

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

IN RE: SHOP-VAC MARKETING AND SALES PRACTICES LITIGATION	MDL No. 2380  Civil Action No. 4:12-md-02380-YK  (Chief Judge Yvette Kane)
THIS DOCUMENT RELATES TO: All Cases	

**JOINT MOTION FOR  
PRELIMINARY APPROVAL OF CLASS SETTLEMENT,  
CERTIFICATION OF SETTLEMENT CLASS, AND  
DISSEMINATION OF CLASS NOTICE**

Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, Plaintiffs Andrew Harbut, Alan McMichael, Kris Reid, David Palomino and Scott Giannetti and Defendants Shop-Vac Corporation and Lowe's Home Centers, LLC hereby move this Court for an entry of Order: (1) granting preliminary approval of their Settlement Agreement; (2) granting preliminary certification of a nationwide Settlement Class; (3) appointing Andrew Harbut, Alan McMichael, Kris Reid, David Palomino and Scott Giannetti as the representatives of the Settlement Class, and the law firm Dilworth Paxson LLP as Liaison Counsel and the law firms Faruqi & Faruqi, LLP, Lax LLP, Lite DePalma Greenberg, LLC, and Milberg LLP and as Class Counsel for the Settlement Class; (4) approving the forms and manner of disseminating notice to members of the Settlement Class; and (5) setting a

Fairness Hearing date for consideration approximately (and no less than) sixteen (16) weeks/one hundred and twelve (112) days after the entry of the Order. A copy of the proposed Order, which is Exhibit A to the Settlement Agreement, is attached to this Joint Motion.

This Joint Motion is based on the accompanying Memorandum of Law in support thereof, the Declaration of Adam R. Gonnelli in Support of the Joint Motion for Preliminary Approval of Class Settlement, Certification of Settlement Class, and Dissemination of Class Notice, as well as any additional written or oral submissions this Court may request or require.

Dated: April 1, 2016

Respectfully Submitted,

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**IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA**

IN RE: SHOP-VAC MARKETING AND  
SALES PRACTICES LITIGATION

MDL No. 2380

Civil Action No. 4:12-md-02380  
(Judge Kane)

THIS DOCUMENT RELATES TO:  
All Cases

**[PROPOSED] ORDER GRANTING PRELIMINARY  
APPROVAL TO CLASS ACTION SETTLEMENT**

On April 1, 2016, Plaintiffs Andrew Harbut, Alan McMichael, Kris Reid, David Palomino and Scott Giannetti (“Plaintiffs”), on behalf of themselves and the Settlement Class, and Defendants Shop-Vac Corporation (“Shop-Vac”), Lowe’s Home Centers, Inc. (“HCI”), and Lowe’s HIW, Inc. (“HIW”) (Plaintiffs and Defendants are collectively “the Parties”) executed a proposed Settlement Agreement (the “Settlement Agreement”). Pursuant to the Settlement Agreement, the Parties jointly moved for entry of an order granting preliminary approval to the settlement provided for in the Settlement Agreement (the “Settlement”). Having reviewed the Settlement Agreement and considered the submissions in support of preliminary approval of the Settlement, the Court now finds, concludes, and orders as follows:

**I. CERTIFICATION OF A NATIONWIDE SETTLEMENT CLASS**

The Settlement Agreement provides for a nationwide class settlement of the claims that are the subject of this litigation.

A. The Court has considered the (1) allegations, information, arguments, and authorities provided by the Parties in connection with pleadings previously filed in this case; (2) information, arguments, and authorities provided by Plaintiffs in their memoranda of points and authorities submitted in support of their unopposed motion for

entry of an order granting preliminary approval to the Settlement; (3) the terms of the Settlement Agreement, including, but not limited to, the definition of the Settlement Class and the benefits to be provided to the Settlement Class; and (4) the Settlement's elimination of any potential manageability issue, and individualized issues of fact and law that could have had a bearing on the certification of a nationwide class for trial in this case. Based on those considerations, the Court hereby finds as follows:

1. Since at least January 1, 2006, Shop-Vac manufactured, advertised for sale, sold, and/or distributed to others to sell Shop-Vac brand wet/dry vacuums in the United States and its territories (the "Vacuums"), including the models falling within the following series: AllAround Series, Ash Vacuum Series, Back Pack Series, Blower Vac Series, Bulldog Series, Farm Ranch and Home Series, Hardware Store Wet/Dry Vac Series, Heavy Duty Portable Series, Industrial Series, Lowe's Wet/Dry Vac Series, Menards Wet/Dry Vac Series, Micro Series, Mulcher Series, Portable Series, Professional Series, Pump Vac Series, Quiet Series, Stainless Series, The Right Stuff Series, Tool Mate Series, Wall-Mount Series, and Walmart Wet/Dry Series.

2. Persons and entities throughout the nation purchased thousands of Vacuums. The number of purchasers of the Vacuums satisfies the numerosity requirement of Rule 23 of the Federal Rules of Civil Procedure. Defendants do not contest this numerosity.

3. There are questions of law and fact common to all members of the Settlement Class based on the manufacture, advertising, sale and distribution of



the Vacuums. Such questions include, but are not necessarily limited to, the following:

- a. Whether Defendants misrepresented the peak horsepower, horsepower, and/or tank capacity of the Vacuums;
- b. Whether Defendants knew their claims regarding the Vacuums were false and/or misleading;
- c. Whether Defendants breached express warranties by selling and delivering the Vacuums which do not conform to their represented product specifications and which do not perform as well as products which would conform, and whether Plaintiffs are entitled to revocation of acceptance and other warranty damages as a result;
- d. Whether Defendants breached implied warranties by selling the Vacuums which do not pass for sale into the trade without objection, due to the inaccurate specifications, and failure of the product to perform to specifications as to power and capacity;
- e. Whether Defendants have been unjustly enriched as a result of their misrepresentations;
- f. Whether Defendants sale of Vacuums which were delivered in a manner which do not conform to represented product specifications violate the Magnuson-Moss Act, 15 U.S.C. § 291, et seq.;

g. Whether Defendants' actions as described above violate the consumer fraud laws of individual states; and

h. Whether Plaintiffs and the other members of the Settlement Class are entitled to damages, restitution, injunctive and/or monetary relief and, if so, the amount and nature of such relief.

4. Plaintiffs' claims are typical of the claims of the Settlement Class. Plaintiffs are members of the Settlement Class and allege that they have been damaged by the same conduct of Global that they allege has damaged other members of the Settlement Class. Plaintiffs' claims are not in conflict with or antagonistic to the claims of the Settlement Class as a whole. The claims of Plaintiffs and other members of the Settlement Class are based upon corresponding theories.

5. The Settlement Class is ascertainable. The unnamed members of the Settlement Class have in common that each of them either (1) purchased a Vacuum, or (2) received a Vacuum as a gift, or (3) acquired possession of a Vacuum through other lawful means.

6. Plaintiffs can fairly, fully, and adequately protect the interests of the Settlement Class. Class Counsel are experienced in prosecuting complex class action litigation, and Plaintiffs and their counsel have no interest that conflicts with, or is adverse to, the interests of the Settlement Class.

7. Questions of law and fact common to all members of the Settlement Class predominate over any questions affecting only individual members for settlement purposes.

8. A nationwide class action for settlement purposes is superior to other available methods for the fair and efficient adjudication of this controversy.

B. Pursuant to Federal Rule of Procedure 23(b)(3), the Court hereby provisionally certifies the following Settlement Class for settlement purposes only:

Each person in the United States and its territories who, from January 1, 2006 to the date of entry of this Preliminary Approval Order, either (1) purchased a Vacuum, or (2) received a Vacuum as a gift, or (3) acquired possession of a Vacuum through other lawful means. Excluded from the Settlement Class is any person or entity who purchased or acquired a Vacuum for resale, all judges to whom the Lawsuits are assigned and the officers, directors and counsel of record of Defendants, and all employees of Defendants.

C. Andrew Harbut, Alan McMichael, Kris Reid, David Palomino, and Scott Giannetti are appointed as the representatives of the Settlement Class, and the law firm Dilworth Paxson LLP is appointed as Liaison Counsel and the law firms Faruqi & Faruqi, LLP, Lax LLP, Lite DePalma Greenberg, LLC, and Milberg LLP are appointed as Class Counsel for the Settlement Class.

D. If for any reason the Settlement Agreement should fail to become effective, Defendants' stipulation to certification of the Settlement Class, or to any other class or subclass, shall be null and void, and the Parties shall return to their respective positions in the Lawsuits as those positions existed on September 3, 2015, when the Parties reached an agreement-in-principle to settle. Nothing stated in the Settlement Agreement shall be deemed an admission or waiver of any kind by any of the Parties or used as evidence against, or over the objection of, any of the Parties for any purpose in the MDL, the New Jersey Action, or any other action or proceeding of any kind.

## **II. PRELIMINARY APPROVAL OF THE TERMS OF THE SETTLEMENT**

Defendants have at all times disputed, and continue to dispute, Plaintiffs' factual allegations in the Lawsuits and to deny any liability for any of the claims that have or could have been alleged by Plaintiffs or other members of the Settlement Class.

A. The Settlement requires Defendants to provide specified benefits to each member of the Settlement Class. The Settlement provides extend the manufacturer's warranty on the motors of the Vacuums for the longer of: (a) 24 months from the date a Vacuum's current manufacturer's warranty would expire by its own terms, or (b) 24 months after the Effective Date of the Settlement. The proposed Settlement further provides for changes to Peak Horsepower designations in the marketing of the Vacuums and to the tank capacity legend of the Vacuums.

B. On a preliminary basis, therefore, taking into account (1) the value of the benefits to be provided by the Settlement to the Settlement Class; (2) the defenses asserted by Defendants, (3) the risks to the members of the Settlement Class that Defendants would successfully defend against claims arising out of the facts and legal theories pled and asserted in this case, whether litigated by members of the Settlement Class themselves or on their behalf in a class action, and (4) the length of time that would be required for members of the Settlement Class, or any group of members of the Settlement Class, to obtain a final judgment through one or more trials and appeals, the Settlement appears fair, reasonable, and adequate. Moreover, the Parties have reached the Settlement after vigorous litigation, significant investigation and discovery conducted by Plaintiffs, Class Counsel, and Defendants, and a protracted, arm's-length negotiation process facilitated by a mediator, and the Settlement is not in any way the product of

collusion. For all these reasons, the Settlement falls within the appropriate range of possible approval and does not appear in any way to be the product of collusion.

C. Accordingly, the Settlement Agreement and corresponding Settlement are hereby preliminarily approved.

D. The Court hereby adopts and incorporates the terms of the Settlement Agreement for the purposes of this Preliminary Approval Order, including the Definitions set forth in the Settlement Agreement.

**III. APPROVAL OF THE SETTLEMENT NOTICE, THE PUBLICATION NOTICE, AND THE PLAN FOR DISTRIBUTING THE NOTICES**

As provided for in the Settlement Agreement, the Parties have submitted a proposed Settlement Notice, a copy of which is attached to this Order as Exhibit 1; a proposed Posted Notice, a copy of which is attached to this Order as Exhibit 2; a proposed Publication Notice, a copy of which is attached to this Order as Exhibit 3; and a plan for distributing the Settlement Notice to the Settlement Class described in the Settlement Agreement and for disseminating the Publication Notice, a copy of which is attached to this Order as Exhibit 4. Having reviewed each, the Court finds and concludes as follows:

A. Distribution of the Settlement Notice and Publication Notice, in substantially the forms attached hereto, through the methodology described in the Settlement Agreement and the Notice Plan is the only notice required, and such notice satisfies the requirements of due process, Rule 23 of the Federal Rules of Civil Procedure, the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, and any other applicable laws, and constitutes the best notice practicable under the circumstances and shall constitute due and sufficient notice to all persons entitled thereto.

B. The Settlement Notice and Publication Notice fairly, accurately, and reasonably inform members of the Settlement Class of: (1) appropriate information about the nature of this litigation and the essential terms of the Settlement Agreement; (2) appropriate information about how to obtain additional information regarding this matter and the Settlement Agreement; and (3) appropriate information about how to challenge, or exclude themselves from, the Settlement, if they wish to do so. The Settlement Notice and Publication Notice also fairly and adequately inform members of the Settlement Class that if they do not comply with the specified procedures and the deadline for objections, they will lose any opportunity to have any objection considered at the Fairness Hearing or otherwise to contest approval of the Settlement or to appeal from any order or judgment entered by the Court in connection with the Settlement.

Accordingly, the Court hereby orders as follows:

1. The form and content of the proposed Settlement Notice, Posted Notice, and Publication Notice are hereby approved. The proposed Notice Plan is hereby approved and notice shall be given to the Settlement Class as provided by the notice methodology described in the Settlement Agreement and the Notice Plan.
2. Promptly following the entry of this Order, the Parties shall prepare final versions of the Settlement Notice and the Publication Notice, and incorporate into each of them the Fairness Hearing date and the deadlines set forth in paragraph IV of this Order.
3. Within one (1) week/ seven (7) days after the entry of this Preliminary Approval Order, Defendants, through the Settlement Administrator,

shall cause the Posted Notice to be posted on the Settlement Website, [www.shopvacphpsettlement.com](http://www.shopvacphpsettlement.com), and linked to the Support page of the Shop-Vac USA website.

4. Within three (3) weeks/twenty-one (21) days after the entry of this Order, the Settlement Administrator shall disseminate to every member of the Settlement Class who reasonably can be identified in Defendants' records, and for whom Defendants know and have readily available a mailing address or an e-mail address, a copy of the Settlement Notice. The Settlement Administrator will disseminate the Settlement Notice to members of the Settlement Class by email where an email address is known and readily available to Defendants. The Settlement Administrator will disseminate the Settlement Notice to members of the Settlement Class by United States Mail where a mailing address is known and readily available to Defendants, but an email address is not, or where the Settlement Administrator notifies Defendants that the e-mail was returned "undeliverable" and a mailing address is known and readily available to Defendants. Before the Settlement Administrator sends copies of the Settlement Notice by United States Mail, the Settlement Administrator will obtain or cause to be obtained address updates using a National Change of Address database and use any updated addresses when mailing. If any Settlement Notice is returned bearing a forwarding address for a member of the Settlement Class, the Settlement Administrator shall make one attempt to mail the Settlement Notice to that forwarding address.

5. Defendants shall disseminate, cause to be disseminated, or ensure that the Settlement Administrator has disseminated, the Publication Notice as outlined by the Settlement Administrator's Notice Plan. Dissemination of the Publication Notice will start within three (3) weeks/twenty-one (21) days after the entry of this Order and will continue until the Notice Plan is fully implemented.

6. This civil action was commenced after February 18, 2005. As a result, the Court directs Defendants to notify the appropriate Federal and State officials under the Class Action Fairness Act of 2005, 28 U.S.C. § 1715. Defendants' Counsel shall file with the Court proof of compliance with the Class Action Fairness Act of 2005, 28 U.S.C. § 1715.

7. No later than one (1) week/seven (7) days before the Fairness Hearing, Defendants shall file with this Court a declaration of compliance with paragraphs 3, 4, 5, and 6 above.

8. Epiq Systems Class Action and Claims Solutions is hereby approved as the Settlement Administrator, whose reasonable costs in administering the Settlement are to be paid by Defendants.

9. The Settlement Administrator shall administer the Settlement subject to the jurisdiction of the Court.

10. The Settlement Administrator shall perform the following functions in accordance with the Settlement Agreement, this Preliminary Approval Order, and subsequent orders that may be entered by this Court in this case:



a. As described above, disseminate the Settlement Notice to members of the Settlement Class by e-mail, where an e-mail address is known and readily available to Defendants, and by mail, where a mailing address is known and readily available to Defendants but an e-mail address is not;

b. Before disseminating the Settlement Notice, establish the Settlement Website;

c. Before disseminating the Settlement Notice, set up and operate a toll-free automated interactive voice response system through which Settlement Class Members can access settlement information and facilitate requests for the Settlement Notice and other settlement information;

d. Send via e-mail or mail notice packets or other settlement information to all those who may request via the toll-free number or mail;

e. Before disseminating the Settlement Notice, establish a postal address to which Settlement Class Members can request to be excluded from the Settlement Class;

f. Disseminate Publication Notice and supervise and carry out the Notice Plan;

g. Process requests for exclusion from the Settlement in accordance with Section IV.B of the Settlement Agreement; and

h. Promptly provide to Class Counsel and Defendants' Counsel copies of the Requests for Exclusion and a list of the names of all persons who submitted Requests for Exclusion. Class Counsel and Defendants shall jointly report in writing to the Court, no later than one (1) week/seven (7) days before the Fairness Hearing, the names of all such persons.

#### **IV. PROCEDURES FOR FINAL APPROVAL OF THE SETTLEMENT**

##### **A. Fairness Hearing**

The Court hereby schedules a Fairness Hearing at \_\_\_\_:\_\_\_\_ \_\_.m. on \_\_\_\_\_, 2016, which date is approximately (and no less than) sixteen (16) weeks/one hundred and twelve (112) days after the entry of this Order, to determine whether the certification of the Settlement Class, the designation of Plaintiffs as class representatives, the appointment of Class Counsel, the Settlement Agreement, and the Settlement should receive final approval. At that time, the Court also will consider Class Counsel's application for an award of attorneys' fees and reimbursement of costs they incurred prosecuting both of the Lawsuits, as well as awards to be paid to Plaintiffs in both of the Lawsuits, all in accordance with the terms of the Settlement Agreement (the "Application").

##### **B. Deadline for Requests for Exclusion from the Settlement Class**

Settlement Class Members shall be bound by all determinations and judgments in the Litigations, whether favorable or unfavorable, unless such persons request exclusion from the Settlement Class in a timely and proper manner, as hereinafter provided. Members of the Settlement Class who wish to be excluded from the Settlement Class must mail their requests for exclusion in written form to the Settlement Administrator by first-class United States mail, postmarked by the United States Postal Service no later than thirteen (13) weeks/ninety-one (91)

days after the entry of this Order. Any request for exclusion submitted in any other manner shall be deemed to have been submitted when actually received by the Settlement Administrator. The request for exclusion shall clearly indicate the name, address and telephone number of the person seeking exclusion, that the sender requests to be excluded from the Settlement Class in *In re: Shop-Vac Marketing and Sales Practices Litigation*, MDL No. 2380, Civil Action No. 4:12-md-02380, and must be signed by the person seeking exclusion. The request for exclusion shall not be effective unless it provides the required information and is made within the time stated above, or the exclusion is otherwise accepted by the Court.

**C. Deadline for Filing Objections and Requests to Appear**

All objections to certification of the Settlement Class, the designation of Plaintiffs as class representatives, the appointment of Class Counsel, the Settlement, the Settlement Agreement, or Class Counsel's Application, shall be made in writing and, no later than thirteen (13) weeks/ninety-one (91) days after the entry of this Order, filed with this Court and mailed to Defendants' Counsel and to the representative for Plaintiffs' Counsel listed below, by first-class United States Mail, at the following addresses:

Clerk of the Court  
U.S. District Court for the Middle District of Pennsylvania  
Ronald Reagan Federal Bldg. & U.S. Courthouse  
228 Walnut Street  
P.O. Box 983  
Harrisburg, PA 17101

For Defendants:

Michael B. Shortnacy  
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555 West Fifth Street, Suite 4000  
Los Angeles, California 90013

For the Settlement Class:

Elizabeth Goldstein  
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Harrisburg, PA 17101

Any written objection must include: (i) your name, address, and telephone number; (ii) the full case name and number (*In re: Shop-Vac Marketing and Sales Practices Litigation*, MDL No. 2380, Civil Action No. 4:12-md-02380); (iii) a statement that you are a Settlement Class Member; (iv) a statement of each objection asserted; (v) a detailed description of the facts underlying each objection; (vi) a detailed description of the legal authorities supporting each objection; (vii) a statement of whether you intend to appear and speak at the Fairness Hearing and, if so, how much time the you anticipate needing to present the objection; (viii) a list of the exhibits that you may offer during the Fairness Hearing, along with copies of such exhibits; and (ix) your signature. In addition, if applicable, please include: (i) the identity of all counsel who represent you, including any former or current counsel who may be entitled to compensation for any reason related to your objection; (ii) the number of times in which you, your counsel (if any), or your counsel's law firm (if any) has objected to a class action settlement within the five years preceding the date that the objector files the objection and the caption of each case in which such objection was made; and (iii) a statement disclosing any consideration that you, your counsel (if any), or your counsel's law firm (if any) has received in connection with the resolution or dismissal of an objection to a class action settlement within the five years preceding the date that the objector files the objection. If the Objector or his or her counsel has *not* objected to any other class action settlement in any court in the United States in the previous five (5) years, he or she must affirmatively state as much in their submission to the Court. Any papers not filed and served in the prescribed manner and time will not be considered at the Fairness Hearing, and all objections not made in the prescribed manner and time shall be deemed waived.

The filing of an objection allows Class Counsel or Defendants' Counsel to take the Objector's deposition consistent with the Federal Rules of Civil Procedure at an agreed-upon

location, and to seek any documentary evidence or other tangible things that are relevant to the objection. Failure by an Objector to make himself or herself available for a deposition or otherwise comply with expedited discovery requests may result in the Court striking the Objector's objection and otherwise denying the Objector the opportunity to make an objection or be further heard. The Court may tax the costs of any such discovery to the Objector or the Objector's counsel should the Court determine that the objection is frivolous or is made for an improper purpose.

All persons wishing to appear at the Fairness Hearing, either in person or by counsel, for the purpose of objecting to any aspect of the certification of the Settlement Class, the designation of Plaintiffs as representatives of the Settlement Class, the appointment of Class Counsel, the Settlement, the Settlement Agreement, or Class Counsel's Application, must file with the Court and serve, on Defendants' Counsel and on the listed representative for Plaintiffs' Counsel, no later than thirteen (13) weeks/ninety-one (91) days after the entry of this Order,, a notice of their intention to appear setting forth the basis of their objections and summarizing the nature and source of any evidence they intend to present at the Fairness Hearing.

Any memorandum or other material the Parties wish to submit in response to any objections to the certification of the Settlement Class, the designation of Plaintiffs as representatives of the Settlement Class, the appointment of Class Counsel, the Settlement, the Settlement Agreement, or Class Counsel's Application, or otherwise in support of the Settlement Class, the Settlement, the Settlement Agreement, or Class Counsel's Application, shall be made in writing and, no later than one (1) week/seven (7) days before the Fairness Hearing, filed with this Court and served on each other and any objectors.

**D. Deadline for Class Counsel to File Papers in Support of Final Approval of Settlement and Fee Application**

No later than three (3) weeks/twenty-one (21) days before the deadlines for Requests for Exclusion and for Filing Objections and Requests to Appear, Class Counsel shall file with this Court, and serve on Defendants, Class Counsel's Application, pursuant to the Settlement Agreement, their papers in support of final approval of the Settlement and their application for an award of attorneys' fees and reimbursement of costs incurred in the Lawsuits and for awards to Plaintiffs.

**V. STAY OF PROCEEDINGS**

Pending final determination of whether the Settlement should be approved, the Plaintiffs, all other Settlement Class Members, and each of them, and anyone who acts or purports to act on their behalf, shall not institute, commence or prosecute any action which asserts Released Claims against any Releasee. Pending the Fairness Hearing, the Court stays all proceedings in the Lawsuit, other than those proceedings necessary to carry out or enforce the terms and conditions of the Settlement Agreement.

IT IS SO ORDERED.

Dated: \_\_\_\_\_, 2016

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YVETTE KANE, District Judge  
Middle District of Pennsylvania