

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

JOHN GULBANKIAN, ROBERT D.  
CALLAHAN, ERIC HARTSHORN, and  
BETHANY PERRY, on behalf of themselves  
and all others similarly situated,

Plaintiffs,

v.

MW MANUFACTURERS, INC.,

Defendant.

Case Numbers: 1:10-CV-10392-RWZ and  
3:12-CV-30122-RWZ

RWZ

**~~PROPOSED~~ FINAL APPROVAL ORDER, FINAL JUDGMENT,  
AND ORDER OF DISMISSAL WITH PREJUDICE**

Plaintiffs John Gulbankian, Robert D. Callahan, Eric Hartshorn, and Bethany Perry (“Plaintiffs”) have moved, pursuant to Federal Rule of Civil Procedure 23 (the “Motion”) for an order finally approving the settlement of the above captioned action, including all actions consolidated therein (the “Action”), in accordance with the Settlement Agreement dated April 18, 2014 (including its exhibits, the “Agreement”) [Doc. 145-1], which sets forth the terms and conditions for a proposed settlement of the Action and its dismissal with prejudice.

Defendant MW Manufacturers, Inc. (“MW”) does not oppose Plaintiffs’ Motion.

On May 23, 2014, this Court entered an Order that preliminarily approved the Agreement and conditionally certified the Settlement Class for settlement purposes only (the “Preliminary Approval Order”) [Doc. 169]. Due and adequate notice was given to the Settlement Class in compliance with the procedures set forth in the Agreement and the Preliminary Approval Order. The Court considered all papers filed and proceedings had herein. The Court conducted a hearing on October 29, 2014, to consider, among other things, whether the settlement should be

approved as fair, reasonable, and adequate, whether Class Counsel's request for approval of attorneys' fees and expenses is reasonable and should be approved by the Court, and whether Class Representatives' request for approval of incentive awards is reasonable and should be approved by the Court. Otherwise being fully informed of the premises, and good cause appearing therefor,

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:**

1. This Final Approval Order and Judgment incorporates by reference the definitions in the Agreement, and all terms used herein shall have the same meanings as set forth in the Agreement, unless otherwise defined in this Order.

2. The Court finds that the Agreement is the product of good faith, arm's-length negotiations by the Parties, with the substantial involvement of an independent, nationally respected mediator, and that each Party was represented by experienced counsel.

3. This Court has subject matter jurisdiction over the Action, and, for purposes of this settlement only, personal jurisdiction over all the Parties, including all Settlement Class Members.

4. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and consistent with due process, this Court hereby approves the Agreement and finds that the Settlement is, in all respects, fair, just, reasonable, and adequate to the Settlement Class Members, and the Parties are hereby directed to perform its terms.

5. The Parties dispute the validity of the claims in this litigation, and their dispute underscores not only the uncertainty of the outcome, but also why the Court finds the Agreement to be fair, reasonable, adequate, and in the best interests of the Settlement Class Members (defined below). Beyond facing uncertainty regarding the resolution of those issues, by continuing to litigate, Settlement Class Members would also face substantial challenges in

attempting to certify a class and in surviving an appeal of any class certification order entered in this Action, as well as surviving an appeal of any other rulings rendered during a trial of the Action.

6. The Court finds that the Settlement was reached following meaningful discovery and investigation conducted by Class Counsel. The Settlement is the result of adversarial, arm's-length negotiations between the parties, and the terms and conditions of the Settlement are fair, adequate and reasonable when balanced against the probable outcome of further litigation. At the time the Settlement was negotiated, counsel were reasonably able to evaluate their respective positions. This Settlement will avoid substantial additional costs to all parties, as well as the delay and risks that would be presented by further prosecution of this Action. In so finding, the Court considered evidence regarding Plaintiffs' case, the risk, expense and complexity of the claims presented, the likely duration of further litigation, the amount obtained in settlement, the extent of investigation and discovery completed, and the experience and views of Class Counsel. The Court also considered the objections and requests for exclusion submitted by Settlement Class Members.

7. This Court hereby certifies, solely for purposes of effectuating this settlement, the "Settlement Class" defined as follows:

All individuals or entities that own or have owned homes, residences, buildings or other structures physically located in the United States, American Samoa, Guam, Northern Mariana Islands, Puerto Rico, or U.S. Virgin Islands that contain or have contained vinyl clad wood-framed windows manufactured by MW Manufacturers, Inc. from January 1, 1987 to and including the date of Preliminary Approval, including, but not limited to, double-hung, casement, awning, sliding, fixed, special shape, picture, transom and side light windows sold under the names V-Wood, Freedom (a/k/a "Freedom Clad" or "MW Clad"), Freedom 600 (a/k/a "Builder Series 600" or "Series 600"), Revere or Freedom 800 (a/k/a "Pro Series 800" or "Series 800").

(hereinafter "Settlement Class Members"). Excluded from this Settlement Class are:

- a. All individuals and entities who submit timely and valid requests to be excluded from the Settlement Class pursuant to the terms of the Settlement Agreement and the Court's Preliminary Approval Order;
- b. All individuals and entities who have filed claims concerning an MW Vinyl-Clad Window in any court of law or before any other tribunal (including, without limitation, an arbitrator), if that claim has been resolved with a final judgment or order, whether or not favorable to the Claimant;
- c. MW, any entity in which MW has a controlling interest, any entity which has a controlling interest in MW, and MW's employees, officers, directors, legal representatives, assigns and successors;
- d. Subrogees with subrogation claims arising from an insurance claim by a class member; and
- e. The Judge to whom this case is assigned and any member of the Judge's immediate family.

8. Plaintiffs' request for final certification of the Settlement Class is granted. The Court finds that, for purposes of this Settlement, the requirements of Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure are met, and that a class action is an appropriate method for resolving the disputes in this litigation. The Court finds that:

- a. The Settlement Class consists of thousands of owners of buildings on which MW Vinyl-Clad Windows were installed on or after January 1, 1987, and joinder of all members is impracticable;
- b. There exist questions of fact and law common to the Settlement Class Members. All Settlement Class Members contend that the MW Vinyl-Clad Windows are defective and allege breach of warranty, negligence and unfair trade practices claims against MW;
- c. The claims of the Named Plaintiffs are typical of the claims of the Settlement Class Members;
- d. The Named Plaintiffs and Class Counsel will fairly and adequately protect the interests of the Settlement Class;

e. The questions of law or fact common to the Settlement Class Members, and which are relevant for settlement purposes, predominate over the questions affecting only individual Settlement Class Members; and

f. Resolution of this litigation in the manner proposed by the parties' Settlement Agreement is superior to other available methods for a fair and efficient adjudication of the Action.

9. This Court finds that the Class Notice was provided to the Settlement Class consistent with the Preliminary Approval Order and that it was the best notice practicable and fully satisfied the requirements of the Federal Rules of Civil Procedure, due process, and applicable law. The Court finds that the Notice Plan that was implemented by the Claims Administrator satisfies the requirements of FED. R. CIV. P. 23, 28 U.S.C. § 1715, and Due Process, and is the best notice practicable under the circumstances. The Notice Plan constituted due and sufficient notice of the Settlement, the Final Approval Hearing, and the other matters referred to in the Notices. Proof of the giving of such notices has been filed with the Court via the Azari Declaration and its exhibits.

10. This Court has considered and hereby overrules each objection to the Settlement for lack of merit. The Court held a Final Approval Hearing to consider the fairness, reasonableness and adequacy of the Settlement and has been advised of the four objections that were received. The Court has considered these objections, and they are hereby overruled and denied. Some objections have asserted arguments about the Notice Program and the claims process. The Court has reviewed the Notice Program and the claims process in detail and overrules these objections.

11. The Court hereby grants final approval of the Settlement and dismisses with prejudice on the merits and without costs (except as otherwise provided in the Agreement) the

above-captioned Action (subject to retention of jurisdiction to enforce the settlement as described in the Settlement Agreement), including all claims asserted by Plaintiffs and the Settlement Class in this Action. The Settlement Class Members, except for those set forth above who returned timely and valid requests for exclusion (“Opt-Outs”), are deemed to have released their claims as set forth in the Settlement Agreement.

12. The Court hereby specifically approves and incorporates herein by reference the Release and all other terms set forth in Sections 13.1-13.4 of the Agreement. By virtue of this Order, Named Plaintiffs and each Settlement Class Member, and all other “Releasing Parties” as defined in Section 13.1 of the Agreement, shall automatically be deemed to have fully and irrevocably released and forever discharged the Released Parties, as also defined in Section 13.1 of the Agreement, to the full extent provided in Section 13 of the Agreement.

13. Class Counsel informed the Court of their belief that this Settlement is fair, reasonable and adequate. The Court finds that Class Counsel are experienced in the area of complex class action litigation such as this case, that they conducted sufficient discovery to determine that the Settlement was fair to the Settlement Class, and that their judgment is entitled to weight.

14. This Court approves an award to Class Counsel in the amount of \$ 2,000,000. in attorneys’ fees and \$ 500,000. in costs, to be paid by MW within 21 calendar days after the Effective Date. The Court approves incentive awards of \$ 5,000. to be paid by MW to each of the Class Representatives within 21 calendar days after the later of (1) the Effective Date, and (2) the receipt of completed and signed W-9 forms from each Plaintiff. Plaintiffs’ Co-Lead Counsel have authority to distribute the attorneys’ fees and costs awarded. This Court, having presided over the above-captioned action and having considered the materials submitted by Class Counsel in support of final approval of the

settlement, as well as their request for attorneys' fees and costs, finds the awards appropriate based on the following factors:

- a. The settlement provides substantial benefits for the Settlement Class.
- b. The requested award of attorneys' fees and expenses is within the range of reasonable fees for similar class action settlements.
- c. The requested fees are consistent with the total lodestar of Class Counsel without a multiplier, based on the declarations submitted to the Court.
- d. This litigation raised numerous questions of law and fact, Class Counsel were opposed by highly skilled defense counsel, the litigation was intensely contested through the completion of the Settlement Agreement, and there was substantial risk that Plaintiffs would not prevail on some or all of their claims.
- e. The Settlement's terms were negotiated at arm's-length and without collusion, with the assistance of highly-qualified mediators.
- f. The fees will be paid in addition to and will not diminish any class settlement.

15. The Released Parties may file the Agreement and/or this Final Approval Order and Judgment in any action that may be brought against them in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good-faith settlement, judgment bar, reduction, set-off, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

16. Settlement Class Members, and any person or entity allegedly acting on behalf of Settlement Class Members, either directly, representatively, or in any other capacity, are enjoined from commencing or prosecuting against the Released Parties any action or proceeding in any court or tribunal asserting any of the Released Claims, provided, however, that this injunction shall not apply to the claims of Opt-Outs.

17. Except as otherwise set forth in the Agreement, without affecting the finality of this Final Approval Order and Judgment in any way, this Court retains continuing jurisdiction to implement the Agreement and to construe, enforce, and administer the Agreement and this settlement, as described in the Settlement Agreement. Class Counsel will continue in their role to oversee all aspects of the Agreement and Settlement. Upon notice to Class Counsel, Defendant may seek from this Court, pursuant to 28 U.S.C. § 1651(a), such further orders or process as may be necessary to prevent or forestall the assertion of any of the released claims set forth in the Agreement, in any other forum, or as may be necessary to protect and effectuate the Settlement and this Final Approval Order and Judgment.

18. If the Effective Date, as defined in the Settlement Agreement, does not occur for any reason whatsoever, this Order and the Preliminary Approval Order shall be deemed vacated and shall have no force or effect whatsoever.

19. If an appeal, writ proceeding, or other challenge is filed as to this Final Approval Order and Judgment, and if thereafter the Final Approval Order is not ultimately upheld, all orders entered, facts found, determinations and stipulations made, and releases delivered in connection herewith, or in the Agreement or in connection therewith, shall be null and void to the extent provided by and in accordance with the Agreement.

20. Neither the Settlement, nor any of its provisions, nor any of the negotiations or proceedings connected with it, shall be construed as an admission or concession by any party of the truth of any allegation in the Action or of any liability, fault or wrongdoing of any kind. Nothing in this Order shall be construed as a finding on the merits of any issue raised in this Action.

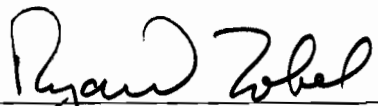
21. The Court hereby enters Final Judgment in this case and dismisses it with prejudice in accordance with the terms of the Settlement Agreement. The final judgment shall



not bind any Settlement Class Members who timely opted out of the Settlement. There being no reason to delay entry of this Final Judgment, the Clerk of the Court is ordered to enter this Final Judgment pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

**IT IS SO ORDERED.**

Dated: December 29, 2014

  
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Hon. Ryan W. Zobel  
UNITED STATES DISTRICT JUDGE