IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

LOUISE LIVINGSTON, MELISSA RAINEY, DAVID SMITH, RAYMOND SABBATINE, PETER GOLDIS, and BILL COLBERT, on behalf of themselves and all others similarly situated, Plaintiffs, v. TRANE U.S. INC., Defendant.	Civ. A. No. 2:17-cv-06480-ES-MAH The Honorable Esther Salas, U.S.D.J. The Honorable Michael A. Hammer, U.S.M.J. Return Date: August 12, 2020 (pursuant to Order, Dkt. No. 104) **CLASS ACTION**

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF JOINT MOTION FOR FINAL APPROVAL OF SETTLEMENT AND ENTRY OF FINAL ORDER AND JUDGMENT

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INTRODUCTION

Plaintiffs Louise Livingston, Melissa Rainey, David Smith, Raymond Sabbatine, Peter Goldis, and Bill Colbert (collectively "Plaintiffs") respectfully submit this memorandum of law in support of the Joint Motion of Plaintiffs and Defendant, Trane U.S. Inc. ("Defendant" or "Trane") (collectively with Plaintiffs, the "Parties"), for final approval of the class action settlement that was preliminarily approved by the Court on April 13, 2020 (ECF 104).

On April 9, 2020, this Court held a telephonic hearing and found that the Parties' settlement agreement—which was reached at arm's length after four mediation sessions with the Hon. Diane M. Welsh (Ret.)—was likely to achieve final approval as being fair, reasonable, and adequate and that the Settlement Class could be certified for settlement purposes. Nothing has occurred in the interim to change that finding. Pursuant to the Court's order, the Parties and the Claims Administrator have: (1) established the settlement website; (2) mailed 245,717 notices and Claim Forms via first-class mail to all addresses reflected in Trane's warranty registration records; and (3) implemented a large-scale publication campaign, which includes print advertisement in a leading trade magazine, a national press release, and 70,000,000 online-advertisement impressions.

This nationwide class action settlement provides significant relief to current

and former owners of nearly 450,000 Trane and American Standard air conditioners[1] manufactured with an unapproved rust inhibitor in the compressor, which causes sticky debris to form on a valve in the HVAC system, called the thermostatic expansion valve ("TXV").

As described more fully below, the settlement (ECF No. 93-4) provides both retrospective and prospective relief that squarely addresses the defect alleged by Plaintiffs in this action.[2] Trane will, *inter alia*:

- Reimburse out-of-pocket costs that class members incurred to diagnose and replace TXVs up to $575;
- Reimburse out-of-pocket costs that class members incurred for diagnosis and injection of an additive to dissolve or prevent TXV deposits up to $250;[3]
- For those who have not received a prior injection, provide a free additive, called "MJ-X Lite," which has been demonstrated to safely prevent deposits of the rust inhibitor on the TXV, plus a $50 labor allowance to inject the additive during a routine maintenance or other service visit;
- Provide enhanced and extended compressor warranty coverage for class members whose HVAC systems were previously injected with a full-strength version an Additive, often called "MJ-X," that includes:
    - ten years of parts coverage on the compressor for all class members,

[1] For ease of reference, we use the term air conditioners to include heat pumps, which are simply air conditioners that can also run in reverse to generate heat. The settlement covers both.
[2] Rather than re-file the Settlement Agreement and exhibits, Plaintiffs cite to the ECF numbers of the Settlement Agreement and related documents filed in support of preliminary approval. (ECF Nos. 93, 95.)
[3] Class members who paid for both an injection and a TXV replacement can receive up to $825.

even if they did not register their warranty;
  - ten years of labor coverage of up to $400 for compressor replacements; and
  - a $600 credit towards a new unit if the compressor fails between years ten and twelve;

- Pay all costs of notice, which will be provided through direct mail and email, print publication, and digital media;

- Issue service bulletins to distributors and to service personnel, advising them of benefits available under the settlement;

- Pay the costs of claims administration through a third-party claims administrator; and

- Pay reasonable attorneys' fees and costs approved by the court up to $1,800,000 and incentive awards to the representative Plaintiffs of $5,000 each.

Plaintiffs respectfully request the Court enter the proposed Final Order and Judgment, which confirms and makes final the Court's earlier preliminary findings that: (1) this Settlement is fair, reasonable, and adequate; (2); all prerequisites for maintenance of a class action set forth in Federal Rules of Civil Procedure 23(a) and (b) are satisfied; and further that: (3) best notice practicable was given to the Settlement Class Members; (4) overrule any objections, if necessary; and (5) exclude any Class Members who file a timely request for exclusion, for which Class Counsel will file a list with their reply papers.

I. LITIGATION HISTORY

A. Factual Background

Beginning in late 2013, compressor manufacturer Emerson Climate

Technologies ("Emerson") began using a new rust inhibitor in manufacturing compressors that it then sold to many major U.S. air conditioner manufacturers, including Trane, Carrier Corporation, and others.[4] (First Am. Compl. ["FAC"], ECF No. 60, at ¶ 28.) By the summer of 2014, many air conditioner manufacturers began to notice high rates of failure in recently installed systems due to clogged TXVs. (*Id.*, at ¶ 30.) The manufacturers determined that these TXV failures were due to the rust inhibitor, which causes a sticky debris to form on the TXV. (*Id.*, at ¶¶ 32-33.) Almost 450,000 Trane air conditioners contain, or likely contain, the rust inhibitor, all of which can be identified by serial number. (ECF No. 93-13.)

Despite discovering the defect in the summer of 2014, Plaintiffs alleged that Trane continued to sell the defective units without disclosing the defect to consumers, which violated consumer protection laws and breached express and implied warranties. (FAC, at ¶¶ 7, 34.)

Moreover, Trane's limited warranty covers only replacement parts. It does not cover labor or materials costs associated with necessary repairs, which often far exceed the cost of the replacement parts. (*See id.*, at ¶¶ 37, 140.) Plaintiffs alleged that these limitations in Trane's warranty are unconscionable given that Trane knew about but failed to disclose the rust inhibitor defect. (*See id.*)

[4] The rust inhibitor is applied to prevent rust during storage and transportation of parts. (FAC, at ¶ 29.) It has no function in an installed compressor. (*Id.*)

Replacing a TXV can be expensive and time consuming. Around September 2014, after discovering the rust inhibitor issue, Trane issued a service bulletin instructing service personnel that, instead of replacing the TXV when one of the affected units failed, they should inject the full-strength MJ-X additive to dissolve the rust-inhibitor debris on the TXV. (*Id.*, at ¶ 36.) Full-strength MJ-X is usually (but not always) successful in dissolving TXV clogs caused by the rust inhibitor, but Plaintiffs allege that it is also highly acidic and causes premature wear to the compressor. (*Id.*, at ¶¶ 5, 73.) Thus, Plaintiffs also allege that Trane breached its warranty by performing a harmful repair, which can cause long term compressor damage. (*Id.*, at ¶¶ 5, 139.)

Pursuant to the service bulletin injection program, Trane would provide full-strength MJ-X and a labor allowance to inject the additive, capped at a rate specified in Trane's warranty system, to service personnel who submitted a claim. These MJ-X bulletins were in effect from September 8, 2014 to September 30, 2018. However, for various reasons, many consumers, including several Plaintiffs, were forced to pay out-of-pocket for additive injections.[5] (*Id.*, at ¶¶ 70, 73.)

Further, many service personnel were distrustful of the additive and

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[5] In some instances, service personnel may have been unaware of the reimbursement program. The bulletins were not disclosed publicly. Plaintiffs allege that in other instances, due to a shortage of MJ-X, service personnel may have used an additive with a different brand name (i.e., Zerol Ice or A/C Re-new), which was functionally identical but not reimbursable under Trane's bulletin program.

recommended a replacement TXV rather than injection of an additive that would remain in the system forever. (*See id.*, at ¶ 67.) In other instances, an injection of the additive failed to fully resolve the issue, requiring a subsequent TXV replacement. (*See id.*, at ¶¶ 73, 76.) Many class members, including several of the Plaintiffs, were required to pay out of pocket to replace their TXV—sometimes in addition to paying for an additive injection. (*See id.*, at ¶¶ 73, 76, 83.)

Trane also developed a "lite" version of the additive called MJ-X Lite. MJ-X Lite was specifically developed by Trane as a preventative measure to prevent sticky deposits on the TXV from the rust inhibitor. (ECF No. 93-4, at ¶ 5.) Trane found that MJ-X Lite is effective at preventing TXV clogs due to the rust inhibitor when injected prior to a clog occurring. Further, MJ-X Lite is much less acidic than full-strength MJ-X, and Plaintiffs do not allege that MJ-X Lite is harmful to the compressor. In October 2014, Trane issued a service bulletin instructing installers to inject MJ-X Lite into the affected air conditioners at the time of installation, but Trane did not provide any labor reimbursement, and the rate of compliance was low. Once again, the bulletins were not made public, and the vast majority of class members never received a preventative injection of MJ-X Lite.

The settlement is well-tailored to all of these issues: it provides reimbursement for class members who paid out of pocket for a TXV replacement and/or an injection of an additive, it provides free MJ-X Lite *and* a labor allowance for preventative

injections, and it provides enhanced and extended warranty coverage on the compressor for class members who had full-strength MJ-X injected into their system at any time through September 30, 2018.

B. Procedural History

Plaintiffs served a pre-suit demand letter on behalf of Trane consumers in June 2017.[6] (FAC, at ¶ 86.) Thereafter, they filed the initial complaint in this action on August 28, 2017, alleging claims for breach of express and implied warranties, as well as violations of their respective state's consumer protection statutes and common law.

While the motion to dismiss was pending, the Court held a scheduling conference on April 20, 2018, and denied Trane's request to stay discovery. (ECF No. 29.) The Court then entered a scheduling order (ECF No. 36), and discovery commenced.

On January 31, 2019, the Court denied Trane's motion to dismiss all of Plaintiffs' express warranty claims and denied Trane's motion to dismiss the implied warranty claims under Massachusetts, North Carolina, and Pennsylvania law. (ECF

[6] As will be discussed later, Class Counsel have been and are plaintiffs' counsel in several related actions against other air conditioner manufacturers, arising out of the same rust-inhibitor defect at issue here, including pending litigation against Carrier Corporation in the Central District of California. *Oddo v. Arcoaire Air Conditioning & Heating*, No. 8:15-cv-01985-CAS (C.D. Cal.) [hereinafter "*Carrier*"]. Their efforts generally on behalf of consumers affected by the defect began as early as 2014.

Nos. 48-49.) The Court granted Trane's motion to dismiss Plaintiffs' fraud-based claims on the grounds that Plaintiffs had not alleged sufficient facts establishing when or how Trane had knowledge of the defect, but the Court afforded Plaintiffs an opportunity to amend, which they did on March 1, 2019. (ECF No. 60.)

Trane filed a motion to dismiss the First Amended Complaint on April 1, 2019. Thereafter, the Parties agreed to engage in private mediation, and the Court dismissed Trane's motion without prejudice and stayed proceedings. (ECF No. 80.)

C. Discovery And Expert Discovery

Prior to agreeing to stay the litigation pending mediation, Plaintiffs conducted substantial discovery of Trane and numerous nonparties, including Emerson (the compressor manufacturer), Shrieve Chemical Products, Inc. (the manufacturer of MJ-X and MJ-X Lite), Danfoss Refrigeration & Air Conditioning Division (a TXV manufacturer), and Parker Hannifin Corporation, Sporlan Division (another TXV manufacturer).

Class Counsel leveraged their knowledge and experience developed in the related cases into efficiently building their case here. Just as one example, Class Counsel had deposed Emerson's designee twice—once in *Carrier* and once in a case against ClimateMaster (*Emmert v. ClimateMaster, Inc.*, No. 5:15-cv-00458-R (W.D. Okla.))—and obtained production of those transcripts in this case. Thus, the record in this case was well-developed from an early stage. Further, since many of the

subpoenas in this case merely asked for production of the same documents that had already been produced in the other cases, nonparty discovery was generally quite efficient here.[7]

In addition to the extensive nonparty discovery, as more fully detailed in Plaintiffs' fee motion, Plaintiffs spent considerable efforts engaging in discovery with Trane. Plaintiffs served forty-four document requests on Trane. Over several months, the Parties extensively negotiated search terms and search protocols for Trane's responsive documents.

Trane produced over 10,250 pages of documents, including many voluminous spreadsheets. Thereafter, the Parties engaged in a number of discovery disputes and meet and confers. These discovery disputes were under submission with the Court and scheduled for hearings when the case was stayed pending mediation. (*See* ECF No. 80.)

Nonparties collectively produced over 24,000 pages of documents, many of which were highly technical. Plaintiffs served a total of eight subpoenas on nonparties.

Trane, for its part, served document requests on each of the Plaintiffs, who collectively produced over 430 pages of documents.

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[7] As described more fully in Plaintiffs contemporaneously filed motion for an award of attorneys' fees and expenses, there was no duplicative billing in any of the related cases.

Plaintiffs also consulted with two experts. Plaintiffs' expert professional engineer had nearly completed a lengthy report opining on the defect, the risks of MJ-X, damages calculations, and many other issues prior to the stay of litigation, which suspended the expert deadline. Plaintiffs also consulted with a survey expert, who they expected to provide evidence and testimony on consumer behavior issues.

D. Mediation Sessions Before The Honorable Diane M. Welsh (Ret.)

Counsel for the Parties attended three all-day mediation sessions before the Hon. Diane M. Welsh (Ret.) in Philadelphia on July 9, September 5, and November 6, 2019, and also had a shorter telephonic mediation session on February 20, 2020. Before and between sessions, from May 2019 to February 2020, the Parties exchanged mediation briefs and eight settlement negotiation letters. Excluding Plaintiffs' initial letter, which was sent prior to but in expectation of the first mediation session, Judge Welsh was copied on all settlement letters.

All material terms of the Settlement were negotiated and agreed before the Parties began discussion of attorneys' fees and Plaintiffs' incentive awards, which were resolved at the final in-person mediation with Judge Welsh.

Since reaching agreement on November 6, 2019, the Parties drafted the formal settlement agreement with attachments, including details of notice and administration process. Drafting the Settlement Agreement and exhibits required substantial negotiation, and the Parties required Judge Welsh's assistance to resolve

a discrete settlement administration issue in February 2020. The Parties finalized the Settlement Agreement on February 20, 2020, and fully executed and filed it for preliminary approval on February 21, 2020. (ECF No. 93; ECF No. 95 [revised settlement exhibits B-D].)

II. SUMMARY OF THE SETTLEMENT

The settlement resolves all claims, excluding claims for personal injury or wrongful death, of Plaintiffs and the Settlement Class against Trane "relating to the allegations in the Action concerning the presence of an unapproved rust inhibitor or injection of an Additive." (*See* ECF No. 93-4, at § IX.) The terms include the following:

A. <u>The Settlement Class</u>

The *Settlement Class* includes: "all United States residents who are current or former owners of the Settlement Class Air Conditioners and Heat Pumps." (*Id.*, at ¶ 47.)[8]

Settlement Class Air Conditioners and Heat Pumps are, in turn, defined as: "Trane and American Standard 1.5- to 5-ton air conditioners and heat pumps with a serial number listed on Exhibit I." (*Id.*, at ¶ 46.)

[8] Excluded from the class are "officers and directors of Trane or its parent and subsidiaries, insurers and subrogees of Settlement Class Members, and any Judge to whom the Litigation is assigned. Also excluded are Settlement Class Members who timely Opt Out or exclude themselves from the Settlement under the procedure specified in Section VII.A.," of the Settlement Agreement. (ECF No. 93-4, at ¶ 47.)

Exhibit I to the Settlement Agreement contains a list of serial numbers of units manufactured with the rust inhibitor. The serial number of an air conditioner is plainly visible on a data plate on the outside of the unit, so current owners can easily identify themselves by checking this number. Class members may also have installation or service records that reflect their serial number.[9]

A searchable version of Exhibit I was posted on the Settlement Website. (*See* June 4, 2020 Declaration of David Kaufman, at ¶ 4 filed herewith ["Kaufman Decl."].) The Settlement Class includes the current and former owners of approximately 450,000 Settlement Class Air Conditioners and Heat Pumps. (*See* ECF No. 93-13.)

B. Class Settlement Consideration

The Settlement provides strong benefits that are tailored to the harms alleged in the action. Class members can claim benefits from each category for which they qualify.

1. Cash Reimbursements For Out-Of-Pocket Repair Expenses For Prior TXV Failures

The Settlement provides that Trane will reimburse out-of-pocket expenses that class members incurred for the diagnosis and repair of a sticky, stuck, or

[9] In addition, as discussed below, the notice was mailed to each address reflected in Trane's warranty registration records as having a class unit, and the notices informed the recipients (who may be original owners or the current residents) that they are likely members of the class.

obstructed TXV by either replacing the TXV (or the indoor coil that houses the TXV) or by injecting an Additive as set forth below. (ECF No. 93-4, at § IV.A.)

- Trane will reimburse class members for diagnosis and repair expenses for TXV (or evaporator coil) replacements up to $575 per Settlement Class Air Conditioner incurred prior to the Effective Date; and

- Trane will reimburse class members for diagnosis and out-of-pocket expenses for an injection of an Additive, including MJ-X, Zerol Ice, and A/C Re-New, received prior to the Effective Date, up to $250 per Settlement Class Air Conditioner.

These cash reimbursement amounts are considerable, and while there are caps on individual reimbursement amounts, there is no cap in the aggregate. The individual, per unit caps are intended only to ensure that the amounts reimbursed fall within a range of reasonableness for each kind of service.

For example, while the cost to replace a TXV can vary widely among contractors, warranty providers often assume two hours of labor to perform the service. Moreover, Trane's warranty provides for a free replacement part, but even if class members did not receive a free part, a TXV usually costs less than $100. So, the $575 reimbursement cap is substantial. Just as an example, the cap amount would cover four hours of labor at $100 per hour, plus up to $175 for parts and materials. Plaintiffs believe the $575 cap will be sufficient to reimburse many, and perhaps most, class members their full out-of-pocket cost for TXV replacements, but even for those class members who paid more than $575, the settlement recovery will undoubtedly be a significant percentage of their out-of-pocket amount, which is

certainly fair and reasonable given the disputed nature of the claims.

Similarly, the $250 cap for additive injections is substantial and would, for example, cover two hours of labor at $100 per hour plus $50 for the additive. Injecting the additive typically takes less than a half hour.

Further, if class members paid for both a TXV replacement and an additive injection (e.g., because the additive did not resolve the problem), they are eligible to claim both benefits for a total of $825. Plaintiffs Smith and Sabbatine, for example, incurred out-of-pocket expenses for both a TXV replacement and an injection of an Additive. (FAC, at ¶¶ 73, 76.)

In order to receive these cash payments, class members need only complete a simple Claim Form and provide documentary evidence of their out-of-pocket expenses. The Claim Form (ECF No. 93-5) is short, in plain English, and may be completed in hard copy or online, and submitted by mail or online. As discussed below, the notice program was initiated, including by first-class mail and publication, on May 28, 2020. (Kaufman Decl., at ¶ 5-7.)

The Settlement Administrator, a neutral third party, will review all claims for reimbursement of out-of-pocket expenses and the evidence provided, and either approve or disapprove the claims under a "more-likely-than-not" standard of review. In order to guide those decisions, Exhibit J provides detailed guidance for the Settlement Administrator to follow. (ECF No. 93-14.) As noted during the

preliminary approval hearing, Class Counsel developed the Claims Handling Guidelines, Exhibit J, by reviewing invoices and receipts in their possession from Plaintiffs and other air conditioner consumers, attempting to anticipate all possible permutations of claim documentation, and then specifying the manner in which the various permutations of claims should be adjudicated. One of the intents is to reduce the possibility of later disputes arising between the Parties concerning the proper handling of claims.

The requirement to provide documentary evidence of out-of-pocket expenses is not burdensome, and it is intended only to ensure that class members incurred out-of-pocket cost for a qualifying repair. Generally, a copy of an invoice reflecting TXV replacement and/or injection of an additive will suffice. Given the substantial cash payments ($250-825), the Claim Form balances simplicity and ease with ensuring payments are warranted.

If any claim is deemed deficient for any reason, the Administrator will provide the class member with notice and at least forty-five days to cure the deficiency, such as by providing additional information. (ECF No. 93-4, at ¶ 56, 66.) Trane will pay all costs for this neutral, third-party claims administration.

2. Preventative Injections For Those Who Have Not Yet Experienced A TXV Failure

In addition to reimbursement of out-of-pocket costs, for a period of twelve months from the effective date Trane will also provide (a) free bottles of MJ-X Lite,

and (b) a labor allowance up to $50 for preventative injections to class members during any routine maintenance or other service visit. (ECF No. 93-4, at § IV.B.) Once again, this relief is tailored to the allegations in the case. Plaintiffs alleged, and their expert was prepared to opine, that all units containing the rust inhibitor that have not yet been injected are at risk of performance loss. (FAC, at ¶¶ 1, 4.) Moreover, as noted, MJ-X Lite has low-acidity and has been shown to be effective at preventing TXV clogs due to the rust inhibitor.

In addition to providing notice of this program to class members through the Mailed Notice, Publication Notice, and digital media notice, this benefit will also be announced in Trane Service Bulletins to its distributors and service personnel by or on the Effective Date, along with information about the enhanced compressor warranty coverage discussed below. (*See* ECF Nos. 93-9, 93-10.)

This preventative program provides real value to class members, in addition to preventing future potential TXV clogs. A bottle of MJ-X Lite costs at least $30, and Trane will pay up to $50 for labor. Class members do not need to complete a Claim Form to receive this benefit; they can simply request it from their service provider. This program will not begin until the Effective Date, but its twelve-month duration is enough to cover at least one full cooling season during which Class members can receive this injection free of charge.

3. Enhanced Compressor Warranty Coverage For Compressor Failures For Units Injected With Full-Strength Additives

While Plaintiffs do not allege any harm from MJ-X Lite, Plaintiffs allege that full-strength MJ-X is highly acidic and causes premature wear to the compressor. (FAC, at ¶ 39.) Plaintiffs, therefore, also negotiated on behalf of the class for enhanced and extended compressor warranty protection for class members whose units were injected with full-strength MJ-X, or similar Additive, prior to September 30, 2018.[10] (ECF No. 93-4, at § IV.C.) The enhanced and extended compressor coverage provides three main benefits:

- For class members who did not register their warranty and, therefore, are subject to the Base Limited Warranty of five years from the date of installation, Trane will extend their warranty on the compressor to ten years from the date of installation (i.e., extend it to match the Registered Limited Warranty). In other words, this will provide a warranty replacement compressor for ten years from the date of installation.

- For class members who experience a compressor failure within ten years of installation—in addition to the coverage under the Limited Warranty (i.e., free compressor)—Trane will provide a warranty concession of four hours of labor and a refrigerant allowance of $8 per lb. up to the nameplate charge. Since Trane's warranties ordinarily provide *no* coverage for labor or materials, this is a significant enhancement.

- For class members who experience a compressor failure between ten and twelve years, which is after the expiration of Trane's Registered Limited Warranty, Trane will provide a $600 credit toward the purchase of a new Trane or American Standard HVAC unit.

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[10] Trane's bulletins instructing service personnel to inject the full-strength additive expired on September 30, 2018. If an injection was received after that date, it was, therefore, not at Trane's instruction under the bulletins.

Trane's records reflect the serial numbers of approximately 42,269 Class units that received an MJ-X injection prior to September 30, 2018. (Kaufman Decl., at ¶ 6.) The owners of these units do not need to make a claim to receive the enhanced compressor warranty benefits. (*See* ECF No. 93-4, at ¶ 64) Of the 42,269, Trane's records reflect address information for 31,304. (Kaufman Decl., at ¶¶ 6-7.) Therefore, the Mailed Notices to these addresses specifically informed the recipients that their unit is entitled to the warranty extension provisions without any further action. (*Id.*, at ¶ 7.a.) Class members whose serial numbers are not among the 42,269 reflected in Trane's records as having been injected must submit a Claim Form and documentation showing that their system was injected with a Qualifying Additive in order to receive the enhanced warranty coverage. (*Id.*, at ¶ 7.b.)

C. Class Notice Was Issued According To The Terms Of The Agreement And Preliminary Approval Order

On April 9, 2020, this Court held a telephonic hearing and granted preliminary approval of the Settlement and ordered that the Notice Program be executed as provided by the Agreement, and the Court entered an Order setting forth a schedule on April 13, 2020. (ECF No. 104.) As part of the Agreement, Trane agreed to pay all costs of notice and administration. (ECF No. 93-4, at § V.) After receiving competitive bids, the Parties selected Heffler Claims Group ("Heffler") to administer this Settlement. The Parties and Heffler faithfully initiated and executed the Notice

Program here by:

- Establishing the Settlement Website, on April 19, 2020, at www.airconditionersettlement.com, which includes the Full Notice (Kaufman Decl., at ¶ 4);

- Mailing, on May 28, 2020, by first-class mail, a summary notice along with a Claim Form to 245,717 Settlement Class members whose contact information appeared in Trane's warranty registration data, which stated that, "Trane's records indicate that you owned or currently own a" Class Air Conditioner (*id.*, at ¶¶ 5-6; ECF No. 95-1);

    - Of those 245,717 Mailed Notices, 31,304 also stated that the Class member was automatically qualified and did not need to submit a claim for the enhanced compressor warranty coverage, as Trane's records indicated that her class air conditioner was injected with a Qualifying Additive; (Kaufman Decl., at ¶ 7.a.)

- Purchasing a print advertisement to run in the June 1, 2020 edition of a leading trade publication, ACHR News Magazine (*id.*, at ¶ 10);

- Issuing the Publication Notice on May 28, 2020, in a national press release through PR Newswire, as well as on Class Counsel's websites (*id.*, at ¶ 9);

- Initiating, on May 28, a digital media advertising campaign, to include over 70,000,000 million impressions through social media (Facebook and Instagram), Google AdWords, and other digital media channels (e.g., banner advertisements), which will run until July 6, 2020 (*id.*, at ¶ 8); and

- Before or on the Effective Date, issuing revised service bulletins to advise service personnel of the preventative injection program and the enhanced and extended warranty coverage, which will be emailed to field service representatives, distributor service operations managers, and independent wholesale distributor principles, who, pursuant to Trane's standard guidelines, are responsible for disseminating information to their local service personnel (ECF No. 93-4, at ¶¶ 59, 63, 77).

D. Attorneys' Fees And Expenses, And Representative Plaintiffs' Incentive Awards

As addressed more fully in Plaintiffs' motion and memorandum requesting an award of fees and incentive awards, Trane has agreed to pay $1,800,000 for an award of attorneys' fees and expenses. (*Id.*, at ¶ 88.) Trane also agreed to pay each of the six representative Plaintiffs a $5,000 incentive award. (*Id.*, at ¶ 90.) The award of fees, expenses, and incentives will not decrease the relief going to the class; Trane will pay these expenses separately and in addition to the settlement consideration described above. Further, the amount was negotiated with the assistance of Hon. Diane M. Welsh (Ret.) and was discussed only after the Parties had agreed upon all other material terms of the Settlement. This request is discussed more fully in Plaintiffs' contemporaneously filed Motion for Award of Attorneys' Fees and Expenses and Plaintiffs' Incentive Awards.

III. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE

On April 9, 2020, the Court found that the Settlement was likely to achieve final approval as being fair, reasonable, and adequate. (*See* ECF No. 104.) The analysis at final approval is largely the same, and nothing has changed that should alter the Court's finding. The Court, therefore, should confirm and make final its finding that this Settlement is fair, reasonable, and adequate.

The Court must find that the settlement meets the fairness factors under Rule 23(e)(2):

> *Approval of the Proposal.* If the proposal would bind class members, the court may approve it only after a hearing and only on finding that it is *fair, reasonable, and adequate* after considering whether:
>
> **(A)** the class representatives and class counsel have adequately represented the class;
>
> **(B)** the proposal was negotiated at arm's length;
>
> **(C)** the relief provided for the class is adequate, taking into account:
>
> **(i)** the costs, risks, and delay of trial and appeal;
>
> **(ii)** the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
>
> **(iii)** the terms of any proposed award of attorney's fees, including timing of payment; and
>
> **(iv)** any agreement required to be identified under Rule 23(e)(3); and
>
> **(D)** the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2) (emphasis added). The 2018 Advisory Committee Notes make clear, however, that these factors do not displace the "lists of factors" courts have traditionally applied to assess proposed class settlements.

Courts in the Third Circuit evaluate whether a settlement is "fair, reasonable, and adequate" using the applicable *Girsh* approval factors:

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

Girsh v. Jepson, 521 F.2d 153, 157 (3d Cir. 1975). Thus, under Rule 23 as amended, the "Court first considers the Rule 23(e)(2) factors, and then considers additional

[*Girsh*] factors not otherwise addressed by the Rule 23(e)(2) factors." *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 330 F.R.D. 11, 29 (E.D.N.Y. 2019). All factors weigh in favor of approval, just as they did at the preliminary approval stage.

A. Rule 23(e)(2)(A): The Class Representatives And Class Counsel Have Adequately Represented The Class

This factor, like the third *Girsh* factor, focuses on "the actual performance of counsel acting on behalf of the class." Fed. R. Civ. P. 23 Advisory Committee's Notes to 2018 Amendment [hereinafter, 2018 Adv. Comm. Notes]; *In re NFL Players' Concussion Injury Litig.*, 821 F.3d 410, 439 (3d Cir. 2016) (plaintiffs' counsel should "develop[] enough information about the case to appreciate sufficiently the value of the claims"); *Girsh*, 521 F.2d at 157 (factor three considers "the stage of the proceedings").

Class Counsel worked diligently and developed a deep understanding of Plaintiffs' claims prior to negotiating the Settlement. As noted above, Class Counsel have been involved in several related actions against other manufacturer's arising out of the same rust-inhibitor defect. At the time this lawsuit was filed, Class Counsel had already conducted substantial discovery in *ClimateMaster* and *Carrier*, including having deposed Emerson's designee twice. (*See supra* § I.C.) As such, Class Counsel began this action with a far greater understanding of the facts and claims at issue than would normally be the case. Nevertheless, Plaintiffs extensively

researched and analyzed their claims for the Plaintiffs in this action prior to serving their pre-suit demand and filing the lawsuit, conducted substantial research into the legal claims in connection with Trane's first motion to dismiss, and engaged in significant discovery. Moreover, their engineering expert's report was virtually complete at the time the action was stayed. Class Counsel reviewed and analyzed over 34,000 pages of documents from Trane and nonparties. Class Counsel had more than enough information to evaluate the claims, and that expertise was applied to crafting settlement terms that are well-tailored to the facts of the case.

In sum, Class Counsel here conducted significant factual discovery and also had a firm "grasp of the legal hurdles that [Plaintiffs] would need to clear in order to succeed on their" claims. *In re NFL Players*, 821 F.3d at 436.

B. Rule 23(e)(2)(B): The Proposal Was Negotiated At Arm's Length

This factor focuses on whether the settlement negotiations "were conducted in a manner that would protect and further the class interests." 2018 Adv. Comm. Notes. The Settlement was negotiated at arm's length by able counsel, who have been described as "among the most capable and experienced lawyers in the country" in consumer class action litigation, *Chambers v. Whirlpool Corp.*, 214 F. Supp. 3d 877, 902 (C.D. Cal. 2016), and with the assistance of a renowned mediator.

In the Third Circuit, a presumption of fairness attaches when the settlement was negotiated by experienced and informed counsel assisted by a respected

mediator. *See, e.g.*, *In re NFL Players*, 821 F.3d at 436. This approach is consistent with the principle that "settlement of litigation is especially favored by courts in the class action setting." *In re Ins. Brokerage Antitrust Litig.*, 297 F.R.D. 136, 144 (D.N.J. 2013). "The participation of an independent mediator in settlement negotiations virtually [e]nsures that the negotiations were conducted at arm's length and without collusion between the parties." *Shapiro Alliance MMA, Inc.*, 2018 U.S. Dist. LEXIS 108132, at *6 (D.N.J. June 28, 2018) (quoting *Alves v. Main*, 2012 U.S. Dist. LEXIS 171773, at *73 (D.N.J. Dec. 4, 2012)).

This presumption should apply here given that experienced counsel on both sides of the deal endorse the settlement, it followed much discovery and three all-day mediation sessions, plus a fourth telephonic session, with a highly respected neutral party—Hon. Diane M. Welsh (Ret.). This factor strongly supports granting final approval.

The presumption of fairness is also supported by the second *Girsh* factor, "the reaction of the class." To date, no class members have objected to the Settlement, and none have objected to the fee request. Considering there are about 450,000 Class Air Conditioners, even a few dozen objectors would comprise only a tiny fraction of the class. *See, e.g.*, *In re Remeron Direct Purchaser Antitrust Litig.*, 2005 U.S. Dist. LEXIS 27013, at *35 (D.N.J. Nov. 9, 2005) (citing *Stoetzner v. United States Steel Corp.*, 897 F.2d 115, 11-19 (3d Cir. 1990)) ("[E]ven when 29 members of a 281-

person class (i.e. 10% of the class) objected, the response of the class as a whole 'strongly favors [the] settlement.'"); *Granillo*, 2019 U.S. Dist. LEXIS 146086 at *24-25 (nineteen objections, 0.02% of the class, weighed in favor of approving fee request). If necessary, Plaintiffs will address any objections in their reply papers.

C. Rule 23(e)(2)(C)(i): The Relief Provided For The Class Is Adequate, Taking Into Account The Costs, Risks, And Delay Of Trial And Appeal Weigh In Favor Of Approval

The relief provided by the Settlement is outstanding and easily satisfies Rule 23(e)(2)(C)(i). This subsection subsumes several *Girsh* factors, "including (i) the complexity, expense and likely duration of the litigation; (ii) the risks of establishing liability; (iii) the risks of establishing damages; and (iv) the risks of maintaining the class through the trial." *In re Payment Card Interchange Fee*, 330 F.R.D. at 36.[11] The excellent results, particularly given the complexity of this highly technical case and the risks Plaintiffs faced, weighs heavily in favor of approval.

Plaintiffs believe their claims are strong, and this is reflected in the relief negotiated, which addresses virtually every conceivable aspect of the harms alleged: recovery for past failure, prevention of future failure, and extended and enhanced warranty coverage.

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[11] The seventh *Girsh* factor, the ability of Trane to withstand a greater judgment, is irrelevant here. This *Girsh* factor is "most relevant when the defendant's professed inability to pay is used to justify the amount of the settlement." *In re NFL Players*, 821 F.3d at 440.

Nevertheless, absent settlement, Plaintiffs would have faced significant litigation risks, as well as time-consuming and expensive litigation. To prevail, Plaintiffs would have had to withstand Trane's pending motion to dismiss, obtain class certification, survive motions for summary judgment, and prevail at trial and any subsequent appeal. Even if Plaintiffs succeeded at every stage, it almost certainly would have taken several years, as the Court noted at the preliminary approval hearing. By comparison, the proposed settlement provides valuable, certain, and prompt relief to the class members.

The eighth and ninth *Girsh* factors direct the court to consider whether the Settlement is in the range of reasonableness in light of the best possible recovery and all the attendant risks of continued litigation. *In re NFL Players*, 821 F.3d at 440 (quoting *Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 538 (3d Cir. 2004)) ("In evaluating the eighth and ninth *Girsh* factors, we ask 'whether the settlement represents a good value for a weak case or a poor value for a strong case.'").

The Settlement here speaks for itself: it provides reimbursement of out-of-pocket damages up to $825 per unit, creates a preventative injection program to prevent future occurrences, and affords valuable extended and enhanced warranty relief. In addition, Trane will pay all costs of notice and claims administration and attorneys' fees, expenses, and Plaintiffs' incentives, none of which reduce the benefits to class members. These excellent results easily satisfy the eighth and ninth

Girsh factors. *See, e.g.*, *Saini v. BMW of N. Am., LLC*, 2015 U.S. Dist. LEXIS 66242, at *3, 27-28 (D.N.J. May 21, 2015) (finding a settlement that provided for out-of-pocket reimbursements and warranty extensions for defective vehicles to be reasonable); *McLennan v. LG Elecs. USA, Inc.*, 2012 U.S. Dist. LEXIS 27703, at *19 (D.N.J. Mar. 2, 2012) (finding a settlement that provided for out-of-pocket reimbursements and warranty extensions on refrigerators to be reasonable).

D. Rule 23(e)(2)(C)(ii): The Relief Provided For The Class Is Adequate, Taking Into Account The Effectiveness Of Any Proposed Method Of Distributing Relief To The Class, Including The Method Of Processing Class-Member Claims

Under this factor, the Court "scrutinize[s] the method of claims processing to ensure that it facilitates filing legitimate claims" and "should be alert to whether the claims process is unduly demanding." 2018 Adv. Comm. Notes.

In order to claim reimbursement of out-of-pocket expenses, class members need only fill out a simple claim form and provide some documentation of their out-of-pocket costs to either replace a TXV or inject an additive. The Claim Form requires only the contact information for the class member, their serial number to establish membership in the class, and to fill in a few blanks to specify the type of claim they are making. (ECF No. 93-5.) In most cases, the requirement for documentation of out-of-pocket expense will be satisfied by an invoice or receipt, and the settlement provides that the claims administrator will review the documentation under a lenient "more-likely-than-not" standard. (ECF No. 93-4, at ¶

24; *see also* ECF No. 93-14 [Claims Handling Guidelines].) Given that many payments will be several hundred dollars, these claim requisites are not unduly burdensome.

Class members need not fill out any claim form to receive the preventative injection. Instead, the free additive will be provided to service personnel to inject during any routine maintenance or other service visit, and service personnel will receive up to a $50 labor credit per injection through Trane's ordinary labor concession channel, which is common in the industry. Class Counsel believe the labor reimbursement will incentivize service personnel to offer this service to their customers during annual maintenance or other service visits.

Trane's records reflect the serial numbers of approximately 42,269 Class units that received an MJ-X injection prior to September 30, 2018. (Kaufman Decl., at ¶ 6.) The owners of these units do not need to make a claim to receive the enhanced compressor warranty benefits. (*See* ECF No. 93-4, at ¶ 64.) Of the 42,269, Trane's records reflect unique address information for 31,304. (Kaufman Decl., at ¶¶ 6-7.) The Mailed Notice to these class members specified that they are entitled to this coverage without a claim. (*See* ECF No. 95-1.) Class members whose units received a Qualifying Additive Injection but the injection did not appear in Trane's records, will need to file a claim and provide some evidence of an additive injection in order to receive the enhanced and extended warranty coverage. (*See id.*; ECF No. 93-4, at

¶ 65.) Once again, the documentation will be evaluated by the Settlement Administrator under a "more-likely-than-not" standard.

Class members whose claims are deemed deficient for any reason will be provided a notice and at least forty-five days to cure the deficiency. (ECF No. 93-4, at ¶ 56, 66.)

The Settlement's proposed claims method is not unduly burdensome and provides a straightforward process for Class members to receive benefits under the Settlement.

E. Rule 23(e)(2)(C)(iii): The Relief Provided For The Class Is Adequate, Taking Into Account The Terms Of Any Proposed Award Of Attorney's Fees, Including Timing Of Payment

This factor recognizes that "[e]xamination of the attorney-fee provisions may also be valuable in assessing the fairness of the proposed settlement." 2018 Adv. Comm. Notes. As noted above, attorneys' fees and expenses were discussed and negotiated with the assistance of the mediator only after all other material terms of the settlement were agreed. Trane has agreed to pay fees and expenses in the amount of $1,800,000, which will not diminish the recovery by class members in any way. *See In re NFL Players*, 821 F.3d at 447 (upholding district court's approval of fees where "[i]t emphasized that the issue of fees was not discussed until after the principal terms of the settlement were agreed to [and] the fee award will not diminish class recovery"). As is discussed more fully in the motion for award of fees and

expenses filed herewith, the $1,800,000 award of fees and expenses results in a 1.24 multiple of Class Counsel's reasonable lodestar. *See, e.g.*, *Saini*, 2015 U.S. Dist. LEXIS 66242, at *36 ("Courts routinely find in complex class action cases that a lodestar multiplier between one and four is fair and reasonable.").

Further, while the settlement benefits are not easily susceptible to precise quantification, the value of the benefits available to class members far outweighs the amount of fees requested under a cross-check analysis.

Finally, Class Counsel filed their motion for attorneys' fees and expenses before the expiration of the objection period, and it will be posted on the Settlement Website, which thereby provides class members an opportunity to review the request for fees and incentive awards and voice any objections.

F. Rule 23(e)(2)(C)(iv): Any Agreement Required To Be Identified Under Rule 23(e)(3)

Rule 23(e)(3) requires settling parties to "file a statement identifying any agreement made in connection with the proposal." Here, there are no "side agreements" concerning this settlement.

G. Rule 23(e)(2)(D): The Proposal Treats Class Members Equitably Relative To Each Other

"A district court's 'principal obligation' in approving a plan of allocation 'is simply to ensure that the fund distribution is fair and reasonable as to all participants in the fund.'" *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 326 (3d Cir. 2011) (quoting

Walsh v. Great Atl. & Pac. Tea Co., Inc., 726 F.2d 956, 964 (3d Cir. 1983)). The proposed settlement benefits and categories satisfy this standard. The Settlement treats all class members fairly.

The categories of benefits are not exclusive and make practical distinctions between class members: (1) who suffered an acute TXV failure and incurred out-of-pocket expenses to obtain a repair; (2) who may not yet have suffered an acute TXV failure (or did and only had a TXV replaced) and merit preventative action; and (3) who have had injections of full-strength MJ-X and are at risk of future compressor failures. Accordingly, the Settlement treats class members equitably relative to each other.

Thus, considering all of the Rule 23(e)(2) factors and the additional *Girsh* factors, the proposed settlement is fair, reasonable, and adequate.

IV. THE SETTLEMENT CLASS SHOULD BE CERTIFIED

Class certification under Rule 23 has two primary components. First, the party seeking class certification must first establish the four requirements of Rule 23(a):

> (1) numerosity (a ‘class [so large] that joinder of all members is impracticable’); (2) commonality (‘questions of law or fact common to the class’); (3) typicality (named parties’ claims or defenses ‘are typical . . . of the class’); and (4) adequacy of representation (representatives ‘will fairly and adequately protect the interests of the class’).

Warfarin Sodium II, 391 F.3d at 527. Second, the Court must find that the class fits within one of the three categories of class actions set forth in Rule 23(b). *In re Cmty.*

Bank of N. Va. & Guar. Nat'l Bank of Tallahassee Second Mortg. Loan Litig., 418 F.3d 277, 302 (3d Cir. 2005). In the present case, Plaintiffs seek certification under Rule 23(b)(3), "the customary vehicle for damage actions." *Id.* Rule 23(b)(3) requires that common questions "predominate over any questions affecting only individual members" and that class resolution be "superior to other available methods for the fair and efficient adjudication of the controversy." *Amchem*, 521 U.S. 591 at 639.

All the Rule 23 requirements are met here. The Court was correct in preliminarily certifying the Class for settlement purposes pursuant to Rules 23(a) and (b)(3), and nothing has changed to alter the propriety of the Court's certification. Therefore, the Class should now be finally certified for settlement purposes.

A. <u>The Class Members Are Too Numerous To Be Joined</u>

For certification of a class to be appropriate, its members must be so numerous that their joinder would be "impracticable." Fed. R. Civ. P. 23(a)(1). There are approximately 450,000 Class Air Conditioners in the United States. (ECF No. 93-13.) Numerosity, therefore, is readily satisfied.

B. <u>There Are Common Questions Of Law And Fact</u>

Rule 23 next requires common questions of law or fact. Fed. R. Civ. P. 23(a)(2). "Meeting this requirement is easy enough," *In re NFL Players*, 821 F.3d at 427, as commonality is satisfied if "the named plaintiffs share at least one question

of fact or law with the grievances of the prospective class," *id.* at 426-27 (quoting *Rodriguez v. Nat'l City Bank*, 726 F.3d 372, 382 (3d Cir. 2013)). The common questions in this case include whether the Class Air Conditioners are defective, whether Trane breached its express and implied warranties, whether Trane's conduct violates state consumer protection statutes, and whether Plaintiffs and class members are entitled to damages. These questions are common to the class, capable of class-wide resolution, and "will resolve an issue that is central to the validity of each one of the claims in one stroke." *Id.* at 427 (quoting *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011)). Thus, the commonality requirement is met. *See Henderson v. Volvo Cars of N. Am., LLC*, 2013 U.S. Dist. LEXIS 46291, at *4 (D.N.J. Mar. 22, 2013) ("Several common questions of law and fact exist in this case, including whether the transmissions in the Class Vehicles suffered from a design defect, whether Volvo had a duty to disclose the alleged defect, whether the warranty limitations on Class Vehicles are unconscionable or otherwise unenforceable, and whether Plaintiffs have actionable claims.").

C. <u>Plaintiffs' Claims Are Typical Of The Class</u>

"Typicality ensures the interests of the class and the class representatives are aligned 'so that the latter will work to benefit the entire class through the pursuit of their own goals.'" *Newton v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 259 F.3d 154, 182-83 (3d Cir. 2001) (citation omitted). Typicality does not require that every

class member "share identical claims," *id.*, but only that plaintiffs' and "class members' claims arise from the same course of events and each class member makes similar legal arguments to prove the defendant's liability," *Atis v. Freedom Mortg. Corp.*, 2018 U.S. Dist. LEXIS 189586, at *20 (D.N.J. Nov. 6, 2018).

Here, all Plaintiffs and class members purchased Trane air conditioning units that contained the same alleged chemical contaminant. Plaintiffs similarly alleged that, in selling these contaminated units, Trane breached its express and implied warranties and violated state consumer protection statutes. Typicality is, therefore, established. *See In re NFL Players*, 821 F.3d at 428 (holding typicality met where plaintiffs "seek recovery under the same legal theories for the same wrongful conduct as the [classes] they represent").

D. <u>Plaintiffs And Class Counsel Have Fairly And Adequately Protected The Interests Of The Class</u>

Two questions are relevant to adequacy of representation under Rule 23(a)(4): "(1) whether Plaintiffs' counsel is qualified, experienced, and able to conduct the litigation; and (2) whether any conflicts of interest exist between the named parties and the class they seek to represent." *Atis*, 2018 U.S. Dist. LEXIS 189586, at *21 (citing *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 312 (3d Cir. 1998)). Plaintiffs and their counsel do not have any conflicts with class members and have vigorously prosecuted this case.

1. Class Counsel Are Well Qualified

Rule 23(g) sets forth the criteria for evaluating the adequacy of plaintiffs' counsel:

> (i) the work counsel has done in identifying or investigating potential claims in the action;
> (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action;
> (iii) counsel's knowledge of the applicable law; and
> (iv) the resources that counsel will commit to representing the class . . . .

Fed. R. Civ. P. 23(g)(1)(A). As discussed in detail in the fee and incentive award motion filed herewith, Class Counsel are well-qualified to serve as class counsel, and they have expended significant time and expense in pursuing this case, including motion practice, discovery, expert discovery, and mediation. (*See supra* §§ I.B.-I.D.)

2. Plaintiffs Have No Conflicts Of Interest And Have Diligently Pursued The Action On Behalf Of The Other Class Members

"A named plaintiff is 'adequate' if his interests do not conflict with those of the class." *Shapiro*, 2018 U.S. Dist. LEXIS 108132, at *14-15. Plaintiffs have agreed to serve in a representative capacity, communicated diligently with their attorneys, gathered relevant documents and produced them to their attorneys, and helped prepare the allegations in the complaints. Plaintiffs will continue to act in the best interests of the other class members; there are no conflicts between Plaintiffs and the class. *See, e.g.*, *id.* (holding adequacy requirement met where the plaintiff had no interests antagonistic to the class).

E. <u>The Requirements Of Rule 23(b)(3) Are Met</u>

As to the predominance and superiority requirements, when "[c]onfronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there will be no trial." *Amchem*, 521 U.S. at 620. Indeed, the Third Circuit has noted that it is "more inclined to find the predominance test met in the settlement context." *In re NFL Players*, 821 F.3d at 434 (quoting *Sullivan*, 667 F.3d at 304 n.29). The predominance and superiority requirements are met here.

1. Common Issues Predominate For Settlement Purposes

The predominance inquiry tests the cohesion of the class, "ask[ing] whether the common, aggregation-enabling, issues in the case are more prevalent or important than the non-common, aggregation-defeating, individual issues." *Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036, 1045 (2016) (citation omitted). Predominance is ordinarily satisfied, for settlement purposes, when the claims arise out of the defendant's common conduct. *See, e.g.*, *Sullivan*, 667 F.3d at 299-300 ("[T]he focus is on whether the defendant's conduct was common as to all of the class members."); *Yaeger v. Subaru of Am., Inc.*, 2016 U.S. Dist. LEXIS 117193, at *19-20 (D.N.J. Aug. 31, 2016) (predominance satisfied for purposes of settlement where vehicles had an allegedly common, undisclosed design defect).

All class members purchased or currently own Class Air Conditioners that

contained the rust inhibitor, which Plaintiffs allege Trane sold in breach of its express and implied warranties and in violation of state consumer protection laws. Whether Trane's alleged conduct breached its warranties or violated consumer protection laws are predominating, common questions of law. *See Sullivan*, 667 F.3d at 303 (internal citation and quotations omitted) (holding "state law variations are largely irrelevant to certification of a settlement class").

Common factual questions include Trane's knowledge of and obligation to disclose the defect, whether Trane breached express and implied warranties, whether the rust inhibitor was a defect, and whether MJ-X was an adequate repair. *See, e.g.*, *In re Prudential*, 148 F.3d at 314 (noting that cases involving "a common scheme to defraud" readily meet predominance test); *Alin v. Honda Motor Co.*, 2012 U.S. Dist. LEXIS 188223, at *12 (D.N.J. Apr. 12, 2012) (predominance satisfied where "class vehicles allegedly suffer from defects that cause their air conditioning systems to break down, although there are differences as to how the breakdowns occur"). Thus, common questions of law and fact predominate for settlement purposes.

2. A Class Action Is A Superior Means Of Resolving This Controversy

The Rule 23(b)(3) superiority inquiry "asks the court to balance, in terms of fairness and efficiency, the merits of a class action against those of alternative available methods of adjudication." *In re NFL Players*, 821 F.3d at 434.

Here, given the relatively low value of an individual claim, class members are

unlikely to bring individual lawsuits against Trane. Furthermore, because the class members number in the hundreds of thousands, class-wide resolution of their claims in a single action is far more efficient than individual actions. *See id.* at 435 (citation omitted) (superiority satisfied where "the [s]ettlement avoids thousands of duplicative lawsuits and enables fast processing of a multitude of claims").

For these reasons, the Court should certify the Settlement Class in this case.

V. THE BEST PRACTICABLE NOTICE WAS PROVIDED

To protect the rights of absent members of the Class, the Court must ensure that all Settlement Class Members who would be bound by a class settlement are provided the best practicable notice. *See* Fed. R. Civ. P. 23(c)(2)(B). The best practicable notice is that which is "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). Both the content and the means of dissemination of the notice must satisfy the "best practicable notice" standard.

On April 19, 2020, the Administrator established the Settlement Website, at www.airconditionersettlement.com, which includes a searchable version of Exhibit I (class unit serial numbers), the Full Notice, preliminary approval papers, and all other relevant documentation. (Kaufman Decl., at ¶ 4.) Further, on May 28, 2020, the Administrator:

- issued Mailed Notice and Claim Forms by first-class mail to 245,717 addresses that appeared in Trane's warranty registration records, which represents about 55% of class units, and the notices state that Trane's records indicate they are a Class Member, provides key details in a short format, and instructs Class Members to review the Full Notice on the Settlement Website (*id.*, at ¶ 7; ECF No. 95-1);[12]

- issued a press release on PR Newswire (Kaufman Decl., at ¶ 9); and

- began the extensive online publication campaign, which will produce no less than 70,000,000 impressions with targeted advertisements and will end on July 6, 2020, (*id.*, at ¶ 8).

Additionally, the Administrator purchased a print ad that will run in a major industry trade journal, ACHR News, which was issued on June 1, 2020, and internet ads on ACHR News's website. (*Id.* at ¶¶ 8, 10.) Class Counsel also published notices on their firms' websites. All notices refer Class Members to the Full Notice available on the settlement website.

Taken together, the individual notice and publication notice satisfy Due Process and provides the "best notice that is practicable under the circumstances . . . ." Fed. R. Civ. P. 23(c)(2)(B); *see also, e.g.*, *Hall v. Best Buy Co.*, 274 F.R.D. 154, 168 (E.D. Pa. 2011) ("Indeed, this combination of individual and publication notice provides the best notice practicable."); *McLennan*, 2012 U.S. Dist. LEXIS 27703, at *23-24 (approving notice where it was "mailed to potential class members, and the wider publication notice, including the website, informed class members of their

[12] *See* 2018 Adv. Comm. Notes ("[F]irst class mail may often be the preferred primary method of giving notice . . . .")

rights and benefits under the Settlement"). Finally, the preventative program and extended and enhanced warranty coverage will be described in service bulletins to be distributed to Trane service personnel on or around the Effective Date, which supplements the notice program to Class Members. (ECF No. 93-4, at ¶ 77.)

CONCLUSION

Plaintiffs respectfully request that the Court enter the proposed Final Order and Judgment.

DATED: June 4, 2020

Respectfully submitted,

s/ Timothy N. Mathews
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CERTIFICATE OF SERVICE

I, Timothy N. Mathews, certify that on this 4th day June 2020, I caused the foregoing *Plaintiffs' Memorandum Of Law In Support Of Joint Motion For Final Approval Of Settlement And Entry Of Final Order And Judgment* to be filed using the Court's CM/ECF system, thereby causing it to be served upon all registered ECF users in this case.

s/ Timothy N. Mathews
Attorney for Plaintiffs