

**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' REPLY BRIEF
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 reply brief in support of the joint motion of Plaintiffs and Defendant, Trane U.S. Inc. (“Defendant” or “Trane”), for final approval of the class action Settlement (ECF No. 106).

As the Court is aware, Plaintiffs negotiated a multi-faceted Settlement comprised of cash reimbursement, a free “lite” additive shown to prevent future problems, and a warranty extension and enhancement, depending on the Class Members’ particular experience. It is not surprising, therefore, that only seven out of nearly 450,000 Settlement Class Members filed objections and only four requested exclusion. Moreover, most of the objections reflect a misunderstanding of the defect or the terms of the Settlement. *See, e.g., Hawker v. Consovoy*, 198 F.R.D. 619, 628 (D.N.J. 2001) (“Many objections are the result of a fundamental misunderstanding of the underlying purpose of the class action . . . and unrealistic or overly optimistic expectations.”).

In reviewing objections to a class settlement, the Court’s role is to determine whether any of the objections render the settlement unfair, unreasonable, or inadequate. *See, e.g., Varacallo v. Mass. Mut. Life Ins. Co.*, 226 F.R.D. 207, 242 (D.N.J. 2005). None of the objections here detract from this Court’s preliminary

finding that the Settlement is fair, reasonable, and adequate.

I. RESPONSE TO OBJECTIONS

1. Lange & McNary Objection (ECF No. 108)

Mr. Joseph P. Lange and Ms. Diane L. McNary state that, during a routine “check-up” of their system in June 2015, their Service Provider, KB Complete, injected an Additive into the system. They do not claim that their TXV has ever malfunctioned, and the receipt they attach to their objection does not reflect any TXV malfunction; so presumably the Additive was injected as a preventative measure. They were not charged for the injection.

Mr. Lange and Ms. McNary state that KB Complete did not give them a choice whether to accept the Additive and did not advise them that there was any risk to adding it. Based on Plaintiffs’ allegation that the Additive is acidic and may impact the long-term health of the compressor, however, along with their discussions with “industry experts” who informed them that it is “unusual” to inject an Additive, Mr. Lange and Ms. McNary argue that Trane should be forced to either “replace the compressor and TXV and all substandard parts for our unit and extend a 10 year warranty from the date of parts replacement . . .” or “replace the whole unit . . . and honor a 10 year warranty on the compressor and all parts”

The Settlement, however, *already* provides much of the relief that Mr. Lange and Ms. McNary seek. Namely, any Class unit injected with a full-strength Additive

qualifies for the Enhanced Compressor Warranty Coverage that provides ten-year parts and labor warranty on the compressor, which is the component that Plaintiffs contend may be affected by the injection of an Additive.¹ Moreover, because Trane's records reflect that Mr. Lange and Ms. McNary received a Qualifying Additive Injection, they are automatically qualified for the Enhanced Compressor Warranty Coverage. The Mailed Notice sent to Mr. Lange and Ms. McNary expressly informed them that they are qualified for this Enhanced Compressor Warranty Coverage without any need to file a claim. (Supplemental Decl. of David Kaufman, filed herewith, at ¶ 9 ["Supp. Kaufman Decl."].)² Should their compressor fail within ten years of installation, Mr. Lange and Ms. McNary are eligible to receive a free compressor *plus* a four-hour labor concession and an \$8 per lb. refrigerant allowance up to the nameplate charge. Should their compressor fail between ten and twelve years from installation, they are eligible to receive a \$600 credit towards the purchase of a new Trane or American Standard HVAC unit. Thus, the Settlement already provides a ten-year warranty on the component potentially affected by the Additive.

Mr. Lange and Ms. McNary's further request that Trane immediately provide

¹ It should be noted that Trane disputes that the Additive causes harm or risk of premature compressor wear.

² The Supplemental Kaufman Declaration also provides updated information on the notice process and claims experience.

them with replacement parts (or a new system) is not warranted by the facts. There is no evidence that their system has experienced a TXV failure, and so there is no current reason to replace the TXV. This is likely due to the fact that, as Trane's studies reflect, the Additive is effective at preventing TXV debris due to Ryconox. Moreover, there is no evidence that their compressor has failed. Therefore, there is no current need to replace the TXV or any other parts in Mr. Lange and Ms. McNary's system, nor would doing so remove either Ryconox or the Additive.

Mr. Lange and Ms. McNary also question whether a Preventative Injection of MJ-X Lite could "cause as much or more damage to the compressor and the overall performance and life expectancy of the unit?" As an initial matter, Mr. Lange and Ms. McNary do not qualify for a Preventative Injection because they already received a full-strength Additive. Nevertheless, MJ-X Lite was developed by Trane to be a safer, less acidic version of the Additive, and Trane's studies showed it to be an effective preventative of Ryconox deposits. (*See* Settlement Agreement, ECF No. 93-4, at ¶ 5; Final Approval Br., ECF No. 106-2, at 6.)

Finally, even if the Settlement did not already provide much of the relief they seek, Mr. Lange and Ms. McNary's suggestion that the Settlement grant them different or more relief is "not a valid objection." *See, e.g., In re Philips/Magnavox TV Litig.*, 2012 U.S. Dist. LEXIS 67287, at *28 (D.N.J. May 14, 2012) (citation omitted). "A settlement is, after all, not full relief but an acceptable compromise."

Id. (citation omitted). Here, the Settlement grants excellent relief directly addressing each harm alleged—even the harm from full-strength MJ-X about which Mr. Lange and Ms. McNary are concerned. (*See* ECF No. 106-2, at § II.B.)

2. Consula Objection (ECF No. 109)

Mr. Daniel V. Consula objects to the Preventative Injection Program because a Trane dealer he contacted indicated that he would need to pay \$70 to \$120 for a routine maintenance or service call in order to receive the free lite additive and labor credit to inject it under the Preventative Injection Program.

While it is true that the Settlement contemplates that the Preventative Injection will be performed during any routine maintenance or service call, and Settlement Class Members are responsible for any charges associated with the routine maintenance or service call above the \$50 labor credit, this does not render the Preventative Injection Program unfair because air conditioners are *supposed* to be professionally maintained annually.

Trane, like virtually all air conditioner manufacturers, recommends yearly professional maintenance. *Preventative Measures to Keep Your AC In Great Shape*, Trane, <https://www.trane.com/residential/en/for-owners/maintenance-tips/air-conditioners/> (last visited July 23, 2020) (recommending yearly maintenance every

spring). That is precisely why dealers sell yearly “tune-up” plans.³ In fact, Trane’s limited warranty requires that units undergo regular maintenance “by a licensed HVAC service provider,” and Trane may request proof of “proper preventative maintenance” as a prerequisite to any warranty claims. (*See* Mathews Decl., filed herewith, Ex. 1.) Similarly, Trane’s Owner’s Guide for Outdoor Units states that:

- “An outdoor unit is not a household appliance. It’s a self-contained system that requires professional maintenance and repair.” (Mathews Decl. Ex. 2.)
- “Your outdoor unit should be inspected regularly by a properly trained service technician.” (*Id.*)

The Preventative Injection Program will run for a full year after the Effective Date of the Settlement, meaning Settlement Class Members who follow Trane and industry guidelines should obtain a routine maintenance within that time. Moreover, the Settlement does not *require* Service Providers to charge their customers for these visits. Given the \$50 labor credit and free lite additive, some dealers may be motivated to provide service calls to inject MJ-X Lite without additional charge to their customers. In any event, the fact that Settlement Class Members may be required to pay for a standard annual maintenance in order to receive the free Preventative Injection does not render the Settlement unfair.

³ Another objector, Mr. Shapiro, discussed below, acknowledges that periodic tune-ups are typical under “service plans which many consumers use.” (ECF No. 113, at ¶ 3.)

3. Bardone Objection (ECF No. 110)

Ms. Marguerite Bardone's objection states that, "[t]he unit's defective [TXV] . . . can negatively impact the unit's compressor[] whether or not the TXV was injected with any [Additive] . . ., and there is no predictability when the defective TXV itself will fail and negatively impact the compressor." She says her "only course to pursue Settlement benefits . . . and avert forthcoming hardware failures, is via preventative repairs quoted from \$1,000 to \$2,000 for TXV replacement, and \$2,000 up to \$3,000 for a compromised compressor replacement." She asserts that Trane should replace all Class members' TXVs and compressors and start a new warranty period.

Ms. Bardone's objection appears to misunderstand the nature of the defect and the Settlement benefits. The defect is not a "hardware" defect. Rather, the alleged defect is the presence of a chemical, Ryconox, that circulates through the system and can cause deposits to accumulate on a TXV and cause it to fail. Thus, replacing the TXV and/or the compressor would not resolve the alleged defect. In fact, replacing those components requires opening a sealed system and brazing in new parts, which presents a significant risk of introducing contaminants.

Further, in stating that her "only course to pursue Settlement benefits" is to replace hardware, Ms. Bardone apparently overlooks the Preventative Injection Program. Ms. Bardone appears to be eligible to receive a Preventative Injection,

which prevents TXV failures by preventing deposits from collecting on the TXV. If there are no deposits on the TXV, then there is also no risk to the compressor from Ryconox. The Preventative Injection Program is tailored to prevent future TXV failures as a result of Ryconox. And, as noted above, an objection that the Settlement should provide different or better relief is not valid.

4. Olgreen Objection (ECF No. 111)

Mr. Ward Olgreen's objection states that his Class unit "has not conveniently broken or needed service" and that he "does not desire having anyone tamper with a sealed system," but that he does "want to be provided full value of repair when it occurs." In other words, Mr. Olgreen would prefer to wait and see if his TXV ever fails and then be reimbursed the cost of the repair.⁴

Mr. Olgreen either overlooks or does not desire to take advantage of the Preventative Injection Program. The program is available to him precisely to prevent a future failure and repair expense related to the alleged defect and was crafted for precisely this circumstance.

Mr. Olgreen also appears to object to any service on his unit because any tampering with a sealed system may "cause issues." But an injection of the preventative MJ-X Lite does not entail breaching the sealed system. Instead, MJ-X Lite is "injected" through a service port present on all systems, which is designed to

⁴ Mr. Olgreen agrees that the reimbursement amounts under the Settlement are fair.

allow pressures to be checked during routine maintenance and to add refrigerant and Additives to the system without introducing contaminants. (*See* Service Bulletin, ECF No. 93-10 (describing process to inject MJ-X Lite under the preventative program).)

5. Clough Objection (ECF No. 112)

Mr. Scott Clough objects to the Settlement for two reasons, one related to a Class Air Conditioner and one related to a unit not included in the Class.

First, he objects because he paid out of pocket to repair a Class unit, ostensibly due to a clogged valve, but he is ineligible for reimbursement under the Settlement because his valve was not replaced and he did not receive an injection of MJ-X. But because his issue was resolved without replacing the TXV or injecting an Additive, it was very unlikely to have been caused by Ryconox in the first place. Thus, the fact that he paid for a repair unrelated to the defect asserted in this case does not render the Settlement unfair.

Mr. Clough's service invoice (attached to his objection) reflects that his Class Heat Pump was short cycling due to low pressure when the technician arrived. The technician switched his heat pump from cooling to heating mode, which resolved the issue. According to the technician, the "[o]nly diagnosed problem[] was the [valve] in air handler had caught a piece of something in it and when put in heat mode blew whatever had the [valve] stopped up in it out."

The technician's description is not characteristic of a Ryconox-related clog, and the fact that it was resolved without replacing the TXV or injecting an Additive strongly suggests that it was not due to Ryconox. As explained in a declaration by Trane's Warranty Administration Leader, Mike Stephens, in response to Mr. Clough's objection, there are many causes of TXV issues, and Mr. Clough's issue was likely debris from installation. (Decl. of Mike Stephens, filed herewith, at ¶¶ 2-7.) If the issue had been Ryconox, simply switching to heat mode would not likely have resolved it. Ryconox collects a sticky debris on the TXV that cannot be easily "blown out" with only existing refrigerant in the system. (*See id.*, at ¶ 6.) This is why the Settlement requires that a Class Member must have had either a TXV replacement or an Additive injection to receive reimbursement. (*See* ECF No. 93-4, at ¶¶ 38, 52.) Absent one of those two outcomes, any TXV failure was not likely caused by Ryconox.

Mr. Clough, however, does appear to be eligible to receive a Preventative Injection, which should prevent possible future Ryconox-related clogs.

Second, Mr. Clough also objects to the Settlement because he owns another Trane unit, manufactured in May 2014, for which he paid for a TXV and compressor replacement, but its serial number is not included in the Class. It is, therefore, not a Class unit. In fact, Mr. Clough's second unit contains an entirely different kind of compressor (which is called a reciprocating compressor) from the compressors at

issue in this case (which are called scroll compressors). (Stephens Decl., at ¶¶ 8-9.)

Thus, Mr. Clough's second objection is not a valid objection to the Settlement.

6. Shapiro Objection (ECF No. 113)

Mr. Harvey S. Shapiro objects to the substance of the notice of the Settlement because he claims confusion as to who can perform a Preventative Injection. Specifically, the summary Mailed Notice he received stated that, to receive a Preventative Injection, Class members may “contact any local Trane dealer.” He states his service provider is not a “Trane dealer,” and speculates that this language was intended to drive business to Trane dealers. He acknowledges, however, that he reviewed the Settlement itself, which makes clear that the Preventative Injection can be performed by “any qualified dealer, service personnel, contractor, or other person who is qualified and, if required, licensed in their state to service air conditioners and heat pumps.” (ECF No. 93-4, at ¶ 43.) This is confirmed by the Full Notice, which states that to receive a Preventative Injection, Settlement Class Members can “contact any local Trane service provider or dealer and reference bulletin number UN-SVB020H-EN.” (Mathews Decl., at ¶ 5 & Ex. 3 (as-posted Full Notice).) Mr. Shapiro also received this information in a response to his email inquiry from the Settlement Administrator. Despite his confusion, Mr. Shapiro did not attempt to contact Class Counsel, even though the Full Notice and Settlement Website state,

“You may also contact Class Counsel if you have any questions.”⁵

After receiving his objection, Class Counsel, Timothy Mathews, contacted Mr. Shapiro to answer his question. (Mathews Decl., at ¶ 6.) As Class Counsel explained, the Mailed Notice, which is only a short summary and instructs Class members to review the Full Notice, says “contact any local Trane dealer” because Trane maintains on its Trane and American Standard websites a “dealer locator” feature, through which consumers can find Service Providers by entering their zip code.⁶ (*Id.*) Class Counsel explained that, as stated in the Settlement and Full Notice, any qualified service person can perform the Preventative Injection service, the only caveat being they must have an account with a Trane/American Standard distributor in order to receive the free bottle of MJ-X Lite and labor reimbursement through the normal warranty channels. (*Id.*)

Mr. Shapiro then explained that he believes the use of the term “Trane dealer” might exclude “American Standard dealers.” (*Id.*) Class Counsel explained that it does not. (*Id.*) “Trane” and “American Standard” are simply brand names of air

⁵ Mr. Shapiro inaccurately says that he received a response from Class Counsel, but in reality he submitted his query to, and received a response from, the Settlement Administrator by filling out the Settlement Administrator’s “Contact Us” form.

⁶ See *Find A Trane Comfort Specialist Near You*, Trane, <https://www.trane.com/residential/en/dealer-locator/> (last visited July 23, 2020); *Find A Local American Standard Dealer You Can Count On*, American Standard, <https://www.americanstandardair.com/how-to-buy/find-your-dealer/> (last visited July 23, 2020).

conditioners manufactured by Trane Technologies. Class Counsel confirmed that Mr. Shapiro's service provider, Preferred Air, is listed on the American Standard "dealer locator" website and appears to be qualified to receive a free bottle of MJ-X Lite, inject it, and claim the labor reimbursement under the Settlement. (*Id.*)

While Class Counsel believe the notices were already adequately clear, in order to ensure no further potential confusion, after speaking with Mr. Shapiro, Class Counsel instructed the Claims Administrator to change the FAQ on the Settlement Website as follows:

In order to receive an injection under this program, contact any local Trane/American Standard service provider or dealer and reference bulletin number **UN-SVB020H-EN**.

(Supp. Kaufman Decl., at ¶ 10.)

Finally, it should be noted that the Service Bulletins providing details about the Preventative Injection Program (ECF Nos. 93-9, 93-10) will be released to distributors and dealers/Service Providers on or before the Effective Date of the Settlement. Thus, Mr. Shapiro's service provider was likely unable to answer questions about the Preventative Program. Once these bulletins are released, Service Providers should have no difficulty confirming for their customers they are qualified to obtain the free MJ-X Lite and labor credit from Trane. If they are not already qualified, creating an account with a Trane distributor is a relatively simple process.

Therefore, Mr. Shapiro's objections based on the notice should be overruled.

See, e.g., In re NFL Players' Concussion Injury Litig., 307 F.R.D. 351, 384 (E.D. Pa. 2015) (overruling objections where the notice “repeatedly instructs readers to sources that can answer their questions”).

7. Webster Objection (ECF No. 114)

Mr. James M. Webster, Jr., objects to the Settlement because he was informed that his unit requires a TXV replacement and was quoted \$1,007.73 for replacement in addition to paying a \$95.01 service call fee. (See the invoice attached to his objection.) He complains that under the Settlement he would only be entitled to a \$575 reimbursement. The Parties obviously cannot control what Service Providers charge for a TXV replacement, but as noted in Plaintiffs’ opening final approval brief (ECF No. 106-2, at 13), warranty providers typically assume two hours of labor and the TXV itself is usually well under \$100. Here, Trane is providing the TXV under warranty (see the invoice), so the \$1,007.73 is apparently just a labor charge.

Absent the Settlement, Mr. Webster could be responsible for the full cost of his TXV replacement as there is no guarantee that Plaintiffs would achieve a recovery even after years of additional litigation and trial. The \$575 reimbursement under the Settlement would cover over half and is a perfectly fair settlement of a disputed claim. *See, e.g., In re Pet Food Prods. Liab. Litig.*, 2011 U.S. Dist. LEXIS 38181, at *57-58 (D.N.J. Apr. 5, 2011) (concluding 43.6% is adequate, reasonable, and fair). In addition, if Mr. Webster did not previously receive an Additive

injection, he is also eligible for MJ-X Lite under the Preventative Injection Program. (ECF No. 93-4, at ¶¶ 57-61.)

For the foregoing reasons, Plaintiffs respectfully request that the Court overrule all of the objections and grant final approval to the Settlement. *See, e.g., In re Ins. Brokerage Antitrust Litig.*, 282 F.R.D. 92, 118 (D.N.J. 2012) (noting that the issue is not whether every class member is completely satisfied with the compromise, but whether the settlement is fair, reasonable, and adequate).

II. EXCLUSIONS

The opt-out deadline was July 13, 2020. There were four requests for exclusions. Exhibit A to the Supplemental Kaufman Declaration is a list of the Settlement Class Members that requested exclusion from the Settlement. *See* Fed. R. Civ. P. 23(c)(3). Plaintiffs request that the Court exclude these Class Members from the Settlement. (*See* ECF No. 106-1, at ¶¶ 8, 13.) Note, however, that these exclusions are specific to the individual and do not exclude from the Settlement other former or current owners of the Class Air Conditioner or Heat Pump. (*See* ECF No. 93-1, at ¶ 12.)

CONCLUSION

Plaintiffs respectfully request that the Court overrule all objections, exclude the Settlement Class Members listed on Exhibit A, and enter the proposed order granting final approval of the Settlement and entering the final order and judgment.

DATED: July 24, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Timothy N. Mathews, certify that on this 24th day July 2020, I caused the foregoing *Plaintiffs' Reply Brief 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.

I further certify that on July 24, 2020, I caused the foregoing and all related declarations and exhibits filed herewith to be served upon the following by First Class Mail:

- | | |
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