COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

SUPERIOR COURT
C.A. NO. 1785CV02005B

JANICE MAGLIACANE, on behalf of herself and others similarly situated,

Plaintiff,

v.

CITY OF GARDNER,

Defendant/Third Party Plaintiff,

v.

SUEZ WATER ENVIRONMENTAL SERVICES, INC. (formerly known as United Water Environmental Services, Inc.),

Third Party Defendant.

MEMORANDUM IN SUPPORT OF PLAINTIFF'S ASSENTED-TO MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT, PLAN OF DISTRIBUTION AND PAYMENT OF SERVICE AWARD

Plaintiff Janice Magliacane ("Plaintiff") respectfully submits this memorandum of law in support of her motion seeking final approval of the class action settlement in this matter. Under the proposed settlement, the Defendant City of Gardner ("Defendant" or "City") and Third Party Defendant SUEZ Water Environmental Services, Inc., now known as Veolia Water Contract Operations USA, Inc. ("SUEZ"), have agreed to pay a total sum of $325,000 to settle Plaintiff and the Class's claims for negligence, gross negligence and nuisance relating to the City and SUEZ's

supply of water to Gardner residents, property owners and businesses, which Plaintiff alleged caused copper heating coils in tankless hot water heating systems in Gardner to fail.

The proposed settlement represents an excellent result after more than eight years of hard-fought litigation, which included an appeal before the Supreme Judicial Court, and reflects Class Counsel's careful consideration of the risks and costs of future litigation, including trial and appeals. Plaintiff and Class Counsel believe that the Settlement is fair, reasonable, adequate and in the best interest of the putative Class, and the City and SUEZ, without admitting any liability, have concluded that it is desirable that the claims against them be settled and dismissed on the terms reflected in this Settlement Agreement.

On September 23, 2025, this Court entered a Preliminary Approval Order (the "Preliminary Approval Order"), which (a) preliminarily approved the Stipulation and Agreement of Settlement dated July 2025 between the parties (the "Stipulation" or "Settlement")[1]; (b) approved the Parties' proposed form and method for disseminating notice of the proposed settlement to the Class; and (c) scheduled a hearing at which, following notice and an opportunity for Class members to be heard, the Court will consider whether to grant final approval to the proposed settlement set forth in the Stipulation. The final approval hearing is scheduled for March 10, 2026.

Plaintiff now requests that the Court finally approve the settlement, plan of distribution and payment of a service award as set forth in the Settlement. Plaintiff also requests that the Court enter the Final Approval Order attached to the accompanying Motion for Final Approval as Exhibit B. The City and SUEZ have assented to the allowance of the Motion.

[1] The Stipulation is attached to the Motion for Final Approval as Exhibit A.

I. SUMMARY OF PROCEEDINGS

On December 13, 2017, Plaintiff filed a class action complaint against the City and its private water system operators, SUEZ and its predecessor AECOM Technical Services, Inc. ("AECOM"), asserting, *inter alia*, claims for negligence, gross negligence and nuisance relating to their supply of water to Gardner residents, property owners and businesses, which Plaintiff alleged caused copper heating coils in tankless hot water heating systems in Gardner to fail. Dkt. #1. On June 27, 2018, the Court dismissed the claims against the City. Dkt. #22. On July 18, 2018, Plaintiff appealed the dismissal of her claims against the City. Dkt. #24.

On August 14, 2018, the Court dismissed the claims against AECOM, but sustained negligence, gross negligence, nuisance and G.L. c. 93A claims against SUEZ. The Court also struck the class allegations as pled in the original complaint against SUEZ. Dkt. #25. On April 29, 2019, Plaintiff and SUEZ stipulated to the dismissal of Plaintiff's individual claims against SUEZ, and the stipulation expressly provided that it "would in no way affect[], impact[] or preclude[] Plaintiff's claims against Defendant City of Gardner" which were then pending on appeal. Dkt. #39.

On January 22, 2020, the Supreme Judicial Court, on direct appellate review, reversed and remanded the Court's dismissal of Plaintiff's claims against the City. *Magliacane v. City of Gardner*, 483 Mass. 842 (2020).

On March 2, 2020, Plaintiff filed an amended complaint against the City, continuing to assert claims for negligence, gross negligence and nuisance. Dkt. #46. On May 14, 2020, the City answered the amended complaint, denying Plaintiff's allegations, and asserted third-party claims of breach of contract, indemnity and contribution against SUEZ. Dkt. #47. On July 24, 2020, SUEZ

answered the City's third-party complaint, denying the City's allegations. Dkt. #50. The parties then continued to engage in discovery.

On September 21, 2022, the City and SUEZ filed a motion to preclude class certification, along with Plaintiff's opposition to the motion to preclude class certification and Plaintiff's cross-motion for class certification. Dkt. #'s 61-62. On December 30, 2022, the Court denied the motion to preclude class certification, granted the motion for class certification and certified a class consisting of all Gardner residents, property owners and businesses who were supplied water by the City and whose copper heating coils in their tankless hot water heating systems failed and had to be replaced (the "Class"). Dkt. #63. The parties thereafter continued to engage in discovery and in efforts to resolve the case through a settlement.

II. MEDIATION AND TERMS OF PROPOSED SETTLEMENT

The Parties conducted a full-day mediation session with Attorney John Ryan on March 29, 2024 in an attempt to resolve their dispute, and the Parties had additional settlement negotiations over the next several months through Attorney Ryan following the mediation. The Parties' mediation efforts ultimately resulted in Settlement, the terms of which are memorialized in the Stipulation. Affidavit of Ian J. McLoughlin, submitted herewith ("McLoughlin Aff.") ¶ 4.

Under the Settlement, the City and SUEZ have agreed to pay the total sum of $325,000 as the Settlement Amount. From the Settlement Amount, as set forth in their contemporaneously filed Application for Attorney's Fees and Expenses, Class Counsel are requesting a fee and expense award of 33% of the Settlement Amount, plus expenses. By the present Motion, Plaintiff also seeks payment of the costs of the settlement administration, including notice and distribution of the Settlement, up to a maximum of $25,000, and payment of a $15,000 Service Award to Plaintiff for her efforts in bringing this case and obtaining the Settlement.

After the award of these forgoing amounts from the Settlement Amount, as approved by the Court, the remaining amount available to be paid to the Class Members (the "Net Settlement Amount") will be distributed to Class Members who mail or submit online a completed valid and timely claim form. Each Class Member who submits a valid, timely Claim Form will be entitled to receive their *pro rata* share of the Net Settlement Amount, which will be divided among Class Members who have submitted valid, timely Claim Forms based on the number of coils they replaced up to a maximum of 3 coils.

Any portion of the Net Settlement Amount that shall remain undistributed to Class members shall be distributed in the manner determined by the Court in accordance with Mass. R. Civ. P. 23(e).[2]

III. PRELIMINARY APPROVAL AND NOTICE

On July 31, 2025, Plaintiff filed an assented-to motion for preliminary approval of the Settlement. Dkt. #78. On September 23, 2025, the Court granted preliminary approval of the Settlement which authorized the dissemination of notice to the Class that informed Class members of: (i) the nature of the action, (ii) the identities of the members of the certified Class, (iii) the essential terms of the Settlement, (iv) the proposed plan for distributing the Settlement funds, (v) the effect of the judgment on Class members, (vi) the methods and deadline for Class members to submit Claim Forms and (vii) the procedures and deadline for objecting to any aspect of the Settlement. Dkt. #80. The notice also provided information about the date, time, and place of the

[2] Under the Settlement, if there are funds that are not distributed to the Class, they will be distributed in accordance with Mass. R. Civ. P. 23(e) governing the distribution of residual funds, subject to a motion at the appropriate time. Stipulation, ¶25. Class Counsel has conferred with the Massachusetts IOLTA Committee and agreed with them that any such motion would seek that half of any such residual funds would go to IOLTA, and the other half to the Gardner Community Action Committee. *See* https://gardnercac.org/.

Final Approval Hearing and about Plaintiff's motion for attorneys' fees and reimbursement of expenses to be paid by Gardner and SUEZ. Dkt. #78, Ex. 1A. The notice also explained the procedures and deadline for objecting to any aspect of the Settlement. To date, no objections have been filed. McLoughlin Aff. ¶ 13.

Pursuant to paragraph 16 of the Stipulation, Plaintiff will file an affidavit from the Settlement Administrator no later than 7 days prior to the Final Approval hearing attesting that the Notice and Summary Notice have been disseminated in accordance with the Preliminary Approval Order. *Id.* That affidavit will make clear that Plaintiff has provided notice to the Class in accordance with the notice plan set forth in the Settlement Agreement and approved by this Court in its Preliminary Approval Order. Pursuant to that notice plan:

- Immediately following the entry of the Preliminary Approval Order, the parties worked with the Settlement Administrator to include copies of the Summary Notice and Claim Form with the next sets of water bills the City sent to all Gardner residents.

- In addition, Class Counsel e-mailed or mailed copies of the Summary Notice and Claim Form to any Class Members who had previously contacted Class Counsel. The Summary Notice included a link to the Settlement Website, where Class Members could access the full Notice and Claim Form.

- Within thirty (30) days after the entry of the Preliminary Approval Order, the Settlement Administrator caused the Summary Notice to be published once a week for two consecutive weeks in the Gardner News.

- Also within (30) days after the entry of the Preliminary Approval Order, the Settlement Administrator caused the Summary Notice to be published on the "Gardner Massachusetts, what's going on" Facebook page (now called Now Gardner Massachusetts – A Group for All Residents).

Stipulation ¶¶ 12-16.

IV. THE COURT SHOULD FINALLY APPROVE THE SETTLEMENT

A. The Settlement Should Be Approved Because It Is Fair, Reasonable and Adequate.

In determining whether a settlement deserves final approval, the Court must determine whether it is "fair, reasonable and adequate." *Sniffin v. Prudential Ins. Co.*, 395 Mass. 415, 421 (1985) (internal citation omitted)[3]; *see also Vt. Pure Holdings, Ltd. v. Berry*, 2010 Mass. Super LEXIS 71, at *27-28, 27 Mass. L. Rep. 33 (2010) ("Approval of a class action settlement which binds absent class members requires determining that the settlement is 'fair, reasonable, and adequate.'"). The proposed settlement, which was negotiated in good faith by Class Counsel and represents an outstanding result for the Class, clearly meets those criteria.

1. The Proposed Settlement Was Reached Following Good Faith, Arm's Length Negotiations and Is Endorsed By Class Counsel.

When "the parties negotiated at arm's length and conducted sufficient discovery, the district court must presume the settlement is reasonable." *Howe v. Townsend (In re Pharm. Indus. Average Wholesale Price Litig.)*, 588 F.3d 24, 32-33 (1st Cir. 2009); *City Pshp. Co. v. Atlantic Acquisition Ltd. Pshp.*, 100 F.3d 1041, 1043 (1st Cir. 1996) ("When sufficient discovery has been provided and the parties have bargained at arm's-length, there is a presumption in favor of the settlement."); *In re Relafen Antitrust Litig.*, 231 F.R.D. 52, 71-72 (D. Mass. 2005) (same).

The Settlement is the result of good faith, arm's-length negotiations by well-informed and experienced counsel, following mediation with an experienced neutral, attorney John Ryan. At the

[3] The Supreme Judicial Court in *Sniffin* looked to Federal law on class action settlements and found it to be persuasive. 395 Mass. at 420-21 ("The standard applied by the [trial] Court in its order is similar to that adopted by the Federal courts when reviewing proposed settlements of class actions under Fed. R. Civ. P. 23 (e), the Federal provision analogous to Mass. R. Civ. P. 23 (c)."). For this reason, if there is no specific Massachusetts law on point, this memorandum relies on federal law with respect to the standards to be applied by the Court in considering whether to grant final approval of a settlement.

time Plaintiff entered into the Settlement, Class Counsel had conducted extensive discovery and had extensively briefed all of the legal issues (including on motions to dismiss, appeal of the ruling on the motion to dismiss and on the class certification motion). McLoughlin Aff. ¶5. Accordingly, the proposed Settlement is procedurally fair and is entitled to a presumption of reasonableness.

Moreover, this action sought the recovery of damages for each class member for the replacement of copper coils, and the Settlement will provide Class with recovery of a considerable percentage of the damages they would have received had this action been successful at trial, which is reasonable in light of the risks associated with ongoing litigation. Class Counsel, who have had extensive experience in consumer class action litigation and were fully informed about the facts and legal issues in this case, strongly believe that this result is in the best interests of the Class in light of the significant risks and certain delay and further expense that would have been presented by trial and possible appeals. Such risks included the possibility that Defendant would prevail on one or more of its affirmative defenses, including statute of limitations and its defense that the City was a governmental entity exercising a "discretionary function" within the scope of its office. Plaintiff also faced the risk of failing to establish liability, if for example the City and SUEZ, or their experts, convinced a jury that Plaintiff had not proven beyond a preponderance of the evidence that the water the City and SUEZ supplied to Gardner residents was (1) corrosive and (2) the cause of the coil failures. At a minimum, continued litigation would have involved a complex, lengthy and expensive "battle of the experts," on which a jury ultimately could have come out either way. In the face of these risks, the benefits of the settlement – immediate recovery of a considerable percentage of Plaintiff and the Class's damages, weighed in favor of the settlement. McLoughlin Aff. ¶¶ 5-7.

The judgment of experienced and well-informed class counsel should be accorded great weight by the Court. See *Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977) ("the trial court is entitled to rely upon the judgment of experienced counsel for the parties."); *Rolland v. Cellucci*, 191 F.R.D. 3, 10 (D. Mass. 2000) ("When the parties' attorneys are experienced and knowledgeable about the facts and claims, their representations to the court that the settlement provides class relief which is fair, reasonable and adequate should be given significant weight."); *Bussie v. Allmerica Fin. Corp.*, 50 F. Supp. 2d 59, 77 (D. Mass. 1999) ("The Court's fairness determination also reflects the weight it has placed on the judgment of the parties' respective counsel, who are experienced attorneys and have represented to the Court that they believe the settlement provides to the Class relief that is fair, reasonable and adequate.").

2. <u>Consideration of All Relevant Factors Supports the Approval of the Settlement.</u>

"In determining whether the settlement is fair, reasonable, and adequate, a trial judge should consider various factors." *Sniffin*, 395 Mass. at 421.

> The criteria generally utilized in determining whether a settlement is fair, reasonable, and adequate are: 1) likelihood of recovery, or likelihood of success; 2) amount and nature of discovery or evidence; 3) settlement terms and conditions; 4) recommendation and experience of counsel; 5) future expense and likely duration of litigation; 6) recommendation of neutral parties, if any; 7) number of objectors and nature of objections; and 8) the presence of good faith and the absence of collusion.

Vt. Pure Holdings, 2010 Mass. Super. LEXIS 71, at *28-29 (internal citations omitted); *see also Fortin v. Ajinomoto U.S.A., Inc.,* 2005 Mass. Super. LEXIS 670, at *3-4 (Mass. Super. Ct. Dec. 15, 2005) ("In approving the Settlement Agreement, the Court has considered (1) whether the proposed settlement was fairly and honestly negotiated; (2) whether serious questions of law and fact exist, placing the ultimate outcome of the litigation in doubt; (3) whether the value of the

proposed settlement outweighs the mere possibility of future relief after protracted and expensive litigation; and (4) the judgment of the parties that the proposed settlement is fair and reasonable.").

While courts often place the greatest significance on the first factor, balancing the strength of the plaintiff's case against the amount offered in settlement, *Sniffin*, 395 Mass. at 421 ("The most important factor is the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement."), there is "'considerable discretion whether to approve a particular settlement,' and, thus, 'the court need not give greater weight to any particular relevant factor and is not required to consider all factors,'" *Vt. Pure Holdings*, 2010 Mass. Super. LEXIS 71, at *29-30 (citations omitted). In light of the well recognized "public interest favoring [] settlement[s] [which] is even stronger in the context of class action litigation … courts generally view facts in a light favorable to settlement." *Id.* at *32.

a) The Likelihood of Success Balanced Against the Amount Offered in Settlement

Under this Settlement, the Class will receive immediate recovery of a considerable percentage of the damages they would have received had this action been successful at trial. As detailed in Section IV A 1) above, and in the accompanying McLoughlin Affidavit, Class Counsel concluded that the likelihood that the Class would have recovered any damages at trial and/or on appeal was uncertain and that the costs of continued litigation, including expert-related expenses, could be substantial. In the face of the risks, the benefits of the settlement – immediate recovery of a considerable percentage of Plaintiff and the Class's damages, favored settlement. McLoughlin Aff. ¶¶ 5-7.

The substantial benefits of the Settlement strongly support final approval of the Settlement, when they are weighed against potential benefits and risks of trial and an appeal..

b) The Evidentiary Record in the Case

At the time Plaintiff entered into the Settlement, Class Counsel had conducted discovery and had extensively briefed all of the legal issues, both at the trial court and Supreme Judicial Court level. Class Counsel, therefore, were fully knowledgeable about the legal and factual strengths and weaknesses of Plaintiff's case when they negotiated the Settlement. And the evidentiary record revealed that there were risks associated with continued litigation. For example, it was not a foregone conclusion that Plaintiff and the Class would prevail in proving by a preponderance of the evidence that the water supplied by the City and SUEZ was corrosive and caused the failure of copper coils. The evidence, including various scientific reports, was highly technical and complex, and potentially subject to differing interpretations by different experts. McLoughlin Aff. ¶¶ 5-7. *See Duhaime v. John Hancock Mut. Life Ins. Co.*, 177 F.R.D. 54, 67 (D. Mass. 1997) ("The stage of the proceedings at which settlement is reached is important because it indicates how fully the district court and counsel are able to evaluate the merits of plaintiffs' claims." (internal citations omitted)).

c) The Settlement Terms and Conditions

The Settlement immediately provides the Class with their *pro rata* share of the Net Settlement Amount, which will be divided among Class Members who have submitted valid, timely Claim Forms based on the number of coils they replaced up to a maximum of 3 coils. Stipulation ¶ 24. This will constitute an immediate recovery of a considerable percentage of the damages they would have received had this action been successful at trial, and such a settlement is reasonable in light of the previously described risks, delays and expenses associated with ongoing litigation. As an illustration, assuming the Net Settlement Fund after subtracting attorney's fees and expenses, settlement administration expenses and a service award to the

Plaintiff were $155,000, if there were 500 claimed coil replacements, Class members would receive $310 per coil replacement, if there were 1000 claimed coil replacements, they would receive $155 per coil replacement, etc. This represents an excellent recovery in light of risks of ongoing litigation.

d) The Recommendation and Experience of Counsel

For the reasons articulated above and in the accompanying McLoughlin Affidavit, Class Counsel strongly believes that the Settlement is fair, reasonable and adequate and is in the best interests of the Class. McLoughlin Aff. ¶ 5-7. Courts have recognized that the opinions of experienced counsel who litigated the case, and negotiated the compromise are entitled to considerable weight. *See Giusti-Bravo v. United States Veterans Admin*., 853 F. Supp. 34, 40 (D.P.R. 1993) noting as follows:

> In view of the fact that competent and experienced counsel have been able to conduct ample discovery which allowed them to properly assess the probability of success on the merits of the putative class claim, and, after doing so, participated in arm's-length settlement negotiations that resulted in a compromise they consider is well-advised and necessary, we feel their recommendation should be entitled to substantial weight in the final determination of whether this stipulation should be approved.

Class Counsel has not only litigated this case for close to a decade, but also have significant experience in litigating complex class actions in both state and federal courts, including extensive trial experience. Here, Class Counsel concluded that the likelihood that the Class would have recovered damages at trial and/or on appeal was uncertain and that the costs of continued litigation, including expert-related expenses, could be substantial, in light of the City's affirmative defenses and defenses to liability. In the face of the risks, the benefits of the settlement – immediate recovery of a considerable percentage of Plaintiff and the Class's damages, favored settlement. McLoughlin Aff. ¶5-7 and Ex. A. The fact that qualified attorneys endorse the Settlement provides a further reason why this Court should give final approval to the Settlement.

See Hawkins v. Comm'r of the N.H. HHS, 2004 U.S. Dist. LEXIS 807, at *15 (D.N.H. Jan. 23, 2004) (presumption in favor of a settlement where "counsel have experience in similar cases"); *Rolland,* 191 F.R.D. (same).

e) The Future Expense and Likely Duration of Litigation

As described more fully above and in the accompanying McLoughlin Affidavit, had this Settlement not been reached, there would have a been expert discovery, a trial and potentially appeals by the Parties. Such continued litigation would have been expensive, and would likely have added another year or more to this already lengthy litigation, particularly insofar as there was a "battle of experts" on the question of liability. Given the risks that the City could have prevailed on liability, or its affirmative defenses of statute of limitations or the performance discretionary functions, the benefits of the settlement – immediate recovery of a considerable percentage of the Class's damages, warranted settlement. For these reasons as well, Class Counsel respectfully submits that the Settlement should be approved.

f) The Recommendation of Neutral Parties

As noted, this Settlement was reached after mediation with experienced neutral John Ryan and follow-up discussions with him following the mediation session, further supporting final approval of the Settlement. McLoughlin Aff. ¶ 4.

g) The Reaction of the Class to the Settlement

The Preliminary Approval Order provides that class members have until February 14, 2026 to lodge any objections to the Settlement. As of the date of this Motion, no such objections have been received. McLoughlin Aff. ¶ 13. Class Counsel will supplement this submission with a final declaration from the Settlement Administrator on or before March 3, 2026 setting forth whether any objections are received between the date of this filing and the objection deadline.

h) The Presumption of Good Faith and the Absence of Collusion

"Courts respect the integrity of counsel and presume the absence of fraud or collusion in negotiating the settlement, unless evidence to the contrary is offered." *In re Packaged Ice Antitrust Litig.*, 2011 U.S. Dist. LEXIS 150427, at *63 (E.D. Mich. Dec. 13, 2011) (internal citations omitted). Here, the Settlement is the result of arm's-length negotiations between well-informed and experienced counsel, who were fully informed of the strengths and weaknesses of their respective cases after over close to ten years of litigation. McLoughlin Aff. ¶¶ 5-7. *See Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 116 (2d Cir. 2005) (strong "presumption of fairness" where settlement is product of arm's-length negotiations conducted by "experienced, capable counsel after meaningful discovery" (internal citation omitted)).

* * *

In sum, all relevant factors, including the likelihood of a greater recovery balanced against the amount offered by Gardner and SUEZ in the Settlement, the arm's-length nature of the settlement negotiations, the recommendation of highly experienced Class Counsel who was fully knowledgeable about the strengths and the weaknesses of the case, and the uncertainty and risks associated with any trial and possible appeal, all strongly support a finding that the Settlement is fair, reasonable and adequate.

B. <u>The Plan of Distribution Is Fair and Reasonable, and Should Be Approved.</u>

As with the Settlement itself, a plan for allocating or distributing settlement proceeds should be approved if it is "fair, reasonable and adequate." *See In re Tyco Int'l Ltd.,* 535 F. Supp. 2d 249, 262 (D.N.H. 2007); *Hochstadt v. Boston Sci. Corp.*, 708 F. Supp. 2d 95, 109 (D. Mass. 2010) (same). A plan of distribution is fair and reasonable as long as it has a reasonable, rational basis. *City of Providence v. Aéropostale, Inc.*, 2014 U.S. Dist. LEXIS 64517, at *29 (S.D.N.Y.

May 9, 2014) ("A plan of allocation 'need only have a reasonable, rational basis, particularly if recommended by 'experienced and competent' class counsel.'") (citations omitted); *In re IMAX Secs. Litig.*, 283 F.R.D. 178, 192 (S.D.N.Y. 2012) ("'When formulated by competent and experienced counsel,' a plan for allocation of net settlement proceeds 'need have only a reasonable, rational basis.'"). In determining whether a plan of distribution is fair and reasonable, courts give great weight to the opinion of experienced counsel. *See In re Advanced Battery Techs. Secs. Litig.,* 298 F.R.D. 171, 180 (S.D.N.Y. 2014) ("When evaluating the fairness of a Plan of Allocation, courts give weight to the opinion of qualified counsel."); *In re Giant Interactive Grp., Inc.,* 279 F.R.D. 151, 163 (S.D.N.Y. 2011) ("[i]n determining whether a plan of allocation is fair, courts look primarily to the opinion of counsel").

Under the proposed settlement, the settlement proceeds will be distributed as follows: to Class Counsel for a fee and expense award of up to 33% of the Settlement Amount, subject to Court approval as detailed in Plaintiff's separate, contemporaneously filed Application for Attorney's Fees and Expenses; then for expenses and payment of the costs of the settlement administration, including notice and distribution of the Settlement (which Class Counsel negotiated with the Settlement Administrator would be capped at $25,000); and then for payment of a Service Award of up to $15,000 to Plaintiff for her efforts in bringing this case and obtaining the Settlement.

After the award of these forgoing amounts from the Settlement Amount, as approved by the Court, the remaining amount available to be paid to the Class Members (the "Net Settlement Amount") will be distributed to Class Members who mail or submit online a completed valid and timely claim form. Each Class Member who submits a valid, timely Claim Form will be entitled to receive their *pro rata* share of the Net Settlement Amount, which will be divided among Class

Members who have submitted valid, timely Claim Forms based on the number of coils they replaced up to a maximum of 3 coils. Any portion of the Net Settlement Amount that shall remain undistributed to Class members shall be distributed in the manner determined by the Court in accordance with Mass. R. Civ. P. 23(e).

As described below, this proposed plan of distribution is fair and reasonable and should be approved by the Court.

1. <u>The Notice, Distribution and Settlement Administration Expenses Should Be Paid For Out of the Class Recovery.</u>

Under the proposed plan of distribution, the Class Recovery will be used in part to pay the administrative costs associated with the Settlement, including the expenses associated with notice and distribution. Courts customarily approve as fair and reasonable the deduction from the Class Recovery of the costs and expenses which are necessary to effectuate the settlement. *See, e.g. Bezdek v. Vibram USA Inc.*, 79 F. Supp. 3d 324, 345 n. 16 (D. Mass. 2015) (approving class settlement and ordering costs of notice and administration to be paid from settlement fund as fair and reasonable); *Trombley v. Bank of Am. Corp.*, 2013 U.S. Dist. LEXIS 130550, at *19, 26 (D.R.I. Sept. 12, 2013) (approving as fair and reasonable the deduction of costs of notice and administration of settlement from settlement fund); *In re Compact Disc Minimum Advertised Price Antitrust Litig.*, 2003 U.S. Dist. LEXIS 12663, at *36 (D. Me. July 9, 2003) (approving payment of settlement notice and administration costs from class settlement fund); *In re Pool Prods. Distrib. Mkt. Antitrust Litig.*, 2016 U.S. Dist. LEXIS 6565, at *16 (E.D. La. Jan. 20, 2016) (approving settlement and ordering payment of notice and administration costs to be paid from settlement fund); *Delandro v. County of Allegheny*, 2011 U.S. Dist. LEXIS 55249, at *10, 52 (W.D. Pa. May 24, 2011) (approving settlement as fair and reasonable, including payment of notice and administration costs from settlement fund).

Although the final costs of the notice and settlement administration are not yet known, Class Counsel negotiated a $25,000 cap on such expenses with the Settlement Administrator. McLoughlin Aff. ¶ 14. Plaintiff thus seeks approval to pay up to $25,000 out of the settlement proceeds for such payments.

2. A Service Award to the Plaintiff is Fully Justified

Under the proposed plan of distribution, the Class Recovery would next pay a service award of $15,000 to Plaintiff Janice Magliacane Progin.

Courts "routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation." *In re Lorazepam & Clorazepate Antitrust Litig. v. Mylan Labs.*, 205 F.R.D. 369, 400 (D.D.C. 2002) (internal citations omitted); *see also In re Compact Disc Minimum Advertised Price Antitrust Litig.*, 292 F. Supp. 2d 184, 189 (D. Me. 2003) ("Because a named plaintiff is an essential ingredient of any class action, an incentive award can be appropriate to encourage or induce an individual to participate in the suit."). In evaluating a service award, courts generally will assess:

> (a) the risk to the plaintiff in commencing suit, both financially and otherwise; (b) the notoriety and/or personal difficulties encountered by the representative plaintiff; (c) the extent of the plaintiff's personal involvement in the suit in terms of discovery responsibilities and/or testimony at depositions; (d) the duration of the litigation; and (e) the plaintiff's personal benefit (or lack thereof) purely in his capacity as a member of the class.

Eldridge v. Provident Cos., 2005 Mass. Super. LEXIS 35, at *4, 18 Mass. L. Rep. 678 (2005). Additionally, "courts consider not only the efforts of the plaintiffs in pursuing the claims, but also the important public policy of fostering enforcement of laws and rewarding representative plaintiffs for being instrumental in obtaining recoveries for persons other than themselves." *Bussie v. Allmerica Fin. Corp.*, 1999 U.S. Dist. LEXIS 7793, at *11-12 (D. Mass. May 19, 1999).

Courts in Massachusetts and throughout the country have not hesitated to issue service awards in the range requested for plaintiffs who did not do nearly as much as Ms. Magliacane did over almost a decade of litigation. Ms. Magliacane's assistance in this litigation was invaluable. She conducted the initial investigation in this case, including through meetings with the Mayor of the City of Garder, meetings with contractors who replaced the corroded heating coils, review of water records provided by the City, and meetings with and review of documents maintained by the Massachusetts Department of Environmental Protection ("MADEP"), which led to the discovery that the MADEP had approved the use of an anti-corrosion treatment for the water supply which was never used. She also has been a very active participant in the litigation. She also responded to written discovery (including detailed interrogatories and the collection and production of documents), appeared for deposition, attended the mediation and assisted Class Counsel in the consideration of the Settlement. McLoughlin Aff. ¶ 12. A $15,000 service award for Plaintiff is fully justified.[4]

[4] *See Physicians Healthsource, Inc. v. Pharms. Inc.*, 2019 U.S. Dist. LEXIS 242426, *10 (D. Mass. March 21, 2019) (granting plaintiff incentive award of $15,000); *In re Lupron Mktg. & Sales Practices Litig.*, 2005 U.S. Dist. LEXIS 17456, at *24-25 (D. Mass. Aug. 17, 2005) (approving $25,000 incentive award for two named plaintiffs' representatives who gathered and produced documents and sat for depositions); *Commonwealth Care Alliance v. AstraZeneca Pharms. L.P.*, 2013 Mass. Super. LEXIS 145, at *2, 8, 31 Mass. L. Rep. (2013) (awarding incentive payment of $15,000 to each of the two plaintiffs); *see also In re Auto. Refinishing Paint Antitrust Litig.*, 2008 U.S. Dist. LEXIS 569, at *23 (E.D. Pa. Jan. 3, 2008) (approving a $30,000 award for each class representative); *McBean v. City of New York*, 233 F.R.D. 377, 391-92 (S.D.N.Y. 2006) (stating incentive awards of $25,000-$35,000 are "solidly in the middle of the range"); *In re Remeron Direct Purchaser Antitrust Litig.*, 2005 U.S. Dist. LEXIS 27013, at *50-52 (D.N.J. Nov. 9, 2005) (approving $60,000 award); *Texas v. Organon USA Inc. (In re Remeron End-Payor Antitrust Litig.)*, 2005 U.S. Dist. LEXIS 27011, at *33 (D.N.J. Sept. 13, 2005) (approving $30,000 award); *Brotherton v. Cleveland*, 141 F. Supp. 2d 907 (S.D. Ohio 2001) (approving $50,000 award).

3. The Proposed Allocation Among Class Members Is Fair and Reasonable

The Settlement provides that the Net Settlement Amount will be distributed to Class Members who mail or submit online a completed valid and timely claim form. As noted, each Class Member who submits a valid, timely Claim Form will be entitled to receive their *pro rata* share of the Net Settlement Amount, which will be divided among Class Members who have submitted valid, timely Claim Forms based on the number of coils they replaced up to a maximum of 3 coils. Any portion of the Net Settlement Amount that shall remain undistributed to Class members shall be distributed in the manner determined by the Court in accordance with Mass. R. Civ. P. 23(e). Such "[a] plan of allocation that reimburses class members based on the extent of their injuries is generally reasonable." *Schwartz v. TXU Corp.*, 2005 U.S. Dist. LEXIS 27077, at *77-78 (N.D. Tex. Nov. 8, 2005) (internal citations omitted).

C. The Notice Plan Fulfilled the Requirements of Massachusetts Law and Due Process

The notice plan described above, which the Settlement Administrator will establish was carried out by affidavit to be filed no later than 7 days prior to the final approval hearing, and the form of notice "fairly apprise[d] 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*, 396 F.3d at 114 (internal citations omitted). *See also Patrowicz v. Transamerica HomeFirst, Inc.*, 359 F. Supp. 2d 140, 150 (D. Conn. 2005) ("the settlement notice must 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.").

Consistent with these requirements, the Notice explained to Class members in plain and easily understandable language (a) the nature of the action, (b) who is a member of the certified Class, (c) the essential terms of the Settlement, (d) the proposed plan for distributing the Settlement

funds, (e) the effect of the judgment on Class members and (f) the methods and deadline for submitting their claims. The Notice also provided information about Plaintiff's Counsel's application for attorneys' fees and reimbursement of expenses to be paid out of the common fund Settlement Amount. It set forth the date, time and place of the Final Approval Hearing and the deadlines for objecting to any aspect of the Settlement or Class Counsel's fee and expense application. The Notice also explained how Class members could obtain additional information through the Settlement Website, as well as from the Settlement Administrator and Class Counsel.

For all the foregoing reasons, the Settlement is fair, reasonable and adequate, and the Court should finally approve it, as well as approving the distribution plan and Service Award to the Plaintiff.

V. CONCLUSION

For the forgoing reasons, the Court should grant the Plaintiff's Assented-To Motion for Final Approval of Settlement and enter the proposed Final Approval Order.

Dated: January 26, 2026

SHAPIRO HABER & URMY LLP

/s/ Ian J. McLoughlin

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Certificate of Service

I hereby certify that a true copy of the above document was served upon counsel of record for Defendant and Third-Party Defendant by e-mail on January 26, 2026.

/s/ Ian J. McLoughlin
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