

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: DOMESTIC DRYWALL
ANTITRUST LITIGATION

MDL No. 2437
13-MD-2437

THIS DOCUMENT RELATES TO:

ALL DIRECT PURCHASER ACTIONS

~~PROPOSED~~ FINAL JUDGMENT ORDER

Direct Purchaser Plaintiffs (“Plaintiffs”), individually and on behalf of members of the Joint Settlement Class (defined in Paragraph 6 herein), and American Gypsum Company LLC, Eagle Materials Inc., New NGC, Inc., and PABCO Building Products, LLC (collectively, the “Settling Defendants”) entered into a Settlement Agreement dated December 29, 2017 (the “Joint Settlement Agreement”) to fully and finally resolve the Settlement Class’s claims (the “Joint Settlement”). On January 19, 2018, Plaintiffs moved the Court for an order preliminarily approving the Joint Settlement, authorizing Plaintiffs to disseminate notice to potential members of the Settlement Class, and scheduling a hearing to determine whether the Joint Settlement is fair, reasonable and adequate and should be finally approved pursuant to Fed. R. Civ. P. 23(e). By order entered January 29, 2018 (the “Preliminary Approval Order”), the Court granted preliminary approval of the Joint Settlement, certified the Joint Settlement Class for purposes of sending notice, and authorized Plaintiffs to disseminate notice of the Joint Settlement, the fairness hearing, and related matters. Notice has been provided to the Settlement Class and the appropriate governmental entities under the Class Action Fairness Act, pursuant to the Preliminary Approval Order. The Court held a hearing on the fairness of the Joint Settlement on June 28, 2018.

The Court has considered the Joint Settlement Agreement, Plaintiffs' Motion for Final Approval of the Proposed Joint Settlement, the arguments presented at the fairness hearing, and the entire record in this matter,

AND NOW, this 17th day of July, 2018, it is hereby **ORDERED** that:

1. The Court has jurisdiction over the subject matter of this litigation.
2. Terms capitalized in this Final Judgment Order and not otherwise defined differently herein have the same meanings as they have in the Joint Settlement Agreement.
3. The Preliminary Approval Order outlined the form and manner by which the Plaintiffs would provide potential members of the Joint Settlement Class with notice of the Joint Settlement, the fairness hearing, and related matters. Individual notice by first class mail was sent to potential members of the Joint Settlement Class who could be identified through reasonable efforts, a summary notice was published once in *LBM Journal*, and the mailed and summary notices were posted on the Internet on a website dedicated to this litigation. Proof that mailing, publication, and posting has conformed with the Preliminary Approval Order has been filed with the Court. Due and adequate notice has been provided to potential members of the Joint Settlement Class in compliance with Fed. R. Civ. P. 23 and the requirements of due process.
4. The Joint Settlement was entered into by Plaintiffs and Settling Defendants in good faith following an extensive investigation of the facts, substantial discovery sufficient for experienced Plaintiffs' counsel to evaluate the matter, a summary judgment ruling, and certification of the Litigation Class. It resulted from vigorous arm's-length negotiations, which were facilitated by a professional mediator and undertaken by counsel with significant experience litigating antitrust class actions.

5. Final approval of the Joint Settlement is hereby granted pursuant to Fed. R. Civ. P. 23(e) because it is fair, reasonable, and adequate to the Joint Settlement Class Members. In reaching this conclusion, the Court considered: (1) the amount of the Joint Settlement payment; (2) the complexity, expense, and likely duration of the litigation, and (3) the Joint Settlement Class Members' reaction to the Joint Settlement.

6. The Joint Settlement Class provisionally certified by the Court in its Preliminary Approval Order is certified as a class pursuant to Rule 23 of the Federal Rules of Civil Procedure for purposes of the Joint Settlement, and is comprised of all persons or entities that purchased Wallboard in the United States during the period January 1, 2012 through December 31, 2013 directly from (a) USG Corporation, United States Gypsum Company, CertainTeed Gypsum, Inc., New NGC, Inc., Lafarge North America Inc., American Gypsum Company LLC, Eagle Materials Inc., PABCO Building Products, LLC, TIN Inc., or Georgia Pacific LLC (collectively, "Wallboard Manufacturers"); and/or (b) L&W Supply Corporation or any of its subsidiaries or affiliates (collectively, "L&W"). Excluded from the Settlement Class are Wallboard Manufacturers, along with each of their respective parent companies, subsidiaries, and affiliates (including, without limitation, Pacific Coast Supply, LLC and L&W), and federal governmental entities and instrumentalities of the federal government and any judicial officer presiding over the Action, and any member of his or her immediate family and judicial staff.

7. The persons and entities identified on the attached Exhibit 1 have timely and validly requested exclusion from the Joint Settlement Class. Those persons and entities are not included in or bound by this Final Judgment Order.

8. All of Plaintiffs' claims against Settling Defendants in the Direct Purchasers' Consolidated Amended Class Action Complaint are dismissed with prejudice and without costs (except as provided for in the Joint Settlement Agreement).

9. Plaintiffs and all members of the Joint Settlement Class who have not timely excluded themselves from the Joint Settlement Class (including all of their current and former parents, subsidiaries, affiliates, predecessors, successors, or assigns, and all current and former officers, directors, attorneys, representatives, agents, and employees of each of the foregoing entities) (collectively, "Releasers") are permanently barred and enjoined from prosecuting against Settling Defendants (and all of their current and former parents, subsidiaries, affiliates, predecessors, successors, or assigns, and all current and former officers, directors, attorneys, representatives, agents, and employees of each of the foregoing entities) (collectively, "Releasees") any and all claims, demands, actions, suits, injuries, causes of action, and damages of any nature, whenever and however incurred (whether actual, punitive, treble, compensatory, or otherwise), including, without limitation, costs, fees, expenses, penalties, and attorneys' fees, whether class, individual, or otherwise in nature, that Releasers, or any of them, ever had, now has, or hereafter can, shall, or may have, directly, representatively, derivatively, or in any other capacity, against Releasees (or any of them), whether known or unknown, suspected or unsuspected, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, asserted or unasserted, whether in law or equity or otherwise, in whole or in part or arising out of or relating in any way to any conduct, act, or omission of Releasees (or any of them) prior to and including December 29, 2017, based upon any of the facts, occurrences, transactions, agreements, conspiracies, communications, announcements, notices, or other matters alleged in the Action against Settling Defendants that arise under any federal, state, or common law, including, without

limitation, the Sherman Act, 15 U.S.C. § 1 *et seq.*, and any federal or state antitrust, unfair competition, unfair practices, price discrimination, unjust enrichment, unitary pricing, or trade practice law, including but not limited to any causes of action asserted or that could have been or could still be alleged or asserted, in any class action complaints filed in this Action or related actions, which collectively includes, without limitation, any action transferred to this multidistrict litigation proceeding (the “Released Claims”); provided, however, that nothing herein shall release: (a) any claims based upon indirect purchases of Wallboard brought by prospective members of any class of indirect purchasers (the “Indirect Purchaser Class”); or (b) claims arising in the ordinary course of business for any product defect, breach of contract, product performance or warranty claims relating to Wallboard.

10. Releasors have expressly waived and released any and all provisions, rights, and benefits conferred by Section 1542 of the California Civil Code, which states:

CERTAIN CLAIMS NOT AFFECTED BY GENERAL RELEASE.

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR;

or by any law of any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to Section 1542 of the California Civil Code. Each Releasor may hereafter discover facts other than or different from those which the Releasor knows or believes to be true with respect to the claims which are the subject of the provisions of Paragraph 9 of this Final Judgment Order, but each Releasor has expressly waived and fully, finally, and forever settled and released any known or unknown, suspected or unsuspected, contingent or non-contingent claim with respect to the subject matter of the provisions of Paragraph 9 of this Final

Judgment Order, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

11. Pursuant to Paragraph 33 of the Joint Settlement Agreement, Plaintiffs and the Settling Defendants have agreed that the Opt-Out Percentage is 0.01981%. Accordingly, the Settling Defendants' total cash payment under the Agreement is now \$124,981,428.13. Settling Defendants will deposit \$124,881,428.13 (*i.e.*, the Settlement Amount less the \$100,000 previously deposited for the Notice Fund) into the escrow account previously established in the Court's preliminary approval order not later than 10 business days after the entry of this Order. That account is, and remains, a Qualified Settlement Fund pursuant to Internal Revenue Code Section 468B and the Treasury Regulations promulgated thereunder. Pursuant to Paragraph 5 of the December 21, 2017 Stipulation Regarding Qualified Settlement Fund (Dkt. 685), this constitutes the Court's order requiring the transfer of the funds that are required to fulfill Defendant New NGC's obligation under this Order, currently in the Qualified Settlement Fund established by Defendant New NGC, Inc., into the settlement escrow account established by Direct Purchaser Plaintiffs pursuant to Paragraph 31 of the December 29, 2017 Settlement Agreement.

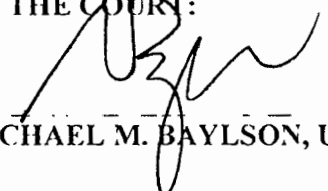
12. Neither the Joint Settlement Agreement, nor any act performed or document executed pursuant to the Joint Settlement Agreement, constitutes an admission of wrongdoing by any party in any civil, criminal, administrative, or other proceeding in any jurisdiction.

13. Without affecting the finality of this Final Judgment Order, the Court retains exclusive jurisdiction over: (a) the Final Judgment Order; (b) the Joint Settlement Agreement; (c) any application for disbursement of the Joint Settlement Fund made by Co-Lead Counsel; (d) the Qualified Settlement Fund, and (e) the Opt-Out Fee and Expense Account.

14. Pursuant to Fed. R. Civ. P. 54(b), the Court finds that there is no just reason for delay and directs the entry of final judgment as to Settling Defendants.

Date: 7/17/18

BY THE COURT:


MICHAEL M. BAYLSON, U.S.D.J.

**JOINT SETTLEMENT FINAL JUDGMENT ORDER EXHIBIT 1:
PERSONS AND ENTITIES REQUESTING EXCLUSION
FROM THE JOINT SETTLEMENT CLASS**

- 1 Ashton Woods USA LLC, Roswell, GA, including:
 - a. Ashton Atlanta Residential, LLC
 - b. Ashton Austin Residential, LLC
 - c. Ashton Charleston Residential, LLC
 - d. Ashton Dallas Residential, LLC
 - e. Ashton Houston Residential, LLC
 - f. Ashton Orlando Residential, LLC
 - g. Ashton Raleigh Residential, LLC
 - h. Ashton San Antonio Residential, LLC
 - i. Ashton Tampa Residential, LLC
 - j. Ashton Woods Construction, LLC
 - k. Ashton Woods Holding LLC
 - l. Ashton Woods USA LLC
2. Beazer Homes USA, Inc., Atlanta, GA, including:
 - a. Beazer Homes Corp.
 - b. Beazer Homes Holding Corp.
 - c. Beazer Homes Holding, LLC
 - d. Beazer Homes Indiana LLP
 - e. Beazer Homes Texas, LP
 - f. Beazer Homes USA, Inc.
 - g. Beazer Homes, LLC
3. CalAtlantic Group, Inc., Irvine, CA
4. D.R. Horton, Inc., Arlington, TX, including:
 - a. CHI Construction Company
 - b. Continental Homes of Texas, LP
 - c. Continental Residential, Inc.
 - d. D.R. Horton - Crown, LLC
 - e. D.R. Horton - Regent, LLC
 - f. D.R. Horton - Schuler Homes, LLC
 - g. D.R. Horton - Texas, Ltd.
 - h. D.R. Horton BAY, Inc.
 - i. D.R. Horton CA2, Inc.
 - j. D.R. Horton CA3, Inc.
 - k. D.R. Horton Los Angeles Holding Company, Inc.
 - l. D.R. Horton VEN, Inc.
 - m. D.R. Horton, Inc.
 - n. D.R. Horton, Inc. - Birmingham
 - o. D.R. Horton, Inc. - Dietz-Crane
 - p. D.R. Horton, Inc. - Emerald, Ltd.
 - q. D.R. Horton, Inc. - Greensboro
 - r. D.R. Horton, Inc. - Gulf Coast
 - s. D.R. Horton, Inc. - Huntsville

- t. D.R. Horton, Inc. Jacksonville
 - u. D.R. Horton, Inc. - Minnesota
 - v. D.R. Horton, Inc. New Jersey
 - w. D.R. Horton, Inc. Portland
 - x. D.R. Horton, Inc. - Sacramento (n/k/a D.R. Horton CA2, Inc.)
 - y. D.R. Horton, Inc. - Torrey
 - z. DRH Cambridge Homes, Inc. (n/k/a D.R. Horton, Inc. - Midwest)
 - aa. DRH Construction, Inc.
 - bb. DRH Southwest Construction, Inc.
 - cc. DRH Tucson Construction, Inc.
 - dd. Hadian, LLC
 - ee. Kaomalo LLC
 - ff. KDB Homes, Inc.
 - gg. Melody Homes, Inc.
 - hh. Pacific Ridge - DRH, LLC
 - ii. SSHI LLC
 - jj. Surprise Village North, LLC
 - kk. Western Pacific Housing, Inc.
5. The Drees Company, Fort Mitchell, KY, including:
- a. Ausherman Homes, Inc.
 - b. Drees Custom Homes LP
 - c. Drees Homes of Florida, Inc.
 - d. Drees Premier Homes, Inc.
 - e. Saber Ridge, LLC
 - f. The Drees Company
6. Hovnanian Enterprises, Inc., Matawan, NJ
7. Jose A. Arreguin, Houston, TX
8. KB Home, Los Angeles, CA
9. Maderas Anahuac de Piedras Negras, S.A. de C.V., 26025 Piedras Negras, Coahuila, Mexico
10. Meritage Homes Corporation, Scottsdale, AZ
11. M/I Homes, Inc., Columbus, OH, including
- a. M/I Homes of Austin, LLC
 - b. M/I Homes of Central Ohio, LLC
 - c. M/I Homes of Charlotte, LLC
 - d. M/I Homes of Chicago, LLC
 - e. M/I Homes of Cincinnati, LLC
 - f. M/I Homes of DC, LLC
 - g. M/I Homes of DFW, LLC
 - h. M/I Homes of Houston, LLC
 - i. M/I Homes of Indiana, LP
 - j. M/I Homes of Minneapolis/St. Paul, LLC
 - k. M/I Homes of Orlando, LLC
 - l. M/I Homes of Raleigh, LLC
 - m. M/I Homes of San Antonio, LLC
 - n. M/I Homes of Sarasota, LLC

- o. M/I Homes of Tampa, LLC
 - p. M/I Homes of West Palm Beach, LLC
 - q. M/I Homes Service, LLC
 - r. M/I Homes, Inc
12. PT Enterprises LLC, Catoosa, OK
13. Pulte Home Corporation, Atlanta, GA
14. Toll Brothers, Inc., Horsham, PA, including:
- a. Jupiter CC LLC
 - b. Provost Square LLC
 - c. TMF Kent Partners LLC
 - d. Toll Brothers, Inc.
15. TRI Pointe Homes, Inc., Irvine, CA, including:
- a. Maracay Homes, LLC
 - b. Pardee Homes of Nevada
 - c. Pardee Homes
 - d. The Quadrant Corporation
 - e. Trendmaker Homes, Inc.
 - f. Tri Pointe Contractors, LP
 - g. TRI Pointe Homes, Inc.
 - h. Winchester Homes, Inc.
16. Winshire Interior Construction, Inc., Towson, MD