

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

JASON TRABAKOOLAS, SHEILA STETSON,  
CHRISTIE WHEELER, JACK MOONEY, and  
KEVEN TURNER individually and on behalf of  
all others similarly situated,

Plaintiffs

v.

WATTS WATER TECHNOLOGIES, INC.,  
WATTS REGULATOR CO., WOLVERINE  
BRASS, INC., AND JOHN DOES 1-100.

Defendants.

No. 3:12-cv-01172-WHO (EDL)

CLASS ACTION

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



1 EXCLUDED FROM THE SETTLEMENT CLASS ARE: THOSE  
2 SETTLEMENT CLASS MEMBERS WHO PROPERLY EXCLUDE  
3 THEMSELVES FROM THE SETTLEMENT; THOSE  
4 SETTLEMENT CLASS MEMBERS WHO HAVE PREVIOUSLY  
5 RESOLVED THEIR CLAIMS THROUGH SETTLEMENT OR  
6 FINAL JUDGMENT; WATTS DEFENDANTS AND THEIR  
7 AFFILIATES; EXCEPT TO THE EXTENT THAT THEY  
8 ACTUALLY INSTALLED A TOILET CONNECTOR, ALL  
9 THOSE BUSINESSES AND ENTITIES THAT SOLD OR  
10 DISTRIBUTED A TOILET CONNECTOR, INCLUDING  
11 CUSTOMERS, RETAILERS, RESELLERS, WHOLESALERS  
12 AND DISTRIBUTORS WHO PURCHASED OR ACQUIRED  
13 TOILET CONNECTORS FROM ANY WATTS DEFENDANT;  
14 AND THE PRESIDING JUDGE AND HIS IMMEDIATE FAMILY.

15 4. Class Counsel and the Class Representatives are hereby found to be and are  
16 therefore appointed as adequate representatives of the Settlement Class: Plaintiffs Trabakoolas,  
17 Stetson, Wheeler, Mooney, and Turner are appointed as representatives of the proposed Settlement  
18 Class. Simon B. Paris, Esquire and Patrick Howard, Esquire of Saltz Mongeluzzi, Barrett &  
19 Bendesky, P.C., 1650 Market Street, 52<sup>nd</sup> Floor, Philadelphia, PA 19103 are appointed as Lead  
20 Counsel pursuant to Fed. R. Civ. P. 23(g) to represent the interests of the proposed Settlement  
21 Class.

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

1 manageability under Rule 23(b)(3)(D). Finally, a class action settlement is superior to other  
2 available methods for a fair resolution of the controversy.

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

8 Notice to Potential Settlement Class Members

9 7. The Court hereby approves the form and procedure for disseminating notice of the  
10 proposed settlement to the Settlement Class as set forth in the Agreement, except that the following  
11 corrections shall be made to the notice and to the Opt Out and Objection requirements:

- 12 • On the notice substantially in the form attached to the Settlement Agreement as  
13 Exhibit A, in section 16 entitled “How do I exclude myself from the settlement?,”  
14 modify subsections 4.b. and 4.c. to state: “Approximate date of purchase . . .” and  
“Approximate date of failure . . .,” respectively.
- 15 • On the notice substantially in the form attached to the Settlement Agreement as  
16 Exhibit A, in section 19 entitled “How do I tell the Court if I do not like the  
17 settlement?,” change “. . . first class mail to Lead Class Counsel and Watts’ counsel  
18 . . .” to “first class mail to District Judge William H. Orrick, United States District  
19 Court, 450 Golden Gate Avenue, San Francisco, CA 94102.”
- 20 • On the notice substantially in the form attached to the Settlement Agreement as  
21 Exhibit A, in section 19 entitled “How do I tell the Court if I do not like the  
22 settlement?,” modify Number 5 to “If it exists, proof that your residence or structure  
23 contains a Watts toilet connector with an acetal coupling nut (in the form of  
24 photographs, installation records, receipts etc.)”
- 25 • On the notice substantially in the form attached to the Settlement Agreement as  
26 Exhibit A, in section 19 entitled “How do I tell the Court if I do not like the  
27 settlement?,” modify Number 6 to: “the nature of the objection, the facts underlying  
28 it, and any legal authority supporting it, and whether or not the Settlement Class  
Member intends to appear at the Final Fairness Hearing.”
- On the notice substantially in the form attached to the Settlement Agreement as  
Exhibit A, in section 19 entitled “How do I tell the Court if I do not like the  
settlement?,” modify Number 7 to: “in order to most effectively explain the nature  
of his or her objection, the Settlement Class Member should, but is not required to,  
include all evidence and supporting papers (including, but not limited to, all briefs,

1 written evidence, and declarations) that the Settlement Class Member wants the  
2 Court to consider in support of the objection.”

- 3 • On the notice substantially in the form attached to the Settlement Agreement as  
4 Exhibit A, in section 19 entitled “How do I tell the Court if I do not like the  
5 settlement?,” delete Number 8: “Whether you (or your attorney if you are  
6 represented) have objected to a class action settlement more than two times before.  
7 If so, identify those cases by case name, court, and case number.”
- 8 • On the notice substantially in the form attached to the Settlement Agreement as  
9 Exhibit A, in section 19 entitled “How do I tell the Court if I do not like the  
10 settlement?,” delete: “If you object to the settlement, both sides may want to take  
11 your deposition, and you must make yourself available within a reasonable  
12 timeframe.”
- 13 • On the notice substantially in the form attached to the Settlement Agreement as  
14 Exhibit A, in section 19 entitled “How do I tell the Court if I do not like the  
15 settlement?,” modify the paragraph above the table containing addresses for Class  
16 Counsel and Counsel for Watts to state: “If you want to appear at the Fairness  
17 Hearing, on your own behalf (or through your own attorney) and speak in court, you  
18 should file a Notice of Appearance with the Court and the Claims Administrator no  
19 later than [Month 00, 0000]. This Notice should list (in detail) the subjects you will  
20 talk about.”
- 21 • On the notice substantially in the form attached to the Settlement Agreement as  
22 Exhibit A, in section 19 entitled “How do I tell the Court if I do not like the  
23 settlement?,” delete the table containing addresses for Class Counsel and Counsel  
24 for Watts. Objections will be filed on ECF and be available in that way to Class  
25 Counsel and Counsel for Watts.
- 26 • On the notice substantially in the form attached to the Settlement Agreement as  
27 Exhibit A, in section 19 entitled “How do I tell the Court if I do not like the  
28 settlement?,” modify the paragraph below the table containing addresses for Class  
Counsel and Counsel for Watts to state: “If you do not file your objection on time  
and include the information above, you may lose the opportunity to have your  
objection considered at the Fairness Hearing. You will also not be able to object to  
appeal any of the Court’s decisions in connection with the settlement.”
- On the notice substantially in the form attached to the Settlement Agreement as  
Exhibit A, in section 21 entitled “When and where will the Court decide whether to  
approve the settlement?,” modify the final sentence to state: “. . . you should notify  
the Court of your intention to appear . . . .”

25 The Court finds that the notice plan contemplated constitutes the best notice practicable  
26 under the circumstances and is reasonably calculated, under the circumstances, to apprise  
27 Settlement Class Members of the pendency of the Action and their right to object to the proposed  
28

1 settlement or opt out of the Settlement Class in full compliance with the requirements of applicable  
2 law, including the Due Process Clause of the United States Constitution and Rules 23(c) and (e).  
3 In addition, Class Notice clearly and concisely states in plain, easily understood language: (i) the  
4 nature of the action; (ii) the definition of the certified Settlement Class; (iii) the claims and issues  
5 of the Settlement Class; (iv) that a Settlement Class Member may enter an appearance through an  
6 attorney if the member so desires; (v) that the Court will exclude from the Settlement Class any  
7 member who requests exclusions; (vi) the time and manner for requesting exclusion; and (vii) the  
8 binding effect of a class judgment on members under Rule 23(c)(3).

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

12 Retention of Class Action Settlement Administrator and Notice Plan

13 9. The Court authorizes the Parties to retain Rust Consulting and Kinsella Media to  
14 effectuate the Notice Plan and Epiq Systems to serve as the Claims Administrator. Rust Consulting  
15 and Kinsella Media shall provide all of the following forms of Notice within thirty (30) days of this  
16 order ("Notice Date"):

- 17 • *Direct Mail Notice.* A copy of the Notice of Pendency and Proposed  
18 Settlement of Class Action substantially in the form attached to the Settlement  
19 Agreement as Exhibit A<sup>1</sup> (the "Class Notice"), together with the Claim Form  
20 (including the Instructions, Claim Form and Release) substantially in the form  
21 attached to the Settlement Agreement as Exhibit D and this Order, shall be mailed to  
22 the subrogation departments of the insurance carriers who offer property insurance  
23 in the United States and such other claimants as can be identified.
- 24 • *Published Notice.* A copy of the Summary Notice substantially in the form  
25 attached to the Settlement Agreement as Exhibit B shall be published in either half  
26 or full page adds in the following magazines: *Better Homes & Gardens* (half-page /

27 \_\_\_\_\_  
28 <sup>1</sup> With the modifications noted above.

1 circulation 7.6 million); *ESPN* (half-page / circulation 2.1 million); *National*  
2 *Geographic* (full-page / circulation 4 million); *People* (half-page / circulation 3.475  
3 million). In addition, the Summary Notice are to be published both in *Parade* and  
4 *USA Weekend*.

5 • *National Press Release.* Issue a joint press release on *PR Newswire's*  
6 national wire, reaching approximately 5,500 media outlets and 5,400 websites. The  
7 release will discuss the Settlement and provide the address for the Settlement  
8 Website where information can be obtained and downloaded.

9 • *Internet Notice.* Banner ads to appear on leading networks, including *24/7*  
10 *Network*, *AOL Media Network*, and *Specific Media*. In addition, banner ads will  
11 appear on *Facebook.com*, which presently has over 1.15 billion monthly active users  
12 worldwide.

13 • *Postcard Notice.* A postcard substantially in the form attached to the  
14 Settlement Agreement as Exhibit C (“Settlement Postcard”) shall be mailed to  
15 various companies and business across the United States who provide water damage  
16 restoration and plumbing services informing them of the fact of the settlement and  
17 that the Class Notice and Claim Form are available on the Settlement Website, or by  
18 calling the Toll-Free Number.

19 • *Website Notice.* A copy of the Notice of Pendency and Proposed Settlement  
20 of Class Action will be posted and available for download on a Settlement Website,  
21 and will be mailed at no charge to Class Members who call a toll-free number to be  
22 (“Toll-Free Number”). This information is to remain available on the Internet until  
23 the last day of the five year Claims Period.

#### 24 Final Fairness Hearing

25 10. At or before the Final Fairness Hearing, the Notice Provider shall file with the Court  
26 documentation showing, and an affidavit attesting, that the Notice Plan was executed in accordance  
27 with this Order.  
28





1 States District Court, 450 Golden Gate Avenue, San Francisco, CA 94102 by the Objection  
2 Deadline. The objection must bear the signature of the Settlement Class Member (even if  
3 represented by counsel) with the date signed and must specify: (i) the name of the Class Action  
4 *Trabakoolas v. Watts*, No. 4:12-cv-01172-WHO; (ii) the Settlement Class Members current address  
5 and telephone number; (iii) whether, on the date of the written objection, the Settlement Class  
6 Member owns or rents a residence or structure or formerly owned or rented a residence or structure  
7 containing a Toilet Connector; (iv) the address of the property(ies) that may contain or have  
8 contained the Toilet Connectors; (v) if it exists, proof that the objector’s residence or structure  
9 contains a Toilet Connector designed, manufactured, distributed and/or sold by the Watts  
10 Defendants (photographs, contemporaneous installation records, etc.); (vi) the nature of the  
11 objection, the facts underlying it, and any legal authority supporting it, and whether or not the  
12 Settlement Class Member intends to appear at the Final Fairness Hearing; and (vii) in order to most  
13 effectively explain the nature of his or her objection, the Settlement Class Member may, but is not  
14 required to, include all evidence and supporting papers (including, but not limited to, all briefs,  
15 written evidence, and declarations) that the Settlement Class Member wants the Court to consider  
16 in support of the objection. If the Settlement Class Member is represented by counsel, the  
17 objection shall also be signed by the attorney who represents the Settlement Class Member.

18 Opts Outs

19 16. Any Settlement Class Member may request to be excluded (or “opt out”) from the  
20 Settlement Class. A Settlement Class Member who wishes to opt out of the Settlement Class must  
21 do so not later than 60 days from the Notice Date (“Opt Out Date”). In order to opt out, a  
22 Settlement Class Member must complete and mail to the Class Action Settlement Administrator,  
23 Epiq Systems, a Request for Exclusion that is post-marked no later than the Opt Out Date. The  
24 Request for Exclusion must bear the signature of the Settlement Class Member and include: (i) a  
25 specific request to opt out of the litigation; (ii) the Settlement Class Member’s name, current  
26 address, telephone number, and email address; (iii) proof that the Class Member has owned or  
27 leased a residence or other structure that contains a Toilet Connector (photographs,  
28

1 contemporaneous installation records, etc.); (iv) the approximate date of purchase or installation of  
2 any failed Toilet Connector and the date of failure; and (v) an estimate of the amount of damages,  
3 if any, that the Person sustained as the result of any alleged failure of a Toilet Connector. If the  
4 Settlement Class Member has entered into a written or oral agreement to be represented by counsel,  
5 the Opt Out Form shall also be signed by the attorney who represents the Settlement Class  
6 Member.

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

11 18. Any Settlement Class Member who has not properly filed a timely written Opt Out  
12 Form, and any insurer or other party who can or is entitled to pursue a claim through or in the name  
13 or right of a Class Member who has not properly filed a timely and complete written Opt Out  
14 Form, shall be bound by this Agreement and by all subsequent proceedings, orders, and judgments  
15 issued by the Court. Any Settlement Class Member who elects to opt out of the Settlement Class  
16 pursuant to this Agreement shall not be entitled to relief under or be affected by this Agreement.

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

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

#### 22 Injunction

23 20. The Court enjoins all Settlement Class Members, and all Persons that can pursue or  
24 are entitled to pursue an action in the name or right of a Settlement Class Member, from  
25 commencing or prosecuting any action asserting any claims that are the subject of this Action  
26 pending the Final Fairness Hearing, unless they have validly opted out of the settlement described  
27 in the Settlement Agreement and the Court has approved such opt outs.  
28

1 No Admission of Liability

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

13 Deadlines

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

- 16 a. The Notice Plan shall be completed within thirty (30) days of the  
17 Preliminary Approval Order (“Notice Date”).
- 18 b. All Requests to opt out of the Settlement must be received by the Claims  
19 Administrator within sixty (60) days of the Notice Date (“Opt Out Deadline”).
- 20 c. All Objections to the Settlement must be received by the Court within sixty  
21 (60) days of the Notice Date (“Objection Deadline”).
- 22 d. Thirty (30) days prior to the Objection Deadline, Lead Counsel shall file  
23 with the Court and post on the Settlement Website their application for payment of attorneys’ fees  
24 and expenses, and Service Awards for the Class Representatives.
- 25 e. No later than twenty (20) days prior to the Final Fairness Hearing the Parties  
26 shall file all papers in support of the application for final approval of the settlement and/or  
27 opposition to any Objections received.
- 28

1 f. A Final Fairness Hearing shall be scheduled within approximately ninety  
2 (90) days following the Notice Date, or as the Court's schedule permits.

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

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

9 Clarifications regarding Agreement

10 25. The Agreement provides for a Total Settlement Amount of \$23 million paid out  
11 over a period of five years. At the Final Fairness hearing, the parties shall advise the Court of the  
12 present value of the \$23 million Total Settlement Amount.

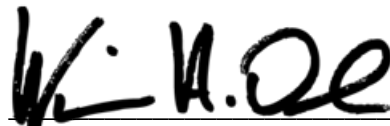
13 26. At the preliminary fairness hearing, the Court expressed concern that the Agreement  
14 appeared to contemplate that monies would revert to Defendants, and that the potential total  
15 amount of claims appeared uncertain given the information provided. Counsel for plaintiffs and  
16 Defendants provided the Court assurance that the known and anticipated claims should exhaust, or  
17 come very close to exhausting, the Total Settlement Amount of \$23 million that Defendants have  
18 agreed to pay. Further, counsel represented that their intent in drafting the Agreement, and  
19 particularly paragraph 62, was to provide the Court with complete discretion to direct any  
20 remaining funds in any fashion that is fair and reasonable to the class, including to *cy pres* or  
21 otherwise, and that the Court had authority under the Agreement not to allow the reversion of any  
22 amount to Defendants. On February 14, 2014, the parties filed a letter (Dkt. No. 275) and proposed  
23 Order (Dkt. No. 275-1), including the following language to supplement Paragraph 62(d) of the  
24 Settlement Agreement:

25 If any money remains in the Common Fund after the end of the  
26 Damage Claims Period and after all valid Settlement Claims for the  
27 Replacement Remedy and Property Damage Remedy have been paid,  
28 the Parties shall make a written recommendation to the Court  
regarding the disposition of the remaining funds, if any. The Court  
shall direct that the remaining funds shall be paid, or apportioned to,

1 the following: (1) the Watts Defendants; (2) the Claimants as  
2 additional compensation for Property Damage Claims; (3) a cy pres  
3 distribution to a charitable cause identified by the Parties and  
4 approved by the Court; and/or (4) any other use consistent with the  
5 Settlement Agreement as approved by the Court. The Court shall  
6 make a decision concerning the disposition of any remaining funds  
7 following a hearing requested by the Parties or any Settlement Class  
8 Member or set by the Court on its own motion.

9 The Court adopts the parties' supplemental language. The Court would not grant  
10 preliminary approval if the Agreement required a reversionary interest. The Court understands that  
11 its discretion relates to the Common Fund as defined in the Settlement: "that part of the Total  
12 Settlement Amount remaining after the payment of the cost of notice, attorneys' fees and expenses,  
13 Service Awards to Class Representatives and shall be the fund from which Replacement Claims  
14 and Damage Claims are paid." This includes any funds that have not already been paid from the  
15 Total Settlement Amount, irrespective of the operation of the funding provisions in paragraphs  
16 62(a)-(b) of the Settlement.

17 Date: February 14, 2014



18 Hon. William H. Orrick  
19 United States District Judge