

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

VICKI LINNEMAN, et al.	:	Case No. 1:15-cv-748
	:	
Plaintiffs,	:	(Judge Susan J. Dlott)
	:	(Magistrate Judge Stephanie K. Bowman)
vs.	:	
	:	
VITA-MIX CORPORATION, et al.	:	<u>PUTATIVE CLASS ACTION</u>
	:	
Defendants.	:	
	:	

**DEFENDANTS’ RESPONSE
TO PLAINTIFFS’ AMENDED MOTION FOR PRELIMINARY APPROVAL**

Defendants Vita-Mix Corporation, Vita-Mix Management Corporation, and Vita-Mix Manufacturing Corporation (collectively, “Defendants” or “Vita-Mix”) make this brief submission to clarify two points in Plaintiffs’ amended motion for preliminary approval (Doc. No. 35).

First, Class Counsel “conservatively” estimate the benefit potentially available to the Class at an amount of “at least Three Hundred Million Dollars (\$300,000,000).” (Doc. No. 35, Motion at 2, PageID #438.) As the Court knows, it is “uniquely complicated” in a claims-made settlement, such as the one to which the parties agreed, to value a settlement—particularly one like this that does not establish a common fund. 5 Newberg on Class Actions § 15:70, at 237 (5th ed. 2015). Vita-Mix anticipates the valuation of the settlement, among other issues, will be contested in connection with Plaintiffs’ fee application and will address the issue further then.

Second, the evidence adduced in discovery demonstrates that, before Plaintiffs filed this lawsuit, Vita-Mix had developed an interim replacement seal that was being used in containers for household blenders and was already engaged in developing a replacement seal for use in

commercial products as well. These facts stand in contrast to the impression Plaintiffs' motion leaves. (See Doc. No. 35, Motion at 5, PageID #441.)

Neither of these issues affects whether the Court should grant preliminary approval, which Defendants support. However, Defendants clarify the record on these points in case they affect other matters that may come before the Court in connection with approval of the settlement.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 29, 2017 I electronically filed the foregoing with the Clerk of the United States District Court using the CM/ECF system, which will send notification of such filing to all attorneys of record.

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