

SAUDER SCHELKOPF LLC

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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

KIMBERLY COLE, ALAN COLE,	:	
JAMES MONICA, LINDA BOYD,	:	Civil Action No.:13-7871-FLW-TJB
MICHAEL MCMAHON, RAY	:	
SMINKEY, JAMES MEDDERS,	:	
JUDY MEDDERS, ROBERT	:	
PEPERNO, SARAH PEPERNO,	:	
KELLY MCCOY, LESA WATTS,	:	<u>CORRECTED DECLARATION OF</u>
CHAD MEADOW, JOHN PLISKO,	:	JOSEPH G. SAUDER IN SUPPORT
SUSAN PLISKO, KENNETH	:	OF PLAINTIFFS' MOTION FOR AN
McLAUGHLIN, RYAN KENNY,	:	AWARD OF ATTORNEYS' FEES TO
ALEXANDER DAVIS, and	:	CLASS COUNSEL,
ANDREA DAVIS, on behalf of	:	REIMBURSEMENT OF CLASS
themselves and all others similarly	:	COUNSEL'S EXPENSES, AND
situated,	:	SERVICE AWARDS TO
	:	PLAINTIFFS
<i>Plaintiffs,</i>	:	
	:	
v.	:	
	:	
NIBCO, Inc.,	:	
	:	
<i>Defendant.</i>	:	

Joseph G. Sauder, of full age, being duly sworn upon his oath, declares as follows:

1. I am an attorney at law of the State of New Jersey and Commonwealth of Pennsylvania, and a founding partner of the law firm of Sauder Schelkopf LLC, attorneys for Plaintiffs in this matter. I have been one of the counsel for Plaintiffs during the entirety of the litigation of this matter. I was also one of the attorneys whom the Court appointed as Interim Class Counsel in this case. ECF No. 39. I have personal knowledge of the facts contained in this Declaration.

2. I make this Declaration in support of Plaintiffs' motion for an award of attorneys' fees to Class Counsel, reimbursement of Class Counsel's expenses, and Service Awards to Plaintiffs.

3. Matthew Schelkopf, Joseph Kenney and I have litigated this action on behalf of the *Cole* Action since the pre-filing investigation in December of 2013.

4. Since 2012, I have been selected by the National Trial Lawyers Association as one of the Top 100 Trial Lawyers in Pennsylvania. Since 2011, I have also been selected as a Pennsylvania *SuperLawyer*, a distinction held by the top 5% of attorneys in PA, as chosen by their peers and through the independent research of Law & Politics.

5. Since 2010, Matthew Schelkopf has been selected by Pennsylvania *SuperLawyers* as a Rising Star (a distinction held by the top 2.5% of attorneys in PA) and then a Pennsylvania *SuperLawyer*, as chosen by their peers and through

the independent research of Law & Politics. In 2012, The American Lawyer Media, publisher of The Legal Intelligencer and the Pennsylvania Law Weekly, named Mr. Schelkopf as one of the “Lawyers on the Fast Track” a distinction that recognized thirty-five Pennsylvania attorneys under the age of 40 who show outstanding promise in the legal profession and make a significant commitment to their community. Mr. Schelkopf was also selected as a Top 40 under 40 by the National Trial Lawyers in 2012-2015.

6. Since 2017, Joseph Kenney has been selected by Pennsylvania *SuperLawyers* as a Rising Star (a distinction held by the top 2.5% of attorneys in PA).

A. Pre-Filing Investigation

7. Prior to the filing of the original complaint, I, along with attorneys at my firm, conducted an extensive pre-filing investigation into the Covered Products (defined below) at issue in this litigation. The investigation began approximately ten months prior to the December 2013 filing of the original Complaint in this case. The pre-filing investigation included interviewing numerous owners of the Covered Products, investigating and inspecting the Covered Products themselves, and interviewing plumbers and consultants with experience installing and/or testing defects in plumbing products.

8. The pre-filing investigation also included the investigation of potential causes of action against NIBCO, Inc. for the defects we, in conjunction with the consultants, identified. The pre-filing investigation culminated in the filing of the Complaint in this litigation.

9. As of the date of this Declaration, Mr. Schelkopf, Mr. Kenney, and I have spoken with hundreds of members of the Settlement Class throughout the various stages of the litigation, including the pre-filing investigation, during the pendency of the litigation, and after the Court entered its preliminary approval order.

B. The Pleadings and NIBCO's Multiple Motions to Dismiss

10. On December 27, 2013, Plaintiffs Kimberly and Alan Cole, citizens of Tennessee, and James Monica, a New Jersey citizen, filed the Complaint in this matter. ECF No. 1. The Complaint alleged that NIBCO's cross-linked polyethylene plumbing tubes, the yellow brass fittings used to connect the tubing together, and the stainless steel clamps used to join the tubing and fittings (the Tubing, Fittings, and Clamps are each defined in the Settlement Agreement and are collectively referred to herein as the "Covered Products") "suffer from undisclosed design and/or manufacturing defects that inevitably cause them to fail prematurely."

11. After the filing of the Complaint, the attorneys at my Firm continued to interview putative class members and inspect samples of the Covered Products that had failed.

12. On March 17, 2014, NIBCO filed its Answer and Affirmative Defenses to the Complaint. ECF No. 8. Plaintiffs moved for the appointment of Interim Class Counsel and, thereafter, on September 3, 2014, filed a motion for leave to file an Amended Complaint. ECF No. 35. On October 2, 2014, Hon. Tonianne J. Bongiovanni, U.S.M.J., granted leave to file the Amended Complaint, ECF No. 36, which Plaintiffs then filed on October 6, 2014, ECF No. 37. The Amended Complaint added Plaintiffs Linda Boyd (an Alabama citizen), Michael McMahon and James and Judy Medders (Texas), Ray Sminkey (Oklahoma), Robert and Sarah Peperno (Pennsylvania), and Kelly McCoy (Georgia). On October 23, 2014, Hon. Freda L. Wolfson, U.S.D.J., entered an Order appointing attorneys from three law firms as Interim Co-Lead Class Counsel. ECF No. 39. I am one of those attorneys and have handled the matter since as an Interim Co-Lead Class Counsel.¹

¹ Those counsel were Matthew D. Schelkopf and me, at our former law firm of Chimicles Schwartz Kriner & Donaldson-Smith LLP (“Chimicles”), Bruce D. Greenberg of Lite DePalma Greenberg, LLC, and Daniel Hogan and Michael Hopkins of Law Offices of Robert A. Stutman, P.C. (“Stutman”). In February 2016, Mr. Schelkopf and I left Chimicles for another firm, McCune Wright & Arevalo, and subsequently, in March 2018, we formed Sauder Schelkopf LLC. The Court entered Orders designating Steven A. Schwartz of Chimicles as

13. On October 20, 2014, NIBCO filed a motion to dismiss, in substantial part, the Amended Complaint. ECF No. 38. After extensive briefing in response and reply, ECF Nos. 44, 45, 46, Judge Wolfson entered an Order and a 29-page opinion on May 20, 2015 that granted NIBCO's motion in part, with leave to amend, and denied it in part. ECF Nos. 48, 49.

14. Following continued factual and legal investigation into the claims of the Plaintiffs and putative class, Plaintiffs then filed a Second Amended Complaint ("SAC") on June 19, 2015. ECF No. 50. The SAC added certain additional legal theories to those previously asserted. NIBCO filed a motion to dismiss the SAC, in part, on July 20, 2015, ECF No. 53, and response and reply briefs followed, ECF Nos. 65, 67.

15. On February 26, 2016, Judge Wolfson entered a 47-page opinion and a companion Order that granted in part and denied in part NIBCO's motion to dismiss as to the SAC. ECF Nos. 84, 85. The Court permitted certain strict product liability claims arising from manufacturing defects or failure to warn, the breach of implied warranty of merchantability claims of Plaintiffs McMahon and

Chimicles' representative on the Interim Class Counsel team, and continuing my and Mr. Schelkopf's roles as Interim Class Counsel following our moves. ECF Nos. 80, 86. Stutman withdrew from the case. *See* ECF Nos. 75, 79. Thus, as of when the settlement of this and the parallel *Meadow* case was achieved, Interim Class Counsel in the present case consisted of myself and Mr. Schelkopf, and Messrs. Greenberg and Schwartz, on behalf of our three law firms.

the Pepernos, certain strict product liability claims arising from design defects that were asserted by Plaintiffs Monica, Sminkey, and McCoy, certain claims for negligent formulation, testing, design, manufacture, and failure to warn asserted by Plaintiffs Boyd, McMahon, Sminkey, the Medders, the Pepernos, and McCoy (except, as to the Pepernos and McCoy, their claims relating to negligent testing) to proceed past the pleadings stage. *Id.* NIBCO filed an Answer to the SAC on March 11, 2016. ECF No. 87.

16. A separate case, *Meadow et al. v. NIBCO, Inc.*, No. 3:15-cv-1124, alleging the same defects in the same NIBCO Covered Products, was filed on October 26, 2015 in the United States District Court for the Middle District of Tennessee. The *Meadow* Court granted in part and denied in part a motion by NIBCO to partially dismiss that case. *Meadow* ECF No. 62. Class Counsel in the present case and counsel for the *Meadow* plaintiffs then agreed to coordinate all discovery in the two cases to avoid duplication of effort and to minimize expense. The firms in the two cases worked together closely on all case matters and in negotiating the settlement to achieve the classwide result here. The history of the *Meadow* case is discussed further in the accompanying Declaration of Shanon J. Carson of Berger Montague PC, one of the law firms who filed the *Meadow* action.

C. The Voluminous Fact and Expert Discovery Taken by the Parties

17. The parties engaged in exhaustive discovery in the two cases. Even

before receiving the Court's decision on the motion to dismiss the SAC, Plaintiffs in this matter had served multiple rounds of extensive discovery requests on NIBCO, issued subpoenas to a number of third parties, received and analyzed over 165,000 pages of documents produced by NIBCO and over 10,000 pages of documents produced by third parties, retained experts, and responded to written discovery served by NIBCO on each of the many Plaintiffs. Plaintiffs' discovery efforts continued thereafter, including an application for letters rogatory to obtain discovery from a Canadian entity, Jana Labs, which Judge Bongiovanni granted. *See* ECF Nos. 96, 98, 99.

18. NIBCO inspected the homes of each Plaintiff in this case and most of the Plaintiffs in *Meadow*, and Plaintiffs' counsel and/or their expert, Cynthia Smith of Paragon Polymer Consultants in Mooresville, NC, were present at each such inspection. The inspections in *Cole* took place at eight different homes in seven states (Alabama, Georgia, New Jersey, Oklahoma, Pennsylvania, Tennessee, and Texas). Three more homes were inspected in *Meadow* (one more in Alabama, one more in Tennessee, and South Carolina). NIBCO took fourteen plaintiff depositions between this case and *Meadow*, including the deposition of five plumbers in the *Cole* case. Plaintiffs took eleven fact discovery depositions, including depositions of nine NIBCO employees and former employees, as well as

the deposition in Canada of Jana Laboratories, a third party that had worked closely with NIBCO on certain of the Covered Products at issue in these cases.

19. The Parties also retained expert witnesses. Plaintiffs offered Ms. Smith as an expert in PEX plumbing and metallurgy and Ed Slovak of Delta Mechanical, Inc. in Mesa, AZ, as their expert on plumbing repair costing. NIBCO presented its own metallurgist, Eric Weishaupt of Engineering and Scientific Investigation (“ESI”), Robert Jalnos, a plumber from San Antonio, TX, and two engineers, Donald E. Duvall and Anand R. Shah of ESI. Each of these professionals, on both sides, prepared a written report (Messrs. Duvall and Shah offered a joint report), and Ms. Smith prepared a rebuttal report. Each expert was deposed by the opposing Party.

D. Motion Practice: Plaintiffs’ Motions for Class Certification, NIBCO’s Motions for Summary Judgment, and Expert Exclusion Motions by Both Sides

20. On March 21, 2017, the *Cole* Plaintiffs filed a motion for class certification. ECF Nos. 108, 109, 110, 111. NIBCO filed its opposition to that motion on June 9, 2017. ECF No. 120. On that same date, NIBCO filed a motion for summary judgment as to virtually all of Plaintiffs’ remaining claims. ECF Nos. 118, 119. Plaintiffs filed an opposition to that motion on July 28, 2017. ECF Nos. 131, 132, 133, 134.

21. Also, on July 28, 2017, the parties in this action filed motions to exclude or limit each other's expert witnesses under *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). Plaintiffs moved to bar NIBCO's metallurgist, Dr. Weishaupt, ECF No. 135, its plumber, Mr. Jalnos, ECF No. 137, and the two engineers, Messrs. Duvall and Shah, ECF No. 140. NIBCO, conversely, sought to exclude Plaintiffs' plumbing expert, Mr. Slovak, ECF No. 138, and their metallurgist (and expert on the reasons that the Covered Products failed), Ms. Smith, ECF No. 139. Thereafter, the parties filed responses and replies on the class certification, summary judgment, and *Daubert* motions, with the last of those submissions on September 1, 2017. ECF Nos. 142, 143, 144, 145, 146, 147, 150, 151, 152, 153, 154, 155, 156.

22. *Meadow* too proceeded through the filing of a motion for class certification by the Plaintiffs there, and the parties completed briefing on that motion on September 13, 2017. *Meadow* ECF Nos. 125, 126 (Plaintiffs' reply submission).

E. The Lengthy Settlement Mediation Process, With Two Mediators

23. Settlement negotiations first took place on August 17, 2016, when the parties in both actions attended a settlement conference in Philadelphia, Pennsylvania. Bruce Greenberg and I attended on behalf of Plaintiffs in the *Cole* action, and Lawrence Deutsch and Jacob Polakoff of Berger Montague PC

attended on behalf of the *Meadow* plaintiffs. This conference did not result in the resolution of either action.

24. Having obtained an appreciation of the risks and likelihoods in the two cases after the extensive discovery and motion filings, the parties proceeded to mediation. They retained Hon. Wayne R. Andersen, U.S.D.J. (Ret., N.D. Ill.), to act as a settlement mediator. The parties mediated with Judge Andersen in Chicago, IL on June 12 and December 13, 2017, and January 29 and 30, 2018.² When issues of NIBCO's insurance coverage became critical for resolution, the parties brought in a second mediator, Ross R. Hart, Esq., of Los Angeles, CA. Plaintiffs and NIBCO mediated with Judge Andersen and Mr. Hart together on March 11 and 12, 2018, and with Mr. Hart alone on April 17, 2018. I personally attended each mediation session and took a lead role in the negotiations. In addition to the mediation sessions, I also led dozens of teleconferences with the mediators between mediation sessions in order to continue negotiating a potential resolution.

25. The total of seven mediation sessions with Judge Andersen and/or Mr.

² To allow the mediation proceedings to mature, in October 2017, Judge Bongiovanni entered Orders in this action administratively terminating all the pending motions, ECF No. 157, and then the entire case, ECF No. 158. In *Meadow*, the parties filed on October 4, 2017 a joint motion to stay the case to permit the parties to focus on mediation. *Meadow* ECF No. 128. The *Meadow* court granted that motion on October 6, 2017. *Meadow* ECF No. 129.

Hart, and dozens of teleconferences between each mediation session, enabled the parties to make progress toward a settlement and complete negotiations of a detailed, single-spaced 20-page Memorandum of Understanding (“MOU”), that ultimately was signed on July 20, 2018.

26. The parties then proceeded to negotiate a formal Settlement Agreement, which became fully-executed on October 26, 2018. A true copy of that Settlement Agreement (“SA”) is attached as Exhibit A.

F. The Terms of the Settlement

27. The settlement creates a common fund of \$43.5 million. SA, ¶¶1.s, 5. Class members will be able to make claims against that fund for water damage caused by Qualifying Leaks. SA, ¶13. A Qualifying Leak is defined as “a physical escape of water from [any of the Covered Products] causing damage,” except for leaks resulting from intervening causes, such as improper installation by a plumber, penetration of a NIBCO PEX product by a nail, or other specified causes for which the NIBCO product is not at fault. SA, ¶1.ff.

28. Claims will be submitted to a neutral Settlement Administrator, Angeion Group, LLC (“Angeion”), which has significant experience in such a role. Settlement Class Members can seek compensation from the settlement fund for “Reasonably Proven Property Damage,” which is defined to include repair or replacement of the NIBCO PEX products as a result of a Qualifying Leak, the

repair or replacement of other property damaged as a result of a Qualifying Leak, and material and labor costs necessary to restore the affected property or structure to its condition prior to the Qualifying Leak. SA, ¶1.jj.

29. Settlement Class Members need not submit any unusual proofs in order to obtain compensation; receipts, invoices, expense records, credit card statements, and other readily available “verifiable indicia of such costs incurred” will suffice. *See* SA, ¶13. Claims can be filed electronically through the settlement website discussed *infra*, making it easier for Settlement Class Members to realize the benefits of the settlement. *See* SA, ¶25.f(iv).

30. The settlement covers not only claims for past property damage that occurred from January 1, 2005 through the Effective Date of the settlement, but also enables Settlement Class Members who experience Qualifying Leaks at any time within the six-year period after the Effective Date (defined as the “Claim Period”) to make claims for compensation. *See* SA, ¶9.a, .b.

31. Moreover, Settlement Class Members who have suffered three or more separate Qualifying Leaks may exercise the option to obtain a re-plumb of their entire residence or structure. SA, ¶9.c. The re-plumb will be compensated at the sum of \$600 per full plumbing fixture (*e.g.*, sink, washing machine, etc.) in the structure and \$300 per half fixture (*e.g.*, toilet), up to a maximum re-plumb expense of \$16,000. *Id.* The \$600 per fixture re-plumb is based on the opinion of

Plaintiffs' plumbing expert, Mr. Slovak, from his experience in re-plumbing homes.

32. Settlement Class Members who claim against the settlement fund will receive up to 70% of their claimed losses from the fund. SA, ¶9.a, .b. However, in order to ensure that the settlement fund is sufficient to treat all Settlement Class Members and their claims equally, Eligible Claimants initially will receive 25% of eligible damages. *Id.* By the end of the Claim Period, when all claims have been submitted, supplemental disbursements will be made so that each Eligible Claimant receives the same percentage, up to 70%. *Id.* Class Counsel will monitor the claim activity to determine whether it would be appropriate to accelerate the subsequent distribution upon approval by the Court.

33. The \$43.5 million Gross Settlement Fund will cover the reasonable costs of class notice and administration. SA, ¶1.s, .kk. Class Counsel are seeking an attorneys' fee of \$12,999,975 (29.885% of the class fund), plus costs of \$1,095,000, from the Gross Settlement Fund for their work in achieving this remarkable result for the class. SA, ¶41.a. Finally, a Service Award of up to \$10,000 is being sought for each Plaintiff (or, in the case of married Plaintiffs, each couple) commensurate with their respective efforts to prosecute this case to a successful conclusion, as discussed in more detail below. *Id.*

34. In consideration of the settlement benefits, NIBCO and others in the chain of distribution will receive a general release from claims arising from or related to the claims that were asserted or could have been asserted in the complaints, SA, ¶34; however, the release does not include personal injury claims, SA, ¶35. Also excluded from the Release are claims alleging that a party or parties other than NIBCO are wholly responsible for a leak of one of the Covered Products, such as a leak resulting from the physical penetration by a nail or leaks resulting from the improper attachment of a Covered Product. SA, ¶35.

G. Notice to the Class

35. To ensure that Settlement Class Members receive notice of pendency and notice of settlement that comply with Rule 23 and due process, the Parties agreed to, and the Court's Preliminary Approval Order directed, a comprehensive, multi-pronged notice plan to be implemented by Angeion. SA, ¶25; ECF No. 177, at 5-6. As of December 29, 2018, Angeion sent notice and a claim form by first-class mail to all Settlement Class Members for whom NIBCO or Plaintiffs' Co-Lead Class Counsel have contact information. SA, ¶25.a, .d.

36. There has also been extensive publication notice, including a press release, a short-form notice published in print and digital/internet media calculated to reach owners of residential and commercial property, as well as plumbers (who are often the purchasers of the Covered Products), as well as a summary notice

published in nationwide plumber trade magazines, in order to target plumbers further. SA, ¶25.b, .c, .e. Angeion also disseminated e-mail notices to 31,527 decision-makers at water damage repair companies; 48,168 decision-makers at homeowners' insurance companies; and 162,094 plumbers nationwide.

37. In addition, Angeion established a Settlement Website, www.pexsystemsettlement.com. SA, ¶25.f. The website contains (i) information concerning deadlines for filing a Claim Form, and the dates and locations of relevant Court proceedings, including the Final Approval Hearing; (ii) a toll-free phone number applicable to the settlement (discussed further *infra*); (iii) copies of the Settlement Agreement, the Notice of Settlement, the Claim Form, Court Orders regarding this settlement, and other relevant Court documents, including these motion papers attorneys' fees, reimbursement of expenses, and Service Awards for Plaintiffs; and (iv) information concerning the submission of Claim Forms, including the ability to submit Claim Forms electronically using an electronic signature service such as DocuSign through the Settlement Website. *Id.* Settlement Class Members can also submit questions through the Settlement Website.

38. Finally, Angeion has set up and maintained a toll-free telephone number, 1-855-649-5968, to receive requests for Claim Forms, the Notice of Settlement, and other relevant documents, and provide callers with information

about such things as relevant deadlines and dates and locations of Court proceedings. SA, ¶25.g. Callers can speak with live telephone operators during normal business hours in order to get questions about the settlement answered.

39. To date, no objections to the settlement have been received, and only one request for exclusion has been received. The deadline for objections and exclusions is February 27, 2019. As of January 24, 2019, there have been 247,291 notices sent, 13,802 unique website visits, and 214 phone calls made to the Claims Administrator.

H. Class Counsel's Fee and Expense Request

40. As stated above, the *Cole* case was primarily litigated by me, Mr. Schelkopf, and Joseph Kenney of Sauder Schelkopf LLC,³ Lite DePalma Greenberg, LLC ("LDG"), and attorneys from our former firm Chimicles Schwartz Kriner & Donaldson-Smith LLP.⁴

41. The *Meadow* case was primarily litigated by Berger Montague PC and a group of several additional firms as described in the Declaration of Shanon

³ As stated in footnote 1, Mr. Schelkopf and I were partners at Chimicles from the initiation of this litigation until February of 2016. We were then partners at McCune Wright Arevalo until February of 2018. On March 1, 2018, we became the founding partners of Sauder Schelkopf LLC. Mr. Kenney has been our associate at each of those firms. The term "firm" used herein shall refer to each of these firms during the time I was employed by each.

⁴ The qualifications of the Chimicles attorneys that participated in this litigation are included in the firm resume attached hereto as Exhibit E.

J. Carson. Counsel in the *Cole* and *Meadow* cases worked cooperatively by dividing assignments throughout the case to achieve efficiencies and save costs.

42. As a result of the cooperation between the two cases, all Class Counsel agreed among themselves that Sauder Schelkopf LLC and Berger Montague PC would lead Class Counsel's team. Consequently, those two firms, along with LDG, incurred the lion's share of the lodestar in these cases. Details of the lodestars of those firms are contained in the accompanying Declarations of Bruce D. Greenberg and Shanon J. Carson, respectively. In total, the lodestar of those two law firms and my firms amounts to \$8,220,894.85. A lodestar cross-check against the 29.885% (\$12,999,975) fee from the Gross Settlement Fund reveals that the lodestar multiplier from those firms and my firm alone, without even considering any of the other firms who worked in these cases, is 1.58. Were the lodestar of those other firms submitted to the Court and added to the lodestar cross-check, the multiplier amounts to 1.33.

43. Attached as Exhibit B is a summary of my firms' lodestar, grouped by category of work performed and by professional who worked in these cases. I prepared those figures from computerized records, which reflect detailed and contemporaneous and daily time entries by all professionals who work on matters. Those time records are regularly maintained in the ordinary course of its business, and will be made available to the Court *in camera* upon the Court's request, since

the records may contain privileged or confidential information relating to attorney-client communications or work product. In preparing the figures, I also exercised billing judgment to reduce or exclude time entries that would not be billable to hourly clients. Finally, time incurred by personnel who billed fewer than ten hours has been omitted entirely from these summaries.

44. The hourly rates shown are the firm's current, standard hourly rates, except that for personnel who are no longer employed by those firms, the hourly rate used is the one applicable to any such person's final year of employment with the firm. The hourly rates shown have been billed to and paid by hourly clients of each firm and have been accepted in other class action cases of varying types by courts in this District and elsewhere. *See, e.g., Desio v. Insinkerator*, No. 15-cv-00346-SMJ (E.D. Wash. Feb. 7, 2018) (products class action); *Traxler v. PPG Industries*, No. 1:15-cv-00912 (N.D. Ohio August 23, 2017) (products class action); *Tolmasoff v. General Motors, LLC*, No. 2:16-cv-11747 (E.D. Mich. Nov. 6, 2017) (automotive defect class action); *Lewis v. Green Dot Corp.*, No. 2:16-cv-03557 (C.D. Cal. Nov. 22, 2017); and *Klug v. Watts Regulator Co.*, No. 8:15-cv-00061 (D. Neb. Apr. 13, 2017) (plumbing product class action); *McCoy v. North State Aviation, LLC*, No. 1:17-cv-00346 (M.D.N.C. June 15, 2018) (federal WARN Act litigation); *Henderson v. Volvo Cars of N. Am. LLC*, No. 09-cv-4146

(D.N.J. Mar. 22, 2013); *Yaeger v. Subaru of Am., Inc.*, No. 14-cv-04490 (D.N.J. Aug. 31, 2016).⁵

45. As reflected in Exhibit B, my firms' total lodestar, as of December 31, 2018, is \$2,686,916.50, representing 4,706 hours of work. Additional lodestar will be incurred for briefing the issue of final settlement approval, preparation for and participation in the Final Approval Hearing, dealing with any objections, and other tasks going forward. Thus, the attached figures necessarily understate the ultimate total lodestar that my firm will ultimately incur.

46. Our role in these cases included, among other things, the following activities: (a) significant pre-suit factual investigation of the Covered Products, including the retention of a consultant (b), legal research prior to the filing of the *Cole* Complaint, and throughout the case on various issues, (c) reviewing and revising the draft of the original *Cole* Complaint, (d) participation in all phases of discovery, including participation in the preparation of paper discovery to be served on Defendant and responding to paper discovery served by NIBCO on

⁵ The Chimicles Firm has also had its rates accepted in other class action cases of varying types by courts in this District and elsewhere. *Rodman v. Safeway*, No. 3:11-cv-03003-JST (N.D. Cal.), August 23, 2018 Order at Dkt. No. 496 at 11-12 (approving CSK&DS rates in connection with \$42 million full-recovery judgment affirmed on appeal); *Chambers v. Whirlpool Corp.*, 214 F. Supp. 3d 877, 889 (C.D. Cal. 2016) (approving CSK&DS rates in contested fee petition over defendants' objections); *Demarco v. Avalon Bay Communities, Inc.*, No. 2:15-628 (D.N.J.), July 11, 2017 Order; Dkt. No. 223 at ¶18 (same).

Plaintiffs (the Coles, James Monica, Linda Boyd, Ray Sminkey, and Michael McMahon, the Medders, the Pepernos, and Kelly McCoy), (e) participation in the preparation of Plaintiffs' Amended Complaint, SAC, and TAC, (f) significant contributions in the briefing of all motions in *Cole*, including Defendant's two motions to dismiss, Plaintiffs' motions for leave to file Amended Complaints, Plaintiffs' motion for class certification, Defendant's motion for summary judgment, Plaintiffs' motions to exclude Defendant's experts, and Defendant's motions to exclude Plaintiffs' experts, (g) participation in working with Ms. Smith, one of Plaintiffs' expert witnesses, (h) taking a Rule 30(b)(6) deposition of Defendant, (i) defending the depositions of the Coles and Mr. Monica, as well participating in depositions of the plumbers for those Plaintiffs, (j) handling telephone and e-mail contacts from numerous class members or potential class members, (k) defending the deposition of Plaintiffs' expert, Mr. Slovak, in Arizona, (l) participating in all mediation sessions with Judge Andersen and/or Mr. Hart, (m) participating in the preparation and revision of the detailed Memorandum of Understanding between the Parties, and the Settlement Agreement that followed, and (n) briefing Plaintiffs' motions for preliminary and final settlement approval, and (o) (it is currently anticipated) attending and participating in the Final Approval Hearing.

47. Our lodestar figures are based solely on the firm's billing rates, which rates do not include charges for expense items. Expense items are billed separately (see discussion of expenses below), and such items are not duplicated in the firm's billing rates.

48. We have incurred a total of \$369,337.66 in unreimbursed expenses in prosecuting this litigation. These expenses include amounts billed by experts but not yet paid. The expenses are reflected on the books and records of each firm, which are summarized by category in the attached Exhibit C and are available in full at the request of the Court. The firm's books and records are prepared from expense vouchers, check records, and other source materials and are an accurate record of the expenses as charged by vendors or others. Third-party expenses are not marked up. Each category of expense is one that is traditionally incurred in complex class actions, and for which reimbursement is made when plaintiffs have been successful.

49. Attached as Exhibit D is a true copy of Sauder Schelkopf's current firm resume which describes the experience and credentials of the firm's attorneys. Additional information about the firm is available at on our www.sauderschelkopf.com.

I. The Request for Service Awards to Plaintiffs

50. The Coles and Mr. Monica filed the original Complaint in the *Cole*

matter in December 2013 and have been involved in that case ever since. Ms. Boyd, Mr. McMahon, Mr. Sminkey, the Medders, the Pepernos, and Mr. McCoy joined the *Cole* case when Plaintiffs there filed their Amended Complaint on October 6, 2014. They too have been involved in that case ever since.

51. Mr. Meadow, the Pliskos, and Mr. McLaughlin filed the original Complaint in the *Meadow* action on October 26, 2015. They have been involved in that case ever since.

52. All of the Plaintiffs named in the preceding two paragraphs answered interrogatories and produced documents in response to written discovery propounded on them by NIBCO. All of them had their homes inspected by NIBCO's experts and had their depositions taken.

53. Plaintiffs stayed in regular contact with Class Counsel as to the status of their respective cases during their pendency. The Plaintiffs with whom I, in particular, was in contact during the case were the Coles, Mr. Sminkey, Mr. Monica, and Mr. McMahon. Then, when the proposed Settlement was reached, I communicated with each of those Plaintiffs about the terms of the Proposed Settlement, by e-mail and telephone, and I addressed all questions that any of them had about the Settlement. Only then did each of those Plaintiffs give the Settlement their approval.

54. The remaining Plaintiffs, Ms. Watts, Mr. Kenny, and the Davises, joined the case when Plaintiffs filed their TAC on November 1, 2018. They did not have to respond to discovery or have their homes inspected as the other Plaintiffs did.

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

Dated: January 30, 2019

/s/ Joseph G. Sauder
Joseph G. Sauder