

1 David M. Birka-White (State Bar No. 85721)
dbw@birka-white.com
2 Mindy M. Wong (State Bar No. 267820)
mwong@birka-white.com
3 BIRKA-WHITE LAW OFFICES
65 Oak Court
4 Danville, CA 94526
Telephone: (925) 362-9999
5 Facsimile: (925) 362-9970

6 Attorneys for Plaintiff
KELLY MERGENS

7 [Additional counsel listed on signature page.]
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9 **UNITED STATES DISTRICT COURT**
10 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

11 KELLY MERGENS, on behalf of
herself and all others similarly situated,

12 Plaintiff,

13 vs.

14 SLOAN VALVE COMPANY, and
15 DOES 1-10, inclusive,

16 Defendants.
17

Case No. 2:16-cv-05255-SJO-SK

**REPLY MEMORANDUM IN
SUPPORT OF PLAINTIFF'S
MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT AND MOTION
FOR ATTORNEYS' FEES AND
COSTS**

The Honorable S. James Otero

Date: September 18, 2017
Time: 10:00 a.m.
Dept.: Courtroom 10C

Action Filed: July 15, 2016

Related Case:

*United Desert Charities, et al. v.
Sloan Valve Company, et al.*
Case No. 2:12-cv-06878-SJO-SH

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1 **I. INTRODUCTION**

2 Pursuant to the Court's April 10, 2017 Preliminary Approval Order
3 (ECF No. 44) ("Preliminary Approval Order"), Plaintiff Kelly Mergens ("Plaintiff")
4 hereby respectfully submits this reply in support of Plaintiff's Motion for Final
5 Approval ("Motion for Final Approval") of the Class Action Settlement
6 ("Settlement") and Motion for Approval of Class Counsel's application for
7 Attorneys' Fees and Costs and Incentive Award to Class Representative ("Fee
8 Application"). Both motions are unopposed. Further, the deadline for objections
9 and opt-outs to the Settlement has passed, and there have been *no objections* and
10 *no opt-outs*. See, Supplemental Declaration of David M. Birka-White in support of
11 the Motion for Final Approval and Fee Application ("Supp. Birka-White Decl.")
12 and Supplemental Declaration of Arnold Rodio in support of the Motion for Final
13 Approval ("Supp. Rodio Decl.") submitted concurrently herewith.

14 **II. THE SETTLEMENT SHOULD BE APPROVED, THE REQUESTED**
15 **ATTORNEYS' FEES AND COSTS APPROVED, AND FINAL**
16 **JUDGMENT ENTERED.**

17 Plaintiff timely submitted the Motion for Final Approval and Fee Application
18 on June 30, 2017 (ECF Nos. 47 and 48). Consistent with the Court's Preliminary
19 Approval Order, the Notice Provider and the Claims Administrator completed the
20 Court approved Notice Program. The Program provided direct-mail notice of the
21 Settlement to 16,350 Class members and approximately 105,793 third-party
22 contractors who may have installed Flushmate Toilets. Notice was also
23 disseminated to Class members through more than three dozen media outlets, and
24 through the posting of the settlement notice on the interactive claims website.
25 See generally Declaration of Arnold Rodio in Support of Plaintiff's Motion for
26 Final Approval (ECF No. 47-2) and Declaration of Shannon Wheatman in Support
27 of Plaintiff's Motion for Final Approval (ECF No. 47-3). Both motions and all
28 supporting exhibits were publicly posted at the dedicated settlement website shortly

1 after filing.

2 Pursuant to the Court's Preliminary Approval Order, Class members were
3 provided until August 21, 2017 to request exclusion from the Settlement and to
4 submit any objections to the Settlement, the request for attorneys' fees and/or any
5 aspect of the proposed Settlement. (ECF No. 44, ¶ 12).

6 Class Counsel is pleased to report to this Court that no formal or informal
7 objection, or other negative comment, has been timely submitted or filed regarding
8 any aspect of the Settlement. *See*, Supp. Birka-White Decl., ¶ 2. Further, no Class
9 members have "opted out" of the Settlement. *See*, Supp. Rodio Decl., ¶ 3.

10 Class Counsel have, in the Final Approval Motion and Fee Application,
11 provided detail as to why the Court should approve the Settlement and why the
12 requested attorneys' fees should be awarded. As noted in those pleadings, the
13 Settlement provides complete relief to Class members, and all relevant factors
14 considered in the Ninth Circuit weigh heavily in favor of approving the Settlement
15 and awarding Class Counsel their requested fees.

16 Class Counsel will not repeat the points and arguments made in prior
17 submissions. Worth nothing, however, is that the lack of any objections or opt-outs
18 by Class members confirms the adequacy of all aspects of the Settlement. As this
19 and other Courts have noted, the absence of objections weigh in favor of granting
20 final approval and granting fees requested by class counsel. *See In re Toys "R" Us-*
21 *Del., Inc. Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D.
22 438, 456 (C.D. Cal. 2014); *see generally Marshall v. Holiday Magic, Inc.*, 550 F.2d
23 1173, 1178 (9th Cir. 1977) ("The small number of class members indicating their
24 disapproval of the settlement, here only one percent, also indicates its
25 acceptability."); *In re Transpacific Passenger Air Transportation Antitrust Litig.*,
26 No. C 07-05634 CRB, 2015 WL 3396829, at *3 (N.D. Cal. May 26, 2015)
27 (approving settlement with just one opt-out from a class of hundreds of thousands).

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1 Accordingly, the Class’s overall approval is a strong factor in supporting the
2 request for final approval and the award of the requested attorneys’ fee and
3 reimbursement of costs.

4 **III. CONCLUSION**

5 Therefore, and for all the reasons articulated in Plaintiff’s prior submissions,
6 Plaintiff respectfully requests that the Court grant Plaintiff’s motions for final
7 approval, attorneys’ fees and costs, and incentive award to the Class
8 Representative, and enter the revised [Proposed] Final Order and Judgment and the
9 revised [Proposed] Order Regarding Motion for Attorneys’ Fees, Reimbursement of
10 Expenses, and Incentive Award to Class Representatives attached hereto as
11 **Exhibits 1 and 2**, respectively.

12 Dated: September 1, 2017

Respectfully submitted,

BIRKA-WHITE LAW OFFICES

By: /s/ David M. Birka-White
David M. Birka-White

David M. Birka-White (State Bar No. 85721)
dbw@birka-white.com
Mindy M. Wong (State Bar No. 267820)
mwong@birka-white.com
BIRKA-WHITE LAW OFFICES
65 Oak Court
Danville, CA 94526
Telephone: (925) 362-9999
Facsimile: (925) 362-9970

Robert J. Nelson (Cal. Bar No. 132797)
rnelson@lchb.com
LIEFF CABRASER HEIMANN &
BERNSTEIN, LLP
275 Battery Street, 29th Floor
San Francisco, CA 94111-3339
Telephone: (415) 956-1000
Facsimile: (415) 956-1008

Attorneys for Plaintiff
KELLY MERGENS

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From: cacd_ecfmail@cacd.uscourts.gov
To: ecfnf@cacd.uscourts.gov
Subject: Activity in Case 2:16-cv-05255-SJO-SK Kelly Mergens v. Sloan Valve Company, et al Reply (Motion related)
Date: Friday, September 1, 2017 1:19:32 PM

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Notice of Electronic Filing

The following transaction was entered by Wong, Mindy on 9/1/2017 at 1:18 PM PDT and filed on 9/1/2017

Case Name: Kelly Mergens v. Sloan Valve Company, et al
Case Number: [2:16-cv-05255-SJO-SK](#)
Filer: Kelly Mergens
Document Number: [50](#)

Docket Text:

REPLY in support of NOTICE OF MOTION AND MOTION for Settlement Approval of FINAL APPROVAL OF CLASS ACTION SETTLEMENT [47], NOTICE OF MOTION AND MOTION for Attorney Fees **and Costs, and Incentive Award to Class Representative**[48] filed by Plaintiff Kelly Mergens. (Attachments: # (1) Proposed Order Final Order and Judgment, # (2) Proposed Order Granting Attorneys' Fees, Expenses and Incentive Award, # (3) Declaration of David Birka-White, # (4) Declaration of Arnold Rodio)(Wong, Mindy)

2:16-cv-05255-SJO-SK Notice has been electronically mailed to:

David M Birka-White dbw@birka-white.com

Mindy M Wong mwong@birka-white.com

Steven H Frankel steven.frankel@dentons.com, diane.donner@dentons.com,
docket.general.lit.sf@dentons.com

2:16-cv-05255-SJO-SK Notice has been delivered by First Class U. S. Mail