

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

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EMANUELE DIMARE, et. al.	:	Case No. 4:12-md-02380-YK
	:	
Plaintiffs	:	
	:	
v.	:	Assigned to
	:	the Honorable Yvette Kane
SHOP-VAC	:	
CORPORATION, et. al.	:	
Defendants	:	
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OBJECTION

Objector, Michelle Vullings, hereby objects to the Settlement in *Emanuele Dimare, et. al. v. Shop-Vac Corporation, et. al.*, Case No. 12-md-02380 as follows:

PRELIMINARY STATEMENT

I, Michelle Vullings, am a class member in *In re: Shop-Vac Marketing and Sales Practices Litigation*, MDL No. 2380, Civil Action No. 4:12-md-02380. My address is 3903 Township Line Road, Collegeville, Pennsylvania 19426 and my phone number is (610) 489-4778. I intend to have my counsel appear on my behalf and speak at the Fairness Hearing. I received a post card notice in the mail indicating I was a Settlement class member. Exhibit 1.

INADEQUATE RELIEF

The relief is inadequate because it neither protects the Class nor the public from Defendant's conduct going forward. What steps will Defendant take to ensure compliance with the consumer fraud laws of the fifty states? What steps will Defendant take to ensure compliance with the Magnuson-Moss Warranty Act? What expectations should the public

have regarding Defendant's conduct? This settlement does not provide any injunctive relief that would prohibit Defendant or its agents from engaging in similar wrongful conduct. The Court should order some form of injunctive relief against the Defendant to the benefit of the Class and the public.

The Class cannot determine the reasonableness, adequacy, or fairness of the settlement relief because Class Counsel neither indicates the Class size in the notice or in its fee motion. The Class cannot determine settlement fairness without knowing how many people are valid Class Members.

Under the class action rule, the district court acts as a fiduciary guarding the rights of absent class members and must determine that a proffered settlement is fair, reasonable, and adequate. Fed.Rules Civ.Proc. Rule 23(e), 28 U.S.C.A.; see also *In re Cendant Corp. Litig.*, 264 F.3d 201, 231 (3d Cir. 2001). In the present matter, the relief is unfair because it does not adequately compensate Class Members who purchased the vacuum cleaner and simply disposed of said vacuum cleaner once it ceased to operate following its shorter than expected life. Such Class Members will waive all claims without receiving any compensation. The relief is unfair because it does not adequately compensate Class Members who purchased the vacuum cleaner, disposed of said vacuum cleaner once it ceased to operate, and purchased a new vacuum cleaner. Such Class Members will waive all claims without receiving any compensation. What is the cost to the Defendants for a manufacturer's warranty? Surely, under this warranty, the Defendant will replace defective parts from their supplier at a relatively inexpensive, wholesale cost. What real consideration do the Defendants give to the Class? The Class cannot determine this, but it is surely minimal.

The relief also is unfair because it does not adequately compensate Class Members for their waiver of consumer fraud and Magnuson-Moss Warranty Act claims. A fair settlement benefit would have included cash distributions to Class Members for their

waiver of consumer fraud and Magnuson-Moss Warranty Act claims. Instead, there is no cash compensation for the class whatsoever. Thus, there are Class Members who will waive all claims without receiving any compensation whatsoever.

INADEQUATE NOTICE

The notice program is not the best practicable notice under the circumstances. Did an expert submit a report regarding the sufficiency of the notice program? The Claims Administrator is using mail, email, and publication notice to reach the class; however, there is no indication as to how many valid mailing or email addresses the Claims Administrator has. More significantly, there is no indication as to whether or not the Administrator is performing a change of address search for claimants whose notices are being returned, or for other class members in defendants' records. There also is no explanation as to what steps the Claims Administrator will take if mailed notice is returned as undeliverable. What is the likelihood that the notice program will notify the majority of the class? As for publication notice, what is the circulation for **People Magazine** and **Family Handyman**, and how many class members will be reached through these magazines?

EXCESSIVE INCENTIVE AWARD

The requested incentive award is excessive and unfair to the Class. A lead plaintiff's participation must still justify the award request (see *Cook v. Niedert*, 142 D.3d 1004, 1016 (7th Cir. 1998)). What did Plaintiffs do to protect the interests of the class? To what degree did the class benefit from those actions? How much time and effort did Plaintiffs expend in pursuing the litigation? Were Plaintiffs deposed? What risks did they face? Class Counsel provides absolutely no support of its incentive award request. Class Counsel fails to explain the work plaintiffs performed to advance the class' interests, or whether or not the named plaintiffs would receive class benefits on top of the incentive

award. The purpose of an incentive award is to compensate named plaintiffs for the risks they take and their role as a class fiduciary. Here, an incentive award request of \$5,000 for each Plaintiff is excessive, unreasonable, and unfair to the Class without an explanation justifying such a premium. The \$5,000 request for each Plaintiff is patently unfair when the Class will receive no cash award at all. Will Plaintiffs receive an incentive award on top of their Class benefits? Plaintiffs should not be permitted to collect both Class Benefits and an incentive award. \$5,000 for each Plaintiff is unreasonable in comparison to the results achieved for Class Members. If class representatives and their attorneys routinely expect the Court to award thousands of dollars in awards on top of their share of the settlement benefits, class representatives may be tempted to accept suboptimal settlements at the expense of the class members whose interests they are appointed to protect.

EXCESSIVE FEE AWARD

In light of the above points, Class Counsel's fee request is excessive and unreasonable. The results achieved for the Class do not support a fee award equal to potentially more than 80% of the settlement. There is no explanation, much less a credible explanation why class counsel should recover such a high percentage. Other class action fee awards do not sufficiently support Class Counsel's request. The Third Circuit Task Force determined that an award in the 20%-30% range is reasonable (108 F.R.D. 237 (1985)). While "free market" rates might exceed the range of the Third Circuit Task Force, class actions are not representative of average civil cases. Thus, free market rates are not applicable. The Court should reduce Class Counsel's fee request.

As stated previously, the relief is unfair because it does not adequately compensate the Class Members. There are Class Members who will waive all claims without receiving any compensation whatsoever. The cost to the Defendants for an extended manufacturer's warranty is not disclosed, but it is surely minimal. This Settlement is likely a small fraction

of the monetary value of the attorney's fees sought by Class Counsel.

EXCESSIVE CLAIMS ADMINISTRATOR'S COSTS AND FEES

The Class Administrator's costs and fees appear to be grossly inflated, thereby causing even less monies to potentially be distributed to the Class. There appears to be no vetting process for the Claims Administrator. In many respects, Notice is being sent via email, the costs of which are *de minimis* at best. The Claims Administrator will contact Class Members via electronic mail and postal mail only when such addresses are "readily available." What efforts and what process is taking place to find viable mailing and/or electronic mailing addresses for potential class members? Is a detailed bill provided by the class administrator to fully explain and/or demonstrate the costs associated with the administration and/or the profits being obtained by the Class Administrator? Such documentation should be posted to the settlement website and provided for all class members, not to mention this Honorable Court, to review and/or upon which to base an objection.

OPT-OUT PROCESS

The opt-out process is unreasonably burdensome for class members. In order to request exclusion, a class member must mail a written document containing his or her intent to opt out. The Notice clearly states that, "You cannot exclude yourself over the phone or by e-mail." There is no reason why an electronic method could not have been made available for exclusion requests. An exclusion form should have been made into an electronic form. The current opt-out requirements harm the class in two ways: first, class members incur out-of-pocket costs; and second, the settlement funds are reduced because the class administrator must sort through and process exclusion requests by hand. An electronic process would have saved the class both time and money.

Class counsel stands to make Four Million, Two Hundred Fifty Thousand Dollars (\$4,250,000) in the present matter. Out of the settlement, this leaves a no cash compensation for the class whatsoever. As stated previously, the relief is unfair because it does not adequately compensate the Class Members. The cost to the Defendants for an extended manufacturer's warranty is not disclosed, but it is surely minimal. This Settlement is likely a small fraction of the monetary value of the attorney's fees sought by Class Counsel. How can this possibly be adequate and fair to the Class? It couldn't be, and it isn't.

WHEREFORE, Objector Michelle Vullings objects to the Settlement in *Emanuele Dimare, et. al. v. Shop-Vac Corporation, et. al.*, Case No. 12-md-02380 for the reasons outlined herein.

Vullings Law Group, LLC

Dated: August 12, 2016

By: /s/ Brent F. Vullings

OBJECTOR



Michelle Vullings

Brent F. Vullings, Esq.
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Suite 102
Collegeville, PA 19426
610-489-6060
bvullings@vullingslaw.com

Attorney for Objector Michelle Vullings

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Objection to Class Action Settlement was filed electronically via CM/ECF on August 12, 2016 and served by the same means on all counsel of record, as well as mailed via USPS Mail on the same date to the following:

Michael B. Shortnacy, Esq. Sidley Austin LLP 555 West Fifth Street, Suite 4000 Los Angeles, CA 90013	Elizabeth Goldstein, Esq. Dilworth Paxson LLP Penn National Insurance Plaza 2 North 2nd Street, Suite 1101 Harrisburg, PA 17101
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/s/ Brent F. Vullings

Brent F. Vullings, Esq.
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Suite 102
Collegeville, PA 19426
610-489-6060
bvullings@vullingslaw.com

Attorney for Objector Michelle Vullings

EXHIBIT 1

Settlement Administrator
P.O. Box 4129
Portland, OR 97208-4129

PRESORTED
FIRST CLASS MAIL
U.S. POSTAGE
PAID
PORTLAND, OR
PERMIT NO. 2882

LEGAL NOTICE

If you bought or received a Shop-Vac® brand wet/dry vacuum between January 1, 2006 and May 26, 2016, you could benefit from a class action settlement.



891500587532

MICHELLE VULLINGS
3903 TOWNSHIP LINE RD
COLLEGEVILLE, PA 19426-1314

A settlement has been proposed in a class action lawsuit (*In re: Shop-Vac Marketing and Sales Practices Litigation*, MDL No. 2380, Civil Action No. 4:12-md-02380) about certain advertising related to Shop-Vac® brand wet/dry vacuums (the "Vacuums"). The U.S. District Court for the Middle District of Pennsylvania authorized this notice and will decide whether to approve the Settlement.

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What is the case about? Plaintiffs allege that Defendants Shop-Vac Corporation and Lowe's Home Centers, LLC misrepresented the horsepower ratings and tank capacity of the Vacuums. The Defendants deny these allegations.

Who's included? The Settlement Class includes all persons in the United States and its territories who, from January 1, 2006 to May 26, 2016, either (1) purchased a Vacuum, (2) received a Vacuum as a gift, or (3) acquired possession of a Vacuum through other lawful means, other than for resale or distribution.

What does the Settlement provide? If approved, the proposed Settlement will extend the manufacturer's warranty on the motors of the Vacuums for at least 2 years. The proposed Settlement also includes changes to the Peak Horsepower ratings and tank capacity on marketing materials.

How do you get benefits? You do not need to do anything in order to qualify for the Settlement benefits. The manufacturer's warranty extension will automatically apply, and the changes to the Peak Horsepower ratings and tank capacity description will be made.

What are your options? The Court will hold a Fairness Hearing at the Ronald Reagan Federal Bldg. & U.S. Courthouse, 228 Walnut Street, Harrisburg, PA 17101 on **September 15, 2016** at 9:30 a.m. to determine whether the Settlement is fair, reasonable, and adequate and to consider Class Counsel's applications for attorneys' fees and expenses of up to \$4,250,000 to be paid by Defendants and for awards up to \$5,000 each for the five Plaintiffs to be paid from the attorneys' fees. If you wish, you or your lawyer may ask to appear and speak at the hearing at your own expense, but you do not have to.

If the Settlement is approved by the Court, and you do not exclude yourself, you will be bound by the judgment, and legal claims that you may have against Defendants related to the Vacuums will be released. If you do not wish to be bound by the Settlement, you must mail a written request for exclusion to Shop-Vac Wet/Dry Vacuum Class Settlement, Settlement Administrator, P.O. Box 4129, Portland, OR 97208-4129 postmarked by **August 15, 2016**. Or, you may file a formal written objection to the Settlement by **August 15, 2016**.

This notice is only a summary. For more information, visit www.ShopVacPHPSettlement.com or call 1-844-807-7711. Do not contact the Court or Defendants.