

the parties' presentation, hereby Orders that its Preliminary Approval Order is made absolute and the Court hereby gives Final Approval to the class settlement (as reflected in the Settlement Agreement).

The Court further orders as follows:

1. The provisions of the Settlement Agreement are hereby finally approved in all respects. **Definitions.** The Court, for purposes of this Order, adopts and incorporates herein by reference all defined terms as set forth in the Settlement Agreement.

2. **Class Certification.** For purposes of settlement only, and pursuant to Missouri Rule of Civil Procedure 52.08, the Court hereby certifies that this action may proceed for settlement purposes as a class action on behalf of a class consisting of:

All persons who purchased the Covered Products between June 7, 2015, through the entry of the Preliminary Approval Order. Excluded from the class are (i) all persons who purchased or acquired the Covered Products for resale; (ii) Defendant and its employees; (iii) any person who properly and timely opts out pursuant to this Agreement; (iv) federal, state, and local governments (including all agencies and subdivisions thereof (but employees thereof are not excluded)); and (v) any judge who presides over the consideration of whether to approve the settlement of this class action and any member of their immediate family.

3. **Rules 52.08(a) and 52.08(b)**

The Court finds, based on the terms of the settlement describe in the Settlement Agreement, that:

Rule 52.08(a)

- (1) The Settlement Class is so numerous that joinder of all members is impracticable,
- (2) There are questions of law and fact common to the Settlement Class,
- (3) The claims of the Settlement Class Representative / Plaintiff are typical of the claims of members of the Settlement Class,

(4) Settlement Class Representative / Plaintiff and Settlement Class Counsel will fairly and adequately represent the interests of the Settlement Class. There are no conflicts of interest between Settlement Class Representative / Plaintiff and members of the Settlement Class.

Rule 52.08(b)

(1) and (A) The prosecution of separate actions by or against individual members of the Settlement Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Settlement Class which would establish incompatible standards of conduct for the party opposing the Settlement Class.

(3) Questions of law and fact common to Settlement Class members predominate over any questions affecting only individual members of the Settlement Class. Certification of the Settlement Class is superior to other methods for the fair and efficient adjudication of the controversy. Accordingly, the Court hereby certifies the Settlement Class, for settlement purposes only, pursuant to Missouri Rule 52.08(b)(1) and (3).

4. Plaintiff Michael Dinges is hereby appointed and designated as representative of the Settlement Class.
5. Paul D. Anderson of Humphrey, Farrington & McClain, PC is hereby appointed and designated as counsel for the Settlement Class.
6. The Settlement terms were reached after lengthy negotiations. Settlement occurred at an appropriate stage of the litigation, reflected arms-length negotiation, and was effectuated by experience counsel who sought the best interest of their respective clients.
7. The Settlement provides substantial relief to Settlement Class members. Defendant agreed to pay a maximum amount of \$850,000, inclusive of all payments to the

Settlement Class members, incentive payments, administrative expenses, costs, and attorney's fees. The Settlement provides a benefit fund of \$400,000 for Settlement Class members to obtain cash benefits. 60,042 valid Claim Forms were submitted. There were zero objections, and zero requests for exclusion. The Settlement Administrator shall distribute the cash payments to the Settlement Class members in accordance with the Settlement Agreement. The value of the Settlement, when considered in light of the parties' claims and defenses, the risks of litigation, and the certainty provided by a Settlement, is reasonable and represents an arms-length negotiation between the parties. Each of these facts support the conclusion that the Settlement is fair, adequate and reasonable.

- 8.** In addition to cash payments, the Settlement also requires Defendant to engage in and implement changed practices as further described in the Settlement Agreement. The Court finds that the changed practices are adequate and reasonable and provide a substantial amount of relief to the Settlement Class and the public. Defendant is ordered to implement these changed practices in accordance with the terms of the Settlement Agreement. The Court will retain jurisdiction over this matter to ensure these changes are implemented as provided in the Settlement Agreement.
- 9.** The notice provided in this case was adequate in all regards, comports with the standards set out under Missouri law. The notice provided all requisite information including: the nature of the case, the benefits provided and the calculations thereof, disclosed Plaintiff's counsel's proposed application for attorney's fees, expenses, and incentive award, methods for challenging the Settlement or seeking exclusion, the effect of remaining in the class and how to make a claim. The notice plan was thorough and

carried out by a professional administrator. The claims rate, along with a review of the notice plan and claims submission validation process, suggests that notice was carefully distributed and crafted. In addition, the claim form was easy to understand and individuals were able to make claims in a number of ways, including by submitting them online. The notice satisfied due process in all regards.

- 10.** The Court finds that Plaintiff properly gave notice to the Settlement Class, as required by the Preliminary Approval Order, and as set forth in the Settlement Agreement. The Court finds that, under the circumstances, the notice constitutes the best practicable notice of the settlement hearing, the proposed Settlement, Settlement Class Counsel's fees and expenses, and other matters set forth in the notice; constitutes valid, due, and sufficient notice to all members of the Settlement Class; and complies fully with the requirements of Rule 52.08, the United States Constitution, the due process rights of the members of the Settlement Class, and all other applicable law.
- 11.** The incentive award is reasonable. Class representatives, in exchange for agreeing to take on the risks attenuated with litigation, the responsibilities attached thereto, and the duty to represent the interests of class members, are routinely awarded incentive awards. In this case, the incentive award is reasonable both in relation to the size of the Settlement Class, the relief obtained, and the duties accepted and carried out by Plaintiff. The Court orders that an incentive award of \$2,500 be paid to Plaintiff Michael Dinges as class representative and be distributed as set forth in the Settlement Agreement.
- 12.** The attorney's fees are well within the reasonable range for a case of this type based upon Missouri law, and there were no objections to it by any Class Settlement members. In addition, the attorneys for Plaintiff and the Settlement Class have demonstrated that they

are experienced class counsel through both the settlement result achieved and their practice before this Court. Pursuant to the relevant standard set forth in this case and as detailed in Plaintiff's Motion, the Court approves attorney's fees and costs to Settlement Class Counsel in the amount of \$197,500 to be distributed as set forth in the Settlement Agreement.

- 13.** As of the Final Effective Date, except for the obligations and rights created by the Settlement Agreement, the Releasing Parties (defined as the Settlement Class and its members, agents, attorneys, partners, joint venturers, affiliates, predecessors, successors, spouses, heirs, assigns, insurers, and any other Persons or entities claiming by or through the Settlement Class, in their capacities as such) release and absolutely and forever discharge Defendant and all Released Parties from any and all Released Claims (defined as: Any claim, liability, right, demand, suit, matter, obligation, lien, damage, punitive damage, exemplary damage, penalty, loss, cost, expense, debt, action, or cause of action, of every kind and/or nature whatsoever whether now known or unknown, suspected or unsuspected, asserted or unasserted, latent or patent, which any Releasing Party now has, or at any time ever had, regardless of legal theory or type or amount of relief or damages claimed, which: (i) in any way arises out of, is based on, or relates in any way to representations pertaining to the expiration date of the Covered Products; and/or (ii) is asserted in the Complaint filed in this Action. However, Released Claims shall not include any claims for personal injury.).
- 14.** To the fullest extent permitted by law, in connection with the Released Claims, the Releasing Parties waive and relinquish any and all rights or benefits they have or may have under California Civil Code Section 1542, or any comparable provision of state or

federal law, with regard to the Released Claims. California Civil Code Section 1542 provides: “A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.” The Settlement Class Representative acknowledges that he and Settlement Class members and/or their attorneys may hereafter discover claims or facts in addition to or different from those now known or believed to be true with respect to the Released Claims, but it is their intention to fully, finally, and forever settle and release any and all Released Claims described herein, whether known or unknown, suspected or unsuspected, which now exist, hereinafter may exist, or heretofore may have existed. In furtherance of this intention, the releases contained in this Agreement shall be and remain in effect as full and complete releases of the Released Claims by the Releasing Parties without regard to the subsequent discovery or existence of such different or additional claims or facts.

15. This Judgment shall not be deemed a presumption, concession, or admission by any party of any fault, liability, or wrongdoing, or lack of merit as to any facts or claims alleged or asserted in the Action or in any other action or proceeding, and shall not be interpreted, construed, deemed, invoked, offered, or received into evidence or otherwise used by any Person in the Action or in any other action or proceeding, whether civil, criminal, or administrative, except in connection with any proceeding to enforce the terms of the Settlement.

16. Without further order of the Court, the Parties may agree to reasonably necessary extensions of time to carry out any of the provisions of the Settlement Agreement. Likewise, the Parties may, without further order of the Court or notice to the Settlement

Class, agree to and adopt such amendments to the Settlement Agreement as are consistent in material respects with this Order and Judgment Granting Final Approval of Class Settlement and that do not limit the rights of Settlement Class members under the Settlement Agreement.

17. In the event that the Final Effective Date does not occur, certification of the Settlement Class shall be automatically vacated and the Order and Judgment Granting Final Approval of Class Settlement, and all other orders entered and releases delivered in connection herewith, shall be vacated and shall become null and void.
18. Based upon the Court's approval of the Settlement Agreement, all individual and class claims asserted against Defendant as forth in the Settlement Agreement are dismissed with prejudice on the merits and a final judgment will be entered accordingly.

Accordingly, it is hereby **ORDERED** that the Plaintiff's Motion for Final Approval of Class Action Settlement is **GRANTED**. The individual claims of Plaintiff and the class claims of all members of the Plaintiff's Class are hereby **DISMISSED WITH PREJUDICE** on the merits, with each party to bear his / its own costs, except as otherwise provided herein or in the Settlement Agreement.

IT IS SO ORDERED.

Dated: June 20, 2022



Honorable Judge Kenneth R. Garrett III