

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

JACQUELYN D. AJOSE,)
KATHY SMITH, SHARON KURTZ,)
PATRICIA EVETT, & JAMES L.)
BOYLAND)
on behalf of themselves and all others)
similarly situated,)

No. 3:14-cv-01707

Plaintiffs,)

JUDGE WILLIAM L. CAMPBELL, JR.
MAGISTRATE JOE BROWN

v.)

INTERLINE BRANDS, INC.,)
Defendant.)

**ORDER GRANTING PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT; CERTIFICATION OF SETTLEMENT CLASS;
AND APPROVAL OF FORM AND CONTENT OF PROPOSED NOTICE**

WHEREAS, this Court has read and considered the Class Action Settlement Agreement and Release (“Agreement”) entered into by and among Defendant Interline Brands, Inc. (“Interline”) on the one hand, and Plaintiffs Jacquelyn D. Ajose, Kathy Smith, Sharon Kurtz, Patricia Evett and James Boyland as individuals and as “Class Representatives” (collectively the “Parties” in the above referenced “Action”), together with all exhibits thereto [ECF No. 245], the record in this case, and heard the arguments of counsel;

WHEREAS, this Court preliminarily finds, for the purposes of settlement only, that the proposed class as stated in the Agreement meets all the prerequisites of Rule 23 of the Federal Rules of Civil Procedure for class certification, including numerosity, commonality, typicality, predominance of common issues, superiority, and that the Class Representatives and Class Counsel are adequate representatives of the Settlement Class;

IT IS HEREBY ORDERED AS FOLLOWS:

1. All terms and definitions used herein have the same meanings as set forth in the Agreement.

2. The proposed settlement set forth in the Agreement is hereby preliminarily approved as being fair, reasonable and adequate such that notice thereof should be given to members of the Settlement Class (as defined in the paragraph below). The Court reserves its ruling on the reasonableness of any requested attorney's fees and costs until after a petition for fees has been filed and fully briefed.

Class Certification

3. The Action is provisionally certified as a class action, for the purposes of settlement only, pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure, which class is defined as follows:

ALL PERSONS WHO OWN OR OWNED, OR LEASE OR LEASED, A RESIDENCE OR OTHER STRUCTURE LOCATED IN THE UNITED STATES CONTAINING A TOILET CONNECTOR, OR WHO OTHERWISE SUFFER OR HAVE SUFFERED PROPERTY DAMAGE FROM THE FAILURE OF A COUPLING NUT ON A TOILET CONNECTOR.

EXCLUDED FROM THE SETTLEMENT CLASS ARE THE FOLLOWING EXCLUDED PERSONS:

A. THOSE SETTLEMENT CLASS MEMBERS WHO PROPERLY EXCLUDE THEMSELVES FROM THE SETTLEMENT AS APPROVED BY THE COURT;

B. THOSE PROPERTY DAMAGE CLAIMS OF SETTLEMENT CLASS MEMBERS PREVIOUSLY RESOLVED THROUGH SETTLEMENT WITH OR FINAL JUDGMENT AGAINST INTERLINE OR OTHER RELEASED PARTIES;

C. INTERLINE AND ITS PARENT, SUBSIDIARIES AND AFFILIATES;

D. ALL THOSE PERSONS THAT SOLD OR DISTRIBUTED A TOILET CONNECTOR, INCLUDING CUSTOMERS, RETAILERS, RESELLERS, WHOLESALERS, MANUFACTURERS, SUPPLIERS AND DISTRIBUTORS OF INTERLINE, EXCEPT TO THE EXTENT SUCH A PERSON IS PURSUING EITHER (I) A REPLACEMENT CLAIM FOR A TOILET CONNECTOR THAT IS OR WAS INSTALLED IN A RESIDENCE OR OTHER STRUCTURE LOCATED IN THE UNITED STATES THAT THE PERSON OWNS OR OWNED, OR LEASES OR LEASED, OR (II) A DAMAGE CLAIM

**ARISING OUT OF OR RESULTING FROM THE FAILURE
OF A TOILET CONNECTOR; AND**

**E. THE PRESIDING DISTRICT JUDGE AND
MAGISTRATE JUDGE IN THE CLASS ACTION AND
THEIR IMMEDIATE FAMILIES.**

4. The Class Representatives and Co-Lead Counsel are hereby found to be, and are therefore appointed as, adequate representatives of the Settlement Class. Plaintiffs Ajose, Smith, Kurtz, Evett and Boyland are appointed as representatives of the proposed Settlement Class. Simon B. Paris, Esquire and Patrick Howard, Esquire of Saltz Mongeluzzi, Barrett & Bendesky, P.C., 120 Gibraltar Road, Suite 218, Horsham, PA 19044, Shanon J. Carson, Esquire and Glen L. Abramson, Esquire of Berger & Montague, P.C., 1622 Locust Street, Philadelphia, PA 19103, and Joseph G. Sauder of Sauder Schelkopf LLC, 555 Lancaster Avenue, Berwyn, PA 19312, are appointed as Co-Lead Counsel pursuant to Fed. R. Civ. P. 23(g) to represent the interests of the proposed Settlement Class. Simon B. Paris, Esquire and Patrick Howard, Esquire of Saltz Mongeluzzi, Barrett & Bendesky, P.C. are appointed as Class Counsel Chair.

5. The Court finds that, for purposes of settlement only, the requirements of Fed. R. Civ. P. 23 are met by the Settlement Class. Joinder of all Settlement Class Members in a single proceeding would be impracticable, if not impossible, because of their numbers and dispersion. Common issues exist among Settlement Class Members' claims regarding whether the Coupling Nut on the Toilet Connectors is defective. The Class Representatives claims are typical of those of the Settlement Class, in that: (i) the interest of the Plaintiffs' claims are typical of those of the Settlement Class; (ii) there are no apparent conflicts between or among the named Plaintiffs and the members of the Settlement Class; (iii) the Plaintiffs have been and are capable of continuing to be active participants both in the prosecution of, and the negotiations to settle, the Action; and (iv) the Plaintiffs and the Settlement Class are represented by qualified, reputable counsel who are experienced in preparing and prosecuting class actions, including those involving defective products. In accordance with the Supreme Court's holding in *Amchem Prods v. Windsor*, 521 U.S. 591, 620 (1997), the Court need not address whether this case, if tried, would present issues

of manageability under Fed. R. Civ. P. 23(b)(3)(D). Finally, a class action settlement is superior to other available methods for a fair resolution of the controversy.

6. Certification of the Settlement Class shall be solely for settlement purposes and without prejudice to the Parties in the event that the Agreement is not finally approved by this Court or otherwise does not take effect. Certification of the Settlement Class shall be vacated and shall have no effect in the event that the Agreement is not finally approved by this Court or otherwise does not take effect.

Notice to Potential Settlement Class Members

7. The Court hereby approves the form and procedure for disseminating notice of the proposed settlement to the Settlement Class as set forth in the Agreement. The Court finds that the Notice Plan contemplated constitutes the best notice practicable under the circumstances and is reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action and their right to object to the proposed settlement or opt out of the Settlement Class in full compliance with the requirements of applicable law, including the Due Process Clause of the United States Constitution and Rules 23(c) and (e) of the Federal Rules of Civil Procedure. In addition, Class Notice clearly and concisely states in plain, easily understood language: (i) the nature of the action; (ii) the definition of the certified Settlement Class; (iii) the claims and issues of the Settlement Class; (iv) that a Settlement Class Member may enter an appearance through an attorney if the member so desires; (v) that the Court will exclude from the Settlement Class any member who requests exclusions; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Fed. R. Civ. P. 23(c)(3).

8. As set forth in the Agreement, Settlement Administration, which includes the costs and expenses incurred in providing notice to the Settlement Class, and attorneys' fees and expenses shall be deducted from the Total Settlement Amount.

Retention of Class Action Settlement Administrator and Notice Plan

9. The Court authorizes the Parties to retain Hilsoft Notifications to effectuate the Notice Plan as the Notice Provider and Epiq Class Action & Claims Solutions, Inc. as the Claims Administrator. Hilsoft Notifications shall provide all of the following forms of Notice within fifteen (15) days of this order (“Notice Date”):

- *Direct Mail Notice.* A copy of the Notice of Pendency and Proposed Settlement of Class Action substantially in the form attached to the Agreement as Exhibit A (the “Class Notice”), together with the Claim Form substantially in the form attached to the Agreement as Exhibit D and this Order, shall be mailed to all reasonably identifiable (a) Settlement Class Members who have a pending claim against Interline arising from the alleged failure of a Toilet Connector (if represented by counsel who has made an appearance or otherwise notified Interline of their representation of the Settlement Class Member, through their counsel), and (b) subrogation departments for all homeowners’ and renters’ insurance carriers included on a list to be obtained by the Notice Provider from a nationally-recognized business and consumer listing company.
- *Published Notice.* A copy of the Summary Notice substantially in the form attached to the Agreement as Exhibit B shall be published in Consumer Print Publications (*Better Homes and Gardens, Parade, People, and Sports Illustrated*), and Trade Publications (*Buildings, Contractor, PHC News, and Plumbing & Mechanical*).
- *National Press Release.* Issue a joint press release on *PR Newswire’s* national wire, reaching approximately 5,500 media outlets and 5,400 websites. The release will discuss the Settlement and provide the address for the Settlement Website where information can be obtained and downloaded.

- *Internet Notice.* Banner ads to appear on leading networks, including *Conversant Ad Network, Facebook, Google Ad Network, Pulpo-Spanish Ad Network, and Yahoo Ad Network.*
- *Postcard Notice.* A postcard substantially in the form attached to the Agreement as Exhibit C (“Settlement Postcard”) shall be mailed to various companies and business across the United States who provide water damage restoration and plumbing services informing them of the fact of the settlement and that the Class Notice and Claim Form are available on the Settlement Website, or by calling the Toll-Free Number.
- *Website Notice.* A copy of the Notice of Pendency and Proposed Settlement of Class Action will be posted and available for download on a Settlement Website, and will be mailed at no charge to Class Members who call a toll-free number to be established. This information is to remain available on the Internet until the last day of the four-year Claims Period.

Final Fairness Hearing

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

11. Thirty (30) days prior to the Objection Deadline, Class Counsel Chair shall file with the Court and post on the Settlement Website their application for payment of attorneys’ fees and expenses, and Service Awards. This filing may be updated no later than ten (10) days prior to the Final Fairness Hearing.

12. A hearing (the “Final Fairness Hearing”) shall be held by the Court on October 19, 2018, beginning at 1:00 p.m., to consider and determine whether the requirements for certification of the Settlement Class have been met and whether the proposed settlement of the Action on the terms set forth in the Agreement should be approved as fair, reasonable, adequate, and in the best interests of the Settlement Class Members; whether Class Counsel’s fee and

expense application and application for Service Awards, included as part of the settlement, should be approved; and whether the Final Judgment approving the settlement and dismissing the Action on the merits and with prejudice against the Class Representatives and all Settlement Class Members should be entered. The Final Fairness Hearing may, from time to time and without further notice to the Settlement Class (except those who have filed timely and valid objections and requested to speak at the fairness hearing), be continued or adjourned by Order of the Court.

13. No later than twenty (20) days prior to the Final Fairness Hearing, the Parties shall file all papers in support of the application for final approval of the settlement.

Objections

14. Any Settlement Class Member who complies with the requirements of this paragraph may object to any aspect of the proposed settlement either on their own or through an attorney hired at their expense. Any Settlement Class Member who intends to object to the proposed settlement must do so no later than sixty (60) days after the Notice Date (“Objection Date”). Objections by any Settlement Class Member may be made to: (A) the certification of the Settlement Class and the proposed settlement contained in the Agreement and described in the Settlement Notice; (B) the payment of fees and expenses to Class Counsel or Service Awards to the Class Representatives; and/or (C) entry of the Final Judgment.

15. To exercise this objection right, the Settlement Class Member must provide written notice of the objection via first class mail, to Class Counsel Chair and Counsel for Interline, by the Objection Deadline. The objection must bear the signature of the Settlement Class Member (even if represented by counsel) with the date signed and must specify: (i) the name of the Class Action, *Ajose v. Interline*, No. 14-cv-01707; (ii) the Settlement Class Member’s current address, telephone number and email address; (iii) whether, as of the date of the objection, the Settlement Class Member owns or rents a residence or structure or formerly owned or rented a residence or other structure containing a Toilet Connector, or otherwise suffered damages as a result of the failure of a Toilet Connector; (iv) the address of the property

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

Opts Outs

16. Any Settlement Class Member may request to be excluded (or "opt out") from the Settlement Class. A Settlement Class Member who wishes to opt out of the Settlement Class must do so not later than 60 days from the Notice Date ("Opt Out Date"). To exercise this opt out right, a Settlement Class Member must send written notification of the decision to request exclusion by completing an Opt Out Form, which may simply be in the form of a letter so long as it provides all of the required information. The Opt Out Form shall be sent via first class mail to the Claims Administrator, Epiq Class Action & Claims Solution, Inc., with courtesy copies to Class Counsel Chair and Counsel for Interline. Opt Out Forms must be submitted by individual Settlement Class Members and will not be valid if submitted in the aggregate or on behalf of a purported class, except that joint owners or residents of the same residence or structure may opt out on the same form. To be valid, Opt Out Forms must be received by the Claims Administrator and/or postmarked on or before the Opt Out Deadline and approved by the Court. The Opt Out Form must bear the signature of the Settlement Class Member and include: (i) a

specific request to opt out of the litigation; (ii) the Settlement Class Member's name, current address, telephone number, and email address; (iii) proof of membership in the Settlement Class; (iv) the date of purchase or installation of any failed Toilet Connector and the date of failure; (v) an estimate of the amount of damages, if any, that the Person sustained as the result of any alleged failure of a Toilet Connector; and (vi) the identity of the lawsuit or other proceeding previously filed by the Settlement Class Member involving the failed Toilet Connector, if any. If the Settlement Class Member is represented by separate counsel, the Opt Out Form shall also be signed by the attorney who represents the Settlement Class Member.

17. Except for those Settlement Class Members who have properly filed a timely written Opt Out Form (and all other Excluded Persons), all Persons who meet the definition of Settlement Class Member will be deemed Settlement Class Members for all purposes under this Agreement.

18. Any Settlement Class Member who has not properly filed a timely written Opt Out Form shall be bound by the terms of this Agreement and by all subsequent proceedings, orders, and judgments issued by the Court. Any Settlement Class Member who elects to opt out of the Settlement Class pursuant to this Agreement shall not be entitled to relief under or be affected by this Agreement.

19. Counsel for the Parties are hereby authorized to utilize all reasonable procedures in connection with the administration of the settlement that are not materially inconsistent with either this Order or the terms of the Agreement.

20. The Names of all Settlement Class Members who properly requested exclusion shall be attached as an exhibit to any Final Order and Judgment.

Injunction

21. The Court hereby enjoins all Settlement Class Members, and all Persons that can pursue or are entitled to pursue an action in the name or right of a Settlement Class Member, from commencing, maintaining, continuing and/or prosecuting any action asserting any claims that fall within the scope of the Released Claims (as defined in the Agreement) until the entry of

the Final Order and Judgment, unless such Person has validly opted out of this settlement and Agreement and the Court has approved such opt out.

No Admission of Liability

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

Deadlines

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

a. The Notice Plan shall be completed within thirty (30) days of this Preliminary Approval Order (“Notice Date”), or June 21, 2018.

b. All Opt Out Forms requesting exclusion from the Settlement Class must be postmarked and sent to the Claims Administrator, Class Counsel Chair and Counsel for Interline within sixty (60) days of the Notice Date (“Opt Out Deadline”), or August 20, 2018.

c. All Objections to the Settlement must be filed with the Court and postmarked and sent to Class Counsel Chair and Counsel for Interline within sixty (60) days of the Notice Date (“Objection Deadline”), or August 20, 2018.

d. Thirty (30) days prior to the Objection Deadline, or July 20, 2018, Class Counsel shall file with the Court and post on the Settlement Website their application for payment of attorneys' fees and expenses, and Service Awards for the Class Representatives.

e. No later than twenty (20) days prior to the Final Fairness Hearing, the Parties shall file all papers in support of the application for final approval of the settlement and/or opposition to any Objections received.

f. A Final Fairness Hearing shall be conducted at 1:00 p.m. on October 19, 2018.

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

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



William L. Campbell, Jr.
United States District Judge