, they become eligible for reimbursement of labor and refrigerant costs associated with replacing those Coils, up to a maximum of $550 reimbursement per installation. This figure was the product of negotiation and compromise. After investigation and confirmatory discovery, Plaintiffs' Counsel determined that $550 represents somewhere between thirty percent and

ninety percent of wide-ranging, highly variable charges.[28] However, the $550 reimbursement amount exceeds the high range of labor coverage offered in Lennox's Complete Care Plus Warranty, an optional extended warranty sold by dealers to consumers, and is therefore a benefit larger than the protection available to consumers at prices in excess of one hundred dollars. Although in some cases this amount likely will not cover the full amount of labor and refrigerant charges incurred to install the replacement coil, Settlement Class Members are not required to undertake the expensive and time-consuming burden of having to prove that the Coil failure was, in fact, caused by formicary corrosion. This was a critical tradeoff that guaranteed widespread relief to the Class and justified agreeing to a reasonable cap on the reimbursement amount.

The $550 reimbursement applies to more than just one Replacement Coil failure. Class Members who have experienced more than one Replacement Coil failure are eligible for up to $550 reimbursement of labor and refrigerant costs for each installation of a Replacement Coil. In addition, Class Members who have had to or will have to replace a Replacement Coil and whose Original Coil failed more than one year but less than five years after installation are eligible to receive the same reimbursement of up to $550 for the work of replacing their Original Coil. Working with Lennox's data, and projecting future potential claims, Ms. Snow has opined that the up to $550 reimbursement benefit could be worth as much as $9,043,564.

The sum of the calculated values of these components results in a potential value of Settlement benefits to the class of $35,236,416 for the more reliably quantifiable benefits values alone. Because of (i) the significant cash benefits, (ii) the monetary value of the Replacement Coil Warranty, (iii) the value to Class Members of receiving aluminum or coated copper tube

[28] *See* Snow Declaration for the wide range of costs. Factors contributing to variability include, among other things regional differences; differences in systems design and layout; differences in individual installation features; and differences in hourly labor rates.

Replacement Coils, (iv) the fact that authorized Lennox dealers and contractors are both aware of the Settlement and most likely individual Coil failures,[29] (v) the ongoing maintenance of the Settlement Website which functions as continuing notice to Class Members, and (vi) the inherent protective value to all Class Members of the Original Warranty-expanding features of the Settlement,[30] Plaintiffs expect the claims rates to be high, consistent with their intent in structuring the Settlement.[31] Because there are no exclusions or qualifications other than the requirement that Claim forms and Request for Benefit forms be timely filed, every Class member is protected by the Settlement, and every Class member will be equally eligible to receive valuable benefits in the event their Coils fail.

VI. ARGUMENT

Federal Rule of Civil Procedure 23(e) governs class action settlements. There is a well-accepted procedure and specific criteria for final approval of class action settlements. Notice is the linchpin of due process in the settlement of a class action, affording every class member the opportunity at (or prior to) a fairness, or final approval, hearing to object to class certification, the notice program, and the settlement. With the benefit of that input, the Court exercises its

[29] And have obvious incentives to alert their customers to the availability of Settlement benefits.
[30] Which, as discussed above, is worth millions or tens of millions of dollars even assuming a nominal value for this overarching protective benefit.
[31] Ms. Snow's work calculates the total potential value of the three principal Settlement benefits being made available by Lennox to the entire Class. She assumes that all Class Members who experienced or experience Coil failures will submit claims, because no data was available from which she could extrapolate likely claims rates. As demonstrated below, however, the Settlement is fair, reasonable and adequate even if the valuation is discounted by some reasonable claims rate. Plaintiffs believe that, given the significant value of each Settlement benefit and the widespread and ongoing notice, the most appropriate claims rate would be the percentage of all Class Members who have experienced one or more Coil failures who have submitted warranty replacement claims to Lennox for those Coils. Lennox represents that it does not possess that data, and it does not agree that this is an appropriate estimation of a likely claims rate.

independent judgment and decides whether the settlement is fair, adequate and reasonable in light of all the circumstances of the action. Then, and only then, may the Court enter an order of final approval of the Settlement. Plaintiffs submit that the Settlement satisfies all of the requirements of the Federal Rules of Civil Procedure, the U.S. Constitution, and the frameworks and benchmarks established by the courts of this Circuit, and that it should, therefore, be finally approved by this Court.

A. THE COURT-APPROVED NOTICE PROGRAM SATISFIES DUE PROCESS

Rule 23 requires that notice of a settlement be "the best notice 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); see also Alba Conte & Herbert Newberg, NEWBERG ON CLASS ACTIONS, § 8.2 at 162-65 (4th ed. 2002). In consultation with KCC, one of the nation's preeminent Notice Experts and Settlement Claims Administrators, Counsel designed and implemented a Notice Program that Plaintiffs reasonably believe maximized the reach of a fully informative Notice to as many Class Members as is practicable. Plaintiffs further believe that the Notice Program, in conjunction with the structure of the Settlement, has not only maximized the number of Class Members who have received proper notice of the Settlement, but it will continue to maximize not only the number of Class Members receiving notice, but also the number of claims submitted by those homeowners.[32]

[32] Unlike many class action settlements, the Settlement in this action does not require all Class members to file a claim immediately. Rather, Class Members can wait until they are eligible for a benefit to submit Claim forms. For this reason, although the mailed and published Notices have already been directed to all Class Members, the Settlement Website and the information on the Lennox and Allied websites will be maintained for the duration of the Settlement program. That will serve both the purposes of continued administration and continued Notice for Class

As discussed above, and as further detailed in the Intrepido-Bowden Declaration (submitted herewith as Ex. A), considerable effort and expense were undertaken in order to design and effectuate a program that far surpassed what is Constitutionally required. Mailing and publication of short-form and long-form Notices, design and administration of the Settlement Website and Settlement Hotline, and the use of an established dealer network as a conduit for Settlement information all maximized the reach and impact of the Notice Program. In all, at least 79.4 percent of Class Members were exposed to information about the Settlement, and so far, 27,542 have submitted Claim Forms, out of an estimated universe of approximately 3.2 million potential Class members who may be or become eligible for Settlement benefits at some point in the next five years.[33]

The contents of the Notice, and the proposed method of its dissemination, comport with Federal Rules of Civil Procedure 23(c)(2) and 23(e), as well as due process. See generally *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 175-77 (1974) (due process is satisfied by mailed notice to all class members who reasonably can be identified); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1025-26 (9th Cir. 1997) (finding that form and distribution of notice were adequate where they complied with criteria described above); *In re Lease Oil Antitrust Litig.*, 186 F.R.D. 403, 429 (S.D. Tex. 1999) (notice mailed to all class members whose address was known combined with publication notice satisfied due process and Rule 23). Accordingly, the form and method of

---

Members who may not have already experienced a Coil failure, and who therefore may not have paid particularly close attention to the traditional, one-time Notices.

[33] The Settlement program itself will run for up to ten years, but only Class Members who experience an actual Original Coil failure within five years of installation are eligible for further benefits. Thus, recent purchasers of Coils may not need to submit a Claim Form for years to come.

notice given to Class members satisfy all of the legal requirements of Fed. R. Civ. P. 23 and the U.S. Constitution.

B. THE COURT SHOULD CERTIFY THE SETTLEMENT CLASS

"Before addressing the substantive provisions of the Settlement Agreement, the [C]ourt must first determine whether the proposed class can be certified." *Kaufman v. American Exp. Travel Related Services Co., Inc.*, 264 F.R.D. 438, 441-42 (N.D. Ill. 2009) (*citing In re Bromine Antitrust Litig.*, 203 F.R.D. 403 (S.D. Ind. 2001)). Class certification is an exercise of judicial discretion, and "[t]he fact that the parties have reached a settlement is a relevant consideration in the class-certification analysis." *Zolkos v. Scriptfleet, Inc.*, No. 12-Civ-8230 (GF), 2014 WL 7011819, *1 (N.D. Ill. Dec. 12, 2014) (*citing Smith v. Sprint Communications Co.*, 387 F.3d 612, 614 (7th Cir. 2004)); *see also Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620, 117 S. Ct. 2231, 2248 (1997) ("Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems, *see* Fed. R. Civ. P. 23(b)(3)(D), for the proposal is that there be no trial.").

Plaintiffs request that the Court certify for settlement purposes only, under Federal Rule of Civil Procedure 23(a) and 23(b)(3), a Settlement Class, defined as:

> All Persons who are residents of the United States and who purchased on or after October 29, 2007 through July 9, 2015 at least one uncoated copper tube Lennox brand, Aire-Flo brand, Armstrong Air brand, AirEase brand, Concord brand, or Ducane brand evaporator coil (separately, as part of an air handler, or as part of a packaged unit), for their personal, their family, or their household purposes, that was purchased new, covered by an original warranty when purchased, and installed in a house, condominium unit, apartment unit, or other residential dwelling located in the United States.

In order to certify a Settlement Class, the Court must determine whether the proposed settlement class satisfies Rule 23's requirements. As demonstrated below, there are ample grounds for certifying the proposed Settlement Class.

The first step in evaluating an application for class certification is to decide whether the proposed class meets the four prerequisites of Rule 23(a): numerosity; commonality; typicality; and adequate representation. Each of these factors weighs in favor of certifying the Settlement Class.

Numerosity, Rule 23(a)(1). The first requirement asks whether the proposed class is so numerous that joinder is impracticable. To satisfy this requirement, Plaintiffs need not provide a specific number. *Smith v. Nike Retail Servs., Inc.*, 234 F.R.D. 648, 659 (N.D. Ill. 2006). Although the Rule provides no firm number, courts have held that numerosity can be satisfied with a relatively small number of putative class members. *See, e.g.*, *Flood v. Dominguez*, 270 F.R.D. 413, 417 (N.D. Ind. 2010) ("Generally speaking, when the putative class consists of more than 40 members, numerosity is met[.]"); *Muro v. Target Corp.*, No. 04-6267, 2005 U.S. Dist. LEXIS 14409, at *39 (N.D. Ill. July 15, 2005) ("Permissive joinder is usually deemed impracticable where the class members number 40 or more."). Lennox has sold approximately 3.2 million Coils separately, as part of an air handler, or as part of a packaged unit during the relevant period, under the six brands at issue in this litigation. This number significantly exceeds those found sufficient in innumerable other cases and, accordingly, Rule 23(a)(1)'s numerosity requirement is met.

Commonality, Rule 23(a)(2). The next question is whether there are questions of law or fact common to the class. "Commonality requires that there be at least one question of law or fact common to the class." *Barragan v. Evanger's Dog & Cat Food Co.*, 259 F.R.D. 330, 334 (N.D. Ill. 2009) (quoting *Rosario v. Livaditis*, 963 F.2d 1013, 1018 (7th Cir. 1992)). Here, common issues include: whether Coils are susceptible to formicary corrosion; whether Coils in fact do fail because of formicary corrosion; what the rates of failure are for Coils; what

percentage of those failures is attributable to formicary corrosion; whether Lennox knew or knows its uncoated evaporator coils are susceptible to formicary corrosion; and whether Lennox took any measures to mitigate the risk of formicary corrosion in its evaporator coils. The centrality of these common questions satisfies the commonality requirement. Given that Plaintiffs need only show one common question of law or fact to establish commonality under the rule, *see Barragan*, 259 F.R.D. at 334, Plaintiffs satisfy the commonality requirement.

Typicality, Rule 23(a)(3). A "'plaintiff's claim is typical if it arises from the same event or practice or course of conduct that gives rise to the same legal theory.'" *Rosario v. Livaditis*, 963 F. 2d 1013, 1018 (7th Cir. 1992) (*quoting De La Fuente v. Stokely-VanCamp, Inc.*, 713 F. 2d 225, 232 (7th Cir. 1983)). Rule 23(a)'s typicality requirement should be "liberally construed." *Saltzman v. Pella Corp.*, 257 F.R.D. 471, 479 (N.D. Ill. 2009). So long as "the representative party's claim arises from the same course of conduct that gives rise to the claims of other class members and all of the claims are based on the same legal theory," typicality is satisfied. *Id.* (citation omitted); *see also Owner-Operator Indep. Drivers Ass'n v. Allied Van Lines, Inc.*, 231 F.R.D. 280, 282 (N.D. Ill. 2005) (typicality is a "low hurdle" requiring "neither complete coextensivity nor even substantial identity of claims."). Rule 23(a)(3) "'primarily directs the district court to focus on whether the named representatives' claims have the same essential characteristics as the claims of the class at large.'" *Muro v. Target Corp.*, 580 F. 3d 485, 492 (7th Cir. 2009) (*quoting De La Fuente*, 713 F. 3d at 232)). Where a defendant has engaged in "standardized" conduct, courts will frequently find both Rule 23(a)'s commonality and typicality requirements satisfied. *See, e.g., In re AT&T Mobility Wireless Data Servs. Sales Litig.*, 270 F.R.D. 330, 341-42 (collecting cases).

Here, the claims of Plaintiffs and the Settlement Class all arise out of Defendant's practices with respect to manufacturing and warranty of uncoated copper evaporator coils. Plaintiffs' legal theories include breaches of express and implied warranties, and they also seek, among other things, a declaration that the Coils are defective, that Lennox has a duty to notify all Coil owners of the defect, and that Lennox must pay for inspection of all Class members' coils to determine whether any need to be replaced. Plaintiffs' claims are "typical" of those of the Settlement Class. *Saltzman*, 257 F.R.D. at 479; *In re Blood Reagents Antitrust Litig.*, 283 F.R.D. 222, 233 (E.D. Pa. 2012).

Adequate Representation, Rule 23(a)(4). The requirement that "the representative parties . . . fairly and adequately protect the interests of the class . . . serves to uncover conflicts of interest between the named parties and the class they seek to represent." *Amchem Prods.*, 117 S.Ct. at 2250. This requirement "tends to merge with the commonality and typicality criteria of Rule 23(a), which serve as guideposts for determining . . . whether the named plaintiff's claim and the class claims are so interrelated that the interests of the class members will be fairly and adequately protected in their absence." *Id*. at 2251 n. 20. Because of the unique nature of the class action device, "[t]he adequacy-of-representation requirement 'is composed of two parts: the adequacy of the named plaintiff's counsel, and the adequacy of representation provided in protecting the different, separate, and distinct interest of the class members.'" *In re AT&T Mobility Wireless Data Servs.*, 270 F.R.D. at 343 (*quoting Retired Chicago Police Assoc. v. City of Chicago*, 7 F.3d 584, 598 (7th Cir. 1993)) (further internal quotations and citation omitted).

"A class representative must . . . 'be part of the class and possess the same interest and suffer the same injury as the class members.'" *In re AT&T Mobility Wireless Servs.*, 270 F.R.D. at 343 (*quoting Amchem Prods.*, 117 S.Ct. at 2245) (further internal quotations and citation

omitted). "This requires the district court to ensure that there is no inconsistency between the named parties and the class[,] . . . [because a] class is not fairly and adequately represented if class members have antagonistic or conflicting claims." *Id.* (internal quotations and citations omitted). In this case, there are no conflicting or antagonistic claims – the named plaintiffs' claims are entirely consistent with those of the class. Neither the claims they assert in the Amended Complaint nor the terms of the Settlement afford any opportunity for preferential treatment. Plaintiffs and their Counsel have worked diligently, along with Counsel for Defendant, to inform the greatest number of Class members and to encourage them to file Claim Forms in order to receive eligible benefits. The named Plaintiffs' interests are fully aligned with those of all absent Settlement Class members, and all members of the Settlement Class will have an equal opportunity to obtain benefits under the Settlement, based solely on the existence, number and timing of their Coil failure(s).

Interim Class Counsel are, likewise, adequately representing the interests of the Class. "Plaintiffs' counsel have invested substantial time and resources in this case by investigating the underlying facts, researching the applicable law, and negotiating a detailed settlement." *In re AT&T Mobility Data Servs.*, 270 F.R.D. at 344 (*citing Rand*, 926 F.2d at 598-99). Interim Class Counsel reviewed documents provided by Defendant, took the deposition of Defendant's designated 30(b)(6) witness, engaged in multiple mediations and extensive negotiations, and developed a solid factual bases on which to premise the settlement, without impairing or prejudicing the interests of the Settlement Class. *Packaged Ice*, 2010 WL 3070161, at *6 (*citing Newby v. Enron Corp.*, 394 F.3d 296, 306 (5th Cir. 2004)). Indeed, the extensive use of mediators over the course of a year of investigation, information exchange and negotiations demonstrates both Interim Class Counsel's pursuit of the interests of the Class and their

determination to avoid even any appearance of collusion with Lennox or any other party.[34] *McCue v. MB Financial, Inc.*, No. 15-cv-00988, 2015 WL 1020348, *2 (N.D. Ill. March 6, 2015) (*citing McKinnie v. JP Morgan Chase Bank, N.A.*, 678 F. Supp.2d 806, 813 (E.D. Wis. 2009)).

Since Preliminary Approval, Interim Class Counsel have worked hard to implement the Notice Plan by participating in regular telephone calls and other communications with the Notice Expert and Defendant's counsel, reviewing the work of the Notice Expert, causing adjustments and fine-tuning of aspects of the Notice Plan to further benefit the Class, and otherwise devoting their time and energy to expanding access to and improving the quality of information so that the largest number of Class members as possible would be made aware of and take action to participate in the Settlement.

In short, Plaintiffs and their counsel have demonstrated that they "are fully capable of litigating this case." *In re Chocolate Confectionary*, 289 F.R.D. at 218. Accordingly, the adequacy requirement is satisfied.

Predominance, Rule 23(b)(3). Once Rule 23(a) is satisfied, Rule 23(b)(3) requires the Court to find that "questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). Certification of the Settlement Class is appropriate under Rule 23(b)(3) because the common questions of law and fact predominate over any individual questions that may arise, especially

[34] Counsel for the Parties did not discuss the topic of Defendant paying the attorneys' fees of Plaintiffs and the Class until the end of the fourth and final mediation, when the Hon. Edward A. Infante opined that the framework for a settlement was sufficiently developed for counsel to ethically discuss the matter. Infante Declaration.

those that may arise in the context of the Settlement, and because a class action is the superior method of adjudicating the claims in light of the nature of the relief under the Settlement.

Whether the Coils are susceptible to formicary corrosion and whether formicary corrosion can cause leaks are questions that would be decided on a classwide basis. Likewise, whether and when Lennox knew the Coils were susceptible to formicary corrosion and what actions it took in response to this issue would be common to the class.

It is neither required nor expected that there are no individual questions, only that the common questions predominate. To be sure, there are some issues that are individualized and that are not suitable for class treatment. For example, determining whether any particular Coil failed due specifically to formicary corrosion would require an examination of the facts and circumstances around each leak, including the type of installation, the geographic location, the types of products used in the home, and the manner in which the air-conditioning unit was maintained. Similarly, determining whether the warranty was breached in any particular case will depend on the applicable state law, the circumstances of the Coil failure, the manner it which was reported, and the Defendant's specific response. Were this case proceeding to trial, the Parties would argue whether these individual issues would necessitate countless mini-trials and render class treatment unmanageable. However, the Court need not take into consideration whether a potential trial would be manageable because Plaintiffs seek certification for settlement purposes only. *See Amchem*, 521 U.S. at 620. For purposes of the proposed Settlement, these individual issues are mooted.

Importantly, the Settlement does not require Settlement Class Members to prove the cause of their Coil leak or establish that the warranty was breached, and, therefore, questions of manageability fall away. Accordingly, Plaintiffs submit that, in the settlement context, the

common factual and legal questions predominate and a class action is the superior mechanism for resolving the claims asserted and providing the Settlement Class with relief. *See Messner v. Northshore Univ. HealthSystem*, 669 F.3d 802, 815 n. 5 (7th Cir. 2012).

Because the requirements of Rule 23 are satisfied with respect to the Settlement, Plaintiffs respectfully request that the Court certify the proposed Settlement Class for settlement purposes only.

C. THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE.

Both judicial and public policy strongly favor the settlement of class actions. "Federal courts naturally favor the settlement of class action litigation." *Isby v. Bayh*, 75 F.3d 1191, 1196 (7th Cir.1996). Indeed, "[i]t is axiomatic that the federal courts look with great favor upon the voluntary resolution of litigation through settlement. In the class action context in particular, there is an overriding public interest in favor of settlement." *Armstrong v. Bd. of Sch. Dirs. of City of Milwaukee*, 616 F.2d 305, 312-13 (7th Cir. 1980), *overruled on other grounds by Felzen v. Andreas*, 134 F.3d 873 (7th Cir. 1998) (quotations omitted); *see also Hispanics United of DuPage County v. Village of Addison*, 988 F. Supp. 1130, 1149 (N.D. Ill. 1997) ("Compromise is particularly appropriate in complex class actions."). Evaluations of fairness, reasonableness and adequacy require that the facts be viewed in a light most favorable to the settlement. *Isby*, 75 F.3d at 1199.

Whether a proposed settlement is fair, reasonable, and adequate necessarily requires an evaluation of the judgment of the attorneys for the parties regarding "the strength of plaintiffs' case compared to the terms of the proposed settlement." *In re AT&T Mobility Wireless Data Serv's. Sales Litig*., 270 F.R.D. 330, 346 (N.D. Ill. 2010). This evaluation of the costs and benefits of settlement must be tempered, however, by the recognition that any compromise

involves concessions on the part of all of the settling parties. Indeed, "[t]he essence of settlement is compromise." *E.E.O.C. v. Hiram Walker & Sons, Inc.*, 768 F.2d 884, 889 (7th Cir. 1985). In determining whether to approve a class settlement, the Seventh Circuit has identified several factors courts should evaluate: (1) the strength of the plaintiffs' case on the merits; (2) the complexity, length, and expense of continued litigation; (3) the amount of opposition to the settlement; (4) the presence of collusion in reaching a settlement; and (5) the stage of the proceedings. *Gen. Elec. Capital Corp. v. Lease Resolution Corp.*, 128 F.3d 1074, 1082 (7th Cir. 1997). "[T]he first factor, the relative strength of the plaintiffs' case on the merits as compared to what the defendants offer by way of settlement, is the most important consideration." *Isby*, 75 F.3d at 1199. However, the Court should "not decide the merits of the case[,]" *Carson v. Am. Brands, Inc.*, 450 U.S. 79, 88 n.4 (1981), but simply consider "whether the proposed settlement is lawful, fair, reasonable, and adequate." *Isby*, 75 F.3d at 1196.

i. Strength of Plaintiffs' Case

Plaintiffs believe their case is meritorious. Formicary corrosion is a problem that has plagued the uncoated copper evaporator coils of many manufacturers for years. Plaintiffs believe that the manufacturers' states of mind – including that of Lennox -- over time have gone from suspicion to belief to knowledge that formicary corrosion is a problem inherent in the use of uncoated, thin copper tubes in coils. The phenomenon of formicary corrosion has been studied and written about in the context of these coils for years, and yet companies like Lennox failed to take action or even to warn customers that this vulnerability may exist in their air conditioning systems. As Plaintiffs see it, this is a product defect or, at the very least, a known flaw that could be addressed in a number of ways, including through improved warranty coverage. Tens of thousands of Class Members have experienced a Coil failure, and more than ten thousand of

them have already experienced multiple Coil failures which may be the result of formicary corrosion. Plaintiffs contend that this is a problem that persists, it costs homeowners money to obtain the necessary repairs, and had homeowners know about the risk, at least some of them may have opted to purchase a more expensive system with a more corrosion resistant evaporator coil.

Defendant denies all of these allegations and has made clear that it will vigorously contest both class certification and liability should the case continue. Defendant contends that if the case were to go to trial, individual issues of proof, causation, and damages, and the need to address the many differences in state warranty and consumer protection laws would make the case unmanageable and undercut the propriety of class certification. Even if a litigation class were certified, Lennox maintains that formicary corrosion is rare (occurring in less than 1% of all Coils sold) and impossible to identify without expensive laboratory testing. When it does occur, it is attributable to factors wholly outside Lennox's control, including environmental factors and the use by homeowners of various products and materials containing organic acids. Accordingly, Defendant's assert that the Coils are not defective, that the Settlement Class Members have suffered no economic loss due to the fact that the Coils are made of uncoated copper, and that the limitations and exclusions of the manufacturer's limited warranty are valid and fatal to Plaintiffs' claims.

In short, complex litigation such as this is inherently risky, there is always a genuine chance that Plaintiffs may not succeed and, even if they could, they may not obtain the full measure of relief they seek. See *In re AT&T Mobility Wireless Data Serv's. Sales Litig.*, 270 F.R.D. at 347. Although Plaintiffs would argue that each and every class member is entitled to a free aluminum tube replacement coil, it is unlikely such argument would persuade the Court,

because Lennox would counter that, given how rare formicary corrosion is, such an award would grossly overcompensate the Class. While Plaintiffs would demand a declaration that the Coils are defective, it is quite uncertain whether these circumstances warrant such a sweeping statement from the Court. Other forms of relief would be equally problematic: Lennox would argue that only Class Members who can establish formicary corrosion as the cause of their Coil's failure are entitled to relief and that in any event all of the uncertainties and variables discussed above make it practically impossible for the Court to establish a sum certain to award the Class.

In light of all of these considerations, it is difficult for Plaintiffs to imagine a measurably better outcome than that achieved through the Settlement.

Shifting focus to its terms, it is clear that the Settlement is fair, reasonable, and adequate. The Settlement eliminates any need to determine on a case-by-case basis whether formicary corrosion was the cause of any particular Coil leak, as opposed to other possible causes, and thus makes every Settlement Class member eligible for the Settlement's benefits without having to prove the actual cause of their evaporator coil's leak. This alone delivers considerable value, by eliminating what might otherwise require years of protracted discovery and motions practice and opening the way to relief for all Class members on equal terms. The Settlement Agreement supplements the terms and benefits of the Original Warranty coverage in ways that benefit every Settlement Class member. Every Class Member has the right to the benefits under the Settlement in accordance with the terms of the Settlement Agreement; the benefits each Class Member receives will vary with each's particular circumstances. That right alone has a dollar value to each Class member in an amount that varies depending on each Class member's circumstances. Every Settlement Class member who experienced or experiences an Original Coil failure within five years of installation is immediately eligible for a $75 rebate toward

service or maintenance. Upon acceptance of a timely and valid Claim and proof of the servicing or maintenance by an independent dealer, Lennox will send the customer a check for $75. This alone makes available to the Class up to more than $8 million in direct cash payments.

In addition, every Class member who has experienced an Original Coil failure will receive an extended five-year warranty *on the replacement Coil itself*. This will, in many cases, result in warranty coverage for a replacement Coil significantly exceeding the coverage available under the Original Warranty. Based upon Ms. Snow's valuation of $100 per unit, this component of the Settlement is worth up to more than $10 million to Class Members.

The reimbursements of up to $550 per replacement, as explained above, cover approximately thirty to ninety percent of labor and refrigerant cost for an evaporator coil replacement (the coil itself will be free). When a Settlement Class member has experienced multiple coil failures, they will receive reimbursement for each Replacement Coil installation and for their First Replacement Coil installation if it happened more than one year but equal to or less than five years after the original installation. Replacement Coils covered by the Replacement Coil Warranty will, if they fail, be replaced by a coated copper tube or aluminum tube evaporator coil. Requiring multiple coil failures before making available this remedy is fair because the vast majority of coil leaks are not caused by formicary corrosion and, in lieu of expensive laboratory analysis, multiple failures are a reasonable proxy to support an inference that formicary corrosion might be causing those particular failures. Through the reimbursements, Lennox is making available as much as $7 million in direct cash payments to eligible Class Members.

Importantly, because there is no cap, the estimates discussed above are not maximum potential values. Should twice as many Class Members submit valid Claims as projected,

Lennox would be obligated to pay twice as much money to the Class. However, based on the actual and projected Coil failures, the more reliably quantifiable components of the Settlement are potentially worth more than $35 million,[35] with additional value for the provision of corrosion-resistant tubes for Class Members suffering multiple Coil failures, and the much broader value conferred upon the entire class by the forward-looking protective structure of the Settlement.[36] Considering the comprehensive and expansive relief afforded to Class Members by the Settlement, and the significant challenges to prevailing if the claims are litigated, Plaintiffs submit it would be unfair to the Class to require Plaintiffs to expend millions of dollars over many years of litigation for merely a chance to obtain marginally improved relief at trial (if they even get there). The Settlement is the epitome of fairness, reasonableness and adequacy, and Plaintiffs do not believe they could make a better case for more relief to judge or jury.[37]

---

[35] As noted above, the value of benefits conferred upon the Class across the ten-year life span of the Settlement is subject to variables of unknown value, including future failure rates and claims rates. Considering the reach and ongoing nature of the Notice Program and the significant value of the individual benefits, Plaintiffs expect a relatively high claims rate. But whether one assumes a ten, twenty-five or fifty percent claims rate, the Settlement is inherently fair, highly reasonable and plenty adequate because it offers protection to all Class Member in the event of a leak, substantial relief to Class Members who experience a Coil failure without regard to the cause, and additional benefits to those who experience multiple failures and thus may possibly be experiencing a formicary corrosion problem.

[36] Which as noted above, if a nominal dollar value were assigned to this broad protective feature, would result in an enhancement of millions or tens of millions of dollars to the Settlement's already significant $35 million monetary value.

[37] Plaintiffs are unable to proffer any non-speculative range of probabilities of outcomes and magnitudes of relief at trial. Among other things, Plaintiffs have been unable to identify any source of data from which actual labor and refrigerant costs for tens of thousands of different Class Members could be extrapolated without commissioning expensive surveys and/or studies. The ranges of labor and refrigerant costs identified by Ms. Snow do not provide any verifiable local, regional or national averages, and the variation is so wide that any assumption of an average would be conjecture. Absent that information, there is no way to project the full measure of compensatory damages that might be proved at trial. Defendant contends that, given the hurdles to class certification and the proof and causation challenges discussed above, the

ii. Complexity, Length and Expense of Continued Litigation

Should Plaintiffs be required to litigate this action, they face a daunting and lengthy road of extensive fact and expert discovery, class certification, summary judgment, potential *Daubert* motions, trial, and appeals of a successful trial verdict. Causation and damages would be hotly contested, so proving their case would require Plaintiffs to deploy an army of experts in materials sciences, chemistry, and other fields. Challenged every step of the way, Plaintiffs might have to surmount a year or more of discovery obstacles and motions practice even to tee up a motion for class certification. And, once submitted, the complexity of the motion would likely require months to decide. If a class were ultimately certified some one and one-half to two years from now, extensive additional fact discovery would be required, into everything from Lennox's product design, manufacturing processes and materials suppliers, to those of its competitors, to dealers and contractors across the United States. Plaintiffs would then have to deploy even more experts to go into peoples' homes to test the air for the presence of certain gases, test the materials for the presence of substances that off-gas those compounds, and remove and test Coils for the presence of formicary corrosion. This would cost many millions of dollars, and the entire process, including the inevitable discovery motions and challenges to experts, would add another year or longer just to get to the summary judgment stage. Assuming Plaintiffs' claims survived, pretrial practice and a lengthy trial would follow, adding yet more time and expense.

Even if Plaintiffs were to win at every stage, survive a motion for summary judgment, emerge victorious at trial, and obtain substantial relief, continuing this litigation would delay Class recovery by years. Plaintiffs contend that during this time additional Coils would leak and

---

likelihood of Plaintiffs prevailing at trial are low and that, even if they do prevail, the damages Plaintiffs will be able to prove would be minimal.

Class Members would continue to incur expenses for repairs. Plaintiffs recognized the possibility that an increasing number of leaks over time might increase the amount of a future damages award, and that might translate into greater incentive awards for Plaintiffs and substantially greater fees for their attorneys. This possibility, however, would come at tremendous cost to the Class, most of whom would not benefit in the least from all that additional time and expense, because the Settlement provides most, perhaps all, of the relief they might ultimately obtain after trial right now. Settlement eliminates the risk of litigation, the extraordinary additional expense it entails, and provides substantial and certain relief to the Settlement Class now and for years to come. It is difficult to imagine how putting the Plaintiffs to years of protracted, expensive and risky litigation would enhance the Class's prospects enough to justify it.

iii. Amount of Opposition to the Settlement

The time for filing objections to the Settlement has not yet expired, and Plaintiffs will address those objections in a subsequent filing. However, it is worth noting that out of approximately 3.2 million Class Members, so far only 15 have filed objections. In contrast, more than 27,000 Class Members have already filed Claim forms. With so many Class Members registering for current or future eligibility for benefits, and so few registering complaints, it is apparent that the Class itself deems the Settlement acceptable.

iv. Lack of Presence of Collusion

As reflected in the Declaration of the Hon. Edward A. Infante (Attached hereto as Exhibit D), who presided over the final mediation session, the Parties engaged in extensive discussions and information exchanges over the course of eight months before arriving at an agreement in principle on the Settlement framework. At that point, Judge Infante confirmed it would be

ethical to introduce the idea of an attorneys' fee award into the discussion and only then did the parties broach the subject.

v. Stage of the Proceedings

"[T]he stage of the proceedings" is another factor that courts consider in determining the fairness of a settlement. *Armstrong*, 616 F.2d at 314. Plaintiffs and Lennox chose to settle only after Interim Class Counsel obtained and analyzed considerable information from Lennox, consulted with experts and conducted research, including a review of the literature on formicary corrosion. Although the litigation is at early stage from the standpoint of formal pleadings and proceedings, "the absence of formal discovery is not an obstacle [to settlement approval], so long as the parties and the Court have adequate information in order to evaluate the relative position of the parties." *Ford*, 2006 WL 1984363, at *25; *see also Packaged Ice*, 2010 WL 3070161, at *6; *Sheick*, 2010 WL 413958, at *19.

Furthermore, Interim Class Counsel's fact gathering was completed in the context of four mediations, which resulted in a framework for extensive, arms-length, good-faith settlement negotiations. The Settlement thus took place in full view of neutral third-parties. Additionally, and as a precondition to entering into the Settlement Agreement, Plaintiffs' Counsel required Lennox to submit to confirmatory discovery, including not only production of internal documents from the company's business records, but also compilations of data Lennox does not generate or maintain in the ordinary course of its business. After the document production, a Lennox senior executive in charge of its residential air conditioner business submitted to a deposition, testifying on the record as to the accuracy of that data and answering questions about, among other things, the Company's knowledge of problems with Coils, relating to both formicary corrosion and other causes.

There can be no question that Plaintiffs' Counsel have a clear view of the strengths and weaknesses of the Class's claims, against which they have been able to fully evaluate the fairness and adequacy of the Settlement. Overall, the Settlement was the result of more than one year of arm's-length and often-adversarial interactions among experienced counsel, creating a presumption that the Settlement terms are fair, adequate, and reasonable. *See Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004) ("A settlement following sufficient discovery and genuine arm's-length negotiation is presumed fair.").

Courts give considerable weight to the opinion of experienced counsel supporting a settlement. See, e.g., *Armstrong*, 616 F.2d at 325 (ruling that in determining the fairness of a class settlement, "the court is entitled to rely heavily on the opinion of competent counsel.").[38] Co-lead counsel Jonathan Shub and Jeffrey Leon are seasoned litigators appointed by the Court because of their experience and demonstrated judgment, and their law firms collectively possess hundreds of years of experience prosecuting class actions. Class Counsel firmly believe this Settlement to be fair, reasonable, and adequate in light of all of the circumstances of this case. Counsel base this belief on their deep familiarity with the factual and legal issues involved, the risks associated with continued litigation, the continued harm being suffered by Class members, and the tremendous benefits of the Settlement to members of the Class.

CONCLUSION

[38] See also *Hispanics United*, 988 F. Supp. at 1170; *Reed v. General Motors Corp.*, 703 F.2d 170, 175 (5th Cir. 1983); *Weinberger v. Kendrick*, 698 F.2d 61, 74 (2d Cir. 1982); *In re First Capital Holdings Corp. Fin. Prods. Sec. Litig.*, MDL Docket No. 901, 1992 U.S. Dist. LEXIS 14337, *8 (C.D. Cal. June 10, 1992); *Fisher Bros. v. Cambridge-Lee Indus., Inc.*, 630 F. Supp. 482, 489 (E.D. Pa. 1985).

For the reasons stated herein, Plaintiffs respectfully request that the Court grant their motion to certify the Settlement Class and for final approval of the Settlement. A proposed order is submitted herewith.

Dated: November 4, 2015

Respectfully Submitted,

ROBERT THOMAS, et al., Representative Plaintiffs

/s/ Jeffrey A. Leon
Jeffrey A. Leon
Jamie E. Weiss
Zachary A. Jacobs
QUANTUM LEGAL LLC
513 Central Avenue, Suite 300
Highland Park, Illinois 60035
(847) 433-4500
jeff@qulegal.com
Jamie@qulegal.com
Zachary@qulegal.com

Richard J. Burke
QUANTUM LEGAL LLC
1010 Market Street, Suite 1310
St. Louis, MO 63101
richard@qulegal.com

Jonathan Shub
KOHN SWIFT AND GRAF, P.C. One South Broad Street, Suite 2100
Philadelphia, Pennsylvania 19107
(215) 238-1700
jshub@kohnswift.com

Attorneys for Plaintiffs and Proposed Classes

EXHIBIT A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ROBERT THOMAS, SCOTT PATRICK HARRIS, MICHAEL BELL, SANDRA PALUMBO, FRANK KARBARZ, and THOMAS DAVIS on behalf of Themselves and all others similarly situated, Plaintiffs, vs. LENNOX INDUSTRIES, INC., Defendant.	CASE NO.: 1:13-cv-07747 **DECLARATION OF GINA M. INTREPIDO BOWDEN ON IMPLEMENTATION AND OVERALL ADEQUACY OF SETTLEMENT NOTICE PLAN**

I, Gina M. Intrepido-Bowden, declare as follows:

1. I have personal knowledge of the matters set forth herein, and I believe them to be true and correct. I am a legal notice expert and a Director of Legal Notification Services with Kurtzman Carson Consultants, LLC ("KCC"), the Settlement Administrator in this action.

2. KCC was chosen by the parties and approved by the Court to design and implement a notice program (the "Notice Plan" or "Notice Program") and notice documents (the "Notice" or "Notices") to inform Settlement Class Members about their rights and options under the class action settlement (the "Settlement"), as well as create and maintain the Settlement Website, notify the appropriate government officials pursuant to the Class Action Fairness Act ("CAFA"), receive and process Claim Forms, respond to Settlement Class Member inquiries, and perform other duties as specified in the Stipulation and Agreement of Settlement (the "Settlement Agreement") preliminarily approved by this Court on July 9, 2015. Forms of these documents were included

with my prior declaration, Declaration of Gina M. Intrepido Bowden on Settlement Notice Plan and Notice Documents (Dkt. #68-3).

3. With the support of KCC's claims administration team, each element of the Court-approved Notice Plan has been implemented, including individual notice to known Settlement Class Members and paid notice placements in leading consumer magazines and on a variety of websites to effectively reach the Settlement Class.

a. Combined, the individual notice and paid notice placements reached approximately 79.4%-80.3% of likely Settlement Class Members,[1] on average 1.5 times each.[2]

b. All notice documents were designed to be noticeable, clear, simple, substantive, and informative. No significant or required information was missing.

c. Each person reached had adequate time prior to the final approval hearing to make appropriate decisions, such as whether to object, opt out, or file a claim.

d. The Notice Program fairly and adequately covered the Settlement Class without excluding any demographic group or geographic area.

e. The Notice Program was consistent with other court-approved notice programs that KCC has designed and implemented for purposes of settlement.

4. After the Court's preliminary approval of the Settlement, we began implementing the Notice Program. This declaration details all of the notice activities undertaken by KCC, provides "proofs of performance," and explains how and why the Settlement Notice Plan was comprehensive, well suited to the Class, and conformed to the high standards that federal courts, state courts, and jurisprudence require.

---

[1] Individual notice was initially based on a class size of approximately 2.9 million, based on actual sales data through January 2015. As of October 29, 2015 we were provided with actual sales data through July 9, 2015 (i.e., the date of preliminary approval). Based on the updated sales data, the estimated approximate class size increased to 3.2 million; thereby decreasing the individual notice reach from 32.8% to 29.7%. In this case, publication reach was calculated among adults in the United States who own a central air conditioner for climate control, and internet reach among adults 25 years of age or older. A similar reach percentage was assumed among likely Class Members.

[2] The reach or net reach of a notice program is defined as the percentage of a class that was exposed to a notice net of any duplication among people who may have been exposed more than once. Notice exposure is the average number of times that those reached by a notice would be exposed to a notice.

NOTICE PLAN IMPLEMENTATION

CAFA Notification

5. On July 2, 2015, in compliance with CAFA, 28 U.S.C. Section 1715, KCC mailed via United States Postal Service ("USPS") Priority Mail a cover letter to the U.S. Attorneys General and the Attorney Generals for all 50 states, along with a CD-ROM containing the following documents: 1) Class Action Complaint; 2) Amended Class Action Complaint; 3) Defendant's Answer to Plaintiffs' Amended Class Action Complaint; 4) Plaintiffs' Motion for Preliminary Approval of the Class Action Settlement; 5) Notice of Motion re: Plaintiffs' Motion for Preliminary Approval of the Class Action Settlement; 6) Memorandum in Support of Plaintiffs' Motion for Preliminary Approval of the Class Action Settlement; 7) Declaration of Gina M. Intrepido Bowden on Settlement Notice Plan and Notice Documents; 8) Proposed Order Granting Preliminary Approval of the Class Action Settlement; 9) a copy of the Long-Form Notice, Summary Notice, Postcard Notice, Dealer Notice, Internet Banner Ads, and Claim Form; 10) Stipulation and Agreement of Settlement; 11) Proposed Final Judgment and Order of Dismissal; and 12) an estimate of the percentages of known Settlement Class Members residing in the United States by States and regions of residence, as well as a list of known Settlement Class Members. Copies of the cover letter and the mailing list for the CAFA notice are attached as **Exhibit 1**.

Individual Notice

6. On June 4, 2015, the Defendant provided KCC with a list of names and addresses of 988,859 persons in its records who had submitted warranty claims or registered their product (the "Settlement Class Member List"). The Settlement Class Member List is estimated to represent approximately one-third of the total number of Settlement Class Members. KCC entered the Settlement Class Member List information into its proprietary database and prepared a data file for the initial mailing. Prior to mailing, the names and addresses were checked against the USPS

National Change of Address ("NCOA")[3] database, certified via the Coding Accuracy Support System ("CASS"),[4] and verified through Delivery Point Validation ("DPV").[5] A total of 73,324 addresses were found and updated.

7. On August 17, 2015, KCC mailed the Postcard Notice to each of the persons on the updated Settlement Class Member List. A sample of the Postcard Notice is attached as **Exhibit 2**.

8. As of October 30, 2015, KCC has received a total of 15,885 Postcard Notices returned by the USPS with forwarding addresses, of which 15,846 Postcard Notices have been re-mailed. It is my understanding that the remaining 39 Postcard Notices have not yet been processed and will be mailed in the coming week. As of October 30, 2015, KCC has received a total of 78,093 Postcard Notices returned by the USPS without forwarding address information. KCC conducted address searches using credit and other public source databases to attempt to locate new addresses for these Settlement Class Members. As of October 30, 2015, these searches have resulted in 39,340 updated addresses. KCC promptly re-mailed Postcard Notices to the updated addresses and will continue to do so until the Claims Period ends.

9. As a result, as of October 30, 2015, the individual mailing effort successfully delivered Postcard Notices to 950,067 Settlement Class Members. Based on a class size of approximately 2.9 million, the individual mailing effort reached approximately 32.8% of the Settlement Class.[6] Based on a class size of approximately 3.2 million, the individual mailing effort reached approximately 29.7% of the Settlement Class.

Consumer Publications

10. To build upon the reach base of the individual notice effort, a half-page Summary

[3] The NCOA database contains records of all permanent change of address submissions received by the USPS for the last four years. The USPS makes this data available to mailing firms and lists submitted to it are automatically updated with any reported move based on a comparison with the person's name and last known address.
[4] Coding Accurate Support System is a certification system used by the USPS to ensure the quality of ZIP+4 coding systems.
[5] Records that are ZIP + 4 coded are then sent through Delivery Point Validation to verify the address and identify Commercial Mail Receiving Agencies. DPV verifies the accuracy of addresses, and reports exactly what is wrong with incorrect addresses.
[6] The reach of the mailed notice is calculated by dividing the total number of successful mailings (950,067) by the total estimated class size (2,900,000).

Notice appeared in *Cooking Light* and *People* magazines. *Cooking Light* has a circulation of 1,788,528 and an adult audience of 11,131,000. *People* has a circulation of 3,537,318 and an adult audience of 42,726,000. *Cooking Light* reaches 5.9% of HVAC Consumers and *People* reaches 19.2%.[7] When compared to the general adult population, *Cooking Light* readers are 25.4% more likely to be HVAC Consumers and *People* readers are 5.6% more likely.

11. The Summary Notice appeared on page 136 of the October 2015 issue (on sale September 11, 2015)[8] of *Cooking Light* magazine. This Notice was located within the issue's feature article "Hash in the Pan." In addition, the Summary Notice appeared on page 55 of the August 31, 2015 issue (on sale August 21, 2015) of *People* magazine. This Notice was placed opposite an editorial entitled "Septuagenarian Sex Scandal, Seniors Gone Wild." Combined, the consumer publications reached approximately 23.1%[9] of HVAC Consumers, and therefore, likely Settlement Class Members. Copies of the consumer publication notices as they appeared are attached as **Exhibit 3**.

Internet Banners

12. To extend reach further, 127 million unique internet banner impressions[10] were purchased to appear on a variety of websites. Of these impressions, 119 million were targeted to adults 25 years of age or older (Adults 25+) and appeared on Run of Network[11] sites. These impressions were geographically distributed based on the sales data provided by Lennox. In addition, five million impressions targeted to Adults 25+ appeared on home and garden websites and three million impressions were behaviorally targeted to Adults 25+ who had shown an interest

[7] To verify the notice program's effectiveness, GfK MediaMark Research & Intelligence, LLC (MRI) data was studied among adults in the United States who own a central air conditioner for climate control ("HVAC Consumers"), because this broad target group best represents the Settlement Class. See Declaration of Gina M. Intrepido Bowden on Settlement Notice Plan and Notice Documents (Dkt. #68-3, ¶ 15-17).

[8] The on-sale date is the date that an issue is first available to readers.

[9] This net reach percentage is calculated using Telmar media planning and advertising software. Telmar is the world-leading supplier of computer based advertising media information services. Its software provides for survey analysis, data integration, media planning and optimization. With over 5,000 users in 85 countries, Telmar's clients include many of the world's leading advertising agencies, publishers, broadcasters and advertisers

[10] A unique internet banner impression is delivered once to an IP address.

[11] Run of Network advertising is an ad buying option in which internet banners appear on any site within an ad network as opposed to a specific website.

in Do-it-Yourself ("DIY") projects. Based on MRI data, 37.3% of HVAC Consumers had a home improvement project done by themselves or by another household member and, compared to the average adult, HVAC Consumers are 56.6% more likely to have had a home improvement project done by themselves or by another household member. As a result, we concluded that targeting DIY sites and individuals would enhance reach among likely Settlement Class Members. A total of 127,288,655 unique impressions were delivered from August 17, 2015 through September 11, 2015, resulting in an additional 288,655 unique impressions at no extra charge. The internet effort alone reached approximately 62.0%[12] of Adults 25+ and likely Settlement Class Members. Screenshots of the internet banner notices, as they appeared on various websites, are attached as **Exhibit 4**.

Additional Efforts by Lennox

13. In addition to the notice procedures undertaken by KCC, it is our understanding Lennox would (1) publish information concerning the Settlement, including a live link to the Settlement Website, on the separate websites for each of the brands that are the subject of the Settlement, and (2) transmit information concerning the Settlement Agreement to independent Lennox dealers (as listed on www.lennox.com). Because we cannot speculate on the number of impressions that these efforts generated or apply a reach percentage to this additional coverage, we have not factored these efforts by Lennox into our calculations and analysis. Thus, whether Lennox provided these additional forms of notice in whole, in part, or not all, has no impact on our conclusions as to the adequacy of the Settlement Notice Program. That said, to the extent Lennox has published and transmitted information about the Settlement on additional websites and to dealers, these notice efforts play a valuable role in distributing information, enhancing coverage and increasing the frequency of exposure.

[12] Based on an MRI Adult 25+ population of approximately 205,315,000, the 127,288,655 unique internet impressions reached 62.0% of Adults 25+. According to MRI data, HVAC Consumers are 8.9% more likely to have access to the internet from home using a computer and 7.7% more likely to have looked at or used the internet in the last 30 days, as compared to the general adult population. In addition, efforts were made to target internet impressions to DIY sites and individuals, as well as geographically based on sales data to enhance reach among likely Settlement Class Members. As a result, reach among likely Settlement Class Members is believed to be at least 62.0%, if not more.

Settlement Website

14. On August 14, 2015, the Settlement Website, www.evaporatorcoillawsuit.com, went live to the public. At this website, Settlement Class Members were and are able to download a Notice, Claim Form, Settlement Agreement, Preliminary Approval Order, Amended Class Action Complaint, and Defendant's Answer to Plaintiffs' Amended Class Action Complaint. Visitors to the site can also submit claims online, upload supporting documentation, and check the status of their claim. The website has been updated several times per the Parties' request to address Settlement Class Member needs and questions, including, but not limited to, updating the Frequently Asked Questions section to address trending Class Member questions and updating the Court Documents section with newly filed documents. Upon final approval, the Settlement Website will be updated to allow Settlement Class Members to submit requests for benefits. The website address was prominently displayed in all printed notice materials and accessible through a hyperlink embedded in the internet banner notices. As of October 30, 2015, the website has received 98,800 visits, 16,123 downloads, 18,139 online claim submissions, and uploads of supporting documentation for 10,788 unique individual claims.[13]

Toll-free Number

15. On August 14, 2015, a toll-free number, 1-888-841-1363, was made available to the public. The toll-free number has provided and continues to provide Settlement Class Members with a simple way to learn more about the Settlement in the form of frequently asked questions and answers and allows them to request to have more information mailed directly to them. The toll-free number was prominently displayed in all printed notice materials. As of October 30, 2015, KCC has received a total of 61,624 calls, of these 16,139 have requested a Notice and 1,840 have requested a Request for Benefits Form.

[13] Online claim submissions refer to claims that were submitted via the website. Unique individual claims refer to individuals who uploaded supporting documentation when they filed their claim online.

Dedicated Email Address

16. On August 14, 2015, an email address, admin@evaporatorcoillawsuit.com, was activated. The email address has provided and continues to provide Settlement Class Members with an additional method to learn more about the Settlement, as well as ask the Settlement Administrator questions. The email address was provided in all printed notice documents. As of October 30, 2015, approximately 5,800 emails have been received. The vast majority of these emails contained generic questions about the Settlement, including what benefits are available. A small number of emails received were outside the scope of the Settlement, as such, these emails were promptly forwarded to the Defendant for a proper response.

Exclusions & Objections

17. As of October 30, 2015, a total of 70 exclusion requests have been received and a total of 15 objections have been received. Of the objections received, none pertained to the Notice Program. The Court has recently extended the exclusion and objection deadline from October 28, 2015 to November 11, 2015.

Claim Forms

18. The deadline for Settlement Class Members to file a claim is the later of a postmarked deadline of February 1, 2016 or 60 days after the original coil is replaced. As of October 30, 2015, KCC has received a total of 27,642 claim forms, of which 9,503 have been received via mail and 18,139 have been received via the Settlement Website.

CONCLUSION

19. The primary objective of the Settlement Notice Program was to effectively reach Settlement Class Members with a noticeable Notice of the Settlement, and provide them with a reasonable opportunity to understand their legal rights and options. These efforts were successful.

20. The direct notice efforts reached approximately 29.7%-32.8% of Settlement Class Members and the media notice effort reached approximately 70.8%[14] of likely Settlement Class

[14] The net, unduplicated reach of the various media is calculated using random probability formulas utilized in the advertising industry (e.g., 1-((1-Reach A) x (1-Reach B)). These formulas remove the inherent overlap of the various media to determine the net percentage reached.

Members. Combined, net of duplication, the notice effort reached approximately 79.4%-80.3% of likely Settlement Class Members on average 1.5 times each.[15] Not included in this reach calculation is the additional exposures received through Lennox's notice efforts, the Settlement Website and toll-free number.

21. My prior declaration[16] stated that the individual notice effort was expected to reach approximately 32.7% of the Class. It also stated that if the direct notice reach changed significantly, additional media efforts could be necessary. As direct notice is the only variable portion of the Notice Program, we continuously monitored the results of the individual notice effort to ensure a successful result of the entire Notice Program. Due to careful planning, extensive experience, and data collected from other class action settlements we were able to successfully deliver the estimated reach and frequency in full and as planned, based on the approximately 2.9 million estimated class size provided. We have recently learned that the approximate class size increased to 3.2 million; thereby, lowering the individual notice reach to 29.7%. This update in the class size does not significantly change the reach of the individual notice effort; therefore, additional media efforts are not necessary.

22. In my experience, this reach percentage is consistent with other effective court-approved notice programs. In addition, it meets the 70-95% reach standard set forth in the Federal Judicial Center's (FJC) *Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide* (the FJC Checklist).

23. The Notices were designed to be "noticed" and understood by Settlement Class Members. They contained easy-to-read summaries of all of the key information affecting Settlement Class Members' rights and options. All information required by Federal Rule of Civil Procedure 23, as well as the *Manual for Complex Litigation, Fourth*, was incorporated into the notice documents. The ad units were adequately sized to attract attention to the Notice. Many

[15] The reach or net reach of a notice program is defined as the percentage of a class that was exposed to a notice net of any duplication among people who may have been exposed more than once. Notice exposure is the average number of times that those reached by a notice would be exposed to a notice.
[16] Dkt #68-3

courts, as well as the FJC, have approved notices that have been written and designed in a similar fashion.

24. We have provided evidence that demonstrates that the Settlement Notice Program reached a substantial percentage of Settlement Class Members and we prepared notice documents that adequately informed them about the Settlement.

25. In my expert opinion, the Settlement Notice Plan and Notices provided the best notice practicable under the circumstances of this case, satisfied due process, including its "desire to actually inform" requirement, conformed to all aspects of Federal Rule of Civil Procedure 23, and comported with the guidance for effective notice articulated in the *Manual for Complex Litigation 4th*.

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

Executed this 3rd day of November, 2015.

Gina M. Intrepido-Bowden

Exhibit 1

KCC

75 Rowland Way
Suite 250
Novato, CA 94945

415-798-5900 PHONE
415-892-7354 FAX
kccllc.com

JULY 2, 2015

VIA PRIORITY MAIL

«First» «Last»
«Company»
«Address_1»
«Address_2»
«City», «State» «Zip»

Re: Notice of Proposed Class Action Settlement Pursuant to 28 U.S.C. § 1715

Dear «First» «Last»:

KCC Class Action Services LLC has been retained as the Third-Party Claims Administrator by Lennox Industries, Inc. McKool Smith, P.C. and Winston & Strawn LLP represent Lennox Industries Inc. ("Lennox") in a putative class action lawsuit entitled *Robert Thomas, Scott Patrick Harris, Michael Bell, Sandra Palumbo, Frank Karbarz and Thomas Davis, on behalf of themselves and all others similarly situated, v. Lennox Industries Inc.*, Case No. 1:13-cv-07747. The lawsuit is pending before the Honorable Sarah L. Ellis in the United States District Court for the Northern District of Illinois, Eastern Division. This letter is to advise you that Plaintiffs filed a Motion for Preliminary Approval of Class Action Settlement in connection with this class action lawsuit on June 26, 2015.

Case Name: *Robert Thomas, et al., v. Lennox Industries Inc.*

Case Number: 1:13-cv-07747

Jurisdiction: United States District Court,
Northern District of Illinois, Eastern Division

Date Settlement Filed with Court: June 26, 2015

Lennox denies any wrongdoing or liability whatsoever, but has decided to settle this action solely in order to eliminate the burden, expense, and uncertainties of further litigation. In compliance with 28 U.S.C. § 1715(b), the following documents referenced below are included on the CD that is enclosed with this letter:

1. **28 U.S.C. § 1715(b)(1) – Complaint and Related Materials:** Copies of the *Class Action Complaint, Amended Class Action Complaint,* and *Defendant's Answer to Plaintiffs' Amended Class Action Complaint* are included on the enclosed CD Rom.

2. **28 U.S.C. § 1715(b)(2) – Notice of Any Scheduled Judicial Hearing:** As of July 2, 2015, the Court has not yet scheduled a final fairness hearing in this matter. Plaintiffs filed a Motion for Preliminary Approval of the Class Action Settlement, and a hearing on that motion is scheduled to take place on July 9, 2015, at 1:45 p.m. in Courtroom 1403 of the Northern District of Illinois, Eastern Division, in the Dirksen Federal Building, Chicago IL, before the Honorable Sara L. Ellis. Copies of *Plaintiffs' Motion for Preliminary Approval of the Class Settlement, Notice of Motion re Plaintiff's Motion for Preliminary Approval of the Class Settlement, Memorandum in Support of Plaintiff's Motion for Preliminary Approval of the Class Settlement, Declaration of Gina M. Intrepido Bowden on Settlement Notice Plan and Notice Documents,* and *[Proposed] Order Granting Preliminary Approval of Proposed Settlement, Provisionally Certifying the Proposed Settlement Class and Authorizing the Dissemination of Notice* are included on the enclosed CD Rom.

3. **28 U.S.C. § 1715(b)(3) – Notification to Class Members:** Copies of the *Long-Form Notice, Summary Notice, Postcard Notice, Dealer Notice, Internet Banners,* and *Claim Form* to be provided to the class are included on the enclosed CD Rom.

4. **28 U.S.C. § 1715(b)(4) – Class Action Settlement Agreement:** A copy of the *Stipulation and Agreement of Settlement* is included on the enclosed CD Rom.

5. **28 U.S.C. § 1715(b)(5) – Any Settlement or Other Agreement:** As of July 2, 2015, no other settlement or agreement has been entered into by the parties to this Action.

6. **28 U.S.C. § 1715(b)(6) – Final Judgmen**t: No Final Judgment has been reached as of July 2, 2015, nor have any Notices of Dismissal been granted at this time. A copy of the *[Proposed] Final Judgment and Order of Dismissal* is included on the enclosed CD Rom.

7. **28 U.S.C. § 1715(b)(7)(A)-(B) – Names of Class Members/Estimate of Class Members:** Pursuant to 28 U.S.C. § 1715(b)(7)(A), attached hereto as Appendix A is a breakdown of the estimated percentages of known Class Members residing in the United States by States and regions of residence. Pursuant to 28 U.S.C. §

1715(b)(7)(B), it is estimated that there are approximately 988,854 known individuals in the class, and the projected settlement class is approximately 2,900,000. A list of these 988,854 known class members is included on the enclosed CD Rom.

8. **28 U.S.C. § 1715(b)(8) – Judicial Opinions Related to the Settlement:** The proposed Settlement is still pending preliminary and final approval by the Court. As of July 2, 2015, there has been no written judicial opinion related to the settlement.

If for any reason you believe the enclosed information does not fully comply with 28 U.S.C. § 1715, please contact McKool Smith, P.C. at ehalper@mckoolsmith.com or (212) 402-9413 immediately so that Lennox can address any concerns or questions you may have.

Thank you.

Sincerely,

/s/
Patrick M. Passarella
Senior Vice President

Enclosure – CD Rom

Attachment A

Last	First	Company	Address 1	Address 2	City	State	Zip
Geraghty	Michael	Office of the Alaska Attorney General	P.O. Box 110300		Juneau	AK	99811-0300
Strange	Luther	Office of the Alabama Attorney General	501 Washington Avenue	PO Box 300152	Montgomery	AL	36130-0152
McDaniel	Dustin	Arkansas Attorney General Office	323 Center Street, Suite 200		Little Rock	AR	72201-2610
Horne	Tom	Office of the Arizona Attorney General	1275 W. Washington Street		Phoenix	AZ	85007
	CAFA Coordinator	Office of the Attorney General	Consumer Law Section	455 Golden Gate Ave., Suite 11000	San Francisco	CA	94102
Suthers	John	Office of the Colorado Attorney General	Ralph L. Carr Colorado Judicial Center	1300 Broadway, 10th Floor	Denver	CO	80203
Jepsen	George	State of Connecticut Attorney General's Office	55 Elm Street		Hartford	CT	6106
Nathan	Irvin	District of Columbia Attorney General	441 4th Street, NW, Suite 1100S		Washington	DC	20001
Lynch	Loretta E.	Attorney General of the United States	United States Department of Justice	950 Pennsylvania Avenue, NW	Washington	DC	20530-0001
Denn	Matt	Delaware Attorney General	Carvel State Office Building	820 N. French Street	Wilmington	DE	19801
Bondi	Pam	Office of the Attorney General of Florida	The Capitol, PL-01		Tallahassee	FL	32399-1050
Olens	Sam	Office of the Georgia Attorney General	40 Capitol Square, SW		Atlanta	GA	30334-1300
Louie	David	Office of the Hawaii Attorney General	425 Queen Street		Honolulu	HI	96813
Miller	Tom	Iowa Attorney General	Hoover State Office Building	1305 E. Walnut Street	Des Moines	IA	50319
Wasden	Lawrence	State of Idaho Attorney General's Office	Statehouse	700 W Jefferson St	Boise	ID	83720-0010
Madigan	Lisa	Illinois Attorney General	James R. Thompson Center	100 W. Randolph Street	Chicago	IL	60601
Zoeller	Greg	Indiana Attorney General's Office	Indiana Government Center South	302 West Washington Street, 5th Floor	Indianapolis	IN	46204
Schmidt	Derek	Kansas Attorney General	120 S.W. 10th Ave., 2nd Floor		Topeka	KS	66612-1597
Conway	Jack	Office of the Kentucky Attorney General	700 Capitol Ave	Capitol Building, Suite 118	Frankfort	KY	40601
Caldwell	James D.	Office of the Louisiana Attorney General	P.O. Box 94095		Baton Rouge	LA	70804-4095
Coakley	Martha	Office of the Attorney General of Massachusetts	1 Ashburton Place		Boston	MA	02108-1518
Gansler	Douglas F.	Office of the Maryland Attorney General	200 St. Paul Place		Baltimore	MD	21202-2202
Mills	Janet	Office of the Maine Attorney General	State House Station 6		Augusta	ME	04333
Schuette	Bill	Office of the Michigan Attorney General	P.O. Box 30212	525 W. Ottawa Street	Lansing	MI	48909-0212
Lori Swanson	Attorney General	Attention: CAFA Coordinator	1400 Bremer Tower	445 Minnesota Street	St. Paul	MN	55101-2131
Koster	Chris	Missouri Attorney General's Office	Supreme Court Building	207 W. High Street	Jefferson City	MO	65101
Hood	Jim	Mississippi Attorney General's Office	Department of Justice	P.O. Box 220	Jackson	MS	39205
Fox	Tim	Office of the Montana Attorney General	Justice Bldg.	215 N. Sanders Street	Helena	MT	59620-1401
Cooper	Roy	Office of the North Carolina Attorney General	Department of Justice	P.O. Box 629	Raleigh	NC	27602-0629
Stenehjem	Wayne	North Dakota Office of the Attorney General	State Capitol	600 E. Boulevard Avenue	Bismarck	ND	58505-0040
Bruning	Jon	Office of the Nebraska Attorney General	State Capitol	P.O. Box 98920	Lincoln	NE	68509-8920
Delaney	Michael	New Hampshire Attorney General	State House Annex	33 Capitol Street	Concord	NH	03301-6397
Chiesa	Jeffrey S.	Office of the New Jersey Attorney General	Richard J. Hughes Justice Complex	25 Market Street, P.O. Box 080	Trenton	NJ	08625
King	Gary	Office of the New Mexico Attorney General	P.O. Drawer 1508		Santa Fe	NM	87504-1508
Masto	Catherine Cortez	Nevada Attorney General	Old Supreme Ct. Bldg.	100 North Carson Street	Carson City	NV	89701
Schneiderman	Eric	Office of the New York Attorney General	Department of Law	The Capitol, 2nd Floor	Albany	NY	12224
Dewine	Mike	Ohio Attorney General	State Office Tower	30 E. Broad Street	Columbus	OH	43266-0410
Pruitt	Scott	Oklahoma Office of the Attorney General	313 NE 21st Street		Oklahoma City	OK	73105
Rosenblum	Ellen F.	Office of the Oregon Attorney General	Justice Building	1162 Court Street, NE	Salem	OR	97301
Kane	Kathleen	Pennsylvania Office of the Attorney General	1600 Strawberry Square		Harrisburg	PA	17120
Kilmartin	Peter	Rhode Island Office of the Attorney General	150 South Main Street		Providence	RI	02903
Wilson	Alan	South Carolina Attorney General	Rembert C. Dennis Office Bldg.	P.O. Box 11549	Columbia	SC	29211-1549
Jackley	Marty J.	South Dakota Office of the Attorney General	1302 East Highway 14, Suite 1		Pierre	SD	57501-8501
Cooper, Jr.	Robert E.	Tennessee Attorney General and Reporter	425 5th Avenue North		Nashville	TN	37243
Abbott	Greg	Attorney General of Texas	Capitol Station	P.O. Box 12548	Austin	TX	78711-2548
Swallow	John	Utah Office of the Attorney General	State Capitol, Room 236	305 N State St	Salt Lake City	UT	84114-0810
Cuccinelli	Ken	Office of the Virginia Attorney General	900 East Main Street		Richmond	VA	23219
Sorrell	William H.	Office of the Attorney General of Vermont	109 State Street		Montpelier	VT	05609-1001
Ferguson	Bob	Washington State Office of the Attorney General	1125 Washington St SE	P.O. Box 40100	Olympia	WA	98504-0100
Van Hollen	J.B.	Office of the Wisconsin Attorney General	Dept of Justice, State Capitol, RM 114	East P.O. Box 7857	Madison	WI	53707-7857
Morrisey	Patrick	West Virginia Attorney General	State Capitol	1900 Kanawha Blvd E	Charleston	WV	25305
Phillips	Gregory	Office of the Wyoming Attorney General	State Capitol Bldg.	200 W 24th St	Cheyenne	WY	82002
Lutu	Afoa Leulumoega	American Samoa Attorney General	Exec. Ofc. Bldg, Utulei	Territory of American Samoa	Pago Pago	AS	96799
Rapadas	Leonardo M	Attorney General Office	590 S. Marine Corps Drive	ITC Bldg, Suite 706	Tamuning	Guam	96913
San Nicolas	Joey Patrick	Northern Mariana Islands Attorney General	Administration Building	PO Box 10007	Saipan	MP	96950-8907
Miranda-Rodriguez	Cesar R.	Puerto Rico Attorney General	P.O. Box 902192	San Juan	San Juan	PR	00902-0192
Frazer	Vincent	Department of Justice	Virgin Islands Attorney General	34-38 Kronprindsens Gade, GERS Bldg, 2nd Floor	St. Thomas	VI	00802
Beck	Norman K.	Winston & Strawn LLP	35 West Wacker Drive		Chicago	IL	60601
Halper	Rick	McKool Smith, P.C.	One Bryant Park	47th Floor	New York	NY	10036
Shub	Jonathan A.	Kohn, Swift & Graf, P.C.	One South Broad Street	Suite 2100	Philadelphia	PA	19107
Leon	Jeffrey A.	Quantum Legal LLC	513 Central Avenue	Suite 300	Highland Park	IL	60035
Passarella	Patrick M.	KCC Class Action Services	75 Rowland Way	Suite 250	Novato	CA	94945
Carameros	Jonathan D.	KCC Class Action Services	75 Rowland Way	Suite 250	Novato	CA	94945

Exhibit 2

LEGAL NOTICE

If you own a Lennox, Aire-Flo, Armstrong Air, AirEase, Concord, or Ducane brand residential air conditioning or heat pump system, your rights may be affected and you could get benefits from a class action settlement.

1-888-841-1363
www.evaporatorcoillawsuit.com
admin@evaporatorcoillawsuit.com

See important notice
on the other side.

LXT

Thomas v. Lennox Industries, Inc.
Settlement Administrator
P.O. Box 43375
Providence, RI 02940-3375

«Barcode»
Postal Service: Please do not mark barcode

Claim #: LXT - «ClaimID» «MailRec»

«First1» «Last1»
«CO»
«Addr1» «Addr2»
«City», «ST» «Zip»
«Country»

A Settlement has been reached with Lennox Industries Inc. ("Lennox") in a class action lawsuit about whether it manufactured and sold defective evaporator coils. An evaporator coil is a part of an air conditioning system or heat pump system in the cooling mode. Lennox denies all of the claims in the lawsuit, but has agreed to the Settlement to avoid the cost and risk of further litigation.

Who's included? Warranty records show that you are likely included. Specifically, the Settlement Class includes all U. S. residents who, between October 29, 2007 and July 9, 2015, purchased at least one new uncoated copper tube Lennox, Aire-Flo, Armstrong Air, AirEase, Concord, or Ducane brand evaporator coil, covered by an Original Warranty ("Original Coil"), whether purchased separately, as part of an air handler, or as part of a packaged unit, for their personal, their family, or their household purposes, that was installed in a house, condominium unit, apartment unit, or other residential dwelling located in the United States.

What does the Settlement provide? An Expanded Warranty and Reimbursement Program (the "Program") that includes: (1) a $75 service rebate; (2) an aluminum tube or coated copper tube Replacement Coil after the first coil replacement; (3) up to $550 as retroactive reimbursement for labor and refrigerant charges for the replacement of the Original Coil in the event there is more than one coil replacement; and (4) up to $550 as reimbursement for labor and refrigerant charges for each uncoated copper tube coil replacement after the first replacement. Program benefits require replacement of an Original Coil due to a coil leak within five years after installation and will vary by individual Settlement Class Members.

How do I get Settlement benefits? You must submit a Claim Form by the later of **February 1, 2016 or 60 days after your Original Coil is replaced by installation of a Replacement Coil** to obtain coverage under the Program and to request benefits for which you may be eligible as of the date you submit your Claim Form. If approved, you will be sent a Certificate explaining the benefits under the Program and when and how to redeem them. To redeem benefits for which you may first become eligible after submission of your Claim Form, you must submit Request for Benefits Forms with information and supporting documentation that were not already included with the Claim Form. Claim Forms and Request for Benefits Forms may be accessed and submitted online or downloaded for submission via U.S. Mail at www.evaporatorcoillawsuit.com. The Forms are also available by calling 1-888-841-1363 or by writing to *Thomas v. Lennox Industries Inc.* Settlement Administrator, P.O. Box 43374, Providence, RI 02940-3374.

Who represents me? The Court has appointed Kohn Swift & Graf, P.C., Quantum Legal LLC, and Seeger Weiss LLP as Class Counsel. You do not have to pay Class Counsel or anyone else to participate. If you want to be represented by your own lawyer, you may hire one at your own expense.

Your other options. If you are in the Settlement Class and you do nothing, your rights will be affected and you won't get any Settlement benefits. If you don't want to be legally bound by the Settlement, you must exclude yourself from the Settlement by **October 28, 2015**. Unless you exclude yourself, you won't be able to sue or continue to sue Lennox for any claim made in this lawsuit or released by the Settlement. If you stay in the Settlement, you may object to the Settlement or give notice of intent for you or your own lawyer to appear at the final approval hearing—at your own expense—but you don't have to. Objections and notices of intent to appear are due by **October 28, 2015**.

The Final Approval Hearing. The Court will hold a hearing on **December 2, 2015** to consider whether to approve the Settlement, and a request of up to $1,250,000 for attorneys' fees, costs and expenses, which includes $2,500 service awards to each Class Representative. If approved, these amounts, and the costs of administering the Settlement, will be paid by Lennox and will not reduce the amount of Settlement benefits available.

Exhibit 3

2

MUSHROOM & LEEK HASH

Hands-on: 1 hr. 30 min.
Total: 1 hr. 45 min.

- ¼ cup canola oil, divided
- 1½ cups thinly sliced leek
- 6 ounces sliced portobello mushroom caps
- 1 tablespoon chopped fresh thyme
- 3 cups roasted potatoes from Master Hash recipe
- 1 cup roasted garlic cream from Master Hash recipe
- 1 cup Brussels sprout leaves
- 6 cherry tomatoes, halved
- 1¼ teaspoons kosher salt, divided
- ½ teaspoon freshly ground black pepper, divided
- 2 tablespoons half-and-half
- ¼ cup white vinegar
- 6 large eggs
- 2 tablespoons chopped fresh flat-leaf parsley

1. Heat 1 tablespoon oil in a large skillet over medium-high heat. Add leek; cook 2 minutes, stirring. Add mushrooms and thyme; cook 4 minutes.
2. Heat a cast-iron skillet over medium-high heat. Add remaining 3 tablespoons oil and potatoes; cook 4 minutes. Add leek mixture, garlic cream, sprouts, tomatoes, 1 teaspoon salt, and ¼ teaspoon pepper; cook 2 minutes. Stir in half-and-half.
3. Follow steps 7 and 8 of Master Hash recipe to poach eggs and serve hash.

SERVES 6 *(serving size: about ¾ cup hash and 1 egg)*
CALORIES 362; **FAT** 20.8g (sat 5g, mono 9.2g, poly 4.4g); **PROTEIN** 12g; **CARB** 34g; **FIBER** 5g; **CHOL** 199mg; **IRON** 3mg; **SODIUM** 504mg; **CALC** 120mg

3

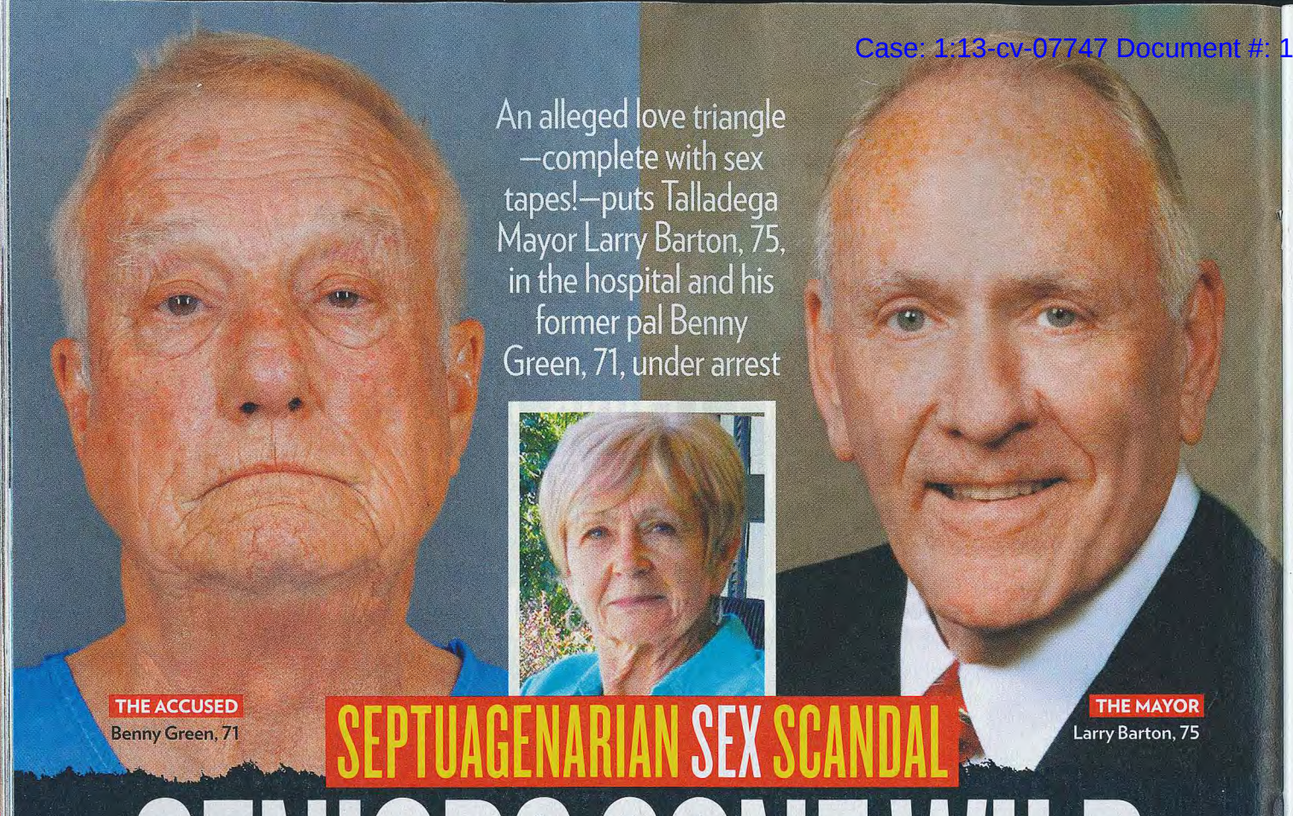
CHICKEN & VEGGIE HASH

Hands-on: 1 hr. 30 min.
Total: 1 hr. 45 min.

- ¼ cup canola oil, divided
- 1 cup sliced red onion
- 1 (9-ounce) package frozen artichokes, thawed
- 1 tablespoon chopped fresh thyme
- 3 cups roasted potatoes from Master Hash recipe
- ½ cup bottled roasted red bell peppers, drained and chopped
- 2 tablespoons chopped fresh oregano, divided
- ½ teaspoon kosher salt
- ½ teaspoon black pepper
- 6 ounces shredded skinless, boneless rotisserie chicken breast
- 3 ounces grated Parmesan cheese, divided
- 1 cup roasted garlic cream from Master Hash recipe
- 2 tablespoons half-and-half

1. Heat 1 tablespoon oil in a skillet over medium heat. Add onion, artichokes, and thyme; cook 5 minutes.
2. Heat a cast-iron skillet over medium-high heat. Add remaining 3 tablespoons oil and potatoes; cook 4 minutes. Stir in onion mixture, bell peppers, 1 tablespoon oregano, salt, black pepper, chicken, half of cheese, and garlic cream. Cook 2 minutes. Stir in half-and-half.
3. Divide hash among 6 plates. Sprinkle with remaining 1 tablespoon oregano and cheese.

SERVES 6 *(serving size: about ¾ cup hash)*
CALORIES 380; **FAT** 21.5g (sat 6.1g, mono 9g, poly 3.6g); **PROTEIN** 18g; **CARB** 31g; **FIBER** 6g; **CHOL** 51mg; **IRON** 1mg; **SODIUM** 540mg; **CALC** 250mg



An alleged love triangle—complete with sex tapes!—puts Talladega Mayor Larry Barton, 75, in the hospital and his former pal Benny Green, 71, under arrest

THE ACCUSED
Benny Green, 71

THE MAYOR
Larry Barton, 75

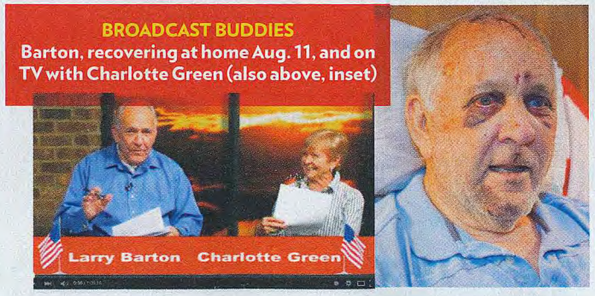
SEPTUAGENARIAN SEX SCANDAL

SENIORS GONE WILD

With 15 gospel recordings, two weekly cable shows and a prison record for stealing $5,900 from the city whose voters have elected him four times—once *after* he got out of jail—Talladega, Ala., Mayor Larry Barton already cut a colorful figure. Then on Aug. 8, say police, Barton, 75, arrived outside the barbershop where he cuts hair and was confronted by a man in a wig and trench coat who hit Barton with a baseball bat, then tried to flee by bicycle. Charged with first-degree assault was Benny Green, 71, Barton's friend and former TV cohost. Significantly, says Green's former attorney Stewart Springer, Barton is the man seen having sex with Green's wife, Charlotte, 68, in three videos secretly recorded in the back of the Greens' liquor store, where Barton keeps an unofficial office. The tapes were cited in the couple's pending divorce case. "If Benny did do this—and I'm not saying he did," says Springer, "they made him do it by what they did to him."

Neither Charlotte Green nor her attorney Steven Adcock returned repeated calls. But Barton, married for 59 years to wife Mary, 77, defends his "good friend" Charlotte and himself. "Mrs. Green's character is impeccable. I don't know what they're talking about," he says. "I do know it's illegal to videotape someone without their permission." Benny Green, free on $150,000 bond and facing two to 20 years, has not entered a plea. But with the report of alleged sex tapes recorded in 2013 going public just prior to Barton's Aug. 25 bid for a fifth term, "it's possibly politically motivated," says the mayor. "They do this every time I run."

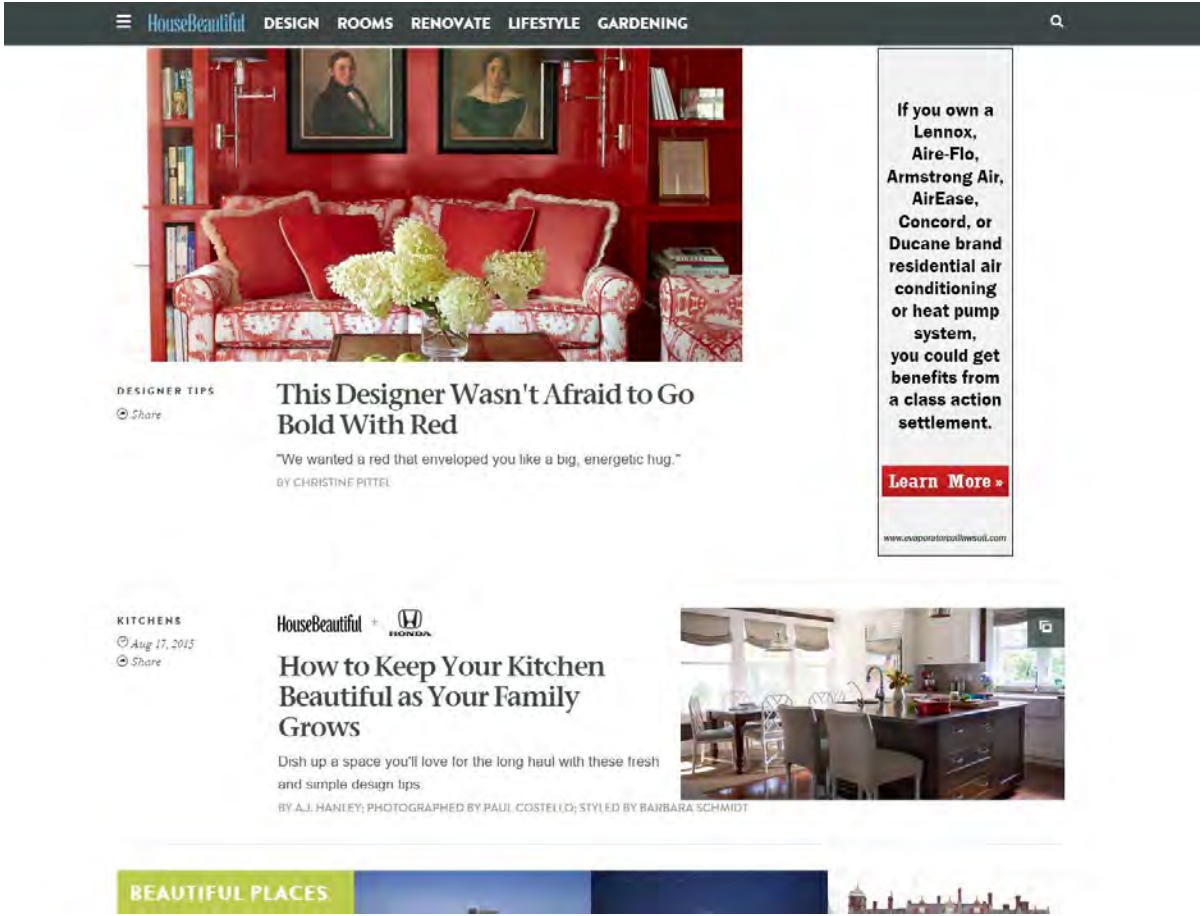
By Jeff Truesdell

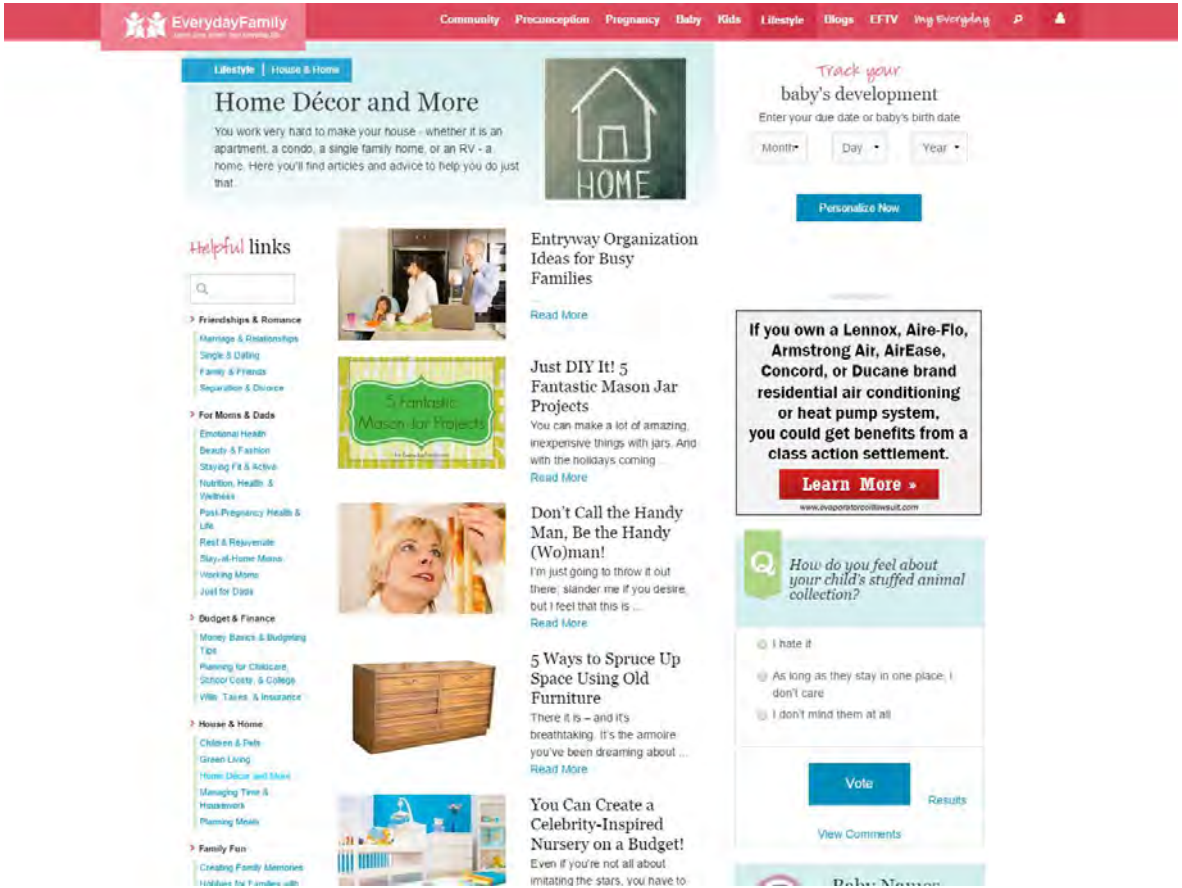


BROADCAST BUDDIES
Barton, recovering at home Aug. 11, and on TV with Charlotte Green (also above, inset)

(GREEN) VESTAVIA HILLS POLICE DEPARTMENT; (BARTON, PORTRAIT) CITY OF TALLADEGA; (BARTON, HOME) BOB GRISTY/THE DAILY HOME

Exhibit 4


HouseBeautiful
DESIGN
ROOMS
RENOVATE
LIFESTYLE
GARDENING
DESIGNER TIPS
Share
This Designer Wasn't Afraid to Go Bold With Red
"We wanted a red that enveloped you like a big, energetic hug."
BY CHRISTINE PITTEL
If you own a Lennox, Aire-Flo, Armstrong Air, AirEase, Concord, or Ducane brand residential air conditioning or heat pump system, you could get benefits from a class action settlement.
Learn More »
www.evaporatorpollawsuit.com
KITCHENS
Aug 17, 2015
Share
HouseBeautiful + HONDA
How to Keep Your Kitchen Beautiful as Your Family Grows
Dish up a space you'll love for the long haul with these fresh and simple design tips.
BY A.J. HANLEY; PHOTOGRAPHED BY PAUL COSTELLO; STYLED BY BARBARA SCHMIDT
BEAUTIFUL PLACES


EverydayFamily
Community
Preconception
Pregnancy
Baby
Kids
Lifestyle
Blogs
EFTV
Lifestyle | House & Home
Home Décor and More
You work very hard to make your house - whether it is an apartment, a condo, a single family home, or an RV - a home. Here you'll find articles and advice to help you do just that.
HOME
Track your baby's development
Enter your due date or baby's birth date
Month
Day
Year
Personalize Now
Helpful links
Friendships & Romance
Marriage & Relationships
Single & Dating
Family & Friends
Separation & Divorce
For Moms & Dads
Emotional Health
Beauty & Fashion
Staying Fit & Active
Nutrition, Health & Wellness
Post-Pregnancy Health & Life
Rest & Rejuvenate
Stay-at-Home Moms
Working Moms
Just for Dads
Budget & Finance
Money Basics & Budgeting Tips
Planning for Childcare, School Costs, & College
Wills, Taxes, & Insurance
House & Home
Children & Pets
Green Living
Home Décor and More
Managing Time & Housework
Planning Meals
Family Fun
Creating Family Memories
Entryway Organization Ideas for Busy Families
Read More
5 Fantastic Mason Jar Projects
Just DIY It! 5 Fantastic Mason Jar Projects
You can make a lot of amazing, inexpensive things with jars. And with the holidays coming ...
Read More
Don't Call the Handy Man, Be the Handy (Wo)man!
I'm just going to throw it out there: slander me if you desire, but I feel that this is ...
Read More
5 Ways to Spruce Up Space Using Old Furniture
There it is – and it's breathtaking. It's the armoire you've been dreaming about ...
Read More
You Can Create a Celebrity-Inspired Nursery on a Budget!
Even if you're not all about imitating the stars, you have to
If you own a Lennox, Aire-Flo, Armstrong Air, AirEase, Concord, or Ducane brand residential air conditioning or heat pump system, you could get benefits from a class action settlement.
Learn More »
How do you feel about your child's stuffed animal collection?
I hate it
As long as they stay in one place, I don't care
I don't mind them at all
Vote
Results
View Comments

martha stewart

Videos Martha's Blog Martha's Pets American Made Weddings Martha Café

COOK | CREATE | CELEBRATE | SHOP

Nominate Yourself For The Martha Stewart American Made Audience Choice Award

Subscribe to our Magazine Sign In

SEARCH

BROWSE TOPICS

GET ORGANIZED

Let's face it: Unorganized spaces can make you feel stressed. Our plan? Get organized by tackling one thing at a time, whether it's craft supplies or your medicine cabinet, with our best organizing tips and supplies.

KITCHEN ORGANIZATION & STORAGE

The secret to speeding up your cooking is organizing kitchen tools and equipment. By thoughtfully placing your small...

EXPLORE 3 PROJECTS, 37 ARTICLES, 2 GALLERIES, 12 VIDEOS, AND MORE

ORGANIZING CALENDARS & CHECKLISTS

Organizing calendars and checklists can make every aspect of your life easier. We have organizing calendars...

EXPLORE 8 PROJECTS, 9 ARTICLES, 7 GALLERIES, 6 VIDEOS, AND MORE

ORGANIZING CLEANING SUPPLIES

It seems intuitive to keep cleaners, well, clean. Our guides to organizing cleaning supplies will not only maintain tidiness...

EXPLORE 1 PROJECT, 14 ARTICLES, 8 GALLERIES, 8 VIDEOS, AND MORE

FAMILYCORNER.com

Search FamilyCorner SEARCH

Home | Connect | Fun with Kids | Family Fun | Holidays | Food | Home & Garden | Ages & Stages | Education | Parenting | Just For You | Finance | Forums

15 Beat the Heat Ideas for Outdoor Fun

July 22nd, 2013 posted by Sherri Osborn

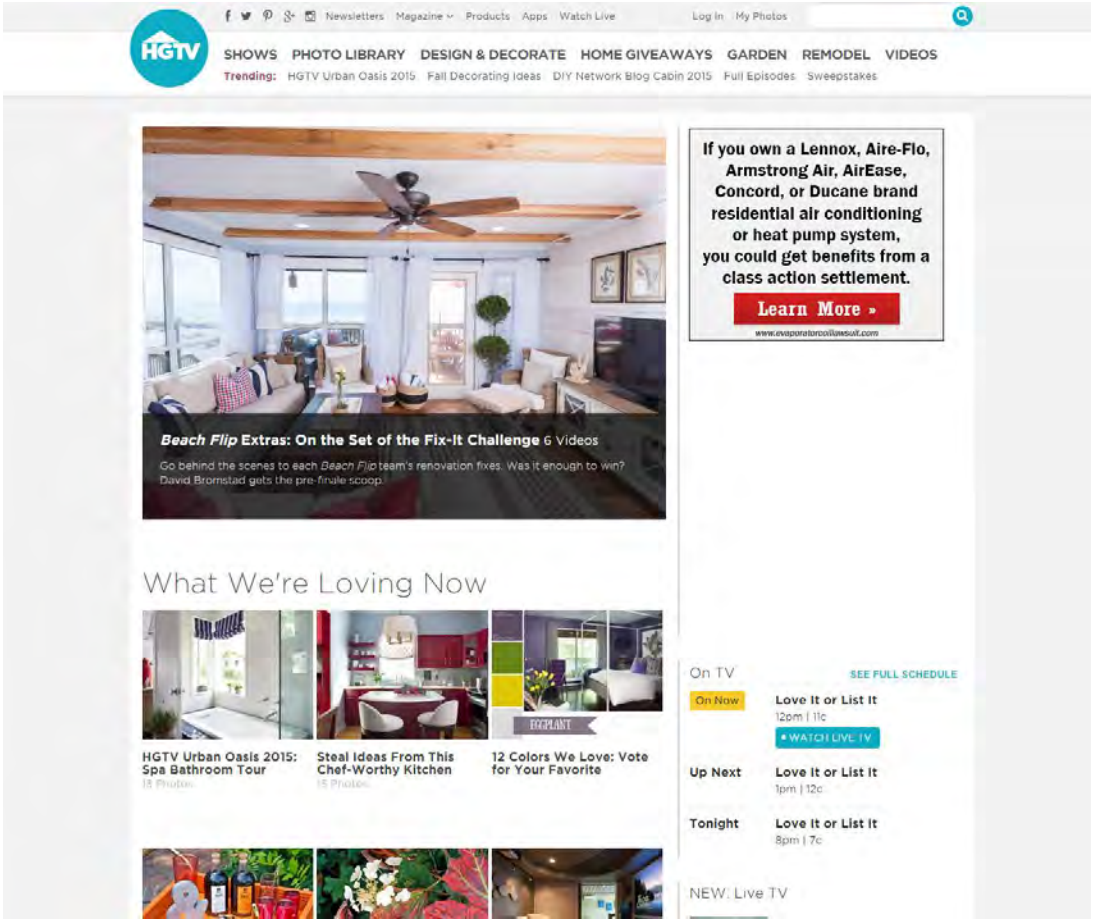

HGTV
Newsletters Magazine Products Apps Watch Live
Log In My Photos
SHOWS PHOTO LIBRARY DESIGN & DECORATE HOME GIVEAWAYS GARDEN REMODEL VIDEOS
Trending: HGTV Urban Oasis 2015 Fall Decorating Ideas DIY Network Blog Cabin 2015 Full Episodes Sweepstakes
Beach Flip Extras: On the Set of the Fix-It Challenge 6 Videos
Go behind the scenes to each Beach Flip team's renovation fixes. Was it enough to win? David Bromstad gets the pre-finale scoop.
If you own a Lennox, Aire-Flo, Armstrong Air, AirEase, Concord, or Ducane brand residential air conditioning or heat pump system, you could get benefits from a class action settlement.
Learn More »
What We're Loving Now
HGTV Urban Oasis 2015: Spa Bathroom Tour
Steal Ideas From This Chef-Worthy Kitchen
12 Colors We Love: Vote for Your Favorite
On TV
SEE FULL SCHEDULE
On Now
Love It or List It
12pm | 11c
WATCH LIVE TV
Up Next
Love It or List It
1pm | 12c
Tonight
Love It or List It
8pm | 7c
NEW: Live TV

EXHIBIT B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ROBERT THOMAS, SCOTT PATRICK HARRIS, MICHAEL BELL, SANDRA PALUMBO, FRANK KARBARZ, and THOMAS DAVIS on behalf of Themselves and all others similarly situated, Plaintiffs, v. LENNOX INDUSTRIES INC., Defendant.	CASE NO.: 1:13-cv-07747 Hon. Sara L. Ellis **DECLARATION OF GARY S. BEDARD ON IMPLEMENTATION OF NOTICE PLAN**

I, Gary S. Bedard, declare as follows:

1. I have personal knowledge of the matters set forth herein, and I believe them to be true and correct. I am vice president and general manager of the residential business for Lennox Industries Inc. ("Lennox"), the Defendant in this action.

2. On July 9, 2015, this Court entered an order granting preliminary approval of the settlement of this action (the "Preliminary Approval Order"), which, among other things, contains several provisions regarding the dissemination of notice of the proposed settlement.

3. As specifically set forth in paragraphs 6.f. and 6.g of the Preliminary Approval Order, Lennox had responsibility for implementing certain aspects of the Notice Plan, including (i) publishing links to the Settlement Website on Defendant's websites, and (ii) providing notice about the Settlement to independent dealers.

4. In particular, no later than 10 business days after the Notice Expert published the Settlement Website, Lennox was responsible for publishing to the websites for each of the brands that are the subject of the settlement, information concerning the settlement, including a live link to the Settlement Website.

5. The Settlement Website went live on August 14, 2015. On August 19, 2015, less than 10 business days later, links to the Settlement Website were published on the websites for the Lennox, Armstrong Air, AirEase, Concord and Ducane brands at the following website addresses:

http://www.lennox.com/support/warranty.asp

http://armstrong.poweractive.com/owners/warranty-registration.asp

http://armstrong.poweractive.com/buyers-guide/warranty.asp

http://airease.poweractive.com/support/warranty-registration.asp

http://airease.poweractive.com/planning/warranty.asp

http://concordair.poweractive.com/warranty-and-support/warranty-registration.asp

http://ducanehvac.poweractive.com/owner-support/warranty-registration.asp

6. Due to an oversight, a link to the Settlement Website was not published on the Aire-Flo brand website at the time the other links were published. This oversight was corrected as soon as it was discovered and the link was subsequently published on October 28, 2015 at the following website address: http://www.aireflo-hvac.com/warrantyfaqs.asp. Aire-Flo products account for less than 1% of the products covered by the Settlement and sold during the Class Period.

7. The link to the Settlement Website on the Lennox website states:

Lennox Industries Inc. has agreed to settle a class action lawsuit about its evaporator coils, purchased between October 29, 2007 and July 9, 2015. You can obtain information about the settlement at www.evaporatorcoillawsuit.com.

8. The links to the Settlement Website on the Armstrong Air, Air Ease, Concord and Ducane websites state:

Lennox Industries Inc., including Allied Air Enterprises LLC, has agreed to settle a class action lawsuit about its evaporator coils, purchased between October 29, 2007, and July 9, 2015. You can obtain information about the settlement at www.evaporatorcoillawsuit.com.

9. The link to the Settlement Website on the Aire-Flo website states:

Lennox Industries Inc. has agreed to settle a class action lawsuit about its evaporator coils, including Aire-Flo brand, purchased between October 29, 2007 and July 9, 2015. You can obtain information about the settlement at www.evaporatorcoillawsuit.com.

10. In each case, clicking on the Settlement Website address links directly to the Settlement Website.

11. Lennox was also responsible for transmitting, within 50 days following entry of the Preliminary Approval Order, to independent dealers then listed at www.lennox.com information concerning the Settlement Agreement, substantially in the form of Exhibit A-4 to the Settlement Agreement (Dkt. 68-2).

12. Lennox met this deadline. The Preliminary Approval Order was entered on July 9, 2015. On August 19, 2015, less than 50 days later, notice was transmitted to independent Lennox dealers and Allied distributors substantially in the form of Exhibit A-4 to the Settlement Agreement. The notice to Lennox dealers was posted on DaveNet, a closed system used by Lennox to provide information to dealers, including information relating to parts, pricing, and warranty coverage. A copy of the dealer notice is attached hereto as Exhibit 1. The notice to Allied distributors was sent via email. A copy of the distributor notice is attached hereto as Exhibit 2.

Under penalties as provided by law, I certify that the statements as set forth in this declaration are true and correct. Executed in Richardson, Texas, on November 3, 2015,

Gary S. Bedard

Gary S. Bedard

EXHIBIT 1

Dealer Notice

As you may be aware, Lennox Industries Inc. has agreed to settle a class action lawsuit about whether it manufactured and sold defective evaporator coils. Some of your customers may be entitled to benefits if the settlement is approved.

The lawsuit claims that the evaporator coils made using copper tubing are defective because they are susceptible to formicary corrosion (the result of a chemical reaction requiring copper, water, and organic acids). Lennox denies all of the claims and allegations made in the lawsuit. Lennox maintains that the occurrence of formicary corrosion is rare, and when it does occur, it is typically the result of concentrations of various chemicals found and used in homes, including construction materials and household cleaners. No one has found that Lennox has done anything wrong. However, Lennox opted to settle the lawsuit to avoid further expense, burden and business distraction.

The parties to the lawsuit have jointly sought court approval of the settlement. On July 9, 2015, the Court preliminarily approved the settlement. The parties now will notify potential settlement class members of their rights under the settlement. These rights include the right to make a claim, object to the settlement, or opt out of the settlement. Notice will be made through a variety of methods, including direct mail to potential settlement class members whose names and addresses are known to Lennox, publication in magazines, and banners on websites.

Generally, with some exceptions, the settlement class includes United States residents who, between October 29, 2007 and July 9, 2015, purchased at least one new uncoated copper tube Lennox, Aire-Flo, Armstrong Air, AirEase, Concord, or Ducane brand evaporator coil, covered by a manufacturer's limited warranty ("Original Coils"), for their personal, their family, or their household purposes, that was installed in a house, condominium unit, apartment unit, or other residential dwelling located in the United States. Original Coils may have been purchased separately, as part of an air handler, or as part of an air conditioning packaged unit or heat pump packaged unit.

The Court will hold a final hearing on December 2, 2015, to consider whether to finally approve the settlement. If it is approved, the settlement provides an Expanded Warranty and Reimbursement Program to settlement class members who submit a timely and valid claim form. The Expanded Warranty and Reimbursement Program includes:

(1) a one-time $75 service rebate;
(2) an aluminum tube or coated copper tube replacement coil after the first replacement;
(3) up to $550 as a retroactive reimbursement for labor and refrigerant charges for the replacement of the Original Coil in the event there is more than one coil replacement; and
(4) up to $550 as reimbursement for labor and refrigerant charges for each uncoated copper tube coil replacement after the first replacement.

Expanded Warranty and Reimbursement Program benefits require replacement of an Original Coil due to a coil leak within five years after installation and will vary by individual settlement class members.

If a consumer contacts you regarding the settlement, please refer them to 1-888-841-1363 or www.evaporatorcoillawsuit.com, where more detailed information about the settlement is available. It is important that consumers receive information through the Court-approved processes, so please do not refer consumers directly to Lennox.

We are pleased that this matter is nearing resolution.

EXHIBIT 2

Distributor Notice

As you may be aware, Lennox Industries Inc., including Allied Air Enterprises LLC, has agreed to settle a class action lawsuit about whether it manufactured and sold defective evaporator coils. Some consumers who own Allied brand—Armstrong air, AirEase, Concord, and Ducane—HVAC units may be entitled to benefits if the settlement is approved.

The lawsuit claims that the evaporator coils made using copper tubing are defective because they are susceptible to formicary corrosion (the result of a chemical reaction requiring copper, water, and organic acids). Lennox and Allied deny all of the claims and allegations made in the lawsuit. Lennox and Allied maintain that the occurrence of formicary corrosion is rare, and when it does occur, it is typically the result of concentrations of various chemicals found and used in homes, including construction materials and household cleaners. No one has found that Lennox or Allied has done anything wrong. However, Lennox and Allied opted to settle the lawsuit to avoid further expense, burden and business distraction.

The parties to the lawsuit have jointly sought court approval of the settlement. On July 9, 2015, the Court preliminarily approved the settlement. The parties now will notify potential settlement class members of their rights under the settlement. These rights include the right to make a claim, object to the settlement, or opt out of the settlement. Notice will be made through a variety of methods, including direct mail to potential settlement class members whose names and addresses are known to Lennox and Allied, publication in magazines, and banners on websites.

Generally, with some exceptions, the settlement class includes United States residents who, between October 29, 2007 and July 9, 2015, purchased at least one new uncoated copper tube Lennox, Aire-Flo, Armstrong Air, AirEase, Concord, or Ducane brand evaporator coil, covered by a manufacturer's limited warranty ("Original Coils"), for their personal, their family, or their household purposes, that was installed in a house, condominium unit, apartment unit, or other residential dwelling located in the United States. Original Coils may have been purchased separately, as part of an air handler, or as part of an air conditioning packaged unit or heat pump packaged unit.

The Court will hold a final hearing on December 2, 2015, to consider whether to finally approve the settlement. If it is approved, the settlement provides an Expanded Warranty and Reimbursement Program to settlement class members who submit a timely and valid claim form. The Expanded Warranty and Reimbursement Program includes:

(1) a one-time $75 service rebate;
(2) an aluminum tube or coated copper tube replacement coil after the first replacement;
(3) up to $550 as a retroactive reimbursement for labor and refrigerant charges for the replacement of the Original Coil in the event there is more than one coil replacement; and
(4) up to $550 as reimbursement for labor and refrigerant charges for each uncoated copper tube coil replacement after the first replacement.

Expanded Warranty and Reimbursement Program benefits require replacement of an Original Coil due to a coil leak within five years after installation and will vary by individual settlement class members.

If a consumer contacts you regarding the settlement, please refer them to 1-888-841-1363 or www.evaporatorcoillawsuit.com, where more detailed information about the settlement is available. It is important that consumers receive information through the Court-approved processes, so please do not refer consumers directly to Lennox or Allied.

We are pleased that this matter is nearing resolution.

EXHIBIT C

EXHIBIT D

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ROBERT THOMAS, SCOTT PATRICK HARRIS, MICHAEL BELL, SANDRA PALUMBO, FRANK KARBARZ, and THOMAS DAVIS on behalf of Themselves and all others similarly situated, Plaintiffs, v. LENNOX INDUSTRIES INC., Defendant.	CASE NO.: 1:13-cv-07747 Hon. Sara L. Ellis **DECLARATION OF THE HONORABLE EDWARD A. INFANTE (RET.) IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

I, Edward A. Infante, under oath, hereby declare and state the following:

1. I am the former Chief Magistrate Judge of the United States District Court, Northern District of California. I currently serve as a mediator with JAMS, the nation's largest private provider of alternative dispute resolution services. As a U.S. Magistrate Judge and with JAMS, I have over 30 years of dispute resolution experience, having conducted over 3,000 settlement conferences in all types of litigation, including antitrust, consumer, securities fraud and shareholder class actions.

2. I mediated the settlement negotiations in the above-entitled action. I offer this declaration in support of approval of the heavily-contested, extensively-negotiated proposed settlement (the "Settlement"), which confers substantial benefits upon the class of consumers with Lennox brand, Aire-Flo brand, Armstrong Air brand, AirEase brand, Concord brand, or Ducane brand evaporator coils.

3. In 2014, the parties approached me to mediate settlement negotiations in the above-entitled action. The parties advised me that they had engaged in several days of settlement negotiations, both with a mediator and on their own. Those efforts had not led to an agreement on settlement terms.

4. On December 22, 2014, the Parties engaged in an all-day mediation session before me at JAMS. Numerous and contentious issues required resolution. Accordingly, as with many of the complex disputes that I mediate, the process of negotiating the settlement was lengthy and difficult. Each of the parties was represented during the mediation process by zealous and able counsel, who negotiated aggressively, in good faith, and at arm's-length. The attorneys' fees amount was negotiated only after the benefit to the class was agreed upon.

5. Plaintiffs and Defendant submitted lengthy Mediation Statements with multiple exhibits setting forth the legal, factual and procedural issues faced by each party. The parties' submissions reflected the complex and challenging legal environment, for both plaintiffs and defendants, in which the numerous claims were being litigated. The parties faced significant risks in pursuing and defending these claims, including, among other things, conflicting views on class certification, liability, damages and injunctive relief. These factors made it apparent to me that litigation of these issues would continue to be highly contested and that both sides would face substantial litigation risk.

6. In my opinion, this settlement is an excellent result for the class members, and an effective result for all parties, particularly in light of the substantial risk and uncertainty of further litigation in the trial and appellate courts, matters with which I became familiar during the mediation. The Court, of course, will make its own determination as to the fairness of the Settlement under applicable legal standards. From a mediator's perspective, however, the

Settlement is the result of extensive arm's-length negotiations with no trace of collusion, and its terms fairly account for the risks and potential rewards of the claims being settled. Accordingly, I fully recommend final Court approval of the Settlement.

Under penalties as provided by law, I certify that the statements as set forth in this declaration are true and correct. Executed in San Francisco, California, on October, 29, 2015,

Edward A. Infante