

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

KIMBERLY COLE, *et al.*, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

NIBCO, INC.,

Defendant.

Civil Action No. 13-cv-7871 (FLW)(TJB)

**DECLARATION OF STEVEN WEISBROT
ON BEHALF OF ANGEION GROUP, LLC**

I, Steven Weisbrot, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. I am a partner at the class action notice and settlement administration firm Angeion Group, LLC (“Angeion”). I am fully familiar with the facts contained herein based upon my personal knowledge.

2. I have been responsible in whole or in part for the design and implementation of hundreds of class action administration plans and have taught numerous accredited Continuing Legal Education courses on the Ethics of Legal Notification in Class Action Settlements, using Digital Media in Class Action Notice Programs, as well as Class Action Claims Administration, generally. I am the author of frequent articles on Class Action Notice, Class Action Claims Administration, and Notice Design in publications such as *Bloomberg*, *BNA Class Action Litigation Report*, *Law360*, the *ABA Class Action and Derivative Section Newsletter*, and numerous other publications.

3. I am a certified professional in digital media sales by the Interactive Advertising Bureau (“IAB”) and I am co-author of the Digital Media section of Duke Law’s soon-to-be

published *Guidelines and Best Practices—Implementing 2018 Amendments to Rule 23*.

4. I have given public comment and written testimony to the Judicial Conference Committee on Rules of Practice and Procedure on the role of direct mail, email, digital media and print publication, in effecting Due Process notice, and I have met with representatives of the Federal Judicial Center to discuss the proposed amendments to Rule 23 and suggest educational programs for the judiciary concerning class action notice procedures.

5. Prior to joining Angeion’s executive team, I was employed as Director of Class Action services at Kurtzman Carson Consultants, an experienced class action notice and settlement administrator. Prior to my notice and claims administration experience, I was employed in private law practice and I am currently an attorney in good standing in the State of New Jersey and the Commonwealth of Pennsylvania.

6. My work as a notice administrator in class action settlements includes a wide range of class action lawsuits that include product defect, false advertising, employment, antitrust, tobacco, banking, firearm, insurance, and bankruptcy cases. I have been instrumental in infusing digital media, as well as “big data” and advanced targeting, into class action notice programs.

7. Federal courts have recognized and approved of my work in the design of class action notice programs. *See, e.g., In Re: Pool Products Distribution Market Antitrust Litigation*, MDL No. 2328 (E.D. LA December 31, 2014); *James Roy, et al. v. Titeflex Corporation, et al.*, No. 384003V (Md. Cir. Ct. February 24, 2017); *In Re Whirlpool Corporation Front Loading Washer Products Liability Litigation*, MDL No. 2001 (N.D. Ohio May 12, 2016); *In Re LG Front Load Washing Machine Class Action Litigation*, No. 08-51 (MCA) (LDW) (D.N.J. June 17, 2016).

8. By way of background, Angeion is a class action notice and claims administration

company formed by a team of executives that have had extensive tenures at five other nationally recognized settlement administration companies. Collectively, the management team at Angeion has overseen more than 2,000 class action settlements and distributed over \$10 billion to class members. The executive profiles as well as the company overview are available at http://www.angeiongroup.com/meet_the_team.htm.

9. This declaration describe the Notice Plan that Angeion has proposed to use in this Litigation, including certain considerations that informed the development of the Notice Plan, and why it will provide due process to the Settlement Class.

SUMMARY OF NOTICE PLAN

10. Angeion believes that the Notice Plan is the best notice that is practicable under the circumstances and fully comports with due process and Rule 23 of the Federal Rules of Civil Procedure. The Notice Plan incorporates a combination of direct mail notice, email notice, state-of-the-art targeted internet banner ad notice, traditional publication notice, a press release and the creation of a Settlement Website, www.pexsystemsettlement.com, to reach members of the Settlement Class.

11. The Notice Plan's robust internet banner advertisement campaign, combined with traditional print publication, a press release and the other forms of notice set forth and detailed in the Settlement Agreement, is designed to reach an overinclusive target audience described below.

12. The Notice Plan also includes an informational Settlement Website and toll-free telephone line where the Settlement Class can learn more about their rights and options regarding the Settlement. The Notice Plan is the best notice that is practicable and in Angeion's experience, is equivalent or superior to notice campaigns approved in similar class action settlements.

13. The comprehensive internet notice program is designed to deliver an approximate 76.02% reach with an average frequency of 3.03 times. In practice, this means that approximately 76.02% of our target audience will see an advertisement concerning the Settlement, and on average, 3.03 times each.

14. The Federal Judicial Center states that a publication notice plan that reaches 70% of class members is one that reaches a “high percentage” and is within the “norm”. Barbara J. Rothstein & Thomas E. Willging, Federal Judicial Center, “Managing Class Action Litigation: A Pocket Guide for Judges,” at 27 (3d ed. 2010).

CLASS DEFINITION

15. The “Settlement Class” is defined in the Settlement Agreement as:

All Persons that own or have owned at any time since January 1, 2005, a residential or commercial structure in the United States that contains or contained NIBCO’s Tubing, Fittings, or Clamps, including their spouses, joint owners, heirs, executors, administrators, mortgagees, tenants, creditors, lenders, predecessors, successors, trusts and trustees, and assigns (“Occupant Persons”); as well as all Persons who have standing and are entitled to assert a claim on behalf of any such Occupant Persons, such as but not limited to a builder, contractor, distributor, seller, subrogated insurance carrier, or other Person who has claims for contribution, indemnity or otherwise against NIBCO based on claims for Qualifying Leaks of the Tubing, Fittings, or Clamps with respect to such residential or commercial structures. The Settlement Class includes all Persons who subsequently purchase or otherwise obtain an interest in a property covered by this Settlement without the need of a formal assignment by contract or court order.

Excluded from the Settlement Class are Occupant Persons with respect to residential structures constructed by D.R. Horton, Inc.-Birmingham (including, but not limited to, those for which the plumbing contracting was performed by or on behalf of Dupree Plumbing Co. Inc.) and which are located in the following cities in Alabama: Bella Vista; Bessemer; Birmingham; Calera; Chelsea; Cottondale; Hoover; Kimberly; Leeds; Maylene; McCalla; Montgomery; Northport; Odenville; Pinson; Prattville; Springville; Trussville; and Tuscaloosa. Also excluded from the Settlement Class are Occupant Persons with respect to residential structures

constructed by Continental Homes of Texas, L.P. (including, but not limited to, those for which the plumbing contracting was performed by or on behalf of Christianson Air Conditioning and Plumbing, LLC) and which are located in the following cities in Texas: Boerne; Cibolo; Converse; Live Oak; Medina County; New Braunfels; Royse City; San Antonio; San Marcos; Schertz; Sequin; and Universal City. A list of such residential structures in Alabama and Texas covered by this exclusion will be provided to the Settlement Administrator and made available on the Settlement Website. Also excluded from the Settlement Class are D.R. Horton, Inc.-Birmingham, Dupree Plumbing Co. Inc., Continental Homes of Texas, L.P., and Christianson Air Conditioning and Plumbing, LLC, solely with respect to the structures identified in that list.

Also excluded from the Settlement Class are: (i) NIBCO, its officers, directors, affiliates, legal representatives, employees, successors, and assigns, and entities in which NIBCO has a controlling interest; (ii) judges presiding over the Litigation; and (iii) local, municipal, state, and federal governmental entities.

MAILED NOTICE

16. The direct notice effort in this Litigation will consist of Angeion preparing and mailing the Notice of Settlement and Claim Form (collectively, "Notice"), first class postage prepaid, to all Settlement Class Members who are identifiable through reasonable means. Angeion has been informed that both NIBCO and Class Counsel will provide reasonably available information that identifies thousands of Settlement Class Members from their existing records, including, without limitation, from NIBCO's claims and warranty database.

17. To obtain the most current mailing addresses for Settlement Class members whose contact information is provided to Angeion, the addresses provided will be processed through the United States Postal Service ("USPS") National Change of Address ("NCOA") database. This process provides updated addresses for individuals who have moved within the past four years and who filed a change of address card with the USPS.

18. Similarly, in an effort to deliver Notices to the intended recipients, the Notice Plan provides for the following: (a) notices that are returned as undeliverable by the USPS and have a forwarding address will be re-mailed to that forwarding address; and (b) notices that are returned as undeliverable by the USPS without a forwarding address will be subject to address verification (“skip tracing”), utilizing a wide variety of data sources, including public records, real estate records, electronic directory assistance listings, *etc.*, to locate updated addresses. Notices will then be re-mailed by Angeion to Settlement Class Members’ updated addresses located through skip tracing.

EMAIL NOTICE

19. The Notice Plan also includes the purchase of several comprehensive email lists that will significantly expand the scope of the Notice Plan. These lists include 31,527 decision-makers at water damage repair companies; 48,168 decision-makers at homeowners’ insurance companies; and 162,094 plumbers nationwide. This email notice campaign will help disseminate news of the Settlement not only to potential Settlement Class Members, but also to individuals likely to understand, be attuned to, and spread news of the Settlement to Settlement Class Members.

20. Below I have outlined some of Angeion’s practices to increase deliverability and readability of email notice. Specifically, Angeion will employ the following best practices regarding the email notice.

21. As an initial matter, Angeion designs the email notice to avoid common “red flags” that might otherwise cause the recipient’s spam filter to block the email notice or identify it as spam. For example, Angeion will not include the Claim Form or long form Notice of Settlement as an attachment to the email notice because attachments are often interpreted by various Internet

Service Providers (“ISP”) as spam. Rather, in accordance with industry best practices, Angeion will include electronic links to all operative documents so that recipients can easily access this information.

22. Angeion also accounts for the reality that some emails will inevitably be blocked during the initial delivery attempt. Therefore, after the initial noticing campaign is complete, Angeion, after an approximate 12-24-hour rest period, which allows any temporary block at the ISP level to expire, will direct a second round of email notice to any email addresses that were previously blocked. In Angeion’s experience, this minimizes the number of emails that may have erroneously been blocked by sensitive servers.

MEDIA NOTICE TARGET AUDIENCE

23. The Notice Plan in this Settlement also contemplates and includes a robust digital media campaign to reach the Settlement Class. The definition of the Settlement Class and additional factors regarding the Settlement Class were used as the starting point to create the media notice program. Specifically, to create the program and verify its effectiveness, our media team analyzed syndication data from 2018 comScore and GfK MRI Media + Fusion to profile the Settlement Class and arrive at the “Target Audience” definition. The following target definition was used to profile Settlement Class members and create an appropriate Target Audience:

- Home Improvements Household Purchased Last 12 Months [Other bathroom or kitchen plumbing fixtures]; and
- Own or Rent Home [Own]

24. Based on the target definition, the potential audience size is estimated at approximately 10,732,000. This Target Audience is significantly overinclusive in that it includes all people who have had work done on their plumbing fixtures as opposed to just those who may

have utilized a NIBCO product. Moreover, we have been advised by counsel that there are an estimated (by NIBCO) 157,700 to 400,000 structures in the United States covered under the Settlement Class definition. Nevertheless, the Target Audience, based on objective syndicated data, will allow the Parties to report the reach and frequency to the Court with confidence that the reach within the Target Audience and the number of exposure opportunities comply with Due Process and exceed the Federal Judicial Center's thresholds for reasonableness in notification programs.

25. Understanding the socioeconomic characteristics, interests and practices of a target group aids in the proper selection of media to reach that target. Here, the Target Audience has the following characteristics:

- Adults ages 35-65 with an average age of 49
- 66.97% are married
- 55.15% have a college degree
- 60.45% live in households with total income over \$75K
- 62.97% are employed, with 51.13% working full time

26. To identify the best vehicles to deliver messaging to the Target Audience, media quintiles were reviewed, which measure the degree to which an audience uses media relative to the general population. Here, the objective syndicated data demonstrates that members of the Target Audience use the internet an above-average twenty (20) hours per week and read an average of six (6) magazine issues per month.

27. Given the strength of digital use as well as our Target Audience's known magazine use, we recommended utilizing traditional print publication, combined with a robust internet advertising campaign to reach members of the Settlement Class with respect to the Notice Plan. This media schedule will allow Angeion to deliver an effective reach level for notice messaging while maximizing efficiencies.

ONLINE NOTICE

28. A programmatic approach to internet purchasing will be utilized. Through this approach, Angeion will be able to focus solely on reaching the prototypical individual Settlement Class member, rather than allocating resources to determine which specific websites would be most appropriate based on a demographic profile. In short, we rely on advanced targeting, machine learning, and a known and verifiable Target Audience profile, to ensure that we are reaching members of the Target Audience online. Purchasing display and mobile inventory programmatically provides the highest reach, allows for multiple advanced targeting layers, and offers the most cost-efficient rates to reach potential Settlement Class members.

29. More specifically, multiple targeting layers will be implemented to help ensure delivery to the most appropriate users, including the use of search targeting, category contextual targeting, keyword contextual targeting, and site retargeting. Inventory will run on desktop and mobile devices to reach the most qualified audience on the websites at which they surf, shop and play. Search terms will be relevant to the NIBCO brand. Moreover, targeting users who are currently browsing or have recently browsed content in categories such as home improvements, plumbing, and repairs, will help qualify impressions to ensure messaging is delivered to the most relevant audience. Additionally, where available, purchase data will be utilized to further qualify impressions.

30. Also included with the digital recommendation is Lotame, a demand management platform (“DMP”), as well as Integral Ad Science (“IAS”), an online ad verification and security provider, to provide a greater quality of service to ad performance. Using Lotame allows Angeion to learn more about the online audiences we are reaching. Through pixels attached behind the scenes, Angeion can and will collect data on users who are served impressions, who click, and

who convert. Demographic profiles can be developed and leveraged for immediate changes in targeting strategies to increase the overall performance of digital campaigns. The insights help Angeion to understand the type of user profile that is most valuable to campaign success. Additionally, with Lotame, Angeion can create first-party audiences based on site-traffic.

31. Angeion also utilizes Integral Ad Science (“IAS”), the leading ad verification company to recognize and foil fraudulent internet activity. IAS has received the Media Rating Council “MRC” accreditation for Sophisticated Invalid Traffic (“SIVT”) detection for desktop and mobile web traffic, which adds another critical level of safety to the notice program.

32. The internet banner notice portion of the Notice Plan will be implemented using a four-week desktop and mobile campaign, utilizing standard IAB sizes (160x600, 300x250, 728x90, 300x600, 320x50 and 300x50). A 3x frequency cap will be imposed to maximize reach. The banner notice portion of the Notice Program is designed to result in serving approximately 23,059,000 impressions.

33. Further, to track campaign success, we will implement conversion pixels throughout the Settlement Website, www.pexsystemsettlement.com, to better understand audience behavior and identify those members of the Target Audience who are most likely to convert. The programmatic algorithm will change based on success and failure to generate conversions throughout the process. Successful conversion on the Claim Form Submission button will be the primary goal, driving optimization and results.

PRINT PUBLICATION

34. In addition to the internet banner notice campaign described above, the notice program utilizes traditional print media.

35. To identify the best print vehicle for delivering the message to the Target

Audience, MRI was used to analyze and filter publications to determine the title with the highest reach against our Target Audience. *People Magazine* was chosen as the best title for this notice program due to its strong reach towards the Target Audience. One ½ page B&W insertion is recommended and will be distributed on a national level.

Publication	Circulation	Target Audience
People	3,510,533	1,663,000

36. Additionally, although neither measured nor reflected in the reported reach percentage, Angeion will utilize the following three separate industry publications to further circulate news of the Settlement among industry professionals: *PHC News*, *Plumber*, and *Plumbing Mechanical* (Circulations of: 47,000, 28,004, 49,005, respectively). At least one ½ page insertion will be utilized for each publication. Along with the email campaign described above, Angeion is utilizing the industry publications to help create awareness of the Settlement among professionals who interact with Settlement Class members regarding their plumbing connections on a day-to-day basis, to help broadly diffuse news of the Settlement.

PRESS RELEASE

37. Angeion will distribute a press release over the general national circuit on PR Newswire and will also utilize the Construction and Buildings Materials Influencer List, which directs the release to those in the construction and building industry. This distribution will help garner “earned media” separate and apart from the paid media outlined herein.

38. By specifically targeting the release to those in the building and construction press, the press release will diffuse news of the settlement to relevant parties who are likely to further share that information to their networks of clients and colleagues

RESPONSE MECHANISMS

39. As indicated above, the Notice Plan calls for creating, populating, and maintaining a Settlement Website, www.pexsystemsettlement.com, at which Settlement Class members can easily view detailed information about this Settlement, review and download relevant Court documents, and view important dates and deadlines pertinent to the Settlement and their rights.

40. The Settlement Website will be designed to be user-friendly and will make it easy for Settlement Class members to find information about the Litigation. The Settlement Website will also have a “Contact Us” page through which members of the Settlement Class can send an email with any additional questions to a dedicated email address.

41. Importantly, Settlement Class members will also be able to submit their Claim Forms and supporting documentation online via the Settlement Website.

42. A toll-free telephone hotline devoted to this Settlement will also be implemented by Angeion, to further apprise Settlement Class members of their rights and options associated with the Settlement. The toll-free telephone hotline will use an interactive voice response (“IVR”) system to provide Settlement Class members with responses to frequently asked questions and provide essential information regarding the Settlement. This hotline will be accessible 24 hours a day, 7 days a week. Settlement Class members will also have the ability to speak with a dedicated live telephone operator via the toll-free hotline during normal business hours.

REACH AND FREQUENCY

43. This declaration provides the reach and frequency evidence on which courts typically rely when reviewing class action publication notice programs for adequacy. The reach percentage and the number of exposure opportunities meet or exceed the guidelines set forth in

the Federal Judicial Center's *Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide*.

44. Specifically, the Notice Plan is designed to deliver a 76.02% reach with an average frequency of 3.03 times each. The 76.02% reach does not include the direct notice campaign to known customers, the email notice campaign to industry and insurance professionals, the industry publications, the press release, the informational Settlement Website, or the toll-free telephone hotline, as these are not readily calculated in the reach percentage but will nonetheless aid in disseminating notice of the Settlement to the Class and informing the Settlement Class members of their rights and options under the Settlement.

45. It is my opinion that the Notice Plan complies with Rule 23 of the Federal Rules of Civil Procedure, provides Due Process of Law, and is the best notice that is practicable under the circumstances.

PLAIN LANGUAGE NOTICE DESIGN

46. The Notice of Settlement and Claim Form, as well as the other notice documents, are designed to be “noticed,” reviewed, and—by presenting the information in plain language—understood by Settlement Class members. The design of the Notices follow principles embodied in the Federal Judicial Center's illustrative “model” notices posted at www.fjc.gov. The Notice forms contain plain-language summaries of key information about Settlement Class members' rights and options. Consistent with normal practice, prior to being delivered and published, all Notice documents will undergo a final edit for accuracy.

47. Rule 23(c)(2) of the Federal Rules of Civil Procedure requires class action notices to be written in “plain, easily understood language.” Angeion maintains a strong commitment to adhering to this requirement, drawing on its experience and expertise to craft notices that

effectively convey the necessary information to Settlement Class members in plain language.

48. My colleagues and I have had the opportunity to review and edit the Notice forms for this case. In my opinion, all the forms of Notice are noticeable, clear, and concise, and are written in plain, easily understood language. The Notice forms effectively communicate key information about the Settlement and are designed to alert the reader that the Notice is an important document and that the content may affect them.

CONCLUSION

49. The Notice Plan outlined above includes direct notice to all reasonably identifiable Settlement Class members. Further, the email notice to decision-makers at water damage companies, decision-makers at homeowners' insurance companies, and plumbers nationwide, will significantly expand the scope of the Notice Program. Additionally, the media notice campaign combines traditional print publication in a leading consumer magazine and in industry publications with a presse release and state-of-the-art digital banner ads that will be hyper-targeted to an overinclusive Target Audience, and which independently would provide proper notice to an absent member of the Settlement Class.

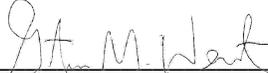
50. In my opinion, the Notice Plan will provide full and proper notice to Settlement Class members before the claims, opt-out and objection deadlines. It is also my opinion that this Notice Plan provides Settlement Class members with Due Process of Law, is the best notice practicable under the circumstances, and is in full compliance with Rule 23 of the Federal Rules of Civil Procedure.

51. After the Notice Plan is carried out, Angeion will provide a further report and declaration on its implementation and effectiveness.

NOTICE AND SETTLEMENT ADMINISTRATION COSTS

52. Angeion will provide the above-described services, the receipt and processing of all Claim Form submissions, and the distribution of Settlement benefits for a “not to exceed” amount of \$850,000.00.

Dated: October 24, 2018



STEVEN WEISBROT
ON BEHALF OF ANGEION GROUP, LLC