

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

JAMES ZILINSKY, GERALDINE)	CASE NO. 2:20-cv-6229-MHW-KAJ
ZILINSKY, CORY SIMPSON, MEAGAN)	
McGINLEY, SANDRA)	
GARRETTDORSEY, BRIAN DERING,)	JUDGE MICHAEL H. WATSON
THERESA DERING, ALAN)	
ARMSTRONG, and SANDY)	
ARMSTRONG, individually and on behalf of)	
all others similarly situated,)	
)	
Plaintiffs,)	
)	
v.)	
)	
LEAFFILTER NORTH, LLC,)	
)	
Defendant.)	
)	

**PLAINTIFFS' MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION SETTLEMENT**

Plaintiffs James Zilinsky, Geraldine Zilinsky, Cory Simpson, Meagan McGinley, Sandra GarrettDorsey, Brian Dering, Theresa Dering, Alan Armstrong, and Sandy Armstrong, on behalf of themselves and the putative Settlement Class they represent, respectfully move this Court to enter the proposed Order Granting Preliminary Approval of Class Action Settlement (“Preliminary Approval Order”) that is attached to the Settlement Agreement as Exhibit A. The Preliminary Approval Order is sought for a settlement that was the result of arm’s length negotiations including mediation under the direction of an experienced mediator, and should be granted for this and other reasons as more fully set forth in the accompanying memorandum of law and supporting documentation which includes: (1) the Settlement

Agreement; (2) the proposed Notice; (3) the proposed Claim Form; (4) the Declaration of Brian Warwick; (5) the Declaration of Jeffrey S. Goldenberg; (6) the Declaration of Rocco Mango; (7) the resume of mediator Hunter Hughes, Esq.; and (8) the Declaration of Christie Reed.

Respectfully submitted,

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Counsel for Plaintiffs and the putative Class

CERTIFICATE OF SERVICE

I certify that on June 24, 2022 I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to counsel of record in this matter who are registered on the CM/ECF.

/s/Jeffrey S. Goldenberg
Jeffrey S. Goldenberg (0063771)

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Defendant.)	
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**PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION SETTLEMENT**

I. PRELIMINARY STATEMENT

Named Plaintiffs James Zilinsky, Geraldine Zilinsky, Cory Simpson, Meagan McGinley, Sandra GarrettDorsey, Brian Dering, Theresa Dering, Alan Armstrong, and Sandy Armstrong (“Named Plaintiffs”) have reached an agreement with Defendant LeafFilter North, LLC (“Defendant” or “LeafFilter”) to settle this class action on the terms set forth in the Settlement Agreement, Exhibit 1 hereto. The proposed Settlement Class is defined to include Named Plaintiffs and a limited and specific subset of LeafFilter customers who share two defining features: (1) they all had debris building up on top of their LeafFilter Gutter System; and (2) they all had LeafFilter open a service ticket relating to Debris Accumulation. The relief provided by the proposed

Settlement is targeted to the exact issue experienced by these customers – Debris Accumulation.¹

Under the Settlement, LeafFilter has agreed to provide each Settlement Class Member transferrable vouchers for up to three future debris cleanings (total value \$285) at no cost, or reimbursement for up to \$200 in out of pocket expenses the Settlement Class Member previously incurred. The Settlement, if approved, will resolve all claims asserted against Defendant in this class action.

The proposed Settlement was reached at a time when the Parties understood the strengths and weaknesses of their respective positions. Named Plaintiffs, through their counsel, conducted an extensive investigation of their claims, filed a complaint, an amended complaint, briefed a motion to strike class allegations and a motion to dismiss, and undertook significant fact discovery.

Named Plaintiffs and Defendant also engaged in extensive arm's-length settlement negotiations and participated in mediation under the supervision of a respected neutral mediator, Hunter Hughes, Esq.² The mediation ultimately resulted in the Settlement Agreement. Named Plaintiffs, based upon their evaluation of the facts and applicable law and their recognition of the substantial risk and expense of continued litigation, submit that the proposed Settlement is in the best interests of the Settlement Class and will provide an immediate meaningful recovery.

Named Plaintiffs request that the Court enter the proposed Order Granting Preliminary Approval of Class Action Settlement, finding that the Court will likely be able to approve the proposed Settlement as fair, adequate, and reasonable and certify the proposed Settlement Class; appointing Named Plaintiffs as the representatives of the Settlement Class; appointing Varnell & Warwick, P.A., and Goldenberg Schneider, L.P.A. as Class Counsel; appointing KCC as the

¹ Unless otherwise defined herein, capitalized terms have the same meaning ascribed to them in the Settlement Agreement.

² Mr. Hughes' extensive resume is attached hereto as Exhibit 2.

Settlement Administrator; approving the form, content, and method of Notice; establishing procedures for notice to Class Members, and for Class Members to object to the Settlement, opt out of the Settlement, and make claims under the Settlement; scheduling deadlines for the filing of papers in support of final approval, and in support of attorneys' fees, reimbursement of expenses, and requested awards for service payments; scheduling the Fairness Hearing; and establishing other requirements and procedures necessary to effectuate the Settlement.

Given the substantial benefits available to Settlement Class Members, and the risks in establishing Defendant's liability and proving damages, Named Plaintiffs respectfully submit that the proposed Settlement is fair, reasonable, and adequate, as further described below.

II. FACTUAL BACKGROUND

On January 3, 2020, Plaintiffs James and Geraldine Zilinsky filed a Class Action Complaint [Doc. 1] against Defendant alleging that LeafFilter Gutter Systems contain a defect that causes debris to accumulate on top of the LeafFilter system and rainwater to flow over the top of the LeafFilter system. The Class Action Complaint asserted claims for (1) violation of the Ohio Consumer Sales Practices Act, (2) breach of the implied warranty in tort, (3) violation of the Illinois Consumer Fraud and Deceptive Business Practices Act, (4) fraud and fraudulent concealment, and (5) unjust enrichment on behalf of a nationwide class (and Illinois subclass) of purchasers of LeafFilter Gutter Systems.

On April 1, 2021, Plaintiffs filed the First Amended Class Action Complaint [Doc. 19], which added seven additional named plaintiffs (Cory Simpson, Meagan McGinley, Sandra GarrettDorsey, Brian Dering, Theresa Dering, Alan Armstrong, and Sandy Armstrong), four additional state subclasses (Maryland, New Jersey, Pennsylvania, and Washington), and four additional claims (violation of the Maryland Consumer Protection Act, violation of the New Jersey

Consumer Fraud Act, violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, and violation of the Washington Consumer Protection Act).

Defendant moved to dismiss the First Amended Class Action Complaint and strike its class allegations [Doc. 30] on April 29, 2021. Plaintiffs filed their opposition memorandum [Doc. 33] on May 27, 2021. And Defendant filed its reply brief [Doc. 36] on June 17, 2021. While Defendant's motion was pending, the Parties engaged in substantial formal and informal discovery, including the production of more than 45,000 pages of documents by Defendant. *See* Declaration of Brian Warwick ("Warwick Decl."), Ex. 3 hereto, at ¶4. On January 25, 2022, the parties jointly moved the Court to stay [Doc. 46] the proceedings to allow the parties to attempt to resolve their dispute through mediation. The Court granted the motion [Doc.47]. The Parties engaged in mediation with the assistance of a respected and experienced neutral, Hunter Hughes, Esq. The mediation process was extended, at times contentious, and always adversarial. Warwick Decl., ¶5-6, 21. The Parties advised the Court in multiple Joins Status Reports (Docs. 48, 50, and 52) that they were continuing to work on the details of the proposed settlement, and in fact, as late as June 3, 2022, reported that there was a possibility that they would not be able to reach final agreement. Doc. 52. Ultimately, with the assistance of Mr. Hughes, the mediation process was successful. Plaintiffs now move the Court to preliminarily approve the proposed Settlement.

Named Plaintiffs' Counsel have reviewed and analyzed the documents produced by Defendant and those obtained through their own considerable investigation; consulted with experts; spoken with hundreds of LeafFilter customers and numerous former employees and independent contractors; examined and considered the benefits to be provided to the Class Members under the Settlement; and considered the laws of the several States and the claims that

could be asserted under those laws regarding LeafFilter Gutter Systems. Warwick Decl., ¶21; Declaration of Jeffrey S. Goldenberg (“Goldenberg Decl.”), Ex. 4 hereto, at ¶5.

Named Plaintiffs and their Counsel believe the Settlement is fair, adequate, reasonable, and in the best interests of the Class Members, taking into account the benefits provided to the Class Members through the terms of the Settlement, the risks of continued litigation and possible trial and appeals, and the length of time and the costs that would be required to complete the litigation. Warwick Decl., ¶22-26; Goldenberg Decl., ¶6.

III. PRIMARY TERMS OF THE SETTLEMENT AGREEMENT

A. Relief Offered

The relief provided by this Settlement is directed at debris accumulation. *See* Doc. 19 at, e.g., ¶1 (alleging a latent defect exists in the LeafFilter Gutter System that causes “debris to accumulate on top of the LeafFilter system that must be cleaned off by the homeowner.”). If a LeafFilter customer complains about debris and requests a service call, a LeafFilter representative comes to the customer’s home and removes any debris on top of the LeafFilter Gutter System, a service for which it charges \$95. Declaration of Rocco Mango (“Mango Decl.”), Ex. 5, ¶8.

Under the Settlement, LeafFilter has agreed to provide each Settlement Class Member fully transferrable vouchers for up to three future debris cleanings (total value \$285) at no cost, or reimbursement for up to \$200 in out of pocket expenses the Settlement Class Member previously incurred. Settlement Class Members can select one (1) of the following forms of relief:

Benefit 1: Reimbursement of up to \$200 for two prior Debris Removal Cleanings. Claims for reimbursement shall be supported by Proof of Expense demonstrating that the Settlement Class Member paid out of pocket money to specifically remove Debris Accumulation. The maximum amount of each individual reimbursement is not to exceed \$100, and the total amount of

reimbursement shall not exceed \$200. As part of completing the Claim Form, Settlement Class Members must certify that their LeafFilter Gutter System experienced Debris Accumulation.

Benefit 2: Reimbursement of up to \$100 for one prior Debris Removal Cleaning, and Vouchers for two future Debris Removal Cleanings. Claims for reimbursement shall be supported by Proof of Expense demonstrating that the Settlement Class Member paid out of pocket money to specifically remove Debris Accumulation. The maximum amount of such reimbursement is not to exceed \$100. As part of completing the Claim Form, Settlement Class Members must certify that their LeafFilter Gutter System experienced Debris Accumulation. Settlement Class Members will also receive two, fully transferrable Vouchers for future Debris Removal Cleanings.³

Benefit 3: Vouchers for three future Debris Removal Cleanings. Settlement Class Members will receive three, fully transferrable Vouchers for future Debris Removal Cleanings. As part of completing the Claim Form, Settlement Class Members must certify that their LeafFilter Gutter System experienced Debris Accumulation.

Benefit 4: Reimbursement of up to \$200 for costs related to the removal of the LeafFilter Gutter System because of Debris Accumulation problems. Claims for reimbursement shall be supported by Proof of Expense demonstrating that the Settlement Class Member paid out of pocket money to remove the LeafFilter Gutter System. As part of completing the Claim Form, Settlement Class Members must certify that their LeafFilter Gutter System experienced Debris Accumulation and that the system was removed for that reason.

³ The Voucher cleanings are to be performed by LeafFilter or its agents and shall be performed within thirty (30) days of request by the Settlement Class Member. If LeafFilter is unable to perform the cleaning within thirty (30) days, then the Settlement Class Member can then schedule his or her own contractor to perform the cleaning and LeafFilter will reimburse the Settlement Class Member for the full amount of the cleaning, up to a maximum of \$100 per cleaning, no later than 14 days after receipt by LeafFilter of the invoice from the Settlement Class Member.

B. Release

In exchange for the relief described above, and upon entry by the Court of a Final Order and Judgment approving the Settlement, Settlement Class Members will release Defendant and its affiliated entities (the “Releasees” as defined in the Settlement) of, among other things, all claims related to any conduct, act, omissions, facts, matters, transactions or oral or written statements or occurrences that relate to or arise out of the LeafFilter Gutter System and that share a factual predicate with the allegations or claims pled in the Complaint. The Settlement does not include any personal injury claims. Thus, it addresses debris accumulation issues, which are common problems for members of the Settlement Class. Most importantly, this Settlement does not affect over 90% of LeafFilter customers during the Class Period who have not previously raised a Debris Accumulation issue with LeafFilter and are not included in the Settlement Class. Thus, it is narrowly tailored to the issue before this Court.

C. Class Representative Service Award

Under the Settlement, LeafFilter has agreed to pay reasonable Service Awards to the Named Plaintiffs, as approved by the Court. Class Counsel have agreed not to seek service awards in excess of \$3,500.00. Married Named Plaintiffs will seek no more than \$3,500 total. Any Service Award that may be approved by the Court will be paid separately by Defendant from the relief being offered to the members of the Settlement Class, and would be in addition to any relief the Named Plaintiffs may receive as a member of the Settlement Class. The Service Award is intended to compensate the Class Representatives for their time and effort assisting Class Counsel with the prosecution of this case and negotiation of the Settlement.

D. Attorneys’ Fees and Expenses

Under the Settlement, LeafFilter has agreed to pay reasonable attorneys’ fees and expense

reimbursement to Class Counsel as approved by the Court. Class Counsel has agreed not to seek an award of attorneys' fees and reimbursement of costs and expenses in excess of \$1,775,000.00. Any Attorneys' Fees and Expenses awarded by the Court will be paid separately from the relief being offered to the Settlement Class Members.

IV. ARGUMENT

A. The proposed Settlement warrants preliminary approval.

Settlement of class actions is generally favored and encouraged. *Franks v. Kroger Co.*, 649 F.2d 1216, 1224 (6th Cir. 1981). Class action settlements are governed by Fed. R. Civ. P. 23(e). Under Rule 23(e), the proponents of the Settlement must present the Court with sufficient information to determine that it will likely be able to: (1) certify the class for settlement purposes; and (2) approve the proposed settlement as fair, adequate and reasonable. Fed. R. Civ. P. 23(e). Named Plaintiffs will address each in turn.

B. The Proposed Class Satisfies the Certification Requirements of Rule 23

"For the Court to certify a class, the plaintiffs must satisfy all of the requirements of Rule 23(a), and one of the requirements of Rule 23(b)." *Pelzer v. Vassalle*, 655 F. App'x 352, 363 (6th Cir. 2016). At this stage of the proceedings, Named Plaintiffs must show that the Court will likely be able to certify the proposed Settlement Class for purposes of judgment. *See* Fed. R. Civ. P. 23(e)(1).

The four requirements of Federal Rule of Civil Procedure 23(a) are numerosity, commonality, typicality, and adequacy. Furthermore, Named Plaintiffs will seek certification of the Settlement Class pursuant to Rule 23(b)(3), which provides that certification is appropriate where "the court finds the questions of law or fact common to class members predominate over any questions affecting only individual members [predominance], and that a class action is

superior to other available methods for fairly and efficiently adjudicating the controversy [superiority].” Fed. R. Civ. P. 23(b)(3).

As discussed below, these requirements are met for purposes of settlement in this case.

1. Numerosity

The numerosity requirement under Rule 23(a)(1) is satisfied where the class is so numerous that joinder of all class members is impracticable. Fed. R. Civ. P. 23(a)(1). There is no magic number needed to satisfy numerosity; in the Sixth Circuit, numerosity has been satisfied with a class of 35. *See In re Am. Med. Sys. Inc.*, 75 F.3d 1069, 1076 (6th Cir. 1996); *see also Daffin v. Ford Motor Co.*, 458 F.3d 549, 553 (6th Cir. 2006) (“substantial” numbers satisfy, and thousands are “substantial”). Here, the total number of Class Members at issue is approximately 60,000. *See Mango Decl.*, ¶7. Numerosity is therefore readily satisfied.

2. Commonality

Rule 23(a)(2) requires that there be “questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2). The Supreme Court has stated that Rule 23(a)(2)’s commonality requirement is satisfied where the plaintiffs assert claims that “depend upon a common contention” that is “of such a nature that it is capable of classwide resolution — which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.” *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2556 (2011). “[F]or purposes of Rule 23(a)(2) even a single common question will do.” *Id.* at 2556.

In this case, there are numerous common questions of law and fact, such as whether the LeafFilter Gutter Systems suffered from a defect that caused them to accumulate debris on top of the gutter system; whether LeafFilter had a duty to disclose that alleged defect to consumers; and whether the Class Members have actionable claims. Commonality is, therefore, satisfied. *See In*

re Whirlpool Corp. Front-Loading Washer Prods. Liab. Litig., 722 F. 3d 838, 855 (6th Cir. 2013) (commonality satisfied because “the evidence confirms that the issues regarding alleged design flaws are common to the class”); *see also Daffin v. Ford Motor Co.*, 2004 WL 5705647, at *2 (S.D. Ohio July 15, 2004), *aff’d*, 458 F.3d 549 (6th Cir. 2008).

3. Typicality

To satisfy the typicality requirement of Rule 23(a)(3), the claims or defenses of the representative parties must be typical of the claims or defenses of the class. “The typicality requirement ensures that the representative’s interests will be aligned with those of the represented group and that the named plaintiff will also advance the interests of the class members.” *Chesher v. Neyer*, 215 F.R.D. 544, 549 (S.D. Ohio 2003). “A plaintiff’s claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members, and if his or her claims are based on the same legal theory.” *Id.*; *see also Am. Med. Sys.*, 75 F.3d at 1082 (same). Typicality seeks to ensure that there are no conflicts between the class representatives’ claims and the claims of the class members represented.

Here, the Named Plaintiffs’ claims all arise out of the same alleged conduct by LeafFilter related to the design, manufacture, and sale of the allegedly defective Gutter Systems, and the same legal theories apply to all. Typicality is satisfied.

4. Adequacy of Representation

The final requirement of Rule 23(a) is that “the representative parties will fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). There are two criteria: 1) the “representative must have common interests with unnamed members of the class,” and 2) “it must appear that the representatives will vigorously prosecute the interests of the class through qualified counsel.” *Am. Med. Sys.*, 75 F.3d at 1083). Here, the Named Plaintiffs are adequate because during

the Class Period they purchased a LeafFilter Gutter System that would be covered by the Settlement and were all allegedly damaged by a defect in the Gutter System. They have also actively participated in the litigation of this case.

In addition, Named Plaintiffs' counsel are qualified. The Agreement designates Varnell & Warwick, P.A. and Goldenberg Schneider, L.P.A. as Class Counsel. These firms have invested considerable time and resources into the prosecution of this action and possess a wealth of experience litigating complex class action lawsuits. (*See* Warwick Decl. ¶¶16, 26; Goldenberg Decl. ¶¶ 4, 10. Based on the results achieved here, the Court should appoint these firms as Class Counsel, and determine that Rule 23(a)'s adequacy requirement is satisfied.

5. Rule 23(b)(3) Requirements

Named Plaintiffs seek to certify a Class under Rule 23(b)(3), which has two components: predominance and superiority. With respect to predominance, the Sixth Circuit has explained that “named plaintiffs must show, and district courts must find, that questions of law or fact common to members of the class predominate over any questions that affect only individual members.” *In re Whirlpool Corp.*, 722 F.3d at 860. With respect to superiority, the Court considers whether a class action is “superior to other methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3).

Rule 23(b)(3) provides a non-exhaustive list of factors to be considered when making this determination. These factors include: (i) the class members' interests in individually controlling the prosecution or defense of separate actions; (ii) the extent and nature of any litigation concerning the controversy already begun by or against class members; (iii) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (iv) the likely difficulties in managing a class action. *Willis v. Big Lots, Inc.*, 2017 WL 1063479, at *2 (S.D. Ohio Mar. 17,

2017) (citing Fed. R. Civ. P. 23(b)(3)). When assessing predominance and superiority, the court may consider that the class will be certified for settlement purposes only, and that a showing of manageability at trial is not required. *See Amchem*, 521 U.S. at 618.

Here, there are several common questions of law and fact that predominate over any questions that may affect individual Settlement Class Members. For example, were this case to proceed, the primary issue would be whether LeafFilter Gutter Systems were defective, and whether LeafFilter is liable for distributing defective Gutter Systems. This is an issue subject to “generalized proof,” and is a “question that is common to all class members.” *See Daffin*, 2004 WL 5705647, at *2 (predominance satisfied where significant issues included: 1) whether throttles were defective; 2) whether that defect reduced the value of the car; and 3) whether Ford breached its warranty); *see also In re Countrywide Fin. Corp. Customer Data Sec. Breach Litig.*, 2009 WL 5184352, at *6 (W.D. Ky. Dec. 22, 2009) (“the proof required [must focus] on Defendant’s conduct, not on the conduct of the individual class members”). Accordingly, the predominance prong of Rule 23(b)(3) is satisfied.

The second prong of Rule 23(b)(3) — that a class action is superior to other available methods for the fair and efficient adjudication of the controversy — is also readily satisfied. *See* Fed. R. Civ. P. 23(b)(3). The Agreement provides members of the Settlement Class with quick, simple, and certain relief, and contains well-defined administrative procedures to ensure due process. This includes the right of any Settlement Class Member who is dissatisfied with the settlement to object to it or to request exclusion from the Class. The proposed Settlement also would relieve the substantial judicial burdens that would be caused by repeated adjudications in individual trials against LeafFilter. *See Young v. Nationwide Mut. Ins. Co.*, 693 F.3d 532, 545 (6th Cir. 2012) (“Where it is not economically feasible to obtain relief within the traditional framework

of a multiplicity of small individual suits for damages, aggrieved persons may be without any effective redress unless they may employ the class-action device.” (internal quotations omitted)).

Here, individual trials are not feasible; the proposed class action remedy is superior.

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

C. The Proposed Settlement Is Fair, Adequate, and Reasonable

As discussed above, the second issue for the Court to determine under Rule 23(e) is whether the Court is “likely” to approve the settlement as fair, adequate, and reasonable. There are four factors listed in Rule 23(e)(3) which are to be considered when examining the fairness of a proposed settlement: (A) the class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm's length; (C) the relief provided for the class is adequate; and (D) the proposal treats class members equitably relative to each other. The proposed Settlement satisfies each component.

1. The Class Representatives and Class Counsel Have Adequately Represented the Class

Named Plaintiffs James Zilinsky, Geraldine Zilinsky, Cory Simpson, Meagan McGinley, Sandra GarrettDorsey, Brian Dering, Theresa Dering, Alan Armstrong, and Sandy Armstrong have all been intimately involved in the prosecution of this case since its outset. All have cooperated with counsel, assisted in the preparation of the Complaint, provided documentation of their purchased Gutter Systems, and responded to Defendant’s requests for document production and interrogatories. Warwick Decl. ¶¶21, 27; Goldenberg Decl. ¶¶11. There is absolutely no evidence that the Named Plaintiffs are inadequate to represent the Settlement Class.

Likewise, Named Plaintiffs' Counsel has litigated this matter vigorously from the outset. For the reasons previously discussed with respect to adequacy of representation, the law firms of Varnell & Warwick, P.A. and Goldenberg Schneider, L.P.A. should be designated as Class Counsel.

2. The proposed Settlement was negotiated at arms-length.

Arm's-length negotiations conducted by competent counsel constitute prima facie evidence of fair settlements. *See, e.g., Roland v. Convergys Customer Mgmt. Grp. Inc.*, 2017 WL 977589, at *1 (S.D. Ohio Mar. 10, 2017) (noting that settlement was "reached after good faith, arms' length negotiations, warranting a presumption in favor of approval"); *Brotherton v. Cleveland*, 141 F. Supp. 2d 894, 906 (S.D. Ohio 2001) (absence of any evidence suggesting collusion or illegality "lends toward a determination that the agreed proposed settlement was fair, adequate and reasonable").⁴ Notably, "[t]he participation of an independent mediator in settlement negotiations virtually insures that the negotiations were conducted at arm's length and without collusion between the parties." *Bert v. AK Steel Corp.*, 2008 WL 4693747, at *2 (S.D. Ohio Oct. 23, 2008).

In this case, the Settlement was the result of intensive, arm's-length negotiations between experienced attorneys who have extensive class action litigation experience and who have knowledge of the legal and factual issues of this case in particular. The Parties' respective counsel are experienced in the litigation, certification, trial, and settlement of class actions cases. There is no evidence of any collusion during the settlement process. Settlement negotiations in this case took place over the course of formal and multiple informal mediation sessions and ultimately

⁴ *See also Mangone v. First USA Bank*, 206 F.R.D. 222, 226 (S.D. Ill. 2001); 1 Herbert B. Newberg & Alba Conte, *NEWBERG ON CLASS ACTIONS* § 11.41 at 90 (4th Ed. 2002).

reached an initial agreement during a session mediated by Hunter Hughes, Esq., an experienced mediator. After the initial agreement was reached, counsel for both Parties spent significant time exchanging, reviewing, and analyzing additional information for the final settlement. Both Parties' counsel supports the Settlement as fair and reasonable, and all certify that it was reached at arm's-length.⁵

3. The relief provided to the Settlement Class is adequate.

To grant preliminary approval, the Court must determine that it is “likely” to approval the settlement. In other words, this Court should determine whether the proposed Settlement falls within the range of possible final approval. Manual for Complex Litigation (Fourth) 21.632 at 320-21. The range of approval “recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion.” *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972); *see also In re Corrugated Container Antitrust Litig.*, 659 F.2d 1322, 1325 (5th Cir. 1981) (“[T]he essence of a settlement is compromise. A just result is often no more than an arbitrary point between competing notions of reasonableness.”).

Rule 23(e)(2)(c) provides four considerations that must be taken into account when determining whether the relief being provided under the Settlement is adequate: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3). Each factor supports approval.

a. The costs, risks, and delay of trial and appeal

⁵ *See also Amos v. PPG Indus.*, 2015 WL 4881459, at *1 (noting that the Southern District of Ohio “recognizes that the settlement of class action is generally favored and encouraged” (internal citations omitted)).

Although Named Plaintiffs believe that the claims asserted in the Class Action are meritorious and the Class would ultimately prevail at trial, continued litigation against Defendant posed significant risks that made any recovery for the Settlement Class uncertain. The fairness and adequacy of the Settlement is underscored by consideration of the obstacles that the Settlement Class would face in ultimately succeeding on the merits, as well as the expense and likely duration of the litigation. *See Amos*, 2015 WL 4881459, at *1 (“In general, most class action are inherently complex, and settlement avoids the costs, delays, and multitude of other problems associated with them.” (internal citations and quotations omitted)).⁶

Here, if the litigation were to continue, Named Plaintiffs would face a number of high-stakes risks before trial that could have limited, or even eliminated, their claims, including a possible negative ruling on the pending motions to dismiss or strike class allegations, or a summary judgment ruling in favor of Defendant. Despite these real and significant risks, the Settlement Class Members will receive significant benefits under the Settlement.

When considering the Settlement, Named Plaintiffs weighed the certainty of an immediate recovery for the Settlement Class against the significant legal challenges Named Plaintiffs faced. Under these circumstances, the proposed Settlement is fair, reasonable, and adequate.

b. The effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims

Because LeafFilter has addresses for all of the homes where its LeafFilter Gutter System was installed, the notice plan calls for direct mail notice (supplemented by additional email notice when possible) to Settlement Class Members at those addresses. As part of the Notice, Settlement

⁶ *See also Brotherton*, 141 F. Supp. 2d at 905 (noting that adding any further delay “would not substantially benefit class members” and would support a finding that the settlement was fair, reasonable, and adequate); *Miracle v. Bullitt Cnty., Ky.*, 2008 WL 3850477, at *6 (W.D. Ky. Aug. 15, 2008) (the “uncertainty of the outcome of the litigation makes it more reasonable for the plaintiffs to accept the settlement offer from the defendant”).

Class Members are provided a simple Claim Form that allows them to select one of four benefits available through the Settlement, depending upon their individual circumstances and preferences. The Claim Form is attached to the Settlement Agreement as Exhibit C. The claim process is designed to be simple and straight forward. A class member may either return the Claim Form provided with the Notice or file a claim electronically through the Settlement Website. The Settlement Agreement provides procedures for a Settlement Class Member to dispute any claim denial, and automatically awards a substitute benefit if the denial is due to failure to provide sufficient proof of out-of-pocket expenses. If the Settlement Class Member has any questions, they can call a toll-free number with live operators who can answer their questions.

c. The terms of any proposed award of attorney's fees, including timing of payment

Named Plaintiffs' Counsel agreed in the Settlement Agreement to seek an award of no more than \$1,775,000 for attorney fees and expenses, and LeafFilter agreed to pay reasonable attorneys' fees and expenses, as approved by the Court. The Settlement Agreement requires Class Counsel to apply to the Court for an attorney fee and cost award at least fourteen days prior to the deadline for Settlement Class Members to object.

Importantly, whatever attorneys' fees, expense reimbursement, and service payments are awarded by this Court, such awards will not reduce the benefits available to the Settlement Class Members. And any fees and expenses awarded by the Court will be paid fourteen days after the Effective Date, as defined by the Settlement Agreement.

d. Any agreement required to be identified under Rule 23(e)(3)

Rule 23(e)(3) requires parties seeking approval to "file a statement identifying any agreement made in connection with the proposal." This section requires disclosure of any side agreements that may not be set clearly forth in the settlement agreement. The Parties have included

all details of their settlement within the Settlement Agreement and supporting documents. There are no additional agreements.

4. The proposed Settlement treats class members equitably relative to one another.

The final factor to be considered under amended Rule 23(e)(2) asks whether the proposed settlement treats class members equitably relative to one another. Here, the Settlement is designed to allow each Settlement Class Member to select the benefit that is most desirable to them, based up on their individual circumstances. Each benefit is valued at no less than \$200 and no more than \$285, so that no Settlement Class Member will recover significantly more than another.

Moreover, the proposed Settlement does not provide preferential treatment to the Named Plaintiffs — instead, their recovery is limited to that obtainable by other Settlement Class Members who file a claim form. Any Service Award (if awarded by the Court) is separate from class relief and is designed to compensate the Named Plaintiffs for their time, effort, and inconvenience in connection with acting as the class representative in this case.

D. The proposed form and manner of notice to the Class is reasonable and should be approved.

Under Rule 23(e), the Court must “direct notice in a reasonable manner to all class members who would be bound” by the proposed settlement. Fed. R. Civ. P. 23(e)(1). Notice of a proposed settlement to class members must be the “best notice practicable.” Fed. R. Civ. P. 23(c)(2)(B). “[B]est notice practicable” means “individual notice to all members who can be identified through reasonable effort.” *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). In order to satisfy these standards and “comport with the requirements of due process, notice must be ‘reasonably calculated to reach interested parties.’” *In re Countrywide*, 2009 WL 5184352, at *43.

The Notice Plan set forth in the Agreement provides the best notice practicable under the circumstances – direct mail notice to all persons on the Class list. The Parties negotiated the form of the Notice which will be provided to all persons who fall within the definition of the Class. The Notice is attached to the Settlement Agreement as Exhibit B.

In addition, Rule 23(h)(1) requires that “[n]otice of the motion [for attorneys’ fees] must be served on all parties and, for motions by class counsel, directed to class members in a reasonable manner.” Class Counsel will file their Motion for Attorneys’ Fees and Expenses no later than two weeks before the deadline for Class Members to object, and the Motion will be posted to the Settlement Website after it is filed to allow Class Members the opportunity to review it.

The proposed Notice Plan complies with Fed. R. Civ. P. 23 and due process because, among other things, it informs Settlement Class Members of: (1) the nature of the action; (2) the essential terms of the settlement, including the definition of the Settlement Class, and the benefits offered; (3) the binding effect of a judgment if the Settlement Class Member does not request exclusion; (4) the process for objection and/or exclusion, including the time and method for objecting or requesting exclusion and that Settlement Class Members may make an appearance through counsel; (5) information regarding the Named Plaintiffs’ request for an incentive award and the payment of attorneys’ fees and expenses; and (6) how to make inquiries. Fed. R. Civ. P. 23(c)(2)(B).

Accordingly, the Notice Plan and Settlement Notice “fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings.” *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 114 (2d Cir. 2005). The manner of providing notice, which includes individual notice by direct mail and email to all Settlement Class Members, represents the best notice practicable under the

circumstances and satisfies the requirements of due process and Rule 23. *See Frost v. Household Realty Corp.*, 61 F. Supp. 3d 740, 745 (S.D. Ohio 2004). Thus, the Notice Plan should be approved. Fed. R. Civ. P. 23(c)(2)(A).

D. The Court should approve KCC as Settlement Administrator

Attached as Ex. 6 is the Declaration of Christie Reed, Class Actions Case Specialist with KCC Class Action Services, LLC (“KCC”), setting forth KCC’s experience and qualifications. Named Plaintiffs request that the Court approve KCC as Settlement Administrator in this action.

E. The Court should provide a schedule leading up to a Fairness Hearing.

Named Plaintiffs request that the Court set a schedule, leading up to a Fairness Hearing, that includes the following dates:

Date	Event
No later than 60 days after entry of preliminary approval order	Class Notice Disseminated (“Notice Date”)
No later than 31 days after Notice Date	Motion for Approval of Attorneys’ Fees and Expenses and Service Awards filed
45 days after Notice Date	Objection and Opt-Out Deadline
120 days after Notice Date	Claim Submission Deadline
No later than 28 days before Fairness Hearing	Motion for Final Approval filed
No later than 21 days before Fairness Hearing	LeafFilter’s Response (if any) to Plaintiffs’ Motions
No later than 14 days before Fairness Hearing	Reply Memoranda in Support of Final Approval and Fee Application filed
No earlier than 90 days after Notice Date	Settlement Fairness Hearing

IV. CONCLUSION

Because the proposed Settlement is fair, adequate, and reasonable, Named Plaintiffs respectfully request that the Court grant preliminary approval and enter the proposed Order attached to the Settlement Agreement as Exhibit A.

Respectfully submitted,

/s/ Jeffrey S. Goldenberg
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* Admitted *Pro Hac Vice*

CERTIFICATE OF SERVICE

I hereby certify that on June 24, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

/s/ Jeffrey S. Goldenberg
Jeffrey S. Goldenberg

Exhibit 1

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

JAMES ZILINSKY, GERALDINE)	CASE NO. 2:20-cv-6229-MHW-KAJ
ZILINSKY, CORY SIMPSON, MEAGAN)	
McGINLEY, SANDRA)	
GARRETTDORSEY, BRIAN DERING,)	JUDGE MICHAEL H. WATSON
THERESA DERING, ALAN)	
ARMSTRONG, and SANDY)	
ARMSTRONG, individually and on behalf)	CLASS ACTION SETTLEMENT
of all others similarly situated,)	AGREEMENT AND RELEASE
)	
Plaintiffs,)	
)	
v.)	
)	
LEAFFILTER NORTH, LLC,)	
)	
Defendant.)	

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I. RECITALS

This Class Action Settlement Agreement and Release (“Settlement Agreement”), dated as of the date of the last signature below, is made and entered into pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(3) and 23(e) between and among: (1) James Zilinsky, Geraldine Zilinsky, Cory Simpson, Meagan McGinley, Sandra GarrettDorsey, Brian Dering, Theresa Dering, Alan Armstrong, and Sandy Armstrong (collectively, “Named Plaintiffs”), on behalf of themselves and as representatives of the Settlement Class defined below (the Named Plaintiffs and members of the Settlement Class are collectively referred to as “Settlement Class Members”) on the one hand, and (2) Defendant LeafFilter North, LLC (“LeafFilter” or “Defendant”), on the other hand, (collectively with Named Plaintiffs, the “Parties”) by and through their undersigned counsel, in order to fully and finally settle and resolve the above-captioned litigation and to effect dismissal with prejudice of all of the Released Claims (defined below) asserted against LeafFilter on the terms set forth herein, subject to the final approval of the Court. This Settlement Agreement is intended by the Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims.

WHEREAS, Named Plaintiffs initiated the above captioned action on December 3, 2020, and filed a First Amended Class Action Complaint on April 1, 2021;

WHEREAS, Named Plaintiffs generally alleged (among other things) that the LeafFilter Gutter System installed on their homes allowed debris to accumulate on top of the LeafFilter screens that required periodic maintenance;

WHEREAS, LeafFilter filed a Motion to Dismiss the First Amended Complaint on April 29, 2021, which motion remains pending;

WHEREAS, the Parties engaged in substantial fact discovery;

WHEREAS, on March 17, 2022, the Parties conducted a formal private mediation session with Hunter Hughes, Esq. in Atlanta, Georgia, and conducted additional informal mediation sessions with Mr. Hughes, and now wish to fully and finally resolve the Litigation;

WHEREAS, LeafFilter denies all of the allegations in the Litigation, denies that it has engaged in any wrongdoing, denies that Named Plaintiffs' claims are meritorious, and denies that it is legally responsible or liable to Named Plaintiffs or any Settlement Class Member, as defined herein, for any of the matters asserted in this Litigation;

WHEREAS, the Parties agree that neither this Settlement Agreement nor the settlement it represents shall be construed as an admission by LeafFilter of any wrongdoing whatsoever including an admission of a violation of any statute or law, or of liability on the claims or allegations in the Litigation;

WHEREAS, the Parties agree and understand that neither this Settlement Agreement nor the settlement it represents shall be construed or admissible as an admission by LeafFilter in the Litigation or any other proceedings that the Named Plaintiffs' claims, or similar claims, are or would be viable or suitable for class treatment if the Litigation proceeded through both litigation and trial;

WHEREAS, LeafFilter does not believe Named Plaintiffs' claims are meritorious or that certification of any proposed class for trial purposes would be proper under Fed. R. Civ. P. 23 and denied and continues to deny that it is legally responsible to Named Plaintiffs or any member of the Settlement Class for any of the claims or allegations asserted in the Lawsuit, but it has concluded that the Settlement is desirable to avoid the time, expense and inherent uncertainties of defending protracted litigation and to resolve, finally and completely, all claims of Named Plaintiffs and members of the Settlement Class (defined below);

WHEREAS, Class Counsel are experienced in this type of class litigation, and therefore recognize the costs and risks of prosecution of this Litigation and believe that it is in the interest of all Settlement Class Members to resolve this Litigation as set forth in this Settlement Agreement;

WHEREAS, the Named Plaintiffs and Class Counsel have examined the benefits to be obtained under the terms of this Settlement Agreement, have considered the risks associated with the continued prosecution of the Litigation and the likelihood of success on the merits of the Litigation and believe that, after considering all of the facts and circumstances, the proposed settlement set forth in this Settlement Agreement offers significant benefits to Settlement Class Members and is fair, reasonable, adequate, and in the best interests of the Settlement Class Members; and

WHEREAS, this Settlement Agreement is the result of significant arm's-length settlement negotiations that have taken place between the Parties, including with the assistance of a neutral and experienced mediator.

NOW, THEREFORE, it is hereby stipulated and agreed, by and between the Parties and their counsel, as follows:

II. DEFINITIONS

2.1 "Benefit"

"Benefit" shall mean the consideration available to Settlement Class Members through this settlement, as described in Section IV herein.

2.2 "Claim"

A "Claim" is a request for a Benefit under this Settlement Agreement.

2.3 "Claim Form"

“Claim Form” refers to a form to be completed by a Settlement Class Member to request a Benefit under this Settlement Agreement, which Claim Form shall be materially in the form of Exhibit C attached hereto.

2.4 “Claims Period”

“Claims Period” means the time period during which a Settlement Class Member may submit a Claim Form, which period shall be one hundred and twenty (120) days after the Notice Date.

2.5 “Class Counsel”

“Class Counsel” means: (1) Varnell & Warwick, P.A.; and (2) Goldenberg Schneider, LPA, both of which appear on the signature page of this Settlement Agreement.

2.6 “Class List”

“Class List” shall mean the complete listing of the names and addresses all persons LeafFilter determines are members of the Settlement Class (defined below) and thereby eligible to receive the Notice. This data shall be run through the National Change of Address database to update addresses before the Notice is sent. A complete electronic copy of the Class List shall be provided to Class Counsel no later than one week after the Notice Date. The Class List shall be treated as Confidential, except that the Class List may be shared with the Settlement Administrator, but only after the Settlement Administrator executes the Acknowledgement of Understanding and Agreement to Be Bound pursuant to the Stipulated Protective Order entered in the Litigation. In advance of the Final Approval Hearing, LeafFilter agrees to move the Court for leave to file the Class List under seal, which motion the Named Plaintiffs and Class Counsel agree not to oppose.

2.7 “Court”

“Court” shall mean the United States District Court for the District of Southern District of Ohio, the Honorable Michael H. Watkins presiding, or his duly appointed successor.

2.8 “Debris Accumulation”

“Debris Accumulation” shall mean the buildup, collection, or aggregation of organic material (including but not limited to leaves, pine needles, twigs, branches, seeds, and pollen) and/or inorganic material (including but not limited to shingle grit) on top of the LeafFilter Gutter System.

2.9 “Debris Related Final Issue Code”

“Debris Related Final Issue Code” shall mean a Final Issue Code of either “Debris on System” or “Debris Behind S/Gs.”

2.10 “Debris Removal Cleaning”

“Debris Removal Cleaning” shall mean the removal of Debris Accumulation by a person or entity other than the Settlement Class Member.

2.11 “Effective Date”

The “Effective Date” of this Settlement Agreement means the date when all of the following conditions have occurred: (1) this Settlement Agreement has been fully executed by the Parties and their counsel; (2) orders have been entered by the Court certifying a Settlement Class, granting preliminary approval of this Settlement Agreement and approving the form of Notice, CAFA Notice, and Claim Form, all as provided herein; (3) the Court-approved Notice and the Settlement Website have been duly created and/or disseminated as ordered by the Court; (4) the Court has entered a Final Order and Judgment (as defined below) finally approving this Settlement Agreement as provided below; and (5) the Final Order and Judgment has become Final, as defined immediately below, and no longer subject to any review or appeal.

2.12 “Final”

“Final” when referring to a judgment or order means that: (1) the judgment is a final appealable judgment; and (2) either: (a) no appeal has been taken from the judgment relating to the merits of the settlement (as opposed to any appeals relating solely to the Class Counsel Fees and Expenses Award, which will not affect finality as defined herein) as of the date on which all times to appeal therefrom have expired, or (b) an appeal or other review proceeding of the judgment relating to the merits of the settlement having been commenced, such appeal or other review is finally concluded and no longer is subject to review by any court, whether by appeal, petitions for rehearing or re-argument, petitions for rehearing *en banc*, petitions for *writ of certiorari*, the appeal is voluntarily withdrawn, or otherwise, and such appeal or other review has been finally resolved in a manner that affirms the Final Order and Judgment in all material respects.

2.13 “Final Approval Hearing”

“Final Approval Hearing” shall mean the final hearing to be held by the Court to consider the fairness, reasonableness, and adequacy of the proposed settlement and whether the settlement should be finally approved by the Court, such Final Approval Hearing to be no earlier than ninety (90) days after the Notice Date, subject to the approval of the Court.

2.14 “Final Issue Code”

“Final Issue Code” shall mean the final code that, after a request for service from a customer, LeafFilter used in its customer database to categorize the issue that prompted the customer’s request.

2.15 “Final Order and Judgment”

“Final Order and Judgment” shall mean the Court order that finally approves this Settlement Agreement, finally certifies the Settlement Class, enters an order on Class Counsel’s

petition for attorneys' fees and expenses and the Service Awards (as detailed herein), and enters judgment and closes the case.

2.16 "LeafFilter"

"LeafFilter" shall mean LeafFilter North, LLC, and its predecessors, successors, affiliates, subsidiaries, parent, assigns, directors, officers, agents, dealers, suppliers, attorneys, representatives, and employees.

2.17 "LeafFilter's Counsel"

"LeafFilter's Counsel" shall mean Gregory J. Phillips, Trevor G. Covey, Michael J. Meyer, and Michael B. Silverstein of BENESCH, FRIEDLANDER, COPLAN & ARONOFF LLP.

2.18 "Litigation"

"Litigation" shall mean all proceedings associated with Named Plaintiffs' original and First Amended Class Action Complaints, allegations, and claims on behalf of themselves and others similarly situated against LeafFilter North, LLC in CASE NO. 2:20-cv-6229-MHW-KAJ, in the Southern District of Ohio.

2.19 "Named Plaintiffs"

"Named Plaintiffs" shall mean Plaintiffs James Zilinsky, Geraldine Zilinsky, Cory Simpson, Meagan McGinley, Sandra GarrettDorsey, Brian Dering, Theresa Dering, Alan Armstrong, and Sandy Armstrong.

2.20 "Notice"

"Notice" shall mean the Court-approved form of notice of the settlement provided to the persons on the Class List, by first class mail, postage prepaid, and by email if email addresses are available and requisite consent has been obtained, which shall be without material alteration from

Exhibit B attached hereto. There shall be no Notices provided that are not expressly authorized by this Settlement Agreement.

2.21 “Notice Date”

“Notice Date” means the date by which the Settlement Administrator completes the mailing of a copy of the Notice by first class mail, postage prepaid, and by email as appropriate, to each person on the Class List after first running the addresses on the Class List through the National Change of Address database. The Notice Date shall be no later than sixty (60) days after the Court enters the Preliminary Approval Order, defined herein, or such earlier practicable date.

2.22 “Opt-Outs”

“Opt-Outs” mean Settlement Class Members who opt-out of this settlement pursuant to Section V.F. below.

2.23 “Preliminary Approval Order”

“Preliminary Approval Order” means the order to be entered by the Court preliminarily approving the settlement, preliminarily certifying the Settlement Class and (among other things) directing that Notice be given to the persons on the Class List, which Preliminary Approval Order shall be materially similar in substance to Exhibit A attached hereto.

2.24 “Proof of Expense”

“Proof of Expense” shall mean an original invoice, legible photocopy thereof, or other record, or some combination thereof, identifying the reimbursable expenses paid by the Settlement Class Member. Sufficient proof shall consist of one or more contemporaneous writings, including but not limited to third-party receipts, invoices, and repair orders or bills, which, either individually or collectively, prove the existence of out-of-pocket costs and the amount of the expense.

2.25 “Recital”

“Recital” means each statement of the facts and/or procedural history in Section I of this Settlement Agreement. The Parties acknowledge and agree the Recitals enumerate important facts and procedural history, are true and accurate, and are hereby made a part of this Settlement Agreement as though fully set forth herein.

2.26 “Released Claims”

“Released Claims” means any and all claims, actions, causes of action, counterclaims, demands, actions, suits, allegations of wrongdoing, liabilities, rights, demands, suits, debts, liens, contracts, agreements, offsets or liabilities, including but not limited to tort claims, claims for breach of contract, breach of express or implied warranty, breach of the duty of good faith and fair dealing, breach of statutory duties, actual or constructive fraud, misrepresentations, fraudulent inducement, statutory and consumer fraud, breach of fiduciary duty, unfair business or trade practices, restitution, rescission, compensatory and punitive damages, injunctive or declaratory relief, attorneys’ fees, interests, costs, penalties and any other claims, whether known or unknown, alleged or not alleged in the Litigation, as or as could have been asserted in the Litigation, suspected or unsuspected, contingent or matured, under federal law, state law, common law, equity, or local law, against LeafFilter and all of the Releasees, which the Named Plaintiffs and/or any Settlement Class Member had, have, or may in the future have, with respect to any conduct, act, omissions, facts, matters, transactions or oral or written statements or occurrences that relate to or arise out of the LeafFilter Gutter System and that share a factual predicate with the allegations or claims pled in the Complaint. The Released Claims specifically include claims for property damage caused by the LeafFilter system that are known or should be known to the Named Plaintiffs and Settlement Class on the Notice Date; but do not include any property damage claims arising

from the LeafFilter system that Named Plaintiffs and the Settlement Class do not know of, and should not know of, at the Notice Date. Nor do the Released Claims include claims for personal injuries or wrongful death caused by the LeafFilter system.

2.27 “Releasees”

“Releasees” shall mean LeafFilter North, LLC, its parent, subsidiaries, affiliates and related entities, and all of their respective past and present directors, officers, employees, independent contractors, partners, principals, agents, and each of their respective predecessors, successors, parents, subsidiaries, divisions, joint ventures, attorneys, insurers, reinsurers, assigns, related or affiliated entities, authorized dealers, distributors, suppliers, and any members of their immediate families, and any trust for which any of them are trustees, settlers, or beneficiaries.

2.28 “Service Awards”

“Service Awards” shall mean monetary awards to compensate the Named Plaintiffs for efforts undertaken by them on behalf of the Settlement Class.

2.29 “Settlement Administrator”

“Settlement Administrator” shall mean KCC.

2.30 “Settlement Class Member”

“Settlement Class Members” are Named Plaintiffs and all LeafFilter customers in the United States who appear in LeafFilter’s customer care database with a Debris-Related Final Issue Code for their service request between January 1, 2016 through the date that this Settlement Agreement is fully executed. Settlement Class Members do not include Opt-Outs.

2.31 “Settlement Website”

“Settlement Website” shall mean the website created and maintained by the Settlement Administrator which will contain, among other things, the Notice and Claim Forms, and

documents and important dates related to the settlement.

2.32 “Voucher”

“Voucher” shall mean a document generated by LeafFilter that entitles the bearer to a future Debris Removal Cleaning at no cost.

III. SETTLEMENT CLASS

3.1 The Parties stipulate to certification, for settlement purposes only, of a Settlement Class defined as follows: all LeafFilter customers in the United States who appear in LeafFilter’s customer care database with a Debris-Related Final Issue Code for their service request. The Class Period shall mean the time period from January 1, 2016 through the date that the Settlement Agreement is fully executed. There are an estimated 59,376 LeafFilter customers who appear in LeafFilter’s customer care database with a Debris-Related Final Issue Code.

3.2 Excluded from the stipulated Settlement Class are: (1) LeafFilter; (2) any affiliate, parent, or subsidiary of LeafFilter; (3) any entity in which LeafFilter has a controlling interest; (4) any officer, director, or employee of LeafFilter; (5) any successor or assign of LeafFilter; (6) any Judge to whom the Litigation is assigned; (7) any person who has resolved or otherwise released their claims as of the date of the settlement; and (8) any Settlement Class Member who opts-out of the settlement.

3.3 Solely for purposes of implementing this Settlement Agreement and effectuating the settlement, LeafFilter stipulates to the Court entering preliminary and final orders approving the settlement, certifying the Settlement Class, appointing Named Plaintiffs as representatives of the Settlement Class, and appointing Named Plaintiffs’ Counsel to serve as Class Counsel for the Settlement Class. Solely for the purpose of implementing this Settlement Agreement and

effectuating the settlement, the Parties stipulate that KCC will be appointed as Settlement Administrator, subject to the approval of the Court.

3.4 Solely for the purpose of implementing this Settlement Agreement and effectuating the settlement, LeafFilter stipulates that Named Plaintiffs and Class Counsel are adequate representatives of the Settlement Class.

IV. SETTLEMENT CONSIDERATION

4.1 In exchange for the dismissal of the Litigation, with prejudice, and the Released Claims as provided herein, LeafFilter agrees to provide the following consideration to the Settlement Class. A Settlement Class Member can select one (1) of the following forms of relief by filing a Claim:

A. Benefit 1

- a. Reimbursement for up to two Debris Removal Cleanings of a LeafFilter Gutter System. The maximum amount of each individual reimbursement is not to exceed \$100, and the total amount of reimbursement shall not exceed \$200. Should a Settlement Class Member submit a valid Claim with Proof of Expense for an individual Debris Removal Cleaning that exceeds \$100, the Settlement Class Member shall receive \$100. Should a Settlement Class Member submit a valid Claim with Proof of Expense for an individual Debris Removal Cleaning that is less than \$100, the Settlement Class Member shall receive the amount shown in the Proof of Expense.
- b. Claims for reimbursement shall be supported by Proof of Expense demonstrating that the Settlement Class Member paid out of pocket money to specifically remove Debris Accumulation prior to the date the Settlement Agreement is fully executed. Fees for other work shall not be reimbursed.
- c. Claims for reimbursement must be submitted no later than one hundred and twenty (120) days after the Notice Date.
- d. As part of completing the Claim Form, Settlement Class Members must certify that their LeafFilter system experienced Debris Accumulation.

B. Benefit 2

- a. Reimbursement for one Debris Removal Cleaning of a LeafFilter Gutter System, and Vouchers for two future LeafFilter system Debris Removal Cleanings. The

maximum amount of such reimbursement is not to exceed \$100. Should a Settlement Class Member submit a valid Claim with Proof of Expense for a Debris Removal Cleaning that exceeds \$100, the Settlement Class Member shall receive \$100. Should a Settlement Class Member submit a valid Claim with Proof of Expense for a Debris Removal Cleaning that is less than \$100, the Settlement Class Member shall receive the amount shown in the Proof of Expense.

- b. Claims for reimbursement shall be supported by Proof of Expense demonstrating that the Settlement Class Member paid out of pocket money to specifically remove Debris Accumulation prior to the date the Settlement Agreement is fully executed. Fees for other work shall not be reimbursed.
- c. Claims for reimbursement must be submitted no later than one hundred and twenty (120) days after the Notice Date.
- d. As part of completing the Claim Form, Settlement Class Members must certify that their LeafFilter Gutter System experienced Debris Accumulation. Settlement Class Members may additionally submit photographic evidence that their LeafFilter Gutter System experienced Debris Accumulation.
- e. The Voucher cleanings are to be performed by LeafFilter or its agents and shall be performed within thirty (30) days of request by Settlement Class Member. If LeafFilter is unable to perform the cleaning within thirty (30) days, then the Settlement Class Member can then schedule his or her own contractor to perform the cleaning and LeafFilter will reimburse the Settlement Class Member for the full amount of the cleaning, up to a maximum of \$100 per cleaning, no later than 14 days after receipt by LeafFilter of the invoice from the Settlement Class Member.
- f. Vouchers shall be fully transferrable.

C. Benefit 3

- a. Vouchers for three future LeafFilter Gutter System Debris Removal Cleanings.
- b. As part of completing the Claim Form, Settlement Class Members must certify that their LeafFilter Gutter System experienced Debris Accumulation. Settlement Class Members may additionally submit photographic evidence that their LeafFilter Gutter System experienced Debris Accumulation.
- c. The Voucher cleanings are to be performed by LeafFilter or its agents and shall be performed within thirty (30) days of request by Settlement Class Member. If LeafFilter is unable to perform the cleaning within thirty (30) days, then the Settlement Class Member can then schedule his or her own contractor to perform the cleaning and LeafFilter will reimburse the Settlement Class Member for the full amount of the cleaning, up to a maximum of \$100 per cleaning, no later than 14 days after receipt by LeafFilter of the invoice from the Settlement Class Member.

- d. Claims for reimbursement must be submitted no later than one hundred and twenty (120) days after the Notice Date.
- e. Vouchers shall be fully transferrable.

D. Benefit 4

- a. Reimbursement of up to \$200 for costs related to the removal of the LeafFilter Gutter System from their home because of Debris Accumulation problems.
- b. Claims for reimbursement shall be supported by Proof of Expense demonstrating that the Settlement Class Member paid out of pocket money to remove the LeafFilter Gutter System.
- c. Claims for reimbursement must be submitted no later than one hundred twenty (120) days after the Notice Date.
- d. As part of completing the Claim Form, Settlement Class Members must certify that their LeafFilter Gutter System experienced Debris Accumulation and that the system was removed for that reason.

E. Rules Applicable To The Benefit

4.2 Settlement Class Members can receive a maximum of one Benefit per LeafFilter Gutter System.

4.3 Warranties for all Settlement Class Members selecting Benefit 4 are voided and canceled.

4.4 If a Settlement Class Member attempts to submit a request for Benefit 1 but only submits one valid Proof of Expense for Debris Removal Cleaning after exhaustion of all procedures set forth in V.D. below, the Settlement Class Member shall be treated as if they submitted a request for Benefit 2.

4.5 If a Settlement Class Member attempts to submit a request for Benefit 1 or 2 but does not submit valid Proof of Expense for a Debris Removal Cleaning after exhaustion of all procedures set forth in V.D. below, the Settlement Class Member shall be treated as if they submitted a request for Benefit 3

V. SETTLEMENT ADMINISTRATION

A. Costs of Administration and Notice

5.1 The Parties agree that KCC shall serve as Settlement Administrator, subject to the approval of the Court and with the input of Counsel for the Parties, to administer specific components of the settlement, including providing Notice, processing Claim Forms, issuing the Benefit to Settlement Class Members, and creating and maintaining the Settlement Website.

5.2 LeafFilter shall be responsible for all costs of Notice and settlement administration. Named Plaintiffs, Settlement Class Members, and Class Counsel shall not be responsible for any costs associated with Notice or settlement administration.

B. Notice Plan and Settlement Website; CAFA Notice

5.3 The Settlement Administrator will be responsible for implementing the Notice Plan, creating and maintaining the Settlement Website, and providing the CAFA Notice.

5.4 The Settlement Administrator shall be responsible for providing notice substantially similar to the Notice attached as Exhibit B and Claim Form attached as Exhibit C to the persons on the Class List (which shall be run through the National Change of Address database to update addresses before the Notice is sent) and shall undertake various administrative tasks, including without limitation: (1) mailing or arranging for the mailing by first-class mail, postage prepaid of the Notice and Claim Forms from the information compiled from the Class List to each person on the Class List; (2) emailing to each person on the Class List the Notice and Claim Forms if email addresses are available; (3) developing processes and procedures for handling deficient Claim Forms and returned mail; (4) providing to Class Counsel and LeafFilter Counsel within five (5) days of receipt copies of any objections, notices of intention to appear at the Final Approval Hearing and requests for exclusion from the Settlement Class; (5) preparing an Opt-Out list of the Settlement Class Members requesting exclusion and submitting an affidavit to the Court before

the Final Approval Hearing attesting to the accuracy of that list; (6) preparing a list of all persons who submitted objections to the settlement and submitting an affidavit to the Court attesting to the accuracy of that list; (7) maintaining a mailing address to which Settlement Class Members can send requests for exclusion, objections, Claim Forms and other correspondence; (8) processing Claim Forms submitted and providing the Benefits to Settlement Class Members as applicable; and (9) creation and maintenance of the Settlement Website.

5.5 Among other things, the Notice will explain the alleged issues with the LeafFilter Gutter System that are the subject of the Litigation, the benefits of the settlement and how to obtain such benefits, and direct Settlement Class Members to the Settlement Website for more information. The Notice will also contain a unique claim number or identification for purposes of accessing or submitting claims via the Settlement Website, as explained below. The Notice will also contain a statement, in a separate highlighted box, advising Settlement Class Members who know or have reason to suspect that they have sustained significant property damage caused by the LeafFilter system to strongly consider opting-out of the Settlement Class to preserve their rights to bring an individual lawsuit against LeafFilter.

5.6 If Notice to a Settlement Class Member is returned undelivered and a forwarding address is provided, the Settlement Administrator will re-send the Notice to that Settlement Class Member one additional time at the new address. For Notice sent via email and for which the Settlement Administrator receives a bounceback, unless the bounceback provides an updated email address, the Settlement Administrator shall take not make any additional attempts to provide Notice via email to that Settlement Class Member.

5.7 The Settlement Administrator will establish and maintain the Settlement Website that will make available for download documents relating to the settlement (including the Notices

and Claim Forms). The Settlement Administrator shall also establish the Settlement Website so that Settlement Class Members can submit claims electronically. Within fourteen (14) days of the entry of the Preliminary Approval Order, the Settlement Administrator will post the required documents on the Settlement Website. All claims submitted through the Settlement Website must include the unique claim number or identification. Submissions missing the unique claim number or identification shall not be accepted or processed and shall be treated as a denial for purposes of Section 5.14. Notwithstanding the above, anyone who believes they are part of the Settlement Class who did not receive a Notice may contact the Settlement Administrator to obtain a Notice with a unique claim number or identification using a process as determined by the Class Counsel, LeafFilter's Counsel, and Settlement Administrator.

5.8 During the Claims Period, the Settlement Administrator will post on the Settlement Website a toll-free telephone number that will be staffed during normal business hours with live operators who can answer questions about and provide information to Settlement Class Members regarding the settlement as well as provide the Notice and Claim Form to any Settlement Class Member upon request.

5.9 The Settlement Administrator will provide available information to Class Counsel and LeafFilter's Counsel on a weekly basis, or more frequently as reasonably requested, as to the number of Claims submitted and the Benefit type(s) of the claims. The Settlement Administrator will provide information regarding Claims decisions made by the Settlement Administrator on a monthly basis so that Class Counsel and LeafFilter's Counsel may monitor and/or audit the claims process.

5.10 In compliance with the attorney general notification provision of the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1715, LeafFilter shall cause notice of this proposed settlement

to be sent to the Attorney General of the United States, and the attorneys general of each state in which a Settlement Class Member resides (“CAFA Notice”).

5.11 Fourteen (14) days prior to the Final Approval Hearing, the Settlement Administrator shall provide to the Parties, for submission to the Court, a declaration stating that Notice was disseminated in a manner consistent with the terms of this Settlement Agreement, or those otherwise required by the Court.

C. Claim Procedure

5.12 Settlement Class Members who believe they are eligible for a Benefit under the Settlement Agreement must send the Settlement Administrator a completed copy of the Claim Form, postmarked during the Claims Period or submit their claim electronically through the Settlement Website during the Claims Period.

D. Claims Processing

5.13 Within a reasonable time of receiving a Claim Form and any accompanying documentation, the Settlement Administrator will review the documentation and either confirm or deny the Settlement Class Member’s eligibility for a Benefit.

5.14 If the determination is to deny a Claim, the Settlement Administrator will send, within fourteen (14) days after determination of denial, notice of the denial to the Settlement Class Member. Such notice will set forth the reason(s) for the denial and provide notice of the claimant’s right to contest the denial and request reconsideration and/or to attempt to cure any defect within the later of fourteen (14) days or the remaining Claims Period. On a monthly basis after the Effective Date until all Claims have been processed, the Settlement Administrator will provide to Class Counsel and LeafFilter’s Counsel a list of all Claims that have been denied, the basis for the denial, along with the Claim Forms and supporting documentation and other relevant information relating to the denial.

5.15 Claims that do not meet the requirements set forth in the Settlement Agreement shall be denied. Grounds for rejection include, but are not limited to, failure to provide Proof of Expense or any other required information, untimely submission of the Claim Form, or submission of ineligible expenses. However, notwithstanding the above, if the Settlement Administrator determines the Claim submitted by the Settlement Class Member would be valid for a Benefit other than the one sought by the Settlement Class Member, the Settlement Administrator may award the Settlement Class Member that Benefit as set forth in Sections 4.4 and 4.5.

5.16 A Settlement Class Member whose Claim has been denied may attempt to cure the deficiency or contest the decision denying the Claim by mailing to the Settlement Administrator at the mailing address for the administration of this Settlement, written notice containing information to attempt to cure any claim deficiencies or a statement of reasons the Settlement Class Member contests the denial, along with any additional supporting documentation (the “Contest Notice”). Any Contest Notice must be postmarked within fourteen (14) days after the date of mailing by the Settlement Administrator of the notice of the denial of the Claim. The Contest Notice procedures shall be posted on the Settlement Website and shall also be provided in writing to any Settlement Class Member whose Claim is denied. The Settlement Administrator shall provide Class Counsel and LeafFilter’s Counsel with a copy of each Contest Notice received no later than fourteen (14) days after receipt.

5.17 Within thirty (30) days after the Settlement Class Member mails the Contest Notice, the Settlement Administrator shall consider the claimant’s request for reconsideration and any materials submitted by the Settlement Class Member in support thereof, and mail to the Settlement Class Member a final determination of the Claim.

5.18 By no later than sixty (60) days after the Effective Date, the Settlement Administrator will provide to Settlement Class Members who timely filed valid Claims the Benefit to which they are entitled under the settlement.

5.19 If this settlement never becomes Final for any reason, no relief, Benefit, or reimbursement of any kind shall be made to anyone pursuant to the Settlement Agreement.

E. Objections

5.20 The Parties agree to ask the Court to require any Settlement Class Member who intends to object to the fairness, reasonableness, or adequacy of the settlement to file any objection via the Court's electronic filing system (if represented by counsel) or to send the objection to LeafFilter's Counsel and Class Counsel via first-class mail. Objections must be filed electronically or postmarked no later than a date to be set by the Court, which date the Parties shall ask the Court to set forty-five (45) days after the Notice Date. Any objecting Settlement Class Member must:

- (a) Set forth his, her, or its full name, current address, and telephone number;
- (b) Identify the date of purchase for his, her, or its LeafFilter Gutter System;
- (c) State that the objector has reviewed the Settlement Class definition and understands that he, she, or it is a Settlement Class Member;
- (d) A written statement of the objection(s) which must include a statement as to whether it applies only to the objector, to a specific subset of the Settlement Class, or to the entire Settlement Class, and also state with specificity the grounds for the objection, including any evidence and legal authority the Settlement Class Member wishes to bring to the Court's attention;
- (e) Provide copies of any documents the objector wants the Court to consider
- (f) Identify his, her, or its counsel, if any; and

- (g) A statement as to whether the Settlement Class Member intends to appear at the final approval hearing.

5.21 In addition, any Settlement Class Member objecting to the settlement shall file a sworn declaration listing all other objections submitted by the objector or the objector's counsel to any class action settlements submitted in any court in the United States in the previous five (5) years. If the Settlement Class Member or his, her, or its counsel has not objected to any other class action settlement in the United States in the previous five years, he, she, or it shall affirmatively so state in the objection.

5.22 An objection must be filed with the Court if the objector is represented by counsel, or if not represented by counsel, must be sent to the Settlement Administrator via first-class mail, postage prepaid, and must also be served by first-class mail, postage prepaid, upon both of the following:

LeafFilter's Counsel at:

Gregory J. Phillips
Benesch, Friedlander, Coplan & Aronoff LLP
200 Public Square, Suite 2300
Cleveland, OH 44114-2378

Class Counsel at:

Brian W. Warwick
Varnell & Warwick, P.A.
1101 E. Cumberland Ave,
Suite 201H, #105
Tampa, FL 33602

5.23 Subject to approval of the Court, any objecting Settlement Class Member may appear, in person or by counsel, at the Final Approval Hearing to argue why the proposed settlement should not be approved as fair, reasonable, and adequate, or to object to any petitions for Class Counsel Fees and Expenses Award and/or Services Awards. Any such objecting

Settlement Class Member—if they intend to appear at the hearing, with or without counsel—must file with the Clerk of the Court and serve upon all counsel designated in the Notice a notice of intention to appear at the Final Approval Hearing by the objection deadline. The notice of intention to appear must include copies of any papers, exhibits, or other evidence that the objecting Settlement Class Member (or the objecting Settlement Class Member's counsel) will present to the Court in connection with the Final Approval Hearing. Any Settlement Class Member who does not provide a notice of intention to appear in accordance with the deadlines and other specifications set forth in the Notice, will be deemed to have waived any right to appear in person or by counsel at the Final Approval Hearing. Any Settlement Class Member who does not file an objection in accordance with the deadlines and other specifications set forth in the Settlement Agreement and the Notice, will be deemed to have waived any objections to the settlement, subject to the discretion of the Court.

5.24 The submission of an objection allows Class Counsel and/or LeafFilter's Counsel to take the deposition of the objecting Settlement Class Member pursuant to the Federal Rules of Civil Procedure at an agreed-upon time and location, and to obtain any evidence relevant to the objection. Failure by an objector to make himself or herself available for a deposition or comply with expedited discovery requests may result in the Court striking the objection. The Court may tax the costs of any such discovery to the objector or the objector's counsel if the Court determines that the objection is frivolous or is made for an improper purpose.

F. Requests for Exclusion

5.25 Settlement Class Members may exclude themselves from the settlement (*i.e.*, “Opt-Out”), relinquishing their rights to any benefits under the Settlement Agreement. A Settlement Class Member wishing to exclude himself, herself or itself must send the Settlement Administrator an email on or before, or a letter postmarked by, a date to be set by the Court, which date the

Parties shall request the Court set forty-five (45) days after the Notice Date, containing: (1) the Settlement Class Member's name, current address, and telephone number; and (2) a clear statement communicating that he, she, or it elects to be excluded from the Settlement Class, does not wish to be a Settlement Class Member and elects to be excluded from any judgment entered pursuant to the settlement. So-called "mass" or "class" exclusion requests or objections shall not be permitted. Any request for exclusion must be emailed or postmarked on or before the deadline provided in the Notice. Settlement Class Members who fail to submit a valid and timely request for exclusion shall be bound by the Settlement Agreement. Class Counsel will confirm the participation of the Named Plaintiffs in the settlement in advance of execution of the Settlement Agreement.

5.26 Any Settlement Class Member who submits a request for exclusion with a timely postmark has no standing to object to the settlement and shall be deemed to have waived any rights or benefits under the Settlement Agreement. If a Settlement Class Member files a Claim Form and also requests exclusion from the settlement, then the Settlement Class Member will remain in the Settlement Class and the request for exclusion will be deemed void.

5.27 Not later than fourteen (14) days after the deadline for submission of requests for exclusion, the Settlement Administrator shall provide Class Counsel, and LeafFilter's Counsel, for submission to the Court, a list identifying each Settlement Class Member who submitted an exclusion request together with copies of the exclusion requests, and a declaration attesting to the completeness and accuracy thereof.

VI. SETTLEMENT APPROVAL PROCESS

A. Preliminary Approval of Settlement

6.1 Promptly after the execution of this Settlement Agreement, Named Plaintiffs shall present this Settlement Agreement to the Court, along with a motion requesting that the Court issue a Preliminary Approval Order, which shall be without material alteration from Exhibit A attached hereto.

B. Final Order and Judgment

6.2 If this Settlement Agreement is preliminarily approved by the Court, Named Plaintiffs shall present a motion requesting that the Court issue a Final Order and Judgment directing the entry of judgment pursuant to Fed. R. Civ. P. 54(b).

C. Class Counsel's Fees and Expenses Award and Named Plaintiffs' Service Awards

6.3 LeafFilter agrees to pay reasonable attorneys' fees and expense reimbursement to Class Counsel and reasonable service awards to the Named Plaintiffs, as approved by the Court, and as consistent with the provisions of this Settlement Agreement. Class Counsel and Named Plaintiffs agree to request an aggregate award of attorneys' fees and expenses not to exceed \$1,775,000. Named Plaintiffs agree to request individual Class Representative Service Awards not to exceed \$3,500 (total per owner(s) of a LeafFilter Gutter System).

6.4 Class Counsel will apply to the Court for the total amount of Class Counsel Fees and Expenses Award and Service Awards prior to the submission of their motion in support of the Final Order and Judgment and at least fourteen (14) days prior to the deadline for Settlement Class Members to object. In no event will LeafFilter pay Class Counsel Fees and Expenses or Service Awards approved by the Court (a) prior to the Effective Date; and/or (b) prior to the date that the order(s) awarding the Class Counsel Fees and Expenses and/or Service Awards become Final, whichever is later.

6.5 The Class Counsel Fees and Expenses Award and Service Awards will be paid separate and apart from any relief provided to the Settlement Class pursuant to this Settlement

Agreement. Within fourteen (14) days after the Effective Date, provided that the order(s) awarding Class Counsel Fees and Expenses and/or Service Awards have become Final, and provided that Class Counsel has provided LeafFilter with requisite W-9s and completed wire transfer forms, LeafFilter shall pay, by wire transfer to the “Varnell & Warwick, P.A. Trust Account” (“Class Counsel Payee”), the Class Counsel Fees and Expenses and Service Awards.

6.6 Any order or proceedings relating to the Class Counsel Fees and Expenses Award and/or Service Awards, or any appeal from any order related thereto or reversal or modification thereof, will not operate to terminate or cancel this Settlement Agreement, or effect or delay the Effective Date of this Settlement Agreement as it relates to benefits conferred to Settlement Class Members, provided that the Settlement Agreement is otherwise in all respects Final, except as otherwise set forth herein.

6.7 Class Counsel agree that upon payment by LeafFilter of the Class Counsel Fees and Expenses Award and Service Awards as approved by the Court, pursuant to wire transfer information provided by Class Counsel, LeafFilter’s obligations to Class Counsel and Named Plaintiffs for Class Counsel Fees and Expenses Award and Service Awards shall be fully satisfied and discharged.

VII. RELEASE BY NAMED PLAINTIFFS AND SETTLEMENT CLASS MEMBERS

7.1 Upon the Effective Date, the Litigation shall be dismissed with prejudice and all Released Claims of Named Plaintiffs and the Settlement Class shall be released, and the Named Plaintiffs and each Settlement Class Member shall be deemed to have, and by operation of the Final Order and Judgment shall have, released, waived, and forever discharged the Releasees from all Released Claims.

7.2 Upon the Effective Date, no default by any person in the performance of any

covenant or obligation under this settlement or any order entered in connection therewith shall affect the dismissal of the Litigation, the *res judicata* effect of the Final Order and Judgment, the foregoing releases, or any other provision of the Final Order and Judgment; provided, however, that all other legal and equitable remedies for violation of a court order or breach of this Settlement Agreement shall remain available to all Parties.

VIII. MISCELLANEOUS PROVISIONS

A. Best Efforts

8.1 Named Plaintiffs, LeafFilter, and Class Counsel agree to use their best efforts to obtain Court approval of this settlement, subject to LeafFilter's rights to terminate this settlement as provided herein.

B. Effect of Exhibits

8.2 The exhibits to this Settlement Agreement are an integral part of the settlement and are expressly incorporated and made a part of this Settlement Agreement.

C. Not Evidence

8.3 This settlement, whether or not it shall become Final, and any and all negotiations, communications, and discussions associated with it, shall not be:

- (a) Offered or received by or against any Party as evidence of, or be construed as or deemed to be evidence of, any presumption, concession, or admission by a Party of the truth of any fact alleged by Named Plaintiffs, of the validity of any Released Claim that has been or could have been asserted in the Litigation, or the deficiency of any defense that has been or could have been asserted in the Litigation, or the deficiency of any defense that has been or could have been asserted in the Litigation, or of any liability, negligence, fault or wrongdoing on the part of Named

Plaintiffs, LeafFilter or any Releasee;

- (b) Offered or received by or against Named Plaintiffs or LeafFilter as a presumption, concession, admission, or evidence of any violation of any state or federal statute, law, rule or regulation or of any liability or wrongdoing by LeafFilter or any Releasee or of the truth of any of the Released Claims, and evidence thereof shall not be used directly or indirectly, in any way, (whether in the Litigation or in any other action or proceeding), except for purposes of enforcing this Settlement Agreement and Final Order and Judgment including, without limitation, asserting as a defense the release and waivers provided herein;
- (c) Offered or received by or against Named Plaintiffs, LeafFilter, or any Releasee as evidence of a presumption, concession, or admission with respect to a decision by any court regarding the certification of a class, or for purposes of proving any liability, negligence, fault or wrongdoing; or in any way referred to for any other reason against LeafFilter or any Releasee, in any other civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the terms of this Settlement Agreement; provided, however, that if this Settlement Agreement is approved by the Court, then Named Plaintiffs or LeafFilter may refer to it to enforce their rights hereunder; or
- (d) Construed as an admission or concession by Named Plaintiffs, the Settlement Class, LeafFilter, or any Releasee that the consideration to be given hereunder represents the relief that could or would have been obtained through trial in the Litigation.
- (e) These prohibitions on the use of this settlement shall extend to, but are not limited to, any Settlement Class Member who opts-out of the settlement pursuant to Section

V.F. above.

D. Entire Agreement

8.4 This Settlement Agreement represents the entire agreement and understanding among the Parties and supersedes all prior proposals, negotiations, agreements, and understandings relating to the subject matter of this Settlement Agreement. The Parties acknowledge, stipulate, and agree that no covenant, obligation, condition, representation, warranty, inducement, negotiation, or understanding concerning any part or all of the subject matter of this Settlement Agreement has been made or relied on except as expressly set forth in this Settlement Agreement. No modification or waiver of any provisions of this Settlement Agreement shall in any event be effective unless the same shall be in writing and signed by the person or party against whom enforcement of the Settlement Agreement is sought.

E. Arm's-Length Negotiations and Good Faith

8.5 The Parties have negotiated all the terms and conditions of this Settlement Agreement at arm's length, including with the assistance and involvement of a neutral mediator. All terms, conditions, and exhibits in their exact form are material and necessary to this Settlement Agreement and have been relied upon by the Parties in entering into this Settlement Agreement. The Parties agree to act in good faith during the settlement administration process.

F. Confirmatory Discovery

8.6 LeafFilter will provide confirmatory discovery to Class Counsel sufficient to show that Settlement Class Members appear in LeafFilter's customer care database with a Debris-Related Final Issue Code.

G. Continuing Jurisdiction

8.7 The Parties agree that the Court may retain continuing and exclusive jurisdiction over them, including all Settlement Class Members, for the purpose of the administration and enforcement of this Settlement Agreement.

H. Binding Effect of Settlement Agreement

8.8 This Settlement Agreement shall be binding upon and inure to the benefit of the Parties and their representatives, heirs, successors, and assigns.

I. Governing Law

8.9 The Settlement Agreement will be construed and enforced in accordance with, and governed by, the substantive laws of Ohio, without giving effect to that state's choice-of-law principles. However, the Parties acknowledge that federal law (including Fed. R. Civ. P. 23 and federal case law) applies to consideration and approval of the settlement, certification of the Settlement Class, and all related issues such as any petition for Class Counsel Fees and Expenses Award and Service Awards.

J. Construction of Settlement Agreement Terms

8.10 The determination of the terms of, and the drafting of, this Settlement Agreement has been by mutual agreement after arm's length negotiation, with consideration by and participation of all Parties and their counsel. Since this Settlement Agreement was drafted with the participation of all Parties and their counsel, the presumption that ambiguities shall be construed against the drafter does not apply. The Parties were represented by competent and effective counsel throughout the course of settlement negotiations and in the drafting and execution of this Settlement Agreement, and there was no disparity in bargaining power among the Parties to this Settlement Agreement. None of the Parties will be deemed the drafter of the Settlement Agreement for purposes of construing its provisions. The language in all parts of the Settlement Agreement

will be interpreted according to its fair meaning and will not be interpreted for or against any of the Parties as the drafter.

K. Confidentiality Agreements

8.11 Class Counsel agree to return or destroy all information and materials obtained from LeafFilter and any Releasee or third party in connection with the Litigation and the settlement that LeafFilter the Releasee or third party has in good faith designated to be confidential, including any copies made thereof, within thirty (30) days after the Effective Date and to retain no copies thereof, other than documents filed in Court. All agreements made and orders entered during the Litigation relating to the confidentiality of information will survive the Settlement Agreement.

L. Extensions of Time

8.12 The Parties may agree upon a reasonable extension of time for deadlines and dates reflected in this Settlement Agreement, without further notice (subject to Court approval as to Court dates).

M. Authority to Execute Settlement Agreement

8.13 The individual signing this Settlement Agreement on behalf of LeafFilter represents that he or she is fully authorized to enter into, and to execute, this Settlement Agreement on LeafFilter's behalf. Class Counsel represent that they are fully authorized to conduct settlement negotiations with counsel for LeafFilter on behalf of the Named Plaintiffs, and expressly to enter into, and to execute, this Settlement Agreement on behalf of each of the Named Plaintiffs and the Settlement Class, subject to Court approval pursuant to Fed. R. Civ. P. 23(e).

N. Further Authority

8.14 Class Counsel, on behalf of the Named Plaintiffs and the Settlement Class, are expressly authorized to take all appropriate action required or permitted to be taken by the

Settlement Class pursuant to this settlement to effectuate its terms and are also expressly authorized to enter into any modifications or amendments to this Settlement Agreement on behalf of the Settlement Class which they deem appropriate. Class Counsel represents and warrants it has authority to execute this Settlement Agreement on behalf of every Named Plaintiff as if each Named Plaintiff individually had signed this Settlement Agreement him or herself.

O. Termination

8.15 LeafFilter has the right to terminate this Settlement Agreement, declare it null and void, and have no further obligations under this settlement to the Named Plaintiffs or to the Settlement Class Members, if any of the following conditions subsequent occurs:

- (a) The Court fails to enter the [Proposed] Preliminary Order in a form materially consistent with Exhibit A to this Settlement Agreement;
- (b) The Parties fail to obtain and maintain preliminary approval of the proposed settlement;
- (c) The Court requires a notice program in any form materially different from the Notice Plan specifically set forth in Section V and attached Exhibit B;
- (d) The Court fails to enter a Final Judgment materially consistent with the provisions in Section VI and the provisions of this Settlement Agreement;
- (e) The Settlement does not become Final for any reason; or
- (f) The Effective Date does not occur for any reason, including but not limited to the entry of an order by any court that would require either material modification or termination of the Settlement Agreement.

8.16 In the event that the above right to cancel or terminate is exercised, then LeafFilter shall have no further obligations under this Settlement Agreement to Settlement Class Members

or Named Plaintiffs and shall have the right to terminate the entire settlement and declare it null and void.

8.17 The failure of the Court or any appellate court to approve in full the request by Class Counsel for Class Counsel Fees and Expenses Award and Services Awards shall not be grounds for Named Plaintiffs, the Settlement Class, or Class Counsel to terminate or cancel the Settlement Agreement or proposed settlement.

8.18 If the Settlement is not finally approved, is not upheld on appeal, or otherwise does not become Final or any reason, then the Settlement Class shall be decertified, the settlement and all negotiations, proceedings, and documents prepared, and statements made in connection therewith, shall be without prejudice to any Party and shall not be deemed or construed to be an admission or confession by any Party of any fact, matter, or proposition of law; and all Parties shall stand in the same procedural posture as if the settlement had never been negotiated, made, or filed with the Court.

P. Full and Final Agreement

8.19 The Settlement Agreement constitutes the entire agreement among the Parties and no other representations, warranties, or inducements have been made to any party concerning the Settlement Agreement.

8.20 The Parties intend this settlement to be a final and complete resolution of all disputes between them with respect to the Litigation. The Parties agree that the terms of the settlement reflect a good faith settlement of the Claims asserted by Named Plaintiffs and the Settlement Class reached voluntarily after consultation with experienced legal counsel. The Parties

deem this settlement to be fair and reasonable and have arrived at this settlement in arms-length negotiations taking all relevant factors, present or potential, into account.

Q. Headings

8.21 The headings in this Settlement Agreement are for the convenience of the reader only and shall not affect the meaning or interpretation of this Settlement Agreement.

R. Severability

8.22 In the event that any provision herein becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this settlement shall continue in full force and effect without said provision to the extent LeafFilter does not execute its right to terminate under Section VII.O.

S. Notices

8.23 All notices or formal communications under this Settlement Agreement shall be in writing and shall be given by electronic mail and (i) hand delivery; (ii) registered or certified mail, return receipt requested, postage prepaid; or (iii) overnight courier to counsel for the Party to whom the notice is directed at the following addresses:

For Named Plaintiffs and the Settlement Class:

Plaintiffs and Settlement Class Counsel at:

Brian W. Warwick
Varnell & Warwick, P.A.
1101 E. Cumberland Ave,
Suite 201H, #105
Tampa, FL 33602

For LeafFilter:

LeafFilter's Counsel at:

Gregory J. Phillips
Benesch, Friedlander, Coplan & Aronoff LLP

200 Public Square, Suite 2300
Cleveland, OH 44114-2378

Counsel may designate a change of the person to receive notice or a change of address, from time to time, by giving notice to all Parties in the manner described in this Section.

T. Cost and Expenses.

8.24 Except as provided in this Settlement Agreement regarding (1) the payment of the Settlement Administrator; and (2) the Class Counsel Fees and Expenses Award and Service Awards (subject to approval of the Court); each of the Named Plaintiffs, Class Counsel, and LeafFilter shall be responsible for his, her, or its own costs and expenses.

U. Taxes

8.25 Named Plaintiffs and Class Counsel shall be responsible for paying any and all federal, state, and local taxes due on any payments made to them pursuant to this settlement.

V. Communications

8.26 LeafFilter reserves the right to communicate with its customers, business contacts, and members of public, including Settlement Class Members, in the ordinary course of business. Class Counsel and Named Plaintiffs hereby agree not to engage in any communications with the media, the press, on the internet, or in any public forum, either orally or in writing, that undermine or contradict the settlement or any of its terms, and further agree not to encourage or otherwise facilitate any objections to or exclusions from this Settlement Agreement. However, nothing herein shall prevent Class Counsel from answering questions from Settlement Class Members regarding their rights under Settlement Agreement, including the right to object or opt-out.

W. Counterparts

8.27 This Settlement Agreement may be executed in one or more counterparts and the execution in counterparts shall have the same effect as if all Parties had signed the same instrument.

Facsimile and scanned signatures shall be considered as valid signatures as of the date signed.

IN WITNESS WHEREOF, the Parties hereby execute, and cause this Settlement Agreement to be executed, by their duly authorized attorneys, as of the date(s) indicated on the lines below.

Dated: June 24, 2022

On behalf of Class Counsel and each Named Plaintiff:

By: 

Brian W. Warwick (admitted pro hac vice)
Janet Varnell (admitted pro hac vice)
Varnell & Warwick, P.A.
1101 E. Cumberland Ave,
Suite 201H, #105
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Facsimile: (513) 345-8294
jgoldenberg@gs-legal.com
tnaylor@gs-legal.com

Attorneys for Plaintiffs and the Settlement Class

Dated: June 24, 2022

LeafFilter North, LLC.

By: Robert C. Psaropoulos

Its: Chief Legal Officer

Dated: June 24, 2022

Approved as to form by:

By: 

Gregory J. Phillips (0077601)
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msilverstein@beneschlaw.com

*Attorneys for Defendant
LeafFilter North, LLC.*

The Court has read and considered the Settlement Agreement including the Notice and Claim Form, has considered the submissions in support of the preliminary approval motion and

the pleadings and other papers on file in this action, and finds there is sufficient basis for: (1) granting preliminary approval of the Settlement Agreement; (2) preliminarily certifying a class for settlement purposes; (3) appointing Named Plaintiffs as “Settlement Class Representatives” and their counsel as Class Counsel for the Settlement Class; (4) directing that Notice be disseminated to the Settlement Class Members; and (5) setting a Final Approval Hearing at which the Court will consider whether to grant final approval of the proposed settlement and Settlement Agreement.

The Court now GRANTS the motion for preliminary approval and makes the following findings and orders:

1. The Court finds pursuant to Fed. R. Civ. P. 23(e)(1)(A) that the Parties have provided sufficient information for it to be able to determine whether to give notice of the Settlement to the Settlement Class.

2. The Court finds pursuant to Fed. R. Civ. P. 23(e)(1)(B)(i) that the terms of the Settlement appear to be fair, reasonable, and adequate such that it will likely be able to finally approve the Settlement under Fed. R. Civ. P. 23(e)(2) after the hearing on final approval of the Settlement. Specifically, the Court finds that the Named Plaintiffs and their counsel have adequately represented the putative Settlement Class, that the Settlement negotiations were conducted at arm’s length and were supervised by a well-respected mediator, that the Settlement treats class members equitably relative to each other, and that the relief offered by the Settlement appears to be adequate, taking into account:

- (a) the costs, risks, and delay of trial and appeal;
- (b) the effectiveness of any proposed method of distributing relief to the class; including the method of processing class-member claims;
- (c) the terms of any proposed award of attorney's fees, including timing of payment; and
- (d) any agreement required to be identified under Rule 23(e)(3).

3. The Court further finds pursuant to Fed. R. Civ. P. 23(e)(1)(B)(ii) that it will likely be able to certify the Settlement Class for settlement purposes after the hearing on final approval of the Settlement, for the following reasons:

(a) The Settlement Class is ascertainable, as the class definition is based on objective criteria found in LeafFilter's customer database;

(b) The Settlement Class is sufficiently numerous – approximately 60,000 members – to satisfy Fed. R. Civ. P. 23(a)(1);

(c) The Settlement Class shares an overriding common question sufficient to satisfy Fed. R. Civ. P. 23(a)(1) regarding whether the LeafFilter Gutter System allows for debris accumulation which may require periodic cleaning, allegedly contrary to the manner in which it was promoted and sold;

(d) The Settlement Class satisfies the requirements of Fed. R. Civ. P. 23(a)(3) because the Named Plaintiffs' claims are typical of the Settlement Class Members they seek to represent;

(e) The Settlement Class satisfies the requirements of Fed. R. Civ. P. 23(a)(4) because the Named Plaintiffs are adequate representatives of the Settlement Class, and Named Plaintiffs' counsel has the qualifications and experience necessary to serve as Class Counsel on behalf of the Settlement Class; and

(f) The Settlement Class satisfies the requirements of Fed. R. Civ. P. 23(b)(3) because a predominant common question in this litigation is whether the LeafFilter Gutter System allows for debris accumulation in a manner contrary to which it was promoted and sold, and that question can be resolved on a class-wide basis. Further, the class action device is superior to other methods of resolving the issues in this litigation, including thousands of individual lawsuits.

4. Therefore, pursuant to Federal Rule of Civil Procedure 23, the Court preliminarily certifies, for settlement purposes only, a Settlement Class defined as follows:

All LeafFilter customers in the United States who appear in LeafFilter's customer care database with a Debris-Related Final Issue Code for their service request during the time period from January 1, 2016 through June 24, 2022.

Excluded from the Settlement Class are: (1) LeafFilter; (2) any affiliate, parent, or subsidiary of LeafFilter; (3) any entity in which LeafFilter has a controlling interest; (4) any officer, director, or employee of LeafFilter; (5) any successor or assign of LeafFilter; (6) any Judge to whom the Litigation is assigned; (7) any person who has resolved or otherwise released their claims as of the date of the settlement; and (8) any Settlement Class Member who opts-out of the settlement.

4. The preliminary certification of the Settlement Class and the Litigation as a class action is for settlement purposes only and shall be terminated and without further force or effect and without prejudice to either party in connection with any future proceedings in the Litigation, including any future motion with respect to class certification, if: (1) the Court fails to approve the Settlement Agreement as written or if on appeal the Court's approval is reversed or substantially modified; or (2) a Final Approval Order and Judgment is not entered by the Court or is reversed or substantially modified on appeal or otherwise fails for any reason.

5. For settlement purposes only, the Court appoints as Settlement Class Representatives James Zilinsky, Geraldine Zilinsky, Cory Simpson, Meagan McGinley, Sandra GarrettDorsey, Brian Dering, Theresa Dering, Alan Armstrong, and Sandy Armstrong, and their counsel, Varnell & Warwick, P.A., and Goldenberg Schneider, LPA, as Class Counsel.

6. The Court directs pursuant to Fed. R. Civ. P. 23(e)(1)(B) that notice of the Settlement be given to all Settlement Class Members.

7. Solely for the purpose of implementing this Settlement Agreement and effectuating the settlement, KCC shall be appointed as Settlement Administrator.

8. The Settlement Administrator shall administer this settlement in accordance with the Settlement Agreement and the Notice Plan therein, and this Order, and LeafFilter will bear all costs and expenses related to the administration of this settlement.

9. The Settlement Administrator shall be responsible for providing notice to the Settlement Class in accordance with the Notice Plan set forth in the Settlement Agreement and this Order, and shall assist with various administrative tasks, including, without limitation: (1) mailing or arranging for the mailing by first-class mail, postage prepaid of the Notice and Claim Form to each person on the Class List; (2) emailing to each person on the Class List the Notice and Claim Forms if email addresses are available; (3) developing processes and procedures for handling deficient Claim Forms and returned mail in accordance with the terms of the Settlement Agreement; (4) providing to Class Counsel and LeafFilter Counsel within five days of receipt copies of any objections, notices of intention to appear at the Final Approval Hearing and requests for exclusion from the Settlement Class; (5) preparing an Opt-Out list of the Settlement Class Members requesting exclusion and submitting an affidavit to the Court before the Final Approval Hearing attesting to the accuracy of that list; (6) preparing a list of all persons who submitted objections to the settlement and submitting an affidavit to the Court attesting to the accuracy of that list; (7) maintaining a mailing address to which Settlement Class Members can send requests for exclusion, objections, Claim Forms and other correspondence; (8) processing Claim Forms submitted and providing the Benefits to Settlement Class Members as applicable; (9) creation and

maintenance of the Settlement Website; and (10) causing notice of this proposed settlement to be sent to the Attorney General of the United States and the attorneys general of each state in which a Settlement Class Member resides pursuant to the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1715 (“CAFA Notice”).

10. The Court hereby approves the form of the Notice, without material alteration from Exhibit B annexed to the Settlement Agreement, and the procedure for disseminating Notice to the proposed Settlement Class as set forth in the Notice Plan. The Court finds that the Notice informs the Settlement Class Members of the material terms of the Settlement Agreement and their rights and responsibilities in connection with the settlement, and: (1) is the best practicable notice; (2) is reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Litigation and of their right to object or to exclude themselves from the proposed settlement; (3) is reasonable, and constitutes due, adequate, and sufficient notice to all persons entitled to receive notice; and (4) meets all applicable requirements of Due Process and applicable law.

11. Pursuant to Rule 23(c)(2)(B) and Rule 23(e), the Court orders that the Settlement Administrator mail the Notice via postage prepaid first-class U.S. mail to the persons on the Class List and email the Notice to those persons for whom email addresses are available, and that such mailing and emailing be completed no later than 60 days after the entry of this Order. The Notice shall be accompanied by a Claim Form that does not materially differ from the form annexed as Exhibit C to the Settlement Agreement.

12. The Court further orders the posting of the Notice and Claim Form on the Settlement Website within fourteen (14) days of the entry of this Order. The Court further orders the Settlement Administrator to file with the Court proof of mailing and emailing of the Notice

and publication of the Notice and Claim Form on the Settlement Website at or before the Final Approval Hearing.

13. The Court orders each Settlement Class Member who has not submitted a timely request for exclusion from the Settlement Class and who wishes to object to the fairness, reasonableness, or adequacy of this Settlement Agreement or the proposed settlement or to the Class Counsel Fees and Expenses Award to file any objection via the Court's electronic filing system (if represented by counsel) or mail the objection to the Settlement Administrator, and serve the objection upon Class Counsel and LeafFilter's Counsel at the addresses listed on the Notice, postmarked no later than forty-five (45) days after the Notice Date ("Objection Deadline"). The statement of the objection signed by the Settlement Class Member must:

- (a) Set forth his, her, or its full name, current address, and telephone number;
- (b) Identify the date of purchase for his, her, or its LeafFilter Gutter System;
- (c) State that the objector has reviewed the Settlement Class definition and understands that he, she, or it is a Settlement Class Member;
- (d) Contain a written statement of the objection(s) which must include a statement as to whether it applies only to the objector, to a specific subset of the Settlement Class, or to the entire Settlement Class, and also state with specificity the grounds for the objection, including any evidence and legal authority the Settlement Class Member wishes to bring to the Court's attention;
- (e) Provide copies of any documents the objector wants the Court to consider
- (f) Identify his, her, or its counsel, if any; and
- (g) State whether the Settlement Class Member intends to appear at the final approval hearing.

14. In addition, any Settlement Class Member objecting to the settlement shall provide a list of all other objections submitted by the objector and/or by the objector's counsel to any class action settlements submitted in any state or federal court in the United States in the previous five (5) years. If the Settlement Class Member or his, her, or its counsel has not objected to any other class action settlement in the previous five years, he, she, or it shall affirmatively so state in the objection.

15. No later than fourteen (14) days after the deadline for submission of objections, the Settlement Administrator will submit to the Court all objections it received from Settlement Class Members.

16. Any Settlement Class Member who does not provide a notice of intention to appear in accordance with the deadlines and other specifications set forth in the Notice, or who has not filed an objection in accordance with the deadlines and other specifications set forth in the Settlement Agreement and the Notice (as applicable), will be deemed to have waived any objections to the settlement and may be foreclosed from seeking any adjudication or review of the settlement by appeal or otherwise, subject to the discretion of the Court.

17. The submission of an objection shall allow Class Counsel or LeafFilter's Counsel to take the deposition of the objecting Settlement Class Member pursuant to the Federal Rules of Civil Procedure at an agreed-upon time and location, and to obtain any evidence relevant to the objection. Failure by an objector to make himself or herself available for a deposition or comply with expedited discovery requests may result in the Court striking the objection.

18. Settlement Class Members may exclude themselves from the settlement (i.e., "Opt-Out"), relinquishing their rights to any benefits under the Settlement Agreement. A Settlement Class Member wishing to exclude himself, herself, or itself must send the Settlement Administrator

an email or a letter postmarked no later than forty-five (45) days after the Notice Date (“Opt-Out Deadline”), containing: (1) the Settlement Class Member’s name, current address, and telephone number; and (2) a clear statement communicating that he, she, or it elects to be excluded from the Settlement Class, does not wish to be a Settlement Class Member, and elects to be excluded from any judgment entered pursuant to the settlement.

19. Any request for exclusion must be postmarked or emailed on or before the deadline provided in the Notice. Any member of the Settlement Class who does not submit a timely, written Opt-Out from the Settlement Class in accordance with the requirements set forth in the Notice will be bound by all proceedings, orders, and judgments in the Litigation.

20. Not later than fourteen (14) days after the deadline for submission of requests for exclusion, the Settlement Administrator shall provide Class Counsel and LeafFilter’s Counsel, for submission to the Court, a list identifying each Settlement Class Member who submitted an exclusion request together with copies of the exclusion requests and with a declaration attesting to the completeness and accuracy thereof.

21. The Court hereby directs the Settlement Administrator to establish a mailing address to be used for receiving requests for exclusion, objections, notices of intention to appear, and any other communications.

22. The Court hereby approves the Claim Form, which is annexed as Exhibit C to the Settlement Agreement.

23. LeafFilter shall file proof of timely mailing of notices required pursuant to the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1715(b). LeafFilter shall file any additional documents required by the statute (as applicable), evidencing continued compliance with CAFA in advance of the Final Approval Hearing.

24. Class Counsel shall file any memoranda or other materials in support of final approval of the Settlement Agreement and motion for entry of Final Approval Order and Judgment, including response to any timely and properly filed objection to the Settlement Agreement, no later than twenty-eight (28) days prior to the Final Approval Hearing. LeafFilter may file its response, if any, no later than twenty-one (21) prior to the Final Approval Hearing, and Class Counsel may file a reply, if any, on or before no later than fourteen (14) prior to the Final Approval Hearing. Such materials shall be served on Class Counsel, LeafFilter's Counsel, and on any Settlement Class Member (or his, her or its counsel, if represented) to whose objection to the Settlement Agreement the memoranda or other materials respond.

25. Class Counsel may apply to the Court for Class Counsel Fees and Expenses Award consistent with the Settlement Agreement no later than 14 days prior to the Objection Deadline, and such application shall be posted on the Settlement Website upon its filing.

26. Class Counsel may also petition the Court for Named Plaintiff service awards consistent with the Settlement Agreement no later than 14 days prior to the Objection Deadline. The purpose of such awards (if approved by the Court) shall be to compensate the Named Plaintiffs for their efforts undertaken for the benefit of the Settlement Class Members.

27. Pursuant to Rule 23(e)(2) of the Federal Rules of Civil Procedure and in accordance with 28 U.S.C. § 1715(d), the Court sets ____, at _ a.m., as the date and time of the Final Approval Hearing [at least 90 days after the Notice Date], at which the Court will determine: (1) whether the proposed settlement is fair, reasonable and adequate and should finally be approved by the Court; (2) whether to issue a Final Approval Order and Judgment; and (3) whether to approve Class Counsel Fees and Expenses Award, and/or service awards for the Named Plaintiffs. The Final

Approval Hearing shall be held at the Joseph P. Kinneary U.S. Courthouse, Room 109, 85 Marconi Boulevard, Columbus, Ohio 43215.

28. The Court reserves the right to adjourn or continue the Final Approval Hearing, or any further adjournment or continuance thereof, and to approve the settlement with modifications, if any, consented to by the Class Counsel and LeafFilter's Counsel without further notice.

29. Pending final determination of the application for approval of this Settlement Agreement, all proceedings in this Litigation other than settlement approval proceedings shall be stayed.

IT IS SO ORDERED.

Date: _____

HONORABLE MICHAEL H. WATSON
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF
OHIO, EASTERN DIVISION

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

You are receiving this notice because the business records of LeafFilter North, LLC (“LeafFilter”) show that you are the owner of a LeafFilter Gutter System and you opened a service ticket with LeafFilter relating to Debris Accumulation. You may be eligible to receive certain benefits from a class action settlement. Benefits of the settlement include receipt of three (3) Vouchers for future Debris Accumulation Cleanings (normally a \$285 value) at no additional cost to you. Alternatively, you may be eligible to receive cash reimbursement up to \$200 if you incurred out-of-pocket expenses for cleaning debris off the top of your LeafFilter Gutter System or removed your LeafFilter Gutter System entirely because of issues with Debris Accumulation. **You MUST submit a Claim Form (enclosed) to receive a benefit under this settlement. Claim Forms may be submitted via U.S. Mail or online through the Settlement Website, www.INSERT.com.**

Your legal rights are affected whether you act or don’t act. Read this notice carefully. If you know or suspect that your LeafFilter Gutter System has caused significant damage to your home, you should strongly consider excluding yourself from this Settlement (see below).

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT	
SUBMIT A CLAIM FORM	The only way for you to get reimbursement for Debris Accumulation Cleanings or removal of your LeafFilter Gutter System, and/or up to three Vouchers for future cleanings is to timely submit a valid Claim Form. If you <u>timely</u> submit a valid Claim Form (enclosed) along with the required documentation, by ____, 2023 you can obtain reimbursement of eligible expenses and/or up to three Vouchers for future cleanings.
ASK TO BE EXCLUDED	Receive no reimbursement, no Vouchers for future cleanings, or other benefits. Get out of this lawsuit but keep your individual right to sue. If you ask to be excluded, you will not be eligible for benefits from this settlement, but you will maintain your right to pursue an individual claim against LeafFilter North, LLC about the claims in this lawsuit.
COMMENT OR OBJECT	Comment in writing about why you like or don’t like the proposed settlement. You may comment in writing about why you like or dislike the proposed settlement by sending a letter to the Settlement Administrator, or by filing an objection with the Court on your own or through an attorney. In order to comment or object to the proposed settlement, you must remain a member of the Settlement Class (<i>i.e.</i> , you cannot ask to be excluded).
DO NOTHING	Receive no reimbursement, no Vouchers for future cleanings, or other benefits. Give up your rights to sue. By doing nothing, you will not be eligible for reimbursement of out-of-pocket expenses or the up to three Vouchers for future cleanings, assuming you would otherwise qualify. You will also give up any rights to sue LeafFilter North, LLC on an individual basis separately about the claims in this lawsuit.

These rights and options—and the deadlines to exercise them—are explained in this Notice.

- The Court in charge of this case still has to decide whether to approve the proposed settlement.

Questions? Visit www.INSERT.com or call toll free _____

Claim Forms will be processed and approved, and benefits and payments will be issued **after** the proposed settlement has been approved by the Court and becomes in all respects Final.

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BASIC INFORMATION

1. What is the purpose of this Notice?

You are receiving this notice because LeafFilter North, LLC's ("LeafFilter") records identified you as a possible Settlement Class Member in a proposed settlement of a federal class action lawsuit pending in the United States District Court for the Southern District of Ohio, *Zilinsky, et al. v. LeafFilter North, LLC, Inc.*, Case No. 2:20-cv-6229-MHW-KAJ (the "Litigation"). You are a Settlement Class Member if you are the owner of a LeafFilter Gutter System and you opened a service ticket with LeafFilter for issues relating to debris accumulating on top of the Gutter System.

As a possible member of the proposed Settlement Class, you have a right to know about the Litigation and proposed settlement. The judge who is overseeing the case, the Honorable Michael H. Watson, authorized this Notice, which explains the Litigation, the proposed settlement, your legal rights, what benefits are available, who is eligible for them, and how to obtain them. You have various options that you may exercise before the Court decides whether to approve the proposed settlement. If the Court approves the proposed settlement and the settlement becomes in all respects final, then the Defendant, LeafFilter, will provide certain benefits to the Settlement Class Members who filed a valid claim form, including reimbursement for up to \$200 for prior Debris Removal Cleanings or removal of the LeafFilter Gutter System due to issues with Debris Accumulation, and/or up to three Vouchers for future Debris Removal Cleanings at no cost to you.

2. What is this lawsuit about?

This Litigation is about Debris Accumulation (the buildup, collection, or aggregation of organic material such as leaves, pine needles, twigs, branches, seeds, and pollen) and/or inorganic material (including but not limited to shingle grit) on top of the LeafFilter Gutter System.

The Named Plaintiffs allege that the LeafFilter Gutter System was represented to be maintenance free, yet suffers from Debris Accumulation that requires periodic cleanings. Plaintiffs allege that LeafFilter should have disclosed that the LeafFilter Gutter System had issues with Debris Accumulation prior to sale or remedied the issue under warranty within a reasonable period of time after the sale. LeafFilter expressly and vigorously denies the allegations in the Litigation, including the allegation that the LeafFilter Gutter System accumulates debris or suffers from any defect whatsoever. LeafFilter further denies that it has engaged in any wrongdoing, and specifically denies all claims described above and asserted in the Litigation.

You can read all of Plaintiffs' allegations in the First Amended Class Action Complaint, available at www.leafilter.com.

3. What is a class action lawsuit and who is involved?

In a class action lawsuit, one or more persons, called "Named Plaintiffs" sue on behalf of other people who are alleged to have similar claims ("Proposed Class"). The Named Plaintiffs and the Proposed Class are collectively called the "Plaintiffs," and their attorneys are referred to as "Class Counsel." The company that has been sued (here, LeafFilter) is called the "Defendant." In a class action lawsuit, all factual questions and legal issues are resolved for all Plaintiffs, except for those people who choose to exclude themselves from the Class. Judge Michael H. Watson is presiding over this class action.

Questions? Visit www.leafilter.com or call toll free _____

4. Why is there a proposed settlement?

The Court has not decided in favor of Plaintiffs or LeafFilter. Instead, both sides agreed to a proposed settlement on behalf of everyone in the proposed Settlement Class. By agreeing to a proposed settlement, all parties avoid the cost of a trial, and Settlement Class Members are eligible to receive certain agreed-upon benefits which will be provided if the proposed settlement is approved and becomes Final. The Class Representatives and Class Counsel believe the proposed settlement is in the best interests of Settlement Class Members.

WHO IS IN THE SETTLEMENT?

5. Am I part of this Settlement Class?

Judge Watson preliminarily approved the following class for settlement purposes only:

All LeafFilter customers in the United States who appear in LeafFilter's customer care database with a Debris-Related Final Issue Code for their service request ("Class Members") from January 1, 2016 through ___, 2022.

6. I'm still not sure if I am included.

If you are still not sure whether you are included, you can get free help at www.____.com, by calling [XXX](tel:XXX), or by writing to Class Counsel at the address listed in response to Question 25, below.

SETTLEMENT BENEFITS – WHAT YOU GET

7. What benefits are available and for whom?

Settlement Class Members are eligible to file claims for one of the following Benefits:

Benefit 1

- Reimbursement for up to two Debris Removal Cleanings of a LeafFilter Gutter System. The maximum amount of each individual reimbursement is not to exceed \$100, and the total amount of reimbursement shall not exceed \$200.
- Claims for reimbursement shall be supported by Proof of Expense demonstrating that the Class Member paid out of pocket money to remove Debris Accumulation from their LeafFilter system prior to June __, 2022. Fees for other work shall not be reimbursed.
- As part of completing the Claim Form, Class Members must certify that their LeafFilter Gutter System experienced Debris Accumulation.

Benefit 2

- Reimbursement for one Debris Removal Cleaning of a LeafFilter Gutter System, and Vouchers for two future LeafFilter system Debris Removal Cleanings. The maximum amount of such reimbursement is not to exceed \$100.

Questions? Visit www.____.com or call toll free _____

- Claims for reimbursement shall be supported by Proof of Expense demonstrating that the Class Member paid out of pocket money to remove Debris Accumulation from the LeafFilter system prior to ___, 2022. Fees for other work shall not be reimbursed.
- As part of completing the Claim Form, Class Members must certify that their LeafFilter Gutter System experienced Debris Accumulation.
- The Voucher cleanings are to be performed by LeafFilter or its agents and shall be performed within thirty (30) days of request by Class Member.
- Vouchers shall be fully transferrable.

Benefit 3

- Vouchers for three future LeafFilter Gutter System Debris Removal cleanings.
- As part of completing the Claim Form, Class Members must certify that their LeafFilter Gutter System experienced Debris Accumulation.
- The Voucher cleanings are to be performed by LeafFilter or its agents and shall be performed within thirty (30) days of request by Class Member.
- Vouchers shall be fully transferrable.

Benefit 4

- Reimbursement of up to \$200 for costs related to the removal of the LeafFilter Gutter System from their home because of Debris Accumulation problems.
- Claims for reimbursement shall be supported by Proof of Expense demonstrating that the Class Member paid out of pocket money to remove the LeafFilter Gutter System.
- As part of completing the Claim Form, Class Members must certify that their LeafFilter Gutter System experienced Debris Accumulation and that the system was removed for that reason.

8. How do I get reimbursed?

To receive reimbursement, you must do 4 things:

- (1) Complete the Claim Form by providing all requested information;
- (2) Enclose a copy of all required documentation and a proof of expense for each eligible reimbursement;
- (3) Sign and date your Claim Form; and
- (4) Mail the Claim Form to the Settlement Administrator or submit your claim electronically through the Settlement website (www.INSERT.com) by the deadline.

Your Claim Form(s) must be postmarked or submitted electronically by _____.

The Claim Form is enclosed with this Notice, and you can obtain additional copies to print at www.INSERT.com.

9. What if I don't submit my Claim Form by the deadline?

Questions? Visit www.INSERT.com or call toll free _____

If you fail to submit the Claim Form by the required deadline (_____, 2023), your Claim will be denied as untimely. Submitting a Claim Form late will be the same as doing nothing (*see* Question 23).

10. When do I get reimbursed?

The Court will hold a hearing (the “Final Approval Hearing”) on _____ at the Joseph P. Kinneary U.S. Courthouse, Room 109, 85 Marconi Boulevard, Columbus, Ohio 43215, to decide whether the settlement is fair, reasonable, and adequate. Even if the Court approves the proposed settlement, there might be appeals that delay the conclusion of the case and prevent it from becoming final. It is always uncertain whether such appeals can be quickly resolved, and resolving them can take months or even years. For that reason, at this time there is no way to determine if and when reimbursement payments will be issued. Information about the progress of the case will be available on the settlement website: www._____.com.

If the Settlement Administrator determines your claim should not be paid or should be paid only in part, you will be mailed a letter telling you the amount you are to receive, if any, and explaining how you can appeal the decision, if you wish to do so.

11. What am I giving up in order to receive the benefits of the settlement?

Unless you exclude yourself, you will remain a member of the Settlement Class. That means that you will not be able to sue, continue to sue, or be a part of any other lawsuit against LeafFilter about the legal issues in this Litigation. It also means that all of the Court’s orders in this Litigation will apply to you and legally bind you.

EXCLUDING YOURSELF FROM THE SETTLEMENT

12. How do I get out of this settlement?

If you want to keep the right to sue LeafFilter, on your own as an individual, about the legal issues in this Litigation including debris removal, then you must take steps to exclude yourself from the Settlement Class and the settlement. This is sometimes referred to as “opting out.” To exclude yourself from the settlement, you must take one of two actions:

- 1) Send an email to the Settlement Administrator saying that you want to be excluded from *Zilinsky, et al. v. LeafFilter North, LLC.*, Case No. 2:20-cv-6229-MHW (KAJ) (S.D. Ohio), and include your:
 - full name;
 - mailing address;
 - telephone number; and
 - clear statement communicating that you want to be excluded from the Settlement Class, do not wish to be a Settlement Class Member, and want to be excluded from any judgment entered pursuant to the settlement.

If you decide to exclude yourself from the Settlement Class by email, your email must be sent to _____.com no later than _____, 2023.

Or

Questions? Visit www._____.com or call toll free _____

2) Send a letter to the Settlement Administrator by U.S. mail (or an express mail carrier) saying that you want to be excluded from *Zilinsky, et al. v. LeafFilter North, LLC.*, Case No. 2:20-cv-6229-MHW (KAJ) (S.D. Ohio), and include your:

- full name;
- mailing address;
- telephone number; and
- a clear statement communicating that you want to be excluded from the Settlement Class, do not wish to be a Settlement Class Member, and want to be excluded from any judgment entered pursuant to the settlement.

If you decide to exclude yourself from the Settlement Class by letter, you must mail your letter to the following address, postmarked no later than _____:

**Settlement Administrator
Leaf Filter Class Action Settlement
[Address]**

If you submit a valid request to exclude yourself from the Settlement Class, you will not receive any benefits of the settlement and you cannot object to the settlement. You will not be legally bound by anything that happens in this proposed settlement. Exclusion requests must be mailed no later than _____, 2023.

13. If I don't exclude myself, can I sue LeafFilter later?

No. If you do not timely submit a valid Exclusion Request, you will remain a part of the Settlement Class and you will not be able to sue LeafFilter for the legal claims that are released as part of the Settlement.

14. If I exclude myself can I get money from this Settlement?

No. If you submit a valid Exclusion Request, you will not receive benefits of the settlement and you cannot object to the proposed settlement. If you exclude yourself, you should not submit a Claim Form seeking reimbursement. You cannot both exclude yourself and seek any benefits of the settlement. If you want to receive benefits under the proposed settlement you cannot exclude yourself from the proposed settlement.

15. Should I exclude myself from this Settlement if I know or suspect my home has been damaged by the LeafFilter Gutter System?

Anyone who knows or has reason to suspect that their LeafFilter Gutter System has caused significant damage to their home (including the foundation, fascia, etc.) should strongly consider opting-out of this Settlement Class to preserve their rights to bring an individual lawsuit against LeafFilter, if appropriate.

THE LAWYERS REPRESENTING YOU

16. Do I have a lawyer in this case?

The Court has decided that the following law firms are qualified to represent you and all Settlement Class Members for purposes of this proposed settlement:

Questions? Visit www.leafilter.com or call toll free 1-800-368-5273

- (1) Varnell and Warwick, P.A. of Tampa, Florida; and
- (2) Goldenberg Schneider, LPA of Cincinnati, Ohio.

Together these law firms are called “Class Counsel.” They are experienced in handling class action cases for defective products. More information about these law firms, their practices, and their lawyers’ experience is available at www.VandWlaw.com and www.gs-legal.com.

17. Should I get my own lawyer?

You do not need to hire your own lawyer because Class Counsel is working on your behalf. However, if you want to hire your own lawyer, you may do so at your own expense.

18. How will the lawyers be paid?

Class Counsel has not received any fees or reimbursement for any of their expenses associated with this case. As part of the proposed settlement, Class Counsel will seek reasonable attorneys’ fees and expenses not to exceed a total of \$1,775,000, as ordered by the Court. By __, 2023 they Class Counsel will file an application with the Court requesting that the Court award Class Counsel Fees and Expenses. Any fees or expenses that Class Counsel request must be approved by the Court and will not reduce the benefits Settlement Class Members can receive under the proposed settlement.

Class Counsel’s application will also ask the Court to approve Service Awards not to exceed \$3,500 for each Named Plaintiffs to compensate them for their time and effort litigating this case on behalf of the Settlement Class. Again, the Service Awards will not reduce the benefits Settlement Class Members can receive under the proposed settlement.

Once filed, Class Counsel’s application for fees and expenses and the Named Plaintiffs’ Service Awards will be available on the Settlement Website, www.____.com.

Neither the Class Counsel’s fees and expenses nor the Service Awards will reduce any of the benefits you may receive under the proposed settlement.

OBJECTING TO THE SETTLEMENT

19. How do I tell the Court that I like or do not like the proposed settlement?

You can tell the Court that you do or do not agree with the proposed settlement or some part of it.

If you remain a Settlement Class Member (that is, if you do not exclude yourself, or opt-out, from the settlement), then you can tell the Court that you like the proposed settlement and it should be approved, or you object to all or part of the proposed settlement. The Court will consider all comments from Settlement Class Members.

To comment or object, you must send a letter to the Settlement Administrator, to Class Counsel, or LeafFilter’s Counsel at the addresses indicated below, specifically stating whether you are commenting or objecting on the settlement in *Zilinsky, et al. v. LeafFilter North, LLC*, Case No. 2:20-cv-6229-MHW (KAJ) (S.D. Ohio), and include your:

- full name;
- mailing address;

Questions? Visit www.____ or call toll free _____

- telephone number;
- approximate date of purchase of LeafFilter Gutter System;
- statement that you have reviewed the Settlement Class definition and understand that you are a Settlement Class Member;
- explanation of your factual and legal grounds for objecting;
- statement as to whether your objection applies only to you, to a specific subset of the Settlement Class, or to the entire Settlement Class;
- copies of any documents supporting your objection; and
- signature.

You do not need to hire legal counsel to comment on or object to the settlement. But, if you are represented by legal counsel, you must also identify your counsel and file your comment or objection to the settlement electronically with the Court.

Any Settlement Class Member objecting to the settlement (each an “Objector”) must also provide a list of all objections to any other class action settlements submitted by him or her, or his or her legal counsel, to any court in connection with a class action settlement in the previous five (5) years. If the Objector or his or her counsel has *not* objected to any other class action settlement in any court in the United States in the previous five (5) years, he or she must affirmatively state as much in their submission to the Court.

The filing of an objection allows Class Counsel or LeafFilter’s Counsel to take the Objector’s deposition consistent with the Federal Rules of Civil Procedure at an agreed-upon location, and to seek any documentary evidence or other tangible things that are relevant to the objection. Failure by an Objector to make himself or herself available for a deposition or otherwise comply with expedited discovery requests may result in the Court striking the Objector’s objection and otherwise denying the Objector the opportunity to make an objection or be further heard.

If you intend to appear at the Final Approval Hearing, your comment or objection must identify the attorneys representing you, if any, who will appear at the Final Approval Hearing.

You must mail your comment or objection to the Court, Settlement Administrator, Class Counsel and LeafFilter’s Counsel at the following addresses, postmarked no later than ____:

Clerk of Court
Joseph P. Kinneary U.S. Courthouse
85 Marconi Boulevard
Columbus, Ohio 43215

Settlement Administrator	Class Counsel	Defense Counsel
Settlement Administrator Zilinsky Class Action Settlement [Address]	Varnell & Warwick, P.A. c/o Brian W. Warwick 1101 E. Cumberland Ave., Suite 201H, #105 Tampa, FL 33602	Benesch, Friedlander, Coplan & Aronoff LLP c/o Gregory J. Phillips 200 Public Square, Suite 2300 Cleveland, OH 44114

20 What is the difference between objecting and excluding?

Objecting is simply telling the Court that you do not like something about the proposed settlement. You can object only if you stay in the Settlement Class as a Settlement Class Member. Excluding yourself is telling the Court that you do not want to be part of the Settlement Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

FINAL APPROVAL HEARING

21. When and where will the Court decide to approve the settlement?

The Court will hold a hearing to decide whether to grant final approval of the settlement. You may attend and you may ask to speak, but you do not have to attend or speak. The Court will hold a hearing (the “Final Approval Hearing”) on____at____at am/pm at the Joseph P. Kinneary U.S. Courthouse, Room 109, 85 Marconi Boulevard, Columbus, Ohio 43215 to decide whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. Judge Watson may listen to people who have asked to speak at the hearing. The Court might also decide how much Class Counsel should be paid for representing the Class and whether Service Awards should be paid to Named Plaintiffs for their time and effort in representing the Settlement Class. After the hearing, the Court will decide whether to approve the settlement. We do not know how long it will take for the Court to make its decision.

22. Do I have to come to the Final Approval Hearing?

No, but you are welcome to come at your own expense if you do not exclude yourself from the settlement. Class Counsel will answer questions that Judge Watson might have. If you send a comment or objection, you do not have to come to the Final Approval Hearing to talk about it. As long as you sent your comment or objection such that it was timely, the Court will consider it. If you decide to hire your own attorney, he or she may also attend the Final Approval Hearing, but it is not necessary.

23. May I speak at the Final Approval Hearing?

If you do not exclude yourself, you may ask the Court’s permission to speak at the Final Approval Hearing concerning the proposed settlement or Class Counsel’s request for attorneys’ fees and expenses or the Service Awards for the Named Plaintiffs. To do so, you must send a letter to the Court, and provide a copy to Class Counsel and LeafFilter’s Counsel, indicating that you intend to appear at the Final Approval Hearing in *Zilinsky, et al. v. LeafFilter North, LLC.*, Case No. 2:20-cv-6229-MHW (KAJ) (S.D. Ohio). The letter must include copies of any papers, exhibits, or other evidence that the objecting Settlement Class Member (or the objecting Settlement Class Member’s counsel) will present to the Court in connection with the Final Approval Hearing. You must send your notice to the Clerk of the Court, Class Counsel, and LeafFilter’s Counsel at the three addresses listed under Questions 18 and 20 above, postmarked no later than____. You may combine this notice and your comment or objection (described under Question 18) in a single letter. You cannot speak at the Final Approval Hearing if you exclude yourself from the proposed settlement.

IF YOU DO NOTHING

24. What happens if I do nothing at all?

If you do nothing, you will remain a member of the Settlement Class but you will not receive reimbursement for eligible out-of-pocket expenses or Vouchers for future Debris Accumulation Cleanings (you must file a claim to be considered for these benefits). Furthermore, you will not be permitted to appear and speak at the Final Approval Hearing.

ADDITIONAL INFORMATION

25. Are there more details available?

You can obtain more information by visiting the Settlement Website, www.leafilter.com, where you can find extra Claim Forms, information about the history of this litigation and the status of the proposed settlement, and documents such as the First Amended Class Action Complaint, LeafFilter's answer and affirmative defenses, and Class Counsel's application for fees and expenses and the Named Plaintiffs' Service Awards filed by the Plaintiffs. You can also submit claims directly through the Settlement Website (www.leafilter.com).

You may also call or write Class Counsel at:

VARNELL & WARWICK, P.A.

1101 E. Cumberland Ave.,

Suite 201H, #105

Tampa, Florida 33602

Telephone: (352) 753-8600

Regarding: LeafFilter settlement

GOLDENBERG SCHNEIDER, LPA

4445 Lake Forest Drive, Suite 490

Cincinnati, Ohio 45242

Telephone: (513) 345-8291

Regarding: LeafFilter settlement

Questions? Visit www.leafilter.com or call toll free 1-800-368-3636

**LEAFFILTER GUTTER SYSTEM DEBRIS ACCUMULATION CLASS ACTION
CLAIM FORM INSTRUCTIONS**

You are receiving this Claim Form because LeafFilter North, LLC's ("LeafFilter") records show that you are the owner of a LeafFilter Gutter System and you opened a service ticket with LeafFilter relating to Debris Accumulation. Under this Settlement, you are eligible to receive **one** of the following four Benefits.

Benefit 1: Reimbursement for two prior Debris Removal Cleanings up to \$200

If you paid to have debris removed from the top of your LeafFilter Gutter System, and have proof of the expenses you incurred, you can file a Claim Form for Benefit 1. You may receive a maximum of \$100 reimbursement for each individual cleaning, with the total amount of reimbursement not to exceed \$200. To be valid, your claim must include documentation of these expenses.

Benefit 2: Reimbursement for one prior Debris Removal Cleaning up to \$100 and two Vouchers for future Debris Removal Cleanings

If you paid to have debris removed from the top of your LeafFilter Gutter System, and have proof of the expenses you incurred, you can file a Claim Form for Benefit 2. Under this Benefit, you may receive a maximum of \$100 reimbursement for one individual cleaning. To be valid, your claim must include documentation of this expense. In addition to your reimbursement for one prior cleaning, if you file a valid claim for Benefit 2, you will also receive two vouchers for future Debris Removal Cleanings to be performed by LeafFilter or its affiliated companies within 30 days of your service request, and at no cost to you.

Benefit 3: Three vouchers for future Debris Removal Cleanings

If you have not paid to have debris removed from the top of your LeafFilter Gutter System, or do not have proof of such expenses, you can file a Claim Form for Benefit 3. Under this Benefit, if you file a valid claim, you will receive three vouchers for future Debris Removal Cleanings to be performed by LeafFilter or its affiliated companies within 30 days of your service request, and at no cost to you.

Benefit 4: Reimbursement for up to \$200 in costs to remove LeafFilter Gutter System due to Debris Accumulation

If you have removed your LeafFilter Gutter System from your home because of issues with Debris Accumulation, you can file a Claim Form for Benefit 4. Under this Benefit, if you file a valid claim, you can receive up to \$200 in reimbursement. To be valid, your claim must include documentation of this expense.

To submit your Claim Form electronically, go to [www.____.com](http://www.leafilter.com)

To submit your Claim Form through the mail, mail your completed Claim Form to:

LEAFFILTER GUTTER SYSTEM DEBRIS ACCUMULATION LITIGATION
[INSERT ADDRESS] _____

All Claim Forms must be submitted online or postmarked by _____, 2022.

LEAFFILTER GUTTER SYSTEM DEBRIS ACCUMULATION SETTLEMENT CLAIM FORM

Submit this Claim Form to seek one (**and only one**) of the Benefits below. Check the appropriate box for the benefit you are seeking. If you are seeking reimbursement for out-of-pocket costs, include the amount of reimbursement you are requesting and attach proof of each expense.

☐ **Benefit 1: Reimbursement for two prior Debris Removal Cleanings up to \$200-** I incurred out-of-pocket costs to clean debris off the top of my LeafFilter Gutter System. I have attached proof of these expenses (invoice, receipt, etc.).

Amount of Reimbursement for first Debris Removal Cleaning: \$ _____

Amount of Reimbursement for second Debris Removal Cleaning: \$ _____

☐ **Benefit 2: Reimbursement for one prior Debris Removal Cleaning up to \$100 and two Vouchers for future Debris Removal Cleanings** - I incurred out-of-pocket costs to clean debris off the top of my LeafFilter Gutter System. I have attached proof of this expense (invoice, receipt, etc.). I also elect to receive two Vouchers for future Debris Removal Cleanings.

Amount of Reimbursement for Debris Removal Cleaning: \$ _____

☐ **Benefit 3: Three vouchers for future Debris Removal Cleanings** - I did not pay to have debris removed from the top of my LeafFilter Gutter System, or I do not have proof of such expenses. I elect to receive three Vouchers for future Debris Removal Cleanings. No additional documentation is required to select this benefit.

☐ **Benefit 4: Reimbursement for up to \$200 in costs to remove LeafFilter Gutter System due to Debris Accumulation** - I incurred out-of-pocket costs to remove my LeafFilter Gutter System from my home because of issues with Debris Accumulation. I have attached proof of this expense (invoice, receipt, etc.).

Amount of Reimbursement for Gutter System Removal: \$ _____

Claimant Information

1. _____
Name of Owner of LeafFilter Gutter System

2. _____
Address City State Zip Code

3. _____
Email Address

Please sign the certification below:

I hereby attest and affirm that I am eligible for the Settlement Benefit indicated above, that the documentation provided, if any, to support my claim is authentic and, if I am seeking reimbursement, that I actually incurred and was not previously reimbursed for these expenses.

Signature: _____

Print name: _____

If you prefer to file your Claim Form electronically, go to www.leafilter.com



Hunter Hughes, Esq. Alternative Dispute Resolution

EXHIBIT 2

Resume of Hunter Hughes

Hunter Hughes serves as a mediator, arbitrator, and special master. He received his B.A. and J.D. degree with honors from the University of Virginia.

Mr. Hughes is a Distinguished Fellow in the American College of Civil Trial Mediators and has been selected for inclusion in multiple editions of Woodward/White's "Best Lawyers in America," Chambers' USA "America's Leading Lawyers for Business," "Who's Who in American Law, Law & Politics," Atlanta Magazine's Top 10 and Top 100 "Georgia Super Lawyers Top 10 and Top 100 and Georgia Trend's "Legal Elite."

He has served as a neutral in scores of national class, collective, and mass actions (including mediating the Morgan Stanley, Smith Barney, FedEx, Abercrombie, Viacom, Disney, NBC, Time Warner, Coca-Cola, Home Depot, Publix, Boeing, Wal-Mart, Dell, Xerox, Lowe's, Cigna, Lockheed, Credit Suisse, Mutual of Omaha, General Dynamics, Boeing, Bechtel, Intrawest, AXA, and Allscripts class and collective action cases) with a focus on securities fraud (e.g. 10b-5 and Section 11 of the '33 Act claims) as well as ERISA (e.g. 401k breach of fiduciary duty claims), employment (pattern or practice and adverse impact discrimination and 216(b) FLSA claims) mass tort, business, and insurance coverage disputes.

Mr. Hughes is past Chairman and Vice Chairman of the EEO Committee Administrative Section of the ABA. He was President of the Corporate Counsel Section of the Atlanta Bar Association and served as Program Co-Chair of the EEO Committee of Labor Section of the American Bar Association. He is past Program Chairman of the American Employment Law Council. He also serves as an arbitrator on the American Arbitration Association Commercial and Employment Panels.

Mr. Hughes has written numerous articles and publications, including "How Our Subconscious Bias Impacts the Negotiations," American Journal of Mediation; Chapter 26, "Mediating Class Actions: How Mediators Operate and What They Want," How ADR Works, BNA Books; "Class Actions in Arbitrations," A Treatise Project of the American Bar Association Labor and Employment Law Section.

Mr. Hughes has served as lead trial counsel in hundreds of cases, including nation-wide class and mass actions. He has also acted as lead counsel in arbitrations and numerous proceedings before state and federal agencies.

He is an Adjunct Professor at the University of Virginia Law School and also has been a speaker throughout the country at several hundred seminars and conferences on various topics, including trial practice, alternate dispute resolution, settlement strategies, damages, negotiations skills and a wide range of substantive matters.

Mr. Hughes is admitted to practice in the Northern, Middle, and Southern Districts of Georgia, the Fifth, Sixth, Eighth, Ninth, and Eleventh Circuit Courts of Appeal and the United States Supreme Court.

Member: Who's Who in America
 International Who's Who
 Who's Who Legal
 Georgia Arbitrators Forum
 American Arbitration Association Commercial and Employment
 Panels

Benchmark Litigation Star
Law Dragon Top 500

RECENTLY MEDIATED CASES

- In Re Miller Energy Resources, Inc. Securities Litigation, United States District Court, Eastern District of Tennessee, Knoxville Division, ([Securities Class Action](#))
- Byron Brown, et al vs. Ambow Education Holding Ltd. et al., United States District Court for the Northern District of California, ([Securities Class Action](#))
- Bristol County Retirement System, et al. v. Allscripts Healthcare Solutions, Inc., Glen E. Tullman, William J. Davis, and Lee Shapir (Securities Class Action) United States District Court for the Northern District of Illinois, Eastern Division; ([Securities Class Action](#))
- Abbott, et al. v. Lockheed Martin Corp., et al. ([ERISA Class Action](#))_United States Court for the Southern District of Illinois
- Tardio v. New Oriental Education & Technology Group ([Securities Class Action](#)) S.D. New York
- Frater v. Hemispherz Biopharma, Inc., William A. Carter, David Strayer and Wayne Pambianchi ([Securities Class Action](#)) United States District Court for the Eastern District of Pennsylvania;
- Biotechnology Value Fund v. Celera Corp, Credit Suisse ([Securities Class action](#)) United States District Court, Northern District of California
- Kruger, et al. v. Novant Health, Inc., et al ([ERISA Class Action](#)) United States District Court for the Middle District of North Carolina
- Francis Howard, et al. v. Chanticleer Holdings, Inc.; Dawson James Securities, Inc.; Creason & Associates, P.L.L.C., et al. ([Securities Class Action](#))_United States Court for the Southern District of Florida
- Feyko, et al. v. Yuhe International, Inc., Zhentao Gao, Hu Gang, Jiang Yingjun, Roth Capital Partners, LLC and Child, Van Wagoner & Bradshaw, PLLC; aAd Partners LP, et al. v. Rodman & Renshaw, LLC; Brean Murray, Carret & Co., LLC, and Global Hunter Securities, LLC;([Securities Class Action](#)) United States District Court, Central District of California,
- Beverly Kanawi, Salvador Aquino, et al. v. Bechtel Corporation, The Bechtel Trust and Thrift Plan Administrative Committee, The Bechtel Trust and Thrift Plan Committee; Fremont Investment Advisors, and Peggi Knox,_([ERISA Class Action](#))_United States District Court, Northern District of California, San Francisco Division
- Kim Nolte, et al. v. CIGNA Corporation, Prudential Retirement Insurance and Annuity Company, et al. ([ERISA Class Action](#)) United States District Court, Central District of Illinois, Urbana Division
- Brenda J. Otte, Administratrix of the Estate of Gladys Reynolds, et al. v. Life Insurance Company of North America, et al. ([ERISA Class Action](#)) United States District Court, District of Massachusetts
- Betty Dukes, et al. v. Wal-Mart, Inc., United States District Court, ([Class Action Discrimination](#)), 131 S. Ct. 2541 (2011)
- Mary Beck, et al. v. The Boeing Company, et al. ([Class Action Discrimination](#)), United States District Court, Western District of Washington, Seattle
- Eduardo Gonzalez, et al. v. Abercrombie & Fitch Stores, Inc., et al.; Elizabeth West and Jennifer LU v. Abercrombie & Fitch Stores, Inc.; Equal Employment Opportunity Commission v. Abercrombie & Fitch Stores, Inc., ([Class Action Discrimination](#)), United States District Court, Northern District of California
- Beaver Co. Employees Retirement Fund v. Tile Shop Holdings, et al ([Securities Class Action](#)), United States District Court Northern District Minnesota.
- Derrick Satchell, et al. v. Federal Express Corporation d/b/a FedEx Express, ([Class Action Discrimination](#)), United States District Court, Northern District of California
- Amochaev, et al. v. Citigroup Global Markets, Inc. d/b/a Smith Barney, ([Class Action Discrimination](#)), United States District Court, Northern District of California
- Abdallah, et al. v. The Coca-Cola Company, ([Class Action Discrimination](#)), United States District Court, Northern District of Georgia
- Carpenters Health & Welfare Fund, et al. v. The Coca-Cola Company, et al., ([Securities Class Action](#)), United States District Court, Northern District of Georgia, (Served as Special Master)
- Jill Hubley, et al. v. Dell Inc., ([Class Action Discrimination](#)), United States District Court, Western District of Texas, Austin Division

- In Re: TV Writers Cases; (Multiple Class Actions Discrimination), Superior Court of the State of California, County of Los Angeles, Central Civil West
- Van Hove GCV, et al. v. Universal Travel Group, (Securities Class Action), United States District Court, District of New Jersey
- Daisy Jaffe, et al. v. Morgan Stanley & Co., Inc. f/k/a Morgan Stanley DW, Inc. (Class Action Discrimination), United States District Court, Northern District of California, San Francisco/Oakland Division, Class Action
- Joanne Augst-Johnson, et al. v. Morgan Stanley DW, Inc., (Class Action Discrimination), United States District Court, District of Columbia
- Will, et al. v. General Dynamics Corp., et al. (ERISA Class Action), United States District Court, Southern District of Illinois
- Randolph Sewell, et al. v. D'Alessandro & Woodyard, Inc., K. Hovnanian First Homes, L.L.C., et al. (Business Litigation), United States District Court, for the Middle District of Florida,
- Reserve Metropolitan District No. 1, The Town of Mt. Crested Butte, et al. v. Reserve Metropolitan District No. 2, The Board of County Commissioners of the County of Gunnison, Colorado and Melody Parks, Treasurer of the County of Gunnison, CO (Business/Insurance Dispute) District Court of Gunnison county, Colorado, Gunnison, CO
- Cadillac Jack, Inc. v. Chartis Claims, Inc. and National Union Insurance Company (Insurance Dispute) (pre litigation)
- In Re Noram Resources, Inc. and Ausam Energy Corp., Debtors, William G. West, Trustee, Plaintiff v. Mark Avery, et al. (Business Dispute), United States Bankruptcy Court for the Southern District of Texas
- Byron Brown, et al. v. Ambow Education Holding Ltd. et al (Securities Class Action), the United States District Court for the Northern District of California
- Spano, et al. v. The Boeing Company, et al (ERISA Class Action) United States District Court for the Southern District of Illinois
- Krueger, et al. v. Ameriprise Financial, (ERISA Class Action) United States District Court for the District of Minnesota
- Brinker Restaurant Corporation v. Superior Court, (FLSA Collective Action) Supreme Court of the State of California

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

JAMES ZILINSKY, GERALDINE)	CASE NO. 2:20-cv-6229-MHW-KAJ
ZILINSKY, CORY SIMPSON, MEAGAN)	
McGINLEY, SANDRA)	
GARRETTDORSEY, BRIAN DERING,)	JUDGE MICHAEL H. WATSON
THERESA DERING, ALAN)	
ARMSTRONG, and SANDY)	
ARMSTRONG, individually and on behalf of)	
all others similarly situated,)	
Plaintiffs,)	
v.)	
LEAFFILTER NORTH, LLC,)	
Defendant.)	
)	
)	
)	
)	
)	

DECLARATION OF BRIAN W. WARWICK

I, Brian W. Warwick, declare as follows:

1. I am a partner in the law firm of Varnell & Warwick, PA (“V&W”), counsel of record for Plaintiff in this matter. I respectfully submit this Declaration in support of Plaintiff’s Motion and Memorandum in Support of Motion for Preliminary Approval of Class Action Settlement.

RELEVANT BACKGROUND

2. On December 3, 2020, Plaintiffs James and Geraldine Zilinsky sued Leaffilter North, LLC, on behalf of themselves and a putative class of purchasers of the Leaffilter gutter protection system asserting claims under the Ohio Consumer Sales Practice Act (“CSPA”), breach of implied warranty due to the Leaffilter product failing to perform the most basic and intended use, violation of the Illinois Consumer Fraud And Deceptive Business Practices Act (“ICFA”) by failing to disclose the overflow defect inherent in the system, additionally Leaffilter committed

both Fraud and Fraudulent Concealment by not disclosing said defect and finally Plaintiffs paid substantial money for a high-quality, high-end gutter system, while being provided with a defective system instead, thus resulting in LeafFilter unjustly enriching themselves.

3. Thereafter, on April 1, 2021, Plaintiffs filed a First Amended Complaint incorporating all claims made in the initial Complaint while also adding additional named plaintiffs and their corresponding state laws. The additional Plaintiffs were Cory Simpson and Megan McGinley from Maryland, Sandra GarrettDorsey from New Jersey, Brian and Theresa Dering from Pennsylvania and Alan and Sandy Armstrong from Washington.

4. Throughout the remainder of 2021, the parties engaged in class discovery, including the production of approximately 45,000 documents from LeafFilter.

5. At the beginning of 2022, the parties agreed to attend mediation and Class Counsel spent the weeks leading up to the mediation requesting and analyzing information related to potential class definitions and determining actual damages. In order estimate damages prior to mediation, Class Counsel reviewed extensive amounts of discovery provided by Defendants.

6. On March 17, 2022, the parties attended a full-day mediation with experienced class action Mediator, Hunter Hughes in Atlanta, Georgia. Mediation resulted in the parties signing a basic term sheet outlining the overall structure and terms of this class action settlement. *Id.*

7. After reaching an agreement in principle, the parties held multiple conference calls and submitted numerous drafts of the Settlement Agreement and supporting documents. There were several points of clarification and dispute that took substantial effort on both sides to resolve. In fact, the formal Settlement Agreement was only fully executed on June 24, 2022. The Agreement is filed with and described in detail in Plaintiff's Memorandum of Law in Support of Preliminary Approval.

CREDENTIALS

8. V&W is a law firm headquartered in Florida that focuses on consumer protection, environmental protection, civil rights and other areas of high-impact public interest litigation. The attorneys of V&W have been appointed lead or co-lead class counsel in more than 50 class action cases certified in both state and federal courts across the nation including cases within this District. They have prosecuted a variety of multi-million-dollar disputes. The defendants in these cases have included governmental entities and international companies such as AT&T, Asplundh, Bank of America, Capital One, Citibank, Discover Bank, General Electric Capital Corp., HSBC, Home Depot, Progressive Insurance, State Farm Insurance, and Sallie Mae.

9. Since starting V&W in 2001, I have concentrated my practice on consumer financial protection litigation. Throughout my career, I have been engaged in complex litigation and frequently litigate under Federal and state consumer protection statutes.

10. I received a B.A. in Finance from the College of St. Francis in Joliet, Illinois in 1994. In 1999, I received my J.D. from Cumberland School of Law and my MBA from Samford University in Birmingham, Alabama.

11. After graduation from law school, I served as Law Clerk to the Honorable Champ Lyons, Jr. on the Alabama Supreme Court.

12. I am currently admitted in the following state and federal courts: Supreme Court of the United States (2004); State of Florida (2002); State of Alabama (1999-Alabama Bar license currently on inactive status); United States District Court, Southern District of Florida (2011); United States District Court, Middle District of Florida (2005); United States District Court, Northern District of Florida (2011); United States District Court of Colorado (2007); Tenth Circuit

Court of Appeals (2010); Eleventh Circuit Court of Appeals (2008); and, Federal Circuit Court of Appeals (2010).

13. I have written the following publications related to class action litigation: Class Action Settlement Collusion: Let's Not Sue Class Counsel Quite Yet, American Journal of Trial Advocacy, Vol. 22:3 (Spring 1999); Claim Jumpers Beware: Alabama Takes Another Look at Class Action Certification, American Journal of Trial Advocacy, Vol. 22:1 (Summer 1998).

14. I have been a guest speaker on class action matters on several occasions for the National Consumer Law Center ("NCLC") and the National Association of Consumer Advocates ("NACA"), which are the two leading organization in the country focused on protecting consumer rights.

15. Along with my partner, Janet Varnell, I received the "2018 Trial Lawyer of the Year Award" from the Public Justice Foundation in Washington D.C. This nationally recognized award was presented for our class action work protecting consumers in the payday loan industry in the matter of *Inetianbor v. CashCall*, in the United States District Court, Southern District of Florida. The *CashCall* case involved payday lenders using tribal land to attempt to circumvent usury laws for internet loans. Florida consumers were charged between 90% and 300% interest on these loans. The complex issues involved in this matter included an arbitration clause that required arbitration under tribal law, a choice of law provision that dictated tribal law and numerous competing class actions. The matter was appealed twice to the Eleventh Circuit and once to the Supreme Court of the United States. Ultimately, Florida consumers received millions of dollars in terminated loans and refunds.

16. Varnell & Warwick has been named Class Counsel in the following cases:

- *Allen v. AT&T*, In the United States District Court, Eastern District of Oklahoma, CIV-00-023-S;

- *Baez v. LTD Financial Services, L.P.*, In the United States District Court, Middle District of Florida, 6:15-cv-1043;
- *Bayhille, et al. v. Jiffy Lube International*, In the District Court for Cherokee County, Oklahoma, CJ-2002-352;
- *Bennett v. Coggin Cars, LLC*, In the Circuit Court of Duval County, Florida, 2004-CA-002883;
- *Briles v. Tiburon Financial, LLC, et al.*, In the United States District Court, District of Nebraska, 8:15-cv-00241
- *Brotz v. Simm Associates, Inc.*, In the United States District Court, Middle District of Florida, 6:17-cv-1603-Orl-40EJK
- *Brown v. Johnson Distributors, et al.*, In the General Court of Justice Superior Court Division, State of North Carolina, County of Mecklenburg, 16-CVS-3445;
- *Bryant v. World Imports U.S.A., Inc., d/b/a World Imports*, In the Circuit Court of Duval County, Florida, 2015-CA-005185;
- *Burrow, et al. v. Forjas-Taurus SA and Braztech International, L.C.*, In the United States District Court, Southern District of Florida, 1:16-cv-21606-EGT;
- *Covey v. American Safety Council, Inc. d/b/a Florida Online Traffic School*, In the Circuit Court of Orange County, Florida, 10-CA-009781;
- *Ebreo v Vystar Credit Union*, In the Circuit Court of Duval County, Florida, 2014-CA-000365;
- *Ferrari v. Autobahn, Inc., et al.*, In the United States District Court for the Northern District of California, 4:17-CV-00018-YGR;
- *Friedman v. Guthy-Renker*, In the United States District Court, Central District of California, 2:14-cv-06009.
- *Gagnon v. Kia Autosport of Pensacola, Inc., et al.*, In the Circuit Court of Escambia County, Florida, 2014-CA-000084;
- *Grant v. Ocwen Loan Servicing, LLC*, In the United States District Court, Middle District of Florida, 3:15-cv-01376-MMH-PDB;
- *Gjolaj v. Global Concepts Limited, Inc.*, United States District Court, Southern District of Florida, 1:12-cv-23064;

- *Law Offices of Henry E. Gare, P.A. v Healthport Technologies, LLC*, In the Circuit Court of Duval County, Florida, 2011-CA-010202;
- *Hardy v. N.S.S. Acquisition Corp.*, In the Circuit Court of Palm Beach County Florida, CL-99- 8628 AO;
- *Harvey v. Hospital Lien Strategies*, In the United States District Court, Middle District of Florida, 3:10-cv-00640-TJC-JRK
- *Holt v. HHH Motors, Inc.*, In the Circuit Court of Duval County, Florida, 2012-CA-010179;
- *Inetianbor v. CashCall and John Paul Reddam*, United States District Court, Southern District of Florida, 13-60066 – CIV – COHN – Seltzer.
- *Ioime, et al., v. Blanchard, Merriam, Adel & Kirkland, P.A.*, In the United States District, Middle District of Florida, 5:15-cv-13-Oc-30PRL;
- *Jackson v. Worthington Ford of Alaska, Inc.*, In the Superior Court for the State of Alaska, Third Judicial District at Anchorage, 3AN-13-08258;
- *Kearney, et al., v. Direct Buy Associates, et al.*, In the Superior Court of the State of California for the County of Los Angeles, Central Civil West, BC539094;
- *Kilby, et al., v. Camaron at Woodcrest, LLC, et al.*, In the Circuit Court of Leon County Florida, 2013-CA-001300;
- *Koster, et al. v. Fidelity Assurance Associates, LLC, et al.*, In the Circuit Court of Lake County Florida, 2010-CA-003482;
- *Lankhorst v. Independent Savings Plan Company d/b/a ISPC*, In the United States District Court, Middle District of Florida, 3:11-cv-390-MMH-JRK;
- *McClure v. Avenue Motors, LTD*, In the Circuit Court of Duval County, Florida, 07-CA-009207;
- *Napoleon v. Worthington Imports of Alaska, Inc. d/b/a Mercedes Benz of Anchorage*, In the Superior Court for the State of Alaska, Third Judicial District at Anchorage, 3AN-14-09617 CI;
- *Newlin v. Florida Commerce Credit Union*, In the United States District Court, Northern District of Florida, 4:11-cv-00080-RH-WCS;
- *Neese, et al. v. Lithia Chrysler Jeep of Anchorage, Inc., et al.*, In the Superior Court in Anchorage Alaska, 3AN-06-4815;

- *Palasack v. Asbury Auto Group*, In the Circuit Court of Pulaski County, Arkansas, CV02-12712;
- *Page v. Panhandle Automotive, Inc.*, In the Circuit Court of Bay County, Florida, 11-CA-1611
- *Parish v. California Style, Inc., et al.*, In the District Court of Sequoyah County, Oklahoma, CJ- 00-342;
- *Petersen v. American General Life Ins. Co.*, United States District Court, Middle District of Florida, Case No. 3:14-cv-100-J-39JBT.
- *Peterson v. Progressive Corporation*, In the Court of Common Pleas, Cuyahoga County, Ohio, CV-03-510154;
- *Pool, et al. v. Rexall Sundown*, In the District Court of Sequoyah County, Oklahoma, CJ-2002-1253;
- *Plummer v. United Auto Group, Inc., et al.*, In the Circuit Court of Pulaski County, Arkansas, CV02-11804;
- *Prindle v. Carrington Mortgage Services, LLC*, In the United States District Court, Middle District of Florida, 3:13-cv-01349;
- *Reynolds v. Jim Moran & Associates*, In the Circuit Court of Wakulla County Florida, 04-CA- 259;
- *Riley v Home Retention Services, Inc. et al.*, United States District Court, Southern District of Florida, 2014-CV-20106;
- *Matthew W. Sowell, P.A. v. Bactes Imaging Solutions, Inc.*, In the Circuit Court of Duval County, Florida, 09-CA-018050;
- *St. John v. The Progressive Corporation*, In the Common Pleas Court of Cuyohoga County, Ohio, 392581;
- *Tate v. Navy Federal Credit Union*, In the Circuit Court of Duval County, Florida, 14-CA-000756;
- *Webb v. Touch of Class Catalog, Inc.*, In the District Court of Sequoyah County, Oklahoma, Case No. CJ-2000-306;
- *West v. City Auto Group-Tallahassee, LLC d/b/a City Hyundai*, In the Circuit Court of Leon County, Florida, 2012-CA-042109;

- *Williams v. New Penn Financial, LLC d/b/a Shellpoint Mortgage Servicing, Inc.*, United States District Court, Middle District of Florida, 3:17-cv-570-25JRK;
- *Williams v. Tallahassee Property Investors, LLC and Apartment Management Consultants, L.L.C.*, In the Circuit Court of Leon County, Florida, 2015-CA-002097;
- *Wood, Atter & Wolf, P.A. v. Record Reproduction Service, Inc.*, In the Circuit Court of Duval County, Florida, 2015-CA-00763;
- *Wood, Atter & Wolf, P.A. v. Star-Med, LLC*, In the Circuit Court of Duval County, Florida, 2016-CA-6096;
- *Wood, Atter & Wolf, P.A. v. University of Florida Jacksonville Physicians, Inc.*, In the Circuit Court of Duval County, Florida, 16-2014-CA-005771.

17. V&W also performs considerable appellate work on consumer class action matters throughout the United States including the following recent appeals: *LTD Financial Services, L.P. v. Liznelia Baez*, Appeal No. 17-13842-F (appeal of class action jury verdict); *Sellers v. Rushmore Loan Management Services, LLC*, Appeal No. 18-11420 (an appeal of class certification); *Katrina Bushnell v. Portfolio Recovery Assoc., LLC*, In the District Court of Appeal, Second District of Florida, Case No. 2D17-0429 (amicus brief on attorney fees in consumer cases); *Amy Friedman v. Pamela Behrend v. Guthy Renker LLC and WEN by Chaz Dean, Inc.*, Case No. 17-56456 (defending a class settlement from objectors), and *Home Depot USA v. Jackson*, 880 F.3d 165 (4th Cir. 2018) (removal by third-party counterclaim defendants under the Class Action Fairness Act).

18. On May 28, 2019, the firm received a win for consumers in the Supreme Court of the United States in the matter of *Home Depot USA Inc. v. Jackson*, 2019 WL 2257158 --- S. Ct. --- (2019). I acted as Counsel of Record in this matter. The issue in the Jackson case was whether a third-party counterclaim defendant could remove a class action counterclaim from state court under either the general removal statutes or under the Class Action Fairness Act. Justice Thomas, writing for the majority, held to the strict construction of the statutes argued by Jackson and federal court jurisdiction was not further expanded.

19. This is a considerable amount of appellate work for a relatively small firm and indicates the firm's high level of experience and expertise in both consumer and appellate law.

20. Varnell & Warwick also employs Janet R. Varnell, Matthew Peterson, Erika Willis and Paria Ghyabi as attorneys practicing in complex consumer litigation.

21. As Plaintiffs' Counsel, I have been intimately involved in every aspect of this litigation since its inception. My firm's involvement included:

- a. Initial investigation;
- b. Drafting pleadings;
- c. Assisting in opposing the motion to dismiss and motion to strike class allegations, including legal research;
- d. Discovery (drafting requests, reviewing documents, responding to Interrogatories and Requests for Production of Documents);
- e. Consulting with potential expert witnesses;
- f. Interviewing hundreds of LeafFilter customers regarding their experience with the LeafFilter Gutter System;
- g. Speaking with numerous former employees and independent contractors of LeafFilter about their experiences with, and knowledge of, the LeafFilter Gutter System;
- h. Case strategy; and
- i. Participating in mediation, settlement negotiations, and drafting settlement docs.

22. I believe that this Settlement Agreement is fair, adequate, reasonable, and is in the best interests of, and will provide significant benefits to, the Class Members in light of all known facts and circumstances, including the significant risks and delays of litigation that are presented by the defenses and potential appellate issues that Defendant may assert.

23. The Settlement Agreement is the result of arm's-length, protracted negotiations performed under the direction and oversight of an experienced mediator over the course of numerous months. There was no collusion with respect to the Settlement Agreement.

24. Plaintiffs' Counsel have vigorously represented the interests of Named Plaintiffs and the Settlement Class Members, have taken significant discovery, and engaged in motion practice enabling them to negotiate this beneficial settlement from a position of knowledge and strength, and as advocates for the entirety of the Settlement Class.

25. Although Plaintiffs have vigorously litigated this matter, to prevail they still would have had to seek and achieve certification of various state court classes, prevail at trial, and prevail on any and all appeals. Accordingly, the proposed Settlement Agreement clearly is within the range of reasonableness.


26. To date, Varnell & Warwick has expended substantial resources to litigate this case and remains committed to vigorously and successfully litigating this case on behalf of the Class.

27. My firm has worked closely with Named Plaintiffs, James and Geraldine Zilinsky who have all been intimately involved in the prosecution of this case since its outset. They have cooperated with counsel, assisted in the preparation of the Complaint, provided documentation of their purchased Gutter Systems, and responded to Defendant's requests for document production and interrogatories. I have spoken to these Named Plaintiffs about the terms of the settlement and they have expressed support for the settlement.

I declare under penalty of perjury of the state of Florida that the foregoing is true and correct to the best of my knowledge, and that I could competently testify to these facts if called as a witness.

Executed in Tampa, Florida.

Dated: June 24, 2022.



Brian W. Warwick

**IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF OHIO EASTERN
DIVISION**

JAMES ZILINSKY, GERALDINE)	CASE NO. 2:20-cv-6229-MHW-KAJ
ZILINSKY, CORY SIMPSON, MEAGAN)	
McGINLEY, SANDRA)	
GARRETTDORSEY, BRIAN DERING,)	JUDGE MICHAEL H. WATSON
THERESA DERING, ALAN)	
ARMSTRONG, and SANDY)	
ARMSTRONG, individually and on behalf of)	
all others similarly situated,)	
)	
Plaintiffs,)	
)	
v.)	
)	
LEAFFILTER NORTH, LLC,)	
)	
Defendant.)	
)	

**DECLARATION OF JEFFREY S. GOLDBERG IN SUPPORT OF THE
SETTLEMENT AGREEMENT AND
PRELIMINARY APPROVAL OF THE SETTLEMENT**

I, Jeffrey S. Goldenberg, Esq., hereby declare under penalty of perjury and pursuant to 28 U.S.C. 1746, as follows:

1. I am a partner and founder in the law firm Goldenberg Schneider, LPA, and I am one of the Class Counsel in this litigation. I make this Declaration of my own personal knowledge, and if called to do so, I could testify competently to the matters stated herein.

2. I graduated Phi Beta Kappa from Indiana University, Bloomington, Indiana in 1988 (B.A. Biology) and received my law degree from Indiana University in 1994. I also received a master's degree in environmental science from Indiana University in 1994.

3. I am admitted to the practice of law in the State of Ohio (1994), the United States Court of Appeals for the Sixth Circuit, Second Circuit, and Ninth Circuit, and the United States District Court for the Southern and Northern Districts of Ohio and the Northern District of Illinois. I also have been admitted pro hac vice to various federal district courts throughout the United States. I am a member in good standing of the Ohio Bar and have never been the subject of any disciplinary proceeding.

4. I have served as lead or co-lead counsel on numerous nationwide class actions and have substantial experience litigating class actions and complex civil litigation. Attached hereto as Exhibit 1 is my firm and attorney profile describing my professional background and my firm's qualifications to serve as Class Counsel.

5. As Plaintiffs' Counsel, I have been intimately involved in every aspect of this litigation since its inception. My firm's involvement included:

- a. Initial investigation;
- b. Drafting pleadings;
- c. Assisting in opposing the motion to dismiss and motion to strike class allegations, including legal research;
- d. Discovery (drafting requests, reviewing documents, responding to Interrogatories and Requests for Production of Documents);
- e. Consulting with potential expert witnesses;
- f. Interviewing hundreds of LeafFilter customers regarding their experience with the LeafFilter Gutter System;
- g. Speaking with numerous former employees and independent contractors of LeafFilter about their experiences with, and knowledge of, the LeafFilter Gutter System;
- h. Case strategy; and
- i. Participating in mediation, settlement negotiations, and drafting settlement docs.

6. I believe that this Settlement Agreement is fair, adequate, reasonable, and is in the best interests of, and will provide significant benefits to, the Class Members in light of all known

facts and circumstances, including the significant risks and delays of litigation that are presented by the defenses and potential appellate issues that Defendant may assert.

7. The Settlement Agreement is the result of arm's-length, protracted negotiations performed under the direction and oversight of an experienced mediator over the course of numerous months. There was no collusion with respect to the Settlement Agreement.

8. Plaintiffs' Counsel have vigorously represented the interests of Named Plaintiffs and the Settlement Class Members, have taken significant discovery, and engaged in motion practice enabling them to negotiate this beneficial settlement from a position of knowledge and strength, and as advocates for the entirety of the Settlement Class.

9. Although Plaintiffs have vigorously litigated this matter, to prevail they still would have had to seek and achieve certification of various state court classes, prevail at trial, and prevail on any and all appeals. Accordingly, the proposed Settlement Agreement clearly is within the range of reasonableness.

10. To date, Goldenberg Schneider has expended substantial resources to litigate this case and remains committed to vigorously and successfully litigating this case on behalf of the Class.

11. My firm has worked closely with Named Plaintiffs Cory Simpson, Meagan McGinley, Sandra GarrettDorsey, Brian Dering, Theresa Dering, Alan Armstrong, and Sandy Armstrong, and have all been intimately involved in the prosecution of this case since its outset. All have cooperated with counsel, assisted in the preparation of the Complaint, provided documentation of their purchased Gutter Systems, and responded to Defendant's requests for document production and interrogatories. I have spoken to these Named Plaintiffs about the terms of the settlement and all Named Plaintiffs expressed support for the settlement.

Executed on June 24, 2022.

/s/Jeffrey S. Goldenberg
JEFFREY S. GOLDENBERG, ESQ.



Exhibit 1

Goldenberg Schneider, LPA

4445 LAKE FOREST DRIVE, SUITE 490
CINCINNATI, OHIO 45242

513-345-8291
WWW.GS-LEGAL.COM

GOLDENBERG SCHNEIDER, L.P.A. was founded in 1996 and focuses on prosecuting actions primarily on behalf of plaintiffs in complex civil litigation and class actions. The subject matter of the Firm's past and current representations is broad, ranging from product defect consumer protection actions to privacy protection actions to employment and labor cases that include ERISA, FLSA, and discrimination, to actions for antitrust, and life and long-term care insurance. The firm's attorneys are experienced in every level of the state and federal judicial systems in Ohio and the country, including specialized courts.

The Firm has demonstrated its capability to successfully represent governmental entities, corporations, and individuals in the most complex of litigation. Founding partner Jeff Goldenberg served as special counsel to the Ohio Attorney General in prosecuting Ohio's Medicaid recoupment action against the tobacco industry and has served as lead or co-lead counsel on numerous nationwide class actions. The tobacco Medicaid recoupment litigation settled in 1999, resulting in a recovery to the State of Ohio of more than \$9.86 billion. Setting aside the substantial, if not immeasurable non-economic components of the settlement, which curb youth smoking and addiction, the settlement's financial proceeds are a multiple of twelve times larger than the prior largest Ohio-based settlement.

Class actions in which one or more of the Firm's attorneys currently serves or served as class counsel include the following:

- *In Re: Ford Motor Co. Spark Plug and 3-Valve Engine Products Liability Litigation* – Goldenberg Schneider served as co-lead counsel for a national class comprised of approximately 4 million Ford vehicle owners who purchased or leased vehicles containing a 5.4 liter 3-valve engine equipped with defective spark plugs and related engine defects. On January 26, 2016, after Plaintiffs had defeated Ford's motion for summary judgment, Judge Benita Pearson of the Northern District of Ohio granted final approval of a nationwide settlement that will provide reimbursement to class members for expenses related to spark plug replacement.

- *Daffin v. Ford Motor Company* – Goldenberg Schneider and its co-counsel successfully certified an Ohio statewide class on behalf of all Ohio purchasers or lessors of 1999 and 2000 model year Mercury Villager Minivans. The Sixth Circuit upheld the class certification, and the case was resolved through a settlement. The Sixth Circuit decision was one of the first to recognize diminished value as a viable damage model.
- *Ulyana Lynevykh v. Mercedes-Benz USA, LLC* – Goldenberg Schneider, serving as counsel for Plaintiffs, and working with co-counsel from Hagens Berman Sobol Shapiro, Carella, Byrne, Cecchi, Olstein, Brody & Agnello, P.C. and SeegerWeiss, recently settled the Mercedes Blue-Tec Engines Diesel Emissions Fraud litigation. The settlement with Mercedes Benz is valued at more than \$700 million and provides substantial benefits to nearly 250,000 owners and lessees of affected diesel Mercedes vehicles. The lawsuit was originally brought in 2016 in the U.S. District Court for the District of New Jersey.
- *Meyer v. Nissan North America* – Goldenberg Schneider served as co-lead counsel on behalf of thousands of Nissan Quest minivan owners throughout the United States. The suit alleged that the Quest minivan developed dangerous levels of carbon deposits in the accelerator system causing the gas pedal to stick, resulting in a roadway safety hazard including documented accidents and injuries. The case was resolved by a nationwide settlement that included the application of the vehicle warranty to remedy the problem as well as a refund of prior repair costs.
- *City of Cincinnati Pension Litigation* – Goldenberg Schneider and its co-counsel, with the assistance of U.S. District Court Judge Michael Barrett, successfully resolved a series of cases relating to the City of Cincinnati Retirement System, known as the CRS. Judge Barrett granted final approval of the historic and landmark Settlement Agreement on October 5, 2015. The settlement comprehensively reforms the CRS, establishes a consistent level of City funding, and reinstates several key provisions that were eliminated in 2011 changes for employees who were vested in the plan at that time. The settlement benefits for the Current Employees Class members, for whom Goldenberg Schneider was approved as Class Counsel, are valued at approximately \$50 million.
- *In Re: Veterans' Administration Data Theft Litigation* – Goldenberg Schneider served as co-lead counsel for a nationwide class of approximately 20 million veterans and current members of the military who were impacted by the August 2006 theft of personal data.

Multiple actions were consolidated by the Panel on Multidistrict Litigation and sent to the Federal District Court in the District of Columbia. This action was successfully resolved with a \$20,000,000 settlement.

- *Bower v. MetLife* – Goldenberg Schneider served as co-lead class counsel on behalf of a nationwide class of beneficiaries of the Federal Employees Group Life Insurance (FEGLI) Policy, the world's largest group life insurance program. Following the Court's Order certifying the nationwide Class, the case was settled in 2012 for \$11,500,000.
- *In Re: OSB Antitrust Litigation* – Goldenberg Schneider served on the trial team in a case that alleged illegal collusion and cooperation among the oriented strand board industry. The case was resolved through a series of settlements that collectively exceeded \$120,000,000.
- *Parker v. Berkeley Premium Nutraceuticals* – Goldenberg Schneider served as co-lead counsel and certified three nationwide classes in a consumer fraud class action on behalf of purchasers of herbal supplements for false and unproven claims and deceptive credit card practices. This case was successfully resolved with a settlement valued in the millions of dollars. Moreover, class members retained all rights to recover a portion of the nearly \$30 million that the U.S. Attorney General seized in a civil forfeiture action. Goldenberg Schneider then recovered an additional \$24,000,000 for the victims by prosecuting a successful Petition for Remission through the forfeiture proceedings.
- *Estep v. J. Kenneth Blackwell, Ohio Secretary of State* – Goldenberg Schneider served as co-lead counsel on this class action against former Ohio Secretary of State, Ken Blackwell, based upon a violation of privacy rights when personal information was unlawfully disclosed in public records accessible through the Secretary's website. The settlement required the Secretary of State to dramatically improve the protection of social security numbers.
- *Cates v. Cooper Tire & Rubber Company/ Johnson v. Cooper Tire & Rubber Company* – Goldenberg Schneider served as co-lead counsel for a class of more than a thousand Cooper Tire retirees who claimed that they were entitled to lifetime health care benefits. Goldenberg Schneider secured a judgment on the pleadings, certified the class, and ultimately resolved the case through a settlement valued at over \$50,000,000.

- *In Re: Consolidated Mortgage Satisfaction Cases* – Goldenberg Schneider served as lead counsel on behalf of Ohio homeowners against some of the largest national and Ohio banking and lending institutions for their failure to timely record mortgage loan payoffs. The Firm was able to consolidate all twenty actions before one trial judge and successfully upheld all the class certifications before the Ohio Supreme Court. These cases were resolved through multiple settlements valued at millions of dollars.
- *In re: Verizon Wireless Data Charges Litigation* – Goldenberg Schneider filed the first nationwide class action challenging Verizon Wireless’ improper \$1.99 data usage charges to certain pay-as-you-go customers. Goldenberg Schneider, as a member of the Plaintiffs Advisory Committee, played an active role in this litigation which resulted in benefits to the Class in excess of \$50,000,000 in refunds and reimbursement payments.
- *Continental Casualty Long Term Care Insurance Litigation* (“Pavlov Settlement”) - Goldenberg Schneider served as Lead Class Counsel in this litigation on behalf of certain CNA long term care policyholders nationwide whose claims for stays at certain facilities were wrongly denied based upon a non-existent 24/7 on-site nursing requirement. The Federal District Court in the Northern District of Ohio granted final approval to a nationwide class action settlement negotiated by Goldenberg Schneider that provided damages to those whose claims were improperly denied and expanded the types of facilities now covered by these policies. The settlement value exceeded \$25 million.
- *Carnevale FLSA Class Action* – Goldenberg Schneider served as co-lead counsel on behalf of employees working for a large industrial company that alleged violations of federal and state labor laws through the systematic misclassification of managers and other employees as salaried professionals. This case successfully resolved with a common fund settlement in excess of \$5 million.

JEFFREY S. GOLDENBERG

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LEGAL EXPERIENCE

FOUNDING PARTNER, GOLDBERG SCHNEIDER, L.P.A. (1998-present) - Civil trial and appellate practice in state and federal courts. Areas of practice include: class actions, consumer protection, product defect, long-term care insurance litigation, state attorney general cost recoupment including tobacco and pharmaceutical average wholesale price litigation, employment litigation including wage and hour (FLSA), toxic torts, lead poisoning, antitrust, environmental, data breach and personal privacy protection, personal injury, and commercial disputes.

ATTORNEY, DINSMORE & SHOHL (1994-1998) - General litigation practice with an emphasis on environmental litigation and compliance.

Bar Admissions/Licenses

State of Ohio (admitted since 1994)
United States Court of Appeals for the Second Circuit
United States Court of Appeals for the Sixth Circuit
United States Court of Appeals for the Ninth Circuit
United States District Court for the Southern District of Ohio
United States District Court for the Northern District of Ohio

Activities/Memberships

Ohio Association for Justice
American Association for Justice
American Bar Association
Ohio State Bar Association
Cincinnati Bar Association
The Cincinnati Academy of Leadership for Lawyers
Volunteer Attorney for the Ohio Foreclosure Mediation Project
Supreme Court of Ohio Lawyer to Lawyer Mentoring Program
Pro Seniors Legal Volunteer
Board of Directors, University of Cincinnati Hillel Jewish Student Center
Board of Directors, Ohio Valley Region, Jewish National Fund

EDUCATION

Indiana University School of Law, Bloomington, Indiana, J.D. 1994
Indiana University School of Public and Environmental Affairs, M.S.E.S. 1994
Indiana University, B.A. Biology, 1988 (Phi Beta Kappa)

JEFFREY S. GOLDENBERG
FOUNDING PARTNER, GOLDENBERG SCHNEIDER, LPA
www.gs-legal.com

Mr. Goldenberg's practice includes class action and complex civil litigation with an emphasis on consumer protection. His practice areas include consumer fraud, defective products, insurance coverage (including long-term care insurance), overtime and wage and hour, personal privacy and data breach, antitrust, personal injury, toxic torts, and commercial disputes.

Mr. Goldenberg served as lead and/or co-counsel in numerous multi-million dollar complex civil cases throughout the United States, including Continental Casualty Long Term Care Insurance Litigation, City of Cincinnati Pension Litigation, Ford Spark Plug Litigation, Enzyte Consumer Fraud Litigation, GEAE FLSA Litigation, Veterans Data Theft Litigation, Styrene Railway Car Litigation, Ford and Nissan Auto Defect litigation, Clayton Home Sales Tax Litigation, MetLife FEGLI Litigation, Mercedes Diesel Emissions Fraud Litigation, MetLife Reduced Pay at 65 Litigation, Vitamix Blender Litigation, and Oriented Strand Board Antitrust Litigation. Jeff also served as Special Counsel representing the State of Ohio against the Tobacco industry and was part of the litigation team that achieved an unprecedented \$9.86 billion settlement for Ohio taxpayers. He also served as lead counsel with John Murdock on the In re Consolidated Mortgage Satisfaction Cases involving twenty separate class actions. That litigation resulted in a significant Ohio Supreme Court decision defining key aspects of Ohio class action law.

Mr. Goldenberg earned three degrees from Indiana University: a Bachelor of Arts in Biology in 1988 (Phi Beta Kappa); a Master of Science in Environmental Science in 1994; and his Juris Doctor in 1994. Jeff has practiced in all levels of Ohio trial and appellate courts as well as other courts across the nation, and is admitted to practice in the State of Ohio and the United States District Court for the Southern and Northern Districts of Ohio and the United States Second, Sixth & Ninth Circuit Courts of Appeal. Jeff is a member of the American Association for Justice, the Ohio State Bar Association, and the Cincinnati Bar Association.

TODD B. NAYLOR

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LEGAL EXPERIENCE

PARTNER, GOLDBERG SCHNEIDER, L.P.A. (2003-present) Civil trial practice in state and federal courts, trial and appellate level, in insurance litigation, products liability, securities, antitrust, toxic torts, consumer protection, personal injury and wrongful death, with a focus on complex litigation and class actions.

ATTORNEY, MANLEY BURKE, L.P.A. (1998-2003) Civil trial practice in state and federal courts, trial and appellate level, in toxic torts, products liability, employment intentional torts, medical malpractice, wrongful death, with an emphasis on representation of workers injured or killed by toxic minerals or chemicals.

ATTORNEY, HERMANIES, MAJOR, CASTELLI & GOODMAN (1997-1998) General civil trial practice with an emphasis on personal injury and products liability.

Bar Admissions/ Licenses

State of Ohio Trial and Appellate Courts (since 1997)
Supreme Court of the United States
United States Court of Appeals for the Sixth Circuit
United States District Court for the Southern District of Ohio
United States District Court for the Northern District of Ohio
Admitted Pro Hac Vice in other Non-Ohio State and Federal Courts

Activities/ Honors

Attorney Mediator- Southern District of Ohio
Arbitrator, Clermont County Court of Common Pleas
Arbitrator, Cincinnati Bar Association Fee Arbitration Committee
Fellow, Cincinnati Academy of Leadership for Lawyers, Class XII
Ohio Association for Justice, Trustee/ Chair Section on Environmental Torts (2000-2004)
Cincinnati Bar Association

EDUCATION

University of Colorado School of Law, J.D. 1997
Trial advocacy scholarship winner
Legal Aid and Defender Program Award
Bradley University, B.A. 1994 (with honors)

TODD B. NAYLOR
PARTNER, GOLDENBERG SCHNEIDER, LPA
www.gs-legal.com

Mr. Naylor's practice areas primarily include class actions, insurance litigation, products liability, antitrust litigation, toxic and environmental torts, personal injury, and wrongful death. He has appeared as lead counsel in courts across the United States representing clients at all stages of litigation and has lectured on various aspects of the legal profession at numerous seminars and at the University of Cincinnati College of Law.

Mr. Naylor frequently represents large classes and entities. He represented the State of Ohio in a securities lawsuit relating to the merger of Exxon and Mobil. He has also represented multiple states, including Connecticut, in pharmaceutical pricing litigation. Mr. Naylor served on the trial team in antitrust litigation involving the oriented strand board industry that resulted in an aggregate settlement of over \$120,000,000. Additionally, Mr. Naylor has served as lead counsel in multiple life insurance cases in which he has obtained contested class certification, ultimately resolving the cases for millions of dollars. One such case was filed on behalf of beneficiaries of the Federal Employees Group Life Insurance (FEGLI) Policy, the world's largest group life insurance program. Mr. Naylor presently serves as lead and/or co-counsel in numerous multi-million dollar complex civil litigation cases throughout the State of Ohio and nationwide.

Mr. Naylor has also represented many individuals in high-value litigation involving severe personal injuries and wrongful death. He recently acted as lead counsel in a case against the Montgomery County, Ohio dog warden for the warden's alleged failure to act to prevent the fatal mauling of a Dayton resident. The multi-million dollar settlement of that case, following Plaintiff's defeat of the Dog Warden's motion for summary judgment, is believed to be the largest settlement ever against an animal control agency. Mr. Naylor also recently obtained a \$10.3 million verdict against Ethicon for the alleged failure of one its surgical staplers to function as intended during a bowel resection. He then successfully defended the appeal of that verdict before the Second District Court of Appeals.

Mr. Naylor is admitted to practice in the State of Ohio, the United States Supreme Court, the United States Court of Appeals for the Sixth Circuit, and the United States District Court for the Southern and Northern Districts of Ohio. He serves as an Attorney Mediator for the Southern District of Ohio, and an Arbitrator for the Clermont County Common Pleas Court and the Cincinnati Bar Association Fee Arbitration Committee. Mr. Naylor is a Fellow with the Cincinnati Academy of Leadership for Lawyers.

ROBERT B. SHERWOOD

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LEGAL EXPERIENCE

ASSOCIATE, GOLDENBERG SCHNEIDER, L.P.A. (2011-present) - Civil trial practice in state and federal courts, trial and appellate level, in data breach, securities, antitrust, products liability, toxic torts, and consumer protection, with a focus on complex litigation and class actions.

ASSOCIATE, SQUIRE, SANDERS & DEMPSEY, LLP (2007–2010) – Civil trial practice in firm’s commercial litigation, complex litigation and class action practice groups.

ASSOCIATE, MEREDITH COHEN GREENFOGEL & SKIRNICK, Philadelphia, PA (2003-2007) Civil trial practice focusing on complex multi-defendant antitrust and securities class actions.

SUPERIOR COURT OF DELAWARE LAW CLERK, HON. JEROME O. HERLIHY (2002-2003)

Bar Admissions/Licenses

Supreme Court of Ohio
Supreme Court of Pennsylvania
United States District Court for the Southern District of Ohio
United States District Court for the Eastern District of Pennsylvania

Activities/Memberships

Cincinnati Bar Association
Ohio State Bar Association
American Bar Association

EDUCATION

University of Pennsylvania Law School, Philadelphia, PA, J.D. 2002
Bucknell University, Lewisburg, PA, B.A., Political Science, 1999
Honors: *Phi Beta Kappa, magna cum laude*

ROBERT B. SHERWOOD
ASSOCIATE, GOLDENBERG SCHNEIDER, LPA
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Robert's practice focuses on complex civil and class action litigation. He represents clients in trial and appellate courts on the state and federal level and has experience representing both plaintiffs and defendants in multi-party disputes involving consumer protection, defective products, data breach and personal privacy protection, antitrust, securities, civil conspiracy, qui tam, insurance coverage, and breach of contract claims.

Prior to joining Goldenberg Schneider, LPA, Robert was an associate with a large Cleveland-based corporate law firm and, prior to that, a small Philadelphia-based boutique firm specializing in antitrust class actions. Robert has served as a member of legal teams prosecuting multi-million dollar antitrust class actions, including *In re Dynamic Random Access Memory (DRAM) Antitrust Litigation*, No.M-02-1486 (N.D. Cal.); *In re Carbon Black Antitrust Litigation*, MDL No. 1543 (D. Mass.); *In re OSB Antitrust Litigation*, No. 06-826 (E.D. Pa.); and *In re Mercedes Benz Antitrust Litigation*, No. 99-4311 (D. N.J.).

Robert received his Bachelor of Arts in 1999 from Bucknell University, from which he graduated *magna cum laude* with *Phi Beta Kappa* honors. After earning his Juris Doctor from the University of Pennsylvania in 2002, he subsequently served as law clerk to the Honorable Jerome O. Herlihy of the Superior Court of Delaware. Robert is admitted to practice in the State of Ohio and the Commonwealth of Pennsylvania, the United States District Courts for the Southern District of Ohio and Eastern District of Pennsylvania.

maintained in this database is historical data on customers' requests for service.

5. When a customer calls LeafFilter to request service on his or her LeafFilter system, LeafFilter typically creates a service ticket in the customer database for the service. A LeafFilter representative then typically visits the customer's property, speaks with the customer, and inspects the LeafFilter system to identify, to the extent possible, the underlying issue, if any, that occasioned the customer's service request. As part of LeafFilter's routine process, if an underlying issue is identified during the on-site inspection, it is then communicated back to LeafFilter's customer service team. When closing service tickets, LeafFilter's customer service team then inputs a "Final Issue Code" for the issues, if any, identified during the inspection.

6. Two of LeafFilter's "Final Issue Codes" are "Debris on System" and "Debris behind S/G," which is an abbreviation for "splash guard." These two Final Issue Codes relate to the accumulation of debris on the LeafFilter system.

7. LeafFilter's customer database shows that between January 1, 2016 and the present, LeafFilter opened service requests for an estimated 59,376 LeafFilter customers whose service tickets were closed with a Final Issue Code of either "Debris on System" or "Debris behind S/G."

8. LeafFilter has never promoted a service specifically for gutter cleaning or debris removal. Under certain circumstances, however, LeafFilter charges customers a service fee of \$95 for service visits. During such visits, LeafFilter representatives are called upon to address a wide range of potential issues, which may include clearing debris, if any, that has accumulated on the LeafFilter system.

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

Executed: June 24, 2022

A handwritten signature in blue ink, appearing to read "Rocco Mango", is written over a horizontal line.

Rocco Mango

Exhibit 6

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

JAMES and GERALDINE ZILINSKY,)
individually and on behalf of all others)
similarly situated,)
Plaintiffs,)
v.)
LEAFFILTER NORTH, LLC,)
Defendant.)

Civil Action No. 2:20-cv-6229

**DECLARATION OF CHRISTIE REED
REGARDING ADMINISTRATION
QUALIFICATIONS**

I, Christie Reed, declare and state as follows:

1. I am a Class Actions Case Specialist with KCC Class Action Services, LLC (“KCC”), located at 222 N. Pacific Coast Highway, Suite 300, El Segundo, California 90245.
2. The purpose of this declaration is to provide information related to KCC’s qualifications and experience.

KCC BACKGROUND AND EXPERIENCE

3. KCC is a leading class action administration firm that provides comprehensive class action services, including claims administration, legal notification, email and postal mailing campaign implementation, website design, call center support, class member data management, check and voucher disbursements, tax reporting, settlement fund escrow and reporting, and other related services critical to the effective administration of class action settlements. With more than thirty years of industry experience, KCC has developed efficient, secure and cost-effective methods to properly handle the voluminous data and mailings associated with the noticing, claims processing, and disbursement requirements of these matters to ensure the orderly and fair treatment of class members and all parties in interest.

4. KCC has served as the administrator across a wide range of practice types, including securities, antitrust, consumer, employment, and government, and our administrative

work has included some of the largest and most complex private settlements, with individual cases that required direct notice to more than 25 million people and single case distributions of more than \$7 billion.

5. If the Court grants the Plaintiffs' Motion for Preliminary Approval of the Settlement, and if KCC is appointed as the Settlement Administrator by the Court in this matter, KCC is prepared to, capable of, and willing to implement the Notice Plan as set forth in the Settlement Agreement.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on 24th day of June 2022 at Lakewood, CA.



Christie Reed



KCC Class Action Services Resume

KCC is an industry leader in class action settlement administration. We administer claims processes and distribute funds in a vast array of varying matters, ranging from small and simple settlements to multi-year complex settlements involving millions of claimants.

KCC's parent company, Computershare, is a publicly traded company which, among its many business lines, provides global financial services centering on communications with customers on behalf of our corporate clients. Computershare employs over 12,000 people and does business with more than 25,000 clients in more than 21 countries. KCC's operations are regulated by federal agencies, including both the SEC and OCC. KCC has the largest infrastructure in the class action industry, and is backed by superior data security, call center support and technology. In addition to the immense resources and capabilities brought to bear through Computershare, KCC can execute all operations in-house with zero outsourcing; a capacity which allows for full quality control over each aspect of service.

KCC has administered over 7,200 class action matters and handled thousands of distribution engagements in other contexts as well. Our call centers handle 13.9 million calls each year. Our domestic infrastructure can open and scan 200,000 claims in a single day, and we have document production capabilities that print and mail millions of documents annually. Last year, our disbursement services team distributed more than \$1.6 billion (USD) across four million class payments.

Locations

KCC has an administrative office in El Segundo, CA, operation offices in San Rafael, CA, and Louisville, KY, and presence in the East Coast, South and Midwest. In addition to these offices, KCC has the global support of Computershare. In the United States Computershare has more than 20 offices.

KCC Personnel

KCC's experienced team of experts knows first-hand the intricacies contained in every aspect of settlement administration, and approach each matter with careful analysis and procedural integrity. Each client is assigned a team of experienced consultants, specialists and technology experts who serve as knowledgeable, reliable and accessible partners that have earned a reputation for exceeding clients' expectations. KCC's executive team – Gerry Mullins, President and Daniel Burke, Executive Vice President – are experienced industry leaders.

Our personnel have considerable experience which includes years of practice with KCC and related endeavors. KCC's professionals have extensive training, both on-the-job and formal, such as undergraduate and advanced business, information technology and law degrees, and they possess and/or have had licenses and certificates in disciplines that are relevant to class action administration.

Recognition

Our settlement administration services have been recognized by *The National Law Journal*, *The New York Law Journal*, *The New Jersey Law Journal*, *The Recorder*, *Legal Intelligencer*, *Legal Times* and other leading publications. KCC has earned the trust and confidence of our clients with our track record as a highly-responsive partner.



Settlement Value	
Case	Value
Fortis Settlement	\$1,572,690,000
Ramah Navajo Chapter v. Jewell	\$940,000,000
U.S.A. v. The Western Union Company	\$586,000,000
Vaccarino v. Midland National Life Ins. Co	\$555,000,000
In re Facebook Biometric Info. Privacy Litig.	\$550,000,000
Safeco v. AIG	\$450,000,000
Johnson v. Caremark Rx, LLC	\$310,000,000
In re Activision Blizzard, Inc. Stockholder Litigation	\$275,000,000
Harborview MBS	\$275,000,000
Dial Corp. v. News Corporation, et al.	\$244,000,000
In re Medical Capital Securities Litigation Settlement	\$219,000,000
In Re: NCAA Athletic Grant-In-Aid Antitrust Litigation	\$208,664,445
Gutierrez v. Wells Fargo Bank, N.A	\$203,000,000
Postmates Mass Arbitration Settlement	\$179,000,000
BlueCrest Capital Management Limited	\$170,000,000
Bell v. Farmers - Bell III	\$170,000,000
In Re Diamond Foods, Inc. Securities Litigation	\$167,000,000
In re JPMorgan Chase & Co. Securities Litigation	\$150,000,000
Haddock v. Nationwide Life Insurance Co. Settlement	\$140,000,000
In re Freeport-McMoran Copper & Gold Inc. Derivative Litigation Notice	\$137,500,000
Bank of America, et al. v. El Paso Natural Gas Company, et al.	\$115,000,000
In re Anthem, Inc. Data Breach Litigation	\$115,000,000
In re Medical Capital Securities Litigation Settlement	\$114,000,000
Drywall Acoustic Lathing v. SNC Lavalin	\$110,000,000
In re Automotive Parts Antitrust Litigation III	\$103,000,000
Rural/Metro Corporation Stockholders Litigation	\$97,793,880
J.C. Penney Securities Litigation	\$97,500,000
Smokeless Tobacco Cases	\$96,000,000
Oubre v. Louisiana Citizens	\$92,865,000
Ardon v. City of Los Angeles	\$92,500,000
Nishimura v. Gentry Homes, Ltd. II	\$90,341,564
In Re: Potash Antitrust Litigation (II) (Escrow)	\$90,000,000
Ormond, et al, v. Anthem, Inc.	\$90,000,000
In re DRAM Antitrust Litigation	\$87,750,000
In re: Morning Song Bird Food Litigation	\$85,000,000
Ideal v. Burlington Resources Oil & Gas Company LP	\$85,000,000
Willoughby v. DT Credit Corporation, et al. (Drivetime)	\$78,000,000
Bake v. Saint-Gobain Performance Plastics Corp.	\$62,000,000
Burdick v. Tonoga Inc.	\$23,000,000



Class Members	
Case	Volume
Edwards v. National Milk Producers Federation et al.	90,000,000
In re Anthem, Inc. Data Breach Litigation	80,000,000
Carrier IQ Inc. Consumer Privacy Litigation	47,300,000
The Home Depot, Inc. Customer Data Security Breach Litigation	40,000,000
In re Facebook Biometric Info. Privacy Litig.	30,000,000
In Re Midland Credit Management, Inc. TCPA Litigation	30,000,000
Golden v. ContextLogic Inc. d/b/a Wish.com	29,222,936
Cassese v. WashingtonMutual	23,200,344
In re Wawa, Inc. Data Security Litigation	22,000,000
Rael v. The Children's Place, Inc.	22,000,000
In Re Optical Disk Drive Antitrust Litigation	20,000,000
In re UltraMist Sunscreen Litigation	20,000,000
Torres v. Wendy's International, LLC	18,000,000
In Re Lithium Ion Batteries Antitrust Litigation	16,000,000
Gordon v. Verizon Communications, Inc.	15,236,046
Experian Data Breach Litigation	15,000,000
Opperman v. Kong Technologies, Inc. et al.	13,279,377
Lerma v Schiff Nutrition International, Inc.	12,000,000
Kolinek v. Walgreen Co.	10,213,348
Dunstan v. comScore, Inc.	10,000,000
Sprint Government Restitution Program	9,500,000
Steinfeld v. Discover Financial Services	9,088,000
Cohen, et al. v. FedEx Office and Print Services, Inc., et al.	9,000,000
Elvey v. TD Ameritrade, Inc.	8,639,226
In Re: Monitronics International, Inc. Telephone Consumer Protection Act Litigation	7,789,972
In re Portfolio Recovery Associates Telephone Consumer Protection Act Litigation	7,395,511
Morrow v. Ascena Retail Group, Inc. and Ann Inc.	7,277,056
Shames v. The Hertz Corporation	7,271,238
In Re Facebook Biometric Information Privacy Litigation	7,000,000
Roberts, et al. v. Electrolux Home Products, Inc.	6,305,000
Chambers v. Whirlpool Corporation, et al.	5,788,410
Martin v. Safeway Inc.	5,610,739
Morales v. Conopco Inc. dba Unilever (TRESemmé Naturals)	5,000,000
Murray v. Grocery Delivery E-Services USA Inc. dba Hello Fresh	5,000,000