

CASE CLOSED

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

In re AZEK BUILDING PRODUCTS, INC.
MARKETING AND SALES PRACTICES
LITIGATION

Civil Action No. 12-6627
MDL No. 2506 (MCA)(MAH)

**FINAL APPROVAL ORDER
AND JUDGMENT**

THIS MATTER having come before the Court for consideration of the parties' application for Final Approval of Class Action Settlement, in accordance with the parties' Settlement Agreement. The terms used in this Order that are defined in the Settlement Agreement shall have the same meaning as set forth in the Settlement Agreement.

WHEREAS, defendants AZEK Building Products, Inc. and CPG International LLC (collectively, "Defendants") and plaintiffs Daniel Berkowitz, Mel Beucler, Barbara Derwich, John Edmonds, Joseph Marino, Kevin Mayhew, Christine Merriam, Joseph Solo, and Jeffrey Wayne ("Named Plaintiffs") reached a Class settlement (the "Settlement");

WHEREAS, the parties submitted the Settlement Agreement together with their motion for preliminary approval of the proposed settlement to the Court;

WHEREAS, the Court gave its preliminary approval of the Settlement on August 23, 2017 (the "Preliminary Approval Order") and directed the parties to provide notice to the Class of the proposed Settlement and the Final Approval Hearing by regular mail, publication, and via the internet;

WHEREAS, the Court appointed Claims Administrator Dahl Administration effectuated notice to the Settlement Class in accordance with the Preliminary Approval Order and also pursuant to the notice requirements set forth in 28 U.S.C. § 1715;

WHEREAS, Named Plaintiffs submitted their motion for final approval of class settlement, award of attorneys' fees and expenses, and approval of service awards on January 22, 2018; and

WHEREAS, on April 4, 2018, the Court conducted the Final Approval Hearing to determine whether the proposed Settlement is fair, reasonable, and adequate, whether the Settlement should be granted final approval by this Court, whether Class Counsel's request for attorneys' fees and reimbursement of expenses in the amount of \$5,250,000.00 should be awarded; and whether the request for a service award to each of the Named Plaintiffs in the amount of \$5,000.00 should be approved;

WHEREAS, the parties having appeared at the Final Approval Hearing.

THEREFORE, after reviewing the pleadings and evidence filed in support of final approval of the Settlement as well as Plaintiff's requested award for attorney's fees and service awards and supporting documentation, and hearing the attorneys for the parties, and for the reasons set forth on the record on April 4, 2018 at the hearing for final approval of the settlement;

IT IS ON THIS 4 day of April April, 2018, ORDERED and, ADJUDGED as follows:

1. The Court finds, upon review of the Settlement and consideration of the nine factors enunciated in *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975), that the Settlement is fair reasonable and adequate. The Court further finds that the case satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure for settlement class actions. The Court has considered the arguments of the objectors and finds them without merit. Accordingly, the Settlement is hereby finally approved by the Court.
2. The Settlement is in the best interests of all Class Members.

3. This Final Approval Order and Judgment incorporates and makes part hereof the Settlement Agreement and all Exhibits thereto.

4. The Court has personal jurisdiction over all Class Members and Defendant, and the Court has subject matter jurisdiction to approve the Settlement Agreement and all Exhibits thereto.

5. Based upon the record before the Court, including all submissions in support of the Settlement, the three objections and three opt-out requests, as well as the Settlement Agreement itself, the Court hereby certifies a Class of all current residential owners of AZEK decking in the United States who purchased certain colors of AZEK decking from August 1, 2007 through December 31, 2012 and who still own the property on which the deck is located. The colors included are: Brownstone, Clay, Slate Gray, Ivory, White, Fawn, Kona, Sedona, Tahoe, Acacia, Morado, and Redland Rose. Excluded from membership in the Class are: (1) persons and entities who timely exercised their rights under Federal Rule of Civil Procedure 23 to opt out of the Settlement; (2) Defendants or any of their predecessors, successors, parent or subsidiary companies, affiliates, officers, directors, employees, agents, attorneys, representatives, insurers, suppliers, distributors or vendors; (3) Class Counsel and any member of Class Counsels' immediate family; and (4) all federal judges (including magistrates) to whom the cases within the MDL Litigation were assigned in the transferor courts, to whom the MDL Litigation was assigned, and any member of those judges' immediate family.

In so holding, the Court finds that the requirements of Federal Rule of Civil Procedure 23(a) and (b)(3) have been satisfied for certification of the Class for settlement purposes because: Class members, numbering in the thousands, are so numerous that joinder of all members is impracticable; there are questions of law and fact common to the Class; the claims and defenses of the Named Plaintiffs are typical of the claims and defenses of the Class Members they represent;

the Named Plaintiffs have fairly and adequately protected the interests of the Class with regard to the claims of the Class they represent; common questions of law and fact predominate over questions affecting only individual Class Members, rendering the Class sufficiently cohesive to warrant a class settlement; and the certification of the Class is superior to individual litigation and/or settlement as a method for the fair and efficient resolution of this matter. In making all of the foregoing findings, the Court has exercised its discretion in certifying the Class based, *inter alia*, upon the Court's familiarity with the claims and parties in this case.

6. The Settlement Agreement and the proposed Settlement were reached after lengthy and rigorous arms'-length negotiations between the parties. The Settlement Agreement and the proposed Settlement are fair, reasonable, and adequate, and they are consistent with and in compliance with all applicable requirements of the Federal Rules of Civil Procedure, the United States Code, and the United States Constitution (including the Due Process Clause), and any other applicable law.

7. The Settlement was the result of the parties' good faith negotiations and counsel had adequately assessed this case's strengths and weaknesses and structured the Settlement in a way that adequately accounts for those strengths and weaknesses.

8. The forms and methods of notice described above satisfy the requirements of the Federal Rules of Civil Procedure and meet all applicable requirements of the Federal Rules of Civil Procedure, the United States Code, the United States Constitution (including the Due Process Clause), and any other applicable law. The Court further finds that Notice in the form approved by the Court was provided and that it constituted the best practicable notice under the circumstances. The Court further finds that the forms of notice were concise, clear, and in plain, easily understood language and was reasonably calculated, under the circumstances, to apprise

Class Members of the pendency of the Action, the claims, issues, and defenses of the Class, the definition of the Class certified, their right to be excluded from the Class, their right to object to the proposed Settlement, their right to appear at the Final Approval Hearing, through counsel if desired, and the binding effect of a judgment on Class Members. Notice was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to receive notice.

9. The terms of the Settlement Agreement and the Final Approval Order are binding on the Named Plaintiffs and all other Class Members, as well as their agents, heirs, executors and administrators, successors, attorneys, representatives, and assigns..

10. As set forth in paragraph 7.1 the Settlement Agreement and by operation of law, and incorporated by reference hereto, the terms of the Settlement Agreement and the Final Approval Order shall have *res judicata*, collateral estoppel, and all other preclusive effect, with respect to Released Claims as defined in paragraph 13 below.

11. The parties and their counsel are ordered to implement and to consummate the Settlement Agreement according to its terms and provisions.

12. All claims against Defendants in this Action are hereby dismissed on the merits and with prejudice, without fees or costs to any party except as provided below.

13. The Release set forth in the Settlement Agreement is incorporated by reference. The Named Plaintiffs and the Class Members , on behalf of themselves and their agents, heirs, executors and administrators, successors, attorneys, representatives, and assigns fully, finally, and forever release the Released Parties (as defined in Section 7.1.1 of the Settlement Agreement) from any and all Released Claims (as defined in Section 7.1.2 of the Settlement Agreement)..

14. The Court hereby grants Class Counsel's request for an award of reasonable attorneys' fees, including reimbursement of costs and expenses, in the total amount of \$5,250,000.00. The payment shall be made by wire transfer to Lead Class Counsel (Carella, Byrne, Cecchi, Olstein, Brody & Agnello, P.C.) within 30 days of the Effective Date as defined in the Settlement Agreement (*i.e.*, entry of this Order and either the expiration of the period within which to file an appeal has occurred without the filing of any appeal or, in the event an appeal is filed, disposition of the appeal or a final order fully disposing of the appeal plus the expiration of time to seek review by the Supreme Court). Lead Class Counsel shall, in their sole discretion, allocate all fees and expenses awarded by this Court to other participating plaintiffs' counsel. All other payments shall be made in accordance with the terms of the Settlement Agreement.

15. The Court approves the agreement to pay a service award to each Named Plaintiff in the amount of \$5,000. Payment shall be made within the timeframe set forth above regarding attorneys' fees.

16. Nothing in this Final Approval Order and Judgment, the Class Settlement, the Settlement Agreement, or any documents or statements related thereto, is or shall be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing by Defendant.

17. No Class Member, either directly, representatively, or in any other capacity shall commence, continue, or prosecute any action or proceeding against Defendants in any court or tribunal asserting any of the Released Claims, as defined in the Settlement Agreement, and all Class Members are hereby permanently enjoined from so proceeding.

18. Without affecting the finality of the Final Approval Order and Judgment, the Court shall retain exclusive and continuing jurisdiction to interpret and enforce the terms, conditions,

and obligations of this Agreement and the Court's orders and judgments. The Court may exercise all equitable powers over the Parties to enforce this Agreement and the Final Order and Judgment.

19. There being no just reason to delay, the Clerk is directed to enter this Final Approval Order and Judgment forthwith.



MADELINE COX ARLEO, U.S.D.J.