

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into between plaintiff Sabra Rench, (the “Class Representative” or “Plaintiff”), on behalf of herself and the Class Members on the one hand, and defendant HMI Industries, Inc. (“HMI”) on the other hand. As provided herein, HMI and Plaintiff (the “Parties”) hereby stipulate and agree that, in consideration of the promises and covenants set forth in this Settlement Agreement, and subject to approval of the Court, all claims against HMI in the action entitled *Rench v. TD Bank, N.A., et al.*, No. 3:13-cv-00922-SMY-PMF (the “Action”) shall be settled and compromised upon the terms and conditions contained herein.

RECITALS

WHEREAS, Plaintiff filed the Action on September 6, 2013;

WHEREAS, Plaintiff’s claims in the Action arise out of HMI’s development and use of allegedly deceptive sweepstakes scratcher tickets which allowed HMI Distributors to gain entry into prospective consumers’ homes in order to sell HMI’s vacuum cleaners and air filters;

WHEREAS, the Action asserts that HMI violated the Federal Racketeer Influenced and Corrupt Organizations Act (“RICO”), the Illinois Prizes and Gifts Act (“IPGA”), and the Illinois Consumer Fraud and Deceptive Business Practices Act (“ICFA”);

WHEREAS, on July 25, 2016, the Court adopted the Report and Recommendation of Magistrate Judge Philip M. Frazier and granted Plaintiff’s Motion for Sanctions against HMI arising out of HMI’s discovery violations during the Action (the “Sanction Order”);

WHEREAS, the Parties disagree on the amount that HMI must pay pursuant to the Sanction Order and the Court has not entered an order establishing the amount of such Award;

WHEREAS, on January 2, 2018, the Court certified the following classes (the “Classes”) pursuant to Federal Rule of Civil Procedure 23:

All (A) individuals in the United States who, within the four years preceding the filing of this Complaint received in the mail a promotional sweepstakes “scratcher” ticket in the form of or substantially similar to Exhibit A (attached to Plaintiff’s Complaint) identifying A-1 Allergy Relief, Inc. and/or Simple Air Solutions and not identifying HMI Industries, Inc. and/or TD Bank, N.A.; or

(B) individuals in the State of Illinois who, within the four years preceding the filing of the initial Complaint in the Litigation received in the mail a promotional sweepstakes “scratcher” ticket in the form of or substantially similar to Exhibit A (attached to Plaintiff’s Complaint) identifying a distributor of HMI Industries, Inc., and not identifying HMI Industries, Inc. and/or TD Bank, N.A.; and (C)(i) individuals who purchased a Filter Queen product; or (C)(ii) individuals who incurred a charge for a Filter Queen product on a Renovate Credit Card Account through any HMI Distributor.

WHEREAS, on January 2, 2018, the Court appointed Plaintiff as Class Representative for the Classes;

WHEREAS, on February 13, 2018, the Seventh Circuit Court of Appeals denied HMI’s Rule 23(f) Petition for Permission to Appeal the Court’s Order Certifying the Classes;

WHEREAS, HMI denies (a) the allegations and all liability with respect to any and all facts and claims alleged in the Action and (b) that Class Representative and the members of the Classes have suffered any damage;

WHEREAS, the Parties have fully briefed HMI’s Motion for Summary Judgment arguing that Plaintiff’s claims and the claims of the members of the Classes fail as a matter of law;

WHEREAS, the Parties have fully briefed Plaintiff’s Motion for Partial Summary Judgment arguing that HMI violated IPGA and ICFA as a matter of law;

WHEREAS, the Court has yet to issue a ruling on HMI’s Motion for Summary Judgment or Plaintiff’s Motion for Partial Summary Judgment;

WHEREAS, contested issues of both law and fact exist concerning the allegations and claims made against HMI;

WHEREAS, Class Representative, Class Counsel, and Defendant's Counsel have investigated the facts and law and have engaged in extensive discovery and settlement negotiations relating to the Action, including mediation on July 20, 2015 with Judge Lloyd Cueto and again on August 21, 2018 with Judge Patrick Murphy, and the Settlement Agreement is a product of sustained, contentious arm's-length negotiations;

WHEREAS, following the August 2018 mediation, HMI provided Class Counsel certain financial information regarding HMI evidencing the limited financial wherewithal of, and financial stress upon, HMI, and casting doubt on HMI's ability to provide substantial monetary relief or satisfy an adverse judgment in the Action;

WHEREAS, the Parties recognize that the outcome of the Action is uncertain, and that a final resolution through the litigation process could require several more years of protracted adversary litigation and appeals; substantial risk and expense; the distraction and diversion of HMI's personnel and resources; and the expense of any possible future litigation raising similar or duplicative claims; and the Parties and their counsel have agreed to resolve the Action with regard to HMI and with respect to all Released Claims of the Class Members according to the terms of this Settlement Agreement; and the Parties intend this Settlement Agreement to bind Class Representative, HMI, and all Class Members who do not timely and properly request to be excluded from the Settlement Agreement.

NOW THEREFORE, in consideration of the covenants and agreements set forth herein and without (a) any admission or concession on the part of the Class Representative of the lack of merit of the Action whatsoever, or (b) any admission or concession of liability or wrongdoing or the lack of merit of any defense whatsoever by HMI, it is hereby stipulated and agreed by the undersigned, on behalf of the Class Representative, the Class Members, and HMI, that the

Action and all claims be settled, compromised, and dismissed on the merits and with prejudice as to HMI, subject to Court approval as required by Federal Rule of Civil Procedure 23, on the terms and conditions set forth herein.

1. Definitions

In addition to the terms defined at various points within this Settlement Agreement, the following terms set forth in this Section have the following meanings throughout this Settlement Agreement:

1.1 Administration Payment Fund. The qualified settlement fund account established by the Settlement Administrator for the purpose of holding the amounts paid by HMI under Section 10.1 hereof.

1.2 Cash Award. The \$100.00 payment that HMI will make to all Claimants who elect to receive such payment pursuant to the Claims Process.

1.3 Claimant. Each Class Member who submits a Claim Form.

1.4 Claimant List. The list of all Claimants who elected to receive the Cash Award, which shall be prepared by the Settlement Administrator and delivered to Class Counsel and Defendant's Counsel after the Claims Period has ended pursuant to Section 4.3 hereof.

1.5 Claim Form. The form in substantially the same form as shown in Exhibit C hereto which Class Members must complete and submit to the Settlement Administrator during the Claims Period to receive the Cash Award. The "Claim Form" includes an online version of the Claim Form that may be completed on the Settlement Website and electronically signed and submitted by the Claimant.

1.6 Claims Period. The period beginning on the Preliminary Approval Date and ending on the date that is sixty (60) days after the Settlement Notice Date.

1.7 Claims Process. The process established by Section 4 of this Settlement Agreement pursuant to which Class Members may elect to receive the Cash Award.

1.8 Class(es). The classes certified by the Court in the Action as described in the recitals.

1.9 Class Counsel. Goldenberg Heller & Antognoli, P.C.

1.10 Class Members. All individuals described in the Class List who do not timely and properly opt out of this Settlement Agreement pursuant to the procedures set forth in Section 7 hereof.

1.11 Class List. The list identifying all putative members of the Classes who were sent notice of the Court's certification of the Classes and who did not opt-out of the Classes, who will receive notice of this Settlement Agreement.

1.12 Class Representative or Plaintiff. Sabra Rench.

1.13 Complaint. The complaint filed by Plaintiff in the Action, and all amendments thereto.

1.14 Court. The United States District Court for the Southern District of Illinois.

1.15 Defendant's Counsel. Shipman & Wright, LLP, counsel for HMI.

1.16 Effective Date. The date on which the Final Judgment becomes final. "Final" as applicable to the Final Judgment means:

(a) If no appeal is taken, thirty-five (35) days after the date on which the Final Judgment is entered by the Court; or

(b) If any appeal is taken with respect to the Court's Final Judgment, the date when all appellate rights with respect to the Final Judgment have expired or have been exhausted in such a manner as to affirm the Final Judgment, and when no further appeals are possible,

including review by the United States Supreme Court, and the appellate court has by final order affirmed the Court's judgment finally approving the settlement of the Action, or has denied review, or the appellant otherwise has exhausted all appellate remedies.

1.17 Fee Account. The qualified settlement fund account established by the Settlement Administrator for the purpose of holding the Sanction Award, the Attorneys' Fee Award, and the Incentive Award until the Settlement Administrator distributes such Awards to Class Counsel pursuant to Sections 10.3 and 10.4 hereof.

1.18 Fee Application. Class Counsel's application to the Court for attorneys' fees and Rule 54 and 23 Costs, and the Incentive Award, which shall be filed within sixty (60) days after the Preliminary Approval Date.

1.19 Fee Award. The Court's award pursuant to the Fee Application.

1.20 Final Approval. Means the Court's approval of the Settlement Agreement, as evidenced by entry on the Court's docket of the Final Judgment.

1.21 Final Judgment. The Final Judgment and Order of Dismissal with Prejudice to be rendered by the Court substantially consistent with this Settlement Agreement in the form attached as Exhibit B hereto. In the event that the Court issues separate orders addressing the matters constituting Final Approval, then Final Judgment includes all such orders.

1.22 Incentive Award. The award to the Class Representative, to be determined by the Court, as a service payment for the time and resources she has put into representing the Classes, as set forth in Section 9.2 hereof.

1.23 HMI. HMI Industries, Inc.

1.24 HMI Distributor. Any seller of HMI Products.

1.25 HMI Products. Products manufactured by HMI, including FILTERQUEEN® brand products.

1.26 HMI Filtration Products. The following HMI Products which the Voucher may be redeemed towards the purchase of at www.filterqueenfiltrationvoucher.com:

FilterQueen Majestic® Biocone™ Semi-Annual Premium Filter Pack (\$59.95)

FilterQueen Majestic® Biocone™ Annual Premium Filter Bundle (\$99.95)

FilterQueen Defender® Medi-Filter® (\$139.95)

FilterQueen Defender® Enviropure® Charcoal Filter Wrap (\$39.95)

FilterQueen Defender® Enviropure® Charcoal Filter Wrap (2-pack) (\$79.90)

1.27 Objection Deadline. The business day on or next after sixty (60) days after the Settlement Notice Date by which any Class Member must file and serve a written statement objecting to the Settlement Agreement or to Class Counsel's Fee Application or to any Class Representative's incentive award. The Objection Deadline shall also be the deadline for a Class Member to file a written notice of intention to appear and for any counsel intending to represent a Class Member to file an entry of appearance.

1.28 Opt-Out Deadline. The business day on or next after sixty (60) days after the Settlement Notice Date by which a Request for Exclusion must be postmarked.

1.29 Opt-Out List. The list created by the Settlement Administrator identifying all persons who have opted-out of the Settlement Agreement by submitting a timely and proper Request for Exclusion.

1.30 Parties. The Class Representative, on behalf of herself and the Class Members, and HMI.

1.31 Preliminary Approval Order. The Order of Preliminary Approval of Settlement substantially in the same form as Exhibit A hereto.

1.32 Preliminary Approval Date. The date on which the Preliminary Approval Order is entered by the Court.

1.33 Released Claims. The claims of Class Members described in Section 5 that are to be released according to the terms of this Settlement Agreement.

1.34 Released Parties. HMI, A-1 Allergy Relief, Inc., HMI Distributors, and HMI affiliates, subsidiaries, parents, and all officers, directors, employees, attorneys, and agents of the foregoing.

1.35 Request for Exclusion. A request to be excluded from the Settlement Agreement, submitted in accordance with Section 7 hereof.

1.36 Sanction Award. The amount HMI will pay to Class Counsel in full and final satisfaction of the Sanction Order as set forth in Section 9.3 herein, subject to approval by the Court.

1.37 Sanction Order. The Court's Order of July 25, 2016, granting Plaintiff's Motion for Sanctions against HMI.

1.38 Settlement Administrator. Atticus Administration, LLC. Class Counsel and HMI may, by agreement, substitute a different organization as Settlement Administrator, subject to approval by the Court if the Court has previously approved the Settlement Agreement preliminarily or finally. Either Class Counsel or HMI may move the Court to substitute a different organization as Settlement Administrator, upon a showing that the responsibilities of Settlement Administrator have not been adequately executed by Atticus Administration, LLC.

1.39 Settlement Agreement. This agreement, together with all of its exhibits.

1.40 Settlement Check(s). The check that the Settlement Administrator will mail within fourteen (14) days of the Effective Date to each Claimant who elects to receive the Cash Award.

1.41 Settlement Fund(s). The Administrative Payment Account, Fee Account, and Settlement Relief Account.

1.42 Settlement Notice. The document to be mailed to the Class Members pursuant to Section 6.3 hereof, as mutually agreed by the parties and as approved by the Court in substantially the same form as Exhibit C.

1.43 Settlement Notice Date. The date set by the Court by which the Settlement Administrator is to send the Settlement Notice to the Class Member pursuant to Section 6.3 hereof.

1.44 Settlement Relief Account. The qualified settlement fund account established by the Settlement Administrator for the purpose of holding the amounts paid by HMI under Section 10.2 hereof, and from which amounts due thereunder will be paid.

1.45 Settlement Website. The website established and maintained by the Settlement Administrator pursuant to Section 6.4 hereof.

1.46 Voucher. The \$300.00 voucher that HMI will provide to each Class Member who does not elect to receive the Cash Award, which may be redeemed for HMI Filtration Products pursuant to Section 3.2.

2. Preliminary Approval

2.1 As soon as practicable following the execution of this Settlement Agreement, Plaintiff shall move the Court for an order substantially in the form of Exhibit A hereto:

- (a) preliminarily approving this Settlement Agreement;

- (b) approving the Parties' selection of the Settlement Administrator;
- (c) approving the Settlement Notice and the manner of providing it to the Class Members described in Section 6 hereof;
- (d) approving the Opt-Out Deadline;
- (e) approving the Claim Form and the Claims Process; and
- (f) setting a Final Approval Hearing date.

3. The Settlement Relief

3.1 Injunctive Relief. HMI consents to the Court's entry of a permanent injunction prohibiting HMI's use of, or participation with, all scratch cards and scratch card programs that allow HMI and/or HMI Distributors to gain entry into prospective consumers' homes or promote the sale of HMI Products. HMI will provide to each HMI Distributor notice of the injunction, including a copy of the injunction order, within 21 days after the Effective Date. So long as HMI adheres to the terms of this injunction, HMI shall not be responsible for the acts of any HMI Distributor who uses scratch cards despite notice from HMI of the injunction.

3.2 Monetary Relief. HMI shall provide each Class Member with a \$300.00 Voucher for HMI Filtration Products unless the Class Member elects to receive a \$100.00 Cash Award by timely submitting a Claim Form to the Settlement Administrator in accordance with the Claims Process set forth in Section 4 hereof. All Vouchers shall be non-transferrable and have an expiration date of two years from the Effective Date, unless state or federal law requires a different expiration date, in which case the expiration date set by law shall apply, and shall be void if not received by HMI for redemption on or before the expiration date. The Voucher may be redeemed in full or in part, and any partial balance remaining on a partially-used Voucher may subsequently be redeemed so long as the Voucher has not expired. The Voucher shall be subject to the following review and approval process:

(a) HMI will submit a proposed Voucher to Class Counsel within thirty (30) days after the Court's Preliminary Approval of the Settlement Agreement.

(b) Class Counsel will notify Defendant's Counsel within thirty (30) days after receipt if Class Counsel objects to the form or content of the proposed Voucher.

(c) The Parties agree to work together in good faith to resolve any disputes regarding the form or content of the Voucher.

4. Claims Submittal and Review Process

4.1 To receive the Cash Award, a Class Member must submit to the Settlement Administrator a completed Claim Form on or before the close of the Claims Period. The Claim Form will be mailed to the Class Members and also made available on the Settlement Website for Class Members to print and deliver to the Settlement Administrator by mail or e-mail. The Settlement Website will also contain a Claim Form that can be completed online, electronically signed, and submitted to the Settlement Administrator.

4.2 The timeliness of the submission of any Claim Form will be conclusively determined by the Settlement Administrator based on the post-mark or other like proof of the date of mailing or transmission, including the time stamp of submission of the online Claim Form.

4.3 Within seven (7) days after the end of the Claims Period, the Settlement Administrator shall provide the Claimant List to Class Counsel and Defendant's Counsel.

5. Release of Claims

5.1 Release of HMI by Plaintiff and Class Members. Upon the Effective Date, Plaintiff and all Class Members, and each of their respective heirs, successors, assigns, representatives, and affiliates will be deemed to have completely released and forever discharged

the Released Parties from any and all claims, causes of action, damages of any nature, attorneys' fees, costs, and expenses, that are, or could have been, raised in the pleadings in this matter, or which arise in any way from the Released Parties' promotional marketing and sale of HMI Products as of the Effective Date or any time prior thereto. It is the express agreement of the Parties that this resolution resolves any and all claims of the Plaintiff and the Class Members against the Released Parties arising out of the same or similar facts at issue in this Action which have accrued as of the Effective Date.

6. Notice Plan

6.1 Court Appointment and Retention of Settlement Administrator. The Parties agree to propose that the Court appoint Atticus Administration LLC as the Settlement Administrator. The Settlement Administrator will facilitate the notice process by assisting the Parties and providing professional guidance in the implementation of the Notice Plan. The Settlement Administrator shall administer: (a) the Notice Plan set forth in this Section; (b) the Opt-Out Process set forth in Section 7 hereof; (c) the Claims Process set forth in Section 4 hereof, and (d) the receipt and distribution of all payments and Vouchers required by this Settlement Agreement pursuant to the schedule set forth in Section 10 hereof, or as otherwise directed by the Court.

6.2 Production of Class List. HMI acknowledges that, prior to the execution of this Settlement Agreement, Class Counsel has delivered the Class List to Defendant's Counsel. The Parties acknowledge and agree that the persons identified in the Class List constitute all potential Class Members who: (a) will receive notice of the Settlement Agreement; (b) may opt-out or object to the Settlement Agreement; (c) will, after the Effective Date, receive the monetary relief

described in Section 3.2 hereof if they do not opt-out; and (d) will be subject to all other terms and conditions of this Settlement Agreement upon its Effective Date.

6.3 The Settlement Notice. Within thirty (30) days after the Preliminary Approval Date, the Settlement Administrator will send Settlement Notice in the form of Exhibit C, via U.S. mail, postage prepaid, to each person identified in the Class List. Prior to sending the Settlement Notice, the Settlement Administrator will process the address of each person identified in the Class List through the U.S. Postal Service's National Change of Address database (the "Address Database"). The Settlement Notice will be sent to the last known address reflected in the Class List unless a different address is listed in the Address Database, in which case the Settlement Notice will be sent to the address listed in the Address Database. For up to thirty (30) days after the Settlement Notice Date, the Settlement Administrator will re-mail the Settlement Notice via standard U.S. Mail, postage prepaid, to any updated addresses to the extent that it received address change notifications from the U.S. Postal Service. No later than fifteen (15) days before the Final Approval Hearing in the Action, the Settlement Administrator will file proof of the mailing of the Settlement Notice with the Court. Neither the Parties nor the Settlement Administrator will have any further obligation to send notice of the Settlement Agreement.

6.4 The Settlement Website. Within seven (7) days after the Preliminary Approval Date, the Settlement Administrator will create the Settlement Website (www.HMIsettlement.com) that will include links to the Settlement Notice, the Settlement Agreement, the Claim Form, the Fee Application, applicable deadlines, and orders of the Court pertaining to the settlement. Class Counsel and Defendant's Counsel shall jointly approve any additional content in advance of posting on the Settlement Website.

6.5 CAFA Notice. HMI shall serve any notice of the settlement that meets the requirements of the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1715, on the appropriate federal and state officials not later than ten (10) days after the filing of this Settlement Agreement with the Court. HMI shall file with the Court a certification of the date upon which the CAFA Notice was served.

7. Opting Out of the Settlement Agreement

7.1 The Right to Opt Out of this Settlement Agreement. All persons identified on the Class List shall have the right to opt out of this Settlement Agreement on or before the Opt-Out Deadline by following the procedures set forth in this Section. All persons who timely and properly opt out of the Settlement Agreement shall not: (1) be bound by any orders or judgments entered in this Action; (2) be entitled to relief under or be affected by this Settlement Agreement; (3) gain any rights or release any claims by virtue of this Settlement Agreement; or (4) be entitled to object to any aspect of this Settlement Agreement.

7.2 Procedures for Opting Out. In order to exercise the opt-out right, the person must execute and submit a written Request for Exclusion to the Settlement Administrator postmarked on or before the end of the Opt-Out Deadline. A Request for Exclusion must include the person’s present name and address, a clear and unequivocal statement that the person wishes to be excluded from the Settlement Agreement, and the signature of the person or, only in the case of a person who is deceased or incapacitated, the signature of the person’s legally authorized representative. A Request for Exclusion shall apply only to the individual who submits the valid Request for Exclusion. No Request for Exclusion may be made on behalf of a group of persons. Except for those persons who have timely and properly opted out, all other persons identified on the Class List will be Class Members for all purposes under this Settlement

Agreement. Any person who submits a Claim Form shall be deemed to have waived his or her right to opt-out of the Settlement Agreement, regardless of whether the person has also submitted a Request for Exclusion.

7.3 Revocation of Request for Exclusion. Any person who timely submits a Request for Exclusion may, prior to the Opt-Out Deadline, submit to the Settlement Administrator a written revocation of the Request for Exclusion, such revocation to simply bear the person's name, address, signature, and a statement of the person revoking the prior Request for Exclusion.

7.4 Non-Solicitation of Opt-Outs. Neither HMI nor the Class Representatives, nor their respective counsel will encourage any person to opt out of the Settlement Agreement.

7.5 List of Class Members Timely Electing to Opt Out. Within fourteen (14) days after Opt-Out Deadline, the Settlement Administrator shall provide the Opt-Out List to Class Counsel and Defendant's Counsel.

7.6 Effect of Opt-Outs on the Settlement Agreement. This Settlement Agreement shall be voidable at the election of Plaintiff or HMI if the number of persons on the Opt-Out List exceeds 5% of the number of persons on the Class List. The party exercising this option must serve a written notice of termination on Class Counsel and Defendant's Counsel within seven (7) days after the Settlement Administrator sends the Opt-Out List, and thereafter file a written notice of termination with the Court. The Parties agree that the failure to timely provide the written notice of the exercise of this option on the opposing party's counsel constitutes a waiver of the right to void the Settlement Agreement.

8. Objections by Participating Class Members

8.1 Procedure for Objections. Only Class Members who do not timely submit a valid Request for Exclusion may object to the Settlement. Any Class Member who wishes to object to the Settlement Agreement, Fee Application, or any payment identified in Section 9 hereof, must file a written objection with the Court and serve the objection on Class Counsel and Defendant's Counsel on or before the Objection Deadline.

8.2 Content of Objections. Written objections must include: (i) the objector's name, address, and telephone number; (ii) the name of this Action and the case number; (iii) a statement of each objection; (iv) a written brief detailing the specific basis for each objection, including any legal and factual support the objector wishes to bring to the Court's attention and any evidence the objector wishes to introduce in support of the objection; (v) a detailed list of any other objections submitted by the Class Member, or his/her counsel, to any class actions submitted in any court, whether state or otherwise, in the United States in the previous five (5) years, and, if the Class Member or his/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/she shall affirmatively state so in the written materials provided in connection with the objection; and (vi) the dates between the time the objection is filed and the date of the Final Approval Hearing when the objector is available for deposition by counsel for the Parties in the Southern District of Illinois. If the objection is made through an attorney, the written objection must also include the identity of the Class Member represented by objector's counsel. No objection may be made on behalf of a group of Class Members.

8.3 Waiver of Objection. Class Members who fail to file and to serve timely written objections in the manner specified above shall be deemed to have waived any objections and

shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement Agreement, Fee Application, or any payment identified in Section 9 hereof.

8.4 Notice of Appearance. Any Class Member who files and serves a written objection satisfying the requirements of this Section may appear at the Final Approval Hearing, either in person or through personal counsel hired at the Class Member's expense, to object to any aspect of the fairness, reasonableness, or adequacy of the Settlement Agreement. Class Members, or their attorneys, intending to make an appearance at the Final Approval Hearing must deliver to Class Counsel and Defendant's Counsel and have file-marked by the Court, on or before the Objection Deadline, a Notice of Intention to Appear. The Notice of Intention to Appear must: (i) state how much time the Class Member anticipates needing to present the objection; (ii) identify, by name, address, telephone number all witnesses the Class Member proposes to have testify; (iii) summarize in detail the anticipated testimony of all such witnesses; (iv) identify all exhibits the Class Member intends to offer in support of the objection; and (v) attach complete copies of all such exhibits.

9. Additional Payments under the Settlement Agreement

9.1 Administration Payment. HMI shall contribute up to \$20,000.00 towards the costs of claims administration performed by the Settlement Administrator (the "Administration Payment").

9.2 Incentive Award. Class Counsel will petition the Court for an Incentive Award for the Class Representative, which amount shall be determined by the Court. HMI will not oppose (or solicit others to oppose) a request by Class Representative for an Incentive Award of \$5,000.00, and HMI will pay the lesser of \$5,000.00 or the Incentive Award approved by the Court.

9.3 Sanction Award. HMI will pay \$150,000.00 to Class Counsel in full and final satisfaction of the Sanction Order.

9.4 Fee Award. Class Counsel will file the Fee Application petitioning the Court for an award of attorneys' fees, costs, and expenses, which amount shall be determined by the Court. HMI will not oppose (or solicit others to oppose) Class Counsel's request to the Court for a Fee Award of up to \$195,000.00 and HMI will pay the lesser of \$195,000.00 or the Fee Award approved by the Court.

10. Schedule of Payments and Disbursements

10.1 Administration Payment. HMI will deposit the Administration Payment into the Administration Payment Account within twenty-one (21) days after the Preliminary Approval Date. The Settlement Administrator will provide Class Counsel and Defendant's Counsel monthly invoices for all services rendered and may distribute from the Administration Payment Account the full amount of each invoice within seven (7) days after submitting such invoice if no objection is raised to the charges listed on the invoice. The Parties, Class Counsel, Defendant's Counsel, and Settlement Administrator agree to work in good faith to timely resolve any disputes related to such invoices. If the costs of administration are less than the Administration Payment, any balance remaining in the Administration Payment Account, will be returned to HMI within fourteen (14) days after the end of the administration process.

10.2 Settlement Relief.

(a) HMI will deposit into the Settlement Relief Account the sum required to pay all Claimants on the Claimant List within twenty-one (21) days after the close of the Claims Period.

(b) The Settlement Administrator will mail Settlement Checks or Vouchers to all Class Members within fourteen (14) days of the Effective Date. The Settlement Checks shall be valid for a period of one hundred eighty (180) days after the date on which they are issued. The Settlement Administrator will make reasonable efforts to locate the proper address for any Class Member whose Settlement Check or Voucher is returned by the U.S. Postal Service as undeliverable, and will re-mail it once to the updated address if one is available.

(c) Following expiration of the one hundred eighty (180) day period during which the Settlement Checks shall remain valid, any funds remaining in the Settlement Relief Account resulting from uncashed settlement checks shall be refunded to HMI, and the Settlement Administrator shall mail Vouchers to those Claimants who failed to timely cash their Settlement Checks in full and final satisfaction of their Claims.

10.3 Sanction Award. HMI will deposit \$150,000.00 for the Sanction Award into the Fee Account within forty-five (45) days after the Preliminary Approval Date. The Settlement Administrator will deliver the Sanction Award to Class Counsel within fourteen (14) days after the Effective Date.

10.4 Fee and Incentive Awards. HMI will deposit into the Fee Account an amount equal to the Fee Award and the Incentive Award within fourteen (14) days after the Court's entry of the Final Judgment. The Settlement Administrator will deliver the Fee Award and Incentive Award to Class Counsel within fourteen (14) days after the Effective Date.

10.5 Accounting. The Settlement Administrator shall provide to Class Counsel and Defendant's Counsel an accounting of the Settlement Accounts 150 days after the Effective Date.

10.6 Qualified Settlement Fund. The funds in the Settlement Accounts shall be deemed a “qualified settlement fund” within the meaning of United States Treasury Reg. § 1.468B-1 at all times since creation of the Settlement Accounts. All taxes (including any estimated taxes, and any interest or penalties relating to them) arising with respect to the income earned by either Settlement Account or otherwise, including any taxes or tax detriments that may be imposed upon HMI, HMI’s Counsel, Plaintiff and/or Class Counsel with respect to income earned by the Settlement Accounts for any period during which either Settlement Account does not qualify as a “qualified settlement fund” for the purpose of federal or state income taxes or otherwise (collectively “Taxes”), shall be paid out of the respective Settlement Account. HMI and HMI’s Counsel and Plaintiff and Class Counsel shall have no liability or responsibility for any of the Taxes. The respective Settlement Account shall indemnify and hold HMI and HMI’s Counsel and Plaintiff and Class Counsel harmless for all Taxes (including, without limitation, Taxes payable by reason of any such indemnification).

11. Dismissal of the Action

The Class Representative, on behalf of herself and the Participating Class Members consents to the dismissal of this Action with prejudice. The Parties hereby stipulate to the entry of the Final Judgment in a form substantially the same as Exhibit B following Final Approval of the Settlement Agreement by the Court.

12. Notices

Any communication, verification, or notice sent by any Party in connection with this Settlement Agreement shall be effected by personal delivery, regular first class mail, email, and/or overnight courier as follows:

To Plaintiff:

Sabra Rench
c/o Thomas P. Rosenfeld
Kevin P. Green
Goldenberg Heller & Antognoli, P.C.
2227 South State Route 157
Edwardsville, IL 62025
tom@ghalaw.com
kevin@ghalaw.com

To HMI:

HMI Industries, Inc.
c/o Gary K. Shipman
William G. Wright
Kyle J. Nutt
Shipman & Wright, LLP
575 Military Cutoff Road, Suite 106
Wilmington, NC 28405
gshipman@shipmanlaw.com
knutt@shipmanlaw.com

13. Miscellaneous

13.1 Entire Agreement. This Settlement Agreement along with the attached exhibits contains the entire agreement between the Parties and supersedes all prior understandings, agreements, or writings regarding the subject matter of this Settlement Agreement.

13.2 No Liability. Notwithstanding anything herein, the Parties acknowledge the claims and contentions in this matter are contested and the subject of genuine dispute, and by entering this Settlement Agreement, HMI makes no admission of liability to Plaintiff, the Class Members, Class Counsel, or any other person, firm, or corporation in any manner. The Parties acknowledge that factors considered in entering this Settlement Agreement include the costs and uncertainties of litigation, and the limited financial wherewithal of, and financial stress upon, HMI.

13.3 Invalidity on Modification or Disapproval. In the event any court disapproves or sets aside this Settlement Agreement or any material part hereof for any reason, or holds that it will not enter or give effect to the Final Judgment without material modification, or holds that the entry of the Final Judgment or any material part thereof should be overturned or modified in any material way, then:

(a) If all Parties do not agree jointly to appeal such ruling, this Settlement Agreement will become null and void, and this Action will continue, and the Parties stipulate to joint motions (i) that any and all orders entered pursuant to this Settlement Agreement be vacated, (ii) that any and all dismissals pursuant to this Settlement Agreement will be vacated; and (iii) that all amounts paid by HMI, including the sums deposited for payment of the Cash Award to Claimants, the Incentive Award, the Fee Award, Sanction Award, and Settlement Administration shall be refunded; or

(b) If the Parties do agree to jointly appeal such ruling and if the Final Judgment or its equivalent in all material respects is not in effect after the termination of all proceedings arising out of such appeal, this Settlement Agreement will become null and void, and this Action will continue, and the Parties stipulate to joint motions (i) that any and all orders entered pursuant to this Settlement Agreement be vacated; (ii) that any and all dismissals pursuant to this Settlement Agreement will be vacated; and (iii) that all amounts paid by HMI, including the sums deposited for payment of the Cash Award to Claimants, the Incentive Award, the Fee Award, Sanction Award, and Settlement Administration shall be refunded.

13.4 Amendment. This Settlement Agreement may be amended or modified only by a written instrument signed by all Parties or their successors in interest or their duly authorized representatives.

13.5 Taxes. Class Representative, Class Members, Class Counsel, and the Settlement Administrator shall be responsible for paying any and all federal, state, and local taxes due on any payments made to them pursuant to the Settlement Agreement.

14. Representations and Warranties

14.1 Parties Authorized to Enter into Settlement Agreement. The Class Representative and HMI represent and warrant that he, she, or it is fully authorized to enter into this Settlement Agreement and to carry out the obligations provided for herein. Each person executing this Settlement Agreement on behalf of a Party covenants, warrants and represents that he, she or it is and has been fully authorized to do so by such Party. Each Party hereto further represents and warrants that he, she, or it intends to be bound fully by the terms of this Settlement Agreement.

14.2 No Attempt by Parties to Object. The Class Representative, Class Counsel and HMI each represent and warrant that they have not made, nor will they make, any attempt to (a) void this Settlement Agreement in any way other than the process set forth in Section 7.6 hereof or (b) solicit or encourage any effort by any person (natural or legal) to opt-out or object to the Settlement Agreement.

14.3 Signatures. The Parties and their counsel may sign separate copies of this Settlement Agreement, which together will constitute one agreement. Each person executing this Settlement Agreement warrants that such person has the full authority to do so. For purposes of this Settlement Agreement, a facsimile or emailed copy shall constitute an original signature and shall have the same binding effect as an original.

14.4 Best Efforts. The Parties agree that the terms of the Settlement Agreement reflect a good-faith settlement of disputed claims. Plaintiff, Class Counsel, HMI, and Defendant's Counsel consider the settlement effected by this Settlement Agreement to be fair and reasonable and will use their best efforts to seek approval of the Settlement Agreement by the Court and in responding to any objectors, intervenors or other persons or entities seeking to

preclude the Final Approval of this Settlement Agreement. This obligation is subject to Plaintiff and HMI's rights to terminate the Settlement Agreement as provided herein.

14.5 Time Periods. The time periods and dates described in this Settlement Agreement with respect to the giving of notices and hearings are subject to Court approval and modification by the Court or by written stipulation of the Counsel.

14.6 Governing Law. Except where otherwise provided for herein, this Settlement Agreement is intended to and shall be governed by the laws of Illinois.

14.7 No Construction against Drafter. This Settlement Agreement shall be deemed to have been drafted by the Parties, and any rule that a document shall be interpreted against the drafter shall not apply to this Settlement Agreement.

14.8 Agreement Binding on Successors in Interest. This Settlement Agreement shall be binding on and inure to the benefit of the respective heirs, successors, and assigns of the Parties.

15. Exhibits

The following exhibits are hereby attached to this Settlement Agreement and Release and incorporated herein by this reference in their entirety:

Exhibit A – Preliminary Approval Order;

Exhibit B – Final Judgment in Action;

Exhibit C – Settlement Notice to be sent by U.S. Mail and displayed on the Settlement Website with Claim Form.

16. Execution

The undersigned, being duly authorized, have caused this Settlement Agreement to be executed on the dates shown below and agree that, subject to the provisions herein, it shall take effect on that date upon which it has been executed by the last of all of the undersigned.


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PLAINTIFF:


Sabra Rench


3-8-19
Date

CLASS COUNSEL:


GOLDENBERG HELLER &
ANTOIGNOLI, P.C.
Thomas P. Rosenfeld
Kevin P. Green
2227 South State Route 157
Edwardsville, IL 62025

3/8/19
Date

HMI INDUSTRIES, INC.

By: 

3/12/19
Date

Name: DANIEL J. DUGGAN

Title: CEO

COUNSEL FOR DEFENDANT



3/12/19
Date

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