**IN THE COURT OF COMMON PLEAS**
**FRANKLIN COUNTY, OHIO**
**CIVIL DIVISION**

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| **Peter Tassi, et al.,** | : | **Case No. 20 CVH 3361** |
| Plaintiffs, | : | **Judge Holbrook** |
| v. | : | |
| **Homewood Corporation, et al.,** | : | |
| Defendants. | : | |

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| **Jacob P. Trinka, et al.,** | : | **Case No. 18 CVH 2023** |
| Plaintiffs, | : | **Judge Holbrook** |
| v. | : | |
| **Trinity Home Builders, LLC,** | : | |
| Defendant. | : | |

# JOINT MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND INCORPORATED MEMORANDUM IN SUPPORT

## I. INTRODUCTION

Plaintiffs Jacob P. and Kirsten M. Trinka and Peter and Jennifer Tassi (collectively, "Plaintiffs") and Defendants Trinity Home Builders, LLC ("Trinity"), Defendants Homewood Corporation and Homewood Building Company, LLC ("Homewood") (Homewood collectively together with Trinity, "Defendants")[1] have reached a class action settlement of this consolidated

[1] Defendants join in this motion only to the extent it seeks approval of the proposed Settlement and proposed Final Approval order based on the proposed Settlement. Defendants do not join in Plaintiffs' substantive arguments herein or acquiesce to Plaintiffs' factual representations herein except where Defendants are expressly and explicitly noted as agreeing or joining. The representations in Section III(A) of this motion regarding the settlement classes are express representations of Defendants, and Defendants make those express representations as parties to this motion. In remaining part, Defendants state that they join in this motion solely to facilitate the Settlement based on their "agreement to withdraw [their] defenses and objections to class certification, which [they do] for purposes of this Settlement Agreement only" and Defendants reserve their rights to assert all applicable defenses, including to class certification, should the

matter, subject to the Court's preliminary and final approval. The Settlement includes the establishment of a $1,200,000 Settlement Fund to be distributed *pro rata* to Authorized Claimants (as defined in the parties' Settlement) who submit a valid claim form, after payment of notice and administration costs (if approved), Plaintiffs' counsel fees and costs (if approved), and an incentive award to the Plaintiffs (if approved).[2] There is no reverter in the Settlement Fund. Notice will be effectuated through notices sent via mail directly to all persons identified in the Class Lists and a website containing the Class Notice and through which Claim Forms may be obtained or directly submitted.

The Settlement was negotiated by counsel with a keen understanding of the merits of the claims and extensive experience in class actions. The Parties negotiated the Settlement with the assistance of the Court at several in-person mediation sessions over a period of approximately six months. The relief provided meets the applicable standards of fairness when taking into consideration the nature of Plaintiffs' claims, Defendants' defenses, and the risks inherent in class litigation.

Therefore, the Parties respectfully requests that the Court: (1) grant preliminary approval of the Settlement; (2) preliminarily approve the proposed Classes; (3) appoint Plaintiffs' attorneys as Class Counsel; (4) appoint Plaintiffs as representatives of the respective Classes; (5) approve the proposed Notice Plan and Notice; and (6) schedule the Final Approval Hearing and related dates as proposed. A proposed Preliminary Approval Order is attached as Exhibit B.

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Settlement not be approved, or Final Judgment not be entered thereon, and/or the Settlement otherwise fail to be consummated pursuant to its terms, and as further defined by the Settlement.

[2] All capitalized terms not defined herein have the meanings set forth in the Parties' Settlement Agreement and Release ("Settlement" or "Agreement"), attached as Exhibit A.

## II. NATURE AND BACKGROUND OF THE CASE

Plaintiffs are homeowners in Delaware County who purchased homes that were constructed by one or more Defendants. They filed suit contending that they purchased homes with hat vents that provide less than 0.5 square foot of NFA, whereas, they contend, the building plans require the homes to be built using hat vents that provide 0.5 square foot of NFA (the "Ventilation Defect"). Defendants denied any Ventilation Defect and any liability.

On March 12, 2018, Mr. and Mrs. Trinka filed a putative class action complaint against Trinity in this Court, captioned *Trinka, et al., v. Trinity Home Builders, LLC*, Case No. 18 CVH 002023 (the "Trinka Action"), alleging, *inter alia*, that Trinity breached the warranties, purchase agreement, and Ohio statutory and common law by virtue of the Ventilation Defect. Defendant denied Plaintiffs' claims and alleged various affirmative defenses. The Parties conducted substantial discovery and engaged in extensive motion practice regarding the allegations. After discovery and motion practice, on December 3, 2021, the Court certified a class and subclass in the Trinka Action, and appointed Plaintiffs' undersigned counsel as class counsel. Trinity appealed this decision and then moved for a stay of the appeal to permit consideration of a motion for decertification. The Parties then engaged in additional discovery relating to the motion for decertification and briefed that motion. Trinity's motion for decertification remains pending.

On another track, Mr. and Mrs. Tassi prosecuted a putative class action complaint against Homewood in this Court, captioned *Tassi, et al., v. Homewood Corporation, et al.*, Case No. 20 CVH 003361 (the "Tassi Action," and collectively together with the Trinka Action, the "Actions"). On May 25, 2020, Plaintiff filed that complaint alleging, *inter alia*, that Homewood breached the warranties, purchase agreement, and Ohio statutory and common law by virtue of the Ventilation Defect. As in the Trinka Action, Defendants denied Plaintiffs' claims and alleged various

affirmative defenses.  And as in the Trinka Action, for years the Parties engaged in substantial motion practice and discovery practice.

After nearly six years of litigation vigorously prosecuted and defended by the Parties, the Parties participated in a near full day mediation with Judge Holbrook on August 2, 2024, and then additional follow-up mediation sessions with Judge Holbrook over the course of several months, during which the Parties negotiated the potential settlement of the Actions.  As a result of those mediation sessions with the Court, on or about February 3, 2025, the Parties  agreed in open Court to a potential settlement of the Actions, the key terms of which are memorialized in the Agreement attached as Exhibit A.

Plaintiffs believe that the claims asserted in the Actions have merit.  (Affidavit of Robert Huff Miller ("RHM Aff."), attached hereto as Exhibit C, at ¶ 3.)  Nonetheless, Plaintiffs and Class Counsel recognize and acknowledge the expense, time, and risk associated with continued prosecution of the Actions through class certification, trial, and any subsequent appeals in the Tassi Action and through the pending appeal and motions, trial, and any subsequent appeals in the Trinka Action.  (*Id*. at ¶4)  Plaintiffs' counsel have taken into account the strength of Defendant's defenses, difficulties in obtaining and defending class certification and proving liability, the uncertain outcome and risk of the litigation, especially in complex actions such as this one, the inherent delays in such litigation, and the extensive appellate practice.  (*Id.* at ¶5)

Plaintiffs' counsel believe that the proposed Settlement confers substantial and immediate benefits upon the Classes, whereas continued and protracted litigation may ultimately deliver none. (RHM Aff. at ¶ 6.)  Therefore, Plaintiffs and Class Counsel believe that it is desirable, in consideration of the proposed Settlement, that the Released Claims be fully and finally compromised, settled, dismissed with prejudice, and barred pursuant to the terms set forth herein. (*Id*. at ¶ 7)  Based on their evaluation, Plaintiffs and Class Counsel have concluded that the terms

and conditions of this Settlement are fair, reasonable, and adequate for the Classes and that it is in the best interests of the Classes to settle the Released Claims pursuant to the terms and provisions of this Settlement. (*Id.* at ¶ 8)

## III. THE PROPOSED SETTLEMENT

### A. THE SETTLEMENT CLASSES

The proposed Settlement would establish two "Classes" for settlement purposes only, defined as:

> For the Trinka Action, the class is defined as the current owners of the homes set forth by address in the attached Exhibit A, but excluding anyone on Exhibit A owning: (1) homes obtained by Trinity as part of its buy-back program that were built by a builder other than Trinity; (2) homes not built and sold by Trinity between January 1, 2009, through March 7, 2018; and (3) homes not located in the following Ohio Counties: Franklin, Licking, Delaware, Fairfield, and Union.
>
> For the Tassi Action, the class is defined as the current owners of the homes set forth by address in the attached Exhibit B, but excluding anyone on Exhibit B owning: (1) homes that have had the original roof replaced; (2) homes that the chain of title reflects had previously been transferred through a foreclosure proceeding; (3) homes obtained by Homewood as part of its buy-back program that were built by a builder other than Homewood; (4) homes not built and sold by Homewood between January 1, 1999, through March 7, 2018; and (5) homes not located in the following Ohio Counties: Franklin, Licking, Delaware, Fairfield, and Union.

(Agreement ¶ I(B)(6).) Defendants expressly represent that:

> "The Class Lists (which are attached as Exhibits A and B to the Agreement) are derived from each Defendant's best available data supplemented as needed with public records of same and are based on each Defendants' current information and belief based on their reasonable efforts and review of presently available records: (a) as to Exhibit A attached to the Agreement, it lists by address all homes built and sold by Trinity from January 1, 2009, through March 7, 2018 set forth by address in the following Ohio Counties: Franklin, Licking, Delaware, Fairfield, and Union, but excluding homes obtained by Trinity as part of its buy-back program that were built by a builder other than Trinity; and (b) as to Exhibit B attached to the Agreement, it lists by address all homes built and sold by Homewood from January 1, 1999, through March 7, 2018, in the following Ohio Counties: Franklin, Licking, Delaware, Fairfield, and Union, but excluding: (i) homes that had their original roof

> replaced; (ii) homes with a foreclosure (i.e. a financial institution or other mortgage lender) in the chain of title; and (iii) homes obtained by Homewood as part of their buy-back program that were built by a builder other than Homewood. Based on the efforts and review described above, Defendants represent that: (a) all or substantially all of the homes relevant to the Claims made in the Trinka Litigation were built in Franklin, Licking, Delaware, Fairfield, and Union Counties from January 1, 2009 through March 7, 2018, and (b) all or substantially all of the homes relevant to the Claims made in the Tassi Litigation were built in Franklin, Licking, Delaware, Fairfield, and Union Counties from January 1, 1999 through March 7, 2018."

## B. SETTLEMENT RELIEF

### 1. Class Member Relief: Settlement Fund

The proposed Settlement establishes a non-reversionary $1,200,000 Settlement Fund, which will exclusively be used to pay: (1) cash settlement awards to Authorized Claimants; (2) settlement administration expenses; (3) court-approved attorneys' fees of up to one-third of the total amount of the Settlement Fund; (4) out of pocket expenses of Plaintiffs' attorneys not to exceed $30,000; and (5) a Court-approved incentive award to each of the Plaintiffs of up to $12,500 ($50,000 total). The proposed Settlement provides that Defendants will have no obligation to pay beyond the $1,200,000 Settlement Fund.

Each Class Member who submits a timely and valid Claim Form shall be entitled to receive an equal *pro rata* amount of the Settlement Fund after all settlement administrative expenses, incentive award, and fees, costs, and expenses awards are paid out of the Settlement Fund. (*Id.* ¶ III(B)(2)(e).) The Settlement provides for any funds remaining due to uncashed settlement distribution checks to be sent to Ohio's Division of Unclaimed Funds in the name(s) of the payee(s) on each such uncashed settlement distribution check. (*Id.* ¶ III(B)(3).)

### 2. Class Representatives Incentive Award

Each Plaintiff will seek to receive an incentive award of $12,500 ($25,000 per couple) from the Settlement Fund. This award will compensate Plaintiffs for their time and efforts and for the risks each of them undertook in prosecuting these cases over many years.

### 3. Attorneys' Fees and Costs

If the Settlement receives preliminary approval, Plaintiffs' counsel will apply to the Court for a Fees, Costs, and Expenses Award in the amount of up to one-third of the total amount of the Settlement Fund in addition to out-of-pocket expenses. As Plaintiffs' counsel will address in their fee application, an award of attorneys' fees and costs will compensate Plaintiffs' counsel for the work already performed in relation to the settled claims, as well as the remaining work to be performed relating to the Settlement. Plaintiffs' proposed attorney fee award (and costs) is plainly disclosed to the Classes in the proposed notice and is wholly consistent with other cases

## C. NOTICE AND SETTLEMENT ADMINISTRATION

All settlement administration expenses will be exclusively paid from the Settlement Fund. The Parties have agreed upon, and propose that the Court approve, the nationally-recognized class action administration firm American Legal Claim Services to be the Settlement Administrator (Agreement ¶ III.B.4), to implement the Class Notice, and to administer the Settlement, subject to review by counsel and the Court. The Settlement Administrator's duties will include: (1) sending the Class Notice to the Classes pursuant to the Settlement; (2) responding to inquiries regarding the settlement process from persons in the Classes; (3) processing and evaluating requests for exclusion and objections; and (4) processing Claim Forms and issuing Authorized Claimants' individual allocated payment amounts.

The Settlement Administrator will send written Notice to include a summary notice and Claim Form via the First Class U.S. Postal Service—substantially in the form attached as Exhibit 2 to the Settlement Agreement—to the names and addresses of persons in the Classes identified as being the current owners of the homes located at the addresses on the Class Lists. (*Id.* ¶ III(F)(2).) The Settlement Administrator will administer a settlement website, through which Settlement

Class Members will be able to obtain further details and information about the Settlement, and Class related forms. (*Id.* ¶ III(F)(2)(c).)

The anticipated administration costs are approximately $20,000, but could vary based on numerous unknown factors. (RHM Aff. at ¶ 9.) Those costs are reasonable compared to the size of the Settlement Fund and in light of the costs for the Notice to 800+ persons in the Classes and maintenance of the settlement website.

### D. OPT-OUT AND OBJECTION PROCEDURES

Persons in the Classes will have the opportunity to exclude themselves from the Settlement or object to its approval. (Agreement ¶ III(F)(1).) The procedures and deadlines for filing requests for exclusion and objections will be conspicuously listed in the Class Notice and on the settlement website. (*See id.* at Exs. 2-3.) The Class Notice informs the Classes that they will have an opportunity to appear and have their objections heard by this Court at a Final Approval Hearing. (*Id.*) The Notice also informs the Classes that they will be bound by the release contained in the Settlement unless they timely exercise their opt-out right. (*Id.*)

### E. RELEASE & DISMISSAL

The release is appropriately tailored to this case involving the Ventilation Defect and is limited to the Class Members. The persons in the Classes who do not timely opt out of the Settlement will be bound to the following release:

> "Released Claims" means the claims released by the Class Members pursuant to this Settlement Agreement as to any of the Released Parties and means all claims, known or unknown, in law, equity, or otherwise, arising from or in any way relating to any alleged under ventilation of a roof and/or attic in any home constructed by the Defendants, including but not limited to, as asserted in the cause(s) of action alleged in the Complaints, including as amended, in the Trinka Action and Tassi Action. (Agreement ¶ I(B)(25).)

In addition, "Released Claims" include all rights, claims, demands, and/or causes of action, of Class Representative Plaintiffs Jacob and Kirsten Trinka and Peter and Jennifer Tassi, individually,

may have against the Defendants as of the date of the Settlement Agreement, regardless of whether pled or unpled, whether known or unknown, accrued or not accrued, in law, equity, or otherwise, and each of them assumes all risks of lack of knowledge attendant thereto. The release and the term "Released Claims" does not apply to persons who are not Class Members because those persons are not participating in the Settlement and are not providing a release pursuant to this Settlement Agreement.

Further, upon the date the Final Judgment is entered, the Parties agree that the Court shall vacate the class certification order dated December 3, 2021, and sanctions order dated June 14, 2023, and the motion for further sanctions filed November 15, 2023, shall be deemed withdrawn. The Final Judgment shall include a dismissal with prejudice of all Released Claims then pending in the Trinka Litigation and Tassi Litigation. Additionally, the Parties to that appeal agree to sign and file with the clerk of the court of appeals a joint motion for remand of Trinity's December 30, 2021 appeal, docketed as Franklin (10th Dist.) App. No. 21AP-703, 10 days after the Settlement Agreement is signed by all parties and a joint motion to dismiss Trinity's December 30, 2021 appeal, pursuant to App.R. 28, costs in excess of deposit, if any, to be paid by the Claims Administrator pursuant to Section III.B.2.d of the Settlement Agreement, five (5) business days after the Final Settlement Date. Per the Settlement Agreement, the doctrines and defenses of res judicata and collateral estoppel shall apply to the Released Claims only. The Settlement Agreement, and the dismissals of the Trinka Litigation and/or Tassi Litigation, will not have res judicata or collateral estoppel effect against the Class Members beyond the scope of the Released Claims, and Defendants waive those defenses as to the Class Members except as to the Released Claims; <u>provided that</u> Defendants expressly preserve any and all res judicata and collateral estoppel defenses against the Class Members arising out of any proceedings other than the Settlement Agreement, the Trinka Litigation and/or the Tassi Litigation.

## IV. THE SETTLEMENT CLASSES SHOULD BE CERTIFIED

Plaintiffs respectfully request that the Court provisionally certify the proposed Classes for settlement purposes under Ohio Rule of Civil Procedure 23(A) and (B)(3). Such certification will allow the Classes to receive notice of the Settlement and its terms, including the right to submit a Claim Form and recover money if the Settlement is approved, the right to object to the Settlement and any of its related terms, the right to be heard on the Settlement's fairness, the right to opt out of the Settlement, and the date, time and place of the formal Settlement hearing. For the following reasons, certification of the Classes for settlement purposes is appropriate under Rule 23(A) and (B)(3).

### A. RULE 23(A) REQUIREMENTS

Numerosity is satisfied.

The numerosity requirement of Rule 23(A)(1) requires that the class be "so numerous that joinder of all members is impracticable." The Supreme Court of Ohio, in a case where 68 class members was deemed to meet the size requirement, has stated that "[t]he rule itself does not specify the minimum class size which will render joinder impracticable. The rule thus allows for a certain degree of flexibility in the determination of whether the proposed class is sufficiently numerous …. In our view, that determination should be left to the sound discretion of the trial court." *Vinci v. Am. Can Co.*, 9 Ohio St. 3d 98, 99-100 (1984). Generally speaking, a class with at least 40 members is sufficient. *Meznarich v. Morgan Waldron Ins. Mgmt., LLC*, 2011 U.S. Dist. LEXIS 113237, *12 (N.D. Ohio Sept. 30, 2011) (stating that "[a]ccording to Newberg's often-cited treatise, 'the difficulty inherent in joining as few as 40 class members should raise a presumption that joinder is impracticable ….'") (*quoting Newberg on Class Actions*).

The proposed Classes consist of about 800 members. (*See* RHM Aff. at ¶ 10.) The Numerosity requirement is therefore satisfied.

Commonality is satisfied.

As the Tenth District has explained, "[p]ursuant to Civ.R. 23(A)(2), there must be the presence of 'questions of law or fact common to the class.'" *New Albany Park Condo. Ass'n v. Lifestyle Cmtys., LTD*, 195 Ohio App. 3d 459, 473 (Tenth App. Dist. 2011). Commonality is not difficult to establish. "Courts have generally given a permissive application to this requirement." *Id*. All that is required is a "common nucleus of operative facts." *Id*. "[I]t is not required that all questions of law or fact raised in the dispute be common to all parties." *Id*.

The Supreme Court of Ohio has explained that "[i]f there is a common liability issue," then the commonality requirement "is satisfied." *Warner v. Waste Mgmt.*, 36 Ohio St. 3d 91 at 97 (*quoting Wright & Miller*). "Similarly if there is a common fact question relating to negligence, or the existence of a contract or its breach, or a practice of discrimination, or misrepresentation, or conspiracy, or pollution, or the existence of a particular course of conduct, the Rule is satisfied." *Id*. Indeed, according to the Supreme Court of Ohio, commonality is so easily satisfied that it generally "is met without difficulty for the parties and very little time need be expended on it by the judge." *Id*.

Here, the common questions are dispositive, apply equally to the Classes, and can be resolved using uniform proof and legal analysis. These cases involve multiple common factual and legal issues going to Defendants' liability, including but not limited to: i) whether Defendants failed to construct the homes in accordance with plans that called for 0.50 square foot vents when only 0.35 square foot vents were used; ii) whether Defendants miscalculated the ventilation capacities for the hat vents on its standard model plans; iii) whether the roof ventilation

calculations provided by Defendants are false; and (iv) whether Defendants have admitted those errors with respect to the Classes.

Likewise, the central legal issues are common to all the Class Members and arise from the common nucleus of operative facts, including but not limited to: 1) whether the homes were constructed in a workmanlike manner given the systematic underventilation resulting from the erroneous plans; 2) whether the homes comply with Residential Code of Ohio, §R806.2, based on the roof ventilation system design, and if not, the legal consequences of failing to comply; 3) whether proper ventilation is required by the warranties; 4) whether Defendants breached the warranty by failing to timely correct the ventilation; and 6) whether Defendants must compensate the Classes. Commonality is easily met in this case because these legal and factual questions are shared by the Classes, and the applicable law and warranties are uniform. Therefore, resolution of these questions on a class-wide basis is viable and efficient.

<u>Plaintiffs' claims are typical of the Settlement Classes.</u>

For similar reasons, Plaintiffs' claims are reasonably coextensive with those of their respective Class, such that the Rule 23(A)(3) typicality requirement is satisfied. "A plaintiff's claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members, and if his or her claims are based on the same legal theory." *Baughman v. State Farm Mut. Auto. Ins. Co.*, 88 Ohio St. 3d 480, 485 (2000).

Here, Plaintiffs are typical of their respective Class. Plaintiffs, like the other persons in their respective Classes, own a home that suffers from the same alleged roof ventilation issues as a result of the Ventilation Defect. Plaintiffs have the same essential claims as their respective Classes against Defendants by statute, in tort, and under Defendants' standard contracts and warranties. Plaintiffs have also suffered the same injury as their respective Classes, in that all of the homes are under-ventilated in that they do not have the ventilation promised in the plans.

Plaintiff and counsel will adequately represent the proposed Settlement Classes.

The last Rule 23(A) requirement assures that "representative parties will fairly and adequately protect the interests of the class." R. Civ. P. 23(A)(4). "The adequate representation requirement is divided into two parts: (1) the adequacy of the representative class members themselves; and (2) the adequacy of counsel for the representative class members." *New Albany Park*, 195 Ohio App. 3d at 475. "[A] representative is deemed adequate so long as his or her interest is not antagonistic to that of other class members." *Hamilton*, 82 Ohio St. 3d at 77-78. "[A]ny doubts about adequate representation, potential conflicts, or class affiliation should be resolved in favor of upholding the class, subject to the trial court's authority to amend or adjust its certification order as developing circumstances demand, including the augmentation or substitution of representative parties." *Baughman*, 88 Ohio St. 3d 480 at 487.

Plaintiffs are adequate representatives of their respective Classes. Like their respective Classes, they own homes built by Defendants with model plans that overstate the capacity of the roof vents and they seek to hold Defendants accountable for these errors. Plaintiffs' interests are aligned with their respective Classes, and, through counsel, they have zealously prosecuted this matter, as reflected on the docket in both Actions over many years.

Plaintiffs' counsel are also adequate counsel. The histories of the Actions demonstrate that Plaintiffs' counsel have and will continue to adequately and zealously advance the interests of the Classes. Plaintiffs' counsel have devoted substantial efforts to the Actions for nearly six years and will continue to do so. Finally, although not required, among Plaintiffs' counsel are attorneys who have many years of experience litigating complex cases, including class actions. See, e.g., Affidavit of Joseph F. Murray in Support of Plaintiffs' Motion for Class Certification, attached hereto as Exhibit D.

Adequacy is therefore satisfied.

### B. RULE 23(B)(3) REQUIREMENTS

Class certification under Rule 23(B)(3) is appropriate where (1) "the questions of law or fact common to class members predominate over any questions affecting only individual members;" and (2) "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." R. Civ. P. 23(B)(3). "The matters pertinent to these findings include: (a) the class members' interests in individually controlling the prosecution or defense of separate actions; (b) the extent and nature of any litigation concerning the controversy already begun by or against class members; (c) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (d) the likely difficulties in managing a class action." *Id.*

Predominance is "readily met" in certain consumer cases. *Baughman*, 88 Ohio St. 3d 480, 489. "It is now well established that 'a claim will meet the predominance requirement when there exists generalized evidence which proves or disproves an element on a simultaneous, class-wide basis, since such proof obviates the need to examine each class member's individual position.'" *Baughman*, 88 Ohio St. 3d 480, 489 (citations omitted).

The central factual question in this case is whether the attic ventilation of the homes in the Classes is insufficient because the plans have an error. It is ***the*** fundamental issue in the Actions, giving rise to claims by all of the Classes under Defendants' standard plans, warranties, and contracts.

Likewise, a class action is the superior method for addressing the claims at issue here. A class settlement managed by the Court assures that the Classes are treated fairly and that the numerous claims in the Classes are handled efficiently and in one forum.

## V. THE SETTLEMENT MERITS PRELIMINARY APPROVAL

### A. THE SETTLEMENT APPROVAL PROCESS

A class action settlement requires court approval. R. Civ. P. 23(E). As a matter of public policy, courts favor settlement of class actions for their earlier resolution of complex claims and issues, which promotes the efficient use of judicial and private resources. The policy favoring settlement is especially relevant in class actions and other complex matters, where the inherent costs, delays, and risks of continued litigation might otherwise overwhelm any potential benefit the class could hope to obtain. *See*, *e.g.*, *Newberg on Class Actions* § 11.41 (4th ed. 2002) (citing cases).

Approval of a class action settlement is a two-step process of "preliminary" and "final" approval. *See Manual for Complex Litig.* ("MCL 4th") § 21.632, at 414 (4th ed. 2004). In the first stage, the parties submit the proposed settlement to the Court for preliminary approval. In the second stage, following preliminary approval, the class is notified and a fairness hearing scheduled at which the Court determines whether to approve the settlement. This procedure safeguards class members' due process rights and enables the Court to fulfill its role as the guardian of class interests. *See* 5 Herbert B. Newberg & Alba Conte, *Newberg on Class Actions* § 13:1 (5th ed. 2016).

Plaintiffs request that the Court take the first step in the settlement approval process by granting preliminary approval of the proposed Settlement Agreement. The purpose of preliminary evaluation of proposed class action settlements is to determine whether sending notice to the class of the settlement's terms and holding a formal fairness hearing would be worthwhile. *Horton v. Merrill Lynch, Pierce, Fenner & Smith, Inc.,* 855 F. Supp. 825, 827 (E.D.N.C. 1994) (holding that the question at preliminary approval stage is simply whether there is "probable cause" to justify notifying class members of proposed settlement).

## B. CRITERIA FOR SETTLEMENT APPROVAL

In assessing the fairness, adequacy and reasonableness of a proposal to settle a class action, the trial court must consider: (1) the fairness and reasonableness of the proposed settlement to those affected by it; (2) the adequacy of the settlement to the class; and (3) whether the settlement proposed is in the public interest. *Williams v. Vukovich*, 720 F.2d 909 (6th Cir. 1983). The determination of whether a settlement is fair, adequate and reasonable is committed to the sound discretion of the trial court and will not be disturbed on appeal in the absence of some demonstration that the trial court abused its discretion. *Id.*

"Several factors guide the inquiry: (1) the risk of fraud or collusion; (2) the complexity, expense and likely duration of the litigation; (3) the amount of discovery engaged in by the parties; (4) the likelihood of success on the merits; (5) the opinions of class counsel and class representatives; (6) the reaction of absent class members; and (7) the public interest." *UAW v. Gen. Motors Corp.*, 497 F.3d 615, 631 (6th Cir. 2007). All of these factors favor approving the Settlement here.

<u>The proposed Settlement is fair and reasonable.</u>

The Parties reached a Settlement after nearly six years of contentious litigation, including significant discovery, depositions, substantive motion practice, and retention of experts and expert reports. (RHM Aff. at ¶ 11.) The dockets in the Actions reveal over 250 entries. Defendants and the third parties subpoenaed in discovery produced thousands of pages of documents. (*Id.*) Class Counsel conducted a thorough investigation and analysis of Plaintiffs' claims and engaged in extensive formal discovery with Defendants and third parties.

Class Counsel's review of that discovery and attendant issues enabled them to gain an understanding of the evidence related to central questions in the action and prepared them for well-informed settlement negotiations.

The Settlement here is the result of extensive, arms-length negotiations between experienced attorneys who are familiar with class action litigation and with the legal and factual issues of these Actions. (RHM Aff. at ¶ 12.) Furthermore, Class Counsel are particularly experienced in the litigation, certification, and settlement of class action cases. (*Id.* at ¶ 13; Murray Aff. at ¶¶ 6-9.) Class Counsel zealously represented Plaintiffs and the interests of the Classes throughout the litigation and continue to do so.

The Parties reached agreement only after several mediation sessions with Judge Holbrook and extensive negotiations. (RHM Aff. at ¶ 14.) At all times, the negotiations were at arms'-length and free from collusion. (*Id.*) Plaintiffs' counsel steadfastly advocated for substantial settlement relief. Plaintiffs and Plaintiffs' counsel also were well aware of the risks they faced if they continued to litigate, particularly the risks inherent in class certification. (*Id.* at ¶ 15.)

Plaintiffs relied on the judgment of Class Counsel, who have extensive experience litigating, settling, and trying class actions. In such circumstances, it may be presumed that a settlement is fair. *See Good v. W. Va.-Am. Water Co.*, No. 14-1374, 2017 WL 2884535 (S.D. W. Va. July 6, 2017) (finding "no evidence of chicanery" in the circumstances surrounding the settlement and noting counsel's "abundance of experience" and the advanced stage of the litigation).

<u>The proposed Settlement is adequate</u>.

The most important factor in weighing the adequacy of a proposed settlement is the strength of the plaintiff's claims on the merits combined with any difficulties the plaintiff would likely encounter if they chose to litigate on their own. *Berry v. Schulman*, 807 F.3d 600, 614 (4th Cir. 2015). Plaintiffs and Class Counsel believe that the claims asserted are meritorious and that Plaintiffs would prevail if the Actions proceeded to trial. Defendants deny any liability, believe they have meritorious defenses, and are willing to litigate vigorously, as they have done for more

than six years in the Trinka Action and more than five years in the Tassi Action. The Parties recognize and acknowledge the expense and length of continued proceedings that would be necessary to prosecute the litigation against Defendants through trial and potentially appeals. (RHM Aff. at ¶ 16.)

Plaintiffs' counsel also have taken into account the strength of Defendants' defenses, difficulties in proving liability, the uncertain outcome and risk of the litigation, especially in complex actions such as this one, and the inherent delays in such litigation. Plaintiffs' counsel believe that the proposed Settlement confers substantial and immediate benefits upon the Class Members. Based on their evaluation of all of these factors, Plaintiffs and Plaintiffs' counsel have determined that the Settlement is in the best interests of Plaintiffs and the Class Members, who otherwise may have received nothing. (*Id*. at ¶ 17.)

The monetary relief, which is anticipated to result in a payment of $1,496.25 per claimant, places the Settlement well within the range of possible approval. Moreover, courts have determined that settlements may be reasonable even where plaintiffs recover only part of their actual losses. Here, the Class Members will receive funds they can use if they wish to add ventilation and/or address any damage that may exist to their homes, in addition to valuable information regarding the matters at issue in this litigation.

For all these reasons, the Settlement is well within the range of reasonableness and is otherwise fair and adequate. It should therefore be preliminarily approved, and notice should be sent to the Classes.

## VI. THE NOTICE PROGRAM IS CONSTITUTIONALLY SOUND

Rule 23(E)(1) requires the Court to "direct notice in a reasonable manner to all class members who would be bound by" a proposed settlement. R. Civ. P. 23(E)(1). The best practicable notice is that which is "reasonably calculated, under all the circumstances, to apprise

interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

The Notice program satisfies this standard. As recited in the Settlement and above, the Notice program will inform the Classes of the substantive terms of the Settlement. It will advise the Classes of their options for remaining part of the Classes, for objecting to the Settlement, Class Counsel's attorneys' fee application and/or request for service award, for opting out of the Settlement, and for submitting a Claim Form necessary to receive payment. Through the direct mailed Notice and Settlement Website, the Notice plan is designed to reach a high percentage of the Classes and exceeds the requirements of Constitutional Due Process. (RHM Aff. ¶ 18.)

The proposed forms of Notice, attached as Exhibit 2 to the Agreement, are clear, straightforward, and provide the Classes with enough information to evaluate whether to participate in the Settlement. Thus, the Notice satisfies the requirements of Rule 23 and due process. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 808 (1985) (explaining a settlement notice must provide settlement class members with an opportunity to present their objections to the settlement). The Notice program constitutes the best notice practicable under the circumstances, provides sufficient notice to the Classes, and fully satisfies the requirements of due process and Rule 23.

## VII. PROPOSED SETTLEMENT APPROVAL SCHEDULE

In connection with preliminary approval of the Settlement, the Court should also set a date and time for the Final Approval Hearing. Other deadlines in the Settlement approval process, including the deadlines for requesting exclusion from the Classes or objecting to the Settlement, will be determined based on the date of the Final Approval Hearing or the date on which the Preliminary Approval Order is entered.

Class Counsel propose the following schedule:

| Last day for Settlement Class Counsel to provide the Settlement Administrator the Class Lists | The date set by the Court for the Preliminary Approval Hearing |
|---|---|
| Last day for the Settlement Administrator to publish the Settlement Website and begin operating a toll-free telephone line, email address, and P.O. Box to accept inquiries from the Classes | On or before 15 days after entry of Preliminary Approval Order |
| Settlement Administrator provides Notice to the Classes | On or before 15 days after entry of Preliminary Approval Order |
| Last day for Class Counsel to file motion in support of Fees, Costs, and Expenses Award and apply for incentive award | On or before 60 days after entry of Preliminary Approval Order |
| Last day for Class Members to file Claim Forms, object and for persons in the Classes to request exclusion from the Classes | On or before 60 days after entry of Preliminary Approval Order |

## VIII. CONCLUSION

For the reasons set forth above and the entire record in this litigation, the Settlement warrants this Court's preliminary approval, and the Parties respectfully request that the motion be granted.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 21, 2025, I electronically filed the foregoing with the Clerk of the Court by using the e-Filing system, which will send a notice of electronic filing to all counsel of record.

**/s/ Robert Huff Miller**
Robert Huff Miller