

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

|   |   |
|---|---|
| IN RE: SHOP-VAC MARKETING AND<br>SALES PRACTICES LITIGATION | MDL No. 2380                                  |
| THIS DOCUMENT RELATES TO:<br>ALL CASES                      | Civil Action No. 4:12-md-2380<br>(Judge Kane) |

**CLASS ACTION SETTLEMENT AGREEMENT**

This agreement (“Settlement Agreement”) is between Plaintiffs Andrew Harbut, Alan McMichael, Kris Reid, David Palomino and Scott Giannetti on behalf of themselves and as representatives of the proposed Settlement Class, as defined herein, on the one hand, and Defendant Shop-Vac Corporation (“Shop-Vac”) and Defendant Lowe’s Home Centers, LLC (“Lowe’s”) (Shop-Vac and Lowe’s, together, “Defendants”) on the other hand, to fully and finally settle and resolve and to effect dismissal with prejudice of all of the Released Claims (as defined herein) asserted against Defendants in the action captioned *In re: Shop-Vac Marketing and Sales Practices Litigation*, MDL No. 2380 (M.D. Pa.) (“the MDL”) brought on behalf of the Settlement Class against Defendants relating to Shop-Vac brand wet/dry vacuums as defined below (hereinafter referred to individually and collectively as a “Vacuum” or the “Vacuums”). This Settlement Agreement would also effect the dismissal with prejudice and release of claims against Defendant Shop-Vac in a parallel action pending in the Superior Court of New Jersey, Law Division, Bergen County, captioned *Palomino, et al. v. Shop-Vac Corporation*, Docket No. BER-L-1399-12 (the “New Jersey Action” and, together with the MDL, the “Lawsuits”), a case brought on behalf of New Jersey purchasers of Shop-Vac brand wet/dry vacuums. David Palomino and Scott Giannetti are the named representative plaintiffs in the New Jersey Action.

Plaintiffs' central allegation in the MDL and the New Jersey Action is that Shop-Vac overstates the horsepower ratings of its Vacuums. Plaintiffs also allege in the MDL only that Shop-Vac's canister size measurement, as represented in its marketing, is misleading.

Multiple actions against Shop-Vac and Lowe's were filed in federal courts across the country. The Judicial Panel on Multidistrict Litigation consolidated all of these actions in the Middle District of Pennsylvania. Plaintiffs McMichael (a resident of Florida), Harbut (a resident of Missouri), and Reid (a resident of California) filed a Consolidated Amended Complaint against Shop-Vac and Lowe's, asserting causes of action for breaches of the consumer protection statutes of each of the fifty states (except New Jersey), express and implied warranties, and the Magnuson-Moss Warranty Act. On Defendants' motion, the MDL Court dismissed all of these claims, with leave to amend, on August 9, 2013. 964 F. Supp. 2d 355. Thereafter, Plaintiffs McMichael, Harbut, and Reid filed a Second Consolidated Amended Complaint. Almost all of Plaintiffs' claims survived a motion to dismiss. *See In re: Shop-Vac Marketing and Sales Practices Litigation*, MDL No. 2380, No. 4:12-md-2380, 2014 U.S. Dist. LEXIS 98075 (M.D. Pa. July 17, 2014). The parties conducted extensive discovery and Plaintiffs were prepared to file a motion for class certification, but the Court granted the parties' joint request to adjourn all then-pending litigation dates in order to allow the parties to mediate the case before the Hon. Edward A. Infante, retired Chief Magistrate Judge of the United States District Court for the Northern District of California.

The complaint in the New Jersey Action, for breach of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 *et seq.*, and for breach of warranty, is against Defendant Shop-Vac only. That case survived a threshold motion to stay that lawsuit in favor of the MDL, a motion for a more definite statement as to both the warranty and NJCFA claims, a motion to dismiss the

warranty claim, and motions for summary judgment asserting applicable statutes of limitation as to all individual claims by Plaintiffs Palomino and Giannetti. Both fact and expert discovery have been completed. A class was certified consisting of all consumers who are New Jersey citizens who purchased Shop-Vac brand wet/dry vacuums in New Jersey between February 1, 2006 and May 8, 2015. Shop-Vac sought leave to appeal the class certification to the Appellate Division of the New Jersey Superior Court, but the Appellate Division denied interlocutory review. The New Jersey state court adjourned a September 3, 2015 trial date until October 19, 2015, to allow the parties to engage in mediation. On October 9, 2015, the New Jersey state court adjourned the trial and stayed the New Jersey Action pending the completion of the approval process in the MDL Court.

Defendants deny all of the allegations in the Lawsuits and assert numerous defenses to each of the claims alleged in the Lawsuits. Defendants assert that peak horsepower, which is used by Defendants, and operational horsepower, which is not, are different measures of power and, therefore, no consumers have been deceived. Defendants also assert that tank size representations were not deceptive because tank sizes that are represented are accurate and Defendant provides visible disclosures that tank capacity varies depending on use.

Plaintiffs and Defendants, after significant discovery and motion practice and having engaged in arm's length settlement negotiations with the assistance of a mediator, the former Chief Magistrate Judge of the Northern District of California, Judge Edward A. Infante (Ret.), have now reached an agreement providing for a settlement of both of the Lawsuits with a proposed nationwide settlement class.

Plaintiffs and Plaintiffs' Counsel, who are experienced in this type of class action litigation, have examined and considered the benefits to be provided to Settlement Class

Members under the settlement provided for in this Settlement Agreement (the “Settlement”); have considered the laws of the states, and the claims that could be asserted under those laws regarding the Vacuums; and believe the Settlement to be in the best interest of the Settlement Class, taking into account what they believe to be the substantial benefits to be provided to the Settlement Class by Defendants, the risks of litigation, and the length of time that would be required to complete the litigation and any appeals.

Defendants have at all times disputed, and continue to dispute, Plaintiffs’ allegations in the Lawsuits and have denied, and continue to deny, any liability for any of the claims that have or could have been raised regarding the Vacuums by Plaintiffs or Settlement Class Members, but believe that the comprehensive resolution of the claims relating to the Vacuums as provided in this Settlement Agreement will avoid the substantial expense and disruption of continued litigation.

The Parties agree that neither this Settlement Agreement nor the Settlement it represents shall be construed as an admission by Defendants of any wrongdoing whatsoever including an admission of a violation of any statute or law, or of liability on the claims or allegations in the Lawsuits.

The Parties agree and understand that neither this Settlement Agreement nor the Settlement it represents shall be construed or admissible as an admission by Defendants in the Lawsuits or any other proceedings that the Plaintiffs’ claims or similar claims are, or would be, suitable for class treatment if the Lawsuits proceeded through both litigation and trial.

The Parties agree that this Settlement Agreement supersedes any and all agreements previously entered into by the Parties with respect to claims asserted in the Lawsuits.

Now, therefore, the Parties stipulate and agree as follows:

## **I. DEFINITIONS**

A. “Administration Expenses” means reasonable fees and expenses incurred by the Settlement Administrator for all tasks the Settlement Administrator and any third parties perform in furtherance of the administration of the Settlement, including: (1) preparation and distribution of the Settlement Notice, and (2) preparation of status reports to the Parties and the Court.

B. “Application” means the application to be filed by Class Counsel to the MDL Court by which they will seek an award of reasonable attorneys’ fees and reimbursement of costs they incurred prosecuting both of the Lawsuits, as well as awards to be paid to the Plaintiffs in both of the Lawsuits.

C. “Class Counsel” means the law firms (1) Faruqi & Faruqi, LLP; (2) Lax LLP; (3) Lite DePalma Greenberg, LLC; and (4) Milberg LLP.

D. “Court” means the United States District Court for the Middle District of Pennsylvania.

E. “Defendants” means Shop-Vac Corporation and Lowe’s Home Centers, LLC.

F. “Effective Date” means the first date after all the following have occurred: (i) this Settlement Agreement has been fully executed; (ii) the Court has entered an order certifying a Settlement Class and granting final approval of the Settlement in accordance with the terms of this Settlement Agreement; (iii) the time for any challenge to the Court’s orders relating to the Settlement, both in the Court and on appeal, has elapsed; and (iv) the Settlement has become Final as defined herein.

G. “Fairness Hearing” means the final hearing, to be held after notice has been provided to the Settlement Class in accordance with this Settlement Agreement and as directed by the Court: (1) to consider the fairness, reasonableness, and adequacy of the proposed settlement and to determine whether to grant final approval to (a) the certification of the Settlement Class, (b) the designation of Plaintiffs as the representatives of the Settlement Class, (c) the designation of Class Counsel as counsel for the Settlement Class, and (d) the Settlement; (2) to rule on Class Counsel’s Application for an award of reasonable attorneys’ fees and reimbursement of costs and for awards to Plaintiffs; and (3) to consider whether to enter the Final Approval Order.

H. “Final” when referring to a judgment or order means that: (1) the judgment is a final, appealable judgment; and (2) either (a) no appeal has been taken from the judgment relating to the merits of the Settlement (as opposed to any appeals relating solely to the Application, which will not affect finality as defined herein) as of the date on which all times to appeal therefrom have expired, or (b) an appeal or other review proceeding of the judgment relating to the merits of the Settlement having been commenced, such appeal or other review is finally concluded and no longer is subject to review by any court, whether by appeal, petitions for rehearing or re-argument, petitions for rehearing en banc, petitions for writ of certiorari, or otherwise, and such appeal or other review has been finally resolved in a manner that affirms the judgment in all material respects.

I. “Final Approval Order” means the proposed Order Granting Final Approval of the Class Action Settlement Agreement and Entry of Final Judgment, to be

entered by the Court with the provisions and in the form of Exhibit B attached to this Settlement Agreement.

J. “Lawsuits” means the putative class action lawsuit pending, as of the date of this Settlement Agreement, in the Court as MDL No. 2380, Civil Action No. 4:12-md-2380, and the putative class action lawsuit pending, as of the date of this Settlement Agreement, in the Superior Court of New Jersey, Law Division, Bergen County, captioned *Palomino, et al. v. Shop-Vac Corporation*, Docket No. BER-L-1399-12.

K. “Liaison Counsel” means the law firm Dilworth Paxson LLP.

L. “Parties” means Plaintiffs and Defendants in the Lawsuits.

M. “Plaintiffs” means Plaintiffs Andrew Harbut, Alan McMichael, Kris Reid, David Palomino, and Scott Giannetti.

N. “Plaintiffs’ Counsel” means Liaison Counsel, Class Counsel, and the law firms Baron & Herskowitz, Pinilis Halpern LLP, Reese LLP, and Walsh PLLC.

O. “Preliminary Approval Order” means the proposed Order Granting Preliminary Approval to Class Action Settlement, to be entered by the Court with the terms and in the form of Exhibit A attached to this Settlement Agreement.

P. “Posted Notice” means the proposed notice, with the terms and form of the document attached to the Preliminary Approval Order as Exhibit 2, to be approved by the Court and to be posted online in accordance with Section V of this Settlement Agreement.

Q. “Publication Notice” means the proposed notice, with the terms and in the form of the document attached to the Preliminary Approval Order as Exhibit 3, to be approved by the Court and to be published in accordance with Section V of this Settlement Agreement.

R. “Released Claims” means any and all claims, actions, causes of action, administrative claims, demands, debts, liens, offsets or liabilities, damages, costs, attorney’s fees, obligations, judgments, expenses, or liabilities, in law or in equity, whether now known or unknown, contingent or absolute, other than claims for personal injury, that Plaintiffs or any member of the Settlement Class now have or, absent the Settlement Agreement, may in the future have, against Releasees, or any of them, by reason of any act, omission, harm, matter, cause, or event whatsoever that has occurred at any time up to and including the entry of the Preliminary Approval Order, that (a) has been alleged in the Lawsuits or (b) could have been alleged in the Lawsuits or in another court action and relates (i) to any of the alleged inadequacies, misstatements, or issues of or associated with the Vacuums alleged in the Lawsuits or (ii) to any act, omission, damage, matter, cause, or event whatsoever arising out of or related to the initiation, defense, or settlement of the Lawsuits or the claims or defenses asserted or that could have been asserted in the Lawsuits.

S. “Releasees” means (a) Defendants, together with their respective predecessors and successors in interest, parents, subsidiaries, affiliates, and assigns; (b) each of their respective past, present, and future owners, shareholders, officers, directors, agents, representatives, employees, attorneys, and insurers; and (c) all suppliers, distributors, dealers, retailers, trade partners, licensors, licensees, franchisees, public

relations firms, advertising and production agencies, and other entities, whether foreign or domestic, who were or are in the chain of, or played any role in, the design, testing, manufacture, assembly, distribution, marketing, sale, lease, installation, or servicing of the Vacuums or their component parts.

T. “Settlement” means the settlement provided for in this Settlement Agreement.

U. “Settlement Administrator” means Epiq Systems Class Action and Claims Solutions, the entity selected by the Parties to administer the Settlement.

V. “Settlement Agreement” means this Settlement Agreement and the exhibits attached hereto.

W. “Settlement Class” means each person in the United States and its territories who, from January 1, 2006 to the date of entry of the 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 the purpose of resale, all judges to whom the Lawsuits are assigned and the officers, directors and counsel of record of Defendants, and all employees of Defendants. Also excluded from the Settlement Class are any putative Settlement Class Members who properly and timely exclude themselves by filing a request for exclusion in accordance with the requirements set forth in the Preliminary Approval Order.

X. “Settlement Class Members” means all persons who are members of the Settlement Class and do not properly and timely exclude themselves from the Settlement Class in the manner and time prescribed by the Court in the Preliminary Approval Order.

Y. “Settlement Notice” means the proposed form of written notice attached to the Preliminary Approval Order as Exhibit 1, to be approved by the Court and to be sent to those Settlement Class Members whose e-mail or mailing addresses are known to and readily identifiable by Defendants in accordance with Section V of this Settlement Agreement.

Z. The “Settlement Website” means [www.shopvacphpsettlement.com](http://www.shopvacphpsettlement.com), which Settlement Class Members can visit to read or request additional information regarding the Settlement, and a hyperlink to the Settlement Website will be placed on the Support page of the Shop-Vac USA website.

AA. “Vacuums” means Shop-Vac brand wet/dry vacuums sold in the United States and its territories during the Class Period.

## **II. CONDITIONAL CERTIFICATION OF NATIONWIDE CLASS SETTLEMENT**

For the purpose of implementing this Settlement Agreement, and for no other purpose, Defendants stipulate to the conditional certification of the nationwide Settlement Class in the MDL, in full settlement of both of the Lawsuits, as set forth in the Preliminary Approval Order. If for any reason this Settlement Agreement should fail to become effective, Defendants’ stipulation to certification of the Settlement Class provided for in this Section II, 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 this 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.

### **III. REQUIRED EVENTS**

A. As soon as practicable after the execution of this Settlement Agreement, the Parties shall jointly file this Settlement Agreement and a motion in the MDL seeking entry of the Preliminary Approval Order, substantially in the form of Exhibit A.

B. At the Fairness Hearing, the Parties will jointly request the Court to enter the Final Approval Order, substantially in the form of Exhibit B.

C. The Parties and their counsel will cooperate and take all reasonable actions to accomplish the above. If the Court fails or refuses to enter either the Preliminary Approval Order or the Final Approval Order, the Parties and their counsel will use all reasonable efforts that are consistent with this Settlement Agreement to cure any defect identified by the Court, except that Defendants have no obligation to provide any additional consideration beyond what is specified herein, to effectuate a settlement of the Lawsuits. If, despite such efforts, the Court does not enter the Preliminary Approval Order and the Final Approval Order, the Parties will return to their prior positions in the Lawsuits, in accordance with Section II of this Settlement Agreement.

**IV. BENEFITS TO SETTLEMENT CLASS MEMBERS AND PROCEDURES FOR PROVIDING BENEFITS TO SETTLEMENT CLASS MEMBERS**

**A. Benefits to Settlement Class Members**

In accordance with the terms of this Settlement Agreement and its exhibits, in exchange for the dismissal of the Litigation, with prejudice, of the Released Claims as provided herein, Defendants agree to provide the following consideration and benefits to the Settlement Class:

1. Upon the Effective Date, Shop-Vac will 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) for those Class Members whose current manufacturer's warranty has expired by its own terms prior to the Effective Date, 24 months after the Effective Date;
2. No later than thirty (30) calendar days after the Effective Date, Shop-Vac will provide on its website, product boxes, and any other marketing materials that refer to Peak Horsepower of the Vacuums or their motors, information that is materially consistent with the following statement:

"Peak Horsepower" (PHP) is a term used in the wet-dry vacuum industry for consumer comparison purposes. It does not denote the operational horsepower of a wet-dry vacuum but rather the horsepower output of a motor, including the motor's inertial contribution, achieved in laboratory testing. In actual use, Shop-Vac's motors do not operate at the peak horsepower shown.

3. No later than thirty (30) calendar days after the Effective Date, Shop-Vac will alter the existing tank gallon legend of the Vacuums to read: "Tank capacity refers to actual tank volume, and does not reflect capacity available during operation."; and
4. For the duration of the warranty extension period, Shop-Vac will maintain an informational webpage and dedicated toll-free number for Settlement Class Members to seek a warranty remedy under the Settlement. All inquiries concerning the extended warranty will be administered by Shop-Vac's warranty/customer service department, knowledgeable to answer such inquiries related to the warranty extension.

The Parties further agree that Shop-Vac shall self-administer the dissemination of benefits specified above, subject to reasonable, good faith auditing requests by Class Counsel.

**B. Procedures for Providing Benefits to Settlement Class Members**

The Parties shall jointly ask the Court to approve Epiq Systems Class Action and Claims Solutions as the Settlement Administrator. The Settlement Administrator shall administer the Settlement subject to the jurisdiction of the Court. The Settlement Administrator shall perform the following functions in accordance with the terms of this Settlement Agreement, the Preliminary Approval Order, and the Final Approval Order:

1. 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;

2. Before disseminating the Settlement Notice, establish the Settlement Website;
3. 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;
4. Send via e-mail or mail notice packets or other settlement information to all those who may request the information via the toll-free number or mail;
5. Before disseminating the Settlement Notice, establish a postal address to which Settlement Class Members can request to be excluded from the Settlement Class;
6. Process requests for exclusion from the Settlement in accordance with Section IV.B of the Settlement Agreement; and
7. 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 the names of

all such persons, no later than one (1) week/ seven (7) days before the Fairness Hearing, or on such date as the Court may order.

## **V. NOTICE**

### **A. Settlement Notice**

The Parties agree that the Settlement Notice provides the Settlement Class and Settlement Class Members information sufficient to inform them of: the essential terms of this Settlement Agreement; appropriate means for obtaining additional information regarding the Settlement Agreement and the Lawsuits; and, appropriate information concerning the procedure for challenging or excluding themselves from the Settlement, if they should wish to do so. To facilitate the efficient administration of this Settlement, and to ensure appropriate notice regarding the Settlement, the Parties have drafted the Settlement Notice. The Parties will request the Court to approve the Settlement Notice in the Preliminary Approval Order.

Similarly, the Parties agree that the Publication Notice provides to the Settlement Class and Settlement Class Members information sufficient to inform them of: the essential terms of this Settlement Agreement; appropriate means for obtaining additional information regarding the Settlement Agreement and the Lawsuits; and, appropriate information about the procedure for challenging or excluding themselves from the Settlement, if they should wish to do so. The Parties will request the Court to approve the Publication Notice in the Preliminary Approval Order.

### **B. Methods for Dissemination of Notice**

#### **1. Dissemination of the Settlement Notice and Publication Notice**

As soon as practicable, but no later than three (3) weeks/ twenty-one (21) days after the Court's entry of the Preliminary Approval 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.

In addition, as soon as practicable, but no later than one (1) week/ seven (7) days after the Court's entry of the Preliminary Approval Order, the Posted Notice will be posted by the Settlement Administrator on the Settlement Website.

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, attached to the Preliminary Approval Order as Exhibit 4. Dissemination of the Publication Notice will start within three (3) weeks/twenty-one (21) days after the entry of the Preliminary Approval Order and will continue until the Notice Plan is fully implemented.

The Parties agree that the dissemination of the Settlement Notice and the Publication Notice in the manner specified in this Section V satisfies the notice 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. The Parties will jointly request the Court to approve, in the Preliminary Approval Order, the dissemination of notice as set forth above in this Section V.

No later than one (1) week/ seven (7) days before the Fairness Hearing, or on such other date as the Court may order, Defendants will file with the Court a declaration of compliance with this plan of notice, including a statement of the number of addresses to which the Settlement Notice was e-mailed or mailed.

#### **VI. COSTS OF NOTICE AND ADMINISTRATION**

In addition to providing to Settlement Class Members the benefits described in Section IV above, Defendants will pay: (A) the costs of preparing and disseminating the notices provided for in Section V above; and (B) the other Administration Expenses, including payments made for the services of the Settlement Administrator.

#### **VII. PROCEDURES FOR SETTLEMENT APPROVAL**

##### **A. Preliminary Approval**

The Parties shall jointly file this Settlement Agreement and a motion in the MDL seeking entry of the Preliminary Approval Order, substantially in the form of Exhibit A.

##### **B. Final Approval**

At the Fairness Hearing, the Parties will jointly request the Court to enter the Final Approval Order, substantially in the form of Exhibit B.

**VIII. CLASS COUNSEL'S APPLICATION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF COSTS, AND FOR AWARDS TO PLAINTIFFS**

A. Class Counsel will submit to the Court an application seeking an award of not more than \$4,250,000 in attorneys' fees and expenses. Class Counsel may also submit to the Court an application seeking awards to Plaintiffs not to exceed \$5,000 each. Class Counsel will not request more than these amounts.

B. Defendants will not oppose or object to the application by Class Counsel for an award of not more than \$4,250,000 in attorneys' fees and expenses, as this figure has been agreed to by the Parties as the result of a Mediator's Proposal, after extensive negotiation and with the assistance of Judge Infante (Ret.) as mediator. The Parties recognize that the Court will have the final authority to award the amount of fees and expenses. The Parties represent that the agreed upon fees and expenses were mediated several months after agreement on all other substantive terms of the Settlement and proposed relief offered to the Settlement Class Members.

C. Within 30 days of the award of fees and costs by the Court, Shop-Vac shall cause the award to be paid to an escrow agent to be mutually agreed upon by the Parties, notwithstanding the existence of any timely filed objections to the award, or potential for appeal from the award, or collateral attack on the Settlement or any part thereof. The amount ordered to be paid to Class Counsel will be released from escrow immediately upon the Effective Date.

D. Plaintiffs and Defendants hereby waive any right to any appeal of any Order relating to the Court's determination of attorneys' fees, reimbursement of expenses, or awards to Plaintiffs.

E. Class Counsel shall allocate the attorneys' fees amongst Plaintiffs' Counsel in a manner in which they in good faith believe reflects the contributions of such counsel to the prosecution and settlement of the Lawsuits with Defendants.

F. After the Effective Date, Class Counsel shall pay any amounts awarded by the Court to Plaintiffs. These amounts shall be paid from the attorneys' fees awarded to Class Counsel by the Court. In no event will Defendants have any obligation to pay any awards to Plaintiffs approved by the Court.

G. Defendants have no liability or obligation with respect to any attorneys' fees, reimbursement of expenses, or awards to Plaintiffs other than Defendants' obligation to pay or cause to be paid the amounts as are awarded by the Court. Class Counsel agree that upon payment to Class Counsel of the amounts awarded by the Court, pursuant to wire transfer information provided by Class Counsel, Defendants' obligations to Class Counsel with respect to any attorneys' fees, reimbursement of expenses, or awards to Plaintiffs shall be fully satisfied and discharged. It is not a condition of this Settlement Agreement that any particular amount of attorneys' fees, costs or expenses be awarded by the Court, other than the limitation set forth in subparagraph (A) of this Section. Defendants shall have no tax liability related to the payment of attorneys' fees to Class Counsel or any award to Plaintiffs. Plaintiffs and Class Counsel shall be liable for their own respective tax liability that arises from or is related to payments made to Plaintiffs or Class Counsel by Defendants.

## **IX. RELEASES**

A. By executing this Settlement Agreement, the Parties acknowledge that, following both the entry of the Final Approval Order by the Court and the passing of the

Effective Date, the Lawsuits shall be dismissed with prejudice and without costs (other than as stated in this Settlement Agreement). All Released Claims shall thereby be conclusively settled, compromised, satisfied, and released as to the Releasees. The Final Approval Order shall provide for and effect the full and final release by Plaintiffs and all Settlement Class Members of all Released Claims against the Releasees. The Released Claims do not include claims to enforce this Settlement. No later than ten (10) days following the passing of the Effective Date, the Parties will file with the New Jersey Superior Court the necessary papers to dismiss the New Jersey Action with prejudice and without costs (other than as stated in this Settlement Agreement).

B. The Final Approval Order shall further provide for and effect the release by Defendants and the other Releasees of all actions, causes of action, claims, administrative claims, demands, debts, damages, costs, attorney's fees, obligations, judgments, expenses, compensation, or liabilities, in law or in equity, whether now known or unknown, contingent or absolute, that they now have against Plaintiffs, Settlement Class Members, Class Counsel, or Plaintiffs' Counsel by reason of any act, omission, harm, matter, cause, or event whatsoever arising out of the initiation, prosecution, or settlement of the Lawsuits or the claims and defenses asserted in the Lawsuits (the "Released Defendants' Claims"). The Released Defendants' Claims do not include claims to enforce this Settlement.

C. With respect to any and all Released Claims and Released Defendants' Claims, the Parties stipulate and agree that, upon both the entry of the Final Approval Order by the Court, and the passing of the Effective Date, Plaintiffs and Defendants shall expressly waive, and each of the Settlement Class Members and the Releasees shall be

deemed to have waived, and by operation of the Final Approval Order shall have waived, relinquished and released any and all provisions, rights and benefits conferred by or under Cal. Civ. Code § 1542 or any law of the United States or any state of the United States or territory of the United States, or principle of common law that governs or limits a person's release of unknown claims, including any law or principle of common law that is similar, comparable or equivalent to Cal. Civ. Code § 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO  
CLAIMS WHICH THE CREDITOR DOES NOT KNOW  
OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT  
THE TIME OF EXECUTING THE RELEASE, WHICH IF  
KNOWN BY HIM OR HER MUST HAVE  
MATERIALLY AFFECTED HIS OR HER  
SETTLEMENT WITH THE DEBTOR.

The Parties acknowledge that they understand the significance and consequence of this release and specific waiver. It is the intention of Plaintiffs and Defendants, and by operation of law, the Settlement Class Members and the Releasees, to completely, fully, finally and forever extinguish any and all Released Claims and Released Defendants' Claims, known or unknown, suspected or unsuspected, which now exist, or heretofore existed, and without regard to the subsequent discovery of additional or different facts. The Parties acknowledge, and the Settlement Class Members and the Releasees by operation of law shall be deemed to have acknowledged, that the inclusion of this waiver was separately bargained for and was a material element of the Settlement and was relied upon by each and all of the Parties in entering into the Settlement Agreement.

D. The Parties acknowledge that they are aware that they or their attorneys may hereafter discover claims or facts in addition to or different from those which they now know or believe to exist with respect to the Released Claims or the Released

Defendants' Claims, but that it is their intention to hereby fully, finally, and forever settle and release all of the Released Claims and Released Defendants' Claims. In furtherance of this intention, the releases shall be and remain in effect notwithstanding the discovery or existence of any such additional different claims or facts.

E. Notwithstanding the above, the Court shall retain jurisdiction over the Parties and the Settlement Agreement with respect to the future performance of the terms of the Settlement Agreement, and to assure that all payments and other actions required of any of the Parties by the Settlement are properly made or taken.

#### **X. REPRESENTATIONS AND WARRANTIES**

Each of the Parties represents and warrants to, and agrees with, each of the other Parties as follows:

A. Each of the Parties has had the opportunity to receive, and has received, independent legal advice from his or its attorneys regarding the advisability of making the Settlement, the advisability of executing this Settlement Agreement, and the legal and income-tax consequences of this Settlement Agreement, and fully understands and accepts the terms of this Settlement Agreement.

B. Plaintiffs represent and warrant that no portion of any claim, right, demand, action, or cause of action against any of the Releasees that Plaintiffs have or may have arising out of the Lawsuits or pertaining to the design, manufacture, testing, marketing, purchase, use, sale, servicing, or disposal of the Vacuum otherwise referred to in this Settlement Agreement, and no portion of any recovery or settlement to which Plaintiffs may be entitled, has been assigned, transferred, or conveyed by or for Plaintiffs in any manner; and no Person other than Plaintiffs has any legal or equitable interest in

the claims, demands, actions, or causes of action referred to in this Settlement Agreement as those of Plaintiffs themselves.

C. None of the Parties relies or has relied on any statement, representation, omission, inducement, or promise of any other Party (or any officer, agent, employee, representative, or attorney for any other Party) in executing this Settlement Agreement, or in making the Settlement provided for herein, except as expressly stated in this Settlement Agreement.

D. Each of the Parties has investigated the facts pertaining to the Settlement and this Settlement Agreement, and all matters pertaining thereto, to the full extent deemed necessary by that Party and his or its attorneys.

E. Each term of this Settlement Agreement, under the titles of the various Sections, is contractual and not merely a recital.

## **XI. MISCELLANEOUS**

### **A. Effect of Exhibits**

The exhibits to this Settlement Agreement are an integral part of the Settlement and are expressly incorporated and made a part of this Settlement Agreement.

### **B. Conditional Nature of Settlement**

Defendants and Plaintiffs shall each have the right to terminate the Settlement by providing written notice of their election to do so to the other within thirty (30) days of: (a) the Court's declining to enter the Preliminary Approval Order in any material respect; (b) the Court's refusal to approve this Settlement Agreement or any material part of it; (c) the Court's declining to enter the Final Approval Order in any material respect; (d) the date upon which the Final Approval Order is modified or reversed in any material respect by the Court of Appeals or

the Supreme Court; or (e) in the event that the Court enters an order and final judgment in a form other than that provided above (“Alternative Judgment”) and none of the Parties elect to terminate this Settlement, the date that such Alternative Judgment is modified or reversed in any material respect by the Court of Appeals or the Supreme Court.

**C. Effectiveness, Amendments, and Binding Nature**

This Settlement Agreement may be amended only by a written agreement signed by the Parties. Except as otherwise stated above, each of the Parties, including Plaintiffs on behalf of themselves and the Settlement Class, expressly accepts and assumes the risk that, if facts or laws pertinent to matters covered by this Settlement Agreement are hereafter found to be other than as now believed or assumed by that Party to be true or applicable, this Settlement Agreement shall nevertheless remain effective.

This Settlement Agreement is binding on, and shall inure to the benefit of, the Parties and their respective agents, employees, representatives, officers, directors, parents, subsidiaries, assigns, executors, administrators, insurers, and successors in interest. All Releasees other than Defendants, who are Parties to this Settlement Agreement, are intended to be third-party beneficiaries of this Settlement Agreement.

**D. Cooperation in Implementation**

Defendants, Plaintiffs, and their respective counsel agree to prepare and execute any additional documents that may reasonably be necessary to effectuate the terms of this Settlement Agreement.

**E. No Admission of Liability**

The Parties are entering into this Settlement Agreement for the purpose of compromising and settling disputed claims. Nothing in this Settlement Agreement or in the documents relating to this Settlement Agreement shall be construed, deemed, or offered as an admission by any of

the Parties, or by any member of the Settlement Class, for any purpose in any judicial or administrative action or proceeding, whether in law or in equity, regardless of whether this Settlement Agreement ultimately becomes effective.

**F. Entire Agreement**

This Agreement represents the entire agreement and understanding among the Parties and supersedes all prior proposals, negotiations, agreements, and understandings relating to the subject matter of this Settlement Agreement. The Parties acknowledge, stipulate, and agree that no covenant, obligation, condition, representation, warranty, inducement, negotiation, or understanding concerning any part or all of the subject matter of this Settlement Agreement has been made or relied on except as expressly set forth in this Settlement Agreement. No modification or waiver of any provisions of this Settlement Agreement shall in any event be effective unless the same shall be in writing and signed by the person or Party against whom enforcement of the Agreement is sought.

**G. Arm's-Length Negotiations and Good Faith**

The Parties have negotiated all of the terms and conditions of this Settlement Agreement at arm's length. All terms, conditions, and exhibits in their exact form are material and necessary to this Settlement Agreement and have been relied upon by the Parties in entering into this Settlement Agreement. The Parties agree to act in good faith during the settlement administration process.

**H. Stay Pending Court Approval**

The Parties agree to stay all proceedings, other than those proceedings necessary to carry out or enforce the terms and conditions of the Settlement, until the Effective Date of the Settlement has occurred. If, despite the Parties' best efforts, this Settlement Agreement should

fail to become effective, the Parties will return to their prior positions in the Lawsuits, in accordance with Section II of this Settlement Agreement.

The Parties also agree to use their best efforts to seek the stay and dismissal of, and to oppose entry of any interim or final relief in favor of any Settlement Class Member in, any other proceedings against any of the Releasees which challenges the Settlement or otherwise asserts or involves, directly or indirectly, a Released Claim.

**I. Confidentiality Agreements**

All agreements made and orders entered during the Litigation relating to the confidentiality of information will survive the Settlement Agreement.

**J. Extensions of Time**

The Parties may agree upon a reasonable extension of time for deadlines and dates reflected in this Settlement Agreement, without further notice (subject to Court approval as to Court dates).

**K. Authority to Execute Settlement Agreement**

Each counsel or other person executing this Settlement Agreement or any of its exhibits on behalf of any Party hereto warrants that such person has the authority to do so.

**L. Right to Rescind**

If one thousand (1,000) Settlement Class Members properly and timely exercise their right to opt out of the Settlement, Defendants shall have the right to terminate this Settlement Agreement without penalty or sanction, without prejudice to its position on the issue of class certification and the amenability of the claims asserted in the Litigation to class treatment, and the Parties shall be restored to their litigation position existing immediately before the execution of this Settlement Agreement.

**M. Signatures**

This Settlement Agreement is being executed by counsel for Defendants and for Plaintiffs, each of whom represents and warrants that he or she has been granted full and complete authority from his or her client or clients to enter into this Settlement Agreement and to take appropriate action required or permitted to be taken pursuant to the Settlement Agreement to effectuate its terms.

This Settlement Agreement may be executed in counterparts, and, when so executed, shall constitute a binding original.

**PLAINTIFFS:**

Dated: April 1, 2016

  
\_\_\_\_\_  
ANDREW HARBUT

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

\_\_\_\_\_  
ALAN MCMICHAEL

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

\_\_\_\_\_  
KRIS REID

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

\_\_\_\_\_  
DAVID PALOMINO

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

\_\_\_\_\_  
SCOTT GIANNETTI

**M. Signatures**

This Settlement Agreement is being executed by counsel for Defendants and for Plaintiffs, each of whom represents and warrants that he or she has been granted full and complete authority from his or her client or clients to enter into this Settlement Agreement and to take appropriate action required or permitted to be taken pursuant to the Settlement Agreement to effectuate its terms.

This Settlement Agreement may be executed in counterparts, and, when so executed, shall constitute a binding original.

**PLAINTIFFS:**

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

\_\_\_\_\_  
ANDREW HARBUT

Dated: 3/31/2016, 2016

  
\_\_\_\_\_  
ALAN MCMICHAEL

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

\_\_\_\_\_  
KRIS REID

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

\_\_\_\_\_  
DAVID PALOMINO

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

\_\_\_\_\_  
SCOTT GIANNETTI

**M. Signatures**

This Settlement Agreement is being executed by counsel for Defendants and for Plaintiffs, each of whom represents and warrants that he or she has been granted full and complete authority from his or her client or clients to enter into this Settlement Agreement and to take appropriate action required or permitted to be taken pursuant to the Settlement Agreement to effectuate its terms.

This Settlement Agreement may be executed in counterparts, and, when so executed, shall constitute a binding original.

**PLAINTIFFS:**


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

\_\_\_\_\_  
ANDREW HARBUT

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

\_\_\_\_\_  
ALAN MCMICHAEL

Dated: 3/30, 2016

  
\_\_\_\_\_  
KRIS REID

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

\_\_\_\_\_  
DAVID PALOMINO

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

\_\_\_\_\_  
SCOTT GIANNETTI

**M. Signatures**

This Settlement Agreement is being executed by counsel for Defendants and for Plaintiffs, each of whom represents and warrants that he or she has been granted full and complete authority from his or her client or clients to enter into this Settlement Agreement and to take appropriate action required or permitted to be taken pursuant to the Settlement Agreement to effectuate its terms.

This Settlement Agreement may be executed in counterparts, and, when so executed, shall constitute a binding original.

**PLAINTIFFS:**

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

\_\_\_\_\_  
ANDREW HARBUT

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

\_\_\_\_\_  
ALAN MCMICHAEL

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

\_\_\_\_\_  
KRIS REID

Dated: MARCH 30, 2016

  
\_\_\_\_\_  
DAVID PALOMINO

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

\_\_\_\_\_  
SCOTT GIANNETTI

**M. Signatures**

This Settlement Agreement is being executed by counsel for Defendants and for Plaintiffs, each of whom represents and warrants that he or she has been granted full and complete authority from his or her client or clients to enter into this Settlement Agreement and to take appropriate action required or permitted to be taken pursuant to the Settlement Agreement to effectuate its terms.

This Settlement Agreement may be executed in counterparts, and, when so executed, shall constitute a binding original.

**PLAINTIFFS:**

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

\_\_\_\_\_  
ANDREW HARBUT

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

\_\_\_\_\_  
ALAN MCMICHAEL

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

\_\_\_\_\_  
KRIS REID

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

\_\_\_\_\_  
DAVID PALOMINO

Dated: April 1 \_\_\_\_\_, 2016

  
\_\_\_\_\_  
SCOTT GIANNETTI

ON BEHALF OF PLAINTIFFS  
AND THE SETTLEMENT CLASS:

Dated: March 30, 2016

**DILWORTH PAXSON LLP**

By: Elizabeth Goldstein  
Elizabeth Goldstein  
[egoldstein@dilworthlaw.com](mailto:egoldstein@dilworthlaw.com)

Penn National Insurance Plaza  
2 North 2nd Street  
Suite 1101  
Harrisburg, PA 17101  
Telephone: (717) 236-4812  
Facsimile: (717) 236-7811

**Liaison Counsel**

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

**FARUQI & FARUQI LLP**

By: \_\_\_\_\_  
Adam Gonnelli  
[agonnelli@faruqilaw.com](mailto:agonnelli@faruqilaw.com)  
369 Lexington Avenue, 10th Floor  
New York, NY 10017  
Telephone: (212) 983-9330  
Facsimile: (212) 983-9331

**Class Counsel**

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

**LAX LLP**

By: \_\_\_\_\_  
Robert I. Lax  
[rlax@lax-law.com](mailto:rlax@lax-law.com)  
380 Lexington Avenue, 31st Floor  
New York, NY 10168  
Telephone: (212) 818-9150  
Facsimile: (212) 818-1266

**Class Counsel**

ON BEHALF OF PLAINTIFFS  
AND THE SETTLEMENT CLASS:

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


**DILWORTH PAXSON LLP**

By: \_\_\_\_\_  
Elizabeth Goldstein  
[egoldstein@dilworthlaw.com](mailto:egoldstein@dilworthlaw.com)  
Penn National Insurance Plaza  
2 North 2nd Street  
Suite 1101  
Harrisburg, PA 17101  
Telephone: (717) 236-4812  
Facsimile: (717) 236-7811

**Liaison Counsel**

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

**FARUQI & FARUQI LLP**

By:  \_\_\_\_\_  
Adam Gonnelli  
[agonnelli@faruqilaw.com](mailto:agonnelli@faruqilaw.com)  
369 Lexington Avenue, 10th Floor  
New York, NY 10017  
Telephone: (212) 983-9330  
Facsimile: (212) 983-9331

**Class Counsel**

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

**LAX LLP**

By: \_\_\_\_\_  
Robert I. Lax  
[rlax@lax-law.com](mailto:rlax@lax-law.com)  
380 Lexington Avenue, 31st Floor  
New York, NY 10168  
Telephone: (212) 818-9150  
Facsimile: (212) 818-1266

**Class Counsel**

ON BEHALF OF PLAINTIFFS  
AND THE SETTLEMENT CLASS:

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

**DILWORTH PAXSON LLP**

By: \_\_\_\_\_  
Elizabeth Goldstein  
[egoldstein@dilworthlaw.com](mailto:egoldstein@dilworthlaw.com)  
Penn National Insurance Plaza  
2 North 2nd Street  
Suite 1101  
Harrisburg, PA 17101  
Telephone: (717) 236-4812  
Facsimile: (717) 236-7811

**Liaison Counsel**

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

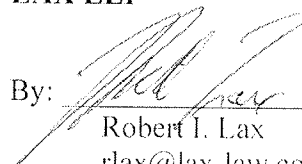
**FARUQI & FARUQI LLP**

By: \_\_\_\_\_  
Adam Gonnelli  
[agonnelli@faruqilaw.com](mailto:agonnelli@faruqilaw.com)  
369 Lexington Avenue, 10th Floor  
New York, NY 10017  
Telephone: (212) 983-9330  
Facsimile: (212) 983-9331

**Class Counsel**

Dated: March 31, 2016

**LAX LLP**

By:  \_\_\_\_\_  
Robert I. Lax  
[rlax@lax-law.com](mailto:rlax@lax-law.com)  
380 Lexington Avenue, 31st Floor  
New York, NY 10168  
Telephone: (212) 818-9150  
Facsimile: (212) 818-1266

**Class Counsel**

Dated: 3/31, 2016

**MILBERG LLP**

By: 

Sanford P. Dumain  
[sdumain@milberg.com](mailto:sdumain@milberg.com)  
Andrei Rado  
[arado@milberg.com](mailto:arado@milberg.com)  
Jennifer Czeisler  
[jczeisler@milberg.com](mailto:jczeisler@milberg.com)

One Penn Plaza  
New York, NY 10119-0165  
Telephone: (212) 594-5300  
Facsimile: (212) 868-1229

**Class Counsel**

Dated: 3/30, 2016

**LITE DePALMA GREENBERG LLC**

By: 

Bruce D. Greenberg  
[bgreenberg@litedepalma.com](mailto:bgreenberg@litedepalma.com)

570 Broad Street, 12th Floor  
Newark, NJ 07102  
Telephone: (973) 623-3000  
Facsimile: (973) 623-0211

**Class Counsel**

**BARON & HERSKOWITZ**

Jon Herskowitz  
[jon@bhfloridalaw.com](mailto:jon@bhfloridalaw.com)  
9100 South Dadeland Boulevard  
One Datan Center, Suite 1704  
Miami, FL 33156  
Telephone: (305) 670-0101  
Facsimile: (305) 670-2393

**Executive Committee Member**

**PINILISHALPERN LLP**

William J. Pinilis  
[wpinilis@consumerfraudlawyer.com](mailto:wpinilis@consumerfraudlawyer.com)  
160 Morris Street  
Morristown, NJ 07962  
Telephone: (973) 401-1111  
Facsimile: (973) 401-1114

**Executive Committee Member**

**REESE LLP**

Michael R. Reese  
[mreese@reesellp.com](mailto:mreese@reesellp.com)  
100 West 93rd Street, 16th Floor  
New York, NY 10025  
Telephone: (212) 643-0500  
Facsimile: (212) 253-4272

**Executive Committee Member**

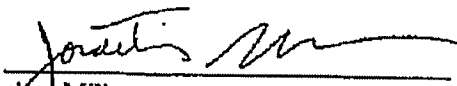
**WALSH PLLC**

Bonner C. Walsh  
[bonner@walshpllc.com](mailto:bonner@walshpllc.com)  
3100 SCR 406  
PO BOX 1343  
Sonora, TX 76950  
Telephone: (903) 200-6069  
Facsimile: (866) 503-8206

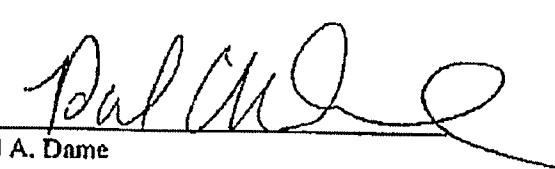
**Executive Committee Member**

DEFENDANTS:

SHOP-VAC CORPORATION

By:   
Jonathan Miller  
Chairman, President and CEO  
Shop Vac Corporation


LOWE'S HOME CENTERS, LLC

By:   
Paul A. Dame  
Corporate Counsel  
Lowe's Companies, Inc.

ON BEHALF OF DEFENDANTS SHOP-  
VAC CORPORATION AND LOWE'S  
HOME CENTERS, LLC:

Dated: April 1, 2016

**SIDLEY AUSTIN LLP**

By:   
Michael L. Mallow  
[mmallow@sidley.com](mailto:mmallow@sidley.com)  
Michael B. Shortnacy  
[mshortnacy@sidley.com](mailto:mshortnacy@sidley.com)

555 West 5<sup>th</sup> Street  
Los Angeles, CA 90013  
Telephone: (213) 896-6000  
Facsimile: (213) 896-6600

Counsel for Defendants Shop-Vac Corporation  
and Lowe's Home Centers, LLC