

**MEMORANDUM OF UNDERSTANDING
PLAINTIFFS, INDIVIDUALLY AND AS CLASS REPRESENTATIVES ON BEHALF
OF PUTATIVE TEXAS-ONLY WARRANTY SETTLEMENT CLASS**

1. Introduction

1.1 This Proposed Memorandum of Understanding (“MOU”) outlines a proposal raised during arms-length negotiations between Defendant Porcelana Corona de Mexico, S.A. de C.V and Plaintiffs Mark and Amber Fessler, Andrew Hocker, Matthew Carreras, Aaron and Stacy Stone, and Daniel Sousa (collectively “Plaintiffs”) regarding certain terms of possible settlement of the remaining claims of a putative class action lawsuit captioned *Mark Fessler, et. al. v. Porcelana Corona de Mexico, S.A. de C.V.*, currently pending as Civil Action No. 4:17-CV-00001 in the United States District Court for the Eastern District of Texas – Sherman Division (“Lawsuit”).

1.1.1 Porcelana Corona de Mexico, S.A. de C.V and Plaintiffs may be collectively referred to herein as the “Parties.”

1.1.2 Porcelana Corona de Mexico, S.A. de C.V may be referred to herein as “Settling Defendant.” “Settling Defendant” shall be defined broadly to include officers, directors, parents, subsidiaries, affiliated entities, etc.

1.2 The Parties agree to the designation and appointment of Epiq for Notice and Claims Administration. Attached to this MOU is an outlined Notice Plan prepared by Epiq and approved by the Parties.

1.3 It is expressly agreed by and among the Parties that no term in this MOU is binding upon the Plaintiffs or Porcelana unless and until the Parties reach an agreement. In the event that the Parties do not reach an agreement as to all of these matters, this MOU will have no force and effect and shall not be disclosed to any third parties or referenced or mentioned in the underlying legal action. It is expressly agreed that this MOU and the negotiations leading up to it, constitute a compromise and offers to compromise as defined in Federal Rules of Civil Procedure and Rules of Evidence.

2. Proposed Scope of Texas-Only Warranty Settlement Class – Equitable Relief

2.1 As described in the Order Granting Certification, the Texas Settlement Class-Equitable Relief is defined as follows:

All Texas owners of a Vortens toilet tank models #3464 and #3412 manufactured at the Benito Juarez plant, with a manufacturing date 2007-2010.

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- 2.2 The following persons are excluded from the Texas-only Warranty Settlement Class-Equitable Relief: a) any and all federal, state, and/or local governments including, but not limited to, their departments, agencies, divisions, bureaus, boards, sections, groups, counsels and/or subdivisions; b) any currently sitting Federal Court judge and/or justices in the current style and/or any persons within the third degree of consanguinity to such judge and/or justice; c) Defendant; d) Plaintiffs' counsel and their immediate families; and e) any person who has litigation pending against Settling Defendant as of the date the Court enters an order preliminarily approving the settlement.
- 2.3 It is further expressly agreed by and among the Parties to jointly request approval and appointment of class representatives and class counsel.
- 2.3.1 In the Motion for Preliminary Approval, the Parties will provide specific identification of Plaintiffs requested to be appointed as Texas Settlement Class-Equitable Relief Representatives.
- 2.3.2 The Parties further intend to include an agreement as to appropriate service awards for the designated Texas Settlement Class-Equitable Relief Representatives. If an agreed award amount is not included in the Motion for Preliminary Approval, Plaintiffs may request the Court approve a service award not to exceed \$7,500.00 to each Texas Settlement Class-Equitable Relief Representative.
- 2.3.3 N. Scott Carpenter and Rebecca Bell-Stanton of the firm Carpenter Schumacher, P.C. will be appointed Texas Settlement Class-Equitable Relief Counsel.

3. Scope of Equitable Relief Provided to Texas-only Warranty Settlement Class Members

- 3.1 Eligible class members are entitled to the following benefits upon submission of a claim up through and including December 31, 2020:
- 3.1.1 Injunctive Relief for the Benefit of the Class. In consideration for the settlement of this Action and the dismissal contemplated herein, Defendant agrees to the following injunctive relief:
- (a) Defendant will provide notice on its website that tank models 3464 and 3412 manufactured between January 1, 2007 and December 31, 2010 manufactured at the Benito Juarez Plant, are guaranteed to Texas owners to be free of manufacturing defects or ceramic defects up through and including December 31, 2020.

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- (b) Defendant will further provide notice on its website directing Texas owners of the subject tanks to the claim website maintained by Epiq for administration of warranty claims for Texas-only Warranty Settlement Class Members.
- (c) Porcelana will conduct an audit of previously denied warranty claims falling within the defined scope of the class. Porcelana will provide a list of homeowners with available contact information to Epiq as the Notice Provider and Claim Administrator for purposes of direct notice to these prior claimants that their previously denied warranty claim is subject to resubmission and reconsideration.
- (d) Epiq will maintain a Settlement Equitable Relief Class website that will post an agreed Texas Settlement Class claim form specific to claims asserted pursuant to this Settlement Agreement from the date of Preliminary Approval of the Settlement through and including December 31, 2020.
- (e) Defendant will not alter the Settlement Class claim procedure in any manner that increases the burden of submission or proof beyond the terms of this Settlement Agreement.

3.1.2 Declaratory Relief for the Benefit of the Class. In consideration for the settlement of this Action and the dismissal contemplated herein, Defendant further agrees to the following declaratory relief:

- (a) Class members may submit a warranty claim (or resubmit a previously denied warranty claim) for a past fracture of a tank under the following terms and entitlements:
 - i. Proof of ownership of a class tank.¹
 - ii. Class members must submit receipts or other documentary proof of replacement costs to be entitled to reimbursement.²
 - iii. Class members are entitled to recover product replacement costs only (property damage is not included in this Warranty Extension Benefit), and reimbursement is capped at \$300 per tank/toilet.

¹ Documentary proof of ownership may include photographs showing the manufacturing date stamp and the four-digit model number stamp inside the tank and/or barcode label, if any, home purchase documents, installer records, builder records, and/or deed information.

² Documentary proof of expenses includes records such as receipts, invoices, insurance claim records, and/or sufficient banking/credit purchase or expenditure documentation.

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(b) Class members experiencing a fracture event of an eligible tank between the date of Settlement Notice and the expiration of the extended warranty are entitled to replacement at no cost to the Class Member, as follows:

- i. Upon proof of fracture, Porcelana shall provide replacement tank product compatible with the particular toilet basin to be picked up by the claimant from a location no farther than 30 miles from the owner's residence at no cost to the class member. In the event a compatible replacement tank product is available but outside of the designated geographic area, the Class Member is entitled to warranty relief in the form of a single payment of \$35.00 for replacement of the fractured tank.
- ii. Upon proof of fracture and in the event the entire toilet must be replaced due to incompatibility of current Porcelana tank product and the original basin, an eligible class member is entitled to reimbursement of incurred replacement expenses not to exceed \$300. Class members must submit receipts or other documentary proof of replacement costs to be entitled to reimbursement, as well as an explanation of why there was no compatible tank available.

3.2 Defendant further agrees to the following additional terms:

Warranty claims falling within the scope of this Texas-only Warranty Class received through Defendant's website or by direct contact with the Defendant will be forwarded to Epiq within 3 (three) business days.

3.3 Class Members' Limited Release of Injunctive Claims Only. Upon the Final Settlement Date, the members of the Class and their present, former, and future heirs, executors, administrators, representatives, agents, attorneys, partners, predecessors-in-interest, successors, assigns, and legatees, fully, finally and forever release, relinquish, and discharge the Released Parties from all claims for equitable, injunctive or declaratory relief based on the facts that were or could have been alleged in the Plaintiffs' Second Amended Complaint, including but not limited to injunctive claims arising out of or relating to any of the facts, transactions, events, occurrences, acts, disclosures, statements, misrepresentations, omissions, failures to act, or other conduct that was or could have been alleged, including, but not limited to, claims regarding Defendant's conduct, practices, disclosures, terms, and policies relating to the availability of the benefits described herein.

4. Settlement Agreement and Preliminary Approval

The Parties shall cooperate in the drafting of a formal Settlement Agreement and shall further cooperate and take all necessary steps to provide immediate Notice to the Court of Settlement on Material Terms, obtain an order granting preliminary approval of the Settlement Agreement, and approving the forms and methods of notice to the Settlement Class. The amount of attorney fees and costs to be paid to Class Counsel shall be determined by the Court.

5. Notice

5.1 Notice will be provided within thirty (30) days after entry of the Court's order preliminarily approving the settlement or as directed by the Court.

5.2 The Parties agree on the use of Epiq to manage and complete the required notice campaign.

6. Settlement of Individual Plaintiffs' Claims

Plaintiffs have asserted individual claims for damages not addressed by the Texas Settlement Class-Equitable Relief arising from damage to other property.

6.1 It is expressly understood that Settlement as to any Class Representative on their asserted individual claim(s) is wholly contingent upon approval of the Texas-only Warranty Settlement Class:

6.1.1 Mark and Amber Fessler: Defendant agrees to pay the Fessler Plaintiffs \$4,599.78 in exchange for a full release of all individual claims.

6.1.2 Aaron and Stacy Stone: Defendant agrees to pay the Stone Plaintiffs \$6,890.12 in exchange for a full release of all individual claims.

6.1.3 Daniel Sousa: Defendant agrees to pay Plaintiff Sousa \$6,697.00 in exchange for a full release of all individual claims.

In the event the Texas Settlement Class-Equitable Relief is not approved, all settlement terms pertaining to resolution of the above-named Class Representatives' individual claims are to be considered null and void.

6.2 The Parties agree to compromise and settle the remaining individual Plaintiffs' claims as follows:

6.2.1 Andrew Hocker: Defendant agrees to pay Plaintiff Hocker \$720.53 in exchange for a full release of all his individual claims.

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- 6.2.2 Matthew Carreras: Defendant agrees to pay Plaintiff Carreras \$2,664.00 in exchange for a full release of all his individual claims.
7. It is the intention of the Parties that all claims in this litigation are being resolved by this settlement.