IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

JARED KRUGER, MARK VAN ESSEN, LYNN KIRSCHBAUM, DONNA and ROBERT KOON, and SCHUMACHER DAIRY FARMS OF PLAINVIEW LLC, on behalf of themselves and all others similarly situated, v. **LELY NORTH AMERICA, INC.**	Case No. 0:20-cv-00629-KMM/DTS

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF UNOPPOSED MOTION FOR PRELIMINARY APPROVAL AND TO DIRECT NOTICE OF PROPOSED SETTLEMENT TO THE CLASS

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I. INTRODUCTION

The Settlement Class Representatives and Defendant Lely North America, Inc. have reached a settlement that will provide substantial relief to Settlement Class Members, all of whom purchased or leased Lely's Astronaut A4 robotic milking machine ("A4" or "A4 Robot"), which Plaintiffs allege was defectively designed and did not perform as promised. The settlement offers Settlement Class Members the option to choose between two separate benefits: (1) a *pro rata* share of the $49,750,000.00 cash fund established by Lely and participation in the Extended Warranty Program (or Additional Cash Payment) and the Pinch-Sleeve Additional Payment Benefit ("Option 1"); *or* (2) the option to trade-in their A4 Robot(s) for Lely's new Astronaut 5 robotic milking machine ("A5 Robot") at a significantly reduced cost of $40,000 per A5 Robot, which has a retail value of $150,000.00 ("Option 2").

The total settlement value based on the terms negotiated without any adjustment to the Cash Fund, and assuming half of the Settlement Class submits claims, is $105 million ($53.35-million for the trade-ins, plus the $49.75-million Cash Fund, plus $1.992 million for the Pinch Sleeve Additional Payment and Extended Warranty Programs). Depending on the option selected by each Class Member and if all participate, the settlement has a value of at least $76 million and up to $184.34 million.[1] The relief made available, cash payment or an upgraded A5 Robot, are tailored to address the central allegations of this

[1] *See* Declaration of Patrick J. Stueve ¶¶ 24, 26-28 (setting forth estimated value of settlement benefits based on anticipated participation levels and the value of the settlement based on what benefits options claimants choose).

litigation and achieve the primary relief sought by Plaintiffs.[2]

Considering the substantial and meaningful cash and non-monetary benefits conferred upon Settlement Class Members and the significant risks faced through continued litigation, the terms of the Settlement are "fair, reasonable, and adequate" in accordance with Federal Rule of Civil Procedure 23(e)(2). Therefore, the Court should preliminarily approve the proposed Settlement, appoint Class Counsel and the Settlement Class Representatives, authorize the provision of notice to the Settlement Class, and set a hearing to consider final approval of the Settlement. In support of this Motion, Plaintiffs contemporaneously submit the Declaration of Patrick J. Stueve ("Stueve Decl."), which attaches as exhibits the following: Ex. 1, the Settlement Agreement with Exhibits A (Standard Warranty), B (Claim Form), and C (Settlement Notice); and Ex. 2, the declaration of Richard Simmons on behalf of the proposed Settlement Administrator, Analytics Consulting LLC ("Analytics") setting forth the proposed Notice Plan.

II. BACKGROUND

Plaintiffs Jared Kruger, Lynn Kirschbaum, and Donna and Robert Koon filed their original complaint on February 28, 2020, against Lely North America, Lely Holding, B.V., Lely International N.V., and Lely Industries N.V. Doc. 1 ("Original Complaint"). Plaintiffs, dedicated, hard-working dairy farmers, spent hundreds of thousands of dollars to purchase an automatic milking system known as the A4 Robot in the hopes of securing a sustainable future in dairy farming amidst ever-increasing labor costs. *Id.* ¶ 190. The A4

[2] While Lely denies Plaintiffs' allegations, it has agreed to the Settlement Agreement and does not oppose the relief sought in this Motion.

was designed, manufactured, marketed and distributed by the Lely Group, which consists of Lely North America and its international parents and siblings (the "Dutch Entities") (collectively with Lely North America, "Lely" or "Defendants"). *Id.* ¶¶ 37-58.

Plaintiffs alleged that the A4 Robot was defective, and resulted in mounting problems and costs in contradiction to what the Defendants had represented. *Id.* ¶¶ 198-205, 212. On behalf of a putative, nationwide class, they asserted contract, tort and fraud claims, as well as state-law consumer protection claims, against Defendants. *Id.* ¶ 248, Counts 1-12.

Defendants moved to dismiss Plaintiffs' original complaint on June 12, 2020. Docs. 28 (the Dutch Entities' Motion to Dismiss for Lack of Jurisdiction), 35 (Lely North America's Motion to Dismiss for Failure to State a Claim). In lieu of opposing the motions to dismiss, on July 2, 2020, Plaintiff Jared Kruger filed an amended class action complaint, adding the direct parent of Lely North America (Maasland), adding allegations regarding the Dutch Entities' jurisdiction based on Plaintiff's alter ego theory, and dismissing without prejudice Plaintiffs Lynn Kirschbaum and Donna and Robert Koon, whose jurisdiction as named representatives was, at that time, challenged by Lely. Doc. 47 ("Amended Complaint").[3] Defendants again moved to dismiss (Docs. 55, 61), which Plaintiff opposed (Docs. 68, 70). The Court heard oral argument on November 9, 2020 (Doc. 85).

[3] Lely does not oppose the addition of Plaintiffs Kirschbaum and Koon as Plaintiffs in the complaint, nor does it oppose the addition of Schumacher Dairy Farms of Plainview LLC, who along with Plaintiffs Kruger and Van Essen are the proposed "Settlement Class Representatives" (also referred to herein as "Plaintiffs"). *See* Ex. 1 ¶1.44; *see also* Plaintiffs' Third Amended Complaint ("Complaint") filed contemporaneously herewith via stipulation of the Parties.

On December 14, 2020, the Court denied the Dutch Entities' motion to dismiss for lack of jurisdiction and permitted jurisdictional discovery. Doc. 95. On February 10, 2021, the Court denied in large part Lely North America's motion to dismiss for failure to state a claim, allowing all of Plaintiff's claims to proceed, other than Plaintiff's two contract claims. Doc. 97.

During the winter and spring of 2021, the parties conducted jurisdictional discovery, which ultimately resulted in an agreement between the parties that the Dutch Entities would provide merits discovery, including up to six depositions, to Plaintiff, and that Lely North America would stipulate to certain facts for the purposes of the litigation and trial. Stueve Decl. ¶ 11. As a result of that agreement, Plaintiff moved to dismiss the Dutch Entities without prejudice, which the Court granted. Docs. 112, 115.

Simultaneous to jurisdictional discovery, both Defendants and Plaintiff Kruger (collectively, the "Parties") served merits discovery, and document collection and productions began in the Summer of 2021. Stueve Decl. ¶ 12. In the Fall of 2021, Defendants informed Plaintiff that they had run into certain technical issues regarding their document productions, so although the parties worked during the Fall of 2021 to negotiate a technology-assisted review ("TAR") protocol, search terms, and custodians, Defendants were unable to produce the vast majority of the documents in the case until March and April of 2022. *Id.* ¶ 13. Defendants completed substantial production in April 2022, producing over 949,000 documents from the relevant custodians. *Id.* Plaintiff Kruger too collected and produced documents, and answered Lely North America's interrogatories. *Id.*

The Parties also engaged in third party discovery. Plaintiff Kruger served document subpoenas on his two dairy creameries, the Minnesota Department of Agriculture, and the Lely Center which had purchased the dealership that had sold him his A4 Robot, in order to obtain documents relevant to his experience with the A4. *Id*. ¶ 14. Plaintiff Kruger also served nine subpoenas on the largest Lely Centers, seeking documents relevant to the litigation. *Id*. Lely North America too served third party subpoenas on Plaintiff Kruger's veterinarians and other service providers related to his farm. *Id*.

After document productions were substantially completed, Plaintiff took Lely North America's Rule 30(b)(6) deposition, which consisted of three different designees on July 8, 13, and 14, one of which was the President of Lely North America, Chad Huyser. *Id*. ¶ 16. Plaintiff also took the fact witness depositions of two key witnesses on August 24 and 25, 2022: the deposition of the Director of Customer Care (Ben Smink) and the key Lely North America employee with knowledge as to regulatory compliance (Brad Cupery). *Id*. Plaintiffs further moved to amend their complaint to add Plaintiff Mark Van Essen as a class representative, and to add in details learned in discovery; ultimately, Lely consented to the amendment and the Court granted Plaintiffs' motion. Docs. 134, 142, 146. On September 6, 2022, Lely North America deposed Plaintiff Jared Kruger. Stueve Decl. ¶ 16.

Plaintiff had noticed and the Parties had agreed to dates for the following 12 depositions of Defendants in September, October, and November of 2022: five key fact witness depositions in the Netherlands, including depositions of the Chief Financial Officer and Chief Operating Officer of the Dutch Entities; a Rule 30(b)(6) deposition of the Dutch Entities; and six additional fact witness depositions of Lely North America employees,

including the current and former presidents of Lely North America, and employees with knowledge of marketing and sales. *Id*. ¶ 17. Lely North America had noticed and was set to depose: Plaintiff Mark Van Essen, Leanne Kruger (Jared's wife), and Paul Kruger (Jared's father). *Id*.

Moreover, during this time, Class Counsel engaged three experts in preparation for class certification and merits expert discovery: a robotics engineering expert, a causation expert in cow health and milk quality, and a damages expert. *Id*. ¶ 18. Class Counsel traveled with the robotics and causation experts to several of Plaintiffs farms, such that the experts could observe the farms and the A4 Robots. *Id*.

On September 6, 2022, the Parties engaged in a full-day, in person mediation in Minneapolis in front of an experienced, neutral, third-party mediator, David Hashmall. *Id*. ¶ 19. Prior to the mediation, the Parties had exchanged detailed mediation statements as well as confidential discovery information, which – in addition to the extensive discovery conducted to date – allowed the Parties to assess the risks of the case and meaningfully engage in arm's-length settlement negotiations. *Id*. At the mediation, the Parties agreed to stay the depositions on the calendar in September so that the Parties could continue settlement discussions that month and meet again for a two-day mediation in late September attended by representatives from the Dutch Entities. *Id*. All depositions set for October and November remained on the calendar. *Id*.

On September 22-23, 2022, the Parties again mediated in person in front of Mr. Hashmall. *Id*. ¶ 20. After vigorous and hard-fought negotiations, the Parties reached agreement regarding the basic terms of a settlement around midnight on the first day. *Id*.

On the second day, the Parties spent a full day actively negotiating a term sheet, which reflects the essential terms of the Settlement now offered for the Court's consideration in the final Settlement Agreement. *Id*.

III. THE PROPOSED SETTLEMENT AGREEMENT AND BENEFITS

A. The Settlement Class

Under the Settlement, the Parties agree to certification of the following Settlement Class:

> All persons in the United States or its territories who purchased or leased a new Lely Astronaut A4 Robot.

Ex. 1 ¶ 1.42. Defendants represent that the Class consists of over 400 farmers or farm entities that purchased or leased approximately 1,468 new Astronaut A4 Robots. *Id.* The Settlement expressly excludes from the Settlement Class: individuals or entities who purchased or leased a used Astronaut A4 Robot; the Court and its officers and employees; Defendants and their corporate parents, siblings, relatives, and subsidiaries, as well as their officers, directors, employees, and agents; governmental entities; and those who timely request to opt-out pursuant to the requirements set forth herein. *Id.*

B. Benefits of the Settlement

In exchange for the release of Settlement Class Members' claims against Defendants, Defendants will create a Cash Fund in the amount of $49,750,000.00, subject to certain possible adjustments as set forth below, and create a trade-in and extended warranty programs. Ex. 1. Settlement Class Members who timely and validly submit a claim ("Claimants") must elect *between* the two benefits options: Option 1 (Cash Payment,

Extended Warranty or Additional Cash, and Pinch Sleeve Additional Payment Program) *or* Option 2 (New A5 Trade-In Program). Ex. 1 ¶ 3.3(a). Option 2, the trade-in program, is only available to those Settlement Class Members who still own or lease their A4 Robot(s). *Id.* ¶ 3.3(c). Together, Options 1 and 2 comprise the Settlement Fund.

1. Option 1: Cash Payments and Extended Warranty (or Additional Cash)

Settlement Class Members who submit a claim for Option 1 will receive three separate benefits: (1) a *pro rata* distribution from the Cash Fund, after Fees, Expenses, Administrative Costs, and adjustments (if any) have been deducted; (2) an additional $1,000 for each A4 Robot owned or leased as part of the Pinch Sleeve Additional Payment Program; and (3) the choice between an Extended Warranty for each A4 Robot they own or lease, or alternatively, an additional cash payment of $7,000 for each A4 Robot owned or leased.

a. Pro Rata Distribution from the Cash Fund.

As part of the Settlement, Lely will establish a Cash Fund of $49.75 million, which may be subject to certain adjustments as described below.[4] *Id.* ¶¶ 3.2, 3.3(d). The Cash Fund has been set up by Lely and will be distributed after accounting for Administrative

[4] As discussed in further detail below, pursuant to the terms of the Settlement Agreement, the cash fund will remain the same if exactly 485 A4 Robots participate in Option 2; will be increased to a maximum of $64,300,000 if no claimant chooses Option 2 (an amount which does not include the additional cash Lely is to contribute under the Extended Warranty and Additional Pinch Sleeve Payment Programs); and will be decreased to $31,000,000 if 1,110 A4 Robots participate in Option 2, though that decrease is capped such that even if more than 1,110 A4 Robots participate in Option 2, the cash fund will not decrease below $31,000,000. Ex. 1 ¶ 3.3(d).

Costs, Attorneys' Fees, Expenses, and any possible adjustments. *Id.* ¶ 3.3(b). This distribution will occur on a *pro rata* basis by taking the amount in the Cash Fund, after accounting for Costs, Fees, Expenses, and possible adjustments, and dividing it by the number of A4 Robots owned or leased by Claimants who chose Option 1, then distributing on a *pro rata* basis to each Claimant based on the number of A4 robots the Claimant owns or leases. *Id.*

b. Pinch Sleeve Additional Payment Program ($1,000 per A4 Robot).

On top of the *pro rata* distribution from the Cash Fund, each Claimant choosing Option 1 will receive an additional $1,000 cash for each A4 Robot owned or leased to compensate for the pinch-sleeve issue on the A4 Robot, which was at issue in this litigation. *Id.* This additional $1,000 per A4 Robot will be added by Defendants to the Cash Fund (i.e. these amounts are not taken from the $49.75 million). *Id.*

c. Extended Warranty or An Additional $7,000 Per A4 Robot.

For each A4 Robot owned or leased by a Claimant choosing Option 1, that Claimant must also choose between receiving either: (1) an Extended Standard Warranty, extended four years beginning from the Effective Date of the Settlement or from the date the original warranty was going to expire, whichever is later, for each A4 Robot, **OR** (2) an additional $7,000 cash payment for each A4 Robot. *Id.* ¶ 3.3(b)(i). The additional $7,000 per A4 Robot, where chosen, will be *added* by Lely to the Cash Fund. *Id.* Each Claimant will have

the opportunity to indicate their preferred Lely Center for use[5] with the Extended Warranty. *Id.* ¶ 3.3(b)(iii). The Lely Centers will be provided a list of Claimants who chose the Extended Warranty, which will become effective and be available to Claimants once the Settlement is final. *Id.*

2. Option 2: The New A5 Trade-In Program

In lieu of choosing Option 1, Settlement Class Members can choose Option 2 in order to trade-in their A4 Robot(s) for brand new A5 Robot(s), the successor robotic milker to the A4.[6] Pursuant to the detailed provisions set forth in the Settlement Agreement, Defendants will establish the New A5 Trade-In Program through which an eligible Claimant who chose Option 2 can trade in their A4 Robot(s) for the same number of new standard A5 Robot(s) at a steeply discounted purchase price of $40,000.00 for each A5 Robot. *Id.* ¶ 3.3(c)(i). The trade-in purchase price under this program covers the cost of the standard model A5 Robot. Claimants are responsible for costs related to transportation, installation, or labor, including removal costs of the A4 Robot. *Id*. A5 Robots received by Claimants under this New A5 Trade-In Program will be accompanied by Defendants' current standard warranty for Astronaut milking systems. *Id.* The recommended retail price of the standard A5 Robot in the United States is approximately $150,000.00 as of the date

[5] The Claimant's preferred Lely Center shall be honored as long as the Claimant resides in that Lely Center's geographical territory.

[6] A Settlement Class Member can only make a claim for Option 2 if they still own or lease their A4 Robot(s); however, if they lease their A4 Robot(s), the Settlement Class Member will need to exercise the purchase option in order to take advantage of Option 2, such that they own their A4 Robot. *Id.* ¶ 3.3(c).

of the Settlement Agreement. *Id.* Thus, the settlement offers a new A5 robot at less than one-third of the price that Settlement Class Member's would otherwise have to pay to upgrade their robot (if they elect Option 2).

Once the Settlement has become final, Claimants who selected Option 2 will be provided notice and instructions within 14 days after the Effective Date, and will then have *two years* from the Effective Date to enter into a valid Purchase Agreement for A5 Robot(s) with their Lely Center, at which time the Claimant must pay 20% of the total amount owed as a down payment (with the balance to be paid upon delivery). *Id.* ¶¶ 3.3(iii)(3),(5). Because Claimants have two years to enter into a purchase agreement, all installations must be complete within three years. *Id.* ¶ 3.3(c)(vii).

Upon submission of the purchase agreement, Defendants will, themselves or through the Lely Centers, cause the A5 Robot(s) to be secured, scheduled for installation, and installed on the Claimant's farm. Consistent with normal business practices, this process could take up to six months or longer. *Id.* ¶¶ 3.3(iii)(4)-(5). Defendants will make commercially reasonable efforts to arrange to remove the A4 Robot(s) on the same day as the installation of the new A5 Robots. *Id.* ¶ 3.3(iii)(5)(b). Although Defendants are usually able to remove A4 Robots and install A5 Robots in under 12 hours, the removal and installation time may depend on number of robots and whether additional installations or modifications are being made. *Id.* Defendants will use commercially reasonable efforts consistent with their ordinary course of business to ensure that they and their Lely Centers have adequate resources to complete the removals of the A4 Robots and installations of the A5 Robots without unreasonable delay. *Id.* ¶ 3.3(iii)(6).

Defendants are required to provide quarterly reports on the status of the trade-in program to Class Counsel through three years after the Effective Date, including copies of all purchase agreements received, identification of the commissioning dates of A5 Robots acquired through the program, confirmation of purchase price and documentation of amounts paid by each Claimant, and identification of Claimants who elected for Option 2 but who have not yet submitted a purchase agreement or who have submitted an agreement but not yet effectuated their trade-in. *Id.* ¶ 5.9(a). At periodic points during the trade-in program, the Settlement Administrator, at the discretion of Class Counsel, will send reminders to Claimants who have not yet entered into a purchase agreement or who have not yet effectuated their trade-in in order to remind them of the deadlines and/or ensure the trade-in program is functioning as intended. *Id*. ¶ 5.8(f).

3. Possible Adjustments to the Cash Fund

Under the Settlement Agreement the following adjustments will be made to the Cash Fund based on participation rates:

- If **less** than 485 A4 Robots make claims for Option 2 (the New A5 Trade-In Program), then for every robot under 485, Lely will contribute an *additional* $30,000 to the Cash Fund. Lely will in no event be required to contribute more than $14.55 million under this adjustment.
- If **exactly** 485 A4 Robots make claims for Option 2 (the New A5 Trade-In Program), no adjustments will be made to the Cash Fund.
- If **more** than 485 A4 Robots make claims for Option 2 (the New A5 Trade-In Program), then for every robot over 485, the Cash Fund will be decreased by $30,000 for each robot over 485 up to 1,100 robots. These funds will be reimbursed to Lely. In no event will Lely receive an amount exceeding $18.75 million under this adjustment.

Id. ¶ 3.3(d). As an example, if Claimants owning 400 A4 Robots choose Option 2, Lely

will contribute an additional $2,550,000 to the Cash Fund. Conversely, if Claimants owning 500 A4 Robots choose Option 2, the Cash Fund will be decreased by $450,000, with that amount returned to Lely. These adjustments will be made prior to any distribution by the Settlement Administrator from the Cash Fund. These adjustments are intended to create balance between the two options, i.e. if more Claimants choose Option 1 (the Cash Fund), then the Cash Fund will increase, and if more Claimants choose Option 2 (the Trade-In) then cash is diverted from the Cash Fund to account for the additional trade-ins Defendants will be completing. Regardless of the number of Claimants who choose Option 2, the Cash Fund would never be reduced below $31 million.

C. Provision of Notice to the Settlement Class

The Parties have consulted with Analytics, the proposed Settlement Administrator, to determine the best practicable method of class notice. *See* Ex. 2. Subject to the requirements of any orders entered by the Court, the Parties propose that notice be provided by the Settlement Administrator as follows.

Within 15 days after entry of the Preliminary Approval Order, Defendants shall provide a Notice List to the Settlement Administrator, including full names, mailing addresses, email addresses (to the extent available), phone numbers (to the extent available), and the number of new A4 Robots purchased or leased for each person likely to be a member of the Settlement Class based on the best information available to Defendants' from their existing business records. Ex. 1 ¶ 4.5.

Within 30 days of entry of the Preliminary Approval Order, the Settlement Administrator will disseminate the Settlement Notice by direct mail, as described in the

Notice Plan. Ex. 1. ¶ 4.6; Ex. 2 ¶¶ 14-17. Settlement Class Members will be mailed a copy of the Settlement Notice (Ex. 1 at Ex. C). Ex. 2 ¶ 15. The Settlement Administrator will also create a website dedicated to providing information related to the Action and this Settlement, and the website will include the Settlement Notice as well as relevant Court documents relating to the Action. Ex. 2 ¶ 18. The Settlement website will enable Settlement Class Members to submit a claim for benefits electronically, or to request a claim form be mailed to them. Ex. 2 ¶ 19. The Settlement Administrator will also establish and maintain a toll-free telephone number with information relevant to the Settlement. Ex. 2 ¶ 20.

Finally, the Settlement Administrator will mail – or if the Claimant indicated e-mail is preferred – follow-up instructions and reminders regarding participation in the New A5 Trade-In Program or Extended Warranty Program, as applicable. Ex. 1 ¶ 5.8(e)-(f).

D. Opt-Out and Objection Procedures

Any Settlement Class Member who wishes to exclude themselves from the Settlement must submit a written request for exclusion to the Settlement Administrator on or before the Opt-Out Deadline. Ex. 1 ¶ 6.1. The written request for exclusion must: (i) identify the case name of the Action; (ii) identify the name and address of the individual seeking exclusion from the Settlement; (iii) identify the number of A4 Robots purchased or leased, and whether the Robots were purchased new; (iv) be personally signed by the individual seeking exclusion; (v) include a statement clearly indicating the individual's intent to be excluded from the Settlement; and (vi) request exclusion only for that one individual whose personal signature appears on the request. *Id.* ¶ 6.2. Any individual who submits a valid and timely request for exclusion in the manner described herein shall not:

(i) be bound by any Final Judgement entered in connection with the Settlement; (ii) be entitled to any relief under, or be affected by, the Agreement; (iii) gain any rights by virtue of the Agreement; or (iv) be entitled to object to any aspect of the Settlement. *Id.* ¶ 6.4.

Other than those individuals excluded under the class definition, any individual on the Class List who does not submit a valid and timely request for exclusion in the manner described herein shall be deemed to be a Settlement Class Member upon expiration of the Opt-Out Deadline, and shall be bound by all subsequent proceedings, orders, and judgments applicable to the Settlement Classes. *Id.* ¶ 6.5. Pursuant to Paragraph 8 of the Settlement Agreement, if a certain threshold of Class Members representing a specific threshold of A4 Robots opt-out, Defendants shall have a walk-away right as set forth in the Agreement. *Id.* ¶ 8.

Any Settlement Class Member who wishes to object to the Settlement must submit a written objection to the Settlement Administrator on or before the Objection Deadline, as specified in the Preliminary Approval Order. *Id.* ¶ 7.1. The written objection must include: (i) the case name of the Action; (ii) the name, address, and telephone number of the objecting Settlement Class Member and, if represented by counsel, of his/her counsel; (iii) the number of A4 Robots purchased or leased, and whether the Robots were purchased new; (iv) a statement of whether the objection applies only to the objector, to a specific subset of the class, or to the entire class; (v) a statement of the specific grounds for the objection, including any factual or legal basis for the objection; and (vi) a statement of whether the objecting Settlement Class Member intends to appear at the Final Approval Hearing, and if so, whether personally or through counsel. *Id.* ¶ 7.2.

In addition to the foregoing requirements, if an objecting Settlement Class Member intends to speak at the Final Approval Hearing (whether *pro se* or through an attorney), the written objection must include a detailed description of any evidence the objecting Settlement Class Member may offer at the Final Approval Hearing, as well as copies of any exhibits the objecting Settlement Class Member may introduce at the Final Approval Hearing. *Id.* ¶ 7.3. Any Settlement Class Member who fails to object to the Settlement in the manner described in this Agreement and in the notice provided pursuant to the Notice Plan will be deemed to have waived any such objection, will not be permitted to object to any terms or approval of the Settlement at the Final Approval Hearing, and will be precluded from seeking any review of the Settlement or the terms of this Agreement by appeal or any other means. *Id.* ¶ 7.5.

E. Release Provisions

As of the Effective Date, all Releasing Parties – Settlement Class Members who do not validly and timely opt out – and each of their respective heirs, executors, family members, representatives, corporations, associations or other legal entities, agents, legal representatives, assigns, successors and predecessors in interest, insurers, and anyone else claiming an interest in an A4 Robot purchased or leased new by a Settlement Class Member who does not validly opt-out, expressly releases the Released Parties, which include Defendants and the Lely Centers, from any claims arising out of or relating to the factual allegations contained in the Complaint or any previous complaints filed in the Action that any of the Releasing Parties ever had, now have, or hereinafter may have arising from the purchase, lease, or use of an A4 Robot. *Id.* ¶¶ 1.36, 1.37, 1.38, 3.1, 3.6, 3.7.

IV. LEGAL STANDARDS

"The law strongly favors settlements." *Little Rock Sch. Dist. v. Pulaski County Special Sch. Dist. No. 1*, 921 F.2d 1371, 1383 (8th Cir. 1990)."Minnesota courts recognize a 'strong public policy favoring the settlement of disputed claims without litigation.'" *Katun Corp. v. Clarke*, 484 F.3d 972, 975 (8th Cir. 2007) (citations omitted); *Liddell v. Board of Educ. of the City of St. Louis*, 126 F.3d 1049, 1056 (8th Cir. 1997); *Alexander v. National Football League*, 1977 WL 1497, *12 (D. Minn. Aug. 1, 1977). Settlement of class actions and other complexes cases "minimizes the litigation expenses of both parties and also reduces the strain such litigation imposes upon already scarce judicial resources." *In re Charter Comm'n, Inc. Sec. Litig.*, 4:02-CV-1186, 2005 WL 4045741, at * 4 (E.D. Mo. June 30, 2005) (citation omitted).

Approval of a proposed class action settlement is a matter of discretion for the trial court. *In re Uponor, Inc. F1807 Plumbing Fittings Products Liab. Litig.*, 716 F.3d 1057, 1063 (8th Cir. 2013). In exercising this discretion, courts must determine whether the class action settlement is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2); *In re Uponor Inc.*, 716 F.3d at 1063. This Memorandum of Law sets forth the factors outlined in Rule 23(e) and address other factors previously analyzed by this and other courts. Under any standard, the settlement is fair, reasonable, and adequate, and should be granted preliminary approval.

V. THE SETTLEMENT APPROVAL PROCESS

Approval of a Rule 23 class settlement involves a two-step process. Manual for Complex Litigation, § 21.632 (4th ed. 2004); Newberg on Class Actions § 11.25, at 38-39

(4th ed.); *see also Schoenbaum v. E.I. Dupont De Nemours & Co.*, 4:05-CV-01108, 2009 WL 4782082, at *2 (E.D. Mo. Dec. 8, 2009) ("As a practical matter, evaluation of a settlement usually proceeds in two stages; before scheduling the fairness hearing, the court makes preliminary determinations with respect to the fairness of the settlement terms, approves the means of notice to class members, and sets the date for that final hearing.") (citing Manual § 21.632 and *Liles v. Del Campo*, 350 F.3d 742, 745 (8th Cir. 2003)).

During the preliminary approval stage, counsel submit the proposed terms of the settlement, and the court makes a preliminary fairness evaluation, deciding whether it is likely to approve the settlement such that notice of the settlement should be sent to the class. Rule 23(e)(1)(B) states that, in order to direct that notice of the proposed settlement be given to the class, the Court must first find that it will likely be able to:

(i) approve the proposal under Rule 23(e)(2); and

(ii) certify the class for purposes of judgment on the proposal.

Fed. R. Civ. P. 23(e)(1)(B)(i)-(ii).

If the Court is likely to approve the settlement, then the Court should grant preliminary approval of the proposed settlement and direct that the settlement proceed to the second stage, in which notice under Rule 23(e) is given to class members of the proposed settlement and a formal fairness hearing is held at which objections may be heard. *See* Manual § 21.633; Fed. R. Civ. P. 23(e)(1).

Here, at this first stage of the settlement process, Plaintiffs request that the Court grant preliminary approval of the Rule 23 settlement and direct that notice be sent to the class, consistent with the terms of the Settlement. Defendants do not oppose Plaintiffs'

request.

VI. THE SETTLEMENT SATISFIES THE RULE 23(E) FACTORS

In preliminarily evaluating the fairness of the settlement, courts consider the factors articulated in Rule 23(e)(2), which include whether:

> (A) the class representatives and class counsel have adequately represented the class;
>
> (B) the proposal was negotiated at arm's length;
>
> (C) the relief provided for the class is adequate, taking into account:
>
> (i) the costs, risks, and delay of trial and appeal;
>
> (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
>
> (iii) the terms of any proposed award of attorneys' fees, including timing of payment; and
>
> (iv) any agreement required to be identified under Rule 23(e)(3);[7] and
>
> (D) the proposal treats class members equitably relative to each other.

According to the Advisory Committee notes: "The central concern in reviewing a proposed class-action settlement is that it be fair, reasonable, and adequate. … The goal of [amended Rule 23(e)] is not to displace any factor, but rather to focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision whether to approval the proposal." 2018 Advisory Committee Notes.

[7] Rule 23(e) contemplates that the parties will identify "any agreement made in connection with the proposal." Fed. R. Civ. P. 23(e)(3). Class Counsel confirms that no agreements exist other than those outlined herein and reflected in Settlement Agreement. Stueve Decl. ¶ 20.

A. Plaintiffs and Their Counsel Have Adequately Represented the Settlement Class.

Pursuant to Rule 23(e)(2)(A), Plaintiffs and their counsel have vigorously and adequately represented the class since the start of the litigation in February 2020 and, prior to commencing this litigation, diligently investigated the facts and circumstances giving rise to litigation since early 2019. Plaintiffs have actively participated in this litigation by producing documents, submitting to deposition, hosting experts on their farms, and participating in mediation. Stueve Decl. ¶ 31.

Class Counsel have likewise diligently pursued the litigation by investigating the factual and legal claims against Lely, drafting a comprehensive Complaint and moving to amend that Complaint, identifying and retaining merits and damages experts to evaluate the litigation and further support Plaintiffs' claims, and working to gather the documents and information necessary to properly evaluate the case and negotiate a robust settlement that provides Settlement Class Members with significant relief. *Id*. ¶ 32. Counsel took multiple depositions of Defendants' key employees and Rule 30(b)(6) witnesses, and was prepared – and scheduled – to conduct extensive deposition discovery of Defendants' executives in the Netherlands prior to success at the second round of mediation. *Id*. Counsel also engaged and traveled with Plaintiffs' merits experts to farms to Plaintiffs' farms to observe and inspect the Lely A4 Robots. *Id*. Thus, both Plaintiffs and Class Counsel have adequately represented the Settlement Class, satisfying this requirement.

B. The Settlement Agreement Was Negotiated at Arm's Length

As required under Rule 23(e)(2)(B), the Settlement Agreement is the result of an

arms-length negotiation. This factor is satisfied "when the court determines that the settlement was negotiated at arm's length and was not collusive in favoring the class representative." *White v. National Football League*, 822 F.Supp. 1389, 1407 (D. Minn. 1993) (citation omitted). When considering this factor, courts in Minnesota examine whether the parties "engaged in zealous litigation of the issues, exchanged both formal and informal discovery, and vigorously negotiated the settlement[.]" *Cleveland v. Whirlpool Corp.*, 20-cv-1906 (WMW/KMM), 2021 WL 5937403, at *7 (D. Minn. Dec. 12, 2021); *Phillips v. Caliber Home Loans, Inc.*, Case No. 19-CV-2711 (WMW/LIB), 2021 WL 3030648, at *6 (D. Minn, July 19, 2021).

Here the parties negotiated the Settlement with the help of an experienced, neutral, third-party mediator over the course two mediation sessions that combined lasted three full days. Stueve Decl. ¶¶ 19-20. These mediation sessions were extensive and hard-fought. *Id*. ¶ 20. Moreover, the mediation sessions did not occur until after Defendants had substantially completed their document production and Plaintiffs were in the middle of extensive deposition practice, including preparing to travel for international depositions. *Id*. ¶¶ 13, 16, 19-20. Both the history of this litigation as well as the negotiation of the settlement indicate that the settlement agreement was negotiated at arm's length and there is no indication collusive behavior here. *Id*. ¶ 20.

C. The Relief Provided for the Settlement Class is Fair, Reasonable, and Adequate

This Settlement Agreement provides significant relief to Settlement Class Members and compensates them fairly for their claims. Thus, the requirements of Rule 23(e)(2)(C)

are readily met, as described below.

1. The Value of Settlement Benefits

The pure cash value of the Settlement Fund is $49,750,000.00, with added cash and/or an extended warranty for Claimants choosing Option 1, but the total value of the Settlement is *much greater* given that under Option 2, Claimants can trade-in their A4 Robot for a brand-new, standard A5 Robot, thus obtaining a machine worth $150,000 for only $40,000. Assuming a 50% participation rate of 734 A4 Robots, the total Settlement value based on the terms negotiated without adjustment to the Cash Fund (i.e., with 485 A4 Robots participating in Option 2 and 249 A4 Robots participating in Option 1) is $105 million ($53.35-million for the trade-ins, plus the $49.75-million Cash Fund, plus $1.992 million for the Pinch Sleeve Additional Payment and Extended Warranty Programs).

While the value of the Settlement varies based on the ultimate claims rate and number of robots participating in each of the two options, the Settlement makes available significant value to the Class *under any claims scenario*.

If all Settlement Class Members select Option 1, the Cash Fund will be increased to $64,300,000 of which the net amount will be distributed *pro rata* based on the number of A4 robots owned by the Settlement Class Members. These Settlement Class Members will also receive $1,000 per A4 Robot under the Additional Pinch Sleeve Payment Program, and either an Extended Warranty or $8,000 per A4 Robot under the Extended Warranty Program, bringing the total value of the settlement under this scenario to $76,044,000. In such a scenario, and assuming 100% participation, Settlement Class Members would recover $51,801 for each A4 robot—which is over a 1/3 recovery of the price they paid for

the A4 Robot—before the reduction for attorneys' fees, expenses, and administrative costs. If Class Members owning or leasing only 50% of the A4 Robots participate (734 A4 Robots) and each choose Option 1, then each Settlement Class Member would receive approximately $95,602 (inclusive of the $8,000 for Pinch Sleeve and Extended Warranty) per A4 Robot, an over 62% recovery of the price they paid for the A4 Robot, before the reduction of fees, expenses, and costs.

If the vast majority of Settlement Class Members elect Option 2, around 95% or 1,394 A4 Robots, the value of the settlement is even greater. Under that scenario, the Cash Fund would be reduced to $31,000,000 but the value of Option 2 would increase to $153,340,000, for a total value of $184,340,000 to the Class.

Assuming a 100% participation rate, if only a portion of the Class elects Option 2—for example one-half of the Settlement Class Member (i.e. 734 A4 Robots representing one-half of the 1,468 A4 Robots)—then the Cash Fund will be adjusted to $42,280,000[8] and the value under Option 2 to the Class will be $80,740,000, for a total settlement value of $123,020,000 to the Class.[9]

Importantly, the decision to take Option 1 or Option 2 is left entirely to the

[8] The value per Settlement Class Member in Option 1 under this scenario is $57,602 per A4 Robot before the deduction for attorneys' fees, expenses, and administrative costs, plus the $8,000 in additional cash (if chosen) for a total compensation of $65,602 per A4 Robot.

[9] The value of Option 2 is calculated as the retail price ($150,000) less than amount due by the Settlement Class Member ($40,000) multiplied by the number of A4 robots presumed to be traded in (734 robots).

Settlement Class Member: thus, any member who does *not* desire to trade-in their A4 for a new Lely A5 robot can take the cash payment, while those who value the trade-in option as being more valuable than the cash payment can trade-in their A4 for a new Lely A5 robot. Thus, the value of the settlement to the Class, depending on the option selected by each Class Member and if all participate, is at least $76 million and up to $184.34 million.

Finally, much of the value conferred by the Settlement would be difficult to obtain at trial. For example, although cash is a common form of relief obtained through litigation, requiring a corporation to trade-in the allegedly defective machine for a newer version or to extend a warranty is not typically relief that is granted. Given the multifaceted forms of relief available here without a trial, the Settlement provides extraordinary value to Settlement Class Members, a factor that weighs in support of the Settlement.

2. The Costs, Risks, and Delay of Trial and Appeal

Although all class actions involve a high level of risk, expense, and complexity, litigation involving claims about how the defective design of a robotic milker impacted a dairy farming operation – specifically where the Defendants have argued that a variety of farming practices and differences are at issue – is especially risky and complex. This is especially so where Defendants indicated they would argue that the damages suffered by Plaintiffs were individualized and not subject to class treatment. *See, e.g.*, *Brown v. Electrolux Home Products, Inc.*, 817 F.3d 1225, 1239 (11th Cir. 2016) (explaining that individualized damages are relevant to the question of predominance).

Indeed, this case is complex and carries significant risks for the Parties as to both legal and factual issues, and litigating the case to trial would consume great time and

expense. Prior to settlement, there was still a substantial amount of work outstanding, including: taking international depositions; conducting expert discovery; briefing class certification; briefing summary judgment motions; conducting trial; and briefing any appeals. This remaining work would require substantial time and resources, and represents significant actual risk. Assuming Plaintiffs are able to clear these hurdles, certify a class, and win at trial, they would still almost certainly face a lengthy appeal.

In contrast, the Settlement Agreement ensures that Settlement Class Members will recover significant, immediate relief, including relief that this litigation primarily sought to achieve: compensation for the allegedly defective A4 Robots. Importantly, the relief is certain and more immediate than it would be if the case went to trial. This immediacy is critical to the Settlement Class Members – many of whom are still milking with the A4 Robots. Under the Settlement, the cash or trade-in relief is certain and is provided to the entire class now, avoiding the uncertainty over who is covered and what is provided.

The Settlement Agreement reflects the Parties' compromise of their assessments of the worst-case and best-case scenarios, weighing the likelihood of various potential outcomes. Plaintiffs believe strongly in their claims, and at the same time they understand that the great number of uncertainties and the substantial delay in a final litigated resolution weigh in favor of an immediate, guaranteed resolution of the litigation that provides substantial relief. As such, the current Settlement strikes an appropriate balance between Plaintiffs' "likelihood of success on the merits" and "the amount and form of the relief offered in the settlement." *See Carson v. Am. Brands, Inc.*, 450 U.S. 79, 88 n.14 (1981).

3. The Effectiveness of Administration

The Parties have agreed to use Analytics – an experienced class action notice provider and administrator – as the Settlement Administrator in this case. Analytics' qualifications and the proposed Notice Plan are outlined in the Declaration of Richard Simmons, attached to the Stueve Declaration as Exhibit 2. Class Counsel obtained and assessed multiple bids from respected settlement administrators before choosing Analytics. Stueve Decl. ¶ 34.

For this case, the Settlement Administrator has formulated a robust Notice Plan. *See* Ex. 2 ¶¶ 11-22. The Class List will be identified by Defendants, who have the addresses for virtually all Settlement Class Members, and the Settlement Notice will be directly sent by first-class U.S. mail to Settlement Class Members, providing them direct notice. Ex. 2 ¶¶ 14-15. Notice will also be published on the settlement website, as well as in a prominent dairy farming publication. Ex. 2 ¶¶ 18, 21. This Notice Plan is more than sufficient in a class action like the instant case, particularly where members of the class have been identified by the Defendant, and most class members will receive "individual notice to all members who can be identified through reasonable effort." *See* Fed. R. Civ. P. 23(c)(2)(B).

The Notice Plan will clearly inform the Settlement Class of their rights to opt out, to object, or to file a claim, as well as the mechanisms and deadlines for doing so, and will include all the information required by Rule 23. After the notice period, the Settlement Administrator will be responsible for reviewing all claim forms to determine whether a claim is approved. The Settlement Administrator will notify a claimant if his or her claim appears deficient. Upon notification, a Settlement Class Member may cure the deficiency

in his or her claim within thirty (30) days of the Settlement Administrator providing notice of the deficiency. Ex. 1 ¶ 5.4.

4. The Experience and Views of Counsel

"The Court is entitled to rely on the judgment of experienced counsel in its evaluation of the merits of a class action settlement." *In re Employee Benefit Plans Sec. Litig*., Civ. No. 3-92-708, 1993 WL 330595, *5 (D. Minn. June 2, 1993); *Welsch v. Gardebring*, 667 F.Supp. 1284, 1295 (D. Minn. 1987) (the court "gives great weight" to the opinions of counsel on if the settlement is in the best interest of the class); *Keil v. Lopez*, 862 F.3d 685, 698 (8th Cir. 2017) ("Class Counsel's views are entitled to deference, especially since the district court found that they have significant experience in class actions and complex litigation."); *White v. National Football League*, 822 F.Supp. 1389, 1420 (D. Minn. 1993) (affording class counsel's opinion "considerable weight" where class counsel had been intimately involved in the lawsuit due to their "understanding of the legal and factual issues involved").

Here, Class Counsel has been intimately involved with this case since its inception and vigorously litigated the case through written discovery and multiple depositions. Plaintiffs and proposed Class Counsel strongly believe the Settlement is fair, reasonable, adequate, and in the best interests of the Settlement Class Members. Stueve Decl. ¶¶ 7, 12-16, 32. Class Counsel have substantial experience serving as lead counsel in numerous complex actions, including other robotic milker cases. *Id*. ¶ 4. Based on their experience, Class Counsel believe the Settlement provides exceptional results for Settlement Class Members while avoiding the uncertainties of continued and protracted litigation. *Id*. ¶ 30.

5. The Proposed Fees, Expenses, and Service Awards

Pursuant to the Settlement Agreement, Class Counsel may apply for Attorneys' Fees not to exceed one-third of the total value of the Settlement Fund. Ex. 1 ¶ 11.2. However, Class Counsel will not request attorneys' fees greater than $21,433,333.33, which is one-third of the upper-threshold of the Cash Fund under the adjustment in Paragraph 3.3(d)(1). Stueve Decl. ¶ 32. Although Class Counsel have yet to move for fees in this case, an award of one-third of the settlement fund is characteristic of other awards in class action suits in this Circuit and surrounding District Courts. *See Huyer v. Buckley*, 849 F.3d 395, 398–99 (8th Cir. 2017) (finding the district court did not abuse its discretion in awarding attorneys' fees that were one-third of the total settlement fund); *In re U.S. Bancorp. Litig.*, 291 F.3d 1035, 1038 (8th Cir. 1002) (finding the district court did not abuse its discretion in award attorneys' fees that were 36% of the total settlement fund); *Bishop, et al v. DeLaval Inc.* 5:19-cv-06129-SRB (W.D. Mo. June 7, 2022) at Doc. 268 (approving fee of one-third of the settlement fund) and Doc. 271 (issuing final approval of settlement); *Becker v. Wells Fargo & Co.*, Case No. 0:20-cv-02016 (KMM/BRT) (D. Minn. Sep. 1, 2022), ECF No. 285 (awarding attorneys' fees equal to one-third of the $32.5 million common fund).[10] Consistent with the Settlement and Rule 23(h), Class Counsel will separately move for an award of fees and costs prior to the Objection Deadline, and the Court will have a full

[10] *See also In re Syngenta AG MIR 162 Corn Litig.*, 357 F. Supp. 3d 1094, 1110 (D. Kan. 2018) (same); *In re Xcel Energy, Inc., Sec., Derivative & "ERISA" Litig.*, 364 F.Supp.2d 980, 998 (D. Minn. 2005) (summarizing that courts in the district and circuit regularly award between twenty-five and thirty-six percent of a common fund in class actions); *Yarrington v. Solvay Pharms., Inc.*, 697 F. Supp. 2d 1057, 1065 (D. Minn. 2010) (awarding one-third of the common fund).

opportunity to consider the appropriate fees as part of the final approval process.

Likewise, Class Counsel will also seek reimbursement of expenses and Defendants have agreed not to contest a reimbursement of up to $300,000.00 in expenses from the Settlement Fund. Ex. 1 ¶ 11.2. It is appropriate and customary in class litigation for class counsel to be reimbursed for out-of-pocket litigation expenses, and the Court may make a preliminary finding that such costs are reasonable. *See* 2 Joseph M. McLaughlin, McLaughlin on Class Actions § 6:24 (8th ed. 2011) (noting that "class counsel also is entitled to reimbursement from the class recovery (without interest) for the costs and reasonable out-of-pocket expenses incurred in prosecuting the litigation"). As with the motion for attorney's fees, the Court will have a full opportunity to consider these expenses at the final approval phase of the proceedings.

Finally, Class Counsel intends to seek Service Awards for each proposed Settlement Class Representative, commensurate with the level of service provided to the Action. Ex. 1 ¶ 10.1. Pending a full motion on the requested Service Awards, the Court will be able to conclude that the amounts sought are reasonable given the work Settlement Class Representatives performed in the case, including time-consuming fact gathering, document production, hosting of merits experts, and preparing for and sitting for deposition. Stueve Decl. ¶ 31; *see also* Order Granting Motion for Attorneys' Fees, Expenses and Service Awards, *Bishop et. al., v. DeLaval., Inc.*, Case No. 5:19-cv-06129-SRB (W.D. Mo. June 7, 2022), ECF No. 268 (granting service awards in a similar robotic milker case ranging from $10,000-$50,000). As with the motion for fees and reimbursement of costs and expenses, the Court will have a full opportunity to evaluate the request for such awards following the

submission of a separate motion.

D. The Proposal Treats Settlement Class Members Equitably

The Settlement treats Settlement Class Members equitably relative to each other. All Class Members are treated equitably under the Settlement Agreement subject only to their own elections in the settlement program. Class Members can choose Option 1 (the cash option), under which Settlement Class Members will be treated equitably on a *pro rata* basis depending on how many A4 Robot(s) they owned or leased, *or* Class Members can choose Option 2 (the trade-in option) under which all Settlement Class Members will receive similar equitable compensation by being able to trade in each A4 Robot they own for a new A5 Robot at a reduced purchase price. It is fully within a Settlement Class Member's discretion as to which option they choose, subject to the Class Member still owning their A4 Robot as required for a trade-in, and thus the Settlement treats Settlement Class Members equitably.

VII. CLASS CERTIFICATION FOR SETTLEMENT PURPOSES IS APPROPRIATE

To grant preliminary approval and direct notice, the Court should decide it will "likely be able to . . . certify the class for purposes of judgment." Fed. R. Civ. P. 23(e)(1)(B); *Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 620 (1997). Rule 23 requires that an action satisfy the four prerequisites of Rule 23(a) and at least one of the provisions of Rule 23(b). *Comcast Corp. v. Behrend*, 569 U.S. 27, 33 (2013). Although the Court has broad discretion to certify a class, it must conduct a "rigorous analysis" to determine whether the requirements have been met. *Postawko v. Mo. Dep't of Corr.*, 910 F.3d 1030,

1036 (8th Cir. 2018); *In re The Hartford Sales Practices Litig.*, 192 F.R.D. 592, 601 (D. Minn. 1999). Here, the Settlement Class satisfies each of the requirements of Rule 23(a) (numerosity, commonality, typicality and adequacy of representation) and of Rule 23(b) (predominance and superiority).

A. The Rule 23(a) Requirements Are Satisfied

Federal Rule of Civil Procedure 23(a) requires that "(1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a). Each of these elements is satisfied here.

1. Numerosity

A class may be certified if "the class is so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). Plaintiffs need not show that joinder is impossible, but rather that joining all members of the class would be difficult. *Lockwood Motors, Inc. v. General Motors Corp.*, 162 F.R.D. 569, 574 (D. Minn. 1995) (citing *Jenson v. Continental Fin. Corp.*, 404 F.Supp. 806, 809 (D. Minn. 1975)). The Eighth Circuit has not established strict requirements regarding the size of a proposed class. *See Belles v. Schweiker,* 720 F.2d 509, 515 (8th Cir. 1983) ("[N]o arbitrary rules regarding the necessary size of classes have been established."); *Glenn v. Daddy Rocks, Inc.*, 203 F.R.D. 425, 428-29 (D. Minn. 2001) (same).

Here, the Class is comprised of roughly 400 Settlement Class Members who purchased or leased 1,468 A4 Robots new, which is well within the range of class sizes

that Courts in this District have approved. *See, Lockwood Motors, Inc. v. Gen. Motors Corp.* 162 F.R.D. 569, 574 (D. Minn. 1995) (noting that commentators have recognized joinder of forty class members is impractical and approving a class with as few as 440 members); *In re Zurn Pex Plumbing Prods. Liability Litig.,* No. 08-MDL-1958 ADM/ AJB, 2013 WL 716088, at 3* (D. Minn. 2013) (finding that "[n]umerosity is present because there are thousands of class members" and citing cases certifying classes with 40, 20 and 48 members). Consequently, it would be impractical to join this many individual plaintiffs who are geographically dispersed across multiple states, to a single lawsuit; thus, the numerosity requirement is satisfied.

2. Commonality

Rule 23(a)(2) requires only a single common question of law or fact that is central to the dispute. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 359 (2011) ("[F]or purposes of Rule 23(a)(2) even a single common question will do") (internal quotations omitted). Commonality is established if plaintiffs and class members' claims "depend upon a common contention" that is "capable of classwide resolution," meaning that "determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Id.* at 350. This Court has recognized, "[t]he commonality requirement . . . generally is satisfied when members of the proposed Class share at least one common fact or legal issue." *In re Lutheran Bhd. Variable Ins. Prods. Co. Sales Practices Litig.,* No. 99-MDL-1309 PAM/JCL, 2004 WL 2931352, at *7 (D. Minn. Dec. 16, 2004); *see also In re Zurn Pex Plumbing Prod. Liab. Litig.,* No. 08-MDL-1958 ADM/AJB, 2013 WL 716088, at *3 (D. Minn. Feb. 27, 2013) (nothing that "[t]he

threshold for commonality is low, requiring only that the legal question 'linking the class members is substantially related to the resolution of the litigation'") (citation omitted); *Figas v. Wells Fargo & Co.,* Civ. No. 08-4546 (PAM/FLN), 2010 WL 2943155, at *5 (D. Minn. Apr. 6, 2010) (stating that "Rule 23 does not require that all questions of law and fact are common to every member of the proposed class" but "requires only that common questions exist").

Here, there are a number of questions of law and fact common to amongst Settlement Class Members, and those questions substantially predominate over any questions that may affect individual Settlement Class Members. These common questions include:

- Are the A4 Robots defectively designed?
- Were Defendants on notice of the defective nature of the A4 Robots and, if so, as of what date?
- Do the A4 Robots meet the past performance data and statistics uniformly represented by Defendants?
- Did Defendants breach an express and/or implied warranty of merchantability?
- Did Defendants breach an implied warranty of fitness for a particular purpose?
- Did Defendants owe a duty of care to Plaintiffs and the Class?
- Were Defendants negligent?
- Did Defendants make material misrepresentations in advertising, marketing and selling the A4 Robots?
- Did Defendants conceal facts regarding the A4 Robots?

- Were Plaintiffs and the Class damaged by Defendants' actions?

Accordingly, these common issues satisfy the commonality requirement of Rule 23.

3. Typicality

Rule 23(a)(3) requires that the claims or defenses of the representative parties be typical of those of the class. This requirement "is fairly easily met so long as other class members have claims similar to the named plaintiff." *DeBoer v. Mellon Mortg. Co.*, 64 F.3d 1171, 1174 (8th Cir. 1995). In assessing typicality, courts consider whether the named plaintiff's claim "arises from the same event or course of conduct as the class claims, and gives rise to the same legal or remedial theory." *Alpern v. UtiliCorp United, Inc.*, 84 F.3d 1525, 1540 (8th Cir. 1996). A named plaintiff's claim is typical "if the claims or defenses of the representatives of the members of the class stem from a single event or are based on the same legal or remedial theory." *In re Select Comfort Corp. Sec. Litig.,* 202 F.R.D. 598, 604 (D. Minn. 2001) (quoting *Paxton v. Union Nat. Bank,* 688 F.2d 552 (8th Cir. 1982)).

The Settlement Class Representatives' claims are typical of the other members of the Settlement Class because all of the claims arise from the same course of conduct by Defendants, the same defects and operational problems with the A4 Robots, and are based on the same legal theories. The Settlement Class Representatives, like all other members of the Settlement Class, have sustained injury and damages as a result of Defendants' alleged misrepresentations and concealment of facts related to the A4 Robots. Therefore, the typicality requirement of Rule 23(a)(3) is satisfied.

4. Adequacy of Representation

Rule 23(a)(4) tests whether the proposed class representatives and class counsel will

"fairly and adequately protect the interests of the class." Rule 23(a)(4). The requirement of adequacy "serves to uncover conflicts of interest between named parties and the class they seek to represent." *Amchem*, 521 U.S. at 625. No conflicts exist between the Settlement Class Representatives and the absent proposed Settlement Class Members, as all have similar interest in establishing Defendants' liability for the same conduct and recovering damages resulting from that conduct. The Settlement Class Representatives have demonstrated their commitment to the class by vigorously representing the interests of the proposed class: they retained class counsel with experience in prosecuting complex and class action litigation, have read and understood the allegations of the Complaint, assisted in the litigation, and are committed to prosecuting this matter on behalf of the Class. Stueve Decl. ¶ 31.

Likewise, Class Counsel have demonstrated their determination to vigorously prosecute this case. Class Counsel are highly experienced in complex class action litigation and have negotiated many class action settlements of this magnitude. *Id*. ¶ 4. Class Counsel have proven track records in prosecution of complex class actions within District Courts in the Eight Circuit and elsewhere. *Id*. ¶ 4. Class Counsel have devoted substantial time and resources to litigate this case, including performing extensive work identifying and investigating potential claims in this Action, evaluating the factual basis of those claims, working with experts, drafting and filing pleadings, motion practice, and evaluating confidential discovery, which added in negotiating a fundamentally fair and meaningful settlement for the Class. *Id*. ¶ 32. As such, the Class Members' interest has and will continue to be fairly and adequately protected by Plaintiffs and Class Counsel.

For these reasons, and those described below, the Court should appoint Patrick J. Stueve, Bradley T. Wilders and Jillian R. Dent of Stueve Siegel Hanson, Arend Tensen of Cullenberg and Tensen, PLLC and Daniel C. Perrone of Perrone Law PLLC as Class Counsel and appoint the Settlement Class Representatives listed in Paragraph 1.44 to the Settlement Agreement as Class Representatives.

B. The Rule 23(b)(3) Requirements Are Satisfied

In addition to meeting the four requirements of Rule 23(a), parties seeking class certification must demonstrate that the action is maintainable under one of the three subsections of Rule 23(b). Under Rule 23(b)(3), a class action may be maintained if "the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). The proposed Settlement Class satisfies Rule 23(b)(3).

1. Predominance

The predominance factor "tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Amchem*, 521 U.S. at 623. The objective of Rule 23(b)(3) is to promote economy and efficiency in actions that are primarily for money damages. Where common questions "predominate," a class action can achieve economies of time, effort, and expense as compared to separate lawsuits, permit adjudication of disputes that cannot be economically litigated individually, and avoid inconsistent outcomes, because the same issue can be adjudicated the same way for the entire class. *See* Fed. R. Civ. P. 23(b)(3) and Advisory Committee Note – 1966 Amendment on Rule

23(b)(3). Plaintiffs are not required to prove that each element of their claims is "susceptible to classwide proof." *Amgen, Inc. v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 469 (2013) (citation omitted). Rather, the predominance inquiry measures the relative weight of the common questions as against individual ones. *Amchem*, 521 U.S. at 624. The predominance requirement is satisfied when plaintiffs and class members share a common claim that is "capable of classwide resolution," meaning that determination of the claims' "truth or falsity will resolve an issue that is central to [the claims'] validity . . . in one stroke." *Dukes*, 564 U.S. at 350. Common issues predominate here, because the central questions at issue in this litigation can be established through generalized evidence.

As explained above, the questions common to Settlement Class Members predominate over questions affecting only individual Settlement Class Members. The individual issues that could arise at trial regarding the application of the answers to these questions to individual Settlement Class Members are not an impediment to certification in the context of the proposed settlement. *See In re Zurn Pex Plumbing Prod. Liab. Litig*., 2012 WL 5055810 at *4 (D. Minn. Oct. 18, 2012) (approving class settlement and stating that "individualized claims and defenses need not be adjudicated in order to approve the Settlement"). Additionally, liability for each Plaintiff's claims can be proven with common evidence of the alleged defectiveness of the A4 Robot and Defendants' alleged knowledge, misrepresentation, and concealment of that defectiveness, which predominates the circumstances of any particular Class Member's purchase or use of the A4 Robot. Accordingly, Settlement Class Members were all allegedly harmed by the same conduct, and common factual and legal issues substantially predominate over any questions that

may affect individual Class Members.

2. Superiority

"[T]he purpose of the superiority requirement is to assure that the class action is the most efficient and effective means of resolving the controversy . . . ." Charles Wright, Arthur Miller & Mary Kay Kane, 7AA Fed. Prac. & Proc. Civ. § 1779 (3d ed. 2005). To determine whether a class action is superior to other methods of adjudication, courts consider the following four factors: (1) the interests of members of the class in individually controlling the prosecution of separate actions; (2) whether other litigation has already commenced; (3) the desirability of concentrating claims in one forum; and (4) the likely difficulties in managing a class action. *Kimball v. Frederick J. Hanna & Assocs., P.C.*, Civil No. 10-130 (MJD/JJG), 2011 WL 3610129, at *6-7 (D. Minn. 2011); Fed. R. Civ. P. 23(b)(3). All four factors weigh in favor of a determination that a class action is the superior method for resolving the claims that Plaintiffs allege on behalf of the Class.

First, class treatment is superior to individual treatment, as it will permit a large number of similarly situated persons to prosecute their respective class claims in a single forum, simultaneously, effectively, and without the unnecessary duplication of evidence, effort, and expense that numerous individual actions would produce. Second, Class Counsel are unaware of any other pending litigation concerning this controversy already begun by or against Class Members. Stueve Decl. ¶ 33. Third, concentrating the litigation in this forum will promote judicial efficiency by resolving the claims of all Class Members in one case. *In re Select Comfort Corp. Sec. Litig.*, 202 F.R.D. 598, 611 (D. Minn. 2001). Finally, this case does not present any manageability concerns, as direct notice will be

provided and the Settlement benefits are distributed based on the number of A4 Robot(s) owned or leased by each Settlement Class Member (easily ascertainable information from either Defendants or the Settlement Class Member). Accordingly, a class action is superior to other available methods for fairly and efficiently adjudicating the litigation.

VIII. APPOINTMENT OF CLASS COUNSEL AND CLASS REPRESENTATIVES

Under Rule 23(g), "a court that certifies a class must appoint class counsel . . . [who must] fairly and adequately represent the interests of the class." Fed. R. Civ. P. 23(g)(1)(B). In making this determination, courts generally consider: (1) the proposed class counsel's work in identifying or investigating potential claims; (2) the proposed class counsel's experience in handling class actions or other complex litigation, and the types of claims asserted in the case; (3) the proposed class counsel's knowledge of the applicable law; and (4) the proposed class counsel's resources committed to representing the class. Fed. R. Civ. P. 23(g)(1)(A)(i)-(iv). As discussed above, Class Counsel have spent a significant amount of time identifying the potential claims in this action and pursuing relevant discovery. They are recognized as experts in consumer law and class-action litigation, and have been appointed class counsel in major consumer class action cases including one case involving a different robotic milker. Stueve Decl. ¶ 4. Further, they have committed their full resources to representing the Settlement Class and will continue that commitment in resolving this case and administering the Settlement. *Id.* ¶¶ 4, 32. Accordingly, the Court should appoint Court should appoint Patrick J. Stueve, Bradley T. Wilders and Jillian R. Dent of Stueve Siegel Hanson, Arend Tensen of Cullenberg and Tensen, PLLC, and Daniel

C. Perrone of Perrone Law PLLC as Class Counsel.

The Court should also appoint the Plaintiffs identified in Paragraph 1.44 to the Settlement Agreement as Class Representatives for the Settlement Class. The Settlement Class Representatives have fulfilled their duties in pursuing their claims and those of Settlement Class Members in this matter, and they have vigorously represented the interests of the Settlement Class. Stueve Decl. ¶ 31. The Settlement Class Representatives are pursuing this case on behalf of all Settlement Class Members, they are fulfilling their duty to protect the interests of all Settlement Class Members, and they do not have any conflicts of interest with any other members of the Settlement Class. *Id*. ¶ 31. The proposed Settlement Class Representatives will fairly and adequately represent and protect the interests of the Settlement Class as Class Representatives.

IX. THE PROPOSED NOTICE PLAN SHOULD BE APPROVED

Rule 23(e)(1) requires that, prior to final approval, the "court must direct notice in a reasonable manner to all class members who would be bound by the proposal." Fed. R. Civ. P. 23(e)(1)(B). For classes certified under Rule 23(b)(3), "the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). "The notice may be by one or more of the following: United States mail, electronic means, or other appropriate means." *Id.* The threshold requirement concerning class notice is whether the means employed to distribute the notice was reasonably calculated to apprise the class of the pendency of the action, the proposed settlement, and the class members' rights to opt out or to object. *See Eisen v. Carlisle & Jacquelin*, 417

U.S. 156, 173 (1974).

Here, the primary form of direct, individual notice will be through mail. The proposed notice here complies with Rule 23(c)(2)(B), in that it "clearly and concisely state[s] in plain, easily understood language" a description of the Settlement Class, a description of the claims, the names of Class Counsel, a description of Settlement Class Members' opportunity to appear at the Final Hearing, opt-out and objection specifics, and the manner in which to obtain further information. *See* Fed. R. Civ. P. 23(c)(2)(B). Ex. 1 at Ex. C (proposed Settlement Notice). The Notice Plan is thus consistent with the requirements of Fed. R. Civ. P. 23(c)(2)(B), Federal Judicial Center guidelines for notice, and other similar court-approved notice plans. Further, the Notice Plan has been reviewed to ensure it meets due process requirements. Ex. 2 ¶¶ 12-13. Likewise, the claims process is also designed to be as straightforward as possible, including a simple online form or, if preferred, a paper form provided by mail to Settlement Class Members that can be mailed to the Settlement Administer. Ex. 2 ¶ 19; *see* also Ex. 1 at Ex. B (Claim Form).

In connection with implementation of the Notice Plan and administration of the Settlement benefits, Plaintiffs request the Court appoint Analytics to serve as the Settlement Administrator. Analytics is qualified and has administration experience in similar matters. *See generally* Ex. 2 ¶¶ 5-6.

Because the Settlement Notice and Notice Plan set forth in the Settlement satisfy the requirements of due process and Rule 23, the Court should direct the Parties and the Settlement Administrator to proceed with providing notice to the Settlement Class

Members pursuant to the terms of the Settlement and the Court's order granting preliminary approval.

X. PROPOSED SCHEDULE FOR INTERMEDIATE DEADLINES AND FINAL APPROVAL HEARING

Plaintiffs request that the Court set a Final Approval Hearing at least one hundred and eighty (180) days after the date a preliminary approval order is entered. This will allow sufficient time for the Settlement Administrator to provide Notice to the class and for class members who wish to opt out or object to do so, but will not delay relief to the Settlement Class any more than necessary. Plaintiffs respectfully propose the following schedule:

EVENT	DATE
Lely Provides Class List	No later than 15 days after entry of the Preliminary Approval Order
Notice Date	No later than 30 days after entry of the Preliminary Approval Order
Plaintiffs to File Motion for Attorneys' Fees, Costs, and Incentive Awards	21 days prior to Deadline for Class Members to Object to the Settlement
Deadline for Class Members to Opt-Out of Settlement	60 days after Notice Date
Deadline for Class Members to Object to Settlement	60 days after Notice Date
Deadline for Class Members to Submit Claim Forms	120 days after Notice Date
Plaintiffs to File Motion for Final Approval and Responses to Objections	10 days prior to Final Approval Hearing
Proof of Notice Submitted	10 days prior to the Final Approval Hearing
Final Approval Hearing	To be set by the Court, at least 180 days after entry of the Preliminary Approval Order

XI. CONCLUSION

The Settlement Agreement proposed is an immediate, substantial, and fair settlement. It achieves the goals of the litigation, benefits the entire Settlement Class, and

accounts for the risks and uncertainties of continued, vigorously contested litigation. Plaintiffs therefore respectfully request that the Court grant the Motion and enter the agreed proposed Preliminary Approval Order submitted contemporaneously with this Motion.

Respectfully submitted this 21st day of November, 2022.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

JARED KRUGER, MARK VAN ESSEN, LYNN KIRSCHBAUM, DONNA and ROBERT KOON, and SCHUMACHER DAIRY FARMS OF PLAINVIEW LLC, on behalf of themselves and all others similarly situated, v. **LELY NORTH AMERICA, INC.**	Case No. 0:20-cv-00629-KMM/DTS

PLAINTIFF'S LOCAL RULE 7.1(F) CERTIFICATE OF COMPLIANCE REGARDING PLAINTIFF'S MEMORANDUM IN SUPPORT OF THEIR UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

The undersigned attorney certifies that Plaintiff's Memorandum in Support of Their Unopposed Motion for Preliminary Approval of Class Action Settlement complies with the word count limits in Local Rule 7.1(f) and the type-size requirements of Local Rule 7.1(h). The undersigned attorney also certifies that Microsoft Word 2016 was used in preparing the aforementioned memorandum and that this word processing program has been applied specifically to include all text, including headings, footnotes, and quotations (but excluding the caption, signature block text, and this certificate of compliance), in the following word count, which reports that the text of the memorandum contains 11,829 words.

Dated: November 21, 2022

Respectfully Submitted,

/s/ Patrick J. Stueve

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