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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

JASON TRABAKOOLAS, SHEILA STETSON, CHRISTIE WHEELER, JACK MOONEY, and KEVEN TURNER individually and on behalf of all others similarly situated,

Plaintiffs

v.

WATTS WATER TECHNOLOGIES, INC., WATTS REGULATOR CO., WOLVERINE BRASS, INC., AND JOHN DOES 1-100.

Defendants.

No. 3:12-cv-01172-WHO (EDL)

CLASS ACTION

DECLARATION OF SIMON B. PARIS IN SUPPORT OF PLAINTIFFS' MOTION FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND COMPENSATION TO NAMED PLAINTIFFS

Date: July 16, 2014
Time: 2:00 p.m.
Courtroom: 2, 17th Floor
Judge: Hon. William H. Orrick

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I, Simon B. Paris, declare as follows:

1. I am an attorney and a partner with the law firm of Saltz, Mongeluzzi, Barrett & Bendesky, P.C. ("SMBB") in Philadelphia, PA and served as court-appointed Lead Counsel for Plaintiffs Jason Trabakoolas, Sheila Stetson, Christie Wheeler, Jack Mooney, and Keven Turner, on behalf of themselves and a proposed class of similarly situated persons ("Plaintiffs") in the case *Trabakoolas, et al., v. Watts Water Technologies, et al*. ECF Nos. 104, 276 at ¶ 4. I have personal knowledge of the matters described in this declaration and am competent to testify thereto.

2. The purpose of this declaration is to summarize the factual and procedural history of this litigation, including, but not limited to: the pre-suit investigation, filing of the initial complaint, motion practice, discovery, settlement negotiations, and the lodestar and litigation expenses. As Lead Counsel, I have been intimately involved in all aspects of the litigation.

3. This litigation, and proposed settlement, resolves the outstanding issues surrounding the allegedly defective Coupling Nut used to attach flexible Toilet Connectors to the base of a toilet. Defendants designed and manufactured the Coupling Nut for distribution and sale in the United States from 1999 through July 2009.

I. HISTORY OF THE CASE

A. SMBB'S Pre-Suit Investigation and Filing of Initial Complaint

4. In February 2010, more than two years before the action was commenced, SMBB began investigating a systemic failure mode in the plastic coupling nut of toilet connectors. The acetal plastic coupling nut on toilet connectors with various branding failed repeatedly in the same fashion, through a circumfral fracture where the side wall met the base of the coupling nut.

5. SMBB began investigating the manufacturing operations of the largest producer of these coupling nuts, Watts Water Technologies, Inc. and Watts Regulator Co. (collectively referred to as "Watts" herein). SMBB sought to obtain an understanding of Watts' corporate structure and distribution system.

6. SMBB searched the history of the alleged defects, including consulting scholarly articles, plastic design guides, and retrieving the dockets from prior individual actions against Watts dating back to 2002.

7. In December 2010, SMBB began interviewing potential consulting experts on toilet connectors, their overall design, as well as the design of the plastic coupling nut itself. By July 2011, SMBB had engaged consulting experts on the design of the Coupling Nut and began to identify the design defects that led to the repeated circumfral fracture of the Coupling Nut. Ultimately, SMBB began working with consultants in the fields of both plastic design and engineering to refine the design defect allegations. At this point, SMBB believed it had identified a systemic failure mode for the Coupling Nuts.

8. After July 2011, SMBB worked independently and with its consulting experts to identify the product at issue, the entities responsible for that product, the defects that exist in this product, and the claims for which relief may be granted on behalf of a class of similarly situated consumers. SMBB also learned of Watts' enforcement of an arbitration agreement with Arbitration Forums, Inc. with the major homeowners' insurance carriers, and Watts' success in defending the design defect claims of the coupling nut in that forum.

9. SMBB prepared the initial complaint against Watts, and began to organize Plaintiffs' legal team (Berman DeValerio; Hagens Berman Sobol Shapiro LLP; Gustafson Gluek PLLC; and Fine, Kaplan and Black R.P.C.). Many of these firms were each assigned pre-suit research and investigative tasks. Lead Counsel specifically requested the involvement of certain lawyers fully expecting that the case may be tried to verdict.

10. Plaintiffs Jason Trabakoolas and Sheila Stetson filed the initial Class Action Complaint (the "Complaint") on March 8, 2012, after more than two years of pre-suit investigation by SMBB. ECF No. 1. Both Plaintiffs had suffered property damage to their homes following the circumfral fracture and failure of a Coupling Nut consistent with the SMBB's pre-suit investigation. *Id*. The Complaint alleged that a series of design defects with the Coupling Nut,

including inadequate warnings and labels, cause it to prematurely fracture and fail resulting in damage to property. Plaintiffs claimed that Watts knew about these defects, but chose to conceal them. *Id*. ¶¶ 55-56. According to the Complaint, after mounting property damage claims, Watts remediated the design and labeling of the Toilet Connector and Coupling Nuts. *Id*. ¶¶ 56-57. The Complaint claimed that despite its knowledge of the alleged defects, Watts never warned anyone of these defects or the subsequent remediation, leaving property exposed to potential damage. *Id*. ¶¶ 35, 68-69, 79-82.

11. The Complaint alleged six causes of action relating to these defects: (1) negligence; (2) strict liability – design defect / manufacturing defect and failure to warn; (3) negligent failure to warn; (4) breach of implied warranty; (5) violation of the California's Consumers Legal Remedies Act ("CLRA"); and (6) violation of California's Unfair Competition Law ("UCL"). The Defendants named in the initial Complaint were: Watts Water Technologies, Inc.; Watts Regulator Co.; Watts Anderson-Barrows Metal Corp. ("Anderson-Barrows"); Watts Plumbing Technologies (TAIZHOU) Co., LTD. ("Watts Taizhou"); Savard Plumbing Co. ("Savard"); and Wolverine Brass, Inc. ("Wolverine"). ECF No. 1.

12. Watts would not accept service of the Complaint for Watts Plumbing Technologies (Taizhou) Co., Ltd., ("Watts Taizhou") a wholly owned subsidiary of Watts Regulator Co. that is domiciled in Zeijiang, China. In May 2012, Plaintiffs commenced the expensive and time-consuming process of completing international service. *See* ECF No. 58.

13. Although Watts had faced individual subrogation claims from property insurers related to Coupling Nut failures, at the time of its filing, this was the first case to challenge the alleged defects with the toilet connectors on a class-wide basis using state consumer protection laws; it was also uniquely positioned to obtain declaratory relief regarding the alleged defective nature of the Toilet Connector's design by adjudicating the common question of whether the Toilet Connector's design was defective on a full merits record.

14. The litigation was hard-fought from the outset, with Watts sparing no expense in its

efforts to fight discovery and defeat Plaintiffs' claims. Watts' counsel, Alston & Bird, challenged every aspect of Plaintiffs' case. Intially, Watts raised a number of unique challenges to Plaintiffs' claims, including twice attempting to have the California Legal Remedies Act (a critical claim in Plaintiffs' case) dismissed with prejudice; sought and successfully had certain allegations in the initial Complaint struck; sought to bifurcate class and merits discovery; and pressed the applicability of an arbitration agreement between the individual Plaintiffs' home insurance carriers and Watts. Over the course of the litigation, the parties struggled to reach agreement on the most basic items (e.g., the location and timing of depositions) to the most fundamental (e.g., the obligations imposed on a party by Fed. R. Civ. P. 26).

B. The Serial Motions to Dismiss

1. Motion to Dismiss the Second and Fifth Causes of Action.

15. On April 25, 2012, Watts moved to dismiss the second and fifth causes of action, or in the alternative, strike certain allegations of the Complaint. ECF No. 37, 44. Watts sought dismissal of the strict liability design defect / manufacturing defect and failure to warn; and the CLRA claims. The motion argued a factual pleading deficiency on the manufacturing defect claim and a failure to comply with the notice requirement of the CLRA. Plaintiffs opposed this motion (ECF No. 46) and Watts filed a reply (ECF No. 48). The Court held oral argument on June 5, 2012. ECF No. 49.

16. Following oral argument, on June 6, 2012, the Court issued an Order Requiring Additional Briefing Regarding the Motion to Dismiss. ECF No. 50. The issue framed by the Court for supplemental briefing was whether the "replacement remedy" sought by Plaintiffs under the CLRA is properly characterized as damages or injunctive relief. *Id*. On June 13, 2014, the parties submitted their supplemental briefs limited to this issue. ECF Nos. 51-52.

17. On July 9, 2014, the Court issued its ruling granting-in-part and denying-in-part Watts' motion. ECF No. 62. In doing so, the Court reasoned that the Complaint set forth a design defect claim rather than a manufacturing defect claim, and that the Complaint's request for

replacement of the Toilet Connectors was a request for damage under Section 1782(a), and not injunctive relief, requiring pre-suit notice under the CLRA.

18. This particular legal issue was one of first impression under the CLRA and its impact on the litigation was material. The Court's conclusion that the replacement request was for damages under that statute, provided Watts the argument that the the claim under the CLRA would need to satisfy Fed. R. Civ. P. 23(b)(3), as opposed to 23(b)(2), to be certified as a class.

19. Plaintiffs served Watts with a CLRA notice pursuant to Section 1782 on July 12, 2012, to preserve all damage claims for the putative class.

20. After Watts failed to respond to the CLRA notice in proper fashion, on August 13, 2012, Plaintiffs filed their First Amended Complaint ("FAC") pursuant to the Court's July 9 Order. ECF No. 69. The FAC removed reference to a manufacturing defect claim and now included a claim for damages under the CLRA. Additionally, pursuant to discussions with Watts, the FAC removed reference to Savard Plumbing Co. or Watts Anderson-Barrows Metal Corp. as defendants because both were merged into Watts Regulator Co.

2. Motion to Dismiss for Lack of Personal Jurisdiction

21. After completing international service, on August 2, 2012, Watts Taizhou moved to dismiss the Complaint for a lack of personal jurisdiction. This motion was terminated by the Court in light of the filing of the FAC on August 13, 2012. ECF No. 71. Watts Taizhou re-filed its motion on August 15, 2012. ECF No. 72. Watts Taizhou is the Chinese manufacturing facility for Watts, and manufactured the Coupling Nuts for the majority of the relevant period. In support of dismissal for lack of personal jurisdiction, Watts Taizhou argued it lacked the sufficient minimum contacts with the State of California to support either general or specific jurisdiction. Extensive briefing on this important issue would follow.

22. Plaintiffs filed their opposition to this motion, and identified exemplar bills of lading from January 12, 2006 and February 22, 2008 for the shipments of "Flexible Water Connector[s]" shipped directly from Watts Taizhou to the Port of Long Beach, California. ECF

Nos. 79-80. These contacts, Plaintiffs argued, provided a sufficient nexus with California to support personal jurisdiction, or at a minimum, afford Plaintiffs the opportunity to take targeted jurisdictional discovery of Watts Taizhou.

23. On September 11, 2012, Watts Taizhou filed is reply, along with a motion to strike the bills of lading. ECF Nos. 81-82. Plaintiffs opposed the motion to strike on September 17, 2012 (ECF No. 83), and the Court struck the motion on procedural grounds the next day (ECF No. 84).

24. On September 25, 2012, the Court held argument on Watts Taizhou's motion to dismiss. ECF No. 88. On October 2, 2012, the Court requested supplemental briefing as to whether, as part of the specific jurisdiction analysis, the Court should focus on the named Plaintiffs or the putative class in analyzing whether the claims arise out of or relate to Watts Taizhou's forum-related activities. ECF No. 89.

25. Prior to the Court ruling on Watts Taizhou's motion to dismiss, the parties stipulated to the dismissal of Watts Taizhou, without prejudice, in exchange for its participation in discovery. ECF No. 91. The Court approved the stipulation and entered an order adopting its terms and vacating Watts Taizhou's motion. ECF No. 93.

3. Second Motion to Dismiss the CLRA Claim

26. On September 4, 2012, Watts again sought dismissal of Plaintiffs' CLRA claim. ECF No. 78. Watts, again, argued that Plaintiffs failed to comply with the notice requirements of the CLRA. Plaintiffs opposed this motion on September 18 (ECF No. 85), and Watts filed a reply on September 25 (ECF No. 86). Without oral argument, the Court denied Watts' motion on October 5. ECF No. 90.

27. On October 15, 2012, Watts filed an Answer to the FAC. ECF No. 94.

28. On May 3, 2013, Plaintiffs filed their Second Amended Complaint ("SAC") to add named plaintiffs, Christie Wheeler, Jack Mooney and Keven Turner, all who suffered Coupling Nut failures in their homes. ECF No. 130. Watts filed an Answer to the SAC on June 3, 2013. ECF No. 147. The SAC is the operable complaint.

C. Discovery

29. The parties held their Initial Case Management Conference on July 2, 2012. ECF No. 60. In connection with this Conference, Watts' indicated their intention to request via motion that class and merits discovery be bifurcated.

30. On July 23, 2012, Watts filed a bifurcation motion. ECF No. 64. Plaintiffs opposed the motion on August 6 (ECF No. 68) and Watts filed its reply on August 13 (ECF No. 70). The Court did not hold argument, and denied Watts' motion on August 22. ECF No. 77. Discovery was conducted on class and merits issues simultaneously.

31. During the 14 consecutive months that the parties engaged in active discovery (June 2012 – August 2013), the parties negotiated a protocol from the production of electronically stored information (ECF No. 96); as well as a protective order (ECF No. 87), and each side served multiple sets of document requests, interrogatories, requests for admissions, and third-party subpoenas.

1. Written Discovery

32. Plaintiffs served two (2) sets of document requests on each Watts defendant, and one (1) set of document requests on Wolverine Brass, two (2) sets of interrogatories on each Watts defendant, two (2) sets of requests for admissions on each Watts defendant, and two (2) notices of inspection on Watts. Watts served Plaintiffs with ten (10) sets of document requests, ten (10) sets of interrogatories, seven (7) sets of requests for admissions, and five (5) notices of inspection.

33. The discovery exchange is charted as follows:

DATE	SERVED BY	SERVED ON	DESCRIPTION
6/29/12	Plaintiffs	Watts	1st Set of Document Requests
8/1/12	Plaintiffs	Watts	1st Set of Interrogatories
8/30/12	Watts	Plaintiff Trabakoolas	1st Set of Document Requests

8/30/12	Watts	Plaintiff Stetson	1st Set of Document Requests
8/31/12	Plaintiffs	Wolverine	1st Set of Document Requests
12/6/12	Watts	Plaintiff Trabakoolas	1st Notice of Inspection
12/6/12	Watts	Plaintiff Stetson	1st Notice of Inspection
12/18/12	Plaintiffs	Watts	1st Set of Requests for Admissions
1/23/13	Watts	Plaintiffs Stetson and Trabakoolas	2nd Set of Document Requests
3/4/13	Watts	Plaintiffs Stetson and Trabakoolas	Notice of Continued Inspection
3/6/13	Plaintiffs	Watts	1st Notice of Inspection
3/22/13	Watts	Plaintiffs Stetson and Trabakoolas	1st Set of Requests for Admissions
3/22/13	Watts	Plaintiffs Stetson and Trabakoolas	3rd Set of Document Requests
3/22/13	Watts	Plaintiffs Stetson and Trabakoolas	1st Set of Interrogatories
3/25/13	Watts	Plaintiffs Stetson and Trabakoolas	4th Set of Document Requests
5/22/13	Plaintiffs	Watts	2nd Set of Requests for Admissions
5/29/13	Plaintiffs	Watts	2nd Notice of Inspection
6/11/13	Watts	Plaintiffs Mooney, Wheeler and Turner	1st Notice of Inspection
6/17/13	Watts	Plaintiffs Stetson and Trabakoolas	2nd Set of Interrogatories
6/17/13	Watts	Plaintiffs Stetson and Trabakoolas	5th Set of Document Requests
6/17/13	Watts	Plaintiffs Stetson and Trabakoolas	2nd Set of Requests for Admissions
6/17/13	Watts	Plaintiffs Mooney, Wheeler and Turner	1st Set of Interrogatories

6/17/13	Watts	Plaintiffs Mooney, Wheeler and Turner	1st Set of Document Requests
6/17/13	Watts	Plaintiffs Mooney, Wheeler and Turner	1st Set of Requests for Admissions
7/15/13	Watts	Plaintiffs Mooney, Wheeler and Turner	2nd Set of Interrogatories
8/9/13	Plaintiffs	Watts	2nd Set of Interrogatories
8/14/13	Plaintiffs	Watts	2nd Set of Document Requests

34. The parties exchanged nearly daily, lengthy correspondence detailing the other parties' alleged deficiencies in both responding to written discovery and searching for and producing relevant materials. The parties held countless telephonic meet-and-confer sessions relating to this discovery, and at least eight (8) separate in-person meet and confer sessions in Los Angeles, San Francisco, Menlo Park, and Oakland.

35. Although agreements were occasionally reached, often times the issues were presented to the Court both in writing through joint-discovery letter briefs (*see, e.g.*, ECF Nos. 122, 139, 195, 213, 216) and during five (5) separate Case Management Conferences. *See* ECF Nos. 60, 111, 119, 134, 209. Between various motions and court conferences, the parties appeared in Court in both Oakland and San Francisco eleven (11) separate times in a twelve (12) month span (July 2012 – July 2013).

2. Document Discovery and ESI Productions

36. Watts produced documents in three categories: ESI, hard copy documents and claim files. Ultimately, Watts produced more than 200,000 pages of documents and ESI in discovery while co-Defendant, Wolverine Brass produced several thousand additional pages, including ESI.

37. Through discovery, Plaintiffs learned that the total number of Toilet Connectors with Coupling Nuts sold from 2003 to July 2009 was 31,332,886. From 2005-2011, discovery also demonstrated that Watts received a total of 1,243 claims for Coupling Nut failures.

38. A review of these claim files demonstrates that the vast majority of those submitting claims to Watts recovered nothing for their damages. In fact, only approximately 15% ever receive any form of payment. As the natural corollary, nearly 85% received no recovery. And the average amount of Watts' payment to those who did recover was only approximately 7.5% of the value of the claim submitted. A detailed analysis of these figures will be submitted in connection with the motion for final approval of the settlement.

D. Watts Affirmative Defenses

39. The historical success of Watts in defending the design of the Coupling Nut presented a significant challenge to Plaintiffs, and emboldened Watts.

40. Watts maintained that the Plaintiffs' claims belonged in Arbitration Forums, Inc. pursuant to an arbitration agreement signed by Watts and the major insurance carriers in the United States, including the Plaintiffs' insurers. Watts had enjoyed great success defending subrogation cases for Coupling Nut failures in this forum. Although the Named Plaintiffs were not signators to any arbitration agreement, had Watts been successful in compelling arbitration, it may have made any class recovery impossible.

41. Watts also asserted that the Coupling Nut failed only as a result of misuse. In other words, the installer used a tool, as opposed to just a hand, to tighten the Coupling Nut during installation. As a result, Watts' contended the Coupling Nut failure was the sole result of improper installation. While Plaintiffs' defective warning/labeling claim addressed this defense, it served as a deterrent to many individuals and insurers in commencing *any* litigation against Watts. For instance, in connection with Plaintiffs Wheeler/Mooney's failed connector, their insurer, Shelter Insurance Co., commissioned an expert report from Diversified Product Inspections, LLC. (*See* July 19, 2012 DPI Report attached hereto as Ex. F (Shelter-Mooney000025-50)). The report concluded that the Watts Coupling Nut was installed with a tool, as opposed to by hand, which was a contributing factor in its failure. *See id.* at Shelter-Mooney000028. As a result, Shelter elected not to pursue Watts despite a damage claim well in excess of $20,000.

42. Watts also maintained that the Toilet Connectors that failed outlasted their useful life of 7-10 years, so in those circumstances, a defect could not be said to be the cause of the failure. Plaintiffs were confident in their ability to overcome this defense.

43. Watts also argued that the failure rate of the Toilet Connectors was extremely low. Watts specifically contended that the known rate of Coupling Nut failures was approximately 0.004%. As a result, Watts argued that the Coupling Nut could not be defective given the low incidence of failure. Plaintiffs were confident in their challenges to Watts' stated failure rate.

E. Third Party Discovery

44. Plaintiffs sought discovery from three third parties. First, Liberty Mutual Insurance Company, which represents approximately 2% of the U.S. homeowners' insurance market, and was known to track the coupling nut failures of their insureds. Second, ESIS who served as Watts' third party administrator for product liability claims, including Coupling Nut failures. Third, Arbitration Forums, Inc., the property insurance carriers' alternative dispute venue for Coupling Nut claims against Watts valued at less than $100,000.

45. While Liberty Mutual and Arbitration Forums complied with the subpoenas, ESIS did not. Plaintiffs filed a motion to compel ESIS's compliance with the subpoena in the Eastern District of Pennsylvania, which was fully briefed and scheduled for a hearing at the time the stay was entered and the settlement reached.

F. Watts' Privilege Logs

46. Beginning on January 18, 2013, Watts produced the first of three privilege logs that covered over 500 pages and nearly 4,000 documents withheld on the basis of attorney-client privilege and/or the work product doctrine.

47. The first Watts privilege log included approximately 1,500 documents. Watts limited this log to the documents withheld from its ESI production. After a series of meet and confers, Watts agreed to revise this ESI privilege log, and on March 27, 2013, Watts produced its revised ESI privilege log identifying 1,639 ESI documents. This ESI privilege log would again be

revised on May 10, 2013, following several additional meet and confers.

48. On March 15, 2013, Watts produced a Clawback log of inadvertently produced documents to which Watts wished to claim privilege. This Clawback log included 7 documents, nearly each of which related to internal connector failure claims and costs analysis.

49. On April 15, 2013, Watts produced an additional privilege log relating to its Coupling Nut claim files. This log compromised 1,820 documents. After a series of meet and confers, Watts revised this privilege log on May 10, 2013. This revision expanded the log to 277 pages and 2,155 documents.

50. Plaintiffs conducted an additional telephonic meet and confer on April 15 and conferred about the Watts' privilege logs in-person on April 1, May 6, and May 13. In addition, the parties exchanged dozens of written communications about the logs between February and June 2013.

51. At the May 13 Case Management Conference, Plaintiffs and Watts asked the Court to assign the matter to a magistrate for resolution. On May 15, 2013, the dispute was referred to Magistrate Judge LaPorte. ECF No. 135. On May 22, 2013, Judge LaPorte ordered the parties to confer again in an effort to narrow the dispute. ECF No. 138. The parties conferred again on June 3, 2013, but could not resolve their differences.

52. On June 11, 2013, Plaintiffs filed a comprehensive motion to compel documents from Watts' privilege logs. ECF No. 152. On June 25, 2013, Watts opposed this motion. ECF No. 165. And Plaintiffs filed their reply on July 2, 2013. ECF No. 177.

53. After voluminous briefing and an *in camera* review of select documents, the Court held oral argument on July 16, 2013, and on August 1 granted Plaintiffs' motion as to 31 of the 35 categories of documents Plaintiffs claimed were improperly withheld on the basis of privilege. ECF No. 210. The Court's order would require Watts to de-privilege and produces hundreds of documents to Plaintiffs.

54. Watts sought relief from Judge LaPorte's August 1 Order (ECF No. 218), and this

Court denied that request on August 20, 2013. ECF No. 255.

G. Depositions

55. Like every other aspect of the litigation, the scheduling of depositions was contentious. As a result, a deposition schedule was entered by Court order. ECF No. 148.

56. Watts conducted the deposition of each of the five named Plaintiffs in varying locations across the country, including California, Oklahoma, and Washington D.C. Watts also successfully moved to compel the re-deposition of two of the named Plaintiffs, which never occurred because of the settlement.

57. Plaintiffs prepared for and conducted three separate Rule 30(b)(6) depositions, one which spanned several days, and several fact witness depositions in Massachusetts, Florida, and South Carolina. Plaintiffs also deposed the key individuals at Watts, including Richard Greenslade – Director Watts' Risk Management Department – and Paul Lake – Watts' Senior Plastics Engineer. Plaintiffs also prepared for and appeared for a Watts fact witness deposition in San Francisco on July 17, 2013, which was Court ordered, but cancelled by Watts the morning of the deposition. This deposition was not rescheduled due to the settlement.

58. Watts deposed four of the five experts designated by Plaintiffs at locations in California, New York and Wisconsin. Plaintiffs scheduled and were prepared to begin the depositions of Watts' eight experts within a matter of days when the litigation was stayed to focus on settlement. ECF No. 258.

H. Experts

59. On June 3, 2013, Plaintiffs served four (4) separate expert reports authored by five separate experts. These five (5) witnesses' expertise rested, respectively, in polymer science; plastic design engineering; finite element analysis; ergonomics; and a hand tight torque study. Plaintiffs' counsel worked closely with each testifying expert in connection with becoming familiar with the backgrounds of their respective fields in sufficient depth to connect their expertise to the evidence in the case. For the various studies and analyses conducted by the expert witnesses,

Plaintiffs purchased more than 100 allegedly defective toilet connectors; two toilets; and 100 toilet fill valves.

60. SMBB coordinated expert teams from Class Counsel to work with particular experts to ensure efficient management of expert discovery. Each team assisted in the preparation of the initial report for that expert, preparation for that expert's deposition, the analysis of any expert designated by Watts to rebut the assigned expert, the deposition of the rebuttal expert, and assisted with the facilitation of any rebuttal report or experts for the assigned expert's field of expertise.

61. On July 3, 2013, Watts produced eight (8) rebuttal expert reports authored by eight (8) separate experts, totaling more than 500 pages. Lead Counsel analyzed all of the reports and orchestrated Plaintiffs' response with the assistance of the designated teams from Class Counsel for each particular expert.

62. A review of Watts' expert reports revealed that certain facts and witnesses from Watts' manufacturing facility in China were made available to Watts' experts, but had not been equally provided to Plaintiffs in discovery.

63. In response, on July 19, 2013, Plaintiffs moved the Court for an order extending the deadline for their rebuttal expert reports in order to acquire both the missing Chinese evidence and the documents Watts improperly withheld on privilege grounds that the Court ordered produced. ECF No. 188. Watts opposed this motion on July 25, 2013. ECF No. 198. And Plaintiffs filed a reply on July 29, 2013. ECF No. 205. The Court held a hearing on July 30, 2013, and granted Plaintiffs an extension until September 30, 2013, to rebut Watts' experts. ECF No. 209. The Court also scheduled *Daubert* and class certification hearings for December 6, 2013 and February 5, 2014, respectively. *Id*. A trial date was set for December 1, 2014. *Id*.

64. On August 19, 2013, Plaintiffs moved to strike portions of certain expert reports submitted by Watts, or in the alternative to compel discovery upon which they were based. ECF No. 224. This motion was referred to Magistrate Judge LaPorte for resolution.

65. On August 22, 2013, however, the parties agreed to a 45 day stay to focus on

settlement discussions that had progressed during the August 20 mediation session. ECF No. 258. The motion remains pending.

I. Mediation and Arms-Length Negotiation

66. Over the nearly two years of vigorous litigation, the parties met in-person three separate times to discuss settlement, twice with the assistance of a mediator. On October 29, 2012, the parties met in Los Angeles to discuss initial settlement proposals exchanged by the parties. The meeting was unsuccessful in advancing any prospect of settlement at that time and the parties resided themselves to litigation. Pursuant to ADR L.R. 3-5b, the parties agreed to retain the Hon. Layn R. Philips (Ret.) and set a mediation session for December 7, 2012, in Newport Beach, CA. ECF Nos. 54-55. That session was later adjourned to February 20, 2013, due to the parties' ongoing disputes regarding discovery and document productions.

67. On February 20, 2013, the parties mediated before Judge Phillips. The session was productive in the limited sense that Judge Phillips pushed the parties to sit together informally and discuss their respective positions – something they had been unwilling to do because both were so heavily entrenched in their litigation positions. However, the parties remained too far apart to advance the discussions and litigation again resumed. *See* Declaration of Layn R. Phillips (Phillips Decl.) attached hereto as Ex. J, ¶6; *see also* ECF No. 271-3. The parties discussed mediating again in May 2013, but ultimately agreed that expert discovery was necessary to shed greater light on the each side's respective litigation positions.

68. After production of expert reports and the Court's extension of Plaintiffs' rebuttal report deadline, the parties again mediated before Judge Phillips in New York City on August 20, 2013. The mediation session lasted a full-day, and both parties felt as though the lines of communication had slowly begun to open, and progress had been made to warrant a litigation stay to continue the discussions. *See* Ex. J, Phillips Decl., ¶9; *see also* ECF No. 258.

69. With the assistance of Judge Phillips, the parties exchanged multiple drafts of a proposed Memorandum of Understanding over the next several weeks and ultimately reached

agreement on its terms on October 2, 2013. Once the terms were set, the parties' negotiated the settlement amount within a range proposed by Judge Phillips. *See* Ex. J, Phillips Decl., ¶13. On December 6, 2013, the parties reached a final agreement at $23 million. *Id.*

70. During the preliminary approval hearing on February 14, 2014, the Court requested a present value determination for final approval based on Watts' staggered funding of the $23 million over 5 years. Attached hereto as Ex. G is the report of C. Frederick DeKay, Ph.D., a consulting economist. Dr. DeKay calculated the present value of the $23 million settlement as $22,802,316.

II. INFORMATION RELATING TO THE REASONABLENESS OF THE REQUESTED FEE AWARD.

A. The Reasonable Award Sought by Class Counsel

71. Subject to the Court's approval, Class Counsel seek a fee award of $5.75 million which is 25% of the $23 million common fund. Class Counsel additionally seeks reimbursement of up to $650,000 in expenses incurred by Class Counsel in the prosecution of this matter from inception through April 30, 2014. Class Counsel will endeavor to supplement the record with actual expenses incurred after April 30, 2014, up to the final approval hearing on July 16, 2014, but in no event will this request exceed $650,000 as set forth in the Notice to the Class.

72. Class Counsel believe the requested fee award of $5.75 million and reimbursement of up to $650,000 for expenses is fair and reasonable given the results achieved, the amount of work undertaken and accomplished, and the risks associated with the litigation. The requested fee is equal to the Ninth Circuit benchmark of 25% of the common fund procured through the settlement.

73. Class Counsel prosecuted this case in an efficient manner. Class Counsel's experience in prosecuting complex antitrust, products liability, and other class actions proved helpful in identifying issues, marshalling evidence and experts, and devising strategies to prosecute this case to a successful conclusion. Class Counsel advanced nearly $650,000 in costs to finance the litigation. Different firms handled projects either independently or jointly with other firms, and

duplication of effort was avoided by Lead Counsel's distribution of responsibilities among all Class Counsel.

74. To date, Class Counsel has yet to be reimbursed for their time and expenses generated in performing all of the work done in this case, and have received no compensation related to this litigation in the years that it has been pending. Class Counsel's fees and expenses are totally contingent and dependant on a fee and expense award by this Court.

75. Class Counsel took on this complex case on a wholly contingent basis with no guarantee that their costs would ever be recovered or their fees ever paid. From the outset, Class Counsel understood this case would be expensive and time consuming with no guarantee of payment resulting from the investment of time, money, and effort.

76. Class Counsel also needed to insure that sufficient resources and funds existed at all times, not only to prosecute the litigation in a cost-effective manner, but also to compensate experts and vendors. Firms in a contingent litigation practice involving complex class actions must not only pay regular overhead, but also advance the expenses of litigation – for years. The financial burden on contingent fee counsel is far greater than it is on firms that are paid on an ongoing basis throughout lengthy and complex litigation.

B. SMBB's Time and Expenses

77. SMBB, as Court appointed Lead Counsel (ECF Nos. 104, 276 at ¶4), required all Class Counsel to report, on a quarterly basis, their lodestar and expenses based on contemporaneously-prepared attorney and paralegal time, expense, and lodestar summaries. Moreover, SMBB has requested and obtained the time detail for each firm to be submitted to the Court *in camera*, should the Court so request.

78. The time, expenses, and lodestar that have been reported monthly by SMBB is similarly based upon contemporaneously maintained attorney and paralegal time and expense records. The total hours, lodestar and breakdown of expenses reported by SMBB is summarized at current rates in Exhibit A attached hereto.

79. As set forth in Exhibit A, the attorneys and paraprofessionals at my firm expended the following number of hours from inception through April 30, 2013, at the following current hourly rates, in performing legal services on behalf of Plaintiffs and the Class in this case from inception through April 30, 2014:

Timekeeper	**Position**	**Hours**	**Rate/Hour**	**Total**
Simon Paris	Partner	1,572.15	$ 600	$ 943,290.00
Patrick Howard	Partner	1,831.30	$ 550	$1,007,215.00
Charles Kocher	Associate	663.90	$ 465	$ 308,713.50
Michael Lorusso	Contract Attorney	52.25	$ 400	$ 20,900.00
Alicia Sandoval	Contract Attorney	57.50	$ 350	$ 20,125.00
Patrick Durkin	Paralegal	240.20	$ 290	$ 69,658.00
Cyndi Dwyer-Fonda	Paralegal	2.5	$ 225	$ 562.50
Total		4,419.80		$2,370,464.00

80. Based on my knowledge and experience, the rates charged by the attorneys and paraprofessionals at my firm are the same as charged for non-contingent legal services by my law firm, and are within the range of rates normally and customarily charged in the Northern District of California by attorneys and paraprofessionals of similar qualifications and experience in cases of this kind.

81. In my judgment, and based on my years of experience, the number of hours expended and the services performed by the attorneys and paraprofessionals at my firm and under my supervision were reasonable and expended for the benefit of the plaintiffs in this litigation.

82. As also set forth in Exhibit A, my law firm also incurred expenses in the amount of $380,216.11. These expenses include: filing fees, facsimile and copying charges, computer research, deposition and hearing transcripts costs, long distance telephone charges, federal express

and other delivery charges, travel expenses, expert fees for consulting and testifying experts, travel, and other case-related expenses that commonly benefitted plaintiffs. Based on my knowledge and experience, all of these expenses were necessary and reasonable, and incurred for the benefit of the Plaintiffs and the Class in this litigation.

C. Class Counsel's Lodestar Cross-Check Confirms the Reasonableness of the Requested Fees and Expenses

83. Lead Counsel, on a quarterly basis throughout the litigation, collected time and expense reports from each Plaintiffs' firms in order to monitor the balance of time expended to task assigned. As a result, I am familiar with each firm's stated lodestar and expense commitment to the litigation.

84. As demonstrated above, the time, personal and out-of-pocket expenses devoted to this case by Class Counsel were significant. Class Counsel have submitted independent declarations in support of their respective lodestars and expenses. *See* Exs. B-E attached hereto. Based on these declarations, each firm's respective lodestar and expenses from February 2010 through April 30, 2014 are listed below.

FIRM	HOURS BILLED	LODESTAR	EXPENSES
SMBB (Ex. A)	4,419.80	$2,370,464.00	$380,216.11
Hagens Berman Sobol Shapiro (Ex. B)	1,382.90	$766,153.00	$70,930.89
Gustafson Gluek (Ex. C)	1,270.75	$698,787.50	$91,655.92
Berman DeValario (Ex. D)	2,148.90	$954,503.00	$65,255.81
Fine, Kaplan & Black (Ex. E)	1,164.20	$429,657.00	$33,380.89
TOTALS	**10,386.55**	**$5,219,434.50**	**$641,458.79**

85. The total lodestar for Class Counsel through April 30, 2014, is $5,219,434.50, which amounts to a multiplier of 1.10 should the Court award the requested fee of $5.75 million. This modest multiplier demonstrates a true correlation between application of the 25% benchmark and so near to actual lodestar on the lodestar cross-check.

III. SERVICE AWARDS FOR CLASS REPRESENTATIVES

86. Subject to the Court's approval, Class Counsel seeks service awards not to exceed $32,500 in total to compensate the named Plaintiffs for their effort, service, time and expenses in serving the Class. The service awards are to be distributed as follows: $5,000 or $7,500 to each of the five Plaintiffs. The distinguishing characteristic between is the home inspections conducted by Defendants and their experts.

87. The Plaintiffs support for this settlement or the requested fee award was not a condition for receipt of any service award. Each of these Plaintiffs have submitted a declaration summarizing their efforts in the litigation and estimating the number of hours expended in assisting Class Counsel in the prosecution of this action.

88. Class Counsel request that the Court approve the requested service awards for these Plaintiffs, who were integral in helping Class Counsel analyze the claims and the evidence. The Plaintiffs met with Class Counsel, responded to interrogatories, searched for and produced documents to advance the litigation, requested and received reports from their counsel, monitored the status of the case, prepared for and attended their depositions, and some permitted the inspection of their homes by counsel for Defendants and their experts.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury under the laws of United States of America that the foregoing is true and correct to the best of my knowledge.

Executed this 30th day of May, 2014 in Philadelphia, Pennsylvania.

/s/ Simon Bahne Paris
Simon Bahne Paris