

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

GAYL JACKSON, *et al.*

Plaintiffs

v.

VIKING GROUP, INC., *et al.*

Defendants.

Civil Action No.: 8:18-cv-02356-PJM

**ORDER GRANTING FINAL APPROVAL TO CLASS ACTION SETTLEMENT AND
CERTIFYING SETTLEMENT CLASS**

WHEREAS, the Court, having considered the Settlement Agreement dated November 14, 2019 (the “Settlement Agreement”), the Court’s December 30, 2019 Order Granting Preliminary Approval of the Settlement (ECF No. 32) as amended on March 27, 2020 (ECF No. 37), and Plaintiffs’ Motion for Final Approval of Class Action Settlement (ECF No. 40), as well as having held a Final Approval Hearing on July 21, 2020, and having considered all of the arguments and submission with respect to the Settlement including supporting documentation requested by the Court following the Final Approval Hearing, and otherwise being fully informed, and good cause appearing therefor; and

WHEREAS, the Settlement resolves this matter.

IT IS HEREBY ORDERED AS FOLLOWS:

1. This Final Approval Order incorporates the Settlement Agreement and its Exhibits, the Preliminary Approval Order as amended, and its Exhibits. Unless otherwise provided, the terms defined in the Settlement Agreement and Preliminary Approval Order as amended shall have the same meanings for purposes of this Final Approval Order and the accompanying Final Judgment.

2. The Court has jurisdiction over this action, and all Parties and Settlement Class Members, for all matters relating to this Lawsuit and the Settlement, including, without limitation, the administration, interpretation, effectuation and/or enforcement of the Settlement, this Final Approval Order, and the Final Judgment.

I. THE SETTLEMENT CLASS

3. In the Preliminary Approval Order, the Court certified the following Settlement Class:

All Persons that currently or at any time previously have owned a residential or commercial structure in the United States while it contains or contained Subject Sprinklers or while the structure sustained water damage from a non-fire activation of a Subject Sprinkler, including their spouses, joint owners, heirs, executors, administrators, mortgagees, residents, tenants, creditors, lenders, predecessors, successors, trusts and trustees, and assigns (“Occupant Persons”); as well as all Persons who have standing and are entitled to assert a claim on behalf of any such Occupant Persons, such as, but not limited to, a builder, contractor, installer, distributor, seller, subrogated insurance carrier, or other Person who has claims for contribution, indemnity or otherwise against Viking based on claims for a non-fire activation of a Subject Sprinkler with respect to such residential or commercial structures. The Settlement Class includes all Persons who subsequently purchase or otherwise obtain an interest in a property covered by this Settlement without the need of a formal assignment by contract or court order.

Excluded from the Settlement Class are: (i) Viking, its officers, directors, affiliates, legal representatives, employees, successors, and assigns, and entities in which Viking has a controlling interest; (ii) the judge presiding over the Lawsuit; and (iii) local, municipal, state, and federal governmental entities.

4. Certification of the Settlement Class is hereby reaffirmed as a final Settlement Class pursuant to Fed. R. Civ. P. 23(a) and (b)(3) for the reasons stated on the record at the Final Approval Hearing on July 21, 2020.

5. The Court previously appointed Plaintiffs Gayl Jackson, Michelle Ebner, and Denise Turner as the Class Representatives of the Settlement Class and hereby reaffirms that appointment.

6. The Court previously appointed Joseph G. Sauder, Matthew D. Schelkopf, and Joseph B. Kenney of Sauder Schelkopf LLC and James P. Ulwick of Kramon and Graham PA as Class Counsel, and hereby reaffirms that appointment.

II. CLASS NOTICE

7. The record shows, and the Court finds, that the Notice Plan has been implemented in the manner approved by the Court in its Preliminary Approval Order as amended. The Court finds that the Notice Plan: (i) constitutes the best notice practicable to the Settlement Class under the circumstances; (ii) was reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of this Lawsuit and the terms of the Settlement, their right to exclude themselves from the Settlement, or to object to any part of the Settlement, their right to appear at the Final Approval Hearing (either on their own or through counsel hired at their own expense), and the binding effect of the Final Approval Order and the Final Judgment, whether favorable or unfavorable, on all Persons who do not exclude themselves from the Settlement Class, (iii) due, adequate, and sufficient notice to all Persons entitled to receive notice; and (iv) notice that fully satisfies the requirements of the United States Constitution (including the Due Process Clause), Fed. R. Civ. P. 23, and any other applicable law. No objections to the Notice Plan have been received.

8. Due and adequate notice of the proceedings having been given to the Settlement Class and a full opportunity having been offered to Settlement Class Members to participate in the Final Approval Hearing, it is hereby determined that all Settlement Class Members except those

identified in Appendix A as having submitted Requests for Exclusion by the Objection and Opt-Out Deadline are bound by this Final Approval Order and the Final Judgment.

9. The Court finds that Defendants Viking Group, Inc., The Viking Corporation, and Supply Network, Inc., d/b/a Viking Supplynet (collectively, “Viking” or “Defendants”) through the Settlement Administrator provided notice of the Settlement to the appropriate state and federal government officials pursuant to 28 U.S.C. § 1715. Furthermore, the Court has given the appropriate state and federal government officials the requisite ninety (90) day time period to comment or object to the Settlement before entering its Final Approval Order and Final Judgment.

III. FINAL APPROVAL OF THE SETTLEMENT

10. The Court finds that the Settlement resulted from arm’s-length good faith negotiations and mediation between the Parties through experienced counsel, and with the assistance and oversight of experienced mediator Judge Diane M. Welsh (Ret.). Moreover, the Settlement was informed by informal discovery that took place prior to and during the settlement process.

11. Pursuant to Fed. R. Civ. P. 23(e), the Court hereby finally approves in all respects the Settlement and finds that the Settlement, the benefits to the Settlement Class Members, and all other aspects of the Settlement are, in all respects, fair, reasonable, and adequate, and in the best interests of the Settlement Class, within a range that responsible and experienced attorneys could accept considering all relevant risks and factors and the relative merits of Plaintiffs’ claims and Viking’s defenses, and are in full compliance with all applicable requirements of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), and the Class Action Fairness Act. Accordingly, the Settlement shall be consummated in accordance with its terms and provisions.

12. The Court finds that the settlement is fair, reasonable, and adequate in light of the factors set forth in *In re: Lumber Liquidators Chinese-Manufactured Flooring Prod. Mktg., Sales Practices & Prod. Liab. Litig.*, 952 F.3d 471, 484 (4th Cir. 2020), for the reasons stated on the record at the Final Approval Hearing on July 21, 2020 and based on the following:

- a. This case was sufficiently complex, expensive, and time consuming, and would have continued to be so through trial and possible appeals if the case had not settled;
- b. The Settlement resulted from arm's-length good faith negotiations that included mediation between the Parties through experienced counsel, and with the assistance of experienced mediator Judge Diane M. Welsh (Ret.);
- c. The Settlement was informed by informal discovery that took place prior to and during the settlement process consisting of approximately 80,000 pages of documents and interviews of Viking representatives, and as such, the Parties had a fair appreciation of the strengths and weaknesses of the claims and defenses;
- d. Class Counsel are experienced in the area of class action litigation and displayed a high degree of organization and professionalism over the course of the proceedings;
- e. Class Counsel and the Settlement Class would have faced material risks in establishing class certification through trial and appeals, and also in establishing liability and damages, if they decided to continue to litigate rather than settle pursuant to the Settlement Agreement;

- f. Having reviewed Plaintiffs' submissions to the Court, including Plaintiffs' Response to the Court's Memorandum Order, ECF No. 42, and having considered the Parties' answers to the Court's questioning at the Final Fairness Hearing concerning the various methods of relief available to Class Members, the Court is convinced that the relief available under the Settlement is within the range of reasonableness in light of the best possible recovery and the risks the Parties would have faced if the Lawsuit had continued to verdicts and possible appeals as to liability and damages;
- g. Having reviewed the Parties' submissions to the Court, including supporting documentation received by the Court following the Final Approval Hearing, the Court is satisfied with the Parties' representation concerning Viking's ability to fulfil its financial obligations pursuant to the Settlement;
- h. There was minimal opposition and no formal objections to the Settlement.

Accordingly, for these reasons, the Settlement shall be consummated in accordance with the terms and provisions of the Settlement Agreement.

13. In making all of the foregoing findings, the Court has exercised its discretion in certifying the Settlement Class and granting final approval to the Settlement based upon all facts and circumstances of this Lawsuit as presented to the Court in the parties' respective submissions in support of approval of the Settlement.

IV. DISMISSAL OF CLAIMS, RELEASE, AND INJUNCTION

14. This Lawsuit is hereby dismissed with prejudice on the merits and without costs to any Party or Person, except as otherwise provided herein or in the Settlement Agreement.

15. Upon the Effective Date and subject to the limited exclusions set forth in Paragraph 16 below and to the provisions of the Settlement Agreement, all Settlement Class Members, on behalf of themselves and their agents, heirs, executors and administrators, successors, assigns, insurers, attorneys, representatives, and any and all persons who seek to claim through or in the name or right of any of them (but excluding any Person who timely opted out of the Settlement with regard to the specific structures opted out) (the “Releasing Parties”), release and forever discharge (as by an instrument under seal without further act by any person, and upon good and sufficient consideration), Viking, its administrators, insurers, reinsurers, agents, firms, parent companies/corporations, sister companies/corporations, subsidiaries and affiliates, and any sales agents and distributors, wholesalers, retailers, installers, home builders, contractors, developers, engineers, architects, and any other product or service provider or any other party in the chain of distribution who distributed, specified, recommended, sold, and/or installed the Subject Sprinklers; and all of the foregoing Persons’ respective predecessors, successors, assigns and present and former officers, directors, shareholders, employees, agents, attorneys, and representatives (collectively, the “Released Parties”), from each and every claim of liability, on any legal or equitable ground whatsoever, including relief under federal law or the laws of any state, regarding or related to the Subject Sprinklers, including without limitation all past, present, or future claims, damages, or liability on any legal or equitable ground whatsoever, and regardless of whether such claims might have been or might be brought directly, or through subrogation or assignment or otherwise, on account of or related to the Subject Sprinklers, which were alleged or could have been alleged in the Complaints filed in the Lawsuit. The releases provided for herein are as a result of membership as a Settlement Class Member, the Court’s approval process herein, and occurrence of the Effective Date, and are not conditional on receipt of replacement sprinklers or any payment

or other remedy by any particular member of the Settlement Class. This Settlement Agreement and the releases provided for herein shall not and are not intended to release the claims of the Settlement Class Members against the suppliers of raw materials, components, or ingredients used in the manufacture of the Subject Sprinklers, which the Settlement Class Members hereby fully and forever assign, transfer, and convey to Viking. For purposes of any claims by Viking against the suppliers of raw materials, components, or ingredients used in the manufacture of the Subject Sprinklers, should such supplier seek to join any Settlement Class Member in such a claim, Viking shall defend, indemnify, and hold harmless the Settlement Class Member from any and all claims of any such supplier against the Settlement Class Member.

16. All personal injury claims are expressly excluded from the Release. Moreover, claims for damages associated with a non-fire activation of a Subject Sprinkler that occurred on or before the Objection and Opt-Out Deadline are not eligible for an Activation Claim and are excluded from the Release.

17. Settlement Class Members have knowingly and voluntarily waived the provisions of Section 1542 of the California Civil Code (to the extent applicable), which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Plaintiffs and the Settlement Class Members, on behalf of all Releasing Parties, expressly waive and relinquish any and all rights and benefits that they may have under, or that may be conferred upon them by, the provisions of Section 1542 of the California Civil Code, or any other law of any state or territory that is similar, comparable or equivalent to Section 1542, to the fullest extent they may lawfully waive such rights or benefits pertaining to the Released Claims. In connection with

such waiver and relinquishment, the Settlement Class Members hereby acknowledge that the Releasing Parties are aware that they or their attorneys may hereafter discover claims or facts in addition to or different from those that they now know or believe exist with respect to Released Claims, but that it is their intention to hereby fully, finally, and forever settle and release all of the Released Claims known or unknown, suspected or unsuspected, that they have against the Released Parties in return for the benefits set forth in the Settlement Agreement. In furtherance of such intention, the Release herein given by the Releasing Parties to the Released Parties shall be and remain in effect as a full and complete general release notwithstanding the discovery or existence of any such additional different claims or facts. Each of the Parties expressly acknowledges that it has been advised by its attorneys of the contents and effect of Section 1542, and with knowledge, each of the Parties hereby expressly waives whatever benefits it may have had pursuant to such section. Plaintiffs acknowledge, and the Releasing Parties shall be deemed by operation of the Final Approval Order and the Final Judgment to have acknowledged, that the foregoing waiver was expressly bargained for and a material element of the Settlement of which this Release is a part.

18. The Court orders that, upon the Effective Date, the Settlement Agreement shall be the exclusive remedy for any and all Released Claims. The Court thus hereby permanently bars and enjoins Plaintiffs, all Settlement Class Members, and all Persons acting on behalf of, or in concert or participation with such Plaintiffs or Settlement Class Members (including but not limited to the Releasing Parties), from: (a) filing, commencing, asserting, prosecuting, maintaining, pursuing, continuing, intervening in, or participating in, or receiving any benefits from, any lawsuit, arbitration, or administrative, regulatory or other proceeding or order in any jurisdiction based upon or asserting any of the Released Claims against any Released Party; (b)

bringing a class action on behalf of Plaintiffs or Settlement Class Members, seeking to certify a class that includes Plaintiffs or Settlement Class Members, or continuing to prosecute or participate in any previously filed and/or certified class action, and/or in any lawsuit based upon or asserting any of the Released Claims. Pursuant to 28 U.S.C. §§ 1651(a) and 2283, the Court finds that issuance of this permanent injunction is necessary and appropriate in aid of its continuing jurisdiction and authority over the Settlement Agreement and the Lawsuit.

19. Neither the Settlement Agreement, nor any of its terms and provisions, nor any of the negotiations, or proceedings connected with it, nor any of the documents or statements referred to therein, nor any of the documents or statements generated or received pursuant to the claims administration process, shall be:

a. offered by any Person or received against Viking or any Released Party as evidence or construed or deemed as evidence of any presumption, concession, or admission by Viking or any Released Party of the truth of the facts alleged by the Plaintiffs or any Settlement Class Member or the validity of any claim that has been or could have been asserted in this Lawsuit or in any litigation, or other judicial or administrative proceeding, or the deficiency of any defense that has been or could have been asserted in this Lawsuit or in any litigation, or of any liability, negligence, fault or wrongdoing of Viking or any Released Party;

b. offered by any Person or received against Viking or any Released Party as evidence of a presumption, concession or admission of any fault, misrepresentation or omission with respect to any statement or written document approved or made by Viking or any Released Party or any other wrongdoing by Viking or any Released Party; or

c. offered by any Person or received against Viking or any Released Party as evidence of a presumption, concession, or admission with respect to any default, liability, negligence, fault, or wrongdoing, or in any way interpreted, construed, deemed, invoked, offered, received in evidence, or referred to for any other reason against any of the settling parties, in any civil, criminal, or administrative action or proceeding; provided, however, that nothing contained herein shall prevent the Settlement Agreement (or any agreement or order relating thereto) from being used, offered, or received in evidence in any proceeding to approve, enforce, or otherwise effectuate the Settlement (or any agreement or order relating thereto), the Final Approval Order, or the Final Judgment, or in which the reasonableness, fairness, or good faith of the Parties in participating in the Settlement (or any agreement or order relating thereto) is an issue, or to enforce or effectuate provisions of the Settlement, the Final Approval Order, the Final Judgment, or the Release as to Viking, the Released Parties, Plaintiffs, or the Settlement Class Members.

V. OTHER PROVISIONS

20. Ronald J. Natali, P.E., C.F.E.I. of Robson Forensic is hereby appointed as the Special Master.

21. The Court has jurisdiction to enter this Final Approval Order and the accompanying Final Judgment. Without in any way affecting the finality of this Final Approval Order or the Final Judgment, this Court expressly retains exclusive and continuing jurisdiction over the Settlement, including all matters relating to the administration, consummation, validity, enforcement and interpretation of the Settlement Agreement, the Final Approval Order, or the Final Judgment, including, without limitation, for the purpose of:

a. enforcing the terms and conditions of the Settlement and resolving any disputes, claims or causes of action that, in whole or in part, are related to or arise out of the Settlement Agreement, the Final Approval Order, or the Final Judgment (including, whether a Person is or is not a Settlement Class Member);

b. entering such additional orders, if any, as may be necessary or appropriate to protect or effectuate the Final Approval Order, the Final Judgment, or the Settlement Agreement, or to ensure the fair and orderly administration of the Settlement; and

c. entering any other necessary or appropriate orders to protect and effectuate this Court's retention of continuing jurisdiction over the Settlement, the Final Approval Order, or the Final Judgment.

22. Without affecting the finality of this Final Approval Order or the Final Judgment, Viking and each Settlement Class Member hereby irrevocably submits to the exclusive jurisdiction of the Court for any suit, action, proceeding, or dispute arising out of or relating to the Settlement or the applicability of the Settlement Agreement, including any suit, action, proceeding, or dispute relating to the Release provisions herein.

23. The Parties are hereby directed to implement and consummate the Settlement according to the terms and provisions of the Settlement Agreement.

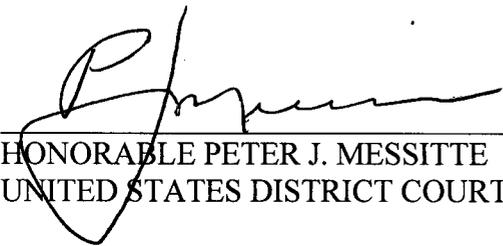
24. Without further order of the Court, the Parties may agree to reasonably necessary extensions of time to carry out any of the provisions of the Settlement Agreement. Likewise, the Parties may, without further order of the Court or notice to the Settlement Class, agree to and adopt such amendments to the Settlement Agreement (including exhibits) as are consistent in material respects with this Final Approval Order and the Final Judgment and that do not limit the rights of Settlement Class Members under the Settlement Agreement.

25. In the event that the Effective Date does not occur, certification of the Settlement Class shall be automatically vacated and the Final Approval Order and Final Judgment, and all other orders entered and releases delivered in connection herewith, shall be vacated and shall become null and void.

26. The Clerk of the Court is hereby directed to CLOSE THIS FILE.

IT IS SO ORDERED, this 28 day of July, 2020.

BY THE COURT:



HONORABLE PETER J. MESSITTE
UNITED STATES DISTRICT COURT JUDGE