

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

This Class Action Settlement Agreement and Release (“Agreement”) is made and entered into as of this ____ day of December, 2019, by AARON AND STACEY STONE, and DANIEL AND SHARON SOUSA¹ (“Plaintiffs”), on behalf of themselves and the Settlement Class, as defined below, and Defendant Porcelana Corona de Mexico, S.A. de C.V. f/k/a Sanitarios Lamosa S.A. de C.V. a/k/a Vortens (“Porcelana”), to settle, fully and finally, all of the claims that have been or could have been brought in their putative class-action lawsuit styled Cone v. Porcelana Corona de Mexico, S.A. de C.V., Case. No. 4:17-00001, in the United States District Court for the Eastern District of Texas, relating to certain toilet tanks described below.

1. A dispute has arisen between the Parties concerning certain Vortens™ toilet tanks specifically defined in Section I, ¶ K;

2. Plaintiffs filed a putative class-action lawsuit alleging, among other things, that the Class Toilet Tanks are defective in that the tanks suddenly and spontaneously crack;

3. Porcelana categorically denies Plaintiffs’ allegations, denies that it has committed or engaged in any misconduct, wrongdoing, or other actionable conduct, denies that the Class Toilet Tanks are defective, denies that the tanks spontaneously crack, denies all liability, and asserts numerous defenses to Plaintiffs’ allegations;

4. After engaging in extensive motion practice, including filing motions to dismiss, motions to strike class allegations, summary judgment motions, and significant discovery—which included production and analysis of hundreds of thousands of pages of documents; conducting extensive interviews of named plaintiffs and putative class members; multiple international trips for depositions and site inspections; non-destructive and destructive testing; party and fact depositions; expert designations, reports, and expert depositions—and after conducting three formal mediations with the help and oversight of two highly experienced mediators, Plaintiffs Kevin Reuss and Charles and Michelle Handley agreed to settlement terms resolving all claims, disputes, and differences pertaining to Vortens™ tank models 3412 and 3464 manufactured in 2011 (the “2011 Settlement Class”).

5. After the filing of a Joint Motion for Preliminary Approval of the 2011 Settlement Class,² litigation of claims by the remaining Plaintiffs and on behalf of additional class members continued. The Parties engaged in extensive briefing as to the certification request for the remaining claims urged by Plaintiffs in their Second Motion for Class Certification. Discovery obligations continued, inclusive of ongoing document production, expert discovery and additional depositions. After entry of a partial certification Order on September 4, 2019, the Parties continued

¹ The Parties are completing confirmatory discovery on the issue of the Benito Juarez plant designation. In the event such confirmatory discovery alters the status of Mark and Amber Fessler as Equitable Class Settlement Members, the Parties agree the Fessler Plaintiffs should also be appointed as Class Representatives.

² On April 2, 2019, the 2011 Settlement Class was severed from the original action and assigned Cause No. 4:19-cv-00248 Final Approval for the 2011 Settlement Class was granted by Order on August 30, 2019.

prosecution of this case contemporaneously with ongoing arm's-length negotiations to resolve this matter.

6. The Parties reached an agreement on settlement terms that resolve the claims remaining in this Lawsuit and outlined material terms of the Agreement through a Memorandum of Understanding dated November 21, 2019. The Settlement Agreement addresses the claims of the individually-named Plaintiffs and further provides equitable relief and incidental recovery to the benefit of class members falling within the scope of the certification Order – all Texas owners of a Vortens™ toilet tank models #3464 and #3412 manufactured at the Benito Juarez plant, with a manufacturing date 2007-2010 (hereinafter “Equitable Relief Class”)³;

7. Class Counsel has reviewed and analyzed the documents produced by Porcelana and those obtained via their own investigation; consulted with experts; examined and considered the benefits to be provided to the Equitable Relief Class Members under the Settlement provided for in this Agreement; considered the applicable laws of the State of Texas and federal declaratory and injunctive authority, and the claims that could be asserted under those laws regarding Class Toilet Tanks; considered the risks, costs, and time associated with prosecuting this case through one or more trials and appeals; and believe the Agreement to be in the best interest of the Settlement Class Members, taking into account the risks and costs of continued litigation, and the length of time that would be required to complete the litigation and any appeals;

8. Porcelana has at all times disputed, and continues to dispute, Plaintiffs’ allegations in the Lawsuit and denied any liability for any of the claims that have or could have been raised regarding the Class Toilet Tanks by Plaintiffs or Equitable Relief Class Members, but believes that the comprehensive resolution of the issues in the Lawsuit as provided in this Agreement will avoid the substantial costs and disruptions of continued litigation, is in the best interest of the Equitable Relief Class, and is in the best interests of Porcelana, and is the most effective and least costly resolution of the Lawsuit;

9. The Parties understand, acknowledge, and agree that this Agreement constitutes the compromise of disputed claims and that it is their mutual desire and intention that the Lawsuit be settled and dismissed, on the merits and with prejudice, and that the Released Claims be finally and fully settled and dismissed, subject to and according to the below terms and conditions.

NOW, THEREFORE, the Parties agree and covenant as follows:

I. DEFINITIONS

As used in this Agreement, the following definitions shall apply:

A. “Action” or “Lawsuit” means the following putative class-action lawsuit pending, as of the date of this Agreement, in the United States District Court for the Eastern District of Texas – Sherman Division: Case No. 4:17-cv-0001, styled *Steven and*

³ Separate written settlement agreements will be entered with the remaining Plaintiffs not within the Equitable Relief Class: Mark and Amber Fessler, Matthew Carreras, and Andrew Hocker. All Plaintiffs agree and approve the Equitable Relief Settlement terms and are of the opinion that the Agreement is in the best interest of the Class.

Joanna Cone, Michael and Kimberly Aftosmes, Mark and Amber Fessler, Andrew Hocker, Matthew Carreras, Aaron and Stacey Stone, and Daniel And Sharon Sousa on Behalf of Themselves and Those Similarly Situated,, and Defendant Porcelana Corona de Mexico, S.A. de C.V.f/k/a Sanitarios Lamosa S.A. de C.V. a/k/a Vortens.

- B. “Administration and Notice Expenses” means reasonable fees and expenses incurred for (1) preparing, mailing, and emailing the Summary Notice and FAQ; (2) the costs of Publication Notice; (3) receiving and adjudicating claims submitted by Equitable Relief Class Members for compensation under this Settlement, including the costs of administering a Settlement Website for the review of the Settlement Notice and submission of claims; (4) receiving and processing Objections to the Settlement submitted by Settlement Class Members; (5) preparing status reports to the Parties and the Court; (6) preparing tax returns for any Settlement bank accounts; (7) distributing Settlement payments or other benefits to Settlement Class Members who timely submit Valid Claims; and (8) other costs of notice and administration of the Settlement that may be mutually-agreed upon by Porcelana and Class Counsel.
- C. “Agreement” or “Settlement Agreement” means this Class Action Settlement Agreement and Release and the exhibits attached hereto.
- D. “Attorney Fees and Expenses” means the amount of any attorney fees and reimbursement of litigation expenses awarded to Class Counsel pursuant to their Fee Petition to be filed in Case No. 4:17-cv-00001.
- E. “Claimants” mean all Equitable Relief Claims Members who submit claims during the Claims Period.
- F. “Claims Deadline” means December 31, 2020.
- G. “Claim Form” means the form to be submitted to the Settlement Administrator by Equitable Relief Class Members who wish to make a claim.
- J. “Class Counsel” means N. Scott Carpenter and Rebecca Bell-Stanton of Carpenter & Schumacher, P.C.
- K. “Class Toilet Tank” or “Class Tank” means a Vortens™ Tank manufactured at the Porcelana Benito Juarez manufacturing plant between January 1, 2007 and December 31, 2010 and bearing either model number 3412 or 3464.
- L. “Class Representatives” means Aaron and Stacey Stone and Daniel and Sharon Sousa.
- M. “Court” means the United States District Court for the Eastern District of Texas – Sherman Division.
- N. “Defendant” means Porcelana Corona de Mexico, S.A. de C.V. f/k/a Sanitarios Lamosa S.A. de C.V. a/k/a Vortens.

- O. “Effective Date” means the first date that is three business days after all of the following have occurred: (i) the Court has entered an order granting final approval of the Settlement Agreement in accordance with the terms of this Agreement; (ii) the time for any challenge to the Settlement, both in the Court and on appeal, has elapsed; and (iii) the Settlement has become final, either because no timely challenge was made to it or because any timely challenge has been finally adjudicated and rejected. For purposes of this paragraph, an “appeal” shall not include any appeal that concerns solely the issue of Class Counsel’s Attorney Fees and Expenses or the Service Awards to the Class Representatives.
- P. “Equitable Relief Class” means all Texas owners of Vortens™ toilet tank models #3464 and #3412 manufactured at the Benito Juarez plant, with a manufacturing date 2007-2010.
- Q. “Fairness Hearing” means the final hearing, to be held after notice has been provided to the Equitable Relief Class in accordance with this Agreement, (i) to determine whether to grant final approval to (a) re-affirm certification of the Equitable Relief Class, (b) designate Class Representatives, (c) designate Class Counsel as counsel for the Equitable Relief Class, and (d) the Settlement; (2) to consider whether to enter the Final Approval Order, and (3) to rule on Class Counsel’s Fee Petitions.
- R. “FAQ” means the long-form notice to the Settlement Class in the form of Frequently Asked Questions and Answers to be approved by the Court and posted on the Equitable Relief Settlement Website in accordance with this Agreement.
- S. “Fee Petition” means the application to be filed by Class Counsel by which they will seek an award of attorney fees and reimbursement of litigation expenses incurred by them in prosecuting the Lawsuit, and all aspects of the settlement of it, as well as a Service Award to be paid to Class Representatives.
- T. “Final Approval Order” means the proposed Order Granting Final Approval to the Equitable Relief Settlement, to be entered by the Court as contemplated by Section III.B.
- U. “Notice Date” means January 16, 2020, which is the date the Settlement Administrator initiates Summary Notices to Class Members pursuant to the Court Order dated November 25, 2019.
- V. “Notice of Claim Denial” means the form that the Settlement Administrator will send, by first-class United States Mail, to each Person who has submitted a Claim Form that the Settlement Administrator has determined, subject to review and approval by Class Counsel, to not be a Valid Claim.
- W. “Parties” means Plaintiffs and Porcelana, collectively.

- X. “Person” means any natural person.
- Y. “Plaintiffs” mean Mark and Amber Fessler, Andrew Hocker, Matthew Carreras, Aaron and Stacey Stone, and Daniel and Sharon Sousa.
- Z. “Preliminary Approval Order” means the proposed Order Granting Preliminary Approval to the Settlement, to be entered by the Court.
- AA. “Publication Notice” means the proposed notice to be approved by the Court and published in accordance with the notice plan set forth in Section III.A.5 and Section V of this Agreement and further defined in the Notice Provider Declaration to be filed with the Court.
- BB. “Qualifying Photograph(s),” as required by Section IV.B.3a means a photograph of the interior of the Class Tank with the manufacturing date, model number, and three-digit cast number displayed within the photograph(s) through some reasonable means.
- CC. “Released Claims” means all claims released by Plaintiffs and all Equitable Relief Settlement Class Members pursuant to the release and waiver set forth in Section IX of this Agreement.
- DD. “Releasees” means (i) Defendant, together with its predecessors and successors in interest, parents, subsidiaries, affiliates, and assigns; (ii) each of Defendant’s past, present, and future officers, directors, agents, representatives, servants, employees, attorneys, and insurers; and (iii) all distributors, retailers, suppliers, and other entities who were or are in the chain of design, testing, manufacture, assembly, distribution, marketing, sale, installation, or servicing of the Class Toilet tanks.
- EE. “Service Award” means a reasonable payment, subject to Court approval, made to a Plaintiff as compensation for his/her efforts in pursuing these Actions.
- FF. “Settlement” means the settlement provided for in this Agreement.
- GG. “Settlement Administrator” means Epiq | Hilsoft Notifications.
- HH. “Settlement Class” means all Texas owners who (i) purchased a Class Tank, or (ii) acquired a Class Tank as part of the purchase of a home, residence, or structure. Excluded from the Settlement Class are (i) officers, directors, and employees of Porcelana or its parents, subsidiaries, or affiliates, (ii) insurers of Settlement Class Members, (iii) subrogees or all entities claiming to be subrogated to the rights of a Class Tank purchaser, a Class Tank owner, or a Settlement Class Member, and (iv) issuers or providers of extended warranties or service contracts for Class Toilet tanks.
- II. “Settlement Class Member” means all Persons falling within the definition of the Equitable Relief Settlement Class.

- JJ. “Settlement Website” means a website created by the Settlement Administrator to facilitate notice and claims administration, as detailed in Section III, ¶A.5, Section V, and Section VI, ¶B.1 of this Agreement.
- KK. “Summary Notice” means the proposed notice to be mailed by the Settlement Administrator to each address of record in Porcelana’s databases (after being run through the National Change of Address database), and emailed to Equitable Relief Settlement Class Members for whom valid email addresses are known to Porcelana.
- LL. “Valid Claim” means a Claim Form that (i) is timely submitted by a Settlement Class Member in accordance with the requirements of this Agreement and the Preliminary Approval Order, (ii) is signed with a certification that the information is true and correct to the best of the claimant’s knowledge and recollection, and (iii) contains all of the attestations, certifications, information, and documentation required for that Settlement Class Member to be eligible to receive one or more of the benefits provided in Section IV of this Agreement.
- MM. “Warranty Protection” for purposes of this Agreement means the replacement of a fractured tank at no cost to the consumer, and does not include other property damages.

II. CONDITIONAL CERTIFICATION OF TEXAS-ONLY SETTLEMENT CLASS

For purposes of implementing this Agreement, and for no other purpose, Porcelana stipulates to the conditional certification of the Equitable Relief Settlement Class.

III. REQUIRED EVENTS

- A. As soon as practicable after executing this Agreement, the Parties shall take all necessary steps to file with the Court this Agreement and a joint motion seeking entry of the Preliminary Approval Order, which by its terms shall accomplish all of the following:
1. Preliminarily approve the Settlement and this Agreement as fair and reasonable to the Equitable Relief Settlement Class;
 2. Conditionally certify the Equitable Relief Settlement Class for purposes of effectuating the Settlement;
 3. Designate Aaron and Stacey Stone and Daniel and Sharon Sousa as the Class Representatives;
 4. Designate Class Counsel as counsel for the Equitable Relief Settlement Class;
 5. Designate Epiq | Hilsoft Notifications as the Notice Provider and Claims Settlement Administrator and instruct the Settlement Administrator to

perform the following functions in accordance with the terms of this Agreement, the Preliminary Approval Order, and the Final Approval Order:

- a. Disseminate the Summary Notice;
- b. Establish the Settlement Website with the Settlement Agreement, FAQ, and other information that Porcelana and Class Counsel jointly agree to post concerning the nature of the case and the status of the Equitable Relief Settlement, including relevant pleadings such as the operative Complaint, papers in support of preliminary and final approval of the Settlement, and Class Counsel's Fee Petition, plus relevant orders of the Court;
- c. Establish a toll-free telephone number that Class Members can call to request hard copies of the Claim Forms and FAQ be sent to them by mail and obtain additional information regarding the Settlement. This should be accomplished before mailing the Settlement Notice or publishing Publication Notice.
- d. Receive, evaluate, and either approve completed Claim Forms sent by Persons seeking to receive compensation as meeting the requirements of the Agreement or disapprove as failing to meet those requirements;
- e. Subject to the provisions of Section V, ¶D of this Agreement, thirty days before mailing Notices of Claim Denial, provide to Porcelana and Class Counsel (i) a list of the names and addresses of all Settlement Class Members who have submitted Claim Forms and whose Claim Forms the Settlement Administrator has determined to be Valid Claims; and (ii) a separate list of the names and addresses of all Persons who have submitted Claim Forms and whose Claim Forms the Settlement Administrator has determined not to be Valid Claims, by category of benefit. Porcelana and Class Counsel shall then have an opportunity to review the Valid Claims and the Notices of Claim Denial and request a meet and confer should they decide to challenge any Valid Claims or Notices of Claim Denial. In the event Lead Counsel challenges a Notice of Claim Denial, that Notice shall not be sent to the Class Member until Class Counsel and counsel for Defendant meet and confer to arrive at a resolution. Legitimate grounds for Porcelana and Class Counsel to challenge a claim shall include, but are not limited to, inadequate documentation and inconsistency with Porcelana's records.
- f. Effect Publication Notice through appropriate media for the Equitable Relief Settlement Class.
- g. Send, by first-class United States Mail, to each Person who has submitted a Claim Form that the Settlement Administrator has

determined not to be a Valid Claim, and which has not been challenged by Class Counsel, a Notice of Claim Denial. Such a person shall have 30 days to cure the reason for any denial.

- h. Process objections to the Settlement in accordance with this Agreement;
 - i. Within 30 days after the processing or payment of all Valid Claims by the Settlement Administrator, provide to Porcelana and Class Counsel, under penalty of perjury, a statement of the total number of claims submitted, the total number of claims adjudicated as Valid Claims, and the total dollar amount paid to Equitable Relief Settlement Class Members as incidental recovery or reimbursement under the terms of this Agreement.
 6. Approve the form, contents, and methods of notice to be given to the Equitable Relief Settlement Class and direct the Settlement Administrator to provide and cause to be provided such notices and to file with the Court a declaration detailing the scope, methods, and results of the notice program.
 7. Establish procedures and schedule deadlines for Equitable Relief Settlement Class Members to object to the Settlement or certification of the Settlement Class, and to submit Claim Forms to the Settlement Administrator, all consistent with the terms of this Agreement.
 8. Schedule the Fairness Hearing; and
 9. Schedule deadlines for the filing of (a) papers in support of final approval of the certification of the Settlement Class, the designation of class representatives of the Settlement Class, the appointment of Class Counsel as counsel for the Settlement Class, and the Settlement; (b) Class Counsel's Fee Application; and (c) objections to certification of the Equitable Relief Settlement Class, to the designation of class representatives of the Settlement Class, to the appointment of Class Counsel as counsel for the Settlement Class, or to the Settlement.
- B. At the Fairness Hearing, Porcelana and Class Counsel will jointly request the Court to enter a Final Approval Order that (1) certifies the Settlement Class, designates Plaintiffs Aaron and Stacey Stone and Daniel and Sharon Sousa as Class Representatives, and designates Class Counsel as counsel for the Settlement Class; (2) grants final approval of the Settlement and this Agreement as fair, reasonable, and adequate to the Equitable Relief Settlement Class Members; (3) provides for the release of all Released Claims and enjoins Equitable Relief Settlement Class Members from asserting, filing, maintaining, or prosecuting any of the Released Claims in the future; (4) orders the dismissal with prejudice of all claims, causes of action, and counts alleged in the Lawsuit, and incorporates the releases and covenant not to sue stated in this Agreement, with each of the Parties to bear its,

his, or her own costs and attorney fees, except as provided in Section VIII below; (5) authorizes the payment by Porcelana of Valid Claims approved by the Settlement Administrator as Valid Claims, and otherwise reviewed by Class Counsel and Counsel for Porcelana and determined to be Valid Claims, in accordance with the terms of the Agreement; and (6) preserves the Court's continuing jurisdiction over the administration of the Settlement and enforcement of this Agreement. In addition, Class Counsel will move the Court for entry of a separate order approving the following: (1) Service Awards to Class Representatives, and (2) attorney fees and costs to Class Counsel in an amount as approved by the Court and consistent with the terms of this Agreement.

- C. Porcelana, Plaintiffs, and Class Counsel will cooperate and take all reasonable actions to accomplish the above. If the Court fails to enter either the Preliminary Approval Order or the Final Approval Order, Porcelana, Plaintiffs, and Class Counsel will use all reasonable efforts that are consistent with this Agreement to cure any defect identified by the Court.

IV. SETTLEMENT BENEFITS TO THE CLASS

The Equitable Relief Settlement Class provides benefits upon submission of a claim up through and including December 31, 2020 to the following:

All Texas owners of Vortens toilet tank models #3464 and #3412 manufactured at the Benito Juarez plant, with a manufacturing date 2007-2010.

- A. Injunctive Relief.

Equitable Relief Settlement Class Members are entitled to the following injunctive relief:

1. Porcelana shall provide notice on its website that tank models 3464 and 3412 manufactured at the Benito Juarez plant between January 1, 2007 and December 31, 2010 are guaranteed to Texas owners to be free of manufacturing defects or ceramic defects up through and including December 31, 2020.
2. Porcelana will further provide notice on its website directing Texas owners of the subject tanks to the claim website maintained by Epiq for administration of warranty claims for Texas-only Equitable Relief Settlement Class Members.
3. Porcelana will conduct an audit of previously denied warranty claims falling within the defined scope of the class. Porcelana will provide a list of homeowners with available contact information to Epiq as the Notice Provider and Claim Administrator for purposes of direct notice to these prior claimants that their previously denied warranty claim is subject to resubmission and reconsideration.

4. Epiq will maintain a Settlement Equitable Relief Class website that will post an agreed Texas Settlement Class claim form specific to claims asserted pursuant to this Settlement Agreement from the date of Preliminary Approval of the Settlement through and including December 31, 2020.
5. Porcelana is enjoined from creating, implementing or requiring any additional elements of proof in the claim process different than articulated in this Settlement Agreement.

B. Declaratory Relief.

Equitable Relief Settlement Class Members are entitled to the following declaratory relief:

1. Porcelana guarantees to Texas owners that tank models 3464 and 3412 manufactured at the Benito Juarez Plant between January 1, 2007 and December 31, 2010 are free of manufacturing defects or ceramic defects.
2. Porcelana extends warranty protections to the Equitable Relief Class Members up through and including December 31, 2020.
3. Equitable Relief Settlement Class members may submit a warranty claim (or resubmit a previously denied warranty claim) for a **past** fracture of a tank under the following terms and entitlements:
 - a. Proof of ownership of a class tank;⁴
 - b. Submission of receipts or other documentary proof of replacement costs to be entitled to reimbursement;⁵
 - c. Class members are entitled to recover product replacement costs (product and installation only) and reimbursement is capped at \$300 per tank/toilet.
4. Class members experiencing a fracture event of an eligible tank between the date of Settlement Notice and December 31, 2020 are entitled to replacement at no cost to the Class Member, as follows:
 - a. Upon proof of fracture, Porcelana shall provide replacement tank product compatible with the particular toilet basin to be picked up by the claimant from a location no farther than 30 miles from the owner's residence at no cost to the class member.

⁴ Documentary proof of ownership may include home purchase documents, installer records, builder records, deed information and qualifying photographs demonstrating proof of tank ownership.

⁵ Documentary proof of expenses includes records such as receipts, invoices, insurance claim records, and/or sufficient banking/credit purchase or expenditure documentation.

In the event a compatible replacement tank product is available but outside of the designated geographic area, the Class Member is entitled to warranty relief in the form of a single payment of \$35.00 for replacement of the fractured tank.

- b. Upon proof of fracture and in the event the entire toilet must be replaced due to incompatibility of current Porcelana tank product and the original basin, an eligible class member is entitled to reimbursement of incurred replacement expenses not to exceed \$300. Class members must submit receipts or other documentary proof of replacement costs to be entitled to reimbursement, as well as an explanation of why there was no compatible tank available.

C. Additional Benefit Considerations.

1. As set forth more fully below, to qualify for any compensation described in this Section IV, an Equitable Relief Class Member must timely submit to the Settlement Administrator a properly completed Claim Form.
2. Warranty claims falling within the scope of this Texas-only Settlement Class received through Defendant's website or by direct contact with the Defendant will be forwarded to Epiq within 3 (three) business days of receipt.
3. Porcelana will search and analyze its Customer Information and all Claims Databases to attempt to identify Settlement Class Members. To the extent practicable, the Settlement Administrator will prepopulate Equitable Relief Class Member claim forms with the information from the Customer Information Databases necessary for the Settlement Class Member to make a claim for benefits. Settlement Class Members who are not identified by this process may obtain a unique claim identification number by submitting their Class Tank's valid model and manufacturing information combination, together with their name and certain contact information, on the Settlement Website.
4. Defendant will not alter the Equitable Relief Class claim procedure in any manner that increases the burden of submission or proof beyond the terms of this Settlement Agreement.

V. CLASS SETTLEMENT ADMINISTRATION AND NOTICE EXPENSES

- A. All notice, publication and claims administration activities shall be carried out exclusively by the Settlement Administrator, including the evaluation of documentary proof submitted by Equitable Relief Class Members.
- B. Porcelana agrees to pay for reasonable Administration and Notice Expenses. Porcelana shall be required to pay the reasonable costs, if any, billed by the

Settlement Administrator with respect to work performed by the Settlement Administrator to provide information to the Court regarding the notice and settlement administration process related to challenges or objections to the Agreement or the Settlement.

- C. Before denying any claim on the basis of insufficient documentary proof, the Settlement Administrator shall send a written notice of deficiency to the Settlement Class Member identifying the insufficient proof that may cause the claim to be denied and giving the Settlement Class Member no less than 30 days to cure the deficiency.
- D. If any Equitable Relief Settlement Class Member disputes the Settlement Administrator's denial of a claim for any reason, the Settlement Administrator shall send the claim to Porcelana for Porcelana to determine the claim's validity. Porcelana's determination shall be final and binding unless Class Counsel, within 30 days of notification of Porcelana's determination, contests Porcelana's determination by first attempting to resolve the claim in dispute directly with Porcelana's counsel, and if those efforts are unsuccessful, by presenting the matter for determination by the Court.
- E. The Parties agree that Epiq will serve as the Settlement Administrator, subject to the Court's approval.
- F. All decisions regarding notice and settlement administration shall be made jointly between Porcelana and Class Counsel. Class Counsel and counsel for Porcelana shall have the ability to communicate with the Settlement Administrator without the need to include each other in each of those communications. Disputes, if any, shall be resolved by the Court. This includes any disputes over whether a particular class member is entitled to recover a particular claim for relief.
- G. The Settlement Administrator will mail the Summary Notice to each Settlement Class Member for whom an address can be found in the Customer Information Databases and also provide email notice to all Settlement Class Members for whom valid email addresses can be found in the Customer Information Databases. The Settlement Administrator will perform a national change of address search and forward notice packages that are returned by the U.S. Postal Service with a forwarding address. The Settlement Administrator also will provide Publication Notice to the Settlement Class Members using appropriate media outlets, and all media notices shall be approved by Porcelana and Class Counsel before the notices are published. The Settlement Administrator will mail a copy of the Claim Form to Settlement Class Members who request a hardcopy form.
- H. The Settlement Administrator will create a Settlement Website that will include all necessary and pertinent information for Settlement Class Members, including the Claim Form, the FAQ, and information relating to relevant deadlines. The Settlement Website will also permit Settlement Class Members to submit claims online, including uploading any necessary documentation. The Settlement Website will also include information that Porcelana and Class Counsel jointly agree to post

concerning the nature of the case and the status of the Settlement, including relevant pleadings such as the operative Complaint, papers in support of preliminary and final approval of the Settlement, Class Counsel's Fee Petition, plus relevant orders of the Court.

- I. The Settlement Administrator will provide to Class Counsel and Porcelana periodic status reports regarding claims.
- J. The Parties agree that the Summary Notice, FAQ, Publication Notice, Claim Form, and Settlement Website provide information sufficient to inform Equitable Relief Settlement Class Members of the essential terms of this Agreement, appropriate means for obtaining additional information regarding the Agreement and the Lawsuits, appropriate information about the procedure for challenging or excluding themselves from the Settlement, if they should wish to do so, and appropriate means for and information about submitting a claim for compensation pursuant to the Settlement. The Parties also agree that the dissemination of notice of the Settlement in the manner specified in this Agreement and on the Settlement Website satisfies the notice requirements of due process and Rule 23 of the Federal Rules of Civil Procedure.
- K. The Parties will jointly request the Court to approve, in the Preliminary Approval Order, the method of notice described in this Agreement.
- L. The Parties will file a Joint Motion for Preliminary Approval of the Settlement Class with the Court and Porcelana will cooperate with Epiq to ensure compliance with the notice provisions of the Class Action Fairness Act, 28 U.S.C. section 1715.

VI. PROCEDURES FOR SETTLEMENT APPROVAL

- A. The Parties shall use their best efforts to effectuate this Agreement, including cooperating in drafting the preliminary approval documents and securing the prompt, complete, and final dismissal, with prejudice, of the Lawsuit.
- B. Preliminary Approval.

The Parties will jointly move the Court for preliminary approval of the Settlement; for authorization to publish the Publication Notice and to disseminate the Summary Notice contemplated by this Agreement to all members of the Equitable Relief Settlement Class.

- 1. The deadlines established in the proposed Preliminary Approval Order are anticipated as follows:
 - a. Directing the Settlement Administrator to post the Class Notice and this Agreement on a website with a domain name instructive as to the nature of the Class and Defendant, such as "vortenswarrantytx" or similarly descriptive domain so long as the term "Vortens" is included.

- b. Requiring that any member of the Equitable Relief Settlement Class who desires to object to the Settlement Class submit to the Settlement Administrator an appropriate, timely objection in the form set forth in the Class Notice to the address stated in the Class Notice on or before a date set by the Court;
 - c. Requiring the Settlement Administrator file a list of all persons objecting to the Equitable Relief Settlement within 5 Days after the expiration of the Deadline for Exclusion and/or Objections;
2. For the purpose of computing deadlines, the Parties incorporate Federal Rule of Civil Procedure 6(a)(1).

C. Final Approval.

1. The Fairness Hearing is set for **March 2, 2020** at 9:00 a.m. before United States District Judge Amos Mazzant at the Paul Brown United States Courthouse, 101 E. Pecan Street, Sherman, Texas 75090.
2. At the Fairness Hearing, the Parties will jointly request the Court to enter a Final Approval Order, which (i) grants final approval of the certification of the Equitable Relief Settlement Class, designation of the Class Representatives, and designation of Class Counsel, all as conditionally approved in the Preliminary Approval Order; (ii) grants final approval to the Settlement and this Agreement as fair, reasonable, and adequate to the Settlement Class; (iii) provides for the release of all Released Claims and enjoins Settlement Class Members from asserting, filing, maintaining, or prosecuting any of the Released Claims in the future; (iv) orders the dismissal with prejudice of all claims, causes of action, and counts alleged in the Lawsuits, and incorporates the releases and covenant not to sue stated in this Agreement; (v) authorizes the payment by Porcelana of claims approved by the Settlement Administrator as Valid Claims in accordance with the terms of the Agreement; and (vi) preserves the Court's continuing jurisdiction over the administration of the Settlement and enforcement of the Agreement.
3. In addition, Class Counsel will move the Court for entry of a separate order approving: (1) Service Awards to Class Representatives; and (2) attorney fees and costs to Class Counsel.

VII. OBJECTIONS BY CLASS MEMBERS

- A. The Notices shall state that any Class Member who wishes to appear to oppose the reasonableness and fairness of the Settlement at the Fairness Hearing must file with the Court an objection in writing, stating the basis of the objection. Objections must also be served on Class Counsel and counsel for Porcelana by the stated deadline. Any objections must include (i) the Class Member's full name and

current address and telephone number; (ii) the model number and serial number of the Class Tank the Class Member owns or owned, with documentary proof of ownership, as described in section IV a description of all of the Class Member's objections, the specific reasons therefore, and any and all supporting papers, including, without limitation, all briefs, written evidence, and declarations; and (iii) the Class Member's signature.

- B. Class Members submitting objections who wish to appear either personally or through counsel at the Fairness Hearing and present their objections to the Court orally must include a written statement of intent to appear at the Fairness Hearing in the manner prescribed by the Notice. Only Class Members who specify in their objections that they intend to appear personally or through counsel at the Fairness Hearing will have the right to present their objections orally at the Fairness Hearing. Settlement Class Members who do not submit timely written objections will not be permitted to present their objections at the Fairness Hearing.
- C. Any Class Member who does not so object by the timely filing and delivery of an objection (pursuant to the procedures set forth in the Notice) to the Court and to counsel for the Parties, shall be deemed to have waived, and shall forever be foreclosed from raising, any objection to the Settlement.

VIII. CLASS COUNSEL'S APPLICATION FOR AN AWARD OF ATTORNEY FEES AND COSTS AND SERVICE AWARDS TO PLAINTIFF

- A. Attorney Fees and Costs and Service Awards do not reduce the amount of money available to reimburse Settlement Class Members pursuant to this Agreement.
- B. The amount of attorney fees and costs to be paid to Class Counsel shall be determined by the Court. After the Court preliminarily approves the Settlement, Class Counsel may submit a Fee Application to the Court.
- C. Within five days of 1) the Effective Date or 2) the final resolution of all appeals and/or objections to Class Counsel's Fee Application, whichever is later, Defendant shall pay any Court-approved amount of attorney fees and costs in the form of one or more checks or wire transfers delivered into trust accounts to be identified by Class Counsel. Class Counsel shall provide to Defendant's counsel in a timely manner all wiring and account information necessary to enable Porcelana to make such deposits within the time required.
- D. Plaintiffs agree not to request an amount greater than \$7,500 to be awarded to the Class Representatives to compensate them for their efforts in pursuing litigation on behalf of the Equitable Relief Settlement Class.
- E. Any issues relating to attorney fees and costs or to any Service Award are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of this Agreement and the Settlement. The Court's or an appellate court's failure to approve, in whole or in part, any award of attorney fees and costs to Class Counsel, or any Service Award, shall not affect the validity

or finality of the Settlement, nor shall such non-approval be grounds for rescission of the Agreement, as such matters are not the subject of any agreement among the Parties other than as set forth above.

IX. RELEASES

- A. Class Members' Limited Release of Injunctive Claims Only. Upon the Final Settlement Date, the members of the Equitable Relief Settlement Class and their present, former, and future heirs, executors, administrators, representatives, agents, attorneys, partners, predecessors-in-interest, successors, assigns, and legatees, fully, finally and forever release, relinquish, and discharge the Released Parties from all claims for warranty, equitable, injunctive or declaratory relief based on the facts that were or could have been alleged in the Plaintiffs' Second Amended Complaint, including but not limited to injunctive claims arising out of or relating to any of the facts, transactions, events, occurrences, acts, disclosures, statements, misrepresentations, omissions, failures to act, or other conduct that was or could have been alleged, including, but not limited to, claims regarding Defendant's conduct, practices, disclosures, terms, and policies relating to the availability of the benefits described herein.
- B. Individual Plaintiff Releases. The Named Plaintiffs have asserted individual claims for damages not addressed by the Texas Settlement Class-Equitable Relief arising from damage to other property, and the material terms of these agreements are included in the Memorandum of Understanding dated November 21, 2019.⁶ The Plaintiffs will execute separate and individual Settlement Documents regarding these individual claims. The Class Representatives have agreed to resolve their individual claims in exchange for the following sums:
 1. *Aaron and Stacy Stone.* Defendant agrees to pay the Stone Plaintiffs \$6,890.12 in exchange for a full release of all personal and individual claims.
 2. *Daniel Sousa.* Defendant agrees to pay Plaintiff Sousa \$6,697.00 in exchange for a full release of all personal and individual claims.

Upon the Final Settlement Date, the Plaintiffs and their present, former, and future heirs, executors, administrators, representatives, agents, attorneys, partners, predecessors-in-interest, successors, assigns, and legatees, fully, finally and forever release, relinquish, and discharge the Released Parties from all claims based on the facts that were or could have been alleged in the Plaintiffs' Second Amended Complaint, including but not limited to property damage and equitable claims arising out of or relating to any of the facts, transactions, events, occurrences, acts,

⁶ It is expressly understood that Settlement as to any Class Representative on their asserted individual claim(s) is wholly contingent upon approval of the Texas-only Warranty Settlement Class:

disclosures, statements, misrepresentations, omissions, failures to act, or other conduct that was or could have been alleged, including, but not limited to, claims regarding Defendant's conduct, practices, disclosures, terms, and policies relating to the availability of the benefits described herein.

- C. By executing this Agreement, the Parties acknowledge that, upon entry of the Final Approval Order by the Court, the Lawsuit shall be dismissed with prejudice, an order of dismissal with prejudice shall be entered, and all Released Claims shall thereby be conclusively settled, compromised, satisfied, and released as to the Releasees. The Final Approval Order shall provide for and effect the full and final release, by Plaintiffs and all Equitable Relief Settlement Class Members, of all Released Claims.
- D. Plaintiffs and the Equitable Relief Settlement Class Members expressly consent that this release shall be given full force and effect according to each of its terms and provisions, including those relating to unknown and unspecified claims, injuries, demands, rights, lawsuits, or causes of action as referenced above. Plaintiffs and the Settlement Class Members acknowledge and agree that this waiver is an essential and material term of this release and the compromise settlement that led to it, and that without this waiver the compromise settlement would not have been accomplished. Plaintiffs have been advised by their attorneys with respect to this waiver and, being of competent mind, understand and acknowledge its significance.
- E. Each Party hereto expressly accepts and assumes the risk that if facts with respect to matters covered by this Agreement are found hereafter to be other than or different from the facts now believed or assumed to be true, this Agreement shall nevertheless remain effective. It is understood and agreed that this Agreement shall constitute a general release and shall be effective as a full and final accord and satisfaction and is a bar to all actions, causes of action, costs, expenses, attorney fees, damages, claims, and liabilities whatsoever, whether or not now known, suspected, claimed or concealed, pertaining to the Released Claims of this Agreement.
- F. Notwithstanding the above, the Court shall retain jurisdiction over the Parties and the Agreement with respect to the future performance of the terms of the Agreement, and to assure that all payments and other actions required of any of the Parties by the Settlement are properly made.

X. COVENANT NOT TO SUE

Plaintiffs (i) covenant and agree that neither they, nor anyone authorized to act on their behalf, will commence, authorize, or accept any benefit from any judicial or administrative action or proceeding, other than as expressly provided for in this Agreement, against the Releasees, or any of them, in either their personal or corporate capacity, with respect to any claim, matter, or issue that in any way arises from, is based on, or relates to any alleged loss, harm, or damages allegedly caused by the Releasees, or any of them, in connection with the Released Claims; (ii) waive and disclaim any right to any form of recovery, compensation, or other remedy in any such

action or proceeding brought by or on behalf of them or any putative class of Class Tank owners related to this suit; and (iii) agrees that this Agreement shall be a complete bar to any such action by Plaintiffs.

XI. REPRESENTATIONS AND WARRANTIES

Each of the Parties represents and warrants to, and agrees with, each of the other Parties as follows:

- A. Each Party has had the opportunity to receive, and has received, independent legal advice from his, her, or its attorneys regarding the advisability of making the Settlement, the advisability of executing this Agreement, and the legal and income-tax consequences of this Agreement, and fully understands and accepts the terms of this Agreement.
- B. Plaintiffs represent and warrant that no portion of any claim, right, demand, action, or cause of action against any of the Releasees that Plaintiffs have or may have arising out of the Lawsuits or pertaining to the Class Toilet Tanks or otherwise referred to in this Agreement, and no portion of any recovery or settlement to which Plaintiffs may be entitled, have been assigned, transferred, or conveyed by or for Plaintiffs in any manner; and no Person or entity other than Plaintiffs has any legal or equitable interest in the claims, demands, actions, or causes of action referred to in this Agreement as those of Plaintiffs themselves.
- C. None of the Parties relies or has relied on any statement, representation, omission, inducement, or promise of the other Party (or any officer, agent, employee, representative, or attorney for the other Party) in executing this Agreement, or in making the Settlement provided for herein, except as expressly stated in this Agreement.
- D. Each of the Parties has investigated the facts pertaining to the Settlement and this Agreement, and all matters pertaining thereto, to the full extent deemed necessary by that Party and his, her, or its attorneys.
- E. Each of the Parties has carefully read, knows, and understands the full contents of this Agreement and is voluntarily entering into this Agreement after having had the opportunity to consult with, and having in fact consulted with, his, her, or its attorneys.
- F. Each term of this Agreement is contractual and not merely a recital.

XII. NO ADMISSION OF LIABILITY

This Agreement is for settlement purposes only. It has been entered into for the purpose of compromising and settling a disputed matter and is not an admission of any deficiency or defect of any kind regarding the Class Toilet Tanks. Neither the execution of this Agreement, nor any of its provisions, nor any action taken pursuant to its terms shall, in this action or in any other action or proceeding, be construed or considered as evidence of an admission by Defendant of the validity

of any Claim that has or could have been made by the Plaintiffs, the Equitable Relief Settlement Class, or any Settlement Class Member, and Defendant denies there are any deficiencies or defects with or in the Class Toilet Tanks or in their design, manufacture, sale, distribution, marketing, warranty, or performance. It is understood and agreed that the Settlement sums and the benefits provided in this Agreement, and this Settlement and Release, are for the compromise of disputed claims and are not to be construed as or deemed to be an admission of any liability, fault, or responsibility on the part of any of the Releasees, by whom liability and fault are, and always have been, expressly and completely denied.

XIII. ADDITIONAL TERMS

- A. Extensions of Time: Unless otherwise ordered by the Court, the Parties may agree to reasonable extensions of time to carry out any of the terms of this Agreement and Settlement.
- B. Cooperation: The Parties agree that they will abide by this Agreement and do all such acts, and prepare, execute, and deliver all such documents, as may reasonably be required to carry out the stated objectives of this Agreement.
- C. Interpretation and Construction: Each Party has participated in the negotiation and drafting of all provisions of this Agreement, has had an adequate opportunity to read, review, and consider with his, her, or its own counsel the effect of the language of this Agreement, and has agreed to its terms. Accordingly, the legal maxim that “ambiguity shall be interpreted against the drafter” has no relevance to the interpretation or construction of this Agreement.
- D. Severance/Severability: With the exception of the provision for attorney fees and costs to Class Counsel and Service Awards to Plaintiffs, none of the terms of this Agreement is severable from the others. If the Court or an appellate court should rule that any term is void, illegal, or unenforceable for any reason, however, Defendant, in its sole discretion, and Plaintiffs, in their sole discretion (but acting in accord with their duties and obligations as Class Representatives), may elect to waive any such deficiency and proceed with the Settlement under the terms and conditions ultimately approved by the Court.
- E. Return or Destruction of Confidential Documents: Within thirty (30) days of the Effective Date, the Parties agree to return to the producing Party or destroy (with written confirmation of such destruction) all documents marked confidential pursuant to the Protective Order entered in the Lawsuits.
- F. Governing Law: With the exception of the Court’s determination of a reasonable award of attorney fees and costs to Class Counsel, which the Parties agree shall be governed by federal law, this Agreement has been, and shall for all purposes be deemed to have been, negotiated, executed, and delivered within the State of Texas, and the rights and obligations of the Parties shall be construed and enforced in accordance with, and governed by, the laws of the State of Texas.

- G. Entire Agreement of the Parties: This Agreement constitutes and comprises the entire agreement between the Parties with respect to the subject matter hereof. It supersedes all prior and contemporaneous oral and written agreements and discussions. It may be amended only by an agreement in writing, signed by the Parties.
- H. Binding on Agents, Successors, and Assigns: This Agreement is binding on, and shall inure to the benefit of, the Parties and their respective agents, employees, representatives, officers, directors, subsidiaries, assigns, heirs, executors, administrators, insurers, and predecessors and successors in interest.
- I. Draft by All Parties: Each Party has participated in, and in any construction to be made of this Agreement shall be deemed to have equally participated in, the negotiating, drafting, and execution of this Agreement.
- J. Court Approval: The parties agree to seek approval of this proposed Settlement in the United States District Court for the Eastern District of Texas – Sherman Division.
- K. Service in the Normal Course of Business: Defendant will continue to provide service in the normal course of business to its customers, including Settlement Class Members, through the Effective Date.

Dated: December 10, 2019

READ AND APPROVED:

By: _____
N. Scott Carpenter
Counsel for Plaintiffs

By: Melissa Dorman Matthews
Melissa Dorman Matthews
Counsel for Defendant