

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

MARK AND AMBER FESSLER, §
ANDREW HOCKER, KEVIN REUSS, §
MATTHEW CARRERAS, CHARLES AND §
MICHELLE HANDLY, AARON AND §
STACEY STONE, and DANIEL AND §
SHARON SOUSA, on §
Behalf of Themselves and §
Those Similarly Situated §

Plaintiffs §

v.

Civil Action No. 4:17-cv-00001

PORCELANA CORONA DE MÉXICO, S.A. §
DE C.V f/k/a SANITARIOS LAMOSA S.A. §
DE C.V. a/k/a Vortens §

Defendant. §

**ORDER GRANTING PRELIMINARY APPROVAL OF
EQUITABLE RELIEF CLASS ACTION SETTLEMENT**

Pending before the Court is the Joint Motion for Preliminary Approval of Class Action Settlement and Memorandum in Support (the “Motion”) (Dkt. 259). In the Motion, Plaintiffs MARK AND AMBER FESSLER, ANDREW HOCKER, KEVIN REUSS, MATTHEW CARRERAS, CHARLES AND MICHELLE HANDLY, AARON AND STACEY STONE, and DANIEL AND SHARON SOUSA on behalf of Themselves and Those Similarly Situated, and Defendant Porcelana Corona de Mexico, S.A. de C.V. f/k/a Sanitarios Lamosa S.A. de C.V. a/k/a Vortens, propose the “Equitable Relief Settlement” for claims asserted in *Cone, et. al v. Porcelana Corona de Mexico, et. al* (the “Action”);

The Court has read and considered the Joint Motion for Preliminary Approval and incorporated Settlement Agreement (“Agreement”) entered into by and among Defendant

(“Porcelana”) on the one hand, Plaintiffs generally as individuals and on behalf of putative class members, and specifically Plaintiffs Aaron and Stacey Stone and Daniel and Sharon Sousa as Class Representatives (collectively the “Parties” in the above referenced “Action”), together with all exhibits thereto, the record in this case, and heard the arguments of counsel;

The Court preliminarily finds that the proposed class as stated in the Agreement meets all the prerequisites of Rule 23(a) of the Federal Rules of Civil Procedure for class certification, including numerosity, commonality, and typicality; specificity of declaratory relief for class members harmed in essentially the same way pursuant to Rule 23(b)(2); and that the Class Representatives and Class Counsel are adequate representatives of the Equitable Relief Settlement Class.

The Motion (Dkt. 259) is **GRANTED**.

It is, therefore, **ORDERED** as follows:

1. The proposed settlement set forth in the Settlement Agreement is hereby preliminarily approved as being fair, reasonable and adequate such that notice thereof should be given to members of the Class (as defined in the paragraph below).

Class Certification

2. Plaintiffs’ Second Motion for Class Certification was granted in part and denied in part. [Dkt. 247; 250]. The Action was provisionally certified as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure, and the class defined as follows:

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

The Certification Order further identified the source of the particular alleged injury for the Class as “a consistent manufacturing defect entitling tank owners to warranty relief,” and specified equitable questions for resolution during a threshold liability stage: what constitutes a

manufacturing defect; whether tanks identified in the Proposed Class are eligible for warranty relief if a manufacturing defect is found, regardless of whether the warranty had expired; and whether the warranty provision includes both replacement and installation. [Dkt.247].

The following persons and/or entities are expressly excluded from the Equitable Relief Settlement Class:

- Persons and/or entities who have settled or otherwise resolved warranty claims with the Defendant as to one of the relevant models, to the extent of the resolution of those claims;
- 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; and
- Any currently sitting Texas state court judge and/or justice in the current style and/or any persons within the third degree of consanguinity to such judge and/or justice.

3. The Equitable Relief Class Representatives and Class Counsel are hereby found to be, and are therefore appointed as, adequate representatives of the Equitable Relief Settlement Class. Specifically, Plaintiffs Aaron and Stacey Stone and Daniel and Sharon Sousa are appointed as representatives of the proposed Settlement Class. N. Scott Carpenter, Esq. and Rebecca Bell-Stanton, Esq., of Carpenter & Schumacher, 2701 N. Dallas Parkway, Suite 570, Plano, Texas 75093 are appointed as Class Counsel pursuant to Fed. R. Civ. P. 23(g) to represent the interests of the proposed Equitable Relief Settlement Class.

4. The Court finds that the requirements of Fed. R. Civ. P. 23 are met by the Equitable Relief Settlement Class. Joinder of all Settlement Class Members in a single proceeding would be impracticable, if not impossible, because of their numbers and dispersion. Common issues exist among Equitable Relief Settlement Class Members' claims regarding whether the identified tank models manufactured between 2007 – 2010 suffer from a manufacturing defect that results in

sudden fracture or otherwise affects the expected lifespan of the product. The Equitable Relief Class Representatives claims are typical of those of the Settlement Class, in that: (i) the interests of Plaintiffs Stone and Sousa are typical of those of the Equitable Relief Settlement Class; (ii) there are no apparent conflicts between or among the Plaintiffs Stone and Sousa and the members of the Equitable Relief Settlement Class; (iii) Plaintiffs Stone and Sousa have been and are capable of continuing to be active participants both in the prosecution of, and the negotiations to settle this portion of the Action; and (iv) Plaintiffs Stone and Sousa and the Equitable Relief Settlement Class are represented by qualified, reputable counsel who are experienced in preparing and prosecuting class actions, including those involving defective products.

5. In accordance with the Supreme Court's holding in *Amchem Prods v. Windsor*, 521 U.S. 591, 620 (1997), the Court need not address whether this case, if tried, would present issues of manageability under Fed. R. Civ. P. 23(b)(3)(D). Finally, a class action settlement is superior to other available methods for a fair resolution of the controversy.

6. The Settlement is preliminarily approved for Declaration and Enforcement of the extended warranty program pursuant to Rule 23(b)(2). To the extent there is any monetary component to the Settlement, such pecuniary relief is incidental to the equitable relief.

7. This preliminary approval of Settlement and the component parts of requested relief shall be without prejudice to the Parties in the event that the Agreement is not finally approved by the Court or otherwise does not take effect.

Notice of Potential Settlement to Equitable Relief Class Members

8. The Court hereby approves the Notice Plan and procedure for disseminating notice of the proposed settlement to the Equitable Relief Settlement Class as set forth in the Agreement and further explained in the Declaration of the Notice Administrator appended to the Joint Motion

for Preliminary Approval. The Court finds that the Notice Plan contemplated constitutes the best notice practicable under the circumstances and is reasonably calculated, under the circumstances, to apprise Equitable Relief Settlement Class Members of the pendency of the Action and their right to object to the proposed settlement in full compliance with the requirements of applicable law, including the Due Process Clause of the United States Constitution and Rules 23(c) and (e) of the Federal Rules of Civil Procedure.

9. In addition, Class Notice shall clearly and concisely state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the certified Equitable Relief Settlement Class; (iii) the claims and issues of the Equitable Relief Settlement Class; (iv) that a Settlement Class Member may enter an appearance through an attorney if the member so desires; (v) the time and manner for asserting objections to the Settlement; and (vi) the binding effect of a class judgment on members under Fed. R. Civ. P. 23(c)(3).

10. As set forth in the Agreement, Settlement Administration, which includes the costs and expenses incurred in providing notice to the Equitable Relief Settlement Class in addition to claims administration, shall be paid by the Defendant. Class Counsel are awarded reasonable costs incurred in the prosecution of the Action and pursuit of this Settlement and must timely file sufficient proof of such costs in accordance with the Deadlines assigned below. Class Counsel are furthermore required to submit proper Application for payment of attorneys fees in accordance with the terms of the Settlement Agreement in a timely manner as provided herein.

Retention of Class Action Settlement Administrator and Notice Plan

11. The Court authorizes the Parties to retain Epiq | Hilsoft Notifications to effectuate the Notice Plan as the Notice Provider and Epiq as the Claims Administrator. The Notice Provider shall provide all the following forms of Notice on or before **January 16, 2020** (“Notice Date”):

- *Direct Mail Notice.* A copy of the Class Notice and Claim Form shall be mailed to all reasonably identifiable Equitable Relief Settlement Class Members.
- *Published Notice.* A copy of the Summary Notice shall be published in Trade Publications (*Buildings, Contractor, PHC News, and Plumbing & Mechanical*). Summary Notice shall also be published in the local newspapers of designated large Texas cities (*Austin American-Statesman, Dallas Morning News, Houston Chronicle, and San Antonio Express-News*).
- *Texas Press Release.* Issuance of a joint press release on *PR Newswire*'s state wire. The release will discuss the Settlement and provide the address for the Settlement Website where information can be obtained and downloaded.
- *Internet Notice.* Banner ads to appear on leading networks, including *Facebook* and *Google Display Network*. Local banner distribution includes Austin, Dallas, Houston and San Antonio. A state-wide banner will also appear on *Facebook*.
- *Website Notice.* A copy of the Equitable Relief Settlement Agreement will be posted and available for download on a Settlement Website. This information is to remain available on the Internet until the last day of the Claims Period, December 31, 2020.

Final Fairness Hearing

12. At or before the Final Fairness Hearing, the Notice Provider shall file with the Court documentation showing, and an affidavit attesting, that the Notice Plan was executed in accordance with this Order.

13. On or before **January 17, 2020**, Class Counsel shall file with the Court and post on the Settlement Website their application for payment of attorneys' fees and expenses, and Service Awards ("**Application Deadline**").

14. A hearing (the "Final Fairness Hearing") shall be held by the Court on **March 2, 2020**, beginning at 9:00 AM., before United States District Judge Amos Mazzant at the Paul Brown United States Courthouse, 101 E. Pecan Street, Sherman, Texas 75090 to consider and determine whether the requirements for certification of the Settlement Class have been met and whether the proposed settlement of the Action on the terms set forth in the Agreement should be approved as

fair, reasonable, adequate, and in the best interests of the Equitable Relief Settlement Class Members; whether Class Counsel's fee and expense application, included as part of the settlement, should be approved; and whether a Final Judgment approving the settlement and dismissing the Action on the merits and with prejudice against the Class Representatives and all Equitable Relief Settlement Class Members should be entered. The Final Fairness Hearing may, from time to time and without further notice to the Settlement Class (except those who have filed timely valid objections and requested to speak at the fairness hearing), be continued or adjourned by Order of the Court.

Objections

15. Any Equitable Relief Settlement Class Member who complies with the requirements of this Section may object to any aspect of the proposed settlement either on their own or through an attorney hired at their expense. Any Equitable Relief Settlement Class Member who intends to object to the proposed settlement must do so no later than **February 3, 2020** ("**Objection Deadline**").

16. Objections by any Equitable Relief Settlement Class Member may be made to: (A) the certification of the Equitable Relief Settlement Class and the proposed settlement contained in the Agreement and described in the Settlement Notice; (B) the payment of fees and expenses to Class Counsel or Service Awards to the Class Representatives; and/or (C) entry of the Final Judgment.

17. To exercise this objection right, the Equitable Relief Settlement Class Member must provide written notice of the objection via first class mail, to Class Counsel and Counsel for Defendant, by the Objection Deadline. The objection must bear the signature of the Equitable Relief Settlement Class Member (even if represented by counsel) with the date signed and must

specify: (i) the name of the Class Action; (ii) the Equitable Relief Settlement Class Member's current address, telephone number and email address; (iii) whether, as of the date of the objection, the Equitable Relief Settlement Class Member owns a residence or structure or formerly owned a residence or other structure containing an Affected Toilet Tank, or otherwise suffered replacement damages as a result of the failure of an Affected Toilet Tank; (iv) the address of the property that may contain or contained an Affected Toilet Tank and, if different, the address where the Equitable Relief Settlement Class Member suffered replacement damages from a failed Affected Toilet Tank; (v) proof that the objector's residence or structure contains an Affected Toilet Tank or otherwise suffered damages caused by the failure of an Affected Toilet Tank (photographs, contemporaneous installation records, etc.); (vi) the exact nature of the objection, the facts underlying, and legal authority supporting, the objection, and whether or not the Equitable Relief Settlement Class Member intends to appear at the Final Fairness Hearing; and (vii) all evidence and supporting papers (including, but not limited to, all briefs, written evidence, and declarations) that the Equitable Relief Settlement Class Member wants the Court to consider in support of the objection. If the Equitable Relief Settlement Class Member is represented by counsel, the objection shall also be signed by the attorney who represents the Settlement Class Member. If an Equitable Relief Settlement Class Member or counsel for the Settlement Class Member has objected to a class action settlement on any prior occasions, the Objection shall disclose all cases in which they have filed an objection by caption, court and case number.

Injunction

18. The Court hereby enjoins all Equitable Relief Settlement Class Members, and all Persons that can pursue or are entitled to pursue an action in the name or right of an Equitable Relief Settlement Class Member, from commencing, maintaining, continuing and/or prosecuting

any action asserting any claims that fall within the scope of the Released Claims (as defined in the Agreement) until the entry of the Final Order and Judgment.

No Admission of Liability

19. The Agreement and this Order are not admissions of liability or fault by Defendant or the Released Parties, or a finding of the validity of any claims in the Action or of any wrongdoing or violation of law by Defendant. The Agreement and Equitable Relief Settlement are not a concession by the Parties. To the extent permitted by law, neither this Order, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be offered as evidence or received in evidence in any pending or future civil, criminal, or administrative action or proceedings to establish any liability of, or admission by, Defendant. Notwithstanding the foregoing, nothing in this Order shall be interpreted to prohibit the use of this Order in a proceeding to consummate or enforce the Agreement or this Order, or to defend against the assertion of Released Claims in any other proceeding, or as otherwise required by law.

Deadlines

20. In Accordance with the Agreement and exhibits attached thereto, the Court sets the following deadlines:

- a. The Notice Date for completion of the Notice Plan is **January 16, 2020**.
- b. The Application Deadline for Class Counsel to file with the Court and post on the Settlement Website their application for payment of attorneys' fees and proof of expenses within is **January 17, 2020**.
- c. The Objection Deadline for submission of all objections to the Equitable Relief Settlement is **February 3, 2020**. All Objections must be filed with the Court and sent to Class Counsel and Counsel for Defendant. Objecting individuals must make themselves available for

deposition in their county of resident within (10) days of service of the Objection.

d. On or before **February 21, 2020**, which is ten (10) days prior to the Final Fairness Hearing, the Parties shall file all papers in support of the application for final approval of the settlement and/or opposition to any timely Objections received.

e. The Final Fairness Hearing is scheduled on **March 2, 2020** at **9:00 a.m.** before United States District Judge Amos Mazzant at the Paul Brown United States Courthouse, 101 E. Pecan Street, Sherman, Texas 75090.

21. If any deadline set forth in this Order falls on a Saturday, Sunday or federal holiday, the deadline shall be extended to the next Court business day.

22. The Court reserves the right to adjust the date of the Final Approval Hearing and related deadlines. In that event, the revised hearing date and/or deadlines shall be posted on the Settlement Website referred to in the Notice, and the parties shall not be required to re-send or republish the Notice.

So ORDERED and SIGNED this 17th day of January, 2020.



KIMBERLY C. PRIEST JOHNSON
UNITED STATES MAGISTRATE JUDGE