Exhibit B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

AARON HALL, KATHERINE GLOD, and JEFFREY BINDER, on behalf of themselves and all others similarly situated, *Plaintiffs*, v. TRIVEST PARTNERS L.P., TGIF POWER HOME INVESTOR, LLC, TRIVEST PARTNERS, INC., TRIVEST GROWTH PARTNERS, INC., TRIVEST GROWTH PARTNERS, L.P., TRIVEST GROWTH PARTNERS GP, LLC, TRIVEST GROWTH INVESTMENT FUND, L.P., TGIF POWER HOME BLOCKER, INC., TRIVEST INVESTMENT ADVISORS, LLC, and WILLIAM JAYSON WALLER, *Defendants*.	No.: 4:22-cv-12743-FKB-CI Hon. F. Kay Behm Hon. Curtis Ivy, Jr.

PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Plaintiffs Aaron Hall, Katherine Glod, and Jeffrey Binder, on behalf of themselves and all others similarly situated, respectfully move this Court for entry of an order: (i) conditionally certifying a Class solely for the purpose of settlement; (ii) preliminarily approving the Settlement Agreement (attached as **Exhibit 1**) reached in this case; (iii) directing notice to the Settlement Class; (iv) scheduling a

Fairness Hearing for approval of the Settlement; and (v) appointing Settlement Class Counsel and Class Representatives. In support of this motion, Plaintiffs state as follows:

1. On November 13, 2022, Plaintiffs commenced this putative class action lawsuit by filing a complaint against Defendants Trivest Partners L.P., TGIF Power Home Investor, LLC, and William Jayson Waller, (later adding additional Defendants Trivest Partners, Inc., Trivest Growth Partners, Inc., Trivest Growth Partners, L.P., Trivest Growth Partners Group, LLC, Trivest Growth Investment Fund, L.P., TGIF Power Home Blocker, Inc., Trivest Investment Advisors, LLC) alleging violations of the Racketeer Influenced and Corrupt Organizations Act and Michigan Consumer Protection Act through Defendants' conduct of Power Home Solar, LLC (later d/b/a Pink Energy).

2. Following an investigation by Plaintiffs' counsel, contentious discovery, fraught motion practice, and a full-day, court-ordered mediation before a neutral mediator, Hon. Victoria Roberts (Ret.), Plaintiffs and Defendant William Jayson Waller (the "Parties") reached agreement to fully and finally resolve all claims against Defendant Waller, subject to Court approval, after notice to the Settlement Class. Exhibit 2, Declaration of Nicholas A. Coulson ("Coulson Decl.") ¶¶ 13-14.

3. Based on their investigation and evaluation of the facts and law relating to the matters alleged in the action, Plaintiffs (on behalf of themselves and the proposed Class) and Class Counsel have agreed to settle the claims against Defendant Waller, pursuant to the terms of the Settlement Agreement.

4. The terms of the proposed settlement are fully set forth in the Settlement Agreement. Defendant Waller, through his insurer, has agreed to pay $575,000.00 to settle this action. The payment will be made into a non-reversionary common fund created for the benefit of the Settlement Class Members. **Ex. 1**, Settlement Agreement, ¶¶1.18, 3.3.

5. The Parties have agreed to a Class, for purposes of the Settlement only, consisting of All persons in the United States who purchased a home solar system from Power Home Solar, LLC (including d/b/a Pink Energy) at any time since August 1, 2018. Excluded from the Settlement Class are: (i) Defendant, any entity in which Defendant has a controlling interest, and Defendant's insurer(s); (ii) any judge, justice, or judicial officer presiding over the Litigation and the members of their immediate families and judicial staff; and (iii) any individual who timely and validly excludes themselves from the Settlement. *Id.* ¶ 1.19.

6. As part of the proposed Settlement Agreement, the Parties have agreed to the appointment of Nicholas A. Coulson and Julia G. Prescott of Coulson P.C. as

Class Counsel and the appointment of Plaintiffs as the Class Representatives. *Id.* ¶¶ 1.11, 4.1(c)(vii), 8.21.

7. The proposed Settlement Agreement was reached in good faith and after arm's-length negotiations and without any undue influence. Each side has zealously represented its interests. **Ex. 2,** Coulson Decl., ¶ 12.

8. The proposed Settlement was achieved by counsel experienced in complex class action litigation.

9. To effectuate the Settlement, the parties request that the Court enter an Order:

- Conditionally certifying this case for settlement purposes only as a class action pursuant to Federal Rule 23;
- Defining the Class as defined herein;
- Appointing Nicholas A. Coulson and Julia G. Prescott as Settlement Class Counsel;
- Appointing Plaintiffs as the Settlement Class Representatives;
- Approving the Class Notice attached as Exhibit B to the Settlement Agreement and the manner of providing the Class Notice as being in compliance with Federal Rule 23(e);
- Approving Kroll Settlement Administration LLC as the settlement administrator;
- Preliminarily approving the Settlement Agreement as fair, reasonable, and adequate; and
- Scheduling a Fairness Hearing to hear any objections from Settlement Class members and to consider final approval of the proposed Settlement Agreement.

10. A proposed Preliminary Approval Order is attached as **Exhibit A** to the Settlement Agreement.

WHEREFORE, Plaintiffs, on behalf of themselves and the proposed Class, respectfully request that this Honorable Court (i) grant this Motion, (ii) enter the proposed Preliminary Approval Order (Exhibit A to the Settlement Agreement) and (iii) award all such other relief as is equitable and just.

Dated: February 13, 2026

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

AARON HALL, KATHERINE GLOD, and JEFFREY BINDER, on behalf of themselves and all others similarly situated, *Plaintiffs*, v. TRIVEST PARTNERS L.P., TGIF POWER HOME INVESTOR, LLC, TRIVEST PARTNERS, INC., TRIVEST GROWTH PARTNERS, INC., TRIVEST GROWTH PARTNERS, L.P., TRIVEST GROWTH PARTNERS GP, LLC, TRIVEST GROWTH INVESTMENT FUND, L.P., TGIF POWER HOME BLOCKER, INC., TRIVEST INVESTMENT ADVISORS, LLC, and WILLIAM JAYSON WALLER, *Defendants*.	No.: 4:22-cv-12743-FKB-CI Hon. F. Kay Behm Hon. Curtis Ivy, Jr.

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF UNOPPOSED MOTION FOR PRELMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Table of Contents

Table of Authorities

Page(s)

CASES

RULES

STATUTES

OTHER AUTHORITIES

Table of Exhibits

ISSUES PRESENTED

1. Should the proposed Settlement Class be certified for settlement purposes pursuant to Federal Rule of Civil Procedure 23?

Plaintiffs' answer: YES.

2. Should the Settlement Agreement be preliminarily approved as sufficiently fair, reasonable, and adequate to justify providing Notice to the proposed Settlement Class?

Plaintiffs' answer: YES.

CONTROLLING AND MOST APPROPRIATE AUTHORITIES

Fed.R.Civ.P. 23

Garner Props. & Mgmt. v. City of Inkster, 333 F.R.D. 614 (E.D. Mich. 2020)

Int'l Union, United Auto., Aerospace, and Agric. Implement Workers of America v. General Motors Corp., 497 F.3d 615 (6th Cir. 2007)

Moeller v. Wk. Publications, Inc., 649 F. Supp. 3d 530 (E.D. Mich. 2023)

Strano v. Kiplinger Washington Eds., Inc., 649 F. Supp. 3d 546 (E.D. Mich. 2023)

INTRODUCTION

Plaintiffs Aaron Hall, Katherine Glod, and Jeffrey Binder, on behalf of themselves and those similarly situated, sued defendants Trivest Partners L.P., TGIF Power Home Investor, LLC, Trivest Partners, Inc., Trivest Growth Partners, Inc., Trivest Growth Partners, L.P., Trivest Growth Partners Group, LLC, Trivest Growth Investment Fund, L.P., TGIF Power Home Blocker, Inc., Trivest Investment Advisors, LLC (collectively, the "Trivest Defendants"), and William Jayson Waller, alleging that the defendants violated the Racketeer Influenced and Corrupt Organizations Act (RICO) with a pattern of racketeering activity as they conducted business through Power Home Solar, LLC (and later, Pink Energy) ("PHS/PE"). Specifically, Plaintiffs alleged that the defendants engaged in a fraudulent scheme designed to lure unsuspecting consumers into purchasing from PHS/PE home solar systems to be designed and installed by PHS/PE. They further alleged the scheme was carried out through multiple uses of mail and wires, using false and misleading advertisements, training materials, and other communications to achieve its ends.

Following an investigation by Plaintiffs' counsel, contentious discovery, fraught motion practice, and a full-day, court-ordered mediation before a neutral mediator, Hon. Victoria Roberts (Ret.), Plaintiffs and Defendant William Jayson Waller (the "Parties") reached agreement to fully and finally resolve all claims against Defendant Waller, subject to Court approval, on a class-wide, non-

reversionary, common-fund basis. As detailed further below, if the Court approves the contemplated Settlement Agreement, the fund will be placed in escrow until such time as all claims in the case have been resolved. Therefore, if more funds are recovered for the class, the cost to claim and distribute the funds will only need to be paid once, ensuring an efficient use of Class Members' recovery. Plaintiffs, through their counsel, are therefore pleased to present to this Honorable Court the attached proposed Settlement Agreement and respectfully request that the Court preliminarily approve this mutually negotiated Settlement Agreement by entering the proposed order, which is attached to the Settlement Agreement as **Exhibit A.**[1]

BACKGROUND

Plaintiffs and the proposed Settlement Class Members purchased home solar systems through PHS/PE. Amended Complaint ¶¶ 110-112, ECF No. 96, PageID.2172. Plaintiffs alleged that the defendants violated RICO through their conduct of PHS/PE through a pattern of racketeering activity. *Id.* ¶¶ 145-173, PageID.2181-2187. The Complaint details a fraudulent scheme designed to lure unsuspecting consumers into purchasing home solar systems to be designed, installed, and sold by PHS/PE, carried out by the defendants through multiple uses

[1] Plaintiffs are authorized to state that Defendant Waller does not oppose the relief requested in this motion, namely the preliminary approval of the Settlement Agreement. The arguments and contentions contained herein, however, are attributable to Plaintiffs alone.

of the mail and wires. *E.g. id.* ¶¶ 93-102, PageID.2162-2170.

Plaintiffs filed their Complaint against Defendants Waller, Trivest Partners L.P., and TGIF Power Home Investor, LLC on November 13, 2022, bringing claims for violation of RICO, 18 U.S.C. § 1962(a) & (c), and 18 U.S.C. § 1962(d), and the Michigan Consumer Protection Act. ECF No. 1. Plaintiffs' Complaint was filed following an extensive pre-suit investigation conducted by Plaintiffs' Counsel. **Ex. 2**, Coulson Decl., ¶ 12.

The parties proceeded with contentious discovery, including two motions to compel and a motion for sanctions. ECF Nos. 59-66, 76, 80, 85. On April 30, 2025, this Court ordered the parties to mediation, which took place on May 2, 2025, before Hon. Victoria Roberts (Ret.). As a result of this mediation, which involved adversarial, arm's-length negotiations between counsel experienced in similar matters, the Parties executed a term sheet, agreeing to settle the claims asserted in the Amended Complaint on the terms and conditions set forth herein, subject to the Court's review and approval.

In October 2024, Defendant Waller and the original Trivest defendants separately moved to compel this case to arbitration. *See* ECF Nos. 70, 75.[2] After the mediation but before the Parties executed the Agreement, this Court denied those

[2] The Court then granted Plaintiffs' motion to amend the complaint to add the remaining Trivest defendants, and the additional defendants also moved to compel the case to arbitration. ECF Nos. 93, 96, 102.

motions, and both Defendant Waller and the original Trivest defendants appealed. ECF Nos. 143, 147, 149.

During the pendency of the interlocutory appeal, this Court stayed proceedings. ECF No. 151. Plaintiffs and Defendant Waller continued to memorialize the settlement, and the parties executed a final agreement on September 15, 2025. They moved this Court for an indicative ruling that, if the Sixth Circuit remanded Defendant Waller's appeal, this Court would grant the Parties' motion to lift the stay and consider a motion for preliminary approval of the Settlement Agreement. ECF No. 152. This Court granted that motion on October 21, 2025, ECF No. 153, and the Sixth Circuit remanded the case on November 3, 2025, ECF No. 154. The Parties' Motion to Lift the Stay for Purposes of Settlement Proceedings is filed concurrently with this Motion.

Plaintiffs seek to certify a Settlement Class consisting of "All persons in the United States who purchased a home solar system from Power Home Solar, LLC (including d/b/a Pink Energy) at any time since August 1, 2018." **Ex. 1**, Settlement Agreement, ¶ 1.19. Excluded from the Settlement Class are: (i) Defendant, any entity in which Defendant has a controlling interest, and Defendant's insurer(s); (ii) any judge, justice, or judicial officer presiding over the Litigation and the members of their immediate families and judicial staff; and (iii) any individual who timely and validly excludes themselves from the Settlement. *Id.*

Under the proposed Settlement Agreement,[3] Defendant Waller will provide monetary relief to the Settlement Class Members and, in exchange, Plaintiffs and the Settlement Class Members will release certain claims against Defendant Waller. *Id.* ¶¶ 3, 5. Defendant Waller and/or his insurer will create a non-reversionary common fund for the benefit of the Settlement Class Members in the amount of $575,000.00, which will be held in escrow (after the payment of such attorney fees as the Court may approve). *Id*. ¶¶ 1.18, 3.3. The proposed Settlement Agreement includes a full release and discharge by Plaintiffs and the Class of any and all claims against Defendant Waller that were or could have been asserted in this case or that relate to their purchase of a solar energy system from Power Home Solar, LLC, except that the release does not bar or release any claims against (1) any lender involved in the financing of a Class Member's solar system; (2) the manufacturer of any component of a Class Member's solar system; or (3) any other Defendant in the Action, or any other entities related to the business collectively operated as Trivest. *Id.* ¶¶ 5, 1.13.

The Settlement Agreement calls for the appointment of a third-party administrator, and the parties have chosen Kroll Settlement Administration, LLC (the "Administrator"), to administer the settlement. **Ex. 1**, Settlement Agreement, ¶ 1.17; **Ex. 2**, Coulson Decl., ¶ 17. The Declaration Of Scott M. Fenwick Of Kroll

[3] Capitalized terms used herein shall have the same meaning as assigned to them in the Settlement Agreement.

Settlement Administration LLC In Connection With Preliminary Approval Of Settlement ("Kroll Decl.") is attached to this motion as **Exhibit 3**. The Agreement also provides that notice of preliminary approval of the settlement will be distributed to the Class in accordance with the Notice specifications approved by the Court. **Ex. 1**, Settlement Agreement, ¶¶ 1.12, 4.2; *see also* **Ex. B** to **Ex. 1**, Settlement Agreement ("**Ex. 1B**"), Class Notice.

Within fifteen days after the Court issues its Preliminary Approval Order (**Ex. 1A**), Class Counsel will provide the names and email addresses of all potential Class Members to the Administrator. **Ex. 1**, Settlement Agreement, ¶ 4.2(c)(i). The Administrator will disseminate the Class Notice to each Class Member within twenty-one days of receiving the names and email addresses. *Id.* ¶ 4.2(c)(ii). If any Email Notice are returned as undeliverable, the Administrator will use an advanced search process to find an alternate email address. **Ex. 3**, Kroll Decl., ¶ 9. The Administrator will post on the Settlement Website the Class Notice, which includes instructions for opting out or objecting to the settlement, the Settlement Agreement, the Preliminary Approval Order, and, promptly after it is filed, Plaintiffs' Counsel's fee application. **Ex. 1**, Settlement Agreement, ¶ 4.2(a); **Ex. 3**, Kroll Decl., ¶ 10.

Class Members will have sixty (60) days from the date Notice is emailed to object to or opt out of the Settlement. **Ex. 1**, Settlement Agreement, ¶ 1.15. After deducting attorney's fees and the cost of settlement administration (Class Counsel

will request an award of reasonable attorney's fees of 1/3 of the Settlement Fund. *Id.* ¶ 7.1), the Settlement Fund will remain in an Escrow account under legal custody of the Court until it is distributed pursuant to the Agreement or further order of the Court. *Id.* ¶¶ 3.1, 3.3(c)-(e).

Because the litigation will continue against the Trivest Defendants, and to prevent the unnecessary expenses associated with multiple claims and payment processes, Plaintiffs do not at this stage propose allocation and distribution of the Settlement Fund. Instead, Plaintiffs propose that the balance of the Settlement Fund remain in the Escrow Account until the Action has concluded against all defendants and then be distributed in accordance with a plan to be proposed to and approved by the Court at that time. Plaintiffs anticipate that this plan and distribution would include both the balance of the Settlement Fund as well as any funds obtained from the remaining defendants, whether by settlement, judgment, or otherwise. As a result, there will be no claims process in connection with the initial administration of the Settlement Agreement. *Id.* ¶ 3.3(i).

Class Counsel wholeheartedly believes that this Settlement Agreement is in the best interest of the Settlement Class under the circumstances given the time, complexity, and expense this litigation would present absent this agreement, and the risk of Defendant Waller not being able to pay a possible judgment after the exhaustion of his D&O (i.e. directors and officers) insurance policy. Ex. 2, Coulson

Decl., ¶ 21.

LEGAL STANDARD

To merit class certification, Federal Rule of Civil Procedure 23(a) requires that: (1) the class be so numerous that joinder of all members is impracticable; (2) there be questions of law or fact common to the class; (3) the claims or defenses of the representative Parties be typical of the class; and (4) the representative Parties fairly and adequately protect the interests of the class. Fed. R. Civ. P. 23(a).

Where, as here, Plaintiffs seek to certify a class under Rule 23(b)(3), Plaintiffs must additionally 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 the fair and efficient adjudication of the controversy. Fed. R. Civ. P. 23(b)(3). Finally, class certification is subject to the implicit requirement that the class is ascertainable. *See In Re OnStar Contract Litig.*, 278 F.R.D. 352, 373 (E.D. Mich. 2011).

The claims of a proposed settlement class may be settled only with the Court's approval and only after a finding that the proposed settlement is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e). A Court must consider four factors to make this determination: (1) whether the class representatives and class counsel have adequately represented the class; (2) whether the proposal was negotiated at arm's length; (3) whether the relief provided for the class is adequate; and (4) whether the

proposal treats Class Members equitably relative to each other. Fed. R. Civ. P. 23(e). The Sixth Circuit provides seven additional factors to consider:

> (1) the risk of fraud or collusion;
> (2) the complexity, expense, and likely duration of the litigation;
> (3) the amount of discovery engaged in by the parties;
> (4) the likelihood of success on the merits;
> (5) the opinions of Class Counsel and Class Representatives;
> (6) the reaction of absent class members and
> (7) the public interest.

Int'l Union, United Auto., Aerospace, & Agric. Implement Workers of America v. General Motors Corp., 497 F.3d 615, 631 (6th Cir. 2007).

ARGUMENT

I. The Court Should Certify The Proposed Class For Settlement Purposes.

The Settlement Class satisfies each of the Rule 23 prerequisites and should be certified for settlement purposes.

A. The Numerosity Requirement is Satisfied.

"Numerosity is a fact specific inquiry that turns upon such factors as geographic location and the ease of identifying Class Members, but there is no strict numerical test to determine when the class is large enough or too numerous to be joined." *Garner Props. & Mgmt. v. City of Inkster*, 333 F.R.D. 614 (E.D. Mich. 2020). However, "it is generally accepted that a class of 40 or more members is sufficient to satisfy the numerosity requirement." *Davidson v. Henkel*, 302 F.R.D. 427, 436 (E.D. Mich. 2014). Here, the Settlement Class includes tens of thousands

of people. **Ex. 2**, Coulson Decl., ¶10. The numerosity requirement is readily satisfied.

B. The Claims Involve Questions of Law or Fact Common to the Class.

To satisfy the commonality requirement, Plaintiffs' claims must depend on a common contention that it is capable of class-wide resolution." *Hicks v. State Farm Fire & Cas. Co.*, 965 F.3d 452, 458 (6th Cir. 2020). "[T]here need be only one common question to certify a class." *Glazer v. Whirlpool Corp. (In re Whirlpool Corp. Front-Loading Washer Prods. Liab. Litig.)*, 722 F.3d 838, 853 (6th Cir. 2013).

Plaintiffs allege that Defendants, including Mr. Waller, engaged in a common course of misconduct towards the proposed Class, giving rise to questions of both law and fact common to Class Members. ECF No. 1, PageID.2178, ¶ 139. The following are just some of the common questions inherent in the case:

- Whether an enterprise existed for purposes of RICO;
- Whether the enterprise affected interstate commerce;
- Whether Defendant Waller was associated with or employed by the enterprise;
- Whether Defendant Waller participated in the enterprise;
- Whether Defendant Waller conducted or participated in the conduct of the enterprise;
- Whether such conduct of the enterprise was through racketeering activity;
- Whether Defendants' conduct constituted predicate acts of mail and/or wire fraud;
- Whether such racketeering activity constituted a pattern.

Plaintiffs' allegations revolve around the common alleged conduct of Defendants' operation of PHS/PE. Accordingly, the commonality prerequisite is

satisfied.

C. The Claims of the Named Plaintiffs are Typical of the Claims of the Class Members.

A proposed class meets the "typicality" requirement for class certification "if the class members' claims are 'fairly encompassed by the named plaintiffs' claims.'" *In re Whirlpool Corp.*, 722 F.3d at 852 (quoting *Sprague v. Gen. Motors Corp.*, 133 F.3d 388, 399 (6th Cir. 1998) (en banc)). Plaintiffs' claims, and those of the Class Members, entail the same type of alleged damages for the same type of injury caused by an alleged singular course of conduct by Defendants, namely the fraudulent and misleading sales practices of PHS/PE. Plaintiffs' claims rest on the exact same legal theories as those of the Class. In all the ways that are relevant to the required analysis, Plaintiffs' claims are typical of the claims of the proposed Class.

D. Plaintiffs and Class Counsel Satisfy the Adequacy of Representation Requirement.

To satisfy the final Rule 23(a) prerequisite, "the representative Parties [must] fairly and adequately protect the interests of the Class." Fed .R. Civ. P. 23(a). The Sixth Circuit has identified two criteria for determining adequacy: (1) the representatives have common interests with unnamed members of the class, and (2) the representatives will "vigorously prosecute the interests of the class through qualified counsel." *Young v. Nationwide Mut. Ins. Co.*, 693 F.3d 532, 543 (6th Cir. 2012) (quoting *In re Am. Med. Sys., Inc.*, 75 F.3d 1069, 1083 (6th Cir. 1996)).

Plaintiffs have no conflict of interest with the absent Class Members and have retained Class Counsel with significant experience conducting class and complex litigation in state and federal courts throughout the country. **Ex. 2**, Coulson Decl., ¶¶ 5-8. Class Counsel has negotiated a favorable Settlement Agreement, including through the use of a neutral mediator, and has vigorously prosecuted Plaintiffs' claims on behalf of the Class throughout this litigation. Accordingly, Class Representatives and Class Counsel will adequately represent the class.

E. The Proposed Settlement Class is Ascertainable.

"The existence of an ascertainable class of persons to be represented by the proposed class representative[s] is an implied prerequisite of Federal Rule of Civil Procedure 23." *In Re OnStar Contract Litig.*, 278 F.R.D. at 373. To satisfy this requirement, "the class definition must be sufficiently definite so that it is administratively feasible for the court to determine whether a particular individual is a member of the proposed class." *Young*, 693 F.3d at 537-38.

The proposed settlement Class here is readily ascertainable. The Class is defined with reference to objective criteria. To determine whether a given person is a member of the Class, all that is required is to determine whether that person purchased a solar system from PHS/PE after August 1, 2018. **Ex. 1**, Settlement Agreement, ¶ 1.19. Plaintiffs' Counsel have access to this information through server access provided by the PHS/PE bankruptcy trustee. *Id.* ¶ 4.2(c)(i)). Class

Members' email addresses are included in this information, and all Class Members will receive a Class Notice form via email. **Ex. 1B**. Thus, the class is ascertainable, and the proposed settlement administration process will ensure that all verified Class Members receive notice of the proposed settlement.

F. The requirements of Rule 23(b)(3) are also satisfied.

1. *Common questions of fact and law predominate.*

"To meet the predominance requirement, a plaintiff must establish that issues subject to generalized proof and applicable to the class as a whole predominate over those issues that are subject to only individualized proof." *Young*, 693 F.3d at 544 (quoting *Randleman v. Fidelity Nat'l Title Ins. Co.*, 646 F.3d 347, 352 (6th Cir. 2011)). The numerous questions common to the Class, including those listed above, demonstrate predominate over any individual issues. The key elements of Plaintiffs' claims—the alleged fraudulent scheme to lure unsuspecting consumers into purchasing home solar systems and the existence and proper measure of resultant damages—are common issues that predominate for the entire Class.

Based on the nature of the case and the Class definition, the Class has been impacted in a similar manner and to a similar degree, rendering any individual issues (such as damages, which can be calculated using common methodology) of minimal importance. Plaintiffs submit that there are simply no individual issues left as to this Settlement Class that might overwhelm the predominating common issues.

2. *A Class Action is the Superior Method for the Fair and Effective Adjudication of This Controversy.*

In considering whether a proposed class meets the superiority requirement of Rule 23(b)(3), courts consider "the difficulties likely to be encountered in the management of a class action." *Young*, 693 F.3d at 545. "Where it is not economically feasible to obtain relief within the traditional framework of a multiplicity of small individual suits for damages, aggrieved persons may be without any effective redress unless they may employ the class-action device." *Id.* (quoting *Deposit Guar. Nat'l Bank v. Roper*, 445 U.S. 326, 339 (1980)). Factors that bear on the predominance inquiry in the settlement context include: (1) the class members' interest in maintaining a separate action, (2) other pending litigation, and (3) the desirability of concentrating the litigation in a particular forum. *Garner Properties & Mgmt.*, 333 F.R.D. at 625. In the settlement context, manageability concerns are obviated because the settlement eliminates the need for further management of the case. *Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

Here, while Mr. Waller was previously named in other actions, Plaintiffs are informed and believe that no such actions remain pending, which also suggests that Class Members have little if any interest in maintaining separate actions. Class resolution achieves economies of time, effort, and expense while ensuring uniformity of decision. The alternative to resolving this case as a class action is inefficient individual litigation that would leave unredressed the claims of most Class

Members for whom active participation is not feasible for financial or other reasons. Resolving these claims together on behalf of a certified Class is fairer and incalculably more efficient. Class resolution will also prevent wasting the resources of the Court and the Parties by providing a single, orderly resolution to the case with a consistent result, as demonstrated by the proposed Settlement.

II. The Court Will Likely Be Able To Approve The Proposed Settlement As Fair, Reasonable And Adequate.

At the preliminary approval stage, the question before the Court is "simply whether the settlement is fair enough that it is worthwhile to expend the effort and costs associated with sending potential class members notice and processing opt-outs and objections." *Garner Properties & Mgmt*, 333 F.R.D. at 626 (citing *Newberg on Class Actions* § 13:10 (5th ed.)). "[T]he settlement agreement should be preliminarily approved if it '(1) does not disclose grounds to doubt its fairness or other obvious deficiencies, such as unduly preferential treatment to class representatives or segments of the class, or excessive compensation for attorneys, and (2) appears to fall within the range of possible approval.'" *Id.* (quoting *Doe v. Deja Vu Servs., Inc*., 2017 WL 490157, at *1 (E.D. Mich. Feb. 7, 2017)).

"At the final-approval stage, the Agreement will be approved if it is fair, reasonable, and adequate. To that end, factors from the Sixth Circuit and the Federal Rules of Civil Procedure guide the analysis." *Moeller v. Wk. Publications, Inc*., 649 F. Supp. 3d 530, 540-41 (E.D. Mich. 2023). To determine whether the terms of the

proposed settlement are fair, reasonable, and adequate, courts consider whether: (A) the class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm's length; (C) the relief provided for the class is adequate; and (D) the proposal treats Class Members equitably to each other. Fed. R. Civ. P. 23(e)(1)(B)(i). Each of these factors, as well as the related considerations set out by the Sixth Circuit, are satisfied here.

A. The Class Representatives and Class Counsel have Adequately Represented the Class.

The first Rule 23(e) factor, adequacy of representation, is "redundant of Rule 23(a)(4)." *Strano*, 649 F. Supp. 3d at 557 (quoting *Newberg and Rubenstein on Class Actions* § 13:48 (6th ed.)) As such and as demonstrated above, the adequacy of representation factor is easily satisfied.

B. The Proposed Settlement Was Negotiated At Arm's Length.

"The primary procedural factor courts consider in determining whether to preliminarily approve a proposed [class-action] settlement is whether the agreement arose out of arms-length, noncollusive negotiations." *Hillson v. Kelly Servs. Inc.*, 2017 WL 279814, at *6 (E.D. Mich. 2017) (quoting *Newberg on Class Actions* § 13:14 (5th ed.)). Here, the Parties engaged in a full-day mediation before experienced and respected neutral mediator Hon. Victoria Roberts (JAMS). **Ex. 2**, Coulson Decl., ¶¶ 13-14; *See Wayside Church v. Van Buren Cty.*, No. 24-1598, 2025 U.S. App. LEXIS 26081, at *53-54 (6th Cir. Oct. 6, 2025) ("[T]he involvement of a

neutral mediator . . . is a strong indicator of procedural fairness, one that runs counter to any allegation of collusion."). Prior to the mediation, the Parties engaged in contentious discovery that allowed both sides to evaluate the strengths and weaknesses of Plaintiffs' claims and the defenses thereto, as well as the concomitant value of this case. **Ex. 2**, Coulson Decl., ¶ 12. Class Counsel believe that the benefits of resolution greatly outweighed the risks and costs of prolonged litigation, especially given the possibility that Defendant Waller' may be unable to satisfy any judgment after prolonged litigation that exhausts his D&O insurance policy. **Ex. 2**, Coulson Decl., ¶¶ 16, 21, 23. While any settlement is necessarily a compromise, the Settlement addresses the concerns of Plaintiffs and the Class and delivers valuable monetary relief.

C. The Relief Provided Through This Settlement Agreement Is Adequate.

Rule 23(e) directs the Court to consider several factors to determine the adequacy of the proposed relief for the class: "(i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class member claims; (iii) the terms of any proposed attorney's fee, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3)."[4] Fed. R. Civ. P. 23(e)(2)(C).

[4] Because Plaintiffs are not at this stage proposing a plan of allocation and distribution of settlement funds, the second factor is not relevant here.

Here, the costs, risks, and delay inherent in further litigation are substantial. The litigation will continue irrespective of Mr. Waller's involvement, but the resources from which he might satisfy any judgment were quickly depleting, especially given that his D&O policy is an eroding one, meaning that expending it on litigation eats into what is left to satisfy a judgment. By the time of trial, and through the multiple likely appeal, it is overwhelmingly likely that any judgment against Mr. Waller would have been uncollectable, a pyrrhic victory at best.

In addition, the Settlement with Defendant Waller has value as an "ice-breaker" settlement. An ice-breaker settlement "is the first settlement in the litigation[,]and should increase the likelihood of future settlements. An early settlement with one of many defendants can 'break the ice' and bring other defendants to the point of serious negotiations." *In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d 631, 643 (E.D. Pa. 2003); *In re Packaged Ice Antitrust Litig.*, 2011 WL 717519, at *10 (E.D. Mich. Feb. 22, 2011) (noting "significant value" of settlement that can serve as an "ice-breaker").

After considering the range of possibilities, it is Plaintiffs' counsel's experienced opinion that given the potential risks, rewards, and costs of continuing litigation, that settlement on the proposed terms is the most desirable course for Plaintiffs and the Class to take. **Ex. 2**, Coulson Decl., ¶ 23.

Next, the requested attorney's fee is standard and reasonable considering the

result for the class. Pursuant to the terms of the Settlement Agreement, Class Counsel plan to request attorney's fees in an amount not to exceed one-third of the total settlement value. **Ex. 1**, Settlement Agreement, ¶ 7.1. This percentage is standard within this district and the Sixth Circuit. *See, e.g.*, *Sheean v. Convergent Outsourcing, Inc.*, No. 2:18-cv-11532-GCS-RSW, 2019 U.S. Dist. LEXIS 197446, at *7 (E.D. Mich. Nov. 14, 2019); *Allan v. Realcomp II, Ltd.*, No. 10-cv-14046, 2014 U.S. Dist. LEXIS 185994, at *7 (E.D. Mich. Sep. 4, 2014); *In re Packaged Ice Antitrust Litig.*, No. 08-01952, 2011 U.S. Dist. LEXIS 150427, at *19 (E.D. Mich. Dec. 13, 2011) (collecting cases awarding up to one-third of settlement fund). Given Plaintiffs' Counsel's expertise in similar complex litigation and their efforts to secure this significant relief for the Class, the standard fee request is justified. Further, any award is subject to the Court's discretion and approval.

Finally, there are no agreements other than the Settlement Agreement that are relevant to the Court's consideration. **Ex. 2**, Coulson Decl., ¶ 22. Because the Settlement Agreement is attached as Exhibit 1 to this Motion, the fourth factor is satisfied. *See Tate v. Eyemed Vision Care, LLC*, No. 1:21-cv-36, 2025 U.S. Dist. LEXIS 145042, at *19 n.7 (S.D. Ohio July 29, 2025).

D. The Proposed Settlement Treats All Class Members Equitably.

For many of the same reasons as discussed above, there are no concerns here regarding the equitable treatment of Settlement Class Members relative to one

another. Every member of the Settlement Class will have an equal opportunity to receive Notice of and opt out of or object to the Settlement. There is no payment allocation methodology yet before the Court, given the stage of the ongoing litigation. There are no material differences between the claims of Settlement Class Members that would merit departing from this fair and manageable approach.

III. The Sixth Circuit Factors Similarly Weigh In Favor Of Preliminary Approval.

Consideration of the Sixth Circuit factors similarly supports preliminary approval. The factors are "(1) the risk of fraud or collusion; (2) the complexity, expense and likely duration of the litigation; (3) the amount of discovery engaged in by the Parties; (4) the likelihood of success on the merits; (5) the opinions of class counsel and class representatives; (6) the reaction of absent Class Members; and (7) the public interest." *UAW v. Gen. Motors Corp.*, 497 F.3d 615, 631 (6th Cir. 2007).

Factors one through five are largely subsumed by the previously outlined Rule 23(e)(2) factors rendering simple reiteration here unnecessary. *See Macy v. GC Servs. Ltd. P'ship*, No. 3:15-cv-819, 2019 U.S. Dist. LEXIS 210632, at *4-5 (W.D. Ky. December 6, 2019) ("[Rule 23(e)] largely encompasses the factors that have been employed by the Sixth Circuit . . . ."). Each of these factors weighs in favor of preliminary approval or, at the very least, is neutral. The sixth factor, the reaction of absent Class Members, cannot be evaluated until notice has been disseminated and the Settlement Class's feedback received, rendering this analysis more appropriate

on final approval. The seventh factor, the public interest, weighs overwhelmingly in favor of approval. "[T]here is a strong public interest in encouraging settlement of complex litigation and class action suits because they are 'notoriously different and unpredictable' and settlement conserves judicial resources." *In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508, 530 (E.D. Mich. 2003) (quoting *Granada Invs., Inc. v. DWG Corp.*, 962 F.2d 1203, 1205 (6th Cir. 1992)). Plaintiffs' Counsel have not identified any countervailing public interest justifications here that would suggest any reason not to preliminarily (or finally) approve the Settlement. This factor also supports approval.

IV. The Proposed Notice Plan Is Appropriate.

"After preliminarily approving a settlement, the court must direct notice of the proposed settlement to all Class Members who would be bound by the proposal." Fed. R. Civ. P. 23(e)(1)(B). When, as here, Plaintiffs seek to certify a class pursuant to Rule 23(b)(3), notice must include, in "'plain, easily understood language':

> (1) The nature of the action;
> (2) The definition of the class certified;
> (3) The class claims, issues, or defenses;
> (4) That a Class Members may enter an appearance through an attorney if the member so desires;
> (5) That the court will exclude from the class any member who requests exclusion;
> (6) The time and manner for requesting exclusion; and
> (7) The binding effect of a class judgment on members under Rule 23(c)(3).

Moeller v. Week Pubs., Inc., 2023 WL 119648, at *8 (E.D. Mich. January 6, 2023)

(quoting Fed. R. Civ. P. 23(c)(2)(B)).

The Settlement Agreement provides for notice to the Settlement Class substantially in the form attached as **Exhibit B** to the Settlement Agreement, **Ex. 1**. Within thirty-six (36) days after the Court issues its Preliminary Approval Order (**Ex. 1A**), the Administrator will disseminate the Class Notice to each Settlement Class Member via email. *See* **Ex. 1**, Settlement Agreement, ¶ 4.2; **Ex. 3**, Kroll Decl., ¶ 6. This is particularly appropriate where, as here, the Settlement Class Members all were customers of PHS/PE, and resultantly, the list Plaintiffs' Counsel obtained through the PHS/PE bankruptcy trustee contains the contact information for Settlement Class members. **Ex. 2**, Coulson Decl., ¶ 10. Further, the Administrator will post the Agreement and Class Notice on the Settlement Website, which contains instructions for opting out of or objecting to the settlement. **Ex. 1**, Settlement Agreement, ¶ 4.2(a); **Ex. 3**, Kroll Decl., ¶ 10. Settlement Class Members will then have sixty (60) days from the Notice Date to opt out or object to the Settlement Agreement. *Id.* ¶ 1.15. Any Settlement Class Member who chooses to opt out will not be bound by the Settlement Agreement and will not release any claims against Defendant Waller. *Id.* ¶ 4.5(a).

The Class Notice provides all the salient information, clearly states that it contains only a summary of the Settlement Agreement, and describes how Settlement Class Members can obtain additional information regarding the Settlement

Agreement. *See* **Ex. 1A**. The Class Notice also refers interested individuals to the Settlement Website, where they may access relevant documents or seek further information. *Id.* Settlement Class Members will have the opportunity to opt-out or object to the Settlement. Plaintiffs will then seek final approval of the Settlement Agreement, at which time the Court can consider the Settlement Class's response thereto. The Class Notice and Notice Plan should therefore be approved.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court enter the attached Order Granting Preliminary Approval (**Ex. 1A**), preliminarily approve the Settlement Class, appoint Plaintiffs' Counsel as Settlement Class Counsel, and approve the Notice program described herein.

Dated: February 13, 2026

Respectfully Submitted,

/s/ Nicholas A. Coulson
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CERTIFICATE OF SERVICE

I hereby certify that on February 13, 2026, I served a copy of the foregoing upon all counsel of record via the Court's CM/ECF system, which will send notifications of such filing to the e-mail addresses registered in the CM/ECF system, as denoted on the Electronic Mail Notice List.

/s/ Nicholas A. Coulson
Nicholas A. Coulson