UNITED STATES DISTRICT COURT
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. **[PROPOSED] ORDER GRANTING THE PARTIES' JOINT MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

WHEREAS, pursuant to Rule 23(a) and 23(b) of the Federal Rules of Civil Procedure, the Parties seek entry of an order preliminarily approving the settlement of this action pursuant to the Settlement Agreement fully executed on February 21, 2020, which, together with its attached exhibits, sets forth the terms and conditions for a proposed settlement of the action and dismissal of the action with prejudice; and

WHEREBY, the Court having read and considered the Settlement Agreement and its exhibits, and the Parties' Joint Motion for Preliminary Approval, the Plaintiffs' motion is GRANTED.

IT IS HEREBY ORDERED as follows:

1. This Order incorporates by reference the definitions in the Settlement Agreement dated February 21, 2020 ("Settlement Agreement"), filed herewith, and all terms used in this Order shall have the same meanings as set forth in the Settlement Agreement.

2. This Court has jurisdiction over this litigation, Plaintiffs, all Settlement Class Members, Defendant Trane U.S. Inc. ("Trane"), and any party to any agreement that is part of or related to the Settlement Agreement.

3. The Court preliminarily approves the Settlement Agreement as being fair, reasonable, and adequate, and finds that it otherwise meets the criteria for approval, subject to further consideration at the Final Approval Hearing described below, and warrants issuance of notice to the Settlement Class. Accordingly, the proposed Settlement Agreement is preliminarily approved.

4. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court certifies, solely for purposes of effectuating the Settlement Agreement, the Settlement Class as follows:

> All United States residents who are current or former owners of Trane and American Standard 1.5- to 5-ton air conditioners and heat pumps with a serial number reflected on Exhibit I to the Settlement Agreement.

Excluded from the Settlement Class are officers and directors of Trane or its parents and subsidiaries, 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 Agreement.

5. The Court preliminarily finds, solely for purposes of the Settlement Agreement, that the Settlement Agreement is likely to receive final approval and class certification, specifically that: (a) the Settlement Class is so numerous that joinder of all Settlement Class Members in the Action is impracticable; (b) there are questions of law and fact common to the Settlement Class that predominate over any individual questions; (c) the claims of the Plaintiffs are typical of the claims of the Settlement Class; (d) Plaintiffs and Class Counsel have and will continue to fairly and adequately represent and protect the interests of the Settlement Class; and (e) a class action is superior to all other available methods for the fair and efficient adjudication of the controversy.

6. The Court appoints Timothy N. Mathews and Zachary P. Beatty of Chimicles Schwartz Kriner & Donaldson-Smith LLP and James C. Shah of Shepherd, Finkelman, Miller & Shah, LLP as Class Counsel, having determined that the requirements of Rule 23(g) of the Federal Rules of Civil Procedure are satisfied by this appointment.

7. The Court hereby appoints Plaintiffs, Louise Livingston, Melissa Rainey, David Smith, Raymond Sabbatine, Peter Goldis, and Bill Colbert, to serve

as Class Representatives for settlement purposes only on behalf of the Settlement Class.

8. The Court approves the form and content of the class notice program as described in Section V of the Agreement. The Court finds that the mailing of the Mailed Notice, in addition with the dissemination of the Full Notice, Publication Notice, and Service Bulletins in the manner and form set forth in the Agreement satisfies Due Process. This notice program is the best notice practicable under the circumstances and shall constitute due and sufficient notice to all Settlement Class members entitled to such notice.

a. Within 10 days of the Preliminary Approval Date, the Settlement Administrator shall establish the Settlement Website, which will be located at an address to be designated by the Settlement Administrator. The Settlement Website shall include the ability to electronically complete the Claim Form, upload supporting documentation, and also to print the Claim Form. The Settlement Website shall also include the Full Notice and an electronically searchable list of the serial numbers of the Settlement Class Air Conditioners and Heat Pumps.

b. Within 49 days after entry of this Preliminary Approval Order, Trane shall—at its expense—cause the Mailed Notice, Claim Form, and the Publication Notice to be disseminated to Settlement Class Members in the

form and manner set forth in the Agreement. The Court authorizes the Parties to make non-material modification to the Mailed Notice, Claim Form, and Publication Notice prior to publication if they jointly agree that any such changes are necessary under the circumstances.

c. On or before the Effective Date, Trane shall cause the Service Bulletins to be issued by its standard bulletin dissemination process, which includes email distribution 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. The Court authorizes the Parties to make non-material modifications to the Service Bulletins if they jointly agree that any such changes are necessary under the circumstances.

d. Trane shall also provide through the Settlement Administrator—also at its expense—a toll-free number with live operators and Interactive Voice Response to field questions from Settlement Class Members.

9. The Claim Form is approved for dissemination to the Settlement Class Members, subject to any non-material changes to which the parties may agree.

10. If Settlement Class Members do not wish to participate in the Settlement Class, they may exclude themselves by timely delivering a written request for exclusion to the Settlement Administrator's address listed in the Mailed

Notice, Publication Notice, and on the Settlement Website. All requests by Settlement Class Members to be excluded from the Settlement Class must be in writing and postmarked on or before 77 days after the entry of this Preliminary Approval Order. Plaintiffs will file with their Reply in Support of their Final Approval Motion, the list of persons and entities that properly excluded themselves from the Settlement Class. The persons and entities deemed by the Court to have excluded themselves from the Settlement Class will be attached as an exhibit to the Final Order and Judgment.

11. The written request for exclusion must include: (a) the Class Member's full name, current address, and telephone number; (b) the serial number of their Settlement Class Air Conditioner or Heat Pump; and (c) specifically and unambiguously state in writing his or her desire to be excluded from the Settlement Class and election to be excluded from any judgment entered pursuant to the Settlement Agreement. No request for exclusion will be valid unless all of the information described above is included. All Settlement Class Members who exclude themselves from the Settlement Class will not be eligible to receive any benefits under the Settlement Agreement, will not be bound by any further orders or judgments entered for or against the Settlement Class, and will preserve their ability to independently pursue any claims they may have against Defendant.

12. A request for exclusion by a *current* owner of a Settlement Class Air Conditioner or Heat Pump does not exclude from the Settlement Agreement a *former* owner of the same Settlement Class Air Conditioner or Heat Pump. A request for exclusion by a *former* owner of a Settlement Class Air Conditioner or Heat Pump does not exclude from the Settlement Agreement a *current* owner of the same Settlement Class Air Conditioner or Heat Pump.

13. To state a valid objection to the Settlement Agreement, an objecting Settlement Class member must in writing provide: (a) the full name, address, telephone number and email address, if any, of the Settlement Class Member; (b) the serial number of the Settlement Class Air Conditioner or Heat Pump and an indication whether the Settlement Class Member is a current or former owner of the unit; (c) the name and contact information of any and all attorneys representing, advising, or in any way assisting the objector in connection with the preparation or submission of the objection or who may profit from the pursuit of the objection; (d) a written statement of all grounds for the objection accompanied by any legal support for the objection, if any; (e) copies of any papers, briefs, or other documents upon which the objection is based; (f) a statement of whether the Settlement Class Member intends to appear at the Fairness Hearing either personally or through counsel; and (h) the signature of the Settlement Class Member.

14. Objections must be filed with the Court, served by first-class mail, and any objecting Class Member must provide a list of all proposed settlements they objected to in the last 5 years. Any objecting Class Member also must provide copies of any other documents offered in support of the objection.

15. In addition to providing a copy of the objection to the Court, objections must also be mailed to each of the following, postmarked on or before seventy-seven (77) days after the entry of this Preliminary Approval Order: Timothy N. Mathews, Chimicles Schwartz Kriner & Donaldson-Smith, LLP, 361 West Lancaster Avenue, Haverford, PA 19041; and Gregory C. Ulmer, 811 Main Street, Suite 1100, Houston, TX 77002.

16. Any Settlement Class Member who does not make his or her objections in the manner provided herein shall be deemed to have waived such objections and shall forever be foreclosed from making any objections to the fairness, reasonableness, or adequacy of the proposed Settlement Agreement and the judgment approving the Settlement Agreement.

17. The Court hereby schedules the Final Approval Hearing for **July 6, 2020**, at _____ a.m./p.m. in Courtroom MLK 2C of the United States District Court for the District of New Jersey, Newark Division, Martin Luther King Building & U.S. Courthouse, 50 Walnut Street, Newark, NJ 07102, to determine whether the proposed Settlement Agreement should be approved as fair, reasonable,

and adequate; whether a judgment should be entered approving such Settlement Agreement; and whether Class Counsel's application for attorneys' fees and for service awards to the class representatives should be approved. The Court may adjourn the Final Approval Hearing without further notice to Settlement Class Members.

IT IS SO ORDERED on this _____ day of _____, 2020.

_____
HONORABLE MICHAEL A. HAMMER
UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT
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: March 16, 2020 **CLASS ACTION**

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF JOINT MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

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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 preliminary approval of a class action settlement.

After more than two years of contentious litigation, extensive discovery, and three mediations with Hon. Diane M. Welsh (Ret.), the Parties have reached a nationwide class action settlement that provides outstanding relief to nearly 450,000 current and former owners of Trane and American Standard air conditioners and heat pumps[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 (Mathews Decl. Ex. 1) provides both retrospective and prospective relief that squarely addresses the defect alleged by Plaintiffs in this action.[2] Trane will, *inter alia*:

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[1] For ease of reference, throughout this brief 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] References to numbered exhibits are to the declaration of Timothy N. Mathews filed herewith. References to lettered exhibits are to the Settlement Agreement, which is Exhibit 1 to the Mathews declaration. (*See* Mathews Decl. ¶ 2.)

- 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 of the additive, called "MJ-X," that includes:

  - ten years of parts coverage on the compressor for all class members, 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 $1.8 million and incentive awards to the representative plaintiffs of $5,000 each.

[3] Class members who paid for both an injection and a TXV replacement can receive up to $825.

As set forth below, the proposed settlement meets the criteria for preliminary approval under Rule 23, and, therefore, Plaintiffs respectfully request that the Court enter the Proposed Preliminary Approval Order: (1) preliminarily approving the settlement; (2) provisionally certifying the settlement class; (3) appointing Timothy Mathews and Zachary Beatty of Chimicles Schwartz Kriner & Donaldson-Smith LLP and James Shah of Shepherd Finkelman Miller & Shah LLP as class counsel; (4) appointing Plaintiffs as class representatives; and (5) setting the Parties' proposed schedule for notice, claims, final approval, and other matters.

I. LITIGATION HISTORY

A. Factual Background

Beginning 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, these air conditioner manufacturers began to notice high rates of failure in recently installed systems due to clogged TXVs. (*Id.*, at ¶ 30.) Within a couple months, the manufacturers determined that these TXV failures were due to the rust inhibitor, which causes a sticky debris to form on the

[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.*)

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. (Ex. I.)

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.*)

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 labor allowance for up to two hours of labor 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 (rightfully) distrustful of the additive, and 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.)

[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.

Trane also developed a "light" 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. (Ex. 1, 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. Thereafter, the Court 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 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

[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 Action"]. Their efforts generally on behalf of consumers affected by the defect began as early as 2014.

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 the Carrier Action 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, 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.

[7] As will be described more fully when Plaintiffs file their motion for an award of attorneys' fees, there was no duplicative billing in any of the related cases. Time spent on matters that benefitted more than one case, such as general review of nonparty documents, is allocated among the various cases to which it applied.

Plaintiffs also consulted with two experts. Plaintiffs' expert professional engineer had almost fully 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. Before and between sessions, from May to November 2019, 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 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. On February 7, 2020, the Parties reached an impasse on a claim-form requirement, which required the assistance of the mediator again to

resolve. The Parties finalized the Settlement Agreement on February 20, 2020, and fully executed it on February 21, 2020.

II. SUMMARY OF SETTLEMENT TERMS

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* Ex. 1, at § IX.) The terms include the following:

A. The Settlement Class

The *Settlement Class* includes: "all United States residents who are current or former owners of the Settlement Class Air Conditioners and Heat Pumps." (Ex. 1, 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.)

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

[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. (Ex. 1, at ¶ 47.)

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 will be posted on the Settlement Website. (*Id.*, at ¶ 72.) The Settlement Class includes the current and former owners of approximately 450,000 Settlement Class Air Conditioners and Heat Pumps.

B. Class Settlement Consideration

The Settlement provides strong benefits that are tailored to 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 obstructed TXV by either replacing the TXV (or the indoor coil that houses the TXV) or by injecting an Additive as set forth below. (Ex. 1, 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

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

> 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 received 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 (Ex. A) is short, in plain English, and may be completed in hard copy or online, and submitted by mail or online.

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.[10] In order to guide those decisions, Exhibit J provides detailed guidance for the Settlement Administrator to follow.

[10] In some instances, Trane may have already provided a free part under warranty or, in rare instances, an extra-warranty labor concession. In order to ensure no double payment, Trane will provide the Settlement Administrator with a list of all serial numbers for which it previously provided some warranty or labor coverage, along with the amount and other data concerning the coverage. The Settlement Administrator will determine whether any amount is duplicative. The claimed amount will be reduced only if it is more likely than not that the claimed amount includes a previously reimbursed amount. (*See* Ex. J.)

If any claim is deemed deficient for any reason, the class member will have an opportunity to cure the deficiency, such as by providing additional information. Trane will pay all costs for this neutral, third-party claims administration.

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 and to deter fraud given the substantial amount of payments that will be made. 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 and deterring fraudulent claims.

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 12 months Trane will 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. (Ex. 1, 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 high risk of performance loss in the future. (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, along with information about the enhanced compressor warranty coverage discussed below. (*See* Exs. E, F.)

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.

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

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.[11] (Ex. 1, 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. Since only about 60% of end-users historically register their warranties, this adds five years to the compressor warranty for roughly 180,000 units.

- 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.

If Trane's records reflect that a Settlement Class Air Conditioner was injected with an Additive prior to September 30, 2018, no claim form is necessary to qualify for these benefits. If Trane's records so indicate, the Mailed Notice will inform the consumer that their unit is entitled to the warranty extension provisions without any further action. For Settlement Class Air Conditioners that do not appear in Trane's

[11] 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.

records as having been injected with an Additive, the Mailed Notice will inform the Settlement Class Members that they must submit evidence that their system was injected with an Additive in order to qualify for the enhanced warranty coverage.

The extended and enhanced warranty coverage provides very significant value to class members. As a point of reference, in 2012, Carrier, a Trane competitor, sold compressor-only, parts-only warranty coverage, for years five through ten, for $68 per unit. (*See* Ex. 2.) Not only does this Settlement provide parts coverage from years five to ten, it provides labor and refrigerant coverage for ten years, plus a $600 credit towards a new air conditioner for compressor failures in years ten to twelve. Thus, the value per unit greatly exceeds $68.

C. Class Notice Plan

Trane will pay all costs of notice and administration through a third-party administrator jointly selected by the Parties. (Ex. 1, at § V.) After receiving competitive bids, the Parties have selected Heffler Claims Group ("Heffler") to administer this Settlement, subject to Court approval. Heffler is a division of global advisor Duff & Phelps and has specialized in the notice and administration of complex matters for more than fifty years. A copy of Heffler's resume is attached as Exhibit 3. A proposed timeline of significant dates under the Settlement is attached as Exhibit 4.

Notice will be disseminated to class members through:

- A two-page summary notice, which will be sent by first-class mail (and email where available) along with a Claim Form to all Settlement Class members whose contact information appears in Trane's warranty registration data;

- Publication notices in a leading trade publication, ACHR News Magazine, plus a national press release through PR Newswire, as well as on Class Counsel's websites;

- A digital media advertising campaign, to include over 70 million impressions through social media (Facebook and Instagram), Google AdWords, and other digital media channels (e.g., banner advertisements);

- A Full Notice on the Settlement Website; and

- The issuance of 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.

According to Trane's records, approximately 60% of end-users historically register their Class Air Conditioners. The Mailed Notice alone, therefore, is expected to reach approximately 270,000 class members. The print and digital publication program is likewise expected to reach a significant percentage of class members.

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

In addition to all other benefits of the Settlement above, Trane has also agreed to pay attorneys' fees and expenses not to exceed $1.8 million and Plaintiffs' incentive awards of $5,000 to each of the named Plaintiffs for their efforts on behalf

of the class and the excellent results achieved. As will be described more fully in their forthcoming motion for attorneys' fees, expenses, and incentive awards, these payments are well-deserved and readily approvable under governing legal standards. In fact, the agreed amount is relatively modest under the relevant standards, particularly given the outstanding results achieved here. Assuming the requested amount is awarded, the requested fee will be less than a 1.75 multiple of Class Counsel's lodestar (and Class Counsel's hourly rates have regularly been approved, including by this Court). Moreover, while the Settlement is not a common fund and, therefore, is not susceptible to precise quantification, the value of the settlement relief is quite substantial and easily satisfies any cross check of the lodestar.

Importantly, 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, these amounts were negotiated with the assistance of Hon. Diane M. Welsh (Ret.) and were discussed only after the Parties had agreed upon all other material terms of the Settlement.

III. ARGUMENT

Approval of a class action settlement is governed by Federal Rule of Civil Procedure 23(e). Approval occurs in two steps: (1) a preliminary approval finding and notice to the class; and (2) a subsequent final approval hearing. *See, e.g.*, *Shapiro v. Alliance MMA, Inc.*, 2018 U.S. Dist. LEXIS 108132, at *4 (D.N.J. June 28, 2018).

The Settlement is likely to achieve final approval as fair, reasonable, and adequate, and the Court is likely to be able to certify the Settlement Class.

A. The 2018 Amendments To Rule 23(e)

The recent amendments to Rule 23 of the Federal Rules of Civil Procedure revised the preliminary approval process for class action settlements. Under the Rule as amended, the Court must determine whether "giving notice is justified by the parties' showing that the court will *likely* be able to: (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal." Fed. R. Civ. P. 23(e)(1)(B) (emphasis added).

Under Rule 23(e)(2), at the preliminary approval stage, the Court must find that the settlement is likely to meet the fairness factors:

> *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, at the preliminary approval stage, 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).

Application of both the Rule 23(e)(2) and traditional factors demonstrates that the settlement here is fair, reasonable, and adequate, and is in the best interests of the class.

B. The Settlement Is Fair, Reasonable, And Adequate

1. 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 had 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 conducted substantial discovery in the ClimateMaster and Carrier actions, 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, including testimony from the depositions of Emerson's designee in the related actions. 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.

2. 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 435. 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*, 2018 U.S. Dist. LEXIS 108132, at *6 (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, and it followed three all-day mediation sessions with a highly respected neutral party—Hon. Diane M. Welsh (Ret.). This factor strongly supports granting preliminary approval. *See Udeen v. Subaru of Am., Inc.*, 2019 U.S. Dist. LEXIS 172460, at *6-8 (D.N.J. Oct. 4, 2019) (noting that the presumption of fairness is "sufficient for preliminary approval").

3. 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.[12] 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.

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. 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

[12] 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. Likewise, the second *Girsh* factor, "the reaction of the class" is premature as notice has not been sent out.

(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 incentives, none of which reduce the benefits to class members. These excellent results easily satisfy the eighth and ninth *Girsh* factors. *See 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).

4. 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. 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. (Ex. 1, at ¶ 24; *see also* Ex. J.) 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.

Class members who received an MJ-X injection prior to September 30, 2018, that appears in Trane's records do not need to make a claim to receive the enhanced compressor warranty benefits. The mailed notice to these class members will specify

that they are entitled to this coverage without a claim. Class members who received an injection that does 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. 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 opportunity to cure the deficiency.

The Settlement's proposed claims method is not unduly burdensome yet deters fraudulent claims. *See Turner v. NFL*, 307 F.R.D. 351, 414 (E.D. Pa. 2015) ("Submission of fraudulent claims to class settlements is, unfortunately, a documented phenomenon.").

5. 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 $1.8 million, 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 will be discussed more fully in the motion for award of fees and expenses, the $1.8 million award of fees and expenses will result in no more than a 1.75 multiple—and likely significantly less—of Class Counsel's reasonable lodestar. 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, the proposed order submitted herewith provides for Class Counsel to file their motion for Attorneys' Fees and Expenses before the expiration of the objection period, thereby providing class members an opportunity to review the request for fees and incentive awards and voice any objections.

At this stage, it suffices to say that Class Counsel's fee request is well within the range of reasonableness in this Circuit. *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.").

6. 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.

7. 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 likely to be fair, reasonable, and adequate.

C. The Court Will Be Able To Certify The Class For Purposes Of Settlement

When a class has not been certified before settlement, the Court considers whether "it likely will be able, after the final hearing, to certify the class." 2018 Adv.

Comm. Notes. The Court will be able to certify the proposed Settlement Class in connection with final approval here.

1. The Class Members Are Too Numerous To Be Joined

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. (Ex. I.) Numerosity, therefore, is readily satisfied.

2. There Are Common Questions Of Law And Fact

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.").

3. Plaintiffs' Claims Are Typical Of The Class

"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).

In this case, 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").

4. Plaintiffs And Class Counsel Have And Will Fairly And Adequately Protect The Interests Of The Class

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.

i. 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). 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.)

Collectively, they have decades of experience successfully representing plaintiffs and classes in complex class litigation, including in consumer-product defect cases. *See, e.g.*, *Chambers*, 214 F. Supp. 3d at 888, 898 (C.D. Cal. 2016) ("Class Counsel are among the most capable and experienced lawyers in the country in these kind of cases."); *Rodman v. Safeway, Inc.*, 2015 U.S. Dist. LEXIS 17523, at *38 (N.D. Cal. Feb. 12, 2015) (granting summary judgment in favor of a certified class represented by proposed Class Counsel, which led to a $42 million judgment); *Henderson v. Volvo Cars of N. Am., LLC*, 2010 U.S. Dist. LEXIS 151733, at *4 (D.N.J. Nov. 1, 2010) (appointing the Chimicles law firm as interim lead counsel); *see also* Exs. 5, 6 (firm resumes).

ii. 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).

5. The Requirements Of Rule 23(b)(3) Are Met

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 Prods. v. Windsor*, 521 U.S. 591, 620 (1997). 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.

i. Common Issues Of Law And Fact 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 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 Ins. Co.*, 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.

ii. 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, consistent with Rule 23(e)(1)(B), the Court will likely be able to certify the settlement class in this case.

D. The Proposed Class Notice And Plan For Dissemination Are Reasonable And Should Be Approved

Rule 23(e)(1)(B) requires the Court to "direct notice in a reasonable manner to all class members who would be bound by the proposal . . . ." In an action certified under Rule 23(b)(3), the Court must "direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). "Generally speaking, the notice should contain sufficient information to enable class members

to make informed decisions on whether they should take steps to protect their rights, including objecting to the settlement or, when relevant, opting out of the class." *In re NFL Players*, 821 F.3d at 435 (citation omitted).

The notices presented here fully comply with Rule 23 and the Due Process mandates. Using plain language, the proposed notice program provides all information required under Rule 23(c)(2)(B).[13]

The Administrator will send a summary Mailed Notice by first-class mail to approximately 60% of class members, which provides key details in a short format and instructs Class Members to review the Full Notice on the Settlement Website. *See* 2018 Adv. Comm. Notes ("[F]irst class mail may often be the preferred primary method of giving notice . . . ."). To the extent Trane's records also include email addresses, the Mailed Notice will also be emailed to registered class members. As noted above, the Administrator will also undertake an extensive online and publication campaign. 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.*,

[13] Rule 23(c)(2)(B) requires the notice contain: "(i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3)."

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 rights and benefits under the Settlement"). Further, the preventative program and extended and enhanced warranty coverage will be described in service bulletins to be distributed to Trane service personnel, supplementing the notice program to Class Members.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court enter the Proposed Preliminary Approval Order: (1) preliminarily approving the settlement; (2) provisionally certifying the Settlement Class; (3) appointing Class Counsel; (4) appointing Plaintiffs as class representatives; and (5) setting the Parties' proposed schedule for notice, claims, final approval, and other matters.

DATED: February 21, 2020

Respectfully submitted,

s/ Timothy N. Mathews
Timothy N. Mathews
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CERTIFICATE OF SERVICE

I, Timothy N. Mathews, certify that on this 21st day of February 2020, I caused the foregoing *Plaintiffs' Memorandum of Law In Support of the Joint Motion For Preliminary Approval of Class Action Settlement* 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

UNITED STATES DISTRICT COURT
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. **CLASS ACTION**

DECLARATION OF TIMOTHY N. MATHEWS
IN SUPPORT OF THE PARTIES' JOINT MOTION
FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

I, TIMOTHY N. MATHEWS, declare as follows:

1. I am a partner in the law firm of Chimicles Schwartz Kriner & Donaldson-Smith LLP ("CSK&D") and counsel for plaintiffs, Louise Livingston, Melissa Rainey, David Smith, Raymond Sabbatine, Peter Goldis, and Bill Colbert (collectively "Plaintiffs"), in this action. I have personal knowledge of the matters

set forth in this declaration and, if called to testify to them, would be competent to do so.

2. Attached hereto as Exhibit 1 is the proposed Class Action Settlement Agreement executed on February 21, 2020, by Plaintiffs and Trane U.S. Inc. ("Defendant" or "Trane"). Exhibit 1 includes the following lettered exhibits, also filed herewith:

Exhibit A	Claim Form
Exhibit B	Mailed Notice
Exhibit C	Publication Notice
Exhibit D	Full Notice
Exhibit E	Distributor Service Bulletin
Exhibit F	Dealer Service Bulletin
Exhibit G	Preliminary Approval Order
Exhibit H	Proposed Final Order and Judgment
Exhibit I	List of Class Air Conditioners and Heat Pumps
Exhibit J	Claims Handling Guidelines

3. Attached hereto as Exhibit 2 is a publicly available document titled "2012 Optional Warranty Pricing."

4. Attached hereto as Exhibit 3 is the firm resume of Heffler Claims Group.

5. Attached hereto as Exhibit 4 is a proposed timeline of significant dates under the Settlement. The dates in Exhibit 4 are calculated as if the Court granted

Preliminary Approval on the regular motion day of March 16, 2020, and are subject to change based on the date the Court enters the preliminary approval Order.

6. Attached hereto as Exhibit 5 is the firm resume of CSK&D.

7. Attached hereto as Exhibit 6 is the firm resume of Shepherd Finkelman Miller & Shah, LLP.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Haverford, Pennsylvania on February 21, 2020.

s/ Timothy N. Mathews

Timothy N. Mathews
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tnm@chimicles.com

CERTIFICATE OF SERVICE

I, Timothy N. Mathews, certify that on this 21st day of February 2020, I caused the foregoing *Declaration Of Timothy N. Mathews In Support Of The Parties' Joint Motion For Preliminary Approval Of Class Action Settlement* 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