UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

IAN POLLARD, on behalf of himself and all others similarly situated,	)	
Plaintiffs,	)	
v.	)	Case No. 4:13-CV-00086-ODS
REMINGTON ARMS COMPANY, LLC, et al.	)	
Defendants.	)	

AMENDED SUGGESTIONS IN SUPPORT OF MOTION FOR CONDITIONAL CERTIFICATION OF SETTLEMENT CLASSES, PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, APPROVAL OF NOTICE PLAN, APPOINTMENT OF CLASS ACTION SETTLEMENT ADMINISTRATOR, AND APPOINTMENT OF CLASS COUNSEL

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Plaintiff Ian Pollard[1] and Defendants Remington Arms Company, LLC ("Remington"), E.I. du Pont de Nemours & Company ("DuPont"), and Sporting Goods Properties, Inc. ("SGPI") move this Court for an Order pursuant to Fed. R. Civ. P. 23 that would: (1) conditionally certify the Settlement Classes; (2) preliminarily approve the terms of the proposed Settlement Agreement;[2] (3) approve the proposed Notice Plan; (4) approve the Claim Forms; (5) appoint Angeion Group as the Class Action Settlement Administrator; (6) appoint Class Counsel; (7) schedule a Final Approval Hearing for approval of Class Certification and the Class Settlement; and (8) schedule dates by which the Parties and potential Settlement Class Members are to comply with their obligations as more fully set forth below and in the proposed order filed concurrently herewith.

I. STATEMENT OF THE CASE

Remington designs, manufactures, and sells firearms and ammunition products, including the Model 700 bolt-action rifle. From 1948 through April 2006, Model 700s were manufactured with trigger mechanisms known as the Walker trigger mechanism, which utilizes a component part known as a trigger connector.[3] Beginning in May 2006, Remington Model 700 and Model Seven bolt-action rifles began to be manufactured with trigger mechanisms known as the X-Mark Pro trigger mechanism, which does not utilize a trigger connector component.

The Litigation. Plaintiffs' Counsel filed four putative class actions against Defendants in federal district courts in 2012 and 2013, including the instant case, arising out of the design,

[1] Pending before the Court is Plaintiffs' Motion for Leave to Amend the Class Action Complaint which names Plaintiffs Rodney Barbre, Wallace Brown, Gordon Hardaway, William Moodie, James Waterman, and Mitchell Winterburn. The citations to the Complaint in this Motion refer to the proposed First Amended Class Action Complaint. *See* Am. Compl. Doc. 81-1, "Doc. 81."

[2] Capitalized terms herein have the same definitions as set forth in the Settlement Agreement, which is attached hereto as Exhibit 1.

[3] From 1948 through November 1993, SGPI was the manufacturer of the Model 700. Remington began manufacturing the Model 700 beginning on December 1, 1993 and continues to do so today. A detailed description of Defendants and their relationships to this litigation are included in the Settlement Agreement. *See* Ex. 1 at I.

manufacturing, advertising, marketing, warranting and sale of Model 700 bolt-action rifles containing the Walker trigger mechanism. *Chapman v. Remington Arms Co., LLC et al.*, No. 1:12-cv-24561 (S.D. Fla. Dec. 31, 2012); *Pollard v. Remington Arms Co., LLC et al.*, No. 4:13-cv-00086 (W.D. Mo. Jan. 28, 2013); *Moodie v. Remington Arms Co., LLC et al.*, No. 2:13-cv-00172 (W.D. Wash. Jan. 29, 2013); *Huleatt v. Remington Arms Co., LLC et al.*, No. 9:13-cv-00113 (D. Mont. June 4, 2013). At their core, these lawsuits claimed that the Walker trigger mechanism is defectively designed because it utilizes a trigger connector which can result in accidental discharges without the trigger being pulled. According to Plaintiffs, Defendants' knowledge of "design flaws associated with the Walker Fire control trigger dates back to before the assembly was ever placed into the stream of commerce," and "[d]espite decades of knowledge related to the various dangerous conditions of the Model 700 Rifle, Defendants never issued an adequate warning or recall of the Model 700 Rifles and Remington continues to falsely represent to the public that the Model 700 is a trusted, safe and reliable Rifle." *See* Doc. 1, ¶¶ 4-5 (Complaint); Doc. 81, ¶¶ 4-5 (proposed First Amended Complaint). Plaintiffs further allege that the claimed design defect has caused unintended shootings resulting in personal injuries and deaths. Plaintiffs allege the value and utility of their Model 700 rifles firearms have been diminished as a result of the alleged defective design, entitling them to economic damages and equitable relief. Defendants deny these allegations.

Plaintiffs' allegations notwithstanding, it is undisputed that Remington's Model 700 rifle is the best-selling American-made bolt-action rifle of all time. Over six million Model 700s have been manufactured and sold since 1962. The Model 700 has also been and continues to be the tactical rifle of choice for law enforcement agencies across the United States. Furthermore, the M24, XM2010, and M40 sniper rifles employed for decades by the United States Army, Marine

Corps, Special Operations Command, and state and federal law enforcement agencies utilize the Remington Walker trigger mechanism.

Defendants dispute Plaintiffs' allegations and contend that firearms containing the trigger connector component are neither defective nor unsafe. Defendants, in support of their position, say that in past personal injury lawsuits, neither Remington nor Plaintiffs' firearms experts have ever been able to duplicate an accidental firing without a trigger pull on a rifle in proper working condition. Defendants further contend that accidental discharges with such firearms are caused by other factors such as improper alterations, poor maintenance, inadvertent trigger pulls, and/or failure of the person handling the firearm to follow basic safety practices. Nevertheless, to avoid the extraordinary costs and uncertainty of protected litigation, and in service to all owners of such firearms, Defendants have agreed to settle the claims made against them in this Action. Plaintiffs dispute all of Defendants' contentions as set forth more fully above and in the proposed amended class action complaint.

The Mediation. In September 2013, the Parties began mediating the litigation with John W. Perry and Randi S. Ellis, an experienced mediation team. During the mediation process, the parties agreed that Remington's X-Mark Pro trigger mechanism could be an appropriate retrofit for Model 700, Seven, Sportsman 78, and 673 firearms containing Walker trigger mechanisms. The Parties further agreed that the current Model 770 connectorless trigger mechanism could be an appropriate retrofit for Models 710, 715, and 770 firearms containing trigger mechanisms that utilize a trigger connector.

The X-Mark Pro Recall. Thereafter, Remington learned that the then-existing X-Mark Pro assembly process created the potential for the application of an excess amount of bonding agent, which could cause Model 700 and Model Seven bolt-action rifles containing X-Mark Pro

trigger mechanisms to discharge without a trigger pull under certain limited conditions. The Parties are unaware of any personal injury caused by or as a consequence of any excess bonding agent.

On April 11, 2014, and after consultation and coordination with Plaintiffs' Counsel, Remington undertook a voluntary recall of all Model 700 and Model Seven bolt-action rifles containing X-Mark Pro trigger mechanisms manufactured from May 1, 2006 to April 9, 2014.[4] Under the terms of the voluntary recall, Remington instituted a specialty cleaning, inspection, and testing process to remove any excess bonding agent that may have been applied in affected X-Mark Pro trigger mechanisms. Remington also changed and improved its assembly processes with regard to the X-Mark Pro trigger mechanism, so the excess bonding agent issue cannot occur again. Once Remington was able to manufacture substantial numbers of X-Mark Pro trigger mechanisms under the new assembly process to be used as replacement triggers in affected rifles, it provided recall participants the option to receive a replacement trigger or have their trigger specialty cleaned. Current participants in the voluntary recall are provided with new triggers manufactured under the changed and improved assembly process rather than the specialty clean, inspection, and testing. Plaintiffs' and Defendants' experts agree that triggers that have been specialty cleaned, inspected, and tested are equivalent in terms of safety and performance as triggers manufactured under the changed and improved assembly process. *See* Ex. 2, ¶ 17 (Declaration of Derek L. Watkins); Ex. 3, ¶ 6.6 (Amended Declaration of Charles W. Powell).

Following the recall, Plaintiffs' Counsel filed motions to amend the Complaint in this case and in *Moodie* to include a putative X-Mark Pro recall class. In addition, Plaintiffs'

[4] As of the date of this filing, the voluntary X-Mark Pro recall is ongoing.

Counsel, with the aid of their experts, have conducted an inspection of Remington's changed and improved assembly process and examined X-Mark Pro trigger mechanisms manufactured under the revised assembly process. Plaintiffs' Counsel, Defendants' Counsel, and their respective experts agree that the X-Mark Pro trigger mechanism manufactured under the revised assembly process is a safe alternative to the Walker trigger mechanism and suitable for retrofit in Model 700, Seven, Sportsman 78, 673 firearms. The X-Mark Pro trigger mechanism manufactured under the revised assembly process can be retrofitted to these firearms without affecting overall performance and safety.

The Settlement Agreement. After five in-person mediation sessions, the Parties reached the material terms of this nationwide Settlement with respect to: (1) all Model 700, 721, 722, 725, Seven, Sportsman 78, 600, 660, 673, XP-100, 710, 715 and 770 firearms manufactured by Remington or SGPI that that contain trigger mechanisms that utilize a trigger connector; and (2) Model 700 and Seven bolt-action rifles containing X-Mark Pro trigger mechanisms that are subject to the April 2014 voluntary recall. Approximately 7,850,000 of these firearms have been sold in the United States. The Parties now seek conditional certification of the Settlement Classes and preliminary approval of the Settlement.

II. THE SETTLEMENT

A. The Settlement Classes

Pursuant to Fed. R. Civ. P. 23(b)(3), the Parties seek conditional certification, for settlement purposes only, of the following Settlement Classes:[5]

Settlement Class A:

[5] The Settlement Class representatives for Class A are Ian Pollard, Rodney Barbre, William Moodie, James Waterman. The Settlement Class representatives for Class B are Wallace Brown, Gordon Hardaway, and Mitchell Winterburn.

> All current owners of Remington Model 700, Seven, Sportsman 78, 673, 710, 715, 770, 600, 660, XP-100, 721, 722, and 725 firearms containing a Remington trigger mechanism that utilizes a trigger connector. Excluded from the class are: (a) persons who are neither citizens nor residents of the United States or its territories; (b) any Judge or Magistrate presiding over the Action and members of their families; (c) governmental purchasers; (d) Remington Arms Company, LLC, Sporting Goods Properties, Inc., E.I. du Pont Nemours & Company, and each of their subsidiaries and affiliates.
>
> Settlement Class B:
>
> All current owners of Remington Model 700 and Model Seven rifles containing an X-Mark Pro trigger mechanism manufactured from May 1, 2006 to April 9, 2014 who have not participated in the voluntary X-Mark Pro product recall; and all current and former owners of Remington Model 700 and Model Seven rifles who previously replaced their rifle's original Walker trigger mechanism with an X-Mark Pro trigger mechanism manufactured from May 1, 2006 to April 9, 2014. Excluded from the class are: (a) persons who are neither citizens nor residents of the United States or its territories; (b) any Judge or Magistrate presiding over the Action and members of their families; (c) governmental purchasers; (d) Remington Arms Company, LLC, Sporting Goods Properties, Inc., E.I. du Pont Nemours & Company, and each of their subsidiaries and affiliates.

See Doc. 81, ¶¶ 66-67 (proposed First Amended Complaint). Approximately 6,650,000 Settlement Class A firearms, and approximately 1,200,000 Settlement Class B firearms, have been sold in the United States.

B. Benefits and Claims Program

Settlement benefits include one or more of the following types of relief: (1) a retrofit of trigger mechanisms that utilize a trigger connector; (2) a retrofit of the X-Mark Pro trigger mechanism subject to the April 2014 recall; (3) a refund of the costs for certain retrofits previously undertaken by the Settlement Class Member; and (4) a voucher code for Remington products redeemable at Remington's online store. In addition, all Settlement Class Members

submitting valid Claim Forms will receive an educational DVD regarding safe firearm handling practices.

To facilitate the claims process, a Claim Form will be available on the Settlement Website for online submission, or by submission through U.S. mail or e-mail. *See* Ex. 1-A (Claim Forms). Claim Forms will also be available by calling the Settlement Telephone Number. Claim Forms may be submitted upon entry of the Preliminary Approval Order until eighteen (18) months after the Effective Date.

The precise benefits and claims process are as follows:

Settlement Class A:

(a) *Model 700, Seven, Sportsman 78, and 673.*

A Remington Authorized Repair Center ("RARC") will remove the original trigger mechanism and retrofit the firearm with an X-Mark Pro manufactured under the new assembly process at no cost to the Settlement Class Member. Settlement Class Members can choose either to take their firearm to the RARC for the retrofit or to ship their firearm to the RARC for the retrofit. If they chose to ship their firearm, Remington will send the Settlement Class Member pre-paid shipping tags, boxes, and written instructions. A list of Remington Authorized Repair Centers can be found on the Settlement Website or by calling the Settlement Phone Number. Settlement Class Members must first submit a timely Claim Form to be eligible for this benefit.

(b) *Model 710, 715, and 770.*

Remington will remove the original trigger mechanism and retrofit the firearm with the current Model 770 connectorless trigger mechanism at no cost to the Settlement Class Member. Remington will send the Settlement Class Member pre-paid shipping tags, boxes, and written

instructions on how to ship the firearm to Remington for the retrofit. Settlement Class Members must first timely submit a Claim Form to be eligible for this benefit.

(c) *Model 600, 660, XP-100, 721, 722, and 725.*

These firearms were predominantly produced between 1948 and 1982 and cannot be readily retrofitted with a Connectorless Trigger Mechanism. Settlement Class Members owning these 32- to 66-year-old firearms will be provided with voucher codes redeemable for Remington products redeemable at Remington's online store. A voucher code for Remington products in the amount of $12.50 will be provided to Settlement Class Members who own a Model 600, 660, or XP-100, which were manufactured between 1962 and 1982. A voucher code for Remington products in the amount of $10.00 will be provided to Settlement Class Members who own a Model 721, 722, or 725, which were manufactured from 1948 to 1961. These voucher codes are transferable, may be combined with other Remington coupons or vouchers, and do not expire. Settlement Class Members are not required to return their firearm(s) to Remington in order to receive a voucher code. Settlement Class Members must, however, first timely submit a Claim Form to be eligible for this benefit.

Settlement Class B: Model 700 and Seven firearms containing an X-Mark Pro trigger mechanism manufactured from May 1, 2006 to April 9, 2014.

A Remington Authorized Repair Center will remove the existing X-Mark Pro trigger mechanism and retrofit the firearm with an X-Mark Pro manufactured under the new assembly process at no cost to the Settlement Class Member. Settlement Class Members can choose either to take their firearm to the RARC for the retrofit or to ship their firearm to the RARC for the retrofit. If they choose to ship their firearm, Remington will send the Settlement Class Member pre-paid shipping tags, boxes, and written instructions. A current list of Remington Authorized Repair Centers can be found on the Settlement Website or by calling the Settlement Phone

Number. Settlement Class Members must first submit a timely Claim Form to be eligible for this benefit.

In addition to the retrofit, Settlement Class B Members who replaced their firearm's original Walker trigger mechanism at their own cost with an X-Mark Pro trigger mechanism manufactured from May 1, 2006 to April 9, 2014 may also seek a refund of the amount of money they paid for the replacement. The Settlement Class Member must first fully and timely execute the Claim Form and any requested documentation. Refunds shall not exceed $119, which represents the most that Remington has ever charged for an X-Mark Pro installation in Model 700 or Model Seven rifles originally containing a Walker trigger mechanism. Refunds will be batch mailed four times per year.

All Settlement Firearms. In addition to the benefits described above, all Settlement Class Members who fully execute the Claim Forms will be provided with an educational DVD regarding safe firearm handling practices.[6]

C. Additional Terms of the Settlement Agreement

1. Settlement Administration and Class Notice

The Settlement Agreement provides that all costs of notice and claims administration will be paid by Defendants. *See* Ex. 1 at ¶ 19. Following a request for a proposal and competitive bidding process, Class Counsel and Defendants have agreed to engage, subject to Court approval, Angeion Group as the Notice provider and Class Action Settlement Administrator to advise them with respect to the providing of Notice and processing of claims.

[6] With certain limited exceptions, most benefits will be provided following the Effective Date. However, due to the ongoing recall of Modell 700 and Seven firearms containing an X-Mark Pro trigger mechanism, the trigger retrofit for those firearms is available to Settlement Class Members now.

The Settlement provides for Notice through a combination of: (1) a joint press release; (2) Direct Notice, *see* Ex. 1-D; (3) Short Form Notice, *see* Ex. 1-C; (4) Long Form Notice, *see* Ex. 1-B; (5) notice through the Settlement Website; and (6) notice through social media, including a Facebook page and internet banners. The notice will include publication of the Short Form Notice in well-known consumer magazines designed to reach owners of the firearms in question.

2. Exclusion and Objection Rights

Any Member of the Settlement Classes wishing to do so may opt out of the Settlement Classes during the opt-out period. *See* Ex. 1 at ¶ 76. The opt-out period shall expire sixty (60) days after the date the last Short Form Notice is published. Those who wish to opt out can do so by providing a written request for exclusion which includes the potential Settlement Class Member's name, address, telephone number, an email address (if available) and an express statement of desire to be excluded from the Settlement Class. *Id.* The request must be filed with the Clerk of the Court and sent by certified or first-class mail to the Class Action Settlement Administrator. The Court shall determine whether any of the contested opt outs are valid.

The Settlement Agreement provides that Remington shall be entitled, at its option, and in its sole and absolute good-faith discretion, to cancel the Settlement and rescind its agreement to the Settlement Agreement if a sufficient number of Settlement Class Members excluding themselves from the Settlement reaches a level that, in Remington's judgment, threatens to frustrate the purposes of the Agreement. To cancel the settlement, Remington must provide written notice to Plaintiffs' Counsel and to the Court no later than ten (10) days prior to the Final Approval Hearing. *Id.* at ¶ 120.

Alternatively, Class Members may file a notice of intent to object to the Settlement if they wish to do so. *Id.* at ¶ 80. The Parties propose that Class Members who wish to object must

file a notice of intent with the Clerk of the Court no later than sixty (60) days after the date the last Short Form Notice is published pursuant to the Settlement Agreement. *Id.* Copies of the notice must also be sent to the Class Action Settlement Administrator. *Id.* The objection must bear the signature of the Settlement Class Member (even if represented by counsel), the Class Member's current address and telephone number, state the firearm's model and serial number, and state the exact nature of the objection including any legal support the Settlement Class Member wishes to introduce in support of the objection, and whether or not the Class Member intends to appear at the final approval hearing. If the Class Member is represented by counsel, the objection shall also be signed by the attorney who represents the Class Member. Objections sent by any Settlement Class Member to incorrect locations shall not be valid.

3. Representative Plaintiff Awards

In addition to the foregoing relief that will benefit Plaintiffs as Settlement Class Members, Class Counsel intends to apply for a representative Plaintiff award of $2,500.00 for each of the named Plaintiffs. The representative awards provided to the named Plaintiffs will compensate the named Plaintiffs solely for their time and effort associated with their participation as named Plaintiffs in this Action.

4. Attorneys' Fees

After negotiating the terms of the Settlement Agreement, the Parties agreed that Plaintiffs' Counsel may file a motion with the Court for an award of attorneys' fees, costs, and expenses not to exceed $12,500,000.00. This award shall include all fees, costs, and expenses for all Plaintiffs' Counsel (and their employees, consultants, experts, and other agents) who may have performed work in connection with this Action.

5. Release

In exchange for the benefits of the Settlement Agreement, Plaintiffs and all Settlement Class Members, and each of their respective heirs, executors, representatives, agents, assigns, and succors shall release all claims, demands, rights, damages, obligations, suits, debts, liens, contracts, agreements and causes of action of every nature and description whatsoever, ascertained or unascertained, suspected or unsuspected, existing or claimed to exist, including those unknown, both at law and in equity which were or could have been brought against Defendants, or any of them, based upon or related in any way to the trigger mechanisms in the rifle models subject to the Settlement Agreement, including but not limited to those claims asserted in the Action, whether sounding in tort, contract, breach of warranty, violation of any state or federal statute or regulation, fraud, unjust enrichment, money had and received, restitution, equitable relief, punitive or exemplary damages or any other claims whatsoever under federal law or the law of any state. Released claims also include any claim for attorneys' fees, expenses, and costs, and catalyst fees under any state's law or under federal law. Released claims do not include claims for personal injury and personal property damage.

III. STANDARD OF REVIEW OF PROPOSED SETTLEMENT

Rule 23(e) of the Federal Rules of Civil Procedure governs settlements of class action lawsuits. It provides that a "class may be settled, voluntarily dismissed, or compromised only with the court's approval." Although the procedure for approval of a class action is not delineated in Rule 23, a two-step procedure is set forth in the Manual for Complex Litigation ("MCL") § 21.632 (4th ed. 2004). District courts within the Eighth Circuit follow this two-step procedure when considering preliminary approval of class action settlements. *See e.g. Ray v. TierOne Corp.*, No.10-CV-119, 2012 WL 2866577, at *1-3 (D. Neb. July 12, 2012).

Under Rule 23(e), preliminary approval is the first of a two-stage process in which the court determines whether the settlement appears to fall within the range of reasonableness and whether the proposed notice plan meets due process. If a class has not yet been certified, a district court must first find that the settlement class meets the requirements of Rule 23 and "may take the proposed settlement into consideration when examining the question of certification." *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 308 (3rd Cir. 1998). Certification of settlement classes is routine, and the certification hearing and preliminary fairness evaluation are usually combined. *See* MCL § 21.632. Neither formal notice nor a hearing is required for the court to grant preliminary approval or provisional certification; instead, the court may grant such relief upon an informal presentation by the settling parties, and may conduct any necessary hearing in court or in chambers, at the court's discretion. *Id.*; *accord* Joseph M. McLaughlin, 2 McLaughlin on Class Actions § 6.6 (3d ed. 2006). Members of the class are subsequently given notice of the formal Rule 23(e) fairness hearing. MCL § 21.632.

The ultimate determination of whether a proposed class action settlement warrants approval resides in the Court's discretion. *Protective Comm. for Indep. S' holders of TMT Trailer Ferry, Inc. v. Anderson,* 390 U.S. 414, 424-25 (1968); *see also In re BankAmerica Corp. Sec. Litig.*, 350 F.3d 747, 752 (8th Cir. 2003). Although the decision to approve a proposed settlement is committed to the Court's sound discretion, courts attach "[a]n initial presumption of fairness . . . to a class settlement reached in arm's length negotiations between experienced and capable counsel after meaningful discovery." *Greir v. Chase Manhattan Auto. Fin. Co.,* No. 99-180, 2000 WL 175126, at *5 (E.D. Pa. Feb. 16, 2000); *see also Grunin v. Int'l House of Pancakes,* 513 F.2d 114, 123 (8th Cir. 1975); *White v. Nat'l Football League,* 836 F. Supp. 1458, 1476-77 (D. Minn. 1993); 4 Herbert B. Newberg & Alba Conte, Newberg on Class Actions

("Newberg") § 11.24 (4th ed. 2002). "The Court is entitled to rely on the judgment of experienced counsel in its evaluation of the merits of a class action settlement." *In re Employee Benefit Plans Sec. Litig.*, No. 3-92-708, 1993 WL 330595 (D. Minn. June 2, 1993); *see also Welsch v. Gardebring*, 667 F. Supp. 1284, 1295 (D. Minn. 1987) (giving "great weight" to opinions of experienced counsel); *In re Coordinated Pretrial Proceedings in Antibiotic Antitrust Actions*, 410 F. Supp. 659, 667 (D. Minn. 1974) (same). In the same vein, a court considering a motion for preliminary approval neither decides the merits of the underlying case, resolves unsettled legal questions, nor crafts a settlement for the parties. *Carson v. Am. Brands, Inc.*, 450 U.S. 79, 88 n. 14 (1981); *see Grunin*, 513 F.2d at 124 ("[N]either the trial court in approving the settlement nor this Court in reviewing that approval have the right or the duty to reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute.") (internal quotations omitted); *see also White,* 836 F. Supp. at 1477 ("[T]he court does not have the responsibility of trying the case or ruling on the merits of the matters resolved by agreement . . . rather, 'the very purpose of compromise is to avoid the delay and expense of such a trial.'") (internal citation omitted)); *Holden v. Burlington N.*, 665 F. Supp. 1398, 1403 (D. Minn. 1987) (recognizing district court's approval was not expression of its opinion about merits); *In re Charter Commc'n, Inc. Sec. Litig.*, No. 4:02-CV-1186-CAS, 2005 WL 4045741, at *4 (E.D. Mo. June 30, 2005). Instead, the court need only determine whether the proposed settlement is within the range of possible approval. *See First Nat'l Bank v. Am. Lenders Facilities, Inc.*, No. 00-269, 2002 WL 1835646, at *1 (D. Minn. 2002) ("The proposed settlement between the Plaintiff Class and the Defendants appears, upon preliminary review, to be within the range of reasonableness and accordingly, the Notice . . . shall be submitted to the class members for their consideration and for hearing under Fed. R. Civ. P. 23(e)."). In making this inquiry, the court "should not

substitute [its] own judgment as to optimal settlement terms for the judgment of the litigants and their counsel." *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1148-49 (8th Cir. 1999) (internal quotation marks omitted); *see also In re Wireless Tel. Fed. Cost Recovery Fees Litig.*, 396 F.3d 922, 934 (8th Cir. 2005) ("We have recognized that a class action settlement is a private contract negotiated between the parties . . . Rule 23(e) requires the court to intrude on that private consensual agreement merely to ensure that the agreement is not the product of fraud or collusion and that, taken as a whole, it is fair adequate, and reasonable to all concerned.").

IV. CONDITIONAL CERTIFICATION OF THE SETTLEMENT CLASSES

Rule 23 governs the issue of class certification whether the proposed class is a litigation class, or as here, a settlement class. Here, the Settlement Classes meet the requirements of Rule 23.[7] For a settlement class to be certified, all four requirements of Rule 23(a) must be satisfied, along with one of the three requirements of Rule 23(b). Fed. R. Civ. P. 23; *Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 620 (1997). In certifying a class for settlement purposes only, the Court need not determine "whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial." *Amchem*, 521 U.S. at 620. Further, the practical purpose of provisional certification is to facilitate dissemination of notice to the class of the terms of the proposed settlement and the date and time of the final settlement approval hearing. *See* MCL § 21.633. For the purposes of settlement, the requirements of Fed. R. Civ. P. 23(a) and (b)(3) have been met.

[7] Defendants maintain that there remain substantial obstacles to certification of any litigation class and that any certification of the final Settlement Classes is for settlement purposes only. Nothing in the Motion or these Suggestions in Support shall constitute, or be construed as, an admission on the part of Defendants that this action, or any other proposed or certified class action, is appropriate for treatment as a class for any other purpose, including for trial class treatment.

1. Rule 23(a) Is Satisfied for Purposes of Certifying the Settlement Classes.

Rule 23(a) requires the proponents of certification to establish that (1) members of the proposed class(es) are so numerous that the joinder of all members is impracticable; (2) commonality exists among issue of law or fact raised by the class members; (3) the claims of the proposed class representatives are typical of the claims of the absent class members; and (4) the proposed class representatives will fairly and adequately represent the interests of the classes. Fed. R. Civ. P. Rule 23(a). Here, all four elements are satisfied.

a. The Settlement Classes are Numerous.

Rule 23(a)(1) requires that a class be "so numerous that joinder of all members is impracticable." "In addition to the size of the class, the court may also consider the nature of the action, the size of the individual claims, the inconvenience of trying individual suits, and any other factor relevant to the practicability of joining all the putative class members." *Paxton v. Union Nat'l Bank*, 688 F.2d 552, 560 (8th Cir. 1982); *Hammer v. JP's Sw. Foods, L.L.C.*, 267 F.R.D. 284, 287 (W.D. Mo. 2010) (citations omitted). While no specific number of class members is required to maintain a class action, a class of more than 40 people generally satisfies the numerosity requirement. *See Lockwood Motors Inc. v. Gen. Motors, Inc.,* 162 F.R.D. 569, 574 (D. Minn. 1995); *see also* 5 MOORE'S FEDERAL PRACTICE § 23.22[1][b] (noting that "[a] class of 41 or more is usually sufficiently numerous.").

Based on Defendants' sales data and discovery in this matter, it is estimated that each of the proposed Settlement Classes has tens of thousands of members geographically dispersed throughout the United States. There can be no dispute that joinder is impracticable and the proposed Settlement Classes are sufficiently numerous to satisfy Rule 23(a)(1).

b. The Settlement Class Members Share Common Questions of Law and Fact.

Under 23(a)(2), a district court may certify a class only when "there are questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). Commonality means that there are "other members of the class who have the same or similar grievance as the plaintiff." *Donaldson v. Pillsbury Co.* 554 F.2d 825, 830 (8th Cir. 1977). The key inquiry for the commonality analysis is whether a common question can be answered in a class-wide proceeding, such that the answer will "drive the resolution of the litigation." *Wal-Mart Stores, Inc. v. Dukes,* 131 S. Ct. 2541, 2551 (2011). "Rule 23 is satisfied when the legal question 'linking the class members is substantially related to the resolution of the litigation.'" *Vernon Gries v. Standard Ready Mix Concrete, L.L.C.*, No. 07-4013-MWB, 2009 WL 427281, at *7 (N.D. Iowa Feb. 20, 2009) (quoting *Deboer v. Mellon Mortg. Co.*, 64 F.3d 1171, 1174 (8th Cir. 1995)). "[F]or purposes of Rule 23(a)(2), even a single common question will do." *Dukes*, 131 S. Ct. at 2556.

Applying these principles, the commonality requirement of Rule 23(a)(2) is satisfied here for purposes of settlement. The central issue posed by this litigation is whether the allegedly defective nature of the trigger mechanisms in the firearms resulted in economic loss to the class members. This is a question that can be answered on a class-wide basis in this case. *See Blades v. Monsanto Co.*, 400 F.3d 562 (8th Cir. 2005).

c. The Claims of the Class Representatives Are Typical of those of the Proposed Classes.

Typicality under Rule 23(a)(3) requires that the "claims or defenses of the representative parties [be] typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3); *see also Dukes,* 131 S. Ct. at 2548. The typicality requirement is "fairly easily met so long as other class members have claims similar to the named plaintiff," *Deboer*, 64 F.3d at 1174, or the "same or similar grievances as the plaintiff." *Donaldson*, 554 F.2d at 830; *see also Ellis v. O'Hara*, 105

F.R.D. 556, 561 (E.D. Mo. 1985). "Typicality is generally considered to be satisfied 'if the claims or defenses of the representatives and the members of the class stem from a single event or are based on the same legal or remedial theory.'" *Bouaphakeo v. Tyson Foods, Inc.*, 564 F. Supp. 2d 870, 905 (N.D. Iowa 2008) (citations omitted); *See Paxton*, 688 F.2d at 561-62 (holding that typicality is met when the claims of the named plaintiffs emanate from the same event or are based upon the same legal theory as the claims of the class members).

Here, the Class Representatives' claims are typical of the claims of the members of the proposed Settlement Classes. Class Representatives allege that the injury to Settlement Class Members – economic losses – is uniform and allegedly arises from the same conduct of Defendants. Rule 23(a)(3) is satisfied.

d. The Class Representatives are Adequate.

Rule 23(a)(4) requires that the "representative Parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). To fulfill this requirement, two factors must be satisfied: (1) "the representatives and their attorneys are able and willing to prosecute the action competently and vigorously, and (2) each representative's interests are sufficiently similar to those of the class that it is unlikely that their goals and viewpoints will diverge. *Lockwood*, 162 F.R.D. at 576; *see also Bishop v. Comm. on Prof'l Ethics & Conduct of Iowa State Bar Ass'n*, 686 F.2d 1278, 1289 (8th Cir. 1982). "The adequacy of class representation…is ultimately determined by the settlement itself" and whether the settlement confers significant benefits on the class members. *DeBoer*, 64 F.3d at 1175 (alteration in original) (quotation omitted).

The named Plaintiffs and the proposed Settlement Class Members are equally interested in demonstrating the alleged defective nature of the trigger mechanisms in the firearms, and the named Plaintiffs are committed to obtaining appropriate repairs or compensation for the repairs.

The named Plaintiffs stand in the same factual and legal shoes, and seek the same form of relief, as other Settlement Class Members: receiving economic damages and equitable relief for buying a firearm that is alleged to be worth less than its purchase price due to the alleged defect with the trigger mechanisms. In addition, the named Plaintiffs have demonstrated a commitment to prosecuting this matter by supplying essential factual information concerning legal claims, making their firearms available for inspections and testing, and being willing to testify at depositions and trial if necessary. As evidenced by the terms of the Settlement Agreement, Plaintiffs, through qualified counsel, have vigorously prosecuted the case in interests of the Settlement Classes. The terms of the Settlement provide substantial benefits to the Settlement Classes. *See id.*

Finally, the requirement or representation by qualified counsel is also met. Class Counsel have extensive experience handling complex class actions and have demonstrated a willingness to vigorously prosecute the class claims, as outlined in the accompanying Joint Declaration of Richard J. Arsenault, Charles E. Schaffer, Eric D. Holland and W. Mark Lanier. *See* Ex. 4.

2. Rule 23(b) Is Satisfied for Purposes of Certifying the Settlement Classes.

In addition to satisfying the requirements of Rule 23(a), a party seeking class certification pursuant to 23(b)(3) must also demonstrate that "the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3); *See In re St. Jude Med. Inc.*, 425 F.3d 1116, 1119 (8th Cir. 2005).

Predominance "tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Blades*, 400 F.3d at 566 (quoting *Amchem*, 521 U.S. at 623).

The predominance requirement is met "when there exists generalized evidence that proves or disproves an element on a simultaneous, class-wide basis. Such proof obviates the need to examine each class member's individual position." *In re Workers' Comp.*, 130 F.R.D. 99, 108 (D. Minn.1990) (internal quotation omitted); *see also Carpe v. Aquila, Inc.*, 224 F.R.D. 454, 458 (W.D. Mo. 2004) ("[T]he fundamental question is whether the group aspiring to class status is seeking to remedy a common legal grievance.").

Here, common questions predominate over any issues individual members of the proposed classes may have. Settlement Class members' claims center on the design, manufacture, marketing, and sale of allegedly defective firearms. Issues of liability are the same with respect to each class member. If every class member were to bring an individual action, each plaintiff would have to demonstrate the same defect to prove liability. Although individual issues may exist, the nature and scope of the common questions in this case satisfy Rule 23(b)(3)'s predominance requirement.

"A class action is a superior form of litigation if it is capable of addressing 'the rights of groups of people who individually would be without effective strength to bring their opponents to court at all.'" *Hartley v. Suburban Radiologic Consultants, Ltd.*, 295 F.R.D. 357, 377 (D. Minn. 2013) (quoting *Amchem*, 521 U.S. at 617). Here, the expense and burden of individual litigation makes it impracticable for members of the proposed classes to seek redress individually. *See In re Tetracycline Cases*, 107 F.R.D. 719, 732 (W.D. Mo. 1985) (noting that "the relatively small amount of potential recovery per individual" weighs in favor of class certification as a superior means of adjudication). Moreover, seeking redress through individual litigation is highly uncertain and may not occur before a lengthy trial and appellate proceedings are complete. *See In re Wireless Tel. Fed. Cost Recovery Fees Litig.*, 396 F.3d at 932; *Cohn v.*

Nelson, 375 F.Supp.2d 844, 859 (E.D. Mo. 2005) (noting that the possible length and complexity of further litigation is a relevant factor to consider when evaluating class action settlement). In contrast, the proposed settlement provides Settlement Class Members with real benefits under a straightforward claims framework, while fully preserving their due process rights.

V. PRELIMINARY APPROVAL OF THE PROPOSED SETTLEMENT

A. The Proposed Settlement Is Presumptively Fair.

In addition to certifying the Settlement Classes, the Court must preliminary determine whether the settlement is "fair, reasonable, and adequate." Fed. R. Civ. P.23(e)(2). Importantly, it is well-settled that there exists a strong judicial policy favoring settlements, particularly in class actions and other complex cases where substantial resources can be conserved by avoiding the time, cost, and rigor of prolonged litigation. *See Little Rock Sch. Dist. v. Pulaski Cnty. Special Sch. Dist.*, 921 F.2d 1371, 1383 (8th Cir. 1990) ("The law strongly favors settlements. Courts should hospitably receive them. . . . As a practical matter, a remedy that everyone agrees to is a lot more likely to succeed than one to which the defendants must be dragged kicking and screaming."); *In re Charter Commc'n Sec. Litig*., 2005 WL 4045741, at *4 ("In the class action context in particular, 'there is an overriding public interest in favor of settlement' . . . Settlement of the complex disputes often involved in class actions minimizes the litigation expenses of both Parties and also reduces the strain such litigation imposes upon already scarce judicial resources.") (quotations and citations omitted); *see also In re Warfarin Sodium Antitrust Litig*., 391 F.3d 516, 535 (3d Cir. 2004) ("[T]here is an overriding public interest in settling class action litigation and it should therefore be encouraged.") A presumption of fairness exists where (1) the settlement is reached through arm's-length bargaining (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently, (3) counsel is experienced in similar litigation; and (4) the percentage of objections is small. 4 Newberg at § 11.41; Manual at

21.662; *see also Little Rock Sch. Dist.*, 921 F.2d at 1391 (recognizing that settlements are presumptively valid); *In re Zurn Pex Plumbing Prods. Liab. Litig.*, No. 08-MDL-1958-ADM, 2013 WL 716088, at *6 (D. Minn. Feb. 27, 2013) (noting that there is a presumption of fairness when a proposed class settlement was negotiated at arm's length by counsel for the class). Because these circumstances apply in this case, the Court should begin its preliminary approval analysis with the presumption that the proposed Settlement is fair.

1. The Proposed Settlement is the Result of an Arm's-Length Negotiation.

Before approving a class action settlement, the court must reach a reasoned judgment that the proposed agreement is not the product of fraud or collusion between the negotiating parties. *See In re Zurn Pex Plumbing Prod. Liab. Litig.*, 2013 WL 716088, at *4 (citations omitted). When making this determination, courts give substantial weight to the experience of the attorneys who prosecuted the case and negotiated the settlement. *See e.g.*, *Jones v. Casey's Gen. Stores, Inc.*, 266 F.R.D. 222, 229 (S.D. Iowa 2009). If a settlement is negotiated at arm's length, there is a presumption that the settlement is procedurally sufficient. *E.g.*, *In re Zurn Pex Plumbing Prod. Liab. Litig.*, 2013 WL 716088, at *6 (settlement negotiated at arms' length was presumptively valid).

Courts additionally consider whether the settlement was reached with the assistance of a mediator. *See, e.g.*, *In re Toys "R" Us Antitrust Litig.*, 191 F.R.D. 347, 352 (E.D.N.Y. 2000) ("Most significantly, the settlements were reached only after arduous settlement discussions conducted in a good faith, non-collusive manner, over a lengthy period of time, and with the assistance of a highly experienced neutral mediator. . . ."); *see also Jones*, 266 F.R.D. at 229 (finding that the assistance of an experienced mediator supported approval of settlement).

Here, there is no dispute that the proposed Settlement Agreement is the product of extensive, arm's-length negotiations. The Parties' negotiations were overseen by an experienced mediation team. *See* Ex. 5 (Declaration of John W. Perry). The Parties' comprehensive and lengthy negotiations were informed by the knowledge of experienced counsel gained by their respective investigations of the law and the facts of this case. The Parties have a thorough understanding of the facts and legal arguments at issue in this lawsuit.

Based on their familiarity with the factual and legal issues and their experience in litigating claims similar in nature to those in this case, the Parties were able to make a well-informed decision on the relative strength and weaknesses of their claims and defenses. The Parties were able to make good-faith assessments of the costs and risks of proceeding to trial before reaching an agreement. As a result, the proposed Settlement Agreement is the result of serious, arm's-length, non-collusive negotiations.

2. The Extent of Discovery Completed and the Stage of Proceedings Weigh in Favor of Approval

Before reaching the Proposed Settlement, the parties engaged in extensive factual investigation and discovery. Throughout the course of this litigation, the Parties have served written discovery requests as well as responses and objections to said written discovery requests. Further, Plaintiffs' Counsel has previously conducted extensive written and deposition discovery regarding Model 700 bolt-action rifles and the Walker trigger mechanism from prior litigation against the Defendants. The Parties in this litigation agreed that Defendants would not be required to reproduce documents that were already within Plaintiffs' Counsels' possession. Plaintiffs' Counsel reviewed over 1,000,000 pages of documents as part of their investigation and analysis into the facts of this litigation. Plaintiffs' Counsel retained and consulted with recognized experts, conducted forensic testing, interviewed witnesses, inspected firearms and

their component parts and tested the firearms to establish their claims. Certain of Plaintiffs' Counsel had previously conducted extensive discovery regarding Model 700 bolt-action rifles and the Walker trigger mechanism from prior and pending litigation against Defendants. Defendants, as part of that prior discovery, produced hundreds of thousands of documents dealing with the core issues in the present litigation, *i.e.*, the design of the Walker trigger mechanism and the alleged accidental discharging of rifles without a trigger pull. Moreover, Plaintiffs' Counsel, with the aid of their experts, have conducted an inspection of Remington's revised and improved assembly and inspection process and they have examined the X-Mark Pro trigger mechanism manufactured under the revised assembly process. Plaintiffs' Counsel, Defendants' Counsel, and their respective experts agree that the X-Mark Pro trigger mechanism manufactured under the revised assembly process is a safe alternative to the Walker trigger mechanism and suitable for retrofit in Model 700, Seven, Sportsman 78, and 673 firearms. The X-Mark Pro trigger mechanism manufactured under the revised assembly process can be retrofitted to these firearms without affecting overall performance and safety. *See* Ex. 3, ¶ 7.4 (Amended Declaration of Charles W. Powell); Ex. 2, ¶ 22 (Declaration of Derek L. Watkins). Similarly, Plaintiffs' Counsel, Defendants' Counsel, and their respective experts agree that the current Model 770 connectorless trigger mechanism is a safe alternative to, and suitable retrofit for, Model 710, 715, and 770 firearms containing trigger mechanisms that utilize a trigger connector. *See* Ex. 3, ¶ 5.4 (Declaration of Charles W. Powell); Ex. 2, ¶ 23 (Declaration of Derek L. Watkins).

Accordingly, both sides along with the mediator were armed with a significant amount of information to make a well informed and intelligent decision regarding the settlement reached in this matter. This factor weighs in favor of the preliminary approval of the proposed Settlement

Agreement. *See In re Charter Commc'n, Inc. Sec. Litig.*, 2005 WL 4045741, at *6 (approving settlement, noting that the Court was "convinced the Settlement was reached by well informed and experienced counsel.") (citation omitted).

3. The Experience and View of Counsel Weigh in Favor of Approval.

Plaintiffs' Counsel involved in this case have extensive experience handling complex class action cases, and have litigated individual firearms cases. Plaintiffs' Counsel and their firms have served as lead or co-lead counsel in numerous class actions in the areas of consumer protection. *See* Ex. 4 (Joint Declaration of Richard J. Arsenault, Charles E. Schaffer, Eric D. Holland and W. Mark Lanier). Based on the experience and the specific facts of this case, Plaintiffs' Counsel have concluded that the Settlement is fair, reasonable, and adequate. Defendants' Counsel are also highly skilled and well adept at defending class actions, having defended class actions in nearly every state for dozens of companies. Thus, counsel for each of the parties – who are experienced plaintiffs' class action and defense attorneys – have fully evaluated the strengths, weaknesses, and equities of the parties' respective positions and have done so in light of similar litigation with which they were involved. This factor has been noted both by courts and commenters as supporting the fairness and reasonableness of a class action settlement. *See, e.g.*, *In re Charter Commc'n, Inc. Sec. Litig.*, 2005 WL 4045741, at *6.

In summary, the proposed Settlement was negotiated by experienced counsel to meet all the requirements of Rule 23 as discussed in *Amchem*, and specifically to provide administrative procedures to assure all class members equal and sufficient due process rights. In addition, the proposed Settlement does not give improper treatment to named Plaintiffs or other class members of the proposed Settlement Classes. The named Plaintiffs must present claims just as other class members of the Settlement Classes and will receive the same benefits as similarly situated claimants. There is no preferential treatment. Accordingly, the proposed Settlement

was not the product of collusive dealings, but rather was informed by the rigorous prosecution and defense of the case by experienced and qualified counsel.

This factor weighs in favor of the preliminary approval of the proposed Settlement Agreement.

4. Objections to the Settlement.

A notice of settlement was filed in this case on July 2, 2014 (Doc. 61). And, while not all of the terms of the settlement have been made public, the central relief of product repair and replacement has been widely reported. On February 3, 2015, the day before the preliminary approval hearing, a letter was filed by Henry J. Belk, Jr., purporting to object to the proposed settlement. *See* Doc. 73. Beyond the letter from Mr. Belk, the parties have not received any objections from potential Settlement Class Members to the proposed settlement. This clearly weighs in favor of preliminary approval of the settlement.

B. Other Factors Support the Conclusion that the Proposed Settlement Agreement is Fair, Reasonable, and Adequate.

In addition to being presumptively fair, the Eighth Circuit has articulated four other factors in determining whether a settlement is fair, reasonable, and adequate: (1) the merits of the plaintiff's case, weighed against the terms of the settlement; (2) the defendant's financial condition; (3) the complexity and expense of further litigation; and (4) the amount of opposition to the settlement. *In re Wireless Tel. Fed. Cost Recovery Fees Litig.*, 396 F.3d at 932-33 (citing *Grunin*, 513 F.2d at 124). Consideration of these criteria demonstrates that the proposed Settlement Agreement should be approved.

1. The Strength of Plaintiffs' Case, When Weighed Against the Terms of the Settlement, Favors Approval of the Proposed Settlement Agreement.

"The most important consideration in deciding whether a settlement is fair, reasonable, and adequate is the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement." S*ee In re Wireless Tel. Fed. Cost Recovery Fees Litig.*, 396 F.3d at 933. Defendants have vigorously contested Plaintiffs' claims on substantive grounds—for instance, challenging the validity of Plaintiffs' claims regarding strict liability, negligence, fraudulent misrepresentation, and breach of warranty. *See Pollard v. Remington Arms Co., LLC*, No. 13-086-CV-ODS, 2013 WL 3039797 (W.D. Mo. June 17, 2013) (granting in part and denying in part Defendants' motion to dismiss). Defect and causation would also be difficult to prove, as evidenced by prior verdicts in favor of Defendants on these issues in personal-injury suits involving the Walker trigger mechanism. Damages would likewise pose significant obstacles, as classwide entitlement to relief would raise a host of individual issues. Finally, a significant number of potential class members' claims would likely be barred by the statute of limitations.

Notwithstanding these weaknesses in Plaintiffs' case, the Settlement Agreement provides concrete and substantial relief to Settlement Class Members. As demanded by the original Complaint, all owners of Model 700 bolt-action rifles with a Walker trigger mechanism are entitled to an X-Mark Pro trigger mechanism retrofit at no cost. *See* Doc. 1; Doc. 81 ("requiring Defendants to repair and/or replace Plaintiff's and Class members' Remington Model 700 bolt action rifle with patented Walker Fire Control with a suitable alternative rifle of Plaintiff's and Class members' choosing"). Moreover, the Settlement provides benefits to owners of additional firearm models containing a Walker trigger mechanism or other trigger mechanism containing a trigger connector that were not included in the original Complaint. Owners of models that are readily capable of a connectorless trigger mechanism retrofit are entitled to such a retrofit, while

owners of decades-old firearms that cannot be readily retrofitted due to their age and design are entitled to Remington voucher codes redeemable at Remington's online store. Finally, including owners of firearms subject to the April 2014 X-Mark Pro recall in the Settlement will increase awareness of and participation in the recall, as well as provide for an additional layer of oversight from the Court and Plaintiffs' Counsel in administering recall relief.

These benefits are uncapped. Because there is no fund that can be depleted, any and all Settlement Class Members are entitled to the full scope of benefits under the Settlement Agreement – benefits will not be administered on a pro rata basis, and there is no limit on the number of Settlement Class Members who may receive settlement benefits. Similarly, because the Settlement Agreement provides for the payment of Plaintiffs' Counsel's attorneys' fees, the Representative Plaintiff Awards, and the cost of the Notice Plan to be made separate and apart from the benefits provided to the Settlement Class Members, these additional items do not diminish the relief to which Settlement Class Members are entitled.

The strength of the Settlement strongly weighs in favor of preliminary approval.

2. Defendants' Financial Conditions.

The Parties submit that the benefits provided by the Settlement are fair, reasonable, and adequate in light of Defendants' financial conditions. Defendants represent that they have the financial wherewithal to comply with the terms of the Settlement.[8]

3. The Risk, Expense, Complexity, and Duration of Further Litigation Weighs in Favor of Approval.

"In most situations, unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results." Alba Conte

[8] While not a named Defendant to this litigation, Remington Outdoor Company, Inc., the parent company of Defendant Remington Arms Company, LLC, has signed the settlement agreement to guarantee the financial obligations of Remington arising under the terms of this settlement.

& Herbert Newberg, Newberg on Class Actions § 11:50, at 155 (4th ed. 2002). Courts clearly favor settlement, as it preserves individual resources by avoiding protracted litigation and subsequent appeals. *See Dryer v. Nat'l Football League*, No. 09-2182, 2013 WL 1408351, at *2 (D. Minn. April 8, 2013).

Here, the Parties recognize the risks of continued litigation and an adverse outcome. Although Plaintiffs and Defendants believe in the merits of their claims and defenses, they are cognizant of the risks of proceeding to trial. The legal and factual issues in this lawsuit are both complex and disputed, as evidenced by the motion to dismiss briefing and the varying outcomes in prior personal injury litigation involving the Walker trigger mechanism.

In addition, the potential costs of going to trial would be substantial. Under such circumstances, the avoidance of further risks and costs conserves the parties' and the Court's resources. Moreover, any judgment would likely be subject to lengthy appeals, whereas the Settlement provides more immediate results and benefits to Settlement Class Members.

This factor weighs in favor of the preliminary approval of the proposed Settlement Agreement.

4. The Reaction of Class Members to the Proposed Settlement.

All of the named Plaintiffs fully support the proposed Settlement Agreement and, to date, the Parties have not received an objection from a potential Settlement Class Member to the proposed Settlement.[9] The motion for final settlement approval will discuss this factor in more detail following the completion of the Notice Plan, which provides Settlement Class Members the opportunity to evaluate the Settlement Agreement.

[9] *See supra* Section V.A.4.

VI. THE COURT SHOULD APPROVE THE CONTENT AND DISTRIBUTION OF THE PROPOSED NOTICE TO THE SETTLEMENT CLASS MEMBERS

Following preliminary approval of a settlement, the Settlement Class Members must be notified of the proposed settlement. Under Rule 23(e) of the Federal Rules of Civil Procedure, the Court must direct notice in a reasonable manner to Settlement Class Members who would be bound by the proposed settlement. "There is no one 'right way' to provide notice as contemplated under Rule 23(e)." *In re Wireless Tel. Fed. Cost Recovery Fees Litig.*, No. 4:03-MD-015, 2004 WL 3671053, at *8-9 (W.D. Mo. April 20, 2004). The mechanics of the notice process "are left to the discretion of the court subject only to the broad 'reasonableness' standard imposed by due process." *Grunin*, 513 F.2d at 121. "Notice of a settlement proposal need only be as directed by the district court . . . and reasonable enough to satisfy due process." *Deboer*, 64 F.3d at 1176. It should be "reasonably calculated, under all the circumstances, to apprise interested Parties of the pendency of the action and afford them an opportunity to present their objections." *Petrovic*, 200 F.3d 1153 (quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)). Settlement notices should present the information about a proposed settlement neutrally, simply, and understandably. *Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 963 (9th Cir. 2009) (citing *Grunin*, 513 F.2d at 122). Each class member need not receive the actual notice for the due-process standard to be met, "so long as class counsel acted reasonably in selecting means likely to inform persons affected. *In re Prudential Sec. Inc. Ltd. P'ships Litig.*, 164 F.R.D. 362, 368 (S.D.N.Y. 1996).

Here, the Parties propose that Notice of the proposed Settlement be made as set forth in the Settlement Agreement and Notice Plan. The Notice Plan is included in Section V of the Settlement Agreement and is confirmed by the proposed Class Action Settlement Administrator to be appropriate under the circumstances and satisfy the requirements of due process. The

proposed Class Action Administrator has also attested that implementation of the Notice Plan in the manner set forth in the Settlement Agreement is fair, appropriate and constitutes "the best notice practicable" under the circumstances. *See* Ex. 6 (Declaration of Steve Weisbrot).

The Settlement provides for Notice through a combination of: (1) a joint press release; (2) Direct Notice, *see* Ex. 1-D; (3) Short Form Notice, *see* Ex. 1-C; (4) Long Form Notice, *see* Ex. 1-B; (5) notice through the Settlement Website; and (6) notice through social media, including a Facebook page and internet banners. The Short Form Notice and Long Form Notice, both of which will be available on the Settlement Website, provide extensive information regarding the Settlement and comport with the criteria recommended by the MCL § 21.312 (4th ed. 2004).[10] The Notices include the class definitions and describe the terms of the settlement in plain language and with sufficient detail. The Notices describe the terms and operation of the Settlement Agreement, the maximum attorneys' fees and costs, the representative awards for the Named Plaintiffs, the procedure for objecting to or opting out of the Settlement Agreement, the procedure for requesting settlement benefits, and the date and place of the Final Approval Hearing. They also contain contact information for Class Counsel. *See* Exs. 1-C, 1-D.

The Parties have agreed to propose Angeion Group to be appointed as Class Action Settlement Administrator. Accordingly, the Court should approve and direct implementation of

[10] According to the MCL, settlement notices should: "define the class and any subclasses; describe clearly the options open to the class members and the deadlines for taking action; describe the essential terms of the proposed settlement; disclose any special benefits provided to the class representatives; provide information regarding attorney fees; indicate the time and the place of the hearing to consider approval of the settlement; describe the method for objecting to (or, if permitted, for opting out) of the settlement; explain the procedures for allocating and distributing settlement funds, and, if the settlement provides different kinds of relief for different categories of class members, clearly set forth those variations; explain the basis for the valuation of nonmonetary benefits if the settlement includes them; provide information that will enable class members to calculate or at least estimate their individual recoveries, including estimates of the size of the class and any sub-classes; and prominently display the address and phone number of class counsel and how to make inquiries." MCL § 21.312.

the proposed Notice Plan, and designate Angeion Group as Class Action Settlement Administrator.

VII. APPOINTMENT OF CLASS COUNSEL

Pursuant to Fed. R. Civ. P. 23(g), a Court certifying a case as a class action "must appoint class counsel." Richard J. Arsenault, Charles E. Schaffer, Eric D. Holland and W. Mark Lanier respectfully request that the Court appoint them as Class Counsel.[11] The experience and qualifications of the proposed Class Counsel have been established, *see* Ex. 4 (Joint Declaration of Richard J. Arsenault, Charles E. Schaffer, Eric D. Holland and W. Mark Lanier), and the proposed Class Counsel will zealously prosecute the claims of the Settlement Class Members.[12]

VIII. ESTABLISHMENT OF FINAL APPROVAL AND FAIRNESS HEARING AND ASSOCIATED DEADLINES

The Parties propose the following schedule regarding Notice to the Settlement Classes and final approval of the Settlement Agreement:

Event	**Time For Compliance**
Completion of Notice Plan	May 20, 2015
Deadline for Filing Plaintiffs' Unopposed Motion for Final Settlement Approval and Plaintiffs' Motion for Attorneys' Fees and Costs	July 3, 2015
Deadline for Filing Plaintiffs' Motion for Attorneys' Fees and Representative Plaintiff Awards	July 3, 2015
Deadline for Opting Out or Objecting	July 20, 2015
Deadline for the Parties' Response(s) to Objections (if any)	August 7, 2015

[11] The objection filed last week by Jack Belk, along with his attendance at the preliminary fairness hearing and indication to the Court that he will participate at the final fairness hearing, makes it possible that Jon Robinson may be a witness at the fairness hearing. Consequently, Mr. Robinson has elected to withdraw his request to be appointed as Class Counsel.

[12] Defendants take no position on the appointment of Class Counsel.

Final Approval Hearing	August 21, 2015 (proposed).

IX. CONCLUSION

For the reasons stated above, the proposed Settlement Agreement is the product of serious, non-collusive, arm's-length negotiations, and is a fair, reasonable, and adequate resolution of Plaintiffs' claims. The proposed Notice and Notice Plan also satisfy Rule 23's due process requirements. As a result, the Parties respectfully request that the Court grant their motion and enter the proposed order attached hereto which: (1) grants provisional certification of the Settlement Classes; (2) grants preliminary approval of the Settlement Agreement; (3) approves the Notice and Notice Plan; (4) appoints Class Counsel; (5) appoints Angeion Group as Class Action Settlement Administrator; and (5) establishes a date for the Final Approval Hearing and other associated events as described in Part VIII above.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of February, 2015, I filed the foregoing document with the clerk of the court using the court's CM/ECF system, which will serve electronic notice on all parties of interest.

/s John K. Sherk

Attorneys for Defendants Remington Arms Company, LLC, E.I. du Pont de Nemours & Company, and Sporting Goods Properties, Inc.