#### IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

**GREG MCMAHON and ADAM** GOLDBERG,

Plaintiffs,

v.

Civil Action No. 2:21-cv-05660

GENERAC POWER SYSTEMS, INC.,

Defendant.

#### MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Plaintiffs, by and through their counsel, Sauder Schelkopf LLC, hereby move before the Honorable Gerald J. Pappert, U.S.D.J., of the United States District Court for the Eastern District of Pennsylvania, located at 11614 U.S. Courthouse, 601 Market Street, Philadelphia, PA 19106, for the entry of an order granting preliminary approval of a proposed class action settlement, granting conditional certification of a settlement class, and directing notice to the proposed class. In support of this motion, Plaintiffs rely upon the accompanying brief, Declaration of Joseph G. Sauder and exhibits, and the enclosed proposed Order.

Dated: February 3, 2023 Respectfully submitted,

> By: /s/ Joseph G. Sauder Joseph G. Sauder

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Counsel for Plaintiffs and the Proposed Settlement Class

1

## **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing *MOTION FOR*PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT was filed via the Court's CM/ECF system, thereby electronically serving it on all counsel of record.

/s/ Joseph G. Sauder Joseph G. Sauder

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

# TABLE OF CONTENTS

I.	INTF	RODUCTION		
II. FACTUAL BACKGROUND		2		
	A.	Plair	ntiffs' Allegations and Pre-Litigation Investigation	2
	B.	History of the Litigation		
	C.	The Parties' Settlement Negotiations		3
	D.	4		
	E. Relief Benefiting the Settlement Class			
F. Attorneys' Fees, C			rneys' Fees, Costs, and Service Awards	5
	G.	Noti	ce to Settlement Class Members	6
	H.	The	Release	7
III.	ARG	UMEN	NT	8
	A.	The	Settlement Warrants Preliminary Approval	8
	B.	The	Girsh Factors Support Preliminary Approval	10
	C.	Certification of the Proposed Settlement Class is Appropriate		12
		1.	Numerosity	12
		2.	Commonality	13
		3.	Typicality	14
		4.	Adequacy	14
		5.	Predominance and Superiority	15
	D.	The Notice Plan Satisfies Due Process and Rule 23(e)		
	E.	A Final Approval Hearing Should Be Scheduled		
IV.	CON	CLUS	ION	18

## TABLE OF AUTHORITIES

Cases	<u>Pages</u>
Baby Neal v. Casey, 43 F.3d 48 (3d Cir. 1994)	13, 14
In re Ins. Brokerage Antitrust Litig., 297 F.R.D. 136, 144 (D.N.J. 2013)	8
In re Countrywide Fin. Corp. Customer Data Sec. Breach Litig., No. 3:08-md-01998, 2009 WL 5184352 (W.D. Ky. Dec. 22, 2009)	17
Ebner v. Merchants & Med. Credit Corp., No. 14-06882, 2017 WL 1079966 (E.D. Pa. Mar. 22, 2017)	14, 16
Ehrheart v. Verizon Wireless, 609 F.3d 590 (3d Cir. 2010)	8
Fidel v. Farley, 534 F.3d 508 (6th Cir. 2008)	17
Girsh v. Jepson, 521 F.2d 153 (3d Cir. 1975)	10
In re GMC Truck Fuel Tank Prods. Litig., 55 F.3d 768, 806 (3d Cir. 1995)	10, 14
Good v. Nationwide Credit, Inc., 314 F.R.D. 141 (E.D. Pa. 2016)	16
Henderson v. Volvo Cars of N. Am., LLC, No. 09-4146 CCC, 2013 WL 1192479 (D.N.J. Mar. 22, 2013)	17
Huffman v. Prudential Ins. Co. of Am., 2:10-cv- 05135, 2019 WL 1499475 (E.D. Pa. Apr. 5, 2019)	10
Hunter v. M-B Cos., Inc., No. 19-CV-04838, 2020 WL 4059898 (E.D. Pa. July 20, 2020)	8
In re Innocoll Holdings Pub. Ltd. Co. Sec. Litig., No. 17-341, 2022 WL 16533571 (E.D. Pa. Oct. 28, 202)	
McDermid v. Inovio Pharms., Inc., No. 20-01402, 2023 WL, 227355 (F.D. Pa. Ian. 18, 2023)	12 14 15

Mehling v. New York Life Ins., 246 F.R.D. 467 (E.D. Pa. 2007)	8
In re Nat'l Football League Players' Concussion Injury Litig., 301 F.R.D. 191 (E.D. Pa. 2014)	8, 18
In re Prudential Ins. Co. Sales Litig., 148 F.3d 282 (3d Cir. 1998)	13
Rodriguez v. Nat'l City Bank, 726 F.3d 372 (3d Cir. 2013)	13
Rose v. Travelers Home & Marine Ins. Co., No. 19-977, 2020 WL 4059613 (E.D. Pa. July 20, 2020)	12, 15
Rudel Corp v. Heartland Payment Sys., Inc., No. 16-cv-2229, 2017 WL 4422416 (D.N.J. Oct. 4, 2017)	8
In re: Shop-Vac Mktg. & Sales Practices Litig., No. 4:12-MD-2380, 2016 WL 3015219 (M.D. Pa. May 26, 2016)	10
Stewart v. Abraham, 275 F.3d 220 (3d Cir. 2001)	12
Sullivan v. DB Invs., Inc., 667 F.3d 273, 323 (3d Cir. 2011)	10, 13, 15, 16
Teh Shou Kao v. CardConnect Corp, No. 16-cv-5707, 2021 WL 698173 (E.D. Pa. Feb. 23, 2021)	14
Udeen v. Subaru of Am., Inc., No. 18 17334(RBK/JS), 2019 WL 4894568 (D.N.J. Oct. 4, 2019)	8, 10
In re ViroPharma Inc. Sec. Litig., No. 12-2714, 2016 WL 312108 (E.D. Pa. Jan. 25, 2016)	9
Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338 (2011)	12
In re Warfarin Sodium Antitrust Litig, 391 F.3d 516 (3d Cir. 2004)	13, 14, 16
Wood v. AmeriHealth Caritas Servs., LLC, No. 17-3697, 2020 WI, 1694549 (F.D. Pa. Apr. 7, 2020)	13 16

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<u>Statutes</u>	<u>Pages</u>
Fed. R. Civ. P. 23	passin
Secondary Sources	<u>Pages</u>
Fed. Jud. Ctr., Manual for Complex Litig. Fourth (2004)	17, 18

#### I. INTRODUCTION

Plaintiffs Greg McMahon and Adam Goldberg brought this action on behalf of themselves and a putative class of persons in the United States who own Generac home standby generators and received an Inspection Notice Letter from Generac. The Inspection Notice Letter provided details on an inspection program that related to potential "significant corrosion of the fuel plenum" in certain conditions. ECF No. 1-1, at 1. The inspection program encouraged customers to arrange for inspections through Generac's Authorized Service Dealers at a cost of \$80. If the inspection determined that the fuel plenum was significantly compromised, Generac agreed to reimburse the \$80 inspection cost and replace the necessary parts free of charge. If the inspection did not reveal significant corrosion, Generac would not reimburse the inspection fee. Plaintiffs brought this lawsuit and alleged that Generac should have performed the inspections for free, and reimburse all of the \$80 inspection fees paid by consumers that had not been reimbursed by Generac.

The proposed Settlement Agreement ("Settlement" or "SA") achieves that goal. Generac has agreed to refund any claimants their \$80 inspection fees if they have not previously been refunded. In addition, Generac has agreed to conduct free inspections of any Class Generators that have not yet been inspected.<sup>1</sup> Because the Settlement achieves the goal of this litigation, while avoiding the risks and costs of protracted litigation, Plaintiffs respectfully request that the Court grant their unopposed Motion for Preliminary Approval of the Class Action settlement so that notice can be disseminated to the Settlement Class.

<sup>&</sup>lt;sup>1</sup> The capitalized terms used herein are defined in Section A of the Settlement Agreement, which is attached as Exhibit A to the Declaration of Joseph G. Sauder.

#### II. FACTUAL BACKGROUND

#### A. Plaintiffs' Allegations and Pre-Litigation Investigation

Before filing this Action, Plaintiffs' counsel conducted an extensive investigation into the alleged corrosion of the plenum in the Class Generators. This investigation included interviewing members of the putative class and reviewing their documents, researching consumer reporting on various websites, reviewing Generac's manuals and other materials, researching potential causes of action, speaking with employees of Generac's authorized service dealerships, communicating with consulting experts in the field of generator systems, and drafting a detailed Complaint. Declaration of Joseph G. Sauder, ¶ 9 ("Sauder Dec.").

The named Plaintiffs are residents of Pennsylvania and Virginia. Complaint, ECF No. 1, at ¶¶ 9, 15. Plaintiff McMahon purchased an extended warranty from Generac, which provided him with warranty coverage until 2024. ¶ 11. In December of 2020, Plaintiff McMahon received a letter from Generac that recommended he pay \$80 for an inspection to detect the presence of corrosion along the fuel line, but also stated that he would only be reimbursed if the fuel plenum was found to be "significantly compromised." ¶ 13. Plaintiff McMahon paid the \$80 inspection fee, but Generac did not reimburse him. ¶ 14. In March of 2021, Plaintiff Goldberg received a similar letter from Generac recommending that he pay \$80 for an inspection, which also stated that he would only be reimbursed if the fuel plenum was found to be "significantly compromised." ¶ 19. Plaintiff Goldberg did not pay for the inspection, as he believed Generac should perform it at no cost to him, regardless of its findings. ¶ 20. Plaintiffs' Complaint seeks certification of a Nationwide Class as well as subclasses in Pennsylvania and Virginia. ¶¶ 36-37. The Complaint alleges claims for violations of the Magnuson-Moss Warranty Act (¶¶ 45-61), as well as for breaches of express warranty (¶¶ 62-66) and implied warranty (¶¶ 67-74).

#### **B.** History of the Litigation

Plaintiffs filed the initial Complaint in this Action on December 30, 2021. ECF No. 1. Judge Tucker granted two extensions to Generac's deadline to respond to Plaintiffs' Complaint. ECF Nos. 7, 11. On May 31, 2022, the Action was reassigned to Judge Pratter. ECF No. 13. On June 2, 2022, the Action was reassigned to Your Honor. ECF No. 14. On June 6, 2022, the Court entered an additional extension for Generac to respond to Plaintiffs' Complaint, and on September 30, 2022, Generac filed a motion to dismiss Plaintiffs' Complaint pursuant to Fed. R. Civ. P. 12(b)(6). ECF Nos. 15, 16.

Plaintiffs investigated and drafted a response to Generac's motion to dismiss. Sauder Dec., ¶ 10. Due to the advanced stage of settlement negotiations between the parties, the parties sought three extensions of time to extend Plaintiffs' opposition deadline, which the Court granted. ECF Nos. 18-20. The briefing on Generac's motion to dismiss allowed the parties to assess the strengths and weaknesses of further litigation and assisted the parties throughout settlement negotiations.

#### C. The Parties' Settlement Negotiations

On May 16, 2022, the Parties engaged in an in-person mediation session with Judge Diane M. Welsh (Ret.) at JAMS' Philadelphia office. Sauder Dec., ¶ 11. The Parties made significant progress during that mediation, and continued negotiations over the following eight months with further assistance from Judge Welsh. In connection with the settlement negotiations, the Parties exchanged confirmatory discovery subject to Rule 408 of the Federal Rules of Evidence. Sauder Dec., ¶ 12. After confirmatory discovery and the Parties' protracted negotiations, the Parties executed the Settlement Agreement on February 3, 2023. Sauder Dec., ¶ 13.

The terms of the Settlement Agreement are the result of arm's-length negotiations between experienced counsel for both sides. The Plaintiffs approve of the Settlement Agreement, which

provides substantial benefits to the proposed Settlement Class. Class Counsel also independently analyzed the source of the corrosion, consulted with industry experts, and interviewed and collected documents from putative class members. In addition, the Settlement Agreement allows Class Counsel to conduct additional confirmatory discovery from Generac's Senior Corporate Quality Control Manager. SA § J.2.

#### **D.** The Settlement Class

If approved by the Court, the Settlement Agreement will provide substantial benefits to the following Settlement Class: (1) all current or former owners of a Class Generator who paid a \$80 Inspection Program fee that was not reimbursed prior to the Preliminary Approval Date, and (2) all current owners of Class Generators that were not inspected pursuant to the Inspection Program prior to the Preliminary Approval Date. SA § A.37. Excluded from the Settlement Class are: (i) Generac, its officers, directors, affiliates, legal representatives, employees, successors, and assigns, and entities in which Generac has a controlling interest; (ii) the judge presiding over the Lawsuit and any member of the Court's staff and immediate family; and (iii) local, municipal, state, and federal governmental entities. *Id*.

#### E. Relief Benefiting the Settlement Class

The consideration to the Settlement Class consists primarily of two types of claims: reimbursements for past inspection fees, and one free inspection to Settlement Class Members who have not had an inspection pursuant to the inspection program moving forward. SA § C. To receive either form of relief, Settlement Class Members need only submit a simple, three-page Claim Form; to receive a benefit, some claimants will need to provide certain information in support of their claim. *See* Exhibit 1 to Settlement Agreement. SA § D.1. Claim Forms can also be submitted both through the Settlement Website and the mail. *Id*.

First, Settlement Class Members who paid for an inspection pursuant to the Inspection Program and the Inspection Notice Letter can file a claim for their unreimbursed, out-of-pocket inspection fee in the amount of \$80.00. SA § C.1. Thus, Settlement Class Members will be made whole for past inspection fees paid pursuant to the Inspection Program.

Second, Settlement Class Members who have not had their plenum inspected through the Inspection Program are eligible to submit a Claim for a cost-free plenum inspection of their Class Generator by an Authorized Service Dealer. SA § C.2. Those Settlement Class Members simply need to attest that they have not had their plenum inspected through the Inspection program and: (i) their Class Generator has not received general maintenance or service from an Authorized Service Dealer since the start of the Inspection Program; or (ii) their Class Generator received general maintenance or service from an authorized service dealer since the start of the Inspection Program but it was nevertheless not examined for corrosion on the plenum surface (along with a supporting narrative statement to that effect); or (iii) that the Class Generator has corrosion on the plenum surface (along supporting photographic evidence with their Inspection Claim). *Id.* If the inspection reveals corrosion on the plenum surface, that Settlement Class Member will receive a free replacement of the fuel plenum (inclusive of parts and labor) which will be performed by a Generac Authorized Service Dealer. SA § C.3.

#### F. Attorneys' Fees, Costs, and Service Awards

Plaintiffs intend to seek attorneys' fees up to \$1,500,000.00. SA § G.1; *see also* Fed. R. Civ. P. 23(h) ("In a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement."); *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983). Plaintiffs will also apply for service awards in the amount of \$2,500 to each of the Plaintiffs (\$5,000 total) in recognition of their time, costs, and effort in the Lawsuit.

*Id.* Plaintiffs' Attorneys' Fees, Cost and Service Awards will be in addition to the benefits provided directly to the Settlement Class and will not reduce or otherwise affect the benefits made available to Settlement Class Members. Generac has also reserved the right to oppose any Attorneys' Fee, Cost, and Service Award that it considers unreasonable. SA § G.1(b).

#### **G.** Notice to Settlement Class Members

The Settlement Agreement includes a comprehensive notice plan, which is to be paid for by Generac and overseen by KCC Class Action Services, LLC, an experienced Settlement Administrator. SA § A.34. Specifically, for Settlement Class Members that Generac has an email address for, they will receive notice via email. SA § D.8(a). For Settlement Class Members that Generac does not have an email address for, the Settlement Administrator will send the postcard Notice of Settlement through first class mail. *Id.* For Settlement Class Members eligible to submit a Reimbursement Claim, their addresses will be run through the National Change-of-Address Database. *Id.* If the notice is returned undeliverable, the Settlement Administrator will perform one advanced address search to re-mail the undeliverable notice. *Id.* Additionally, on a confidential basis, the parties will provide the Settlement Administrator with reasonably available information that identifies possible Settlement Class Members from their existing records. *Id.* 

In addition, the Settlement Administrator will establish a Settlement Website (www.fuelplenumsettlement.com) that will provide, at minimum: (i) information concerning deadlines for filing a Claim Form, and the dates and locations of relevant Court proceedings, including the Final Approval Hearing; (ii) the toll-free phone number applicable to the Settlement; (iii) copies of the Settlement Agreement, the Notice of Settlement, the Claim Form, Court Orders regarding this Settlement, and other relevant Court documents, including Class Counsel's Motion for Approval of Attorneys' Fees, Costs, and Service Awards; and (iv) information concerning the

submission of Claim Forms, including the ability to submit Claim Forms electronically using an electronic signature service such as DocuSign through the Settlement Website. SA § D.8(d). The Settlement Website will also provide a serial number look-up where consumers can input their Generac home standby generator's serial number to check whether their generator is a Class Generator. *Id.* A toll-free number will also be established that can be used to: (i) request the Claims Form, the Notice of Settlement, and this Settlement Agreement; and (ii) obtain information about deadlines for filing a Claim Form, opting out of or objecting to the Settlement, and the scheduling of the Final Approval Hearing. SA § D.8(e).

Generac, through the Settlement Administrator, will also mail all notices required by 28 U.S.C. § 1715. SA § D.8(f). Further, Generac will advise its Authorized Service Dealers of the nocost Inspection Claims available to Claimants, and continue to remind them to visually examine fuel systems (including but not limited to plenums) during general maintenance or service visits, and update the information on its website regarding the Inspection Program. SA § D.8(c). The Settlement Administrator will provide the parties with a declaration detailing all its efforts regarding the Notice Plan and its reach to the Settlement Class, which will be filed as an exhibit to Plaintiffs' motion for final approval of the settlement. SA § D.9.

#### H. The Release

In exchange for the foregoing relief, and subject to approval by the Court, Plaintiffs and Settlement Class Members who do not timely exclude themselves will be bound by a release of all claims arising out of or relating to the claims that were asserted in the Complaint (the "Released Claims"). The Released Claims extend to Generac and its related entities and persons. The Released Claims will not apply to any claims for death, personal injury, property damage (other than damage to the Class Generators related to the plenum), or subrogation. SA § A.30.

#### III. ARGUMENT

#### A. The Settlement Warrants Preliminary Approval

The Court's review of a class action settlement is a two-step process consisting of preliminary approval and final approval. At this preliminary approval stage, "the Court is required to determine only whether the proposed settlement discloses grounds to doubt its fairness or other obvious deficiencies such as unduly preferential treatment of class representatives or segments of the class, or excessive compensation of attorneys, and whether it appears to fall within the range of possible approval." *In re Nat'l Football League Players' Concussion Injury Litig. ("In re NFL")*, 301 F.R.D. 191, 198 (E.D. Pa. 2014) (quoting *Mehling v. New York Life Ins.*, 246 F.R.D. 467, 472 (E.D. Pa. 2007) (citations omitted)). Under Rule 23, a settlement falls within the "range of possible approval," if there is a conceivable basis for presuming that the standard applied for final approval – fairness, adequacy, and reasonableness – will be satisfied." *In re NFL*, 301 F.R.D. at 198 (emphasis added) (citations omitted).

In addition, "a settlement agreement is entitled to a presumption of fairness when it resulted from arm's length negotiations between experienced counsel." *Hunter v. M-B Cos., Inc.*, No. 19-CV-04838, 2020 WL 4059898, at \*3 (E.D. Pa. July 20, 2020); *see also Udeen v. Subaru of Am., Inc.*, No. 18 17334(RBK/JS), 2019 WL 4894568, at \*2 (D.N.J. Oct. 4, 2019) ("A settlement is presumed fair when it results from 'arm's-length negotiations between experienced, capable counsel after meaningful discovery.") (quoting *Rudel Corp v. Heartland Payment Sys., Inc.*, No. 16-cv-2229, 2017 WL 4422416, at \*2 (D.N.J. Oct. 4, 2017)). This presumption applies in furtherance of the public policy favoring settlement, *see Ehrheart v. Verizon Wireless*, 609 F.3d 590, 594-95 (3d Cir. 2010), and "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). Moreover,

"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." *In re ViroPharma Inc. Sec. Litig.*, No. 12-2714, 2016 WL 312108, at \*8 (E.D. Pa. Jan. 25, 2016) (citation omitted).

The settlement here is the result of extensive, arm's-length negotiations between experienced counsel, and overseen by a nationally recognized mediator, who believe the settlement is in the best interests of their respective clients. Class Counsel verified the adequacy of the Settlement engaging in confirmatory discovery with Defendant throughout the mediation process and subsequent negotiations between counsel, which lasted approximately eight months. Sauder Dec., ¶¶ 11-13. The settlement is well supported and will eliminate the uncertainties and risks to the Parties from proceeding further in the litigation. Thus, preliminary approval should be granted.

Because there are no "obvious deficiencies" in the parties' Settlement Agreement in this case, nor any "grounds to doubt its fairness," the standards for granting preliminary approval are satisfied. This Settlement is fair, adequate, and reasonable; it is more than conceivable that the requirements for final approval will be satisfied, and Settlement Class Members will be provided with notice in a manner that satisfies the requirements of due process and Federal Rule of Civil Procedure 23(e). Therefore, Plaintiffs respectfully ask the Court to enter the proposed order, which will: (i) grant preliminary approval of the proposed settlement; (ii) find that the Settlement Class is likely to be certified pursuant to Federal Rule of Civil Procedure 23(b)(3); (iii) schedule a final approval hearing to consider final approval of the Settlement; and (iv) direct adequate notice to Settlement Class Members of the Settlement and their rights.

#### B. The Girsh Factors Support Preliminary Approval

Although the foregoing analysis is sufficient for the Court to grant preliminary approval of the proposed Settlement, a factor-by-factor analysis further buttresses this conclusion. The following nine factors inform the Court's analysis at the final approval stage:

(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).<sup>2</sup>

The court evaluates a class settlement "against the realistic, rather than theoretical potential for recovery after trial." *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 323 (3d Cir. 2011) (en banc). In conducting this analysis, the court also "guard[s] against demanding too large a settlement based on its view of the merits of the litigation; after all, settlement is a compromise, a yielding of the highest hopes in exchange for certainty and resolution." *In re GMC Truck Fuel Tank Prods. Litig.*, 55 F.3d 768, 806 (3d Cir. 1995); *see also In re: Shop-Vac Mktg. & Sales Practices Litig.*, No. 4:12-MD-2380, 2016 WL 3015219, at \*2 (M.D. Pa. May 26, 2016) (noting that "a satisfactory

<sup>&</sup>lt;sup>2</sup> Rule 23(e) was amended in December 2018 to specify uniform standards for settlement approval. Courts in this district have continued to apply the same legal standards to preliminary approval after the 2018 amendments. *See, e.g., Udeen,* 2019 WL 4894568; *Smith,* 2019 WL 3281609. Further, "[t]he 2018 Committee Notes to Rule 23 recognize that, prior to this amendment, each circuit had developed its own list of factors to be considered in determining whether a proposed class action was fair[.]" *Huffman v. Prudential Ins. Co. of Am.,* 2:10-cv-05135, 2019 WL 1499475, at \*3 (E.D. Pa. Apr. 5, 2019) (citing Fed. R. Civ. P. 23(e)(2), Advisory Committee Notes). "[T]he goal of the amendment is not to displace any such factors, but rather to focus the parties [on] the 'core concerns' that motivate the fairness determination." *Id.* As such, the traditional *Girsh* factors continue to apply.

settlement may only amount to a hundredth or even a thousandth part of a single percent of the potential recovery.") (internal citations and quotations omitted). All of the *Girsh* factors that the Court can analyze now support preliminary approval.<sup>3</sup>

The Settlement affords complete relief to the Settlement Class. This litigation was initiated because of Plaintiffs' allegations of failures in Generac's original Inspection Program. Plaintiffs contend that Generac should have provided all relevant inspections for free instead of charging the Settlement Class Members \$80 per inspection, and then refunding it only if "significant" corrosion was found. The Settlement provides that exact relief: any Settlement Class Members who paid \$80 for an inspection and were not reimbursed will be eligible to submit a claim for reimbursement through the Settlement, and any Settlement Class Members who elected not to have an inspection because of the cost can now receive one free inspection.

The complexity, expense, and likely duration of the litigation supports preliminary approval because, without the Settlement, the parties would be engaged in contested motion practice and adversarial litigation for years. Generac filed a motion to dismiss Plaintiffs' Complaint. Plaintiffs have an opposition prepared and if the litigation were to continue, the Court would first need to rule on the pleadings. The claims advanced on behalf of the Settlement Class Members involve numerous complex legal and technical issues. Continued litigation would be time consuming and expensive, with no certainty of a favorable outcome through a nationwide class action.

The third factor, the stage of the proceedings and the amount of discovery completed, also supports preliminary approval. As noted above, the parties have exchanged confirmatory

<sup>&</sup>lt;sup>3</sup> The reaction of the Settlement Class cannot be evaluated until final approval, after notice is issued and objections and opt-outs are submitted.

discovery. Sauder Dec. ¶ 12. Plaintiffs' counsel also conducted their own extensive independent investigation into the inspection program and the issue that causes corrosion on the fuel plenum of the Class Generators. Sauder Dec. ¶ 9. In addition, the Settlement contemplates further confirmatory discovery, including from Generac's Senior Corporate Quality Control Manager, which Plaintiffs will provide additional information on with their motion for final approval of the settlement. SA § I(2).

#### C. Certification of the Proposed Settlement Class is Appropriate

Plaintiffs submit that certification of the proposed Settlement Class for settlement purposes only is appropriate here. A "settlement class must meet Rule 23(a)'s requirements: numerosity, commonality, typicality, and adequacy of representation." *McDermid v. Inovio Pharms., Inc.*, No. 20-01402, 2023 WL 227355, at \*2 (E.D. Pa. Jan. 18, 2023). Additionally, the settlement class "must also satisfy at least one of the three requirements listed in Rule 23(b)." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 345 (2011). Here, Plaintiffs seek certification for settlement purposes only pursuant to Rule 23(b)(3), which requires that the questions of law or fact common to class members predominates over any questions affecting only individual members, and that the class action is superior to other available methods for fairly and efficiently adjudicating the controversy. Fed. R. Civ. P. 23(b)(3). As discussed further below, the Settlement Class satisfies each of these requirements.

#### 1. Numerosity

Rule 23(a)(1) requires that the class be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). The numerosity requirement is generally met if the class size exceeds forty. *Rose v. Travelers Home & Marine Ins. Co.*, No. 19-977, 2020 WL 4059613, at \*4 (E.D. Pa. July 20, 2020) (citing *Stewart v. Abraham*, 275 F.3d 220, 226-27 (3d Cir. 2001);

Wood v. AmeriHealth Caritas Servs., LLC, No. 17-3697, 2020 WL 1694549, at \*4 (E.D. Pa. Apr. 7, 2020) (same). Here, the Settlement Class consists of tens of thousands of persons. Therefore, the numerosity requirement is satisfied.

#### 2. Commonality

Commonality requires that questions of law or fact are common to the class. Fed. R. Civ. P. 23(a)(2). This requirement is satisfied where the plaintiffs and members of the putative class share at least one question of law or fact. In re Warfarin Sodium Antitrust Litig., 391 F.3d 516, 527-28 (3d Cir. 2004); Baby Neal v. Casey, 43 F.3d 48, 56 (3d Cir. 1994). Indeed, the commonality bar "is not a high one." Rodriguez v. Nat'l City Bank, 726 F.3d 372, 382 (3d Cir. 2013). The Third Circuit has "acknowledged commonality to be present even when not all plaintiffs suffered an actual injury, when plaintiffs did not bring identical claims, and most dramatically, when some plaintiffs' claims may not have been legally viable[.]" Id; see also Baby Neal, 43 F.3d at 56; In re Prudential Ins. Co. Sales Litig., 148 F.3d 282, 310 (3d Cir. 1998); Sullivan v. DB Invs., Inc., 667 F.3d 273, 299 (3d Cir. 2011). The focus of commonality is on the defendant's conduct. *Id.* (citing Sullivan, 667 F.3d at 299 (explaining that the focus is not on the strengths of each plaintiff's claim but "on whether the defendant's conduct was common as to all of the class members"); Warfarin, 391 F.3d at 528 (focusing the commonality inquiry on the defendant's conduct, not "on the conduct of individual class members"); Baby Neal, 43 F.3d at 56 (considering whether defendant engaged in a common course of conduct toward the class members).

Here, there are several common factual and legal questions, including whether the inspection fee violated the terms of Generac's express warranties and implied warranties; whether the inspection fee violated the Magnuson-Moss Warranty Act; whether Plaintiffs and the Class

have actionable claims; and the amount of recoverable damages. Therefore, commonality is satisfied.

#### 3. Typicality

Typicality requires that Plaintiffs' claims be "typical of the claims or defenses of the class." *Ebner v. Merchants & Med. Credit Corp.*, No. 14-06882, 2017 WL 1079966, at \*2 (E.D. Pa. Mar. 22, 2017) (quoting Fed. R. Civ. P. 23(a)(3)). The typicality inquiry focuses on "whether the action can be efficiently maintained as a class and whether the named plaintiffs have incentives that align with those of absent class members so as to assure that the absentees' interests will be fairly represented." *Id.* (citing *Baby Neal*, 43 F.3d at 57). "Where claims of the representative plaintiffs arise from the same alleged wrongful conduct on the part of the defendant, the typicality prong is satisfied." *Warfarin*, 391 F.3d at 532. Here, Plaintiffs' claims arise out of the same alleged conduct by Generac related to its Inspection Program and specifically, its imposition of an inspection fee. As such, Rule 23(a)(3)'s typicality requirement is also met.

#### 4. Adequacy

The final requirement of Rule 23(a) provides that "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). In determining whether Class Counsel fairly and adequately protects the interests of the class, the Third Circuit considers various factors, such as Class Counsel's qualifications and experience and whether Class Counsel has acted at arm's length from the defendant. *In re GMC Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 801 (3d Cir. 1995). *See also McDermid*, 2023 WL 227355, at \*2. Additionally, the Third Circuit considers whether the named plaintiffs' interests are aligned or antagonistic to those of other settlement class members. *Teh Shou Kao v. CardConnect Corp.*, No. 16-cv-5707, 2021 WL 698173, at \*5 (E.D. Pa. Feb. 23, 2021).

Here, the Plaintiffs are adequate because Plaintiff McMahon paid for the inspection but was not reimbursed by Generac, and Plaintiff Goldberg did not pay for an inspection because he contends Generac should pay for the cost, regardless of whether "significant corrosion" was later found. Thus, the Plaintiffs and the Settlement Class allege to have suffered similar injuries based on the same conduct by Generac. The Plaintiffs recognize and accept their responsibilities as class representatives and each has actively participated in the litigation of this case and communicated regularly with their attorneys about the proceedings. Additionally, Class Counsel has experience with similar complex class action litigation lawsuits. *See* Sauder Dec., ¶¶ 3-8. Therefore, both the Class Representatives and Class Counsel fairly and adequately protect the interests of the class pursuant to Rule 23(a)(4).

#### 5. Predominance and Superiority

The Court should certify the Settlement Class pursuant to Rule 23(b)(3), which has two components: predominance and superiority. The predominance component assesses whether the proposed class is "sufficiently cohesive to warrant adjudication by representation." *McDermid*, 2023 WL 227355, at \*3. The court's inquiry focuses on whether the defendant's conduct is common to all class members and whether all class members were harmed by the defendant's conduct. *Id*; *see also Sullivan*, 667 F.3d at 298. In the past, this Court has certified a settlement class in a breach of contract action. *Rose*, 2020 WL 4059613, at \*5. Here, like in *Rose*, Plaintiffs allege various breach of warranties. At bottom, this case hinges on whether Generac's Inspection Program violated its express and implied warranties. This determination is based on the language of Generac's warranties, which are substantially similar across all Settlement Class Members. Thus, predominance is met.

Superiority requires the Court to "balance, in terms of fairness and efficiency, the merits of a class action against those of alternative available methods of adjudication." *Wood*, 2020 WL 1694549 at \*5 (citing *Warfarin*, 391 F.3d at 534). Rule 23(b)(3) directs the Court to consider various factors, including:

(A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (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.

Fed. R. Civ. P. 23(b)(3). Pursuing the relatively small claims of the potentially tens of thousands of Class Members is not economically feasible, neither for the Settlement Class Members or the Court. See Ebner, 2017 WL 1079966 at \*3 (quoting Good v. Nationwide Credit, Inc., 314 F.R.D. 141 (E.D. Pa. 2016) ("Even if a mere fraction of the members of the putative class were to litigate their claims individually, the courts would be significantly burdened by numerous lawsuits.")); see also In re Innocoll Holdings Pub. Ltd. Co. Sec. Litig., No. 17-341, 2022 WL 16533571, at \*3 (E.D. Pa. Oct. 28, 2022) ("Where there are potentially thousands of shareholders within the proposed class, class resolution is preferable to multiple relitigations that would drain both the parties and the courts of their resources."). Moreover, a settlement reduces the costs of individual plaintiffs pursuing their claims against the defendant on an individual basis. See Wood, 2020 WL 1694549, at \*5. The settlement provides Plaintiffs and Class Members with fair, adequate, and prompt relief. Thus, Plaintiffs have satisfied the predominance component of Rule 23(b)(3). And because the parties seek to resolve this case through a settlement, any manageability issues that could have arisen at trial are marginalized. Sullivan, 667 F.3d at 302-03.

In sum, because the requirements of Rule 23(a) and (b)(3) are met, certification of the Settlement Class is appropriate.

#### D. The Notice Plan Satisfies Due Process and Rule 23(e)

Under Federal Rule of Civil Procedure 23(e), class members who would be bound by a settlement are entitled to reasonable notice before the settlement is approved. *See* Fed. Jud. Ctr., Manual for Complex Litig. Fourth, § 30.212 (2004). Under Rule 23(b)(3), "the Court must direct to class members the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable efforts." *In re Countrywide Fin. Corp. Customer Data Sec. Breach Litig.*, No. 3:08-md-01998, 2009 WL 5184352, at \*12 (W.D. Ky. Dec. 22, 2009) (citing Fed. R. Civ. P. 23(c)(2)(B)). To satisfy these standards and "comport with the requirements of due process, notice must be 'reasonably calculated to reach interested parties." *Id.* (quoting *Fidel v. Farley*, 534 F.3d 508, 514 (6th Cir. 2008)).

The proposed Notice – Exhibits 2 and 3 to the Settlement Agreement – includes all legal requirements and explains the settlement concisely using clear, simple terms. *See* Fed. R. Civ. P. 23(c)(2)(B). The notice plan described above and set forth in Section D.8 of the Settlement Agreement provides the best notice practicable under the circumstances. *See Henderson v. Volvo Cars of N. Am., LLC*, No. 09-4146 CCC, 2013 WL 1192479, at \*1 (D.N.J. Mar. 22, 2013). KCC, an experienced claims administrator, will oversee the Notice Plan, and will then use this information to prepare the Notice that will be sent to all Settlement Class Members. In the first instance, email will be used to send the notices. For any Settlement Class Members that Generac does not have email address for, notice will be provided via first-class mail. The Notice of Settlement will also be posted on the Settlement Website.

Plaintiffs thus request that the Court approve the proposed Notice Plan.

#### E. A Final Approval Hearing Should Be Scheduled

Finally, Plaintiffs request that the Court schedule a final approval hearing to determine whether to grant final approval to the settlement, consider Class Counsel's request for attorneys' fees, expenses, and service awards for the Class Representatives, consider any objections and exclusions, and determine whether to dismiss this action with prejudice. *See* Fed. Jud. Ctr., Manual for Complex Litig. Fourth, § 30.44 (2004); *In re Nat'l Football League Players Concussion Injury Litig.*, 775 F.3d 570, 581-83 (3d Cir. 2014). Plaintiffs also respectfully suggest the following schedule:

Event	Date
Notice Date	70 days after entry of the preliminary approval order
Class Counsel Fee and Service Award Application	30 days after the Notice Date (100 days after entry of the preliminary approval order)
Opt-Out or Objection Deadline	60 days after the Notice Date (130 days after entry of the preliminary approval order)
Final Approval Motion	14 days prior to the Final Approval Hearing (130 days after the entry of the preliminary approval order)
Final Approval Hearing	At least 74 days after the Notice Date (144 days after entry of the preliminary approval order)
Claims Forms Due	90 days from the Notice Date (160 days after entry of the preliminary approval order)

#### IV. CONCLUSION

Plaintiffs respectfully request that this Court enter an Order: (1) finding that this case is likely to be certified as a class action pursuant to Fed. R. Civ. P. 23(a) and 23(b)(3) for the purpose of effectuating a class action settlement; (2) preliminarily approving the settlement; and (3) directing notice to the Settlement Class Members.

DATED: February 3, 2023 Respectfully submitted,

By: /s/ Joseph G. Sauder Joseph G. Sauder Joseph B. Kenney

Joseph B. Keinie

## Sauder Schelkopf LLC

1109 Lancaster Avenue Berwyn, PA 19312 Phone: (888) 711-9975 jgs@sstriallawyers.com jbk@sstriallawyers.com

Counsel for Plaintiffs and the Proposed Settlement Class

**CERTIFICATE OF SERVICE** 

I hereby certify that a true and correct copy of the foregoing PLAINTIFFS'

MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF

CLASS ACTION SETTLEMENT was filed via the Court's CM/ECF system, thereby electronically

serving it on all counsel of record.

/s/ Joseph G. Sauder

Joseph G. Sauder

20

#### IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GREG MCMAHON and ADAM GOLDBERG,

Plaintiffs,

Civil Action No. 2:21-cv-05660

v.

GENERAC POWER SYSTEMS, INC.,

Defendant.

# <u>DECLARATION OF JOSEPH G. SAUDER IN SUPPORT OF PLAINTIFFS'</u> MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

- I, Joseph G. Sauder, under penalty of perjury, declare as follows:
- 1. I am a partner at the law firm of Sauder Schelkopf LLC in Berwyn, Pennsylvania. I respectfully submit this Declaration in support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement. My declaration is based upon my knowledge of the facts set forth herein, and if called to do so, I could and would testify competently thereto.
- 2. Attached as **Exhibit A** is a true and correct copy of the executed Settlement Agreement entered and agreed to by the parties on February 3, 2023.
  - a. Attached to the Settlement Agreement as **Exhibit 1** is a true and correct copy of the Claim Form.
  - b. Attached to the Settlement Agreement as **Exhibit 2** is a true and correct copy of the short-form Notice of Class Action Settlement.
  - Attached to the Settlement Agreement as Exhibit 3 is a true and correct
     copy of the long-form Notice of Class Action Settlement.

- d. Attached to the Settlement Agreement as **Exhibit 4** is a true and correct copy of the proposed Preliminary Approval Order.
- e. Attached to the Settlement Agreement as **Exhibit 5** is a true and correct copy of the Notice of Deficiency Letter.
- f. Attached to the Settlement Agreement as **Exhibit 6** is a true and correct copy of the denial of Claim letter.
- g. Attached to the Settlement Agreement as **Exhibit 7** is a true and correct copy of the proposed Final Approval Order.
- h. Attached to the Settlement Agreement as **Exhibit 8** is a true and correct copy of the proposed Final Judgment.

#### **BACKGROUND ABOUT MY FIRM**

- 3. Sauder Schelkopf is a national boutique class action and personal injury law firm located in Berwyn, Pennsylvania. Our firm was named in the Litigation Departments of the Year, an award that honors the best litigation practice in a small or mid-sized firm in Pennsylvania, by *The Legal Intelligencer* in 2022. In addition, the 2023 edition of U.S. News & World Report, Best Lawyers® recognized our firm as a Best Law Firm, as nominated by our peers based on our experience, service, success, and performance.
- 4. I started my legal career as a prosecutor in the Philadelphia District Attorney's Office where, from 1998 to 2003, I successfully tried hundreds of criminal cases to verdict. *LawDragon* recognized me in its list of the "500 Leading Plaintiff Consumer Lawyers" for 2022. The publication notes "these are the lawyers who stand on the front line in individual lawsuits and class actions seeking justice. They relish their role of underdog, taking on the toughest cases . . . . " *The American Lawyer* named me to its 2021 Northeast Trailblazers. The

honor recognizes 60 lawyers who are "truly agents of change." It "recognizes professionals in the Northeast who have moved the needle in the legal industry." *The Legal Intelligencer* named me in its 2020 Pennsylvania Trailblazers list recognizing 31 lawyers who "have taken extra measures to contribute to positive outcomes . . . and who are truly agents of change." *The Legal* highlights my innovative work on advocacy as class counsel in large institutional sex abuse cover-ups, women's, and children's rights.

- 5. Since 2012, I have been selected by the National Trial Lawyers Association as one of the Top 100 Trial Lawyers in Pennsylvania. Since 2011, I have been selected as a Pennsylvania *SuperLawyer*, a distinction held by the top 5% of attorneys in Pennsylvania, as chosen by their peers and through the independent research of Law & Politics.
- 6. I am currently serving or have served as lead or co-lead counsel in class actions in courts across the country. *See, e.g., Jackson v. Viking Group, Inc.*, No. 8:18-cv-02356-PJM, ECF No. 46 (D. Md.) (class action settlement valued between \$30.45 million and \$50.75 million that provided a free replacement program to replace the allegedly defective sprinklers with non-defective sprinklers, and a claims program to reimburse those who experienced non-fire activations); *Bromley v. SXSW LLC*, No. 1:20-cv-439-LY (W.D. Tex.) (class action settlement related to ticket purchases for festival canceled by COVID-19 pandemic); *Cole v. NIBCO, Inc.*, No. 13-7871, ECF No. 227 (D.N.J.) (\$43.5 million settlement related to allegedly defective plumbing products); *In re Checking Account Overdraft Litig.*, MDL No. 2036 (S.D. Fla.) (\$55 million class action settlement with US Bank and \$14.5 million class action settlement with Comerica); *Traxler v. PPG Indus., Inc.*, No. 1:15-cv-00912-DAP (N.D. Ohio); (\$6.5 million class action settlement on behalf of homeowners who purchased and used defective deck resurfacer); *Klug v. Watts Regulator Co.*, No. 8:15-cv-61 (D. Neb.) and *Ponzo v. Watts Regulator Co.*, No.

8:16-200 (D. Neb.) (achieved \$14 million joint settlement related to defective toilet connectors and water heater connectors).

7. In addition, Sauder Schelkopf attorneys have been appointed to leadership positions in numerous class action cases throughout the United States, including: In re: Hyundai and Kia Engine Litig., 8:17-cv-02208-JLS-JDE (C.D. Cal.) (appointed co-lead counsel in class action against Hyundai and Kia and negotiated a class settlement valued at approximately \$892 million related to alleged engine defect); In re: Subaru Battery Drain Prod. Liab. Litig., No. 1:20-cv-03095-JHR-MJS (D.N.J.) (class action settlement related to allegedly defective vehicle batteries); Zhao v. Volkswagen Group of Am., Inc., No. 2:21-cv-11251 (D.N.J.) (class action settlement related to allegedly defective vehicle water pumps); In re: General Motors Air Conditioning Marketing and Sales Pracs. Litig., No. 18-md-02818 (E.D. Mich.) (class action related to allegedly defective vehicle air conditioning systems); Salcedo v. Subaru of America, Inc., No. 1:17-cv-08173(JHR)(AMD) (D.N.J.) (appointed as lead counsel in class action against Subaru and negotiated a class settlement related to an alleged engine defect); Bang v. BMW of North America, LLC, No. 2:15-cv-69450(MCA)(LDW) (D.N.J.) (appointed as co-lead counsel in class action against BMW and negotiated a class settlement related to an alleged oil consumption defect); Yaeger v. Subaru of America, Inc., No. 1:14-cv-04490(JBS) (KMW) (D.N.J.) (appointed as colead counsel in class action against Subaru and negotiated a class settlement related to an alleged oil consumption defect); Davitt v. Honda North America, Inc., No. 2:13-cv-00381-MCA-JBC (D.N.J.) (appointed lead counsel in class action against Honda and negotiated a class settlement related to alleged door lock actuator defect); Fath v. American Honda Motor Co., No. 18-cv-01549-WMW (D. Minn.) (appointed lead counsel in class action against Honda and negotiated a class settlement related to an alleged oil dilution defect); and Tolmasoff v General Motors, LLC,

No. 2:16-cv-11747 (E.D. Mich.) (class action settlement related to GM vehicles with overstated fuel economy).

8. Attached as **Exhibit B** is a true and correct copy of the firm resume of Sauder Schelkopf LLC.

#### **BACKGROUND ON THE ACTION**

- 9. Before filing this Action, Plaintiffs' counsel conducted an extensive investigation into the alleged corrosion of the plenum in the Class Generators. This investigation included interviewing members of the putative class and reviewing their documents, researching consumer reporting on various websites, reviewing Generac's manuals and other materials, researching potential causes of action, speaking with employees of Generac's authorized service dealerships, communicated with consulting experts in the field of generator systems, and drafting a detailed Complaint.
- 10. After Generac filed a motion to dismiss Plaintiffs' Complaint, my firm investigated the legal arguments raised by Generac and drafted a detailed opposition to the motion to dismiss. Plaintiffs were prepared to file the opposition brief and litigate the motion, but the parties ultimately resolved this litigation through executing the Settlement Agreement. Briefing the motion to dismiss allowed Plaintiffs to assess the strengths and weakness of further litigation and assisted the parties with settlement negotiations.
- 11. Settlement negotiations were protracted and conducted at arm's-length. The parties engaged in an in-person mediation session with Judge Diane M. Welsh (Ret.) at JAMS' Philadelphia office on May 16, 2022. The parties made significant progress during that mediation, and continued negotiations over the following eight months with further assistance from Judge

Case 2:21-cv-05660-GJP Document 21-2 Filed 02/03/23 Page 6 of 6

Welsh. The parties negotiated attorneys' fees, expenses, and service awards, with Judge Welsh,

only after they had reached agreement on the relief for the Settlement Class.

In connection with the settlement negotiations, the parties exchanged confirmatory 12.

discovery, subject to Rule 408 of the Federal Rules of Evidence.

13. The parties executed the Settlement Agreement on February 3, 2023.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true

and correct.

Dated: February 3, 2023

/s/ Joseph G. Sauder

6

#### IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GREG MCMAHON and ADAM GOLDBERG,

Plaintiffs,

Civil Action No. 2:21-cv-05660

v.

GENERAC POWER SYSTEMS, INC.,

Defendant.

#### CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

This Class Action Settlement Agreement and Release is made and entered into by and among Plaintiffs, on behalf of themselves and the Releasing Parties, and Generac, on behalf of itself and the Released Parties.

#### **RECITALS**

**WHEREAS**, Plaintiffs have Class Generators (as defined below) installed outside of their homes;

WHEREAS, Plaintiffs have asserted claims in the Lawsuit seeking to recover damages allegedly caused by the Inspection Program implemented by Generac for the Class Generators;

**WHEREAS,** Plaintiffs have not asserted any claims or alleged any damages arising from personal injury, property damage, or subrogation;

WHEREAS, Generac has moved to dismiss Plaintiffs' claims, in part, on the grounds that (a) Plaintiffs allege no compensable harm; (b) Plaintiffs' claims are barred by their warranties, their failure to provide notice, and the expiration of the limitations period; and (c) Plaintiffs have otherwise failed to state a valid claim (*see* ECF No. 16);

WHEREAS, Class Counsel asserts that Generac's motion to dismiss lacks merit because (a) Plaintiffs allege compensable harm; (b) the limitations on Generac's warranties are unconscionable and unenforceable; (c) Plaintiffs provided notice of their claims on December 16, 2021 and that such notice was reasonable because Plaintiffs are retail consumers; and (d) Plaintiffs properly pled their breach of warranty claims;

WHEREAS, Class Counsel has conducted an extensive investigation into the facts and law relating to the matters alleged in the Lawsuit;

WHEREAS, without conceding any lack of merit of any of their claims, Plaintiffs and Class Counsel have concluded that it is in the best interests of the Settlement Class to settle the Lawsuit on the terms set forth herein, which are fair, reasonable, adequate, and in the best interests of the Settlement Class;

WHEREAS, Generac has denied and continues to deny vigorously the claims and conduct alleged by Plaintiffs, and any fault, wrongdoing, illegal conduct, or liability whatsoever on its part, and denies any alleged defect in the Class Generators or with its inspection program;

WHEREAS, without conceding any lack of merit in its defenses, Generac has concluded that it is desirable to enter into this Settlement Agreement to avoid further expense, to dispose of potentially burdensome and protracted litigation, and to avoid the uncertain outcome of proceeding in the Lawsuit;

WHEREAS, the Parties engaged in extensive, complex, and arm's-length negotiations regarding the resolution of the Lawsuit, and entered into this Settlement Agreement only after an in-person mediation session overseen by Judge Diane M. Welsh (Ret.) on May 16, 2022, and after further numerous communications among counsel for the Parties over the course of eight months, including further involvement from Judge Welsh;

WHEREAS, Plaintiffs and Generac agree that this Settlement Agreement shall not be deemed or construed to be an admission, concession, or evidence of any violation of any federal, state, or local statute, regulation, rule, or other law, or principle of common law or equity, or of any liability or wrongdoing whatsoever, by Generac, or of the truth of any of the claims that the Plaintiffs have asserted against Generac;

WHEREAS, the Parties desire and intend by this Settlement Agreement to settle finally and completely, and effectuate a final resolution of the Lawsuit and to provide for a full and final release by the Releasing Parties of the Released Claims against the Released Parties; and

**NOW, THEREFORE**, subject to the approval of the Court, the Parties hereby agree, in consideration of the mutual promises and covenants contained herein, that any Released Claims of any Releasing Party against any Released Party shall be settled, compromised and forever released upon the following terms and conditions.

#### **TERMS AND CONDITIONS**

#### A. **DEFINITIONS**

As used in this Settlement Agreement and any exhibits thereto, the following terms have the meanings set forth below:

- 1. "Attorneys' Fees, Costs, and Service Awards" means any and all attorneys' fees, costs, expenses, and service awards that may be awarded by the Court for work performed in the Lawsuit for the benefit of the Settlement Class by Class Counsel and Plaintiffs.
- 2. "Claim" means a claim made by a Claimant via the submission of a Claim Form to the Settlement Administrator pursuant to this Settlement Agreement.
- 3. "Claimant" means a Settlement Class Member who submits a Claim Form seeking a benefit pursuant to this Settlement Agreement.

- 4. "Claim Form" means the form approved by the Court for making Inspection Claims and Reimbursement Claims pursuant to this Settlement Agreement, which is to be substantially in the form of **Exhibit 1**. The Claim Form will notify Claimants that they will be bound by the Release set forth in this Settlement Agreement.
- 5. "Claim Period" means ninety (90) days from the date on which the Settlement Administrator mails notice to Class Members.
- 6. "Class Counsel" means Joseph G. Sauder and Joseph B. Kenney of Sauder Schelkopf LLC.
- 7. "Class Generators" means Generac home standby generators that were part of the Inspection Program.
- 8. "Counsel for Generac" means Michael P. Daly and Meaghan V. Geatens of Faegre Drinker Biddle & Reath LLP.
- 9. "Court" means the United States District Court for the Eastern District of Pennsylvania.
- appeal from the Final Approval Order and Final Judgment if no appeal is filed; or (b) if an appeal is filed, the latest of (i) the date of final affirmance of that Final Approval Order and Final Judgment, (ii) the expiration of the time for a petition for writ of certiorari to review the Final Approval Order and Final Judgment if affirmed, the denial of certiorari, or, if certiorari is granted, the date of final affirmance of the Final Approval Order and Final Judgment following review pursuant to that grant; or (iii) the date of final dismissal of any appeal from the Final Approval Order and Final Judgment or the final dismissal of any proceeding on certiorari to review the Final Approval Order and Final Judgment that has the effect of confirming the Final Approval Order

and Final Judgment. For avoidance of doubt, the Effective Date shall not have been reached until the Court enters a Final Approval Order and Final Judgment and there has been the successful exhaustion of all appeal periods without appeal or resolution of any appeals or certiorari proceedings in a manner upholding the Final Approval Order and Final Judgment.

- 11. "Eligible Claimant" means a Claimant who has submitted a valid and timely Claim Form as determined by the Settlement Administrator subject to all rights of the Parties under the Settlement Agreement.
- 12. "Final Approval Hearing" means the hearing conducted by the Court to determine whether to grant final approval to this Settlement and to determine the fairness, adequacy, and reasonableness of this Settlement.
- 13. "Final Approval Order" means the Final Approval Order that grants final approval to the Settlement, which is to be agreed upon by the Parties and submitted with Plaintiffs' Motion for Final Approval, which is to be substantially in the form of Exhibit 7.
- 14. "Final Judgment" means the Court's final judgment, which is to be agreed upon by the Parties and submitted with Plaintiffs' Motion for Final Approval, which is to be substantially in the form of Exhibit 8.
  - 15. "Generac" means Generac Power Systems, Inc.
- 16. "Inspection Notice Letter" means a letter from Generac, to the owners of Class Generator, containing notice of the Inspection Program.
  - 17. "**Inspection Claim**" shall have the meaning ascribed to it in Section C.2.
- 18. "Inspection Program" means the voluntary inspection program previously offered by Generac pursuant to the Inspection Notice Letter, in which owners of Class Generators could

schedule an inspection of their Class Generator's fuel plenum for a discounted, \$80 inspection fee that would be reimbursed if the fuel plenum was significantly compromised.

- 19. "Lawsuit" means McMahon v. Generac Power Sys., Inc., No. 21-5660 (E.D. Pa.).
- 20. "Notice of Settlement" means the short-form Notice of Class Action Settlement substantially in the form attached as Exhibit 2. The long-form Notice of Class Action Settlement will be substantially in the form attached as Exhibit 3.
- 21. "**Notice Date**" means the date seventy (70) days after the Preliminary Approval Date, representing the date by which the Notice Plan shall be substantially implemented.
  - 22. "Notice Plan" shall have the meaning ascribed to it in Sections D.8.a. to D.8.f.
- 23. "Objection and Opt-Out Deadline" means the date sixty (60) days after the Notice Date.
  - 24. "Parties" means Plaintiffs and Generac as those terms are defined herein.
  - 25. "Person" or "Persons" means any individual or entity, public or private.
  - 26. "Plaintiffs" means Greg McMahon and Adam Goldberg.
- 27. "Preliminary Approval Date" means the date on which the Court enters the Preliminary Approval Order.
- 28. "Preliminary Approval Order" means the Preliminary Approval Order that preliminarily approves the Settlement, which is to be substantially in the form of Exhibit 4.
  - 29. "Reimbursement Claim" shall have the meaning ascribed to it in Section C.1.
- 30. "Released Claims" means any and all claims, causes of action, suits, obligations, debts, demands, agreements, promises, liabilities, damages, losses, controversies, costs, expenses, and attorneys' fees of any nature whatsoever, whether based on any federal law, state law, common law, territorial law, foreign law, contract, rule, regulation, any regulatory promulgation (including,

but not limited to, any opinion or declaratory ruling), common law or equity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, latent or patent, actual or contingent, liquidated or unliquidated, punitive or compensatory, of every nature and description whatsoever, as of the date of the Final Approval Order, that arise out of or relate in any way to the Class Generators' plenums, the Inspection Program, and/or the Inspection Notice Letter. Without limiting the generality of the foregoing, Released Claims shall include, with regard to the foregoing subject matter: (1) any class, group, collective or individual claim for any breach or violation of any federal or state statute, case law, common law or other law; (2) any claim for breach of any duty imposed by law, by contract or otherwise; and (3) any claim for damages, injunctive relief, declaratory relief, class damages or relief, penalties, punitive damages, exemplary damages, restitution, rescission or any claim for damages based upon any multiplication or enhancement of compensatory damages arising out of or relating to the above. The Released Claims exclude any claims for death, personal injury, property damage (other than damage to the Class Generators related to the plenum), or subrogation.

31. "Released Parties" means Generac and each of its past, present, and future members, owners, direct and indirect parents, subsidiaries, managers, divisions, predecessors, successors, holding companies, and affiliated companies and corporations, and each of the past, present, and future directors, officers, managers, members, employees, contractors, general partners, limited partners, investors, controlling persons, owners, trustees, principals, agents, associates, administrators, insurers, reinsurers, shareholders, attorneys, accountants, advisors, consultants, assignors, assignees, representatives, fiduciaries, predecessors, successors, divisions, joint ventures, or related entities of those companies including, but not limited to, vendors, subvendors, contractors, subcontractors, Authorized Service Dealers, and other service providers.

- 32. "Releasing Parties" means Plaintiffs and the Settlement Class Members (whether or not they submit a Claim Form or are Eligible Claimants), and their respective assigns, heirs, successors, predecessors, parents, subsidiaries, officers, directors, shareholders, members, managers, partners, principals, representatives, and employees (each solely in their respective capacity as such), and all those who assert or could asserts claims on their behalf.
- 33. "Settlement" means the conditions set forth in this Settlement Agreement to settle Plaintiffs' Lawsuit against Generac.
- 34. "Settlement Administrator" means KCC Class Action Services, LLC, which shall be appointed by the Court in the Preliminary Approval Order to effectuate and administer the Notice Plan, distribute the Settlement Notice, administer the exclusion process for opt-outs, the Claim process, and make distributions to Eligible Claimants under the supervision of the Parties and the Court.
- 35. "Settlement Administration Costs" means the reasonable fees and expenses of the Settlement Administrator incurred in the administration of this Settlement and approved by the Court, including the reasonable costs associated with the Notice Plan and the Settlement Notice, the administering of Claims, and distribution of any Settlement Payments to Eligible Claimants; other fees, expenses, and costs of settlement administration. The Settlement Administration Costs will be paid by Generac.
- 36. "Settlement Agreement" means this Class Action Settlement Agreement and Release including all exhibits.
  - 37. "Settlement Class" means the following for settlement purposes only:
    - (1) all current or former owners of a Class Generator who paid a \$80 Inspection Program fee that was not reimbursed prior to the Preliminary Approval Date, and

(2) all current owners of Class Generators that were not inspected pursuant to the Inspection Program prior to the Preliminary Approval Date.

Excluded from the Settlement Class are: (i) Generac, its officers, directors, affiliates, legal representatives, employees, successors, and assigns, and entities in which Generac has a controlling interest; (ii) the judge presiding over the Lawsuit and any member of the Court's staff and immediate family; and (iii) local, municipal, state, and federal governmental entities.

- 38. "Settlement Class Member" means a member of the Settlement Class who does not submit a timely and valid Request for Exclusion from the Settlement.
- 39. "Settlement Notice" means the notice or notices required by the Notice Plan for providing notice of this Settlement to the Settlement Class as set forth in Sections D.8.a. to D.8.f.
  - 40. "Settlement Payment" means a settlement check for a Reimbursement Claim.
- 41. "Settlement Website" means the website to be established by the Settlement Administrator pursuant to Section D.8.d.

# B. <u>CERTIFICATION OF THE SETTLEMENT CLASS</u>

1. <u>Settlement Class Certification</u>. Pursuant to the procedure described herein, Plaintiffs will seek the Court's certification of the Settlement Class for settlement purposes only pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3).

### 2. **Preliminary Approval**.

- a. Class Counsel shall file with the Court a Motion for Preliminary Approval of Class Action Settlement requesting that the Court certify the Settlement Class for settlement purposes only and enter a Preliminary Approval Order.
- b. The Motion for Preliminary Approval of Class Action Settlement shall seek to appoint Plaintiffs as representatives of the Settlement Class and Class Counsel as counsel for the Settlement Class.

- c. Plaintiffs, who have executed this Settlement Agreement and agree to be bound by it, believe the Settlement is in the best interests of the Settlement Class.
  - d. The Preliminary Approval Order shall:
    - i. find that the requirements for certification of the Settlement Class have been satisfied;
    - ii. appoint Plaintiffs as the representatives of the Settlement Class;
    - iii. appoint Class Counsel as counsel for the Settlement Class;
    - iv. preliminarily approve the Settlement as being within the range of reasonableness such that the Settlement Notice should be sent to the members of the Settlement Class;
    - v. preliminarily approve the Notice Plan and Settlement Notice and direct that it be implemented as set forth in Sections D.8.a. to D.8.f.;
    - vi. schedule the Final Approval Hearing not earlier than **144** days following the Preliminary Approval Date;
    - vii. appoint KCC Class Action Services, LLC as the Settlement Administrator;
    - viii. provide that any objections by any Settlement Class Member to the Settlement Agreement shall be heard and any papers submitted in support of said objections shall be considered by the Court at the Final Approval Hearing only if such Settlement Class Member follows the procedures set forth in this Settlement Agreement;
      - ix. establish dates by which the Parties shall file and serve all papers in support of the Motion for Final Approval of the Settlement, the

- Motion for Attorneys' Fees, Costs, and Service Awards, and any response or valid or timely objections to either Motion;
- x. provide that all Settlement Class Members will be bound by the
  Final Approval Order and the Final Judgment unless such Person
  timely submits to the Settlement Administrator a timely and valid
  written Request for Exclusion in accordance with this Settlement
  Agreement and the Settlement Notice;
- xi. provide that, pending the Final Approval Hearing and the Effective

  Date, all proceedings in the Lawsuit, other than proceedings
  necessary to carry out or enforce the terms and conditions of this

  Settlement Agreement, shall be stayed;
- xii. provide that, pending the Final Approval Hearing, Plaintiffs, or any of them, and all Settlement Class Members are enjoined from commencing or prosecuting, either directly or indirectly, any action asserting any of the Released Claims against any of the Released Parties, unless they have submitted a timely and valid Request for Exclusion from the Settlement; and
- xiii. issue other related orders to effectuate the preliminary approval of the Settlement Agreement.

### C. CONSIDERATION TO THE SETTLEMENT CLASS

1. **Reimbursements.** Settlement Class Members who paid for an inspection pursuant to the Inspection Program and the Inspection Notice Letter can file a claim (a "Reimbursement Claim") for their unreimbursed, out-of-pocket inspection fee in the amount of \$80.00.

- 2. <u>Inspections</u>. Settlement Class Members who have not had their plenum inspected through the Inspection Program will be entitled to submit a Claim for a cost-free plenum inspection of their Class Generator by an Authorized Service Dealer (an "Inspection Claim") subject to the following conditions:
  - a. Settlement Class Members must:
- i. attest that the Class Generator has not received general maintenance or service from an Authorized Service Dealer since the start of the Inspection Program;
- ii. attest that, although the Class Generator has received general maintenance or service from an Authorized Service Dealer since the start of the Inspection Program, it nevertheless was not examined for corrosion on the plenum surface (and must submit a supporting narrative statement to that effect with their claim); or
- iii. attest that the Class Generator has corrosion on the plenum surface (and must submit supporting photographic evidence with their Inspection Claim).
- b. Generac will identify local Authorized Service Dealers who will perform the free inspections for approved claimants.
- 3. **Replacements.** A Settlement Class Member who submits an Inspection Claim and whose inspection by a Generac Authorized Service Dealer reveals corrosion on the plenum surface will receive a free replacement of the fuel plenum (inclusive of parts and labor) which will be performed by a Generac Authorized Service Dealer.
- 4. <u>Existing Warranties</u>. The Settlement provides for the exclusive remedies for Plaintiffs and Settlement Class Members with respect to any Claim over a Class Generator. This Settlement does not in any way extend, enhance, or modify the terms, existence, duration, or scope of any existing unexpired written warranty.

5. <u>Uncashed Settlement Payment Checks</u>. All Settlement Payment checks issued by the Settlement Administrator to Eligible Claimants shall remain valid for 180 days. Any Settlement Payment check that is not cashed within 180 days shall be void. Any residual funds from uncashed checks shall be applied toward paying the Settlement Administration Costs.

## D. <u>SETTLEMENT ADMINISTRATION AND NOTICE PLAN</u>

- 1. <u>Claim Process</u>. Any Settlement Class Member who wishes to submit a Claim must timely complete, sign (by hard copy or electronic signature), and submit a Claim Form and provide the Settlement Administrator with all requested information. All Claim Forms shall be submitted under oath. Claim Forms will be able to be completed and submitted on the Settlement Website. Paper copies of Claim Forms will also be available upon request to be completed manually and then submitted either on the Settlement Website or to a mailing address to be established and monitored by the Settlement Administrator.
- a. The Settlement Administrator shall process and review Claims as promptly as possible subject to the provisions in this Settlement Agreement. Claims shall be processed in the order that they are received to the extent practicable.
- b. Class Counsel and Counsel for Generac shall have the right to review the Claim files of the Settlement Administrator at any time, including, but not limited to, requesting the right to inspect any photographs of any plenums to confirm that corrosion exists on the plenum. The Settlement Administrator shall have the right to confer with Class Counsel and Counsel for Generac with respect to any Claim.
- c. A Claim that does not meet each of the requirements is deficient and shall be responded to by the Settlement Administrator using the form Notice of Deficiency Letter attached as **Exhibit 5**. Claimants shall have an opportunity to cure deficient Claims within 30 days.

- d. If the Claimant does not provide a response that cures the deficiency in the time period required, then the Settlement Administrator shall deny the Claim in whole or in part. A copy of the form denial of Claim letter to be used by the Settlement Administrator is attached as **Exhibit 6.**
- e. Claim Forms will provide a payment election field that Settlement Class Members submitting Reimbursement Claims can use to elect their preferred electronic payment method (such as direct deposit, PayPal, Venmo, Zelle, or a check).
- 2. **Dispute Resolution**. Either Party shall have the right to challenge any potential errors made by the Settlement Administrator in the processing, handling, reviewing, approving, and paying of claims. The Claim Form shall disclose that additional information may be requested to permit any additional review that may be required, and that either Party has the right to challenge the Settlement Administrator's decision denying or approving claims. Any such challenges that the Parties cannot resolve among each other shall be submitted to a Special Master to decide the matter in a timely fashion. The Claims Administrator shall thereafter comply with the decision of the Special Master.
- 3. <u>Claim Review</u>. If the Settlement Administrator suspects fraud or misleading conduct with respect to any Claim, the Settlement Administrator will immediately bring the Claim to the attention of Class Counsel and Counsel for Generac, who shall meet and confer with the Settlement Administrator concerning the Claim, and who reserve the right to bring the Claim to the attention of the Court or the appropriate authorities.
- 4. <u>No Liability for Claims Administered Pursuant to Agreement</u>. No Person shall have any claim against Generac, Counsel for Generac, Plaintiffs, Class Counsel, the Released Parties, and/or the Settlement Administrator based on any determinations, distributions, or awards

made with respect to any Claim. This provision does not affect or limit in any way the right of review of any disputed Claim as provided in this Settlement Agreement. The applicable dispute procedures set forth in Section D.2 shall be the sole and exclusive means of resolving disputes based on any determinations, distributions, awards, or Settlement Payments made with respect to any Claim. For the avoidance of doubt, in no event shall Plaintiffs, Class Counsel, Generac, or Counsel for Generac, have any liability for claims of wrongful or negligent conduct on the part of the Settlement Administrator, the Special Master, or their agents.

### 5. <u>Settlement Administrator Duties</u>. The Settlement Administrator shall:

- a. Use personal information acquired as the result of this Agreement solely for purposes of evaluating and paying Claims under this Agreement.
- b. Assign a manager to oversee the protection and appropriate management of personal information and review its internal system to manage the protection of personal information to ensure consistent performance and constant improvement.
- c. Take security countermeasures to prevent unauthorized access to personal information and the loss, destruction, falsification and leakage of personal information.
- d. If outsourcing the handling of personal information, determine that outsourced companies take steps to ensure appropriate management of the information to prevent leaks of personal or confidential information, and prohibit reuse of information for other purposes.
- e. Respond immediately with appropriate measures when necessary to disclose, correct, stop using, or eliminate contents of information.
- f. Within one hundred and twenty (120) days after the completion of the latest possible check-cashing period following the conclusion of the Claim Period, and in compliance with applicable retention law, destroy all personal information obtained in connection with this

15

Settlement in a manner most likely to guarantee that such information cannot be obtained by unauthorized Persons.

- 6. <u>Settlement Administrator Accounting</u>. The Settlement Administrator shall maintain a complete and accurate accounting of all receipts, expenses (including Settlement Administration Costs), and payments made pursuant to this Settlement Agreement. The accounting shall be made available on reasonable notice to Class Counsel and Counsel for Generac.
- 7. **Removal of Settlement Administrator**. If the Settlement Administrator fails to perform adequately, the Parties may agree to remove the Settlement Administrator by petitioning the Court to do so.
- 8. Notice Plan. The Parties agree that the Notice Plan described below is valid and effective and that it will provide reasonable and the best practicable notice to the Settlement Class. The Notice Plan shall be effectuated by the Settlement Administrator as follows:
- a. Notice of Settlement. The Notice of Settlement substantially in the form attached as Exhibit 2 and a Claim Form substantially in the form attached as Exhibit 1 shall be sent to members of the Settlement Class who are identifiable to the Settlement Administrator through reasonable means. Notice of Settlement will be sent via email to Settlement Class members for whom there is an email address. For Settlement Class members for whom there is no email address, the Settlement Administrator will send Notice of Settlement via postcard, first class postage prepaid. For Settlement Class members eligible to submit a Reimbursement Claim, addresses will be run through the National Change-of-Address Database. If a postcard is returned as undeliverable, the Settlement Administrator will perform one advanced address search in order to re-mail the undeliverable notice. On a confidential basis, Generac and Class Counsel will

provide the Settlement Administrator with reasonably available information that identifies possible Settlement Class members from their existing records.

- b. <u>Notice Content</u>. Notices will state that Generac denies any liability or wrongdoing, that Generac denies any defect with the Class Generators, and that there has been no finding or liability or wrongdoing. Notices will also state that Generac instructs and expects Authorized Service Dealers to examine fuel systems (including plenums) during any general maintenance or service visits.
- c. Additional Efforts. Generac will advise its Authorized Service Dealers of the no-cost Inspection Claims available to Claimants pursuant to the settlement. Generac will also continue to remind Authorized Service Dealers in its service information bulletin to visually examine fuel systems (including but not limited to plenums, if any) during general maintenance or service visits. Generac will also update the information on its website regarding the Inspection Program.
- d. **Settlement Website**. Upon filing the Motion for Preliminary Approval, the Settlement Administrator shall establish and make live the Settlement Website, which shall be an Internet website concerning the Settlement utilizing the domain name www.fuelplenumsettlement.com. The Settlement Website shall be maintained by the Settlement Administrator until one hundred eighty (180) days after the conclusion of the Claim Period and the time period for cashing all Settlement Payment checks has expired. The domain name of the Settlement Website shall be included in all Settlement Notices. The Settlement Website shall provide, at a minimum: (i) information concerning deadlines for filing a Claim Form, and the dates and locations of relevant Court proceedings, including the Final Approval Hearing; (ii) the tollfree phone number applicable to the Settlement; (iii) copies of the Settlement Agreement, the

Notice of Settlement, the Claim Form, Court Orders regarding this Settlement, and other relevant Court documents, including Class Counsel's Motion for Approval of Attorneys' Fees, Costs, and Service Awards; and (iv) information concerning the submission of Claim Forms, including the ability to submit Claim Forms electronically using an electronic signature service such as DocuSign through the Settlement Website. The Settlement Website will also provide a serial number look-up where consumers can input their Generac home standby generator's serial number to check whether their generator is a Class Generator.

- e. <u>Toll-Free Number</u>. The Settlement Administrator shall establish a toll-free telephone number that can be used to: (i) request the Claims Form, the Notice of Settlement, and this Settlement Agreement; and (ii) obtain information about deadlines for filing a Claim Form, opting out of or objecting to the Settlement, and the scheduling of the Final Approval Hearing. The toll-free telephone number shall be included in all notices described in Sections D.8.a. to D.8.f. The toll-free numbers shall be maintained while the Settlement Website is active.
- f. <u>CAFA Notice</u>. Generac, through the Settlement Administrator, shall mail all notices required by 28 U.S.C. § 1715. The Settlement Administrator will provide, in connection with the Motion for Final Approval, documentation to confirm that CAFA notice was issued.
- 9. **Proof of Compliance with Notice Plan**. The Settlement Administrator shall provide Class Counsel and Counsel for Generac with a declaration detailing all of its efforts regarding the Notice Plan and of its timely completion of the Notice Plan and its reach to the members of the Settlement Class, to be filed as an exhibit to Plaintiffs' Motion for Final Approval of Class Action Settlement.
- 10. <u>Settlement Administrator Database</u>. The Settlement Administrator shall maintain and preserve records of all of its activities, including logs of all telephone calls, emails,

mailings, visits to the Settlement Website, and all other contacts with actual and potential members of the Settlement Class, in a computerized database with easily retrievable records. The database shall also include a running tally of the number of and types of materials mailed or disseminated by the Settlement Administrator. The Settlement Administrator shall provide Class Counsel and Counsel for Generac with monthly written reports regarding both Reimbursement Claims and Inspection Claims throughout the Claim Period summarizing all statistics and actions taken by the Settlement Administrator in connection with administering the Settlement.

## E. OPT-OUTS AND OBJECTIONS

### 1. Requests for Exclusion.

- a. Settlement Class Members may submit a Request for Exclusion from (*i.e.*, "opt-out" of) the Settlement pursuant to Federal Rule of Civil Procedure 23(c)(2)(B)(v). A member of the Settlement Class who submits a valid Request for Exclusion cannot object to the Settlement and is not eligible to receive any Settlement Payment or Inspection.
- b. To validly request exclusion from the Settlement Class, a member of the Settlement Class must submit a written request to opt out to the Settlement Administrator so that it is postmarked on or before the Objection and Opt-Out Deadline stating that "I wish to exclude myself from the Settlement Class in the Plenum Inspection Program Class Action Settlement" (or substantially similar clear and unambiguous language). That written request shall contain the Settlement Class member's printed name, address, telephone number, email address (if any), date of birth, generator serial number, and the address at which the generator is installed. The Request for Exclusion must contain the actual written signature of the Settlement Class member seeking to exclude himself or herself from the Settlement Class.

- c. Requests for Exclusion cannot be made on a group or class basis, except that joint owners of the same residence or structure may opt out by using the same form so long as it is individually signed by each joint owner.
- d. The Settlement Administrator will provide copies of all Requests for Exclusion to counsel for the Parties on a weekly basis by email.
- e. Any Settlement Class Member who does not submit a valid and timely written Request for Exclusion as provided in Sections E.1.a. to E.1.d. shall be bound by all subsequent proceedings, orders and judgments in this Lawsuit, including, but not limited to, the Release, the Final Approval Order, and the Final Judgment, even if such Settlement Class Member has litigation pending, or subsequently initiates litigation, against any Released Party relating to the Released Claims.
- f. A member of the Settlement Class who opts out can, on or before the Objection and Opt-Out Deadline, withdraw their Request for Exclusion by submitting a written request to the Settlement Administrator stating their desire to revoke their Request for Exclusion along with their written signature.
- g. Any statement or submission purporting or appearing to be both an objection and opt-out shall be treated as a Request for Exclusion.
- h. Not later than seven (7) days after the Objection and Opt-Out Deadline, the Settlement Administrator shall provide to Class Counsel and Counsel for Generac a complete list of opt-outs together with copies of the opt-out requests and any other related information. Generac may void the Settlement Agreement if the number of optouts constitutes more than one percent of the Settlement Class. Generac must advise Class Counsel and the Court, in writing, of this election within fourteen (14) days of receiving the list of Requests for Exclusion from the Settlement

Administrator following the Objection and Opt-Out Deadline. If Generac chooses to void the Settlement in this manner, this Settlement Agreement will be vacated, rescinded, cancelled, and annulled, and the Parties will return to the status quo ex ante, as if they had not entered into this Settlement Agreement.

- Objections. Any Settlement Class Member who does not submit a written Request for Exclusion may present a written objection to the Settlement explaining why he, she, or it believes that the Settlement should not be approved by the Court as fair, reasonable, and adequate. A Settlement Class Member who wishes to submit an objection must deliver to the Settlement Administrator so that it is postmarked on or before the Objection and Opt-Out Deadline, a detailed written statement of the objection(s) and the aspect(s) of the Settlement being challenged, as well as the specific reasons, if any, for each such objection, including any evidence and legal authority that the Settlement Class Member wishes to bring to the Court's attention.
- a. That written statement shall contain (a) the Settlement Class Member's printed name, address, telephone number, email address (if any), and date of birth; (b) evidence showing that the objector is a Settlement Class Member, including the address of the residence or structure that contains or contained the Class Generator and proof that the residence or structure contains or contained the Class Generator (photographs, contemporaneous installation records, etc.); (c) any other supporting papers, materials, or briefs that the objecting Settlement Class Member wishes the Court to consider when reviewing the objection; (d) the actual written signature of the Settlement Class Member making the objection; and (e) a statement whether the objecting Settlement Class Member and/or his, her, or its counsel intend to appear at the Final Approval Hearing.

- b. A Settlement Class Member may object on his or her own behalf or through an attorney; however, even if represented, the Settlement Class Member must individually sign the objection and all attorneys who are involved in any way asserting objections on behalf of the Settlement Class Member must be listed on the objection papers. Counsel for the Parties may take the deposition of any objector prior to the Final Approval Hearing in a location convenient for the objector.
- c. If a Settlement Class Member or counsel for the Settlement Class Member who submits an objection to this Settlement has objected to a class action settlement on any prior occasion, the objection shall also disclose all cases in which they have filed an objection by caption, court and case number, and for each case, the disposition of the objection.
- d. Any objector who files and serves a timely written objection as described above may appear at the Final Approval Hearing, either in person at their own expense or through personal counsel hired at the objector's expense, to object to the fairness, reasonableness, or adequacy of any aspect of the Settlement on the basis set forth in the written objection. As noted above, objectors or their attorneys who intend to make an appearance at the Final Approval Hearing must state their intention to appear in the objection.
- e. Any Settlement Class Member who fails to comply with the provisions of Sections E.2.a. to E.2.d. shall waive and forfeit any and all rights that he, she, or it may have to appear separately and/or to object to the Settlement, and shall be bound by all the terms of this Settlement Agreement and by all proceedings, orders and judgments in the Lawsuit, including, but not limited to, the Release, the Final Approval Order, and the Final Judgment, even if such Settlement Class Member has litigation pending or subsequently initiates litigation against any Released Party relating to the Released Claims.

- 3. The exclusive means for any challenge to this Settlement shall be through the provisions of Sections E.2.a. to E.2.d. Without limiting the foregoing, any challenge to the Settlement, the Final Approval Order, the Final Judgment, or any Attorneys' Fee, Cost, and Service Award Order shall be pursuant to appeal under the Federal Rules of Appellate Procedure and not through a collateral attack.
- 4. An objector shall be entitled to all of the benefits of the Settlement if this Settlement Agreement and the terms contained herein are approved, as long as the objector complies with all requirements of this Settlement Agreement applicable to Settlement Class Members, including the timely and complete submission of a Claim Form and other requirements herein. A Settlement Class Member who objects can, on or before the Final Approval Hearing, withdraw their objection by submitting a written request to the Settlement Administrator stating their desire to withdraw their objection along with their signature.
- 5. The Settlement Administrator shall provide counsel for the Parties with copies of any objections received on a weekly basis by email.

### F. RELEASE OF CLAIMS

- 1. <u>Release</u>. The Parties intend that this Settlement Agreement will fully and finally dispose of the Lawsuit and the Released Claims. As of the Effective Date, each of the Releasing Parties will be deemed to have completely released and forever discharged the Released Parties, and each of them, from and for any and all Released Claims (the "Release").
- 2. <u>Good Faith Settlement</u>. The Releasing Parties agree that the provisions of this Agreement and any claim thereunder constitute a good faith settlement under California Code of Civil Procedure Sections 877 and 877.6, Hawaii Revised Statutes 663-15.5, and comparable laws

in other states. Plaintiffs and Class Counsel will not oppose a motion by Generac in a subsequent action contending that this is a good faith settlement.

- 3. <u>Assumption of Risk</u>. Each of the Releasing Parties hereby does, and shall be deemed to, assume the risk that facts additional, different, or contrary to the facts that each believes or understands to exist, may now exist or may be discovered after this Settlement Agreement becomes effective. Each of the Releasing Parties agrees that any such additional, different, or contrary facts shall in no way limit, waive, or reduce the foregoing Release, which shall remain in full force and effect.
- 4. California Civil Code and Any Counterparts from Other States. All Releasing Parties will be deemed by the Final Approval Order and the Final Judgment to acknowledge and waive Section 1542 of the Civil Code of the State of California, which provides that: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY." Plaintiffs and the Settlement Class Members, on behalf of all Releasing Parties, expressly waive and relinquish any and all rights and benefits that they may have under, or that may be conferred upon them by, the provisions of Section 1542 of the California Civil Code, or any other law of any state or territory that is similar, comparable or equivalent to Section 1542, to the fullest extent they may lawfully waive such rights or benefits pertaining to the Released Claims. In connection with such waiver and relinquishment, the Settlement Class Members hereby acknowledge that the Releasing Parties are aware that they or their attorneys may hereafter discover claims or facts in addition to or

different from those that they now know or believe exist with respect to Released Claims, but that it is their intention to hereby fully, finally, and forever settle and release all of the Released Claims known or unknown, suspected or unsuspected, that they have against the Released Parties. In furtherance of such intention, the release herein given by the Releasing Parties to the Released Parties shall be and remain in effect as a full and complete general release notwithstanding the discovery or existence of any such additional different claims or facts. Each of the Parties expressly acknowledge that they have been advised by their attorneys of the contents and effect of Section 1542, and with knowledge, each of the Parties hereby expressly waives whatever benefits they may have had pursuant to such section. Plaintiffs acknowledge, and the Releasing Parties shall be deemed by operation of the Final Approval Order and the Final Judgment to have acknowledged, that the foregoing waiver was expressly bargained for and a material element of the Settlement of which this Release is a part.

- 5. No Assignment of Claims. Plaintiffs represent and warrant that they are the sole and exclusive owners of all claims that they personally are releasing under the Settlement Agreement. Plaintiffs further acknowledge that they have not assigned, pledged, or in any manner whatsoever, sold, transferred, assigned or encumbered any right, title, interest or claim arising out of or in any way whatsoever pertaining to the Lawsuit, including without limitation, any claim for benefits, proceeds, or value under the Lawsuit, and that the Plaintiffs are not aware of anyone other than themselves claiming any interest, in whole or in part, in the Lawsuit or in any benefits, proceeds, or values under the Lawsuit.
- 6. <u>All Fees and Costs.</u> Without in any way limiting its scope, and, except to the extent otherwise specified in the Settlement Agreement, the Release covers by example and without limitation, any and all claims for attorneys' fees, costs, expert fees, consultant fees, interest,

litigation fees, costs, or any other fees, costs, and/or disbursements incurred by any attorneys, Class Counsel, Plaintiffs, or Settlement Class Members who claim to have assisted in conferring the benefits under this settlement upon the Settlement Class.

7. <u>Dismissal with Prejudice</u>. Upon the Effective Date, the Released Claims of the Settlement Class Members and Releasing Parties will be dismissed with prejudice.

# G. <u>ATTORNEYS' FEES, COSTS AND SERVICE AWARDS</u>

- 1. Payment of Attorneys' Fees and Costs. Only after agreeing to the material terms set forth in this Settlement Agreement and the structure of relief for the Settlement Class, the Parties negotiated the maximum amount of any Attorneys' Fees, Cost, and Service Awards that Class Counsel and Plaintiffs would seek, subject to the approval of the Court.
- a. Within the time period established by the Court, and no later than fourteen (14) days prior to the Objection and Opt Out Deadline, Class Counsel will file a Motion for Approval of Attorneys' Fees, Cost and Service Awards, which shall be included on the Settlement Website. Class Counsel shall apply for the following: (a) attorneys' fees and reimbursement of costs in an amount not to exceed \$1,500,000 and (b) service awards of \$2,500 each to Greg McMahon and Adam Goldberg, in recognition of their time, costs, and effort in the Lawsuit, including, for example, gathering documents and materials and performing other representative duties.
- b. The Parties further agree that Generac shall not pay, or be obligated to pay, any amounts in excess of those stated in Section G.1.a. for attorneys' fees, costs and service awards. Class Counsel and Plaintiffs shall provide W-9 Forms prior to such payment. Class Counsel shall be responsible for distributing the service awards to Plaintiffs. Generac reserves the

right to oppose any fee request, whether for attorneys' fees or service awards, that it considers unreasonable.

- c. Any Attorneys' Fee, Cost, and Service Award shall be set forth in an order separate from the Final Approval Order and the Final Judgment so that any appeal of the Attorneys' Fee, Cost, and Service Award shall not constitute an appeal of the Final Approval Order or the Final Judgment. Any order or proceedings relating solely to the application for an Attorneys' Fee, Cost, and Service Award, or any appeal solely from any Attorneys' Fee, Cost, and Service Award, or reversal or modification of any such Attorneys' Fee, Cost, and Service Award, will not operate to terminate or cancel this Settlement Agreement, or affect or delay the Effective Date.
- d. The Attorneys' Fee, Cost, and Service Awards approved by the Court shall be (i) paid within fourteen (14) days after the latter of the Effective Date or Generac's receipt of W-9 Forms from Plaintiffs and Class Counsel, and (ii) paid by wire transfer to Sauder Schelkopf LLC. Under no circumstances will Generac be liable to Class Counsel, or any other attorney or law firm, for, because of, relating to, concerning, or as a result of any payment or allocation of attorneys' fees made in accordance with this Settlement Agreement; and Class Counsel, and each of them, release Generac from any and all disputes or claims because of, relating to, concerning, or as a result of any payment or allocation of attorneys' fees and costs made in accordance with this Settlement Agreement.
- e. Class Counsel shall not be entitled to any compensation from any Released Party for fees or expenses beyond that provided in this Section, including, without limitation, any fees or expenses incurred in their cooperation in the administration of this Settlement Agreement.

## H. FINAL APPROVAL

- 1. <u>Motion for Final Approval of Settlement</u>. Pursuant to the schedule set by the Court in its Preliminary Approval Order and at least fourteen (14) days prior to the Final Approval Hearing, Class Counsel shall file a motion and supporting papers requesting that the Court grant final approval of this Settlement Agreement and for entry of a Final Approval Order and Final Judgment substantially in the form attached as **Exhibits 7 and 8**. The Final Approval Order shall:
  - a. determine that the Court has personal jurisdiction over all Plaintiffs and Settlement Class Members, that the Court has subject matter jurisdiction over the claims asserted in this Lawsuit, and that venue is proper;
  - b. finally approve the Settlement Agreement and settlement as fair, reasonable, and adequate pursuant to Federal Rule of Civil Procedure 23;
  - finally approve and certify the Settlement Class for settlement purposes only;
  - d. find that the Notice Plan, Settlement Notice, and dissemination methodology complied with all laws, including, but not limited to, the Due Process Clause of the United States Constitution, and was fair, adequate, and sufficient, as the best practicable notice under the circumstances, and as reasonably calculated to apprise members of the Settlement Class of the Lawsuit, the Settlement Agreement, their objection rights, and their exclusion rights;
  - e. dismiss the Lawsuit with prejudice and without costs (except as provided for in this Settlement Agreement as to costs);
  - f. expressly include the Release set forth in the Settlement Agreement and making the Release effective as of the Effective Date;

- g. list all opt-outs;
- h. find that the notification requirements of the Class Action Fairness Act, 28 U.S.C. § 1715, have been met;
- i. authorize the Parties to implement the Settlement Agreement;
- j. permanently enjoin Plaintiffs and all other Settlement Class Members and those subject to their control, from commencing, maintaining, or participating in, or permitting another to commence, maintain, or participate in on their behalf, any Released Claims against the Released Parties;
- k. retain jurisdiction relating to the administration, consummation, enforcement, and interpretation of the Settlement Agreement, the Final Approval Order, and the Final Judgment, and for any other necessary purpose; and
- issue related Orders to effectuate the final approval of the Settlement
   Agreement and its implementation.
- 2. Exclusive Remedy, Dismissal of Action and Jurisdiction of Court. All Settlement Class Members who do not properly file a timely written Request for Exclusion from the Settlement Class submit to the jurisdiction of the Court and will be bound by the terms of this Settlement Agreement, including, without limitation, the Release set forth herein. This Settlement Agreement sets forth the sole and exclusive remedy for any and all pending or future claims of Settlement Class Members, other Claimants, and the Releasing Parties against Generac and the Released Parties arising from or related to the Class Generators as set forth above. Upon entry of the Final Approval Order, each Settlement Class Member who has not validly and timely opted out of the Settlement Class and any Person that has made or can or is entitled to make a claim

through or in the name or right of a Settlement Class Member shall be barred from initiating, asserting, continuing, or prosecuting any such claims against Generac or any Released Party.

### I. CONTINGENCIES; TERMINATION

1. Termination by Generac. This Settlement Agreement is contingent on the final certification of the Settlement Class and entry of the Final Approval Order and Final Judgment as defined above. Generac may terminate this Settlement Agreement in its entirety at any time and without further obligation if: (a) any court rejects or denies approval of any material term or condition of this Settlement Agreement (e.g. because it substantially increases the cost of the Settlement Agreement, or deprives Generac of a benefit of the Settlement Agreement); (b) any court makes any order purporting to alter, amend or modify any material term or condition of this Settlement Agreement; (c) any court fails to certify the Settlement Class as defined above; (d) any court makes any order purporting to preclude Plaintiffs and/or Generac from proceeding in whole or in part with any of the material terms and conditions of this Settlement Agreement; or (e) the number of optouts constitutes more than one percent of the Settlement Class. For purposes of (a), (b) and (d) of this Section I.1, whether a term or condition is "material" shall be determined by Generac after meet and confer between the parties. In the event Generac exercises its right to terminate this Settlement Agreement, it must notify the Court and Class Counsel in writing within fourteen (14) days of the relevant order or notice of the Court and cause the Settlement Administrator to notify the Settlement Class Members by posting information on the Settlement Website and by emailing information to those Claimants for whom the Settlement Administrator has an email address on file. Further, in the event Generac exercises its right to terminate this Settlement Agreement, this Settlement Agreement shall be considered null and void and have no force or effect, no person or entity shall be bound by any of its terms or conditions, and the rights

of all persons or entities with respect to the claims and defenses asserted in the Lawsuit shall be restored to the positions existing immediately prior to execution of this Settlement Agreement.

- 2. **Contingencies.** Unless all of the Parties agree otherwise in a signed writing, this Settlement Agreement shall be deemed terminated and cancelled, and shall have no further force and effect whatsoever, if: (a) there is no Effective Date; (b) the Court fails to enter a Preliminary Approval Order substantially in the form attached as **Exhibit 4**; (c) the Court fails to enter a Final Approval Order, substantially in the form attached as **Exhibit 7**, or Final Judgment, substantially in the form attached as **Exhibit 7**, or Final Judgment, substantially in the form attached as **Exhibit 8**; or (d) Generac elects to terminate pursuant to Section I.1 above.
- 3. **Effect of Termination.** In the event that this Settlement Agreement is voided, terminated, or cancelled, or fails to become effective for any reason whatsoever, then the Parties shall be deemed to have reverted to their respective statuses as of the date and time immediately prior to the execution of this Settlement Agreement, and they shall proceed in all respects as if this Settlement Agreement and any related orders had never been executed or accepted. Without limiting the foregoing or the other agreements between the Parties in this Settlement Agreement, but rather for the sake of clarity, the Parties expressly agree that this Settlement Agreement, the settlement and mediation discussions leading to this Settlement Agreement, and any proceeding related to this Settlement Agreement are governed by Federal Rule of Evidence 408 and also shall not be construed as an admission or waiver by Generac or the Released Parties of any claim, defense, or argument.

# J. OTHER TERMS AND CONDITIONS

1. <u>Plaintiffs' Communications</u>. Any press release issued by Plaintiffs of Plaintiffs' Counsel in connection with the resolution of the Lawsuit will be jointly prepared and agreed by the Parties. Class Counsel may, however, post an update regarding the Lawsuit on its website

consistent with the language in this Settlement Agreement and on the Settlement Website. Other than in notices, the preliminary and final approval motions, and in response to questions from individual Settlement Class Members, neither Plaintiffs nor Class Counsel will make, or cause anyone else to make, any public comments about the Lawsuit or the Settlement Agreement (other than directing individuals to the long-form notice on the Settlement Website, which is to be substantially in the form of **Exhibit 3**) without written approval from Generac.

- 2. <u>Confirmatory Discovery</u>. Class Counsel shall be permitted mutually agreeable confirmatory discovery from Generac's Senior Corporate Quality Control Manager.
- 3. No Admission of Liability. This Settlement Agreement is made for the sole purpose of attempting to consummate a settlement of the Lawsuit on a class-wide basis. This Settlement Agreement is made in compromise of disputed claims and shall not be construed as an admission of liability by Generac or any Released Party. Because this is a class action settlement, this Settlement Agreement must receive preliminary and final approval by the Court. It is an express condition of this Settlement Agreement that the Court shall enter the Final Approval Order and Final Judgment and that the Settlement Agreement reach the Effective Date. In the event that the Effective Date does not occur, this Settlement Agreement shall be terminated and only those provisions necessary to effectuate termination and to restore fully the Parties to their respective positions before entry of this Settlement Agreement shall be given effect and enforced. In such event, the Parties shall bear their own costs and attorneys' fees in all respects, including without limitation with regard to the efforts to obtain any Court approval under this Settlement Agreement.
- 4. <u>Exclusive and Continuing Jurisdiction</u>. The Court shall retain exclusive and continuing jurisdiction to interpret and enforce the terms, conditions, and obligations of this Settlement Agreement and its own orders and judgments.

- a. In the event of a breach of this Settlement Agreement by Plaintiffs, Generac, or a Settlement Class Member, the Court may exercise all of its equitable powers to enforce this Settlement Agreement and the Final Approval Order and Final Judgment irrespective of the availability or adequacy of any remedy at law. Such powers include, among others, the power of specific performance and injunctive relief.
- b. Generac, Class Counsel, and Plaintiffs agree, and Settlement Class Members and Claimants will be deemed to have agreed, to submit irrevocably to the exclusive jurisdiction of the Court for the resolution of any matter covered by this Settlement Agreement, the Release, the Final Approval Order, or the Final Judgment, or the applicability of this Settlement Agreement, the Release, the Final Approval Order, or the Final Judgment.
- c. In the event that the provisions of this Settlement Agreement, the Release, the Final Approval Order, or the Final Judgment are asserted by any Released Party as a ground for a defense, in whole or in part, to any claim or cause of action, or are otherwise raised as an objection in any other suit, action, or proceeding by any Releasing Party or any other Person covered by the Release, it is hereby agreed that the Released Party shall be entitled to seek an immediate stay of that suit, action, or proceeding until after the Court has entered an order or judgment determining any issues relating to the defense or objections based on such provisions. Plaintiffs and Class Counsel will not oppose such relief.
- 5. <u>Stay of Proceedings</u>. The proposed Preliminary Approval Order shall request that all further proceedings in the Lawsuit be stayed except as necessary to approve and effectuate the Settlement.
- 6. <u>Defendants' Attorneys' Fees and Costs</u>. Generac shall bear its own attorneys' fees and costs in the Lawsuit.

7. **Representation by Counsel**. The Parties are represented by competent counsel,

and they have had an opportunity to consult and have consulted with counsel prior to executing

this Settlement Agreement. Each Party represents that it understands the terms and consequences

of executing this Settlement Agreement, and executes it and agrees to be bound by the terms set

forth herein knowingly, intelligently, and voluntarily.

8. <u>Mutual Full Cooperation</u>. The Parties agree to cooperate with each other in good

faith to accomplish the terms of this Settlement Agreement, including the execution of such

documents and such other action as may reasonably be necessary to implement the terms of this

Settlement Agreement and obtain the Court's final approval of the Settlement Agreement

including the entry of an order dismissing the Lawsuit with prejudice.

9. No Tax Advice. Neither the Parties nor their counsel intend anything contained

herein to constitute legal advice regarding the taxability of any amount paid hereunder, and no

Person shall rely on anything contained in this Settlement Agreement to provide tax advice, and

shall obtain his, her, or its own independent tax advice with respect to any payment under this

Agreement.

10. Notices. Unless otherwise specifically provided herein, all notices, demands, or

other communications given hereunder shall be in writing by mail or email and addressed as

follows:

To Plaintiffs and the Settlement Class:

Joseph G. Sauder

Joseph B. Kenney

SAUDER SCHELKOPF LLC

1109 Lancaster Avenue

Berwyn, PA 19312

jgs@sstriallawyers.com

jbk@sstriallawyers.com

34

To Generac:

Michael P. Daly
Meaghan V. Geatens
Faegre Drinker Biddle & Reath LLP
One Logan Square, Ste. 2000
Philadelphia, PA 19103
michael.daly@faegredrinker.com
meaghan.geatens@faegredrinker.com

- 11. **Drafting of Agreement**. The language of all parts of this Settlement Agreement shall be construed as a whole, according to its fair meaning, and not strictly for or against any Party. No Party shall be deemed the drafter of this Settlement Agreement. The Parties acknowledge that the terms of this Settlement Agreement are contractual and are the product of negotiations between the Parties and their counsel. Each Party and its counsel cooperated in the drafting and preparation of this Settlement Agreement, and this Settlement Agreement shall not be construed against any Party because of their role in drafting it.
- 12. <u>Governing Law</u>. This Settlement Agreement shall be governed by the laws of the Commonwealth of Pennsylvania, without regard to its conflict of laws rules or precedents.
- 13. <u>Modification</u>. This Settlement Agreement may not be changed, altered, or modified, except in writing and signed by all Parties. The Settlement Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by all Parties.
- 14. <u>Integration</u>. This Settlement Agreement and its Exhibits contain the entire agreement between the Parties relating to the Settlement and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a Party or its counsel, are merged herein. Each Party represents and warrants that it is not relying on any representation not expressly included in this Settlement Agreement. No rights hereunder may be waived except in writing.

- 15. **Extensions**. The Parties reserve the right, subject to the Court's approval, to agree to any reasonable extensions of time that might be necessary to carry out any of the provisions of this Settlement Agreement.
- 16. Use in Other Proceedings. The Parties expressly acknowledge and agree that this Settlement Agreement and its Exhibits, along with all related drafts, motions, pleadings, conversations, negotiations, and correspondence, constitute an offer of compromise and a compromise within the meaning of Federal Rule of Evidence 408 and any equivalent rule of evidence in any state. In no event shall this Settlement Agreement, any of its provisions or any negotiations, statements or court proceedings relating to its provisions in any way be construed as, offered as, received as, used as, or deemed to be evidence of any kind in the Lawsuit, in any other action, or in any judicial, administrative, regulatory or other proceeding, except in a proceeding to enforce this Settlement Agreement or the rights of the Parties, their counsel, or the Released Parties. Without limiting the foregoing, neither this Settlement Agreement nor any related negotiations, statements, or court proceedings shall be construed as, offered as, received as, used as or deemed to be evidence or an admission or concession of any liability or wrongdoing whatsoever on the part of any Person, including, but not limited to, the Released Parties, Plaintiffs, or the Settlement Class or as a waiver by the Released Parties, Plaintiffs, or the Settlement Class of any applicable privileges, claims or defenses.
- 17. <u>Subheadings</u>. Sub-headings in this Settlement Agreement are for purposes of clarity only and are not intended to modify the terms of this Settlement Agreement's text, which are controlling.

18. <u>Waiver</u>. The waiver by any party to this Settlement Agreement, of any breach of its terms shall not be deemed or construed to be a waiver of any other breach of this Settlement

Agreement, whether prior, subsequent, or contemporaneous.

19. <u>Signatures</u>. Each Person executing this Settlement Agreement on behalf of any

Party warrants that such Person has the authority to do so. This Settlement Agreement shall be

binding upon, and inure to the benefit of, the agents, heirs, executors, administrators, successors,

and assigns of the Parties.

20. <u>Counterparts</u>. This Settlement Agreement may be executed in any number of

counterparts, including by electronic signature, each of which shall be deemed to be an original.

All counterparts shall constitute one Settlement Agreement, binding on all Parties, regardless of

whether all Parties are signatories to the same counterpart, but the Settlement Agreement will be

without effect until and unless all Parties to this Settlement Agreement have executed a

counterpart.

[THE REMAINDER OF THIS PAGE HAS INTENTIONALLY BEEN LEFT BLANK]

# AGREED AND ENTERED INTO BY EACH PARTY ON THE DATES SET FORTH BELOW:

Dated: February <u>3</u> , 2023	By: Raj Kanuru Title: Executive Vice President, General Counsel On behalf of Generac Power Systems, Inc.
Dated: February, 2023	Joseph G. Sauder Class Counsel
Dated: February, 2023	Greg McMahon Plaintiff
Dated: February, 2023	Adam Goldberg Plaintiff

# AGREED AND ENTERED INTO BY EACH PARTY ON THE DATES SET FORTH BELOW:

Dated: February, 2023	By: Raj Kanuru Title: Executive Vice President, Genera Counsel On behalf of Generac Power Systems, Inc.
Dated: February 3, 2023	Joseph G. Sauder Class Counsel
Dated: February, 2023	Greg McMahon Plaintiff
Dated: February, 2023	Adam Goldberg Plaintiff

## AGREED AND ENTERED INTO BY EACH PARTY ON THE DATES SET FORTH BELOW:

Dated: February, 2023	By: Raj Kanuru Title: Executive Vice President, General Counsel On behalf of Generac Power Systems, Inc.
Dated: February, 2023	Joseph G. Sauder Class Counsel
Dated: February, 2023	Docusigned by:  Gry MMalion  20833373CB23433  Greg McMahon  Plaintiff
Dated: February, 2023	Adam Goldberg Plaintiff

## AGREED AND ENTERED INTO BY EACH PARTY ON THE DATES SET FORTH BELOW:

Dated: February, 2023	By: Raj Kanuru Title: Executive Vice President, General Counsel On behalf of Generac Power Systems, Inc.
Dated: February, 2023	Joseph G. Sauder Class Counsel
Dated: February, 2023	Greg McMahon Plaintiff
Dated: February <sup>3</sup> , 2023	Adam Goldberg Adam Goldberg (Feb 3, 2023 13:02 EST)  Adam Goldberg  Plaintiff

## **EXHIBIT 1**

#### In the United States District Court for the Eastern District of Pennsylvania McMahon v. Generac Power Systems, Inc., No. 2:21-cv-05660

#### **Settlement Claim Form**

If you are a Settlement Class Member and would like to receive a reimbursement for a previously paid plenum inspection fee or obtain a free plenum inspection and associated repair (if applicable), your Claim Form must be completed and postmarked on or before [Claims Deadline]. Settlement Class Members will be bound by the Release set forth on the Settlement Website. Please read the full notice at [website] before submitting this form.

PART O	NE – CLAIMANT INFORMATION
	current contact information below. It is your responsibility to f your contact information changes after you submit this form.
FIRST NAME	LAST NAME
STREET ADDRESS	
CITY	STATE ZIP CODE
TELEPHONE NUMBER	EMAIL ADDRESS
PART TW	O – GENERATOR INFORMATION
You must provide information abo	out the location of your generator below.
INSTALLATION STREET ADI	DRESS

CITY	Y		STATE	ZIP CODE
Unit	Serial	Number:		
		PART THR	EE – CLAIM INF	ORMATION
for th those Servio If the	eir \$80 unreimb who can make ce Dealer. Pleas type of claim y	oursed inspection an Inspection C e check the releva	n fees incurred prior feather for a cost-free ant boxes below to cost that you submit a	who can make a Reimbursement Claim or to [Preliminary Approval Date], and the plenum inspection by an Authorized claim your benefits under the settlement. Indicated that the support with your claim, you
REIN	<b>IBURSEMEN</b>	Γ CLAIM:		
То та	ake a Reimburse	ement Claim, you	must be able to che	eck <u>all</u> of the following four boxes:
	I own or owne	ed a Generac hom	ne standby generato	r;
	That generator Inspection No	-	nerac's voluntary ins	spection program pursuant to the
	I paid \$80 to t	ake part in the In	spection Program; a	and
	I was not prev the Inspection	•	ed by Generac or the	e service provider for the cost of
		eimbursement C nation requested		choose your preferred payment method
	Venmo: Zelle:		[Venmo Username	[Zelle account information]
			[Bank Namailing address pro	me, Acct. Number, & Routing Number]
INSP	ECTION CLA	IM:		
To ma	ake an Inspectio	n Claim, you mu	st be able to check a	all of the following three boxes:
	I currently ow	n a Generac hom	ne standby generator	 ,

PART FIVE – CHECKLIST		
SIGNATURE DATE		
	This is the only Claim Form that I am submitting.  I declare under penalty of perjury that all of the information I have provided on or with this claim form is true and correct.	
	PART FOUR – CLAIMANT ATTESTATION	
statem name the th	checked the second option regarding maintenance, you must also include a narrative nent that explains the maintenance or service that was performed on your generator and the of the Generac Authorized Service Dealer that performed the maintenance. If you checked ird option, you must also include photographic support that shows the corrosion on your ator's plenum.	
	that generator has corrosion on the plenum surface.	
	although that generator has received general maintenance or service from an Authorized Service Dealer since the start of the Inspection Program, it was not examined for corrosion on the plenum surface; or	
	that generator has not received general maintenance or service from an Authorized Service Dealer since the start of the Inspection Program; or	
You n	nust also be able to check at least one of the following three boxes:	
	I have not had that generator's plenum inspected through the Inspection Program.	
	That generator was part of Generac's voluntary inspection program pursuant to the Inspection Notice Letter; and	

Before submitting this Claim Form, please make sure you have:

- 1. completed all fields and provide all information requested in the Claimant Information (Part One), Generator Information (Part Two), and Claim Information (Part Three) sections of this Claim Form; and
- 2. signed the Attestation (Part Four). You must sign the Attestation to be eligible to receive

any benefits under the Settlement Agreement.

Please keep a copy of your Claim Form for your records.

QUESTIONS? VISIT [WEBSITE] OR CALL [NUMBER] TOLL-FREE

## **EXHIBIT 2**

#### **LEGAL NOTICE**

Please read this Notice as it affects your legal rights.

A federal court authorized this notice. It is not a solicitation from a lawyer.

# If you own or owned a Generac home standby generator with a fuel plenum that was part of Generac's voluntary fuel plenum inspection program, you may be entitled to benefits from a class action settlement

A settlement has been proposed in a class action against Generac Power Systems, Inc. ("Generac"). The case concerns an Inspection Notice Letter that was sent to owners of certain Generac air cooled home standby generators in specific regions of the United States that were manufactured between 2008-2016. The Inspection Notice Letter offered inspections of generators' fuel plenums for a discounted \$80 fee that would be refunded if a plenum had significant corrosion (the "Inspection Program"). The Plaintiffs allege that Generac should not have had fees associated with the inspections, and that doing so amounted to a breach of its express and implied warranties. Generac denies any liability and has moved to dismiss the Plaintiffs' claims. The parties subsequently settled the lawsuit in order to avoid the costs, uncertainty, and inconvenience of litigation.

Who's included in the Settlement Class? The Settlement Class is defined as "(1) all current or former owners of a Class Generator [defined as a Generac home standby generators that were part of the Inspection Program] who paid a \$80 Inspection Program fee that was not reimbursed prior to the [date the Court preliminarily approves the Settlement], and (2) all current owners of Class Generators that were not inspected pursuant to the Inspection Program prior to the [date the Court preliminarily approves the Settlement]." "Excluded from the Settlement Class are: (i) Generac, its officers, directors, affiliates, legal representatives, employees, successors, and assigns, and entities in which Generac has a controlling interest; (ii) the judge presiding over the Lawsuit and any member of the Court's staff and immediate family; and (iii) local, municipal, state, and federal governmental entities."

What benefits does the Settlement provide? The Settlement provides for (1) a refund of the unreimbursed \$80 inspection fee for Settlement Class Members who paid for an inspection as part of the Inspection Program and (2) a cost-free plenum inspection by an Authorized Service Dealer, subject to certain conditions, for Settlement Class Members who have not had their plenum inspected for free through the Inspection Program, along with a repair of the plenum if it is found to be corroded after inspection. To receive your benefit, you must submit a valid and timely Claim Form. Claims must be submitted by [DATE]. You can file your Claim online at www.fuelplenumsettlement.com or download a Claim Form and file it by mail.

**Your other options.** If you do not want to be legally bound by the Settlement, you must exclude yourself by **INSERT**. If you do not exclude yourself, you may object to the Settlement by submitting a written objection by **INSERT**. The Notice of Settlement available at the website explains how to exclude yourself from or object to the Settlement. The Court will hold a Final Approval Hearing on **INSERT** to decide whether to approve the Settlement, whether to award Class Counsel attorneys' fees and expenses up to \$1.5 million paid separately from the class relief, and whether to award the Class Representatives service awards of up to \$2,500. You may hire you own attorney at your own expense but you do not have to. If approved, these amounts, as well as all settlement administration costs, will be paid by Generac. For detailed information call +1- **INSERT** or visit **INSERT**.

## **EXHIBIT 3**

#### NOTICE OF CLASS ACTION SETTLEMENT

#### UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Please read this Notice as it affects your legal rights. A federal court authorized this notice. This is not a solicitation from a lawyer.

Attention: If you own or owned a Generac home standby generator with a fuel plenum that was part of Generac's voluntary fuel plenum inspection program, you may be entitled to benefits from a class action settlement.<sup>1</sup>

- A settlement has been proposed in a class action against Generac Power Systems, Inc. ("Generac").
- The case concerns an Inspection Notice Letter that was sent to owners of certain Generac air cooled home standby generators in specific regions of the United States for units that were manufactured between 2008 2016.
- The Inspection Notice Letter offered inspections of generators' fuel plenums for a discounted \$80 fee that would be refunded if a plenum had significant corrosion (the "Inspection Program").
- The Plaintiffs allege that Generac should not have had fees associated with the inspections, and that doing so amounted to a breach of Generac's express or implied warranties.
- Generac denies any liability and has moved to dismiss the Plaintiffs' claims. The parties subsequently settled the lawsuit in order to avoid the costs, uncertainty, and inconvenience of litigation.
- The Settlement provides three kinds of potential benefits to Settlement Class Members: reimbursement, inspection, and, if necessary, replacement.
  - First, Settlement Class Members who paid for an inspection of their Class Generator pursuant to the Inspection Program and the Inspection Notice Letter can file a claim (a "Reimbursement Claim") for a refund of their unreimbursed, out-of-pocket \$80 inspection fee.
  - Second, Settlement Class Members who have not had their generator plenum inspected through the Inspection Program can submit a claim for a cost-free plenum inspection of their Class Generator by an Authorized Service Dealer (an "Inspection

<sup>&</sup>lt;sup>1</sup> The definition of any capitalized term not defined herein can be found in the Settlement Agreement which can be downloaded at the Settlement Website: www.fuelplenumsettlement.com.

Claim"). To do so, Claimants must: (i) attest that the Class Generator has not received general maintenance or service from an Authorized Service Dealer since the start of the Inspection Program; (ii) attest that, although the Class Generator has received general maintenance or service from an Authorized Service Dealer since the start of the Inspection Program, it nevertheless was not examined for corrosion on the plenum surface (and must submit a supporting narrative statement to that effect with their claim); or (iii) attest that the Class Generator has corrosion on the plenum surface (and must submit supporting photographic evidence with their Inspection Claim).

- Third, if inspections of the Settlement Class Members' Class Generators finds corrosion on the plenum surface, they are eligible for a free replacement of the fuel plenum (inclusive of parts and labor) to be performed by a Generac Authorized Service Dealer.
- The Court has preliminarily approved the Settlement. This Notice provides information about the Lawsuit, the Settlement, and your options as a Settlement Class Member.

Your Legal Rights and Options in This Settlement	
Submit a Claim Deadline: [INSERT]	To receive a benefit, you must submit a Claim Form by the deadlines described below and listed on the Settlement Website, <a href="https://www.fuelplenumsettlement.com">www.fuelplenumsettlement.com</a> .
Request Exclusion / Opt-Out Deadline: [INSERT]	This option, described in Sections 13 and 14 below, allows you to sue or continue to sue Generac regarding claims that Generac should have provided free generator plenum inspections to owners of Generac home standby generator owners with generators subject to the Inspection Program and that not doing so amounted to a breach of an express or implied warranty. If you opt-out, you will not be bound by any of the terms of the Settlement but you will also not be entitled to submit a Claim Form for benefits under the Settlement or object to the terms of the Settlement.
Objection Deadline: [INSERT]	You are entitled to submit a written objection telling the Court what you do not like about the Settlement pursuant to the procedures described in Section 15 below.
Attend the Final Approval Hearing Scheduled for [INSERT]	You are entitled to attend the Final Approval Hearing at which the Court will consider whether to grant final approval of the Settlement. The date and time of the Final Approval Hearing may be changed by the Court. Please check the Settlement Website at www.fuelplenumsettlement.com for updates.

Do Nothing	If you are a Settlement Class Member and do nothing, you will be bound by the terms of the Settlement if it is approved by the Court, whether or not you submit a Claim Form, and you will be subject to the Release set forth in the Settlement.

#### TABLE OF CONTENTS

1. WHY WAS THIS NOTICE ISSUED?	∠
2. WHAT IS THE LAWSUIT ABOUT?	2
3. WHAT IS A CLASS ACTION?	2
4. WHY IS THERE A SETTLEMENT?	2
5. AM I A SETTLEMENT CLASS MEMBER?	
6. HOW DO I KNOW IF MY RESIDENCE OR BUILDING HAS THESE PRODUCTS?	<del>[</del>
7. WHAT BENEFITS ARE AVAILABLE UNDER THE SETTLEMENT?	5
8. WHEN WILL I RECEIVE MY SETTLEMENT PAYMENT OR INSPECTION?	6
9. HOW DO I SUBMIT A CLAIM FORM?	6
10. WHAT ARE THE RELEASED CLAIMS?	6
11. WHO IS CLASS COUNSEL?	8
12. CLASS COUNSEL'S ATTORNEYS' FEES AND COSTS	8
13. HOW DO I OPT OUT OF THE SETTLEMENT?	8
14. WHAT HAPPENS IF I DO NOT OPT-OUT OF THE SETTLEMENT?	
15. HOW DO I OBJECT TO THE SETTLEMENT?	
16. WHAT IS THE DIFFERENCE BETWEEN OBJECTING AND OPTING OUT?	10
17. WHEN AND WHERE IS THE FINAL APPROVAL HEARING?	10
18. HOW DO I GET MORE INFORMATION?	
19. WHAT IF MY INFORMATION CHANGES AFTER I SUBMITTED A CLAIM?	<b>1</b> 1

#### 1. WHY WAS THIS NOTICE ISSUED?

You received this Notice of Settlement because Generac's records indicate that you may own or have owned a Class Generator.

The United States District Court for the Eastern District of Pennsylvania preliminarily approved the Settlement and authorized this Notice to inform you about your options before it decides whether to grant final approval of the Settlement. Additional information about the Settlement can be found at www.fuelplenumsettlement.com.

#### 2. WHAT IS THE LAWSUIT ABOUT?

A settlement has been proposed in a class action against Generac Power Systems, Inc. ("Generac"). The case concerns an Inspection Notice Letter that was sent to owners of certain Generac air cooled home standby generators in specific regions of the United States for units that were manufactured between 2008 - 2016. The Inspection Notice Letter offered inspections of the generators' fuel plenums for a discounted \$80 fee that would be refunded if a plenum had significant corrosion (the "Inspection Program"). The Plaintiffs claimed that Generac should not have had a fee associated with the inspection, and that doing so amounted to a breach of its express and implied warranties. Generac denies any liability and maintains that it did not violate any warranties. Generac has historically instructed and expected Authorized Service Dealers to examine fuel systems (including the fuel plenum) during any general maintenance or service visits. The parties subsequently settled the lawsuit in order to avoid the costs, uncertainty, and inconvenience of litigation.

The Settlement does not include, or release, any claims for personal injury, property damage (other than damage to the Class Generators related to the plenum), or subrogation.

#### 3. WHAT IS A CLASS ACTION?

In a class action lawsuit, one or more people sue on behalf of other people who allegedly have similar claims. For purposes of this settlement, one court will resolve the issues alleged in the Lawsuit for all Settlement Class Members.

#### 4. WHY IS THERE A SETTLEMENT?

Generac denies that it has done anything wrong and admits no liability. The Court has not decided that the Plaintiffs or Generac should win the Lawsuit. Instead, both sides agreed to a Settlement Agreement. That way, they avoid the cost of a trial, and the Settlement Class Members will receive benefits now rather than years from now, if at all.

#### 5. AM I A SETTLEMENT CLASS MEMBER?

The term "Settlement Class" is defined in the Settlement Agreement as:

- (1) all current or former owners of a Class Generator who paid an Inspection Program fee up to \$80 that was not reimbursed prior to the Preliminary Approval Date, and
- (2) all current owners of Class Generators that were not inspected pursuant to the Inspection Program prior to the Preliminary Approval Date.

Excluded from the Settlement Class are: (i) Generac, its officers, directors, affiliates, legal representatives, employees, successors, and assigns, and entities in which Generac has a controlling interest; (ii) the judge presiding over the Lawsuit and any member of the Court's staff and immediate family; and (iii) local, municipal, state, and federal governmental entities.

The term "Class Generators" means Generac home standby generators that were part of the Inspection Program.

The term "Inspection Program" means the voluntary inspection program previously offered by Generac pursuant to the Inspection Notice Letter, in which owners of Class Generators could schedule an inspection of their Class Generator's fuel plenum for a discounted, \$80 inspection fee that would be reimbursed if the fuel plenum had significant corrosion.

The term "Inspection Notice Letter" means a letter from Generac, to the owners of Class Generators, containing notice of the Inspection Program.

#### 6. HOW DO I KNOW IF MY RESIDENCE OR BUILDING HAS THESE PRODUCTS?

Class Generators can be identified by serial number. The Settlement Website will have a dedicated page to help you locate the serial number on the Class Generators and verify whether the unit is included within the class.

#### 7. WHAT BENEFITS ARE AVAILABLE UNDER THE SETTLEMENT?

The Settlement will provide the following benefits to Eligible Claimants who submit a valid and timely Claim Form to the Settlement Administrator:

**Reimbursement Claims**. Settlement Class Members who paid for an inspection pursuant to the Inspection Program and the Inspection Notice Letter prior to [Preliminary Approval Date] can file a claim (a "Reimbursement Claim") for their unreimbursed, out-of-pocket inspection fee of \$80.00.

**Inspection Claims**. Settlement Class Members who have not had their generator plenum inspected through the Inspection Program can submit a claim for a cost-free plenum inspection of their Class Generator by an Authorized Service Dealer (an "Inspection Claim"). To do so, Claimants must: (i) attest that the Class Generator has not received general maintenance or service from an Authorized Service Dealer since the start of the Inspection Program; (ii) attest that, although the Class Generator has received general maintenance or service from an Authorized Service Dealer

since the start of the Inspection Program, it nevertheless was not examined for corrosion on the plenum surface (and must submit a supporting narrative statement to that effect with their claim); or (iii) attest that the Class Generator has corrosion on the plenum surface (and must submit photographic support with their Inspection Claim). Generac will identify local Authorized Service Dealers who will perform the free inspections for approved claimants.

**Replacements.** If inspections of the Settlement Class Member's Class Generator inspection finds corrosion on the plenum surface, that Settlement Class Member would be eligible for a free replacement of the fuel plenum (inclusive of parts and labor) to be performed by a Generac Authorized Service Dealer.

#### 8. WHEN WILL I RECEIVE MY SETTLEMENT PAYMENT OR INSPECTION?

The Court will hold a hearing on [INSERT] at [INSERT].m. to decide whether to approve the Settlement Agreement. If the Court approves the settlement, there may then be appeals which may delay the conclusion of the case. It is always uncertain whether such appeals will result in a favorable decision for the Settlement Class, and concluding them can take time, perhaps more than a year. You can check on the progress of the case on the Settlement Website at www.fuelplenumsettlement.com. *Please be patient*.

#### 9. HOW DO I SUBMIT A CLAIM FORM?

To be eligible to receive any of the benefits described above, you must complete and submit a valid and timely Claim Form. Your Claim Form and supporting documentation may be submitted:

- through the claim portal on the Settlement Website, www.fuelplenumsettlement.com;
- by email to the Settlement Administrator using the email address [INSERT]; or
- by U.S. Mail to the Settlement Administrator using the address: [INSERT].

Claim Forms are available for download at www.fuelplenumsettlement.com, and are also available by email or by writing to the Settlement Administrator using the information above.

The deadline for submitting a Claim is [INSERT].

Please check the Settlement Website at www.fuelplenumsettlement.com, for updates regarding the Effective Date and corresponding Claim Form Deadline dates. <u>In any event, please file your Claim Form as soon as possible.</u>

#### 10. WHAT ARE THE RELEASED CLAIMS?

**Release**. Upon the Effective Date of the Settlement, the Releasing Parties will release and forever discharge the Released Parties from the Released Claims. Those terms are defined as follows:

- Releasing Parties: Plaintiffs and all Settlement Class Members (whether or not they submit a Claim Form or are Eligible Claimants), and their respective assigns, heirs, successors, predecessors, parents, subsidiaries, officers, directors, shareholders, members, managers, partners, principals, representatives, and employees (each solely in their respective capacity as such), and all those who assert or could asserts claims on their behalf (but excluding any Person who timely opted out of the Settlement).
- Released Parties: Generac and each of its past, present, and future members, owners, direct and indirect parents, subsidiaries, managers, divisions, predecessors, successors, holding companies, and affiliated companies and corporations, and each of the past, present, and future directors, officers, managers, members, employees, contractors, general partners, limited partners, investors, controlling persons, owners, trustees, principals, agents, associates, administrators, insurers, reinsurers, shareholders, attorneys, accountants, advisors, consultants, assignors, assignees, representatives, fiduciaries, predecessors, successors, divisions, joint ventures, or related entities of those companies including, but not limited to, vendors, subvendors, contractors, subcontractors, authorized service dealers, and other service providers.
- **Released Claims:** any and all claims, causes of action, suits, obligations, debts, demands, agreements, promises, liabilities, damages, losses, controversies, costs, expenses, and attorneys' fees of any nature whatsoever, whether based on any federal law, state law, common law, territorial law, foreign law, contract, rule, regulation, any regulatory promulgation (including, but not limited to, any opinion or declaratory ruling), common law or equity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, latent or patent, actual or contingent, liquidated or unliquidated, punitive or compensatory, of every nature and description whatsoever, as of the date of the Final Approval Order, that arise out of or relate in any way to the Class Generators' plenums, the Inspection Program, and/or the Inspection Notice Letter. Without limiting the generality of the foregoing, Released Claims shall include, with regard to the foregoing subject matter: (1) any class, group, collective or individual claim for any breach or violation of any federal or state statute, case law, common law or other law; (2) any claim for breach of any duty imposed by law, by contract or otherwise; and (3) any claim for damages, injunctive relief, declaratory relief, class damages or relief, penalties, punitive damages, exemplary damages, restitution, rescission or any claim for damages based upon any multiplication or enhancement of compensatory damages arising out of or relating to the above.
- Exclusions from Released Claims: The Released Claims exclude any claims for death, personal injury, property damage (other than damage to the Class Generators related to the plenum), or subrogation.
- <u>Important Note</u>: The releases are a consequence of membership in the Settlement Class and the Court's approval process, and are not conditional on receipt of inspections, replacement plenums, or any payment or other benefit by any particular member of the Settlement Class.

#### 11. WHO IS CLASS COUNSEL?

In its Preliminary Approval Order, the Court appointed Sauder Schelkopf LLC as Class Counsel to represent Plaintiffs and the Settlement Class Members. You will not be charged for these lawyers. If you wish to be represented by your own lawyer, you may hire one at your own expense. The contact information for Class Counsel is set forth below:

Joseph G. Sauder Joseph B. Kenney Sauder Schelkopf LLC 1109 Lancaster Avenue Berwyn, PA 19312 Telephone: (888) 711-9975

Email: info@sstriallawyers.com Website: www.sauderschelkopf.com

#### 12. CLASS COUNSEL'S ATTORNEYS' FEES AND COSTS.

Within the time period established by the Court and no later than fourteen (14) days prior to the Objection and Opt-Out Deadline, Class Counsel will file a Motion for Approval of Attorneys' Fees, Cost and Service Awards to be paid by Generac, which shall be included on the Settlement Website. Class Counsel in the Lawsuit shall apply for the following: (a) attorneys' fees and costs not to exceed \$1,500,000 and (b) service awards of \$2,500 for Greg McMahon and Adam Goldberg, in recognition of their time, costs and effort in the Lawsuit, including, for example, gathering documents and materials and performing other representative duties.

#### 13. HOW DO I OPT OUT OF THE SETTLEMENT?

Settlement Class Members may submit a Request for Exclusion from (i.e., "opt-out" of) the Settlement to preserve their individual rights to sue or continue to sue Generac with respect to the Class Generators' plenums, the Inspection Program, and/or the Inspection Notice. A member of the Settlement Class who submits a valid Request for Exclusion cannot object to the Settlement and is not eligible to receive benefits under the Settlement. If you have requested exclusion from the settlement, you may not speak at the Final Approval Hearing because you are not bound by the settlement.

To validly request exclusion from the Settlement Class, a Settlement Class Member must submit a written request to opt out to the Settlement Administrator that it is postmarked by [INSERT] stating "I wish to exclude myself from the Settlement Class in the Plenum Inspection Program Class Action Settlement" (or substantially similar clear and unambiguous language). That written request shall contain the Settlement Class Member's printed name, address, telephone number, email address (if any), and date of birth, generator serial number, and the address at which the generator is installed. The Request for Exclusion must contain the actual written signature of the Settlement Class Member seeking to exclude himself or herself from the Settlement Class. Requests for Exclusion

cannot be made on a group or class basis, except that joint owners of the same residence or structure may opt out by using the same form so long as it is individually signed by each joint owner.

All Requests for Exclusion must be sent to the Settlement Administrator at the following address: [INSERT]

A Settlement Class Member who opts out can, on or before the Objection and Opt-Out Deadline, withdraw their Request for Exclusion by submitting a written request to the Settlement Administrator stating their desire to revoke their Request for Exclusion along with their written signature.

#### 14. WHAT HAPPENS IF I DO NOT OPT-OUT OF THE SETTLEMENT?

Any Settlement Class Member who does not submit a valid and timely written Request for Exclusion shall be bound by all subsequent proceedings, orders and judgments in this Lawsuit, including, but not limited to, the Release, the Final Approval Order, and the Final Judgment, even if such Settlement Class Member has litigation pending, or subsequently initiates litigation, against any Released Party relating to the Released Claims.

#### 15. HOW DO I OBJECT TO THE SETTLEMENT?

Settlement Class Members who do not submit a written Request for Exclusion may present a written objection to the Settlement explaining why they believe that the Settlement should not be approved by the Court as fair, reasonable, and adequate. To object to the Settlement, a Settlement Class Member must submit a written objection to the Settlement Administrator that it is postmarked on or before [INSERT], and include a detailed written statement of the objection(s) and the aspect(s) of the Settlement being challenged, as well as the specific reasons, if any, for each such objection, including any evidence and legal authority that the Settlement Class Member wishes to bring to the Court's attention. Any objection after that time will not be considered. All written Objections must be sent to the Settlement Administrator at the following address: [INSERT]

That written statement shall contain (a) the Settlement Class Member's printed name, address, telephone number, email address (if any), and date of birth; (b) evidence showing that the objector is a Settlement Class Member, including the address of the residence or structure that contains or contained the Class Generator and proof that the residence or structure contains or contained the Class Generator (photographs, contemporaneous installation records, etc.); (c) any other supporting papers, materials, or briefs that the objecting Settlement Class Member wishes the Court to consider when reviewing the objection; (d) the actual written signature of the Settlement Class Member making the objection; and (e) a statement whether the objecting Settlement Class Member and/or his, her, or its counsel intend to appear at the Final Approval Hearing.

A Settlement Class Member may object on his or her own behalf or through an attorney; however, even if represented, the Settlement Class Member must individually sign the objection and all attorneys who are involved in any way asserting objections on behalf of the Settlement Class

Member must be listed on the objection papers. Counsel for the Parties may take the deposition of any objector prior to the Final Approval Hearing in a location convenient for the objector.

If a Settlement Class Member or counsel for the Settlement Class Member who submits an objection to this Settlement has objected to a class action settlement on any prior occasion, the objection shall also disclose all cases in which they have filed an objection by caption, court and case number, and for each case, the disposition of the objection.

Any objector who files and serves a timely written objection as described above may appear and speak at the Final Approval Hearing, either in person at their own expense or through personal counsel hired at the objector's expense, to object to the fairness, reasonableness, or adequacy of any aspect of the Settlement on the basis set forth in the written objection. As noted above, objectors or their attorneys who intend to make an appearance at the Final Approval Hearing must state their intention to appear in the objection.

An objector shall be entitled to all of the benefits of the Settlement if this Settlement Agreement and the terms contained herein are approved, as long as the objector complies with all requirements of this Settlement Agreement applicable to Settlement Class Members, including the timely and complete submission of a Claim Form and other requirements herein. A Settlement Class Member who objects can, on or before the Final Approval Hearing, withdraw their objection by submitting a written request to the Settlement Administrator stating their desire to withdraw their objection along with their signature.

#### 16. WHAT IS THE DIFFERENCE BETWEEN OBJECTING AND OPTING OUT?

Objecting is simply telling the Court that you disagree with something about the Settlement Agreement. You can object only if you stay in the Settlement Class. Excluding yourself is telling the Court that you don't want to be part of the Settlement Class. If you exclude yourself, you have no basis to object because the settlement no longer affects you.

#### 17. WHEN AND WHERE IS THE FINAL APPROVAL HEARING?

The Court will hold a Final Approval Hearing on [INSERT] at [XX:XX a.m./p.m.], at the United States District Court for the Eastern District of Pennsylvania at 601 Market St, Philadelphia, PA 19106, before Judge Gerald J. Pappert, to consider whether the Settlement is fair, adequate, and reasonable, and whether it should be finally approved. If there are objections, the Court will consider them at that time. The Court will also consider at this time Class Counsel's Motion for Attorneys' Fees, Costs and Service Awards.

**Important:** The date and time of the Final Approval Hearing may be changed by the Court. Please check the Settlement Website at [INSERT] for updates.

Please note that Class Counsel is working on your behalf and will answer any questions that the Court may have about the Settlement. You are welcome to attend the Final Approval Hearing but your appearance is not necessary to receive any benefits available under the Settlement.

#### 18. HOW DO I GET MORE INFORMATION?

This Notice only summarizes the Settlement. The full Settlement Agreement and Exhibits (including copies of this Notice and the Claim Form) are located on the Settlement Website, www.fuelplenumsettlement.com.

If you need more information or have any questions, you may contact the Settlement Administrator via the Settlement Website, www.fuelplenumsettlement.com, by toll-free telephone at <a href="INSERT">[INSERT]</a>, or by email at <a href="INSERT">[INSERT]</a>.

PLEASE DO NOT WRITE OR CALL THE COURT, THE CLERK OF THE COURT, GENERAC, OR COUNSEL FOR GENERAC FOR INFORMATION ABOUT THE SETTLEMENT OR THIS LAWSUIT.

#### 19. WHAT IF MY INFORMATION CHANGES AFTER I SUBMITTED A CLAIM?

It is your responsibility to inform the Settlement Administrator of your updated information. You may do so at the address below: [INSERT]

## **EXHIBIT 4**

## IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GREG MCMAHON and ADAM GOLDBERG,

Plaintiffs,

Civil Action No. 2:21-cv-05660

v.

GENERAC POWER SYSTEMS, INC.,

Defendant.

# [PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL TO CLASS ACTION SETTLEMENT, PROVISIONALLY CERTIFYING SETTLEMENT CLASS, DIRECTING NOTICE TO THE SETTLEMENT CLASS, AND SCHEDULING FINAL APPROVAL HEARING

Plaintiffs Greg McMahon and Adam Goldberg ("Plaintiffs") and Defendant Generac Power Systems, Inc. ("Generac"), have participated in mediation and executed a proposed Settlement Agreement (the "Settlement Agreement" or "Settlement"). Pursuant to the Settlement Agreement, Plaintiffs have moved for entry of an order granting preliminary approval of the Settlement. The Court hereby adopts and incorporates the terms of the Settlement Agreement for the purposes of this Preliminary Approval Order, including the Definitions set forth in the Settlement Agreement. A copy of the Settlement Agreement has been filed with the Court and will be posted to the Settlement Website, www.fuelplenumsettlement.com. Having reviewed the Settlement Agreement and considered the submissions in support of preliminary approval of the Settlement, the Court now orders as follows:

#### I. <u>CERTIFICATION OF SETTLEMENT CLASS</u>

The Settlement Agreement provides for a class action settlement of the claims alleged in this Lawsuit. The Court has considered the (1) allegations, information, arguments, and

authorities provided by the Parties in connection with the pleadings previously filed in this case; (2) information, arguments, and authorities provided by Plaintiffs in their brief in support of their motion for entry of an order granting preliminary approval to the Settlement; (3) the terms of the Settlement Agreement, including, but not limited to, the definition of the Settlement Class and the benefits to be provided to the Settlement Class; and (4) the Settlement's elimination of any potential manageability issue that may otherwise have existed if litigation continued. Based on those considerations, the Court hereby finds as follows for settlement purposes only at this time:

- A. That the prerequisites for a class action under Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure have been satisfied. The Court finds, in the specific context of this Settlement, that the following requirements are met: (a) the number of Settlement Class Members is in the tens of thousands and is so numerous that joinder of all Settlement Class Members is impracticable; (b) there are questions of law and fact common to the Settlement Class Members; (c) Plaintiffs' claims are typical of the claims of the Settlement Class Members they seek to represent for purposes of the Settlement; (d) Plaintiffs and Class Counsel have fairly and adequately represented the interests of the Settlement Class; (e) questions of law and fact common to the Settlement Class Members predominate over any questions affecting any individual Settlement Class Member; and (f) a class action provides a fair and efficient method for settling the controversy under the criteria set forth in Rule 23.
- B. The Court also concludes that, because the Lawsuit is being settled rather than litigated, the Court need not consider manageability issues that might otherwise be presented by the trial of a class action involving the issues in the Lawsuit.
- C. Pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3), the Court hereby provisionally certifies the following Settlement Class for settlement purposes only:

- (1) all current or former owners of a Class Generator who paid an \$80 Inspection Program fee that was not reimbursed prior to the Preliminary Approval Date, and
- (2) all current owners of Class Generators that were not inspected pursuant to the Inspection Program prior to the Preliminary Approval Date.

Excluded from the Settlement Class are: (i) Generac, its officers, directors, affiliates, legal representatives, employees, successors, and assigns, and entities in which Generac has a controlling interest; (ii) the judge presiding over the Lawsuit and any member of the Court's staff and immediate family; and (iii) local, municipal, state, and federal governmental entities.

D. Plaintiffs Greg McMahon and Adam Goldberg are appointed as the Class Representatives of the Settlement Class, and Joseph G. Sauder and Joseph B. Kenney of Sauder Schelkopf LLC are appointed as Class Counsel.

#### II. PRELIMINARY APPROVAL OF THE TERMS OF THE SETTLEMENT

- A. On a preliminary basis, taking into account (1) the value and certainty of the benefits to be provided by the Settlement to Settlement Class Members who submit valid and timely Claim Forms; (2) the defenses asserted by Generac; (3) the risks to Plaintiffs and Settlement Class Members that Generac would successfully defend against class certification and/or against the merits of the claims alleged in this Lawsuit, whether litigated by Settlement Class Members themselves or on their behalf in a class action; and (4) the length of time that would be required for Settlement Class Members or any of them to obtain a final judgment through one or more trials and appeals, the Settlement appears sufficiently fair, reasonable, and adequate to authorize dissemination of notice to the Settlement Class as set forth in the Settlement Agreement.
- B. Moreover, the Court finds that the Settlement falls within the range of reasonableness because the Settlement has key indicia of fairness, in that (1) the Parties reached the Settlement only after extensive negotiations, which were contentious, at arm's-length,

and facilitated by an experienced mediator (Hon. Diane M. Welsh (Ret.) of JAMS), (2) the Plaintiffs obtained confirmatory discovery, and (3) the proponents of the Settlement are experienced in similar class action litigation.

C. Accordingly, the Settlement is hereby preliminarily approved.

## III. APPOINTMENT OF THE SETTLEMENT ADMINISTRATOR AND APPROVAL OF NOTICE PLAN

As set forth in the Settlement Agreement, the Parties have submitted a proposed Notice Plan, including, without limitation, a Notice of Settlement and Claim Form, a proposed short form publication notice, provisions for providing notice of the Settlement through digital and print methods depending on the estimated reach of the notice to be sent directly to Settlement Class Members following to the efforts described in Paragraph D.8. of the Settlement Agreement, and a Settlement Website, www.fuelplenumsettlement.com. Having reviewed each, the Court finds and concludes as follows:

A. The notices attached as Exhibits to the Settlement Agreement fairly, accurately, and reasonably inform Settlement Class Members of: (1) appropriate information about the nature of this Lawsuit and the essential terms of the Settlement Agreement; (2) appropriate information about how to obtain additional information regarding this matter and the Settlement, in particular, through the Settlement Website, www.fuelplenumsettlement.com; and (3) appropriate information about how to object to, or exclude themselves from, the Settlement if they wish to do so. The Notice of Settlement and proposed short form publication notice also fairly and adequately inform Settlement Class Members that if they do not comply with the specified procedures and the deadline for objections, they will lose any opportunity to have any objection considered at the Final Approval Hearing or to otherwise contest approval of the

Settlement or appeal from any order or judgment entered by the Court in connection with the Settlement.

- B. The Notice of Settlement and Claim Form, the short form publication notice, as well as the other notice methods described in the Notice Plan as set forth in the Settlement Agreement, satisfy the requirements of due process, Rule 23 of the Federal Rules of Civil Procedure, the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, and any other applicable laws, constitutes the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons entitled thereto.
- C. Accordingly, the Court hereby approves the proposed Notice Plan and orders that the form and content of the proposed Notice of Settlement, the proposed short form publication notice, and the proposed Claim Form are hereby approved, and shall be provided to the Settlement Class by the Settlement Administrator as set forth in the Settlement Agreement.
- D. Generac shall notify the appropriate government officials under the Class Action Fairness Act of 2005, 28 U.S.C. § 1715. Proof of compliance will be filed with the Motion for Final Approval.
- E. KCC Class Action Services, LLC is hereby appointed by the Court as the Settlement Administrator, whose reasonable fees and costs are to be paid by Generac.
- F. The Settlement Administrator shall perform and comply with all notice and administration duties ascribed to it in the Settlement Agreement, this Preliminary Approval Order, and subsequent orders that may be entered by this Court in this case.

#### IV. REQUESTS FOR EXCLUSION AND OBJECTIONS

A. All Settlement Class Members have the right to either opt out of or object to the Settlement pursuant to the procedures and schedule set forth in the Settlement Agreement, which

also will be set forth in the Notice of Settlement and on the Settlement Website at www.fuelplenumsettlement.com.

- B. A member of the Settlement Class who submits a timely and valid Request for Exclusion cannot object to the Settlement and is not eligible to receive any Settlement Payment or Inspection.
- 1. To validly request exclusion from the Settlement Class, a Settlement Class Member must submit a written Request for Exclusion to the Settlement Administrator so that it is postmarked by the date 60 days after the date of the Notice Date, stating that "I wish to exclude myself from the Settlement Class in the Plenum Inspection Program Class Action Settlement" (or substantially similar clear and unambiguous language). That written request shall contain the Settlement Class member's printed name, address, telephone number, email address (if any), date of birth, generator serial number, and the address at which the generator is installed. The Request for Exclusion must contain the actual written signature of the Settlement Class Member seeking to exclude himself or herself from the Settlement Class.
- 2. Requests for Exclusion cannot be made on a group or class basis, except that joint owners of the same residence or structure may opt out by using the same form so long as it is individually signed by each joint owner.
- 3. Any Settlement Class Member who does not submit a valid and timely written Request for Exclusion shall be bound by all subsequent proceedings, orders and judgments in this Lawsuit, including, but not limited to, the Release, the Final Approval Order, and the Final Judgment, even if such Settlement Class Member has litigation pending, or subsequently initiates litigation, against any Released Party relating to the Released Claims.

- 4. Any statement or submission purporting or appearing to be both an objection and opt-out shall be treated as a Request for Exclusion.
- C. Any Settlement Class Member who does not submit a written Request for Exclusion may present a written objection to the Settlement explaining why he or she believes that the Settlement Agreement should not be approved by the Court as fair, reasonable and adequate. A Settlement Class Member who wishes to submit an objection must deliver to the Settlement Administrator so that it is postmarked by the date 60 days after the Notice Date, a detailed written statement of the objection(s) and the aspect(s) of the Settlement being challenged, as well as the specific reasons, if any, for each such objection, including any evidence and legal authority that the Settlement Class Member wishes to bring to the Court's attention.
- 1. That written statement shall contain (a) the Settlement Class Member's printed name, address, telephone number, email address (if any), and date of birth; (b) evidence showing that the objector is a Settlement Class Member, including the address of the residence or structure that contains or contained the Class Generator and proof that the residence or structure contains or contained the Class Generator (photographs, contemporaneous installation records, etc.); (c) any other supporting papers, materials, or briefs that the objecting Settlement Class Member wishes the Court to consider when reviewing the objection; (d) the actual written signature of the Settlement Class Member making the objection; and (e) a statement whether the objecting Settlement Class Member and/or his, her, or its counsel intend to appear at the Final Approval Hearing.

- 2. A Settlement Class Member may object on his, her, or its own behalf or through an attorney, however, even if represented, the Settlement Class Member must individually sign the objection and all attorneys involved must be listed on the objection papers.
- 3. Counsel for the Parties may take the deposition of any objector prior to the Final Approval Hearing in a location convenient for the objector.
- 4. Any objector who files and serves a timely written objection may appear at the Final Approval Hearing, either in person at his or her own expense or through personal counsel hired at the objector's expense, to object to the fairness, reasonableness, or adequacy of any aspect of the Settlement on the basis set forth in his or her objection if they expressly state in their objection that they or their counsel intend to appear at the Final Approval Hearing.
- 5. Any Settlement Class Member who fails to comply with these requirements shall waive and forfeit any and all rights that he, she, or it may have to appear separately and/or to object to the Settlement, and shall be bound by all the terms of the Settlement Agreement and by all proceedings, orders and judgments in the Lawsuit, including, but not limited to, the Release, the Final Approval Order, and the Final Judgment, even if such Settlement Class Member has litigation pending or subsequently initiates litigation, against any Released Party relating to the Released Claims.
- 6. If a Settlement Class Member or counsel for the Settlement Class Member has objected to a class action settlement on any prior occasion, the objection shall also disclose all cases in which they have filed an objection by caption, court and case number, and for each case, the disposition of the objection.

#### V. <u>FINAL APPROVAL HEARING</u>

The Court hereby schedules a Final Approval Hearing at \_\_\_\_\_\_.m. on

8

#### VI. STAY OF PROCEEDINGS

Pending final determination of whether the Settlement should be approved, Plaintiffs, all other Settlement Class Members, and Releasing Parties, and each of them, and anyone who acts or purports to act on their behalf, shall not institute or prosecute any action that asserts Released Claims against any Released Party in any court or tribunal, unless they file a timely and valid Request for Exclusion from the Settlement. Pending the Final Approval Hearing, the Court hereby also stays all proceedings in this case, other than those proceedings necessary to carry out or enforce the terms and conditions of the Settlement Agreement. Pursuant to 28 U.S.C. §§ 1651(a) and 2283, the Court finds that issuance of this preliminary injunction is necessary and appropriate in aid of the Court's continuing jurisdiction and authority over this action.

#### VII. OTHER PROVISIONS

- A. In the event that the Settlement Agreement is not finally approved by the Court or does not reach the Effective Date, or the Settlement Agreement is terminated pursuant to its terms for any reason, the Parties reserve all of their rights, including the right to continue with the Lawsuit and all claims and defenses pending at the time of the Settlement, including with regard to any effort to certify a litigation class. All of the following also shall apply:
- 1. All orders and findings entered in connection with the Settlement Agreement shall become null and void and have no force and effect whatsoever, shall not be used or referred to for any purposes whatsoever, and shall not be admissible or discoverable in this or any other proceeding.
- 2. The provisional certification of the Settlement Class pursuant to this Preliminary Approval Order shall be vacated automatically, and the Lawsuit shall proceed as though the Settlement Class had never been certified and such findings had never been made.
- 3. Nothing contained in this Preliminary Approval Order is to be construed as a presumption, concession, or admission by or against Generac or Plaintiffs of any default, liability, or wrongdoing as to any facts or claims alleged or asserted in the action, or in any actions or proceedings, whether civil, criminal or administrative, including, but not limited to, factual or legal matters relating to any effort to certify the action as a class action.
- 4. Nothing in this Preliminary Approval Order or pertaining to the Settlement Agreement, including any of the documents or statements generated or received pursuant to the claims administration process, shall be used as evidence in any further proceeding in this case or any other litigation or proceeding, including, but not limited to, motions or proceedings seeking treatment of the action as a class action.

5. All of the Court's prior orders having nothing whatsoever to do with

Settlement Class certification shall, subject to this Preliminary Approval Order, remain in force

and effect.

B. Class Counsel and Counsel for Generac are hereby authorized to use all

reasonable procedures in connection with approval and administration of the Settlement that are

not materially inconsistent with this Preliminary Approval Order or the Settlement Agreement,

including making, without further approval of the Court, minor changes to the Settlement

Agreement, to the form or content of the Notice of Settlement, short form notice, or to the form

or content of any other exhibits attached to the Settlement Agreement, that the Parties jointly

agree are reasonable or necessary, and which do not limit the rights of Settlement Class Members

under the Settlement Agreement.

C. This Court shall maintain continuing jurisdiction over these Settlement

proceedings to assure the effectuation thereof for the benefit of the Settlement Class.

IT IS SO ORDERED.

Dated: \_\_\_\_\_\_, 2023

Gerald J. Pappert, U.S.D.J.

11

## **EXHIBIT 5**

#### FUEL PLENUM INSPECTION PROGRAM CLASS ACTION SETTLEMENT

INSERT ADDRESS
Telephone: INSERT
Email: INSERT
Settlement Website: INSERT

«MailDate»

#### NOTICE OF DEFICIENT CLAIM

**INSERT ADDRESS** 

Re: Fuel Plenum Inspection Program Class Action Settlement

Dear INSERT:

We are the Court-appointed Settlement Administrator for the above-referenced class action Settlement. After careful review of your Claim Form and any supporting materials you provided, we have determined that your Claim is deficient for the following reason(s):

■ INSERT REASON(S)

We cannot approve your Claim until all deficiencies are cured. Please cure every deficiency noted above <u>in writing within thirty (30) days</u>, including by providing any requested information and/or documentation. You may do so by sending it to the physical address or email address at the top of this letter or, if appropriate, uploading it through the Settlement Website at www.fuelplenumsettlement.com. Failure to timely and fully cure the deficiency will result in the denial of your Claim.

Sincerely,
KCC Class Action Services, LLC
Settlement Administrator

## **EXHIBIT 6**

#### FUEL PLENUM INSPECTION PROGRAM CLASS ACTION SETTLEMENT INSERT ADDRESS

Telephone: INSERT
Email: INSERT
Settlement Website: INSERT

«MailDate»

#### NOTICE OF DENIAL OF CLAIM

**INSERT ADDRESS** 

Re: Fuel Plenum Inspection Program Class Action Settlement

Dear INSERT:

We are the Court-appointed Settlement Administrator for the above-referenced class action settlement. After careful review of your Claim Firm and any supporting materials you provided, we have denied your Claim for the following reason(s):

■ INSERT REASON(S)

You were also notified of these reason(s) on [date deficiency letter sent]. Because your Claim was denied, you will not receive benefits under the Settlement. If you believe your claim was denied in error, however, you may contact us at the email address or telephone number provided above with specific reason(s) for why you believe the decision was incorrect.

KCC Class Action Services, LLC Settlement Administrator

# **EXHIBIT 7**

# IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GREG MCMAHON and ADAM
GOLDBERG,
Plaintiffs

v.

Civil Action No. 2:21-cv-05660

GENERAC POWER SYSTEMS, INC.,

Defendant.

#### [PROPOSED] FINAL APPROVAL ORDER

The Court makes the following findings:

1. The Settlement Agreement is, in all respects, fair, adequate, and reasonable and therefore approves it. Among other matters considered, the Court took into account: (a) the claims asserted by the Plaintiffs; (b) the defenses asserted by Generac Power Systems, Inc ("Generac"), which could potentially preclude or reduce the recovery by Settlement Class Members; (c) delays in any benefits to the Settlement Class that would occur in the absence of a settlement; (d) the benefits to the Settlement Class; (e) the recommendation of the Settlement Agreement by counsel

<sup>&</sup>lt;sup>1</sup> Capitalized terms in this Final Approval Order ("Order"), unless otherwise defined, have the same definitions as those terms in the Settlement Agreement.

for the Parties; and (f) the low number of objectors to the Settlement Agreement, demonstrating that the Settlement Class has a positive reaction to the settlement.

- 2. The Settlement falls within the range of reasonableness because it has key indicia of fairness, in that (1) the Parties reached the Settlement only after extensive negotiations, which were contentious, at arm's-length, and facilitated by an experienced mediator (Hon. Diane M. Welsh (Ret.)), (2) the Plaintiffs had the ability to obtain confirmatory discovery, and (3) the proponents of the Settlement are experienced in similar litigation.
- Specifically, the Court has analyzed each of the factors set forth in Fed. R. Civ. P. **3.** 23(e)(2), Girsh v. Jepson, 521 F.2 153, 157 (3d Cir. 1975) and In re Prudential Ins. Co. Am. Sales Practice Litig., 148 F.3d 283, 323 (3d Cir. 1998) and finds the factors support final approval of the settlement, including, including an assessment of the likelihood that the Class Representatives would prevail at trial; the range of possible recovery; the consideration provided to Settlement Class Members as compared to the range of possible recovery discounted for the inherent risks of litigation; the complexity, expense, and possible duration of litigation in the absence of a settlement; the nature and extent of any objections to the settlement; the stage of the proceedings and the amount of discovery requested; the risk of establishing liability and damages, the ability of the defendants to withstand a greater judgment, the range of reasonableness of the settlement; the underlying substantive issues in the case; the existence and probable outcome of claims by other classes; the results achieved; whether the class can opt-out of the settlement; whether the attorneys' fees are reasonable, and whether the procedure for processing claims is fair and reasonable. The Court also finds the factors recently added to Fed. R. Civ. P. 23(e)(2) substantially overlap with the factors the Third Circuit has enumerated in Girsh and In re Prudential, and that each supports final approval of the settlement.

- 4. Notice was provided to Settlement Class Members in compliance with Section 8 of the Settlement Agreement, due process, and Rule 23 of the Federal Rules of Civil Procedure. The notice: (a) fully and accurately informed Settlement Class Members about the Lawsuit and Settlement Agreement; (b) provided sufficient information so that Settlement Class Members could decide whether to accept the benefits offered, opt-out and pursue their own remedies, or object to the settlement; (c) provided procedures for Settlement Class Members to submit written objections to the proposed settlement, to appear at the hearing, and to state objections to the proposed settlement; and (d) provided the time, date, and place of the Final Approval Hearing.
- **5.** Generac provided notice to government officials in the manner and within the time required by 28 U.S.C. § 1715(b).
- 6. Plaintiffs and Class Counsel have fairly and adequately protected the Settlement Class' interests, and the Parties have adequately performed their obligations under the Settlement Agreement.
- 7. For the reasons stated in the Preliminary Approval Order, and having found nothing in any submitted objections that would disturb these previous findings, this Court finds that the proposed Settlement Class, as defined below, meets all of the legal requirements for class certification, for settlement purposes only, under Federal Rule of Civil Procedure 23(a) and (b)(3). Specifically, the prerequisites for a class action under Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure have been satisfied. The Court finds, in the specific context of this Settlement, that the following requirements are met: (a) the number of Settlement Class Members is in the tens of thousands and is so numerous that joinder of all Settlement Class Members is impracticable; (b) there are questions of law and fact common to the Settlement Class Members; (c) Plaintiffs' claims are typical of the claims of the Settlement Class Members they seek to represent for purposes of

the Settlement; (d) Plaintiffs and Class Counsel have fairly and adequately represented the interests of the Settlement Class; (e) questions of law and fact common to the Settlement Class Members predominate over any questions affecting any individual Settlement Class Member; and (f) a class action provides a fair and efficient method for settling the controversy under the criteria set forth in Rule 23. The Court also concludes that, because the Lawsuit is being settled rather than litigated, the Court need not consider manageability issues that might otherwise be presented by the trial of a class action involving the issues in the Lawsuit.

In light of the Court's findings, it is **ORDERED** as follows:

- **Settlement Class Members.** The Settlement Class is certified as a class of:
  - (1) all current or former owners of a Class Generator who paid an \$80 Inspection Program fee that was not reimbursed prior to the Preliminary Approval Date, and
  - (2) all current owners of Class Generators that were not inspected pursuant to the Inspection Program prior to the Preliminary Approval Date.

Excluded from the Settlement Class are: (i) Generac, its officers, directors, affiliates, legal representatives, employees, successors, and assigns, and entities in which Generac has a controlling interest; (ii) the judge presiding over the Lawsuit and any member of the Court's staff and immediate family; and (iii) local, municipal, state, and federal governmental entities.

- 2. Exclusions. The persons identified in Exhibit 1 hereto requested exclusion from the Settlement Class. These persons shall not share in the benefits of the Settlement, and Order does not affect their legal rights to pursue any claims they may have against Defendant.
- **3. Appointments**. The Court reaffirms the appointment of Plaintiffs Greg McMahon and Adam Goldberg as the Class Representatives of the Settlement Class, and Joseph G. Sauder and Joseph B. Kenney of Sauder Schelkopf LLC as Class Counsel.
- **4. Objections**. The Court has considered any objections to the Settlement, and finds that they are unpersuasive and therefore overrules all of them.

- 5. Binding Effect of Order. This Order applies to all claims or causes of action settled under the Settlement Agreement and binds all Settlement Class Members, including those who did not properly request exclusion under the Preliminary Approval Order. This Order does not bind persons or entities who submitted timely and valid requests for exclusion.
- 6. Release. Plaintiffs and all Settlement Class Members who did not properly request exclusion are: (1) deemed to have completely released and forever discharged the Released Parties from all claims arising out of or asserted in the Lawsuit and the Released Claims; and (2) barred and permanently enjoined from asserting, instituting, or prosecuting, either directly or indirectly, these claims and the Released Claims. The full terms of the release described in this paragraph are set forth in the Settlement Agreement and are specifically incorporated herein by this reference.
- 7. Settlement Payments. Generac is directed to transfer funds to the Settlement Administrator sufficient to allow the Settlement Administrator to make the Settlement Payments. The Settlement Administrator is directed to issue Settlement Payments to each Settlement Class Member who submitted a valid and timely Claim Form for a Reimbursement Claim.
- 8. Inspections. The Settlement Administrator is further directed to provide the names and contact information of the Settlement Class Members who have submitted valid and timely Claim Forms for Inspection Claims to Generac so Generac can facilitate inspections with Authorized Service Dealers for those Settlement Class Members.
- 9. Uncashed Settlement Payment Checks. Pursuant to the Settlement Agreement, any residual funds from uncashed Settlement Payment checks shall be applied toward paying the Settlement Administration Costs.
- 10. Miscellaneous. No person or entity shall have any claim against Generac, Generac's Counsel, the Released Parties, Plaintiffs, the Settlement Class Members, Class Counsel,

or the Settlement Administrator based on distributions and payments made in accordance with the Settlement Agreement.

11. Court's Jurisdiction. Pursuant to the Parties' request, the Court will retain jurisdiction over the Actions and the Parties for all purposes related to this settlement.

IT IS SO ORDERED.	
Dated:, 2023	
	Gerald J. Pappert, U.S.D.J.

# **EXHIBIT 8**

# IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GREG MCMAHON and ADAM GOLDBERG,			
Plaintiffs,	Civil Action No. 2:21-cv-05660		
V.			
GENERAC POWER SYSTEMS, INC.,			
Defendant.			
[PROPOSED] FINAL JUDGMENT			
Pursuant to Federal Rule of Civil Procedure 58(a), Judgment is hereby ENTERED in			
accordance with these Court's Orders of, 2023 (ECF No) and, 2023			
(ECF No), which granted the Motion for Final Approval of Class Action Settlement (ECF			
No) and Motion for Award of Attorneys' Fees, Costs, and Service Awards (ECF No).			
Dated:, 2023			
	Gerald J. Pappert, U.S.D.J.		

# SAUDER | SCHELKOPF Attorneys at Law

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# About Us Attorneys

Joseph G. Sauder Matthew D. Schelkopf Joseph B. Kenney Mark B. DeSanto

#### **Practice Areas**

Automobile Defects and False Advertising Consumer Fraud Class Actions Sexual Misconduct and Gender Discrimination Employee Rights Class Actions General Complex Litigation Data Breach/Privacy Litigation

#### Case Highlights

#### **About Us**

Sauder Schelkopf has a nationally recognized litigation practice. The firm currently serves as court-appointed lead counsel in courts across the country. The attorneys at Sauder Schelkopf have recovered over \$500 million on behalf of their clients and class members. Our firm was recognized by the Legal Intelligencer's 2022 Professional Excellence Awards. The Legal Intelligencer's Professional Excellence Awards honor Pennsylvania law firms and attorneys who have made a significant, positive impact on the legal profession. Our firm was named in the Litigation Departments of the Year (Specialty Area Category), an award that honors the best litigation practice in a small or mid-sized firm in Pennsylvania. This recognition was based on the firm's 2021 litigation work and its important ongoing cases. Law Dragon has recognized our attorneys in its list of the "500 Leading Plaintiff Consumer Lawyers" for 2022. This list notes: "From the opioid epidemic to toxic substances and defective products, truck accidents to wildfires and sexual abuse, these are the lawyers who stand on the front line in individual lawsuits and class actions seeking justice." Mr. Schelkopf was named to Pennsylvania's Best Lawyers® 2022 for Class Actions/Mass Tort Litigation. The American Lawyer named Mr. Sauder to its 2021 Northeast Trailblazers. The honor recognizes 60 lawyers who are "truly agents of change." It "recognizes professionals in the Northeast who have moved the needle in the legal industry." The Legal Intelligencer named Mr. Sauder and Mr. Schelkopf in its 2020 Pennsylvania Trailblazers list recognizing 31 lawyers who "have taken extra measures to contribute to positive outcomes . . . and who are truly agents of change." The Legal highlighted the firm's innovative work on advocacy as class counsel in large institutional sex abuse cover-ups, women's, and children's rights. Our attorneys have also consistently been recognized by their peers being named to Pennsylvania SuperLawyer, a distinction held by the top 5% of attorneys in Pennsylvania, and Pennsylvania SuperLawyer Rising Stars, a distinction for 2.5% of lawyers in Pennsylvania. Our attorneys have also been selected by the National Trial Lawyers Association as the Top 100 Trial Lawyers in Pennsylvania.

#### Joseph G. Sauder, Partner

Joseph G. Sauder handles complex cases on behalf of individuals, sexual abuse survivors, consumers, small businesses and employees. Mr. Sauder currently serves as court appointed lead counsel in state and federal courts across the country. He has successfully litigated cases against some of the largest companies in the world.



Mr. Sauder started his legal career as a prosecutor in the Philadelphia District Attorney's Office where, from 1998 to 2003, he successfully tried hundreds of criminal cases to verdict, including sexual abuse cases. LawDragon recognized Mr. Sauder in its list of the "500 Leading Plaintiff Consumer Lawyers" for 2022. The Lawdragon consumer law guide offers the publication's take on the best of the U.S. plaintiff bar specializing in representing consumers. The publication notes "these are the lawyers who stand on the front line in individual lawsuits and class actions seeking justice. They relish their role of underdog, taking on the toughest cases . . . ." The American Lawyer named Joe Sauder to its 2021 Northeast Trailblazers. The honor recognizes 60 lawyers who are "truly agents of change." It "recognizes professionals in the Northeast who have moved the needle in the legal industry." The Northeast includes Maine, New York, New Jersey, Vermont, Massachusetts, Rhode Connecticut, New Hampshire, and Pennsylvania. The Intelligencer named Mr. Sauder in its 2020 Pennsylvania Trailblazers list recognizing 31 lawyers who "have taken extra measures to contribute to positive outcomes . . . and who are truly agents of change." The Legal highlights Joe's innovative work on advocacy as class counsel in large institutional sex abuse cover-ups, women's, and children's rights. Mr. Sauder has been repeatedly recognized by his peers. Since 2011, Mr. Sauder has been selected as a Pennsylvania SuperLawyer, a distinction held by the top 5% of attorneys in Pennsylvania, as chosen by their peers and through the independent research of Law & Politics.

Mr. Sauder received his Bachelor of Science, magna cum laude in Finance from Temple University in 1995. He graduated from Temple University School of Law in 1998, where he was a member of Temple Law Review.

Mr. Sauder is admitted to practice before the Supreme Courts of Pennsylvania and New Jersey, the United States Court of Appeals for the Third Circuit, the United States District Courts for the Eastern District of Pennsylvania, the Middle District of Pennsylvania, the District of New Jersey and the District of Colorado. Mr. Sauder currently serves as a lead counsel in numerous class actions related to product, construction and automotive defect cases pending throughout the country.

#### Matthew D. Schelkopf, Partner

Matthew D. Schelkopf has extensive trial and courtroom experience throughout the United States, with an emphasis on class actions involving automotive defects, consumer protection, defective products and mass torts litigation.

The Legal Intelligencer named Mr. Schelkopf in its 2020 Pennsylvania Trailblazers list recognizing 31 lawyers who "have taken extra measures to contribute to positive outcomes . . . and who are truly agents of change." The Legal highlights Matthew's work on behalf of clients who have been victimized by corporations. Since 2010, Mr. Schelkopf has been selected by Pennsylvania Super Lawyers as a Rising Star (a distinction held by the top 2.5% of attorneys in PA) and then a Pennsylvania Super Lawyer, as chosen by their peers and through the independent research of Law & Politics. In 2012, The American Lawyer Media, publisher of The Legal Intelligencer and the Pennsylvania Law Weekly, named Mr. Schelkopf as one of the "Lawyers on the Fast Track" a distinction that recognized thirty-five Pennsylvania attorneys under the age of 40 who show outstanding promise in the legal profession and make a significant commitment to their community. Mr. Schelkopf was also selected as a Top 40 under 40 by the National Trial Lawyers in 2012-2015.

Mr. Schelkopf began his legal profession as a criminal prosecutor with the District Attorney's Office of York County. He quickly progressed to Senior Deputy Prosecutor where he headed a trial team responsible for approximately 300 felony and misdemeanor cases each quarterly trial term.

In 2004, Mr. Schelkopf then associated with a suburban Philadelphia area law firm, litigating civil matters throughout Pennsylvania and New Jersey. In 2006, he was cocounsel in a Philadelphia County trial resulting in a \$30,000,000.00 jury verdict in favor of his clients – the largest state verdict recorded for that year. Mr. Schelkopf currently serves as a lead and co-lead counsel in numerous class actions related to product and automotive defect cases pending throughout the country.

Outside of the office, Mr. Schelkopf enjoys spending time with his family, mountain and road biking, skiing and restoring classic automobiles. Three of his auto restorations have been featured in nationally circulated automotive publications.

#### Joseph B. Kenney, Partner

Joseph B. Kenney has experience representing consumers in class actions involving defective products, automotive defects, false and misleading advertising, and other consumer protection litigation. Mr. Kenney also represents victims of sexual misconduct in federal courts throughout the country.



Since 2017, Joe has been selected by Pennsylvania Super Lawyers as a Rising Star, an honor reserved for 2.5% of lawyers in Pennsylvania, as chosen by his peers based on his professional achievements. Joe is also the co-chair of the firm's Law & College Fellowship Program, where he mentors undergraduate students, law students, and new attorneys. Joe has argued numerous dispositive motions in federal courts across the country, deposed engineers and other highly specialized witnesses, and achieved settlements valued in the tens of millions of dollars on behalf of consumers.

Joe received his J.D., *cum laude*, from Villanova University's School of Law in 2013. While at Villanova, he was elected as a Managing Editor of Student Works for the Jeffrey S. Moorad Journal of Sports Law for his third year of law school. As a staff writer, his comment, *Showing On-Field Racism the Red Card: How the Use of Tort Law and Vicarious Liability Can Save the MLS from Joining the English Premier League on Racism Row*, was selected for publication in the Spring 2012 Volume of the Journal. Prior to law school, he attended Ursinus College where he majored in politics and minored in international studies. Mr. Kenney was also a member of the men's varsity soccer team at Ursinus.

Joe is admitted to practice before the Supreme Courts of Pennsylvania and New Jersey and the United States District Courts for the Eastern District of Pennsylvania, the District of New Jersey, the District of Colorado, and the Eastern District of Michigan.

#### Mark B. DeSanto, Associate

Mark B. DeSanto has extensive class action litigation experience in federal courts throughout the United States representing consumers, pension participants, investors, and employees in class actions involving false and misleading advertising, defective products, data breaches, ERISA litigation, securities litigation, employee rights, and other consumer protection litigation.



Since 2018, Mr. DeSanto has been selected by Pennsylvania Super Lawyers as a Rising Star (an honor reserved for 2.5% of lawyers in Pennsylvania), as selected by his peers based on his professional achievements. Mr. DeSanto has extensive experience handling all aspects of class action litigation, from inception through pretrial motion practice, including case investigation and initiation, complaint drafting and motion to dismiss briefing, written discovery and discovery motion practice, taking and defending fact witness depositions, contested class certification briefing, preparation of expert reports, taking and defending expert witness depositions, *Daubert* motion practice, summary judgment, motions in limine, preliminary and final approval settlement briefing, and oral arguments on all of the foregoing. Mr. DeSanto also authored a chapter of a course handbook published by the Practising Law Institute on March 1, 2018, for the 23rd Annual Consumer Financial Services Institute titled Chapter 57: The Impact of Payment Card II on Class Action Litigation & Settlements (ISBN Number: 9781402431005).

Mr. DeSanto received his Juris Doctor (J.D.), *cum laude*, from the University of Miami School of Law in 2013, where he was also a member of the National Security and Armed Conflict Law Review. During his second and third years of law school, Mr. DeSanto worked full-time at a securities litigation firm while also attending law school full-time and earning Dean's List and President's Honor Roll distinction (4.0 GPA) in multiple semesters. Prior to attending law school, Mr. DeSanto attended the University of Miami where he earned his Bachelor of Business Administration (B.B.A.) in Finance in 2009.

Mr. DeSanto is admitted to practice law in Florida, Pennsylvania, and New Jersey, and has been admitted to United States District Courts for the Eastern District of Pennsylvania, the District of New Jersey, Southern District of Florida, and the District of Colorado.

#### Practice Area: Consumer Fraud Class Actions

The attorneys at Sauder Schelkopf have prosecuted and resolved numerous consumer fraud class actions on behalf of millions of consumers against nationally known corporations for deceptive and unfair business practices. Sauder Schelkopf's experience includes the following types of consumer fraud class action cases:

<u>Automotive Defects</u> – Automobiles are a major expense and consumers expect them to provide safe and reliable transportation for themselves and their family and friends. Some vehicles, however, may contain manufacturing or design defects that can pose a danger to our families and others on the road. Even if these defects do not create a potential safety issue, they might result in costly repairs to consumers.

<u>Construction Defects</u> - When consumers purchase a home, they expect the plumbing and other basic functions of the home to work without fail. Certain companies, however, are known to cut corners when designing and manufacturing their products. When an essential component of the home fails, it can lead to costly repair bills, damage to the surrounding property in the home, and high homeowner's deductibles.

<u>Consumer Electronics Defects</u> - As technology continues to evolve, more and more consumers purchase and depend upon electronic devices in their daily routines. From smartphones to state-of-the art drones, many manufacturers rush products to sale to take advantage of high consumer demand. As these products are rushed to market, consumers often are left between the difficult choice of paying expensive repair bills or placing their expensive product on the shelf to gather dust.

<u>Medical Device Defects</u> – Manufacturers of medical devices are held to high standards in the design, manufacturing, and marketing of their products. When a manufacturer learns of a defect in their medical device that could cause bodily harm to the end-user, the law imposes a strict duty on them to institute a recall immediately. Many times, however, manufacturers seek to place profits above the safety of their customers

# Practice Area: Sexual Misconduct and Gender Discrimination

Sauder Schelkopf has a nationally recognized sexual misconduct practice with significant experience fighting for victims. Our former prosecutors have extensive experience investigating and trying cases. Sauder Schelkopf represented victims of clergy sexual abuse in dioceses throughout the country. We have litigated numerous class action and individual lawsuits throughout the country on behalf of sexual abuse survivors.

### Practice Area: Employee Rights Class Actions

The attorneys at Sauder Schelkopf have protected workers' rights. Employees are given numerous protections under state and federal law. The attorneys at Sauder Schelkopf has held employers accountable to their obligations under the law when hiring, employing, and firing their workers.

If employees face discrimination based on their race, color, country of origin, religion, gender, sexual orientation, the employer is violating the law. In addition, many employees do not receive their due compensation as numerous employers engage in wage and hour violations. Whether you are a potential whistleblower, or your case is associated with any technical or creative legal matter, the attorneys at Sauder Schelkopf are available to discuss your potential case.

#### Case Highlights

The attorneys at Sauder Schelkopf have played a lead role in cases throughout the country including:

- Afzal v. BMW of North America, LLC, (D.N.J.) (class action on behalf of purchasers and lessees of BMW M3 vehicles with S65 engines containing an alleged rotating assembly defect resulting in engine failure);
- Ajose v. Interline Brands, Inc., (M.D. Tenn.) (\$16.5 million nationwide class action settlement on behalf of purchasers of defective toilet connectors);
- Bang v. BMW of North America, LLC, (D.N.J.) (class action settlement on behalf of hundreds of thousands of purchasers and lessees of certain BMW vehicles with N63 engines containing alleged oil consumption defect);
- *Bromley v. SXSW LLC,* (W.D. Tex.) (class action settlement related to ticket purchases for 2020 festival cancelled by the COVID-19 pandemic);
- Brown v. Hyundai Motor Am., (D.N.J.) (class action settlement related to defect that caused premature engine failure in approximately 1 million Hyundai vehicles);
- In re Checking Account Overdraft Litig., (S.D. Fla.) (class action resulting in a \$55 million settlement with US Bank; \$14.5 million settlement with Comerica);
- *Cole v. NIBCO, Inc.,* (D.N.J.) (\$43.5 million class action settlement related to defect in PEX products that made them prone to leaking and causing substantial property damage);
- Davitt v. Honda North America, Inc., (D.N.J.) (class action settlement on behalf of hundreds of thousands of purchasers and lessees of Honda CR-V vehicles with alleged defective door lock actuators);
- **Desio et al. v. Insinkerator et al. (E.D. WA)** (\$3.8 million class action settlement on behalf of homeowners who purchased defective water filters);
- Fath v. American Honda Motor Co., (D. Minn) (class action settlement related to defect that caused vehicles to experience fuel dilution and eventually engine failure);

- Guill, Jr. v. Alliance Resource Partners, L.P., (S.D. Ill) (WARN Act class action on behalf of 200 coal miners);
- *Hartley v. Sig Sauer, Inc.,* (W.D. Mo.) (class action settlement related to pistols that suffered from defect which made them susceptible to firing out-of-battery);
- *Henderson v. Volvo Cars of North America LLC*, (D.N.J.) (class action nationwide settlement on behalf of 90,000 purchasers and lessees of Volvo vehicles with defective GM4T65 automatic transmissions);
- In re: Hyundai and Kia Engine Litig., (C.D. Cal.) (class action settlement valued at \$892 million related to defect that caused catastrophic engine failure in approximately 4 million Hyundai and Kia vehicles);
- International Brotherhood of Electrical Workers Local 98 Pension Fund v Encore, (San Diego, CA) (shareholder derivative settlement implemented industry-leading reforms to its risk management and corporate governance practices, including creating Chief Risk Officer and Chief Compliance Officer positions, various compliance committees, and procedures for consumer complaint monitoring);
- Jackson v. Viking Group, Inc., (D. Md.) (class action settlement valued between \$30.45 million and \$50.75 million on behalf of owners of defective sprinklers that suffered from non-fire activations);
- Klug v. Watts Regulatory Co., and Ponzo v. Watts Regulatory Co., (D. Neb.) (\$14 million settlement on behalf of homeowners with defective toilet connectors and water heater connectors manufactured by Watts);
- Lax v. Toyota Motor Corporation, (N.D. Cal.) (class action on behalf of hundreds of thousands of purchasers and lessees of certain Toyota vehicles with alleged oil consumption defect);
- *McCoy v. North State Aviation*, (M.D.NC) (\$1.5 million settlement on behalf of hundreds of former employees for Worker Adjustment and Retraining Notification (WARN) violations when they were fired without notice);
- Mendoza v. Hyundai Motor America, Inc., (N.D. Cal.) (class action on behalf
  of hundreds of thousands of purchasers and lessees of certain Hyundai Sonata
  vehicles with alleged connecting rod bearing defect resulting in engine failure);

- Neale v. Volvo Cars of North America LLC, (D.N.J.) (certified class action on behalf of hundreds of thousands of purchasers and lessees of certain Volvo vehicles with alleged defective sunroof water drainage systems);
- In re: Outer Banks Power Outage Litigation, (E.D.N.C.) (\$10.3 million settlement on behalf of businesses impacted by massive power outage and evacuation cause by a bridge builder);
- *Physicians of Winter Haven v. Steris Corp.*, (N.D. Ohio) (\$20 million class action settlement on behalf of surgical centers to recoup out-of-pocket expenses related to recalled medical device);
- Rangel v. Cardell Cabinetry, LLC, (W.D. Tex.) (\$800,000 settlement on behalf of hundreds of former employees of a Texas cabinetry maker for Worker Adjustment and Retraining Notification (WARN) violations when they were fired without notice);
- *Rivera v. Ford Motor Company*, (E.D. Mich.) (class action on behalf of hundreds of thousands of purchasers and lessees of certain Ford Focus vehicles with alleged defective Evaporative Emission Control (EVAP) systems causing sudden and unexpected engine stalling);
- *Smith v. Gaiam*, (D. Colo.) (\$10 million consumer class action settlement, which provided full relief to the class);
- In re Stericycle Inc., Sterisafe Contract Litigation, (N.D. Ill.) (\$295 million class action settlement on behalf of medical waste disposal customers of Stericycle regarding alleged automated price increases in violation of contractual terms);
- *Tolmasoff v. General Motors*, (E.D. MI.) (\$6 million nationwide class action settlement on behalf of purchasers and lessees alleging overstated MPG);
- Traxler v. PPG Industries, Inc., (N.D. Ohio) (\$6.5 million class action settlement on behalf of homeowners who purchased and used defective deck stain);
- In re: USC Student Health Center Litig., (C.D. Cal.) (\$215 million class action settlement on behalf of female patients of Dr. George Tyndall, a gynecologist at the University of Southern California accused of sexually assaulting students since the 1990s);

- Wallis v. Kia Motors America, Inc., (N.D. Cal.) (class action on behalf of hundreds of thousands of purchasers and lessees of certain Kia vehicles with alleged connecting rod bearing defect resulting in engine failure);
- Whalen v. Ford Motor Co., (N.D. Cal.) (class action on behalf of hundreds of thousands of purchasers and lessees of certain Ford and Lincoln vehicles with alleged defective MyFord Touch infotainment systems);
- Yaeger v. Subaru of America, Inc., (D.N.J.) (class action on behalf of hundreds of thousands of purchasers and lessees of certain Subaru vehicles with alleged oil consumption defect).
- Shanks v. True Health New Mexico, Inc., D-202-CV-2022-00445 (2nd Dist. Ct. NM) (class action on behalf of consumers impacted by a data breach).

# IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GREG MCMAHON and ADAM GOLDBERG,

Plaintiffs,

Civil Action No. 2:21-cv-05660

v.

GENERAC POWER SYSTEMS, INC.,

Defendant.

# [PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL TO CLASS ACTION SETTLEMENT, PROVISIONALLY CERTIFYING SETTLEMENT CLASS, DIRECTING NOTICE TO THE SETTLEMENT CLASS, AND SCHEDULING FINAL APPROVAL HEARING

Plaintiffs Greg McMahon and Adam Goldberg ("Plaintiffs") and Defendant Generac Power Systems, Inc. ("Generac"), have participated in mediation and executed a proposed Settlement Agreement (the "Settlement Agreement" or "Settlement"). Pursuant to the Settlement Agreement, Plaintiffs have moved for entry of an order granting preliminary approval of the Settlement. The Court hereby adopts and incorporates the terms of the Settlement Agreement for the purposes of this Preliminary Approval Order, including the Definitions set forth in the Settlement Agreement. A copy of the Settlement Agreement has been filed with the Court and will be posted to the Settlement Website, www.fuelplenumsettlement.com. Having reviewed the Settlement Agreement and considered the submissions in support of preliminary approval of the Settlement, the Court now orders as follows:

#### I. <u>CERTIFICATION OF SETTLEMENT CLASS</u>

The Settlement Agreement provides for a class action settlement of the claims alleged in this Lawsuit. The Court has considered the (1) allegations, information, arguments, and

authorities provided by the Parties in connection with the pleadings previously filed in this case; (2) information, arguments, and authorities provided by Plaintiffs in their brief in support of their motion for entry of an order granting preliminary approval to the Settlement; (3) the terms of the Settlement Agreement, including, but not limited to, the definition of the Settlement Class and the benefits to be provided to the Settlement Class; and (4) the Settlement's elimination of any potential manageability issue that may otherwise have existed if litigation continued. Based on those considerations, the Court hereby finds as follows for settlement purposes only at this time:

- A. That the prerequisites for a class action under Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure have been satisfied. The Court finds, in the specific context of this Settlement, that the following requirements are met: (a) the number of Settlement Class Members is in the tens of thousands and is so numerous that joinder of all Settlement Class Members is impracticable; (b) there are questions of law and fact common to the Settlement Class Members; (c) Plaintiffs' claims are typical of the claims of the Settlement Class Members they seek to represent for purposes of the Settlement; (d) Plaintiffs and Class Counsel have fairly and adequately represented the interests of the Settlement Class; (e) questions of law and fact common to the Settlement Class Members predominate over any questions affecting any individual Settlement Class Member; and (f) a class action provides a fair and efficient method for settling the controversy under the criteria set forth in Rule 23.
- B. The Court also concludes that, because the Lawsuit is being settled rather than litigated, the Court need not consider manageability issues that might otherwise be presented by the trial of a class action involving the issues in the Lawsuit.
- C. Pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3), the Court hereby provisionally certifies the following Settlement Class for settlement purposes only:

- (1) all current or former owners of a Class Generator who paid an \$80 Inspection Program fee that was not reimbursed prior to the Preliminary Approval Date, and
- (2) all current owners of Class Generators that were not inspected pursuant to the Inspection Program prior to the Preliminary Approval Date.

Excluded from the Settlement Class are: (i) Generac, its officers, directors, affiliates, legal representatives, employees, successors, and assigns, and entities in which Generac has a controlling interest; (ii) the judge presiding over the Lawsuit and any member of the Court's staff and immediate family; and (iii) local, municipal, state, and federal governmental entities.

D. Plaintiffs Greg McMahon and Adam Goldberg are appointed as the Class Representatives of the Settlement Class, and Joseph G. Sauder and Joseph B. Kenney of Sauder Schelkopf LLC are appointed as Class Counsel.

#### II. PRELIMINARY APPROVAL OF THE TERMS OF THE SETTLEMENT

- A. On a preliminary basis, taking into account (1) the value and certainty of the benefits to be provided by the Settlement to Settlement Class Members who submit valid and timely Claim Forms; (2) the defenses asserted by Generac; (3) the risks to Plaintiffs and Settlement Class Members that Generac would successfully defend against class certification and/or against the merits of the claims alleged in this Lawsuit, whether litigated by Settlement Class Members themselves or on their behalf in a class action; and (4) the length of time that would be required for Settlement Class Members or any of them to obtain a final judgment through one or more trials and appeals, the Settlement appears sufficiently fair, reasonable, and adequate to authorize dissemination of notice to the Settlement Class as set forth in the Settlement Agreement.
- B. Moreover, the Court finds that the Settlement falls within the range of reasonableness because the Settlement has key indicia of fairness, in that (1) the Parties reached the Settlement only after extensive negotiations, which were contentious, at arm's-length,

and facilitated by an experienced mediator (Hon. Diane M. Welsh (Ret.) of JAMS), (2) the Plaintiffs obtained confirmatory discovery, and (3) the proponents of the Settlement are experienced in similar class action litigation.

C. Accordingly, the Settlement is hereby preliminarily approved.

# III. APPOINTMENT OF THE SETTLEMENT ADMINISTRATOR AND APPROVAL OF NOTICE PLAN

As set forth in the Settlement Agreement, the Parties have submitted a proposed Notice Plan, including, without limitation, a Notice of Settlement and Claim Form, a proposed short form publication notice, provisions for providing notice of the Settlement through digital and print methods depending on the estimated reach of the notice to be sent directly to Settlement Class Members following to the efforts described in Paragraph D.8. of the Settlement Agreement, and a Settlement Website, www.fuelplenumsettlement.com. Having reviewed each, the Court finds and concludes as follows:

A. The notices attached as Exhibits to the Settlement Agreement fairly, accurately, and reasonably inform Settlement Class Members of: (1) appropriate information about the nature of this Lawsuit and the essential terms of the Settlement Agreement; (2) appropriate information about how to obtain additional information regarding this matter and the Settlement, in particular, through the Settlement Website, www.fuelplenumsettlement.com; and (3) appropriate information about how to object to, or exclude themselves from, the Settlement if they wish to do so. The Notice of Settlement and proposed short form publication notice also fairly and adequately inform Settlement Class Members that if they do not comply with the specified procedures and the deadline for objections, they will lose any opportunity to have any objection considered at the Final Approval Hearing or to otherwise contest approval of the

Settlement or appeal from any order or judgment entered by the Court in connection with the Settlement.

- B. The Notice of Settlement and Claim Form, the short form publication notice, as well as the other notice methods described in the Notice Plan as set forth in the Settlement Agreement, satisfy the requirements of due process, Rule 23 of the Federal Rules of Civil Procedure, the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, and any other applicable laws, constitutes the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons entitled thereto.
- C. Accordingly, the Court hereby approves the proposed Notice Plan and orders that the form and content of the proposed Notice of Settlement, the proposed short form publication notice, and the proposed Claim Form are hereby approved, and shall be provided to the Settlement Class by the Settlement Administrator as set forth in the Settlement Agreement.
- D. Generac shall notify the appropriate government officials under the Class Action Fairness Act of 2005, 28 U.S.C. § 1715. Proof of compliance will be filed with the Motion for Final Approval.
- E. KCC Class Action Services, LLC is hereby appointed by the Court as the Settlement Administrator, whose reasonable fees and costs are to be paid by Generac.
- F. The Settlement Administrator shall perform and comply with all notice and administration duties ascribed to it in the Settlement Agreement, this Preliminary Approval Order, and subsequent orders that may be entered by this Court in this case.

#### IV. REQUESTS FOR EXCLUSION AND OBJECTIONS

A. All Settlement Class Members have the right to either opt out of or object to the Settlement pursuant to the procedures and schedule set forth in the Settlement Agreement, which

also will be set forth in the Notice of Settlement and on the Settlement Website at www.fuelplenumsettlement.com.

- B. A member of the Settlement Class who submits a timely and valid Request for Exclusion cannot object to the Settlement and is not eligible to receive any Settlement Payment or Inspection.
- 1. To validly request exclusion from the Settlement Class, a Settlement Class Member must submit a written Request for Exclusion to the Settlement Administrator so that it is postmarked by the date 60 days after the date of the Notice Date, stating that "I wish to exclude myself from the Settlement Class in the Plenum Inspection Program Class Action Settlement" (or substantially similar clear and unambiguous language). That written request shall contain the Settlement Class member's printed name, address, telephone number, email address (if any), date of birth, generator serial number, and the address at which the generator is installed. The Request for Exclusion must contain the actual written signature of the Settlement Class Member seeking to exclude himself or herself from the Settlement Class.
- 2. Requests for Exclusion cannot be made on a group or class basis, except that joint owners of the same residence or structure may opt out by using the same form so long as it is individually signed by each joint owner.
- 3. Any Settlement Class Member who does not submit a valid and timely written Request for Exclusion shall be bound by all subsequent proceedings, orders and judgments in this Lawsuit, including, but not limited to, the Release, the Final Approval Order, and the Final Judgment, even if such Settlement Class Member has litigation pending, or subsequently initiates litigation, against any Released Party relating to the Released Claims.

- 4. Any statement or submission purporting or appearing to be both an objection and opt-out shall be treated as a Request for Exclusion.
- C. Any Settlement Class Member who does not submit a written Request for Exclusion may present a written objection to the Settlement explaining why he or she believes that the Settlement Agreement should not be approved by the Court as fair, reasonable and adequate. A Settlement Class Member who wishes to submit an objection must deliver to the Settlement Administrator so that it is postmarked by the date 60 days after the Notice Date, a detailed written statement of the objection(s) and the aspect(s) of the Settlement being challenged, as well as the specific reasons, if any, for each such objection, including any evidence and legal authority that the Settlement Class Member wishes to bring to the Court's attention.
- 1. That written statement shall contain (a) the Settlement Class Member's printed name, address, telephone number, email address (if any), and date of birth; (b) evidence showing that the objector is a Settlement Class Member, including the address of the residence or structure that contains or contained the Class Generator and proof that the residence or structure contains or contained the Class Generator (photographs, contemporaneous installation records, etc.); (c) any other supporting papers, materials, or briefs that the objecting Settlement Class Member wishes the Court to consider when reviewing the objection; (d) the actual written signature of the Settlement Class Member making the objection; and (e) a statement whether the objecting Settlement Class Member and/or his, her, or its counsel intend to appear at the Final Approval Hearing.

- 2. A Settlement Class Member may object on his, her, or its own behalf or through an attorney, however, even if represented, the Settlement Class Member must individually sign the objection and all attorneys involved must be listed on the objection papers.
- 3. Counsel for the Parties may take the deposition of any objector prior to the Final Approval Hearing in a location convenient for the objector.
- 4. Any objector who files and serves a timely written objection may appear at the Final Approval Hearing, either in person at his or her own expense or through personal counsel hired at the objector's expense, to object to the fairness, reasonableness, or adequacy of any aspect of the Settlement on the basis set forth in his or her objection if they expressly state in their objection that they or their counsel intend to appear at the Final Approval Hearing.
- 5. Any Settlement Class Member who fails to comply with these requirements shall waive and forfeit any and all rights that he, she, or it may have to appear separately and/or to object to the Settlement, and shall be bound by all the terms of the Settlement Agreement and by all proceedings, orders and judgments in the Lawsuit, including, but not limited to, the Release, the Final Approval Order, and the Final Judgment, even if such Settlement Class Member has litigation pending or subsequently initiates litigation, against any Released Party relating to the Released Claims.
- 6. If a Settlement Class Member or counsel for the Settlement Class Member has objected to a class action settlement on any prior occasion, the objection shall also disclose all cases in which they have filed an objection by caption, court and case number, and for each case, the disposition of the objection.

#### V. <u>FINAL APPROVAL HEARING</u>

The Court hereby schedules a Final Approval Hearing at \_\_\_\_\_\_.m. on

8

Date, to determine whether the certification of the Settlement Class, the designation of Plaintiffs as Class Representatives, the appointment of Class Counsel, and the Settlement should receive final approval. At that time, the Court will also consider Plaintiffs' Motion for Attorneys' Fees, Costs, and Service Awards, which shall be filed at least fourteen (14) days before the Objection and Opt-Out deadline, and posted on the Settlement Website, www.fuelplenumsettlement.com. Plaintiffs' Motion for Final Approval of the Settlement shall be filed at least fourteen (14) days before the Final Approval Hearing. The Final Approval Hearing and other interim deadlines may be postponed or rescheduled by order of the Court without further notice to the Settlement Class, but any new dates will be posted on the Settlement Website, www.fuelplenumsettlement.com, and available through the Settlement toll-free number.

#### VI. STAY OF PROCEEDINGS

Pending final determination of whether the Settlement should be approved, Plaintiffs, all other Settlement Class Members, and Releasing Parties, and each of them, and anyone who acts or purports to act on their behalf, shall not institute or prosecute any action that asserts Released Claims against any Released Party in any court or tribunal, unless they file a timely and valid Request for Exclusion from the Settlement. Pending the Final Approval Hearing, the Court hereby also stays all proceedings in this case, other than those proceedings necessary to carry out or enforce the terms and conditions of the Settlement Agreement. Pursuant to 28 U.S.C. §§ 1651(a) and 2283, the Court finds that issuance of this preliminary injunction is necessary and appropriate in aid of the Court's continuing jurisdiction and authority over this action.

#### VII. OTHER PROVISIONS

- A. In the event that the Settlement Agreement is not finally approved by the Court or does not reach the Effective Date, or the Settlement Agreement is terminated pursuant to its terms for any reason, the Parties reserve all of their rights, including the right to continue with the Lawsuit and all claims and defenses pending at the time of the Settlement, including with regard to any effort to certify a litigation class. All of the following also shall apply:
- 1. All orders and findings entered in connection with the Settlement Agreement shall become null and void and have no force and effect whatsoever, shall not be used or referred to for any purposes whatsoever, and shall not be admissible or discoverable in this or any other proceeding.
- 2. The provisional certification of the Settlement Class pursuant to this Preliminary Approval Order shall be vacated automatically, and the Lawsuit shall proceed as though the Settlement Class had never been certified and such findings had never been made.
- 3. Nothing contained in this Preliminary Approval Order is to be construed as a presumption, concession, or admission by or against Generac or Plaintiffs of any default, liability, or wrongdoing as to any facts or claims alleged or asserted in the action, or in any actions or proceedings, whether civil, criminal or administrative, including, but not limited to, factual or legal matters relating to any effort to certify the action as a class action.
- 4. Nothing in this Preliminary Approval Order or pertaining to the Settlement Agreement, including any of the documents or statements generated or received pursuant to the claims administration process, shall be used as evidence in any further proceeding in this case or any other litigation or proceeding, including, but not limited to, motions or proceedings seeking treatment of the action as a class action.

Case 2:21-cv-05660-GJP Document 21-5 Filed 02/03/23 Page 11 of 11

5. All of the Court's prior orders having nothing whatsoever to do with

Settlement Class certification shall, subject to this Preliminary Approval Order, remain in force

and effect.

B. Class Counsel and Counsel for Generac are hereby authorized to use all

reasonable procedures in connection with approval and administration of the Settlement that are

not materially inconsistent with this Preliminary Approval Order or the Settlement Agreement,

including making, without further approval of the Court, minor changes to the Settlement

Agreement, to the form or content of the Notice of Settlement, short form notice, or to the form

or content of any other exhibits attached to the Settlement Agreement, that the Parties jointly

agree are reasonable or necessary, and which do not limit the rights of Settlement Class Members

under the Settlement Agreement.

C. This Court shall maintain continuing jurisdiction over these Settlement

proceedings to assure the effectuation thereof for the benefit of the Settlement Class.

IT IS SO ORDERED.

Dated:	2023
Daleu.	. 202.)

Gerald J. Pappert, U.S.D.J.

11