

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

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GREG MCMAHON and ADAM GOLDBERG,

Plaintiffs,

v.

GENERAC POWER SYSTEMS, INC.,

Defendant.

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Civil Action No. 2:21-cv-05660

**MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

Plaintiffs, by and through their counsel, Sauder Schelkopf LLC, will 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, on September 27, 2023, for the entry of an order granting final approval of a proposed class action settlement. In support of this motion, Plaintiffs rely upon the accompanying brief and other related materials in support of their motion.

Dated: September 13, 2023

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing *MOTION FOR FINAL 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 FINAL  
APPROVAL OF CLASS ACTION SETTLEMENT**

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## **I. INTRODUCTION**

After the Court issued its order granting preliminary approval to the settlement, approximately 229,000 notices were sent to owners of the Class Generators.<sup>1</sup> No Settlement Class Members have submitted objections, and only 15 opt-outs have been received. The reason for the clear support for the Settlement is obvious, as it provides full relief for Settlement Class Members. For any individuals who previously paid inspection fees that were not reimbursed, they are eligible for full reimbursement. For Settlement Class Members that did not have an inspection performed, they are eligible for a free inspection. In addition, Generac sent notice to all of its Authorized Service Dealers informing them that all Class Generators are eligible for one no-cost inspection of their fuel system. Moreover, the Settlement benefits are now available to owners of certain Generac generators nationwide. Because of the overwhelming support for the Settlement, along with the substantial relief offered through the Settlement, Plaintiffs respectfully request that the Court grant final approval to the settlement.

## **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

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<sup>1</sup> The capitalized terms used herein are defined in Section A of the Settlement Agreement. *See* ECF No. 22-1 (hereafter, "SA").

with consulting experts in the field of generator systems, and drafting a detailed Complaint. Declaration of Joseph G. Sauder, ECF No. 21-2, ¶ 9 (hereafter, “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 Petrese B. 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 Gene E.K. 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 (but did not file) a response to Generac's motion to dismiss. Sauder Dec., ECF No. 21-2, ¶ 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. 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., ECF No. 21-2, ¶ 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. *Id.* ¶ 12. After confirmatory discovery and the Parties' protracted negotiations, the Parties executed the Settlement Agreement on February 3, 2023. *Id.* ¶ 13.

The terms of the Settlement Agreement (previously submitted at ECF No. 22-1) 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**

On August 11, 2023, Plaintiffs filed their motion for attorneys' fees, which seeks \$1,500,000 in attorneys' fees and \$2,500 to each of the Plaintiffs in recognition of their time, costs, and effort in the Lawsuit. Plaintiffs' requests are 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. While Generac reserved the right to oppose Plaintiffs' motion, it has not done so. SA § G.1(b).

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

The Settlement Agreement includes a comprehensive notice plan, which was 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 had an email address for, they received notice via email. SA § D.8(a). For Settlement Class Members that Generac did not have an email address for, the Settlement Administrator sent the postcard Notice of Settlement through first class mail. *Id.* For Settlement Class Members eligible to submit a Reimbursement Claim, their addresses were run through the National Change-of-Address Database. *Id.* If the notice was returned undeliverable, the Settlement Administrator performed one advanced address search to re-mail the undeliverable notice. *Id.* Additionally, on a confidential basis, the parties provided the Settlement Administrator with reasonably available information that identifies possible Settlement Class Members from their existing records. *Id.*

In addition, the Settlement Administrator established a Settlement Website ([www.fuelplenumsettlement.com](http://www.fuelplenumsettlement.com)) that provided: (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, which will include 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 also provides 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 was also 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, mailed all notices required by 28 U.S.C. § 1715. SA § D.8(f). Generac also advised its Authorized Service Dealers of the no-cost Inspection Claims available to Claimants and continues to remind them to visually examine fuel systems (including but not limited to plenums) during general maintenance or service visits, and updated 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 is being filed contemporaneously herewith. 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.

#### **I. The Preliminary Approval Order**

On April 18, 2023, the Court issued its Order Granting Preliminary Approval to Class Action Settlement, Provisionally Certifying Settlement Class, Directing Notice to the Settlement Class, and Scheduling Final Approval Hearing (the “Order”). ECF No. 23. The Order set the Final Approval Hearing for 10:00 a.m. on September 27, 2023 in Courtroom 11-A. *Id.* at 9. Settlement Class Members had until August 26, 2023 to either object to or opt-out of the settlement. For

Settlement Class Members who did not opt-out, they have until September 25, 2023 to submit claims. No Settlement Class Members have objected to the settlement and there have only been 15 opt-outs. When compared against the approximately 229,000 notices sent, the opt-outs represent approximately 0.0065% of the Settlement Class.

### **III. ARGUMENT**

Court approval is required for the settlement of class actions. Fed. R. Civ. P. 23(e). In order to grant final approval to the proposed class action Settlement, the Court must hold a hearing and find the settlement “fair, reasonable and adequate.” Fed. R. Civ. P. 23(e)(2). While courts examine each settlement individually, they are guided by a “strong judicial policy in favor of class action settlement.” *Ehrheart v. Verizon Wireless*, 609 F.3d 590, 595 (3d Cir. 2010). By entering into a voluntary settlement, the parties can benefit substantially by avoiding “costs and risks of a lengthy and complex trial.” *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 784 (3d Cir. 1995). This is particularly true in class action trials. *Id.*

#### **A. The Settlement is Entitled to a Presumption of Fairness**

This Settlement meets the criteria for a presumption of fairness. The requirements to qualify for a presumption of fairness are as follows: “(1) the negotiations occurred at arm’s length; (2) there was sufficient discovery; (3) the proponents of the settlement are experienced in similar litigation; and (4) only a small fraction of the class objected.” *In re National Football League Players Concussion Injury Litig.*, 821 F.3d 410, 436 (3d Cir. 2016) (citing and quoting in part *In re Cendant Corp. Litig.*, 264 F.3d 201, 232 n.18 (3d Cir. 2001)).

The Settlement is the product of arm’s length negotiations undertaken over a substantial period of time and with the assistance of Diane Welsh of JAMS. “The participation of an independent mediator in settlement negotiations virtually [e]nsures that the negotiations were

conducted at arm's length and without collusion between the parties.” *Shapiro v. All. MMA, Inc.*, No. 17-2583 (RBK/AMD), 2018 U.S. Dist. LEXIS 108132, at \*6 (D.N.J. June 28, 2018) (citation and internal marks omitted); *see also McDermid v. Inovio Pharms., Inc.*, No. CV 20-01402, 2023 WL 227355, at \*4 (E.D. Pa. Jan. 18, 2023) (finding settlement entitled to presumption of fairness in part because “negotiations occurred at arm's length, including via a nationally recognized mediator in securities matters”).

Moreover, the parties engaged in sufficient discovery and exchange of information, including confirmatory discovery and a confirmatory interview of a Generac employee, which enabled Plaintiffs to gain “a clear understanding of the strengths and weaknesses of their case,” *Udeen v. Subaru of Am., Inc.*, No. 18-17334 (RBK/JS), 2019 U.S. Dist. LEXIS 172460, at \*8 (D.N.J. Oct. 4, 2019), and confirm that the proposed Settlement is fair, reasonable, and adequate.

The requirement of experienced counsel has also been met here. Throughout the litigation of this Action, the parties have been represented by counsel highly experienced in class action litigation and settlement negotiations. *McDermid*, 2023 WL 227355, at \*4 (finding “Plaintiffs’ counsel has well-documented experience handling securities class actions”).

Finally, the notification of the Settlement Class has resulted in a microscopically small number of opt outs and no objections. The deadline by which Settlement Class members could exclude themselves from the Settlement or object to its terms was August 26, 2023. Of the approximately 229,000 notices sent, Plaintiffs have only received 15 opt outs. Of the total notices sent, the opt-out percentage of 0.0065% constitutes only a miniscule fraction of the Settlement Class. This demonstrates overwhelming support for the Settlement from the Settlement Class Members. *Id.* (finding “an initial presumption of fairness applied” in part because “only one class member objected to the settlement”).

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

Having satisfied each of the requirements for a presumption of fairness, Plaintiffs now turn to the *Girsh* multifactor test. The Third Circuit requires the consideration of the following factors when granting final approval to a class action settlement:

(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 first factor for consideration, “the complexity, expense, and likely duration of the litigation”, supports approval. Without the Settlement, the parties would be engaged in contested motion practice and adversarial discovery for years. The claims advanced on behalf of the Settlement Class involve numerous complex legal and technical issues. Continued litigation would be complex, time consuming and expensive, with no certainty of a favorable outcome. Conversely, the Settlement secures substantial benefits for the Settlement Class without the delay, risk and uncertainty of continued litigation. *See McDermid*, 2023 WL 227355, at \*7 (observing “this

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<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.



litigation required complex and skillful work on the part of both parties” and “[s]hould it continue, the parties would have to continue retaining experts, incurring additional expenses” and “[s]hould the case go to trial, Plaintiffs will have to obtain class certification and maintain the class through trial”); *Yaeger v. Subaru of Am., Inc.*, No. 14-cv-4490(JBS)(KMW), 2016 WL 4541861, at \*9 (D.N.J. Aug. 31, 2016) (“The longer the litigation extended, the more the owners of affected class vehicles would suffer.”).

The Settlement also 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 second factor supports approval because the reaction of the class, as measured by the number of objections and opt-outs, demonstrates overwhelming support for the Settlement. Of the approximately 229,000 notices sent, there are no objections and only 15 opt-out requests. An opt-out percentage of 0.0065% shows the Settlement Class supports the approval of the Settlement. *See, e.g., In re Prudential*, 148 F.3d at 318 (finding 19,000 opt outs out of 8 million policy holders, or 0.24%, to be “truly insignificant”); *McDermid*, 2023 WL 227355, at \*7 (finding eleven objections and one objection out of 576,695 notices to be “overwhelmingly positive”).

The third factor, the stage of the proceedings and the amount of discovery completed, also supports preliminary approval. Class Counsel conducted their own extensive independent

investigation into the inspection program and the issue that causes corrosion on the fuel plenum of the Class Generators. In addition, the parties engaged in confirmatory discovery, which included the exchange of documents and information. Plaintiffs took the confirmatory interview of Generac's Senior Corporate Quality Control Manager. The confirmatory interview covered the identification of the Class Generators, the manner in which inspections will be conducted under the Settlement, additional notification measures to Generac's Authorized Service Dealers, and the costs associated with servicing the Class Generators and replacing the plenums, among other things. *Yaeger*, 2016 WL 4541861, at \*9 (finding stage of proceedings supported final approval where plaintiffs' counsel "conducted its own investigation, researched and responded to numerous inquiries from class members, received and analyzed documents produced by defendants, and conducted confirmatory deposition discovery of defendant's Rule 30 (b) (6) designated deponent"). The amount of discovery completed, along with the Settlement representing a full recovery to the Settlement Class, supports approval.

The fourth, fifth, and sixth factors all analyze the risk of continued litigation. If the parties had been unable to resolve this case through the Settlement, further litigation would have been protracted and costly. Class Counsel have litigated many consumer protection class actions that have taken several years to conclude, and some have lasted over a decade factoring in the appeal of class certification orders. Before ever approaching a trial in this case, the parties likely would have fully briefed motions to dismiss, class certification (along with a potential Rule 23(f) appeal), *Daubert* motions, and summary judgment – in addition to expending considerable resources on electronic discovery, depositions, and expert witnesses. It is therefore unlikely that the case would have reached trial before 2024, with post-trial activity to follow. By that time, many Settlement Class Members may have experienced issues with the plenums on their Class Generators, and

without the benefits offered by the Settlement. *See McDermid*, 2023 WL 227355, at \*8 (observing continued hurdles at summary judgment, trial, and appeal were significant and further observing even if the Court granted class certification, “classes may be decertified or modified at any time if the class becomes unmanageable”); *Yaeger*, 2016 WL 4541861, at \*9 (holding prospect of “protracted motion practice” involving the “nuances of various state laws” as well as “costly discovery” weighed in favor of settlement). Perhaps most importantly for these factors, the foregoing analysis presumes Plaintiffs’ Complaint would have survived Defendant’s pending motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure.

Moreover, Generac maintains that there is no issue with the Class Generators, and it did not breach any express or implied warranties. *McDermid*, 2023 WL 227335, at \*8 (noting defendants disputed liability for conduct at issue). In addition, Generac maintains that most Settlement Class members have not experienced, and indeed may never experience, any alleged malfunction of the plenum on their Class Generators. If the litigation were to continue, Generac would also likely assert numerous defenses which could potentially prevent or substantially reduce many Settlement Class Members’ recovery, such as statutes of limitation, lack of standing, lack of privity, and other common law and/or statutory defenses applicable to particular Settlement Class Members.

These individualized defenses pertaining to the various Settlement Class Members yield no guarantee of recovery and render the prospects of class certification risky. In addition, there are numerous other individualized factors that could adversely affect the ability to certify a class if this action is litigated, including: the manner in which each Class Generator was maintained, each Settlement Class Member’s purchase facts, circumstances and decisions; whether and to what extent any Settlement Class Member experienced a fuel plenum issue; the circumstances and root

causes of any alleged fuel plenum issue; and whether, when and under what circumstances a Settlement Class Member presented the alleged problem to an Generac or its Authorized Service Dealers for diagnosis and repair. *Yaeger*, 2016 WL 4541861, at \*10 (“This is a case requiring particular expertise about the design and servicing of engine oil systems, and the establishment of a defect for purposes of claims for breach of warranty was certainly questionable.”). In addition, material differences in state laws among the 50 states could create substantial obstacles to nationwide class certification. In contrast, these individualized issues do not preclude class certification for settlement purposes, since the Court will not be faced with the significant manageability problems of a trial. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

Courts routinely find the seventh factor – the defendant’s ability to withstand greater judgement – to be neutral. Such a factor is typically only relevant when “the defendant’s professed inability to pay is used to justify the amount of the settlement.” *In re NFL Players Concussion Injury Litig.*, 821 F.3d at 440. This not a factor here.

Finally, the remaining *Girsh* factors – the range of reasonableness of the settlement both independently and weighed against the risk of further litigation – support approval. The settlement must be judged “against the realistic, rather than theoretical potential for recovery after trial.” *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 323 (3d Cir. 2011). In conducting this analysis, the court must “guard 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.” *California v. Teva Pharm. Indus.*, No. 19-3281, 2020 U.S. Dist. LEXIS 102992, at \*32-33 (E.D. Pa. June 10, 2020); *see also In re Shop-Vac Mktg. & Sales Practices Litig.*, No. MDL No. 2380, 2016 U.S. Dist. LEXIS 69345, at \*11 (M.D. Pa. May 25, 2016) (“The proposed settlement amount does not have to be dollar-for-dollar the equivalent of the claim....

and a satisfactory 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). The settlement provides full relief to the Settlement Class in the form of reimbursements for prior inspections, and free inspections moving forward. *McDermid*, 2023 WL 227355, at \*8 (“Courts are instructed to compare the damages plaintiffs would likely recover if successful—discounted for the risk of not prevailing—with the amount of the settlement agreement.”). Moreover, because the Settlement is not a traditional common fund, the recovery of the Settlement Class will not be reduced *pro rata* based on the number of claimants.

### **C. The *Prudential* Factors**

The Third Circuit also permits courts to consider additional factors when evaluating whether to approve a class action settlement. In *In re Prudential*, the Third Circuit identified additional factors that the Court may consider the following factors in evaluating a settlement agreement:

- (1) “the maturity of the underlying substantive issues, as measured by the experience in adjudicating individual actions, the development of scientific knowledge, the extent of discovery on the merits, and other factors that bear on the ability to assess the probable outcome of a trial on the merits of liability and individual damages”;
- (2) the “existence and probable outcome of claims by other classes and subclasses”;
- (3) “the comparison between the results achieved by the settlement for individual class or subclass members and the results achieved—or likely to be achieved—for other claimants”;
- (4) “whether class or subclass members are accorded the right to opt out of the settlement”;
- (5) “whether any provisions for attorneys' fees are reasonable”;  
and

(6) "whether the procedure for processing individual claims under the settlement is fair and reasonable."

*In re Prudential Ins. Co. Am. Sales Practice Litig.*, 148 F.3d 283, 323 (3d Cir. 1998).

"Unlike the *Girsh* factors, each of which the district court must consider before approving a class settlement, the *Prudential* considerations are just that, prudential. They are permissive and non-exhaustive . . . ." *In re Comcast Corp. Set-Top Cable TV Box Antitrust Litig.*, 333 F.R.D. 364, 384 (E.D. Pa. 2019) (quoting *In re Baby Prods. Antitrust Litig.*, 708 F.3d 163, 174 (3d Cir. 2013)).

The first *Prudential* factor is met here because the information disclosed by the parties, the independent investigation performed by Class Counsel, and research of key legal issues by counsel has enabled the parties to gain a strong grasp of the case and its probable outcome. *See Id.* ("Here, Class Counsel were able to make an informed decision about the probable outcome of a trial."). The parties were therefore able to make an informed decision prior to agreeing to the Settlement.

"Factors two and three look at the outcomes of claims by other classes and other claimants." *Vista Healthplan, Inc. v. Cephalon, Inc.*, 2020 U.S. Dist. LEXIS 69614, \*67 (E.D. Pa. April 20, 2020). Class Counsel is unaware of other related class actions. Moreover, as stated above, Class Counsel contends that the Settlement constitutes a highly desirable outcome for the members of the Settlement Class.

Since the Settlement permits individuals to opt out of the Settlement, and only 15 such requests have been submitted, the fourth *Prudential* factor is satisfied.

As demonstrated in the Plaintiffs' recently filed motion for attorney's fees (ECF No. 25), the attorney's fees sought in this action are reasonable. As a result, the fifth *Prudential* factor is met as well.

The procedure for processing claims under the Settlement is also fair and reasonable. Here, Settlement Class Members need only submit a simple Claim Form in order to avail themselves of

the benefits of the Settlement. Settlement Class Members are also provided with the contact information for Class Counsel if they have any questions regarding the relief or how to submit a claim.

**D. The Court Should Reaffirm Certification of the Settlement Class**

In the Preliminary Approval Order, the Court conditionally certified the proposed Class for settlement purposes, concluding that certification of the Settlement Class satisfied the requirements of Rules 23(a) and 23(b)(3). (ECF No. 23, pp. 1-3.) Nothing has changed since the Preliminary Approval Order, and no objections have been received challenging the propriety of the Court's certification of the Settlement Class. Accordingly, Class Counsel respectfully request that the Court reaffirm those findings, grant final approval of this Settlement and certify the Settlement Class proposed here.

**E. The Notice Plan Satisfied Due Process and Rule 23(e)**

Fed R. Civ. P. 23(c)(2)(B) states that “the court must direct to all members who can be identified through reasonable effort.” Generac retained an experienced claims administrator, who oversaw the Notice Plan, and used this information to prepare the Notice that was sent to Settlement Class Members. In the first instance, email was used to send the notices. 53,462 email notices were sent. For any Settlement Class Members that Generac did not have email address for, notice was provided via first-class mail. 175,895 notices were mailed. The Notice of Settlement is also posted on the Settlement Website.<sup>3</sup>

In addition to the requirements of Rule 23, due process further requires that notice be ‘reasonably calculated, under all the circumstances, to apprise interested parties of the pendency

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<sup>3</sup> See <https://www.fuelplenumsettlement.com/case-documents.aspx> (last visited September 13, 2023).

of the action and afford them an opportunity to present their objections.” *In re NFL Players Concussion Injury Litig.*, 821 F.3d at 435 (quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S. Ct. 652, 94 L. Ed. 865 (1950)). The above-described notice system and accompanying notice forms ensured that interested parties were made aware of the action and presented them with an opportunity to present their objections. Accordingly, the form and manner of the notice satisfies all applicable requirements.

Further, in granting preliminary approval, the Court observed that the Notice Plan satisfied “the requirements of due process, Rule 23 of the Federal Rules of Civil 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.” ECF No. 23, at p.5. As such, the Notice Plan was executed as intended, which also supports Plaintiffs’ request for final approval of the Settlement.

#### IV. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court reaffirm certification of the Settlement Class and issue an order granting final approval to the Settlement.

DATED: September 13, 2023

Respectfully submitted,

By: /s/ Joseph G. Sauder  
 Joseph G. Sauder  
 Joseph B. Kenney  
**Sauder Schelkopf LLC**  
 1109 Lancaster Avenue  
 Berwyn, PA 19312  
 Phone: (888) 711-9975  
 jgs@sstriallawyers.com  
 jbk@sstriallawyers.com

*Class Counsel*



**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing *PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR FINAL 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

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

---

GREG MCMAHON and ADAM  
GOLDBERG,

Plaintiffs,

v.

GENERAC POWER SYSTEMS, INC.,

Defendant.

---

Civil Action No. 2:21-cv-05660

**DECLARATION OF JANETH ANTONIO REGARDING MAILING OF  
CLASS NOTICE AND REQUESTS FOR EXCLUSION**

I, Janeth Antonio, hereby declare as follows:

1. I am a Director at KCC Class Action Services, LLC (“KCC”), which serves as the Settlement Administrator for the above-captioned action. I am responsible for supervising the services provided by KCC for this matter. I am over the age of 21 and am otherwise competent to make this declaration. I have personal knowledge of the facts contained in this declaration, which are true and correct.

2. KCC specializes in class action notification and settlement administration, including telephone support, website implementation, and email and direct mail services. KCC has been approved by numerous courts throughout the country to provide class notice implementation and settlement/claim administration services for class actions involving consumers, pension benefits, securities, product liability, insurance antitrust, fraud, property, employment, discrimination, bankruptcy and other types of class action cases. We regularly provide class notice,

claim form and claims processing, claim review and administration, settlement website implementation, check distribution, and other claims administration services.

3. This Declaration describes the implementation of the Notice Plan as described in the Settlement Agreement, and in the Court's Preliminary Approval Order dated April 18, 2023 (ECF No. 23).

#### **CAFA NOTICE**

4. Pursuant to the Class Action Fairness Act of 2005, KCC mailed, on February 10, 2023, via First-Class Mail, notice of this Settlement, together with the Complaint, the Motion for Preliminary Approval of the Class Action Settlement with all attachments and the Settlement Agreement and all exhibits thereto, to the parties listed on **Exhibit A**, i.e., the United States Attorney General, the Attorneys General of each of the 50 states, the Attorney Generals of the 5 U.S Territories, as well as parties of interest to this Action.

#### **NOTICE TO THE SETTLEMENT CLASS**

5. Pursuant to the Court-approved Notice Plan, on June 27, 2023, KCC first emailed 53,462 Notices of Settlement to Settlement Class members for whom Generac provided an email address to KCC.

6. KCC mailed 175,895 Notices of Settlement to Settlement Class members. For Settlement Class members eligible to submit a Reimbursement Claim, the addresses were run through the National Change-of-Address Database.

7. Since the mailing of the Notices to the Class Members, KCC has received 3,147 Notices returned by the USPS with forwarding address. KCC immediately caused the Notice to be re-mailed to the forwarding addresses supplied by the USPS.

8. Since mailing of the Notices to the Class Members, KCC has received 15,888 Notices returned by the USPS with undeliverable addresses. Through credit bureau and/or other public source databases, KCC performed address searches for these undeliverable Notice Packets and was able to find updated addresses for 6,245 Class Members. KCC promptly re-mailed Notice Packets to the found new addresses.

9. Attached as **Exhibit B** is a true and correct copy of the final form of the Notice of Settlement, which was mailed or emailed to Settlement Class members per the above.

10. The deadline for Settlement Class members to file claims is September 25, 2023. As of September 12, 2023, KCC has received 9,526 Claim Forms. The Claim Forms are being reviewed and may not all be timely, complete, or otherwise valid.

#### **SETTLEMENT WEBSITE AND TOLL-FREE NUMBER**

11. Pursuant to the approved Notice Plan, in addition to the Class Notice mailing, on June 27, 2023, KCC, with input from the parties, made available an interactive, Settlement Website, [www.FuelPlenumSettlement.com](http://www.FuelPlenumSettlement.com), which features answers to Frequently Asked Questions, contact information for the Settlement Administrator including e-mail and toll-free telephone number, important dates and deadlines, including the deadlines for objecting to or opting-out of the Settlement and for filing a claim for reimbursement under the Settlement, and the date and time of the Final Approval Hearing. The Settlement Website also contains a serial number lookup portal for persons and entities to determine whether their generator is a Class Generator, copies of important case documents such as the Complaint, Notice of Settlement, and Claim Form, Settlement Agreement, Motion for Preliminary Approval and the Preliminary Approval Order, Motion for Attorneys' Fees Costs, and Service Awards and will contain other submissions that will later be filed, including the Motion for Final Approval. KCC will, as directed

by counsel for the Parties, continue to promptly update the Settlement Website with other relevant information, orders, and documents agreed upon by counsel for the Parties.

12. As of September 11, 2023, there have been 20,439 users, 25,603 sessions/hits (active visits to the website), and 59,814 page views of the Settlement Website.

13. KCC maintains a 24-hour toll-free telephone line that Settlement Class members can call to obtain information about the Settlement, and during business hours the call center is staffed with operators who are trained to answer questions and provide any needed assistance about the Settlement and/or the claims process. Outside of business hours callers can hear answers to Frequently Asked Questions.

14. As of September 11, 2023, the toll-free telephone line has received 598 calls.

#### **REQUESTS FOR EXCLUSION/OBJECTIONS**

15. The deadline to mail a timely request for exclusion from, or object to, the Settlement was August 26, 2023.

16. As of September 12, 2023, KCC received a total of 15 purported requests for exclusion. Not all of the requests for exclusion may be timely and/or complete. The exclusion requests are being reviewed to determine whether they are timely and meet the criteria listed in Section E(1) of the Court's Preliminary Approval Order.

17. As of September 12, 2023, KCC has received no objections to the Settlement.

I declare under penalty of perjury that the foregoing is true and correct. Executed on September 13, 2023, in Vallejo, California.

*Janeth Antonio*

---

Janeth Antonio

# Exhibit A

Last	First	Company 1	Company 2	Address 1	Address 2	City	State	Zip
Garland	Merrick	Attorney General of the United States		United States Department of Justice	950 Pennsylvania Avenue, NW	Washington	DC	20530-0001
Taylor	Treg	Office of the Alaska Attorney General		1031 W. 4th Avenue, Suite 200		Anchorage	AK	99501-1994
Marshall	Steve	Office of the Alabama Attorney General		501 Washington Avenue	PO Box 300152	Montgomery	AL	36130-0152
Griffin	Tim	Arkansas Attorney General Office		323 Center Street, Suite 200		Little Rock	AR	72201-2610
Mayes	Kris	Office of the Arizona Attorney General		2005 N. Central Avenue		Phoenix	AZ	85004
CAFA Coordinator		Office of the Attorney General		Consumer Law Section	455 Golden Gate Ave., Suite 11000	San Francisco	CA	94102
Weiser	Phil	Office of the Colorado Attorney General		Ralph L. Carr Colorado Judicial Center	1300 Broadway, 10th Floor	Denver	CO	80203
Tong	William	State of Connecticut Attorney General		165 Capitol Avenue		Hartford	CT	06106
Schwalb	Brian	District of Columbia Attorney General		400 6th St., NW		Washington	DC	20001
Jennings	Kathy	Delaware Attorney General		Carvel State Office Building	820 N. French Street	Wilmington	DE	19801
Moody	Ashley	Office of the Attorney General of Florida		The Capitol, PL-01		Tallahassee	FL	32399-1050
Carr	Chris	Office of the Georgia Attorney General		40 Capitol Square, SW		Atlanta	GA	30334-1300
Lopez	Anne E.	Office of the Hawaii Attorney General		425 Queen Street		Honolulu	HI	96813
Bird	Brenna	Iowa Attorney General		Hoover State Office Building	1305 E. Walnut Street	Des Moines	IA	50319
Labrador	Raul	State of Idaho Attorney General's Office		700 W. Jefferson Street, Suite 210	P.O. Box 83720	Boise	ID	83720-1000
Raoul	Kwame	Illinois Attorney General		James R. Thompson Center	100 W. Randolph Street	Chicago	IL	60601
Rokita	Todd	Indiana Attorney General's Office		Indiana Government Center South	302 West Washington Street, 5th Floor	Indianapolis	IN	46204
Kobach	Kris	Kansas Attorney General		120 S.W. 10th Ave., 2nd Floor		Topeka	KS	66612-1597
Cameron	Daniel	Office of the Kentucky Attorney General		700 Capitol Ave.	Capitol Building, Suite 118	Frankfort	KY	40601
Landry	Jeff	Office of the Louisiana Attorney General		P.O. Box 94095		Baton Rouge	LA	70804-4095
Campbell	Andrea	Attorney General of Massachusetts		1 Ashburton Place	20th Floor	Boston	MA	02108-1698
Brown	Anthony G.	Office of the Maryland Attorney General		200 St. Paul Place		Baltimore	MD	21202-2202
Frey	Aaron	Office of the Maine Attorney General		State House Station 6		Augusta	ME	04333
Nessel	Dana	Office of the Michigan Attorney General		P.O. Box 30212	525 W. Ottawa Street	Lansing	MI	48909-0212
Keith Ellison	Attorney General	Attention: CAFA Coordinator		445 Minnesota Street	Suite 1400	St. Paul	MN	55101-2131
Bailey	Andrew	Missouri Attorney General's Office		Supreme Court Building	207 W. High Street	Jefferson City	MO	65101
Fitch	Lynn	Mississippi Attorney General's Office		Department of Justice	P.O. Box 220	Jackson	MS	39205
Knudsen	Austin	Office of the Montana Attorney General		Justice Bldg.	215 N. Sanders Street	Helena	MT	59620-1401
Stein	Josh	North Carolina Attorney General		Department of Justice	P.O. Box 629	Raleigh	NC	27602-0629
Hilgers	Mike	Office of the Nebraska Attorney General		State Capitol P.O. Box 98920		Lincoln	NE	68509-8920
Ford	Aaron	Nevada Attorney General		Old Supreme Ct. Bldg.	100 North Carson St.	Carson City	NV	89701
Formella	John	New Hampshire Attorney General		Hew Hampshire Department of Justice	33 Capitol St.	Concord	NH	03301-6397
Platkin	Matthew J.	Office of the New Jersey Attorney General		Richard J. Hughes Justice Complex	25 Market St., P.O. Box 080	Trenton	NJ	08625-0080
Torrez	Raul	Office of the New Mexico Attorney General		P.O. Drawer 1508		Santa Fe	NM	87504-1508
James	Lettia	Office of the New York Attorney General		Dept. of Law - The Capitol	2nd Floor	Albany	NY	12224-0341
Wrigley	Drew H.	North Dakota Office of the Attorney General		State Capitol	600 E. Boulevard Ave., Dept. 125	Bismarck	ND	58505-0040
Yost	Dave	Ohio Attorney General		Rhodes State Office Tower	30 E. Broad St., 14th Flr.	Columbus	OH	43215
Drummond	Gentner	Oklahoma Office of the Attorney General		313 NE 21st St.		Oklahoma City	OK	73105
Rosenblum	Ellen F.	Office of the Oregon Attorney General		Justice Building	1162 Court St., NE	Salem	OR	97301-4096
Shapiro	Josh	Pennsylvania Office of the Attorney General		16th Flr., Strawberry Square		Harrisburg	PA	17120
Neronha	Peter	Rhode Island Office of the Attorney General		150 South Main St.		Providence	RI	02903
Wilson	Alan	South Carolina Attorney General		Rembert C. Dennis Office Bldg.	P.O. Box 11549	Columbia	SC	29211
Jackley	Marty	South Dakota Office of the Attorney General		1302 East Highway 14, Suite 1		Pierre	SD	57501-8501
Skrmetti	Jonathan	Tennessee Attorney General and Reporter		425 5th Avenue North		Nashville	TN	37243
Paxton	Ken	Attorney General of Texas		Capitol Station	P.O. Box 12548	Austin	TX	78711-2548
Reyes	Sean	Utah Office of the Attorney General		P.O. Box 142320		Salt Lake City	UT	84114-2320
Clark	Charity R.	Office of the Attorney General of Vermont		109 State St.		Montpelier	VT	05609-1001
Miyares	Jason	Office of the Virginia Attorney General		202 North Ninth St.		Richmond	VA	23219
Ferguson	Bob	Washington State Attorney General		1125 Washington St. SE	P.O. Box 40100	Olympia	WA	98504-0100
Morrissey	Patrick	West Virginia Attorney General		State Capitol Complex, Bldg. 1, Rm. E-26	1900 Kanawha Blvd. E.	Charleston	WV	25305
Kaul	Josh	Office of the Wisconsin Attorney General		Dept. of Justice, State Capitol	Rm. 114 East, P.O. Box 7857	Madison	WI	53707-7857
Hill	Bridget	Office of the Wyoming Attorney General		109 State Capitol		Cheyenne	WY	82002
Ala'ilima-Utu	Fainu'ulelei Falefatu	American Samoa Gov't		Dept. of Legal Affairs, c/o Attorney General	P.O. Box 7	Utulei	AS	96799
Moylan	Douglas	Office of the Attorney General, ITC Building		590 S. Marine Corps Dr.	Suite 706	Tamuning	Guam	96913
Manibusan	Edward	Northern Mariana Islands Attorney General		Administration Building	P.O. Box 10007	Saipan	MP	96950-8907
Hernández	Domingo Emanuelli	Puerto Rico Attorney General		Torre Chardón, Suite 1201	350 Carlos Chardón Ave.	San Juan	PR	00918
George	Denise N.	Virgin Islands Atty. General, DOJ		3438 Kronprindsens Gade	GERs Complex, 2nd Floor	St. Thomas	VI	00802
Geatens	Meaghan V.	Faegre Drinker Biddle & Reath LLP		One Logan Square	Ste. 2000	Philadelphia	PA	19103

# Exhibit B



Claim ID: <<ClaimID>>

## **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 Generac home standby generators that were part of the Inspection Program] who paid a \$80 Inspection Program fee that was not reimbursed prior to April 18, 2023, and (2) all current owners of Class Generators that were not inspected pursuant to the Inspection Program prior to April 18, 2023." "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 September 25, 2023. You can file your Claim online at [www.fuelplenumsettlement.com](http://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 **August 26, 2023**. If you do not exclude yourself, you may object to the Settlement by submitting a written objection by **August 26, 2023**. The Notice of Class Action 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 **September 27, 2023** 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 your 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 1-855-664-1559 or visit [www.fuelplenumsettlement.com](http://www.fuelplenumsettlement.com).

*Meridian v. Generac Power Systems*  
Settlement Administrator  
P.O. Box 301132  
Los Angeles, CA 90030-1132

**LEGAL NOTICE**

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

**If you own or owned a Generac home  
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VISIT THE  
SETTLEMENT  
WEBSITE BY  
SCANNING  
THE PROVIDED  
QR CODE

<<Barcode>>

Postal Service: Please Do Not Mark Barcode

Claim#: GPG-«ClaimID» - «MailRec»

«First1» «Last1»

«CO»

«Addr2»

«Addr1»

«City», «St» «Zip»

«Country»

**GPG**

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

---

GREG MCMAHON and ADAM  
GOLDBERG,

Plaintiffs,

v.

GENERAC POWER SYSTEMS, INC.,

Defendant.

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Civil Action No. 2:21-cv-05660

**[PROPOSED] FINAL APPROVAL ORDER**

On the \_\_\_\_ day of \_\_\_\_\_, 2023, this Court heard the Plaintiffs' motion for final approval of the settlement and entry of judgment.<sup>1</sup> This Court reviewed: (a) the motion and the supporting papers, including the Class Action Settlement Agreement and Release ("**Settlement Agreement**"); (b) any objections to the settlement; (c) the Parties' responses to any objections; and (d) counsels' arguments. Based on this review and the findings below, the Court finds good cause to grant the motion.

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

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<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.

3. Specifically, the Court has analyzed each of the factors set forth in Fed. R. Civ. P. 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:

**1. 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

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