

FILED

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SONJA CHILDERS
CIRCUIT CLERK
PHELPS COUNTY, MO

IN THE CIRCUIT COURT OF PHELPS COUNTY, MISSOURI

CHRISTINE MENDOZA and TONYA
DOOLEY, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

UNITED INDUSTRIES CORPORATION,

Defendant.

Case No. 21PH-CV00670

**ORDER PRELIMINARILY APPROVING CLASS SETTLEMENT, APPROVING
CLASS NOTICE, AND SCHEDULING FAIRNESS HEARING**

The Court has considered Plaintiffs' Motion for Preliminary Approval of Class Settlement pursuant to Mo. R. Civ. P. 52.08. Upon review of the Motion and the Settlement Agreement and its attachments, and after consideration of the Parties' submissions and the arguments at the hearing on this matter, if any, for good cause shown, the Court preliminarily finds that the terms of the settlement are fair, adequate, and reasonable. The Court further finds that the notice provisions provided for by the Settlement Agreement are adequate and appropriate to inform members of the class of the terms of the settlement.

THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Court does hereby preliminarily approve the Settlement Agreement¹ and the settlement set forth therein (the "Settlement"), subject to further consideration at the Final Approval Hearing described below.

¹ The Court, for purposes of this Order, adopts the definitions of capitalized terms set forth in the Settlement Agreement.

2. A hearing (the "Final Approval Hearing") shall be held before this Court on Sept. 23, 2021, at 9:00 a.m. to determine whether the proposed settlement of the Action on the terms and conditions provided for in the Settlement Agreement is fair, adequate, and reasonable to the Class and should be approved by the Court, and whether a Final Approval Order and Judgment should be entered herein.

3. Plaintiffs Christine Mendoza and Tonya Dooley are preliminarily appointed as representatives of the Settlement Class ("Class Representatives"), and the following attorneys for Plaintiffs are preliminarily appointed as counsel for the Settlement Class ("Class Counsel"): Steelman & Gaunt and Bursor & Fisher, P.A. This Court finds Class Counsel to be experienced, thoughtful, and effective advocates in class actions who adequately, faithfully, and zealously represent the classes they represent.

4. For purposes of determining whether the terms of the Settlement should be finally approved as fair, adequate, and reasonable, the following Settlement Class is conditionally certified for settlement purposes only:

All persons in the United States who purchased one or more Covered Products during the Class Period. Excluded from the Settlement 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) the judges to whom this Action is assigned and any member of their immediate family.

5. Should the Settlement not become final, United Industries Corporation ("Defendant") may still oppose class certification. The fact that the Court ordered class certification as part of the Settlement and that Defendant was willing to stipulate to class certification as part of the Settlement shall have no bearing on, and shall not be admissible in

connection with, the issue of whether a class should be certified in this Action or in any other proceeding.

6. The Court designates Digital Settlement Group (“DSG”) as the Settlement Administrator and instructs DSG to perform the following functions, as set forth in the Settlement Agreement:

- a. Process requests for exclusion from the Settlement in accordance with Section 7 of the Settlement Agreement;
- b. Process objections to the Settlement in accordance with Section 8 of the Settlement Agreement;
- c. Process Claim Forms in accordance with Section 11 of the Settlement Agreement;
- d. Before disseminating the Settlement Notice, establish the settlement website, which Settlement Class Members can visit to read and obtain additional information regarding the Settlement, including submission of claims; and
- e. Set up and operate a toll-free automated interactive voice response system through which Settlement Class Members can access Settlement information.

7. The Court approves, as to form and content, the Settlement Notice, the Publication Notice, and the Media Plan attached as Exhibit B to the Settlement Agreement, and finds that the distribution of the Settlement Notice substantially in accordance with Section 6 of the Settlement Agreement meets the requirements of Mo. R. Civ. P. 52.08(b)(3), 52.08(c)(2) and due process, and is the best notice practicable under the circumstances and shall constitute due and sufficient notice to all persons entitled thereto.

8. On or before July 7, 2021, the Settlement Administrator shall disseminate the Settlement Notice by setting up the settlement website on the Internet and posting both the Settlement Notice and Publication Notice. On or before July 7, 2021, the Settlement Administrator shall publish the Publication Notice pursuant to the Media Plan. The Publication

Notice shall also be posted on the Settlement Website until the conclusion of the Claims Period, or such later date as may be agreed to by Class Counsel and Defendant's Counsel.

9. The Settlement Administrator shall prepare a declaration attesting to compliance with the Settlement Notice requirements and a statement of the number of Persons the Media Plan reached. Such declaration shall be provided to Defendant's Counsel and Class Counsel and filed with the Court on or before Sept. 13, 2021

10. The Court approves the Claim Form in form and content as Exhibit **B** to the Motion For Preliminary Approval to the Settlement Agreement.

11. As set forth in paragraph 2.5 of the Settlement Agreement, claims shall be submitted on or before Sept. 7, 2021 (the "Claims Deadline"). To be timely, all Claims must be submitted by the Claims Deadline in accordance with the Settlement Agreement.

Any Settlement Class Member who intends to object to the Settlement must do so no later than Sept. 7, 2021 (the "Objection Deadline"). In order to object, the Settlement Class Member must file with the Court prior to the Objection Deadline, and provide a copy to Class Counsel and Defendant's Counsel, also prior to the Objection Deadline, a document that includes all of the following:

- a. The case name: *Christine Mendoza, et al., v. United Industries Corporation*, Case No. 21PH-CV00670 (Phelps County Circuit Court, Missouri).
- b. Your full name, address, and telephone number.
- c. The name, address, and telephone number of any lawyer(s) representing you or who may be entitled to compensation in connection with objection.
- d. A statement that you are a Class Member in the proposed Settlement, including a verification under oath of Covered Product(s) purchased and, to the extent known, the location, approximate date, and approximate price paid.
- e. A detailed statement of the Objection(s), including the grounds for the Objection(s) and any legal support for the Objection.

- f. Copies of any papers, briefs, or other documents upon which the Objection is based.
- g. A list of any and all persons who will be called to testify in support of the Objection.
- h. A statement whether you or your counsel intend to appear at the Fairness Hearing.
- i. A list and copies of any and all exhibits that you or your counsel intends to offer at the Fairness Hearing.
- j. The identity of any current or former lawyer who may be entitled to compensation for any reason relating to the Objection.
- k. A list of any class action settlement objections made by you or your lawyer in any state or federal court in the last five years.

12. Any Settlement Class Member who fails to file and serve timely: (a) a written objection containing all of the information listed in items (a) through (k) of the previous paragraph; and, (b) notice of his/her intent to appear at the Final Approval Hearing pursuant to this paragraph, shall not be permitted to object to the Settlement and shall be foreclosed from seeking any review of the Settlement or the terms of the Settlement Agreement by any means, including but not limited to an appeal

13. Any Settlement Class Member may request to be excluded (or “opt out”) from the Settlement Class. A Settlement Class Member who wishes to opt out of the Settlement Class must do so no later than Sept. 7, 2021 (the “Opt-Out Deadline”). In order to opt out, a Settlement Class Member must complete and mail to the Settlement Administrator a “Request for Exclusion” that is postmarked no later than the Opt-Out Deadline. Requests for Exclusion that are postmarked after the Opt-Out Deadline will be considered invalid and of no effect, and the Person who untimely submits a Request for Exclusion will remain a Settlement Class Member and will be bound by any Orders entered by the Court, including the Final Approval Order and the releases contemplated thereby.

14. Except for those Persons who have properly and timely submitted Requests for Exclusion, all Settlement Class Members will be bound by the Settlement Agreement and the Final Approval Order, including the releases, regardless of whether they file a Claim Form or receive any monetary relief. Any Person who timely and properly submits a Request for Exclusion shall not: (a) be bound by any orders or the Final Approval Order nor by the releases contained therein; (b) be entitled to any relief under the Settlement Agreement; (c) gain any rights by virtue of the Settlement Agreement; or (d) be entitled to object to any aspect of the Settlement Agreement. Each Person requesting exclusion from the Settlement Class must personally sign his or her own individual Request for Exclusion. No Person may opt-out of the Settlement Class any other Person, or be opted-out by any other Person, and no Person shall be deemed opted-out of the Settlement Class through any purported "mass" or "class" opt-outs.

15. The Settlement Administrator shall provide Settlement Class Counsel and Defendant's Counsel with a final list of any timely Requests for Exclusion received by the Settlement Administrator on or before Sept. 13, 2021

16. On or before Sept. 13, 2021, the Settlement Administrator shall prepare and deliver to Settlement Class Counsel, who shall file with the Court, and Defendant's Counsel, a report stating the total number of Persons who have submitted timely and valid Requests for Exclusion from the Settlement Class and Objections to the Settlement, and the names of such Persons.

17. On or before Sept. 17, 2021, Settlement Class Counsel shall submit papers in support of final approval of the certification of the Settlement Class, the designation of Plaintiffs as the representatives of the Settlement Class, the appointment of Settlement Class Counsel as counsel for the Settlement Class, and Settlement Class Counsel's Application for attorneys' fees

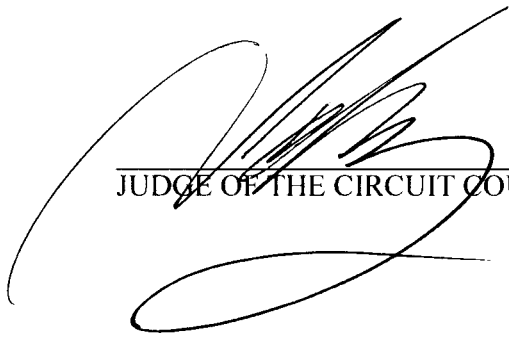
and expenses, and any response to any Objections.

18. Neither the Settlement Agreement, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be construed as an admission or concession by the Class Representatives or Defendant of any fact or allegation, or of any liability, fault, or wrongdoing of any kind.

19. The Court reserves the right to adjourn or continue the date of the Final Approval Hearing without further notice to the members of the Settlement Class, and retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement. The Court may approve the Settlement, with such modification as may be agreed to by the Parties, if appropriate without further notice to the Class.

IT IS SO ORDERED.

Dated: 6-7-21



JUDGE OF THE CIRCUIT COURT