

**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**

FINAL JUDGMENT ORDER

Direct Purchaser Plaintiffs (“Plaintiffs”), individually and on behalf of a class of direct purchasers of gypsum wallboard (the “USG Settlement Class”), and USG Corporation, United States Gypsum Company and L&W Supply Corporation (collectively, “USG”) entered into a Settlement Agreement dated February 11, 2015 (the “USG Settlement Agreement”) to fully and finally resolve the USG Settlement Class’s claims against USG (the “USG Settlement”). On February 12, 2015, Plaintiffs moved the Court for an order preliminarily approving the USG Settlement, authorizing Plaintiffs to disseminate notice to potential members of the USG Settlement Class, and scheduling a hearing to determine whether the USG Settlement is fair, reasonable and adequate and should be finally approved pursuant to Fed. R. Civ. P. 23(e). By order entered March 16, 2015 (the “USG Preliminary Approval Order”), the Court granted preliminary approval of the USG Settlement, certified the USG Settlement Class for purposes of sending notice to potential members of the USG Settlement Class, and authorized the Plaintiffs to disseminate notice of the USG Settlement, the fairness hearing, and related matters to potential members of the USG Settlement Class. Notice has been provided to the USG Settlement Class Members 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 USG Settlement on July 15, 2015.

The Court has considered the USG Settlement Agreement, Direct Purchaser Plaintiffs' Motion for Final Approval of Settlements with TIN, Inc. and USG Corporation, United States Gypsum Company, and L&W Supply Corporation and Request for Authorization to Utilize up to \$2,500,000 of the Settlement Funds for Ongoing Litigation Expenses, the arguments presented at the fairness hearing, and the entire record in this matter,

AND NOW, this 20th day of August, 2015, 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 USG Settlement Agreement.
3. The USG Preliminary Approval Order outlined the form and manner by which the Plaintiffs would provide potential members of the USG Settlement Class with notice of the USG Settlement, the fairness hearing, and related matters (Doc. 185). Individual notice by first class mail was sent to potential members of the USG Settlement Class who could be identified through reasonable efforts, a summary notice was published once in *LBM Journal*, and the mailed notice was posted on a website dedicated to this litigation. Proof that mailing, publication and posting conformed to the USG Preliminary Approval Order has been filed with the Court. Due and adequate notice has been provided to the USG Settlement Class Members in compliance with Fed. R. Civ. P. 23 and the requirements of due process.
4. The USG Settlement was entered into by Plaintiffs and USG in good faith following an extensive investigation of the facts, and substantial discovery sufficient for experienced plaintiffs' counsel to evaluate the matter. It resulted from vigorous arm's-length

negotiations, which were undertaken by counsel with significant experience litigating antitrust class actions.

5. Final approval of the USG Settlement is hereby granted pursuant to Fed. R. Civ. P. 23(e) because it is fair, reasonable, and adequate to the USG Settlement Class Members. In reaching this conclusion, the Court considered: (1) the amount of the settlement payment; (2) the cooperation to be provided by USG to Plaintiffs; (3) the complexity, expense, and likely duration of the litigation; and (4) the USG Settlement Class Members' reaction to the USG Settlement.

6. The USG Settlement Class provisionally certified by the Court in the USG Preliminary Approval Order is certified as a class pursuant to Rule 23 of the Federal Rules of Civil Procedure for purposes of the USG Settlement, and is comprised of all persons or entities that purchased Wallboard in the United States directly from any of the Defendants or their subsidiaries from January 1, 2012 through November 30, 2014. Excluded from the USG Settlement Class are Defendants, the officers, directors and employees of any Defendant, the parent companies, subsidiaries and affiliates of any Defendant, the legal representatives and heirs or assigns of any Defendant, any federal governmental entities and instrumentalities of the federal government, any judicial officer presiding over the Action, and any member of his or her immediate family and judicial staff. In finally certifying the USG Settlement Class, the Court adopts and incorporates herein all findings made under Rule 23 in the USG Preliminary Approval Order.

7. The Court's certification of the USG Settlement Class is without prejudice to, or waiver of, the rights of the Defendants to contest certification of any other class proposed in MDL No. 2437. The Court's findings in this Final Judgment Order shall have no effect on the Court's ruling on any motion to certify any other class in MDL No. 2437, and no party may cite

or refer to the Court's approval of the USG Settlement Class as compelling the same result with respect to any motion to certify any other class in MDL No. 2437.

8. The persons and entities identified on the attached Exhibit A have timely and validly requested exclusion from the USG Settlement Class. This Final Judgment Order shall have no force or effect on the persons or entities listed on Exhibit A hereto.

9. All of Plaintiffs' claims against USG in the Direct Purchasers' Consolidated Amended Class Action Complaint and Demand for Jury Trial are dismissed with prejudice and without costs (except as provided for in the USG Settlement Agreement).

10. Plaintiffs and all members of the USG Settlement Class who have not timely excluded themselves from the USG Settlement Class (including all of their past and present, direct and indirect parents, subsidiaries and affiliates, and their past and present directors, officers, employees, stockholders, attorneys, representatives, parents, subsidiaries, affiliates, partners, and assignees of any claim that is subject to the Release) (collectively, "Releasers") are permanently barred and enjoined from prosecuting against USG (and all of its current and former parents; the predecessors, affiliates, assigns, successors, and subsidiaries of any of the above; and any officers, directors, agents, representatives, employees, attorneys, heirs, executors, and administrators of each of the foregoing) (collectively, "Releasees") any and all claims, demands, actions, suits, injuries, and causes of action, damages of any nature, whenever or 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 the 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 based in whole or in part or arising out of or relating in any way to any conduct, act or omission of the Releasees (or any of them) prior to and including November 30, 2014, concerning any of the facts, occurrences, transactions, agreements, conspiracies, communications, announcements, notices, or other matters alleged in the Action against USG that arise under any federal or state 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”). Releasees does not include any Defendant in the Action other than USG, including any Non-USG Defendants’ current and former parents, their predecessors, affiliates, assigns, successors, subsidiaries, attorneys, and their officers, directors, agents, representatives, and employees in their capacity associated solely with Non-USG Defendants and not in association with USG. 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, or other contract, product performance or warranty claims relating to Wallboard.

11. 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 he, she or it knows or believes to be true with respect to the claims which are the subject of the provisions of Paragraph 10 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 10 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.

12. The Escrow Account into which USG has deposited \$39,250,000, plus accrued interest thereon, is approved as a Qualified Settlement Fund pursuant to Internal Revenue Code Section 468B and the Treasury Regulations promulgated thereunder.

13. The Court approves the establishment of the Opt-Out Fee and Expense Account, to be paid to Settlement Class Counsel in consideration of their efforts on behalf of the Opt-Out Purchasers, upon approval by the Court of any such payment request. *See* USG Settlement Agreement, ¶ 34.


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

15. This Final Judgment Order does not settle or compromise any claims by the Plaintiffs against the other Defendants or any other person or entity other than USG and the other Releasees, and all rights against any of the other Defendants or other person or entity have been specifically reserved by the Plaintiffs.

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

17. 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 USG.

BY THE COURT:



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

EXHIBIT A

USG FINAL JUDGMENT ORDER
EXHIBIT A (List of Opt-Outs)

- 1) DJ Plastering, LLC, 2704 Katie Cove, Leander, TX 78641
- 2) Northwest Drywall & Roofing Supply, Inc., 160 8th Avenue WN, Kalispell, MT 59904
- 3) Northwest Drywall & Building Supply, Inc., 160 8th Avenue WN, Kalispell, MT 59904
- 4) Sound Ceilings, P.O. Box 2197, Freeport, TX, 77542-2197
- 5) Ashton Woods Holding L.L.C., 1405 Old Alabama Road, Suite 200, Roswell, GA 30076

Ashton Woods USA L.L.C.	Ashton Charleston Residential L.L.C.
Ashton Atlanta Residential, L.L.C.	Ashton Raleigh Residential L.L.C.
Ashton Dallas Residential L.L.C.	Ashton Austin Residential L.L.C.
Ashton Houston Residential L.L.C.	Ashton San Antonio Residential L.L.C.
Ashton Orlando Residential L.L.C.	Ashton Woods Construction, LLC
Ashton Tampa Residential, LLC	

- 6) Beazer Homes Holding Corp., 1000 Abernathy Road, Suite 260, Atlanta, GA 30328

Beazer Homes USA, Inc.	Beazer Homes Texas, L.P.
Beazer Homes Corp.	Beazer Homes Indiana LLP

- 7) D.R. Horton, Inc., 301 Commerce Street, Suite 500, Fort Worth, TX 76102

D.R. Horton Los Angeles Holding Company, Inc.	D.R. Horton, Inc. - Torrey	CHI Construction Company
Continental Homes of Texas, L.P.	DRH Cambridge Homes, Inc.	D.R. Horton, Inc. - New Jersey
D.R. Horton, Inc. - Jacksonville	D.R. Horton, Inc. - Minnesota	D.R. Horton - Texas, Ltd.
D.R. Horton, Inc. - Birmingham	Western Pacific Housing, Inc.	D.R. Horton, Inc. - Dietz-Crane
D.R. Horton BAY, Inc.	D.R. Horton, Inc. - Sacramento	D.R. Horton, Inc. - Gulf Coast
D.R. Horton, Inc. - Greensboro	D.R. Horton VEN, Inc.	D.R. Horton - Emerald, Ltd.
DRH Southwest Construction, Inc.	Melody Homes, Inc.	Surprise Village North, LLC
D.R. Horton, Inc. - Huntsville	D.R. Horton - Schuler Homes, LLC	KDB Homes, Inc.
D.R. Horton, Inc. - Portland	Continental Residential,	D.R. Horton - Crown, LLC

	Inc.	
D.R. Horton - Regent, LLC	SSHI LLC	

8) The Drees Company, 211 Grandview Drive, Fort Mitchell, KY 41017

Drees Custom Homes L.P.	Drees Premier Homes, Inc.
Drees Homes of Florida, Inc.	Saber Ridge, L.L.C.
Ausherman Homes, Inc.	

9) Hovnanian Enterprises, Inc., 110 West Front Street, Red Bank, NJ 07701

10) KB Home, 10990 Wilshire Boulevard, Los Angeles, CA 90024

11) Meritage Homes Corporation, 8800 East Raintree Drive, Suite 300, Scottsdale, AZ 85260

12) M/I Homes, Inc., Three Easton Oval, Suite 500, Columbus, OH 43219

M/I Homes Service, LLC	M/I Homes of Indiana, L.P.	M/I Homes of Tampa, LLC
M/I Homes of Orlando, LLC	M/I Homes of Central Ohio, LLC	M/I Homes of Cincinnati, LLC
M/I Homes of Raleigh, LLC	M/I Homes of Charlotte, LLC	M/I Homes of DC, LLC
M/I Homes of Chicago, LLC	M/I Homes of Houston, LLC	M/I Homes of San Antonio, LLC
M/I Homes of Austin, LLC	M/I Homes of DFW, LLC	

13) Pulte Home Corporation, 3350 Peachtree Road NE, Atlanta, GA 30326

14) The Ryland Group, Inc., 3011 Townsgate Road, Suite 200, Westlake Village, CA 91361

15) Toll Brothers, Inc., 250 Gibraltar Road, Horsham, PA 19044

Jupiter CC L.L.C.	Provost Square I L.L.C.
TMF Kent Partners L.L.C.	

16) TRI Pointe Homes, Inc., 19540 Jamboree Road, Suite 300, Irvine, CA 92612

Tri Pointe Contractors, L.P.	The Quadrant Corporation
Winchester Homes, Inc.	Maracay Homes, L.L.C.
Trendmaker Homes, Inc.	Pardee Homes