

**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 INDIRECT PURCHASER ACTIONS**

FINAL JUDGMENT ORDER

Indirect Purchaser Plaintiffs (“Plaintiffs”), individually and on behalf of a class of indirect 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 “Settlement Agreement”) to fully and finally resolve the USG Settlement Class’s claims against USG (the “USG Settlement”). On February 13, 2015, Plaintiffs moved the Court for an order preliminarily approving the USG Settlement, authorizing Plaintiffs to disseminate notice to the USG Settlement Class members, 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 “Preliminary Approval Order”), the Court granted preliminary approval of the USG Settlement, certified the USG Settlement Class for purposes of sending notice to the USG Settlement Class members, and authorized the Plaintiffs to disseminate notice of the USG Settlement, the fairness hearing, and related matters to the USG Settlement Class members. 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 Settlement Agreement, Plaintiffs' Motion for Final Approval of the Proposed Settlement with USG, 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 Settlement Agreement.
3. The Preliminary Approval Order outlined the form and manner by which the Plaintiffs would provide the USG Settlement Class members with notice of the USG Settlement, the fairness hearing, and related matters. Proof that such notice was effectuated 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 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 Settlement with USG 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 Settlement.

6. The USG Settlement Class provisionally certified by the Court in its Preliminary Approval Order is certified as a class pursuant to Rule 23 of the Federal Rules of Civil Procedure for purposes of the Settlement with USG, and is comprised of the following:

Nationwide Injunctive Class: All persons or entities in the United States who indirectly purchased for end use and not for resale Wallboard manufactured and/or sold by one or more of the Defendants or their subsidiaries or affiliates at any time from January 1, 2012 through November 30, 2014. Excluded from the Class are Defendants, their officers, directors, and employees, their parent companies, subsidiaries and affiliates, the legal representative and heirs or assigns of any Defendant, any federal governmental entities and instrumentalities of the federal government, any judicial officer presiding over the Action, any member of his or her immediate family and judicial staff, and any juror assigned to the Action.

Indirect Purchaser State Damages Class: All persons or entities located in or making a purchase in or from an entity located in Arizona, Arkansas, California, the District of Columbia, Florida, Illinois, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Puerto Rico, Rhode Island, South Dakota, Tennessee, Utah, Vermont, West Virginia, and Wisconsin who indirectly purchased for end use and not for resale Wallboard manufactured and/or sold by one or more of the Defendants or their subsidiaries or affiliates at any time from January 1, 2012 through November 30, 2014. Excluded from the Class are Defendants, their officers, directors, and employees, their parent companies, subsidiaries and affiliates, their 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, any member of his or her immediate family and judicial staff, and any juror assigned to the Action.

In finally certifying the USG Settlement Class, the Court adopts and incorporates herein all findings made under Rule 23 in its 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. Those persons and entities are not included in or bound by this Final Judgment Order or the final judgment regarding USG.

9. All of Plaintiffs' claims against USG in the Indirect Purchasers' Consolidated Amended Class Action Complaint and Demand for Jury Trial are dismissed with prejudice and without costs (except as provided for in the 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, their predecessors, affiliates, assigns, successors, subsidiaries, attorneys, and their officers, directors, agents, representatives, and 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 direct purchases of Wallboard brought by prospective members of any class of direct purchasers (the “Direct 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 \$8,750,000, 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. Neither the Settlement Agreement, nor any act performed or document executed pursuant to the Settlement Agreement, constitutes an admission of wrongdoing by any party in any civil, criminal, administrative, or other proceeding in any jurisdiction.

14. 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.

15. Without affecting the finality of this Final Judgment Order, the Court retains exclusive jurisdiction over: (a) the Final Judgment Order; (b) the Settlement Agreement; and (c) any application for disbursement of the USG Settlement Fund made by Interim Co-Lead Counsel.

16. 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 1 – OPT-OUT REQUESTS

1. **D.R. Horton, Inc. 301 Commerce Street, Suite 500, Fort Worth, TX 76102**, and the following related entities:
 - a. D.R. Horton Los Angeles Holding Company, Inc.
 - b. D.R. Horton, Inc. - Torrey
 - c. CHI Construction Company
 - d. Continental Homes of Texas, L.P.
 - e. DRH Cambridge Homes, Inc.
 - f. D.R. Horton, Inc. - New Jersey
 - g. D.R. Horton, Inc. - Jacksonville
 - h. D.R. Horton, Inc. - Minnesota
 - i. D.R. Horton - Texas, Ltd.
 - j. D.R. Horton, Inc. - Birmingham
 - k. Western Pacific Housing, Inc.
 - l. D.R. Horton, Inc. - Dietz-Crane
 - m. D.R. Horton BAY, Inc.
 - n. D.R. Horton, Inc. - Sacramento
 - o. D.R. Horton, Inc. - Gulf Coast
 - p. D.R. Horton, Inc. - Greensboro
 - q. D.R. Horton VEN, Inc.
 - r. D.R. Horton- Emerald, Ltd.
 - s. DRH Southwest Construction, Inc.
 - t. Melody Homes, Inc.
 - u. Surprise Village North, LLC
 - v. D.R. Horton, Inc. - Huntsville
 - w. D.R. Horton - Schuler Homes, LLC
 - x. KDB Homes, Inc,
 - y. D.R. Horton, Inc. - Portland
 - z. Continental Residential, Inc.
 - aa. D.R. Horton - Crown, LLC
 - bb. D.R. Horton-Regent, LLC
 - cc. SSHILLC

2. **Beazer Homes USA, Inc. 1000 Abernathy Road, Suite 260, Atlanta, GA 30328**, and the following related entities:
 - a. Beazer Homes Holding Corp.
 - b. Beazer Homes Corp.
 - c. Beazer Homes Texas, L.P.
 - d. Beazer Homes Indiana LLP

3. **Hovnanian Enterprises, Inc., 110 West Front Street, Red Bank, NJ 07701**,

4. **Ashton Woods USA L.L.C.**, 1405 Old Alabama Road, Suite 200, Roswell, GA 30076, and the following related entities:
 - a. Ashton Woods Holding L.L.C.
 - b. Ashton Atlanta Residential, L.L.C.
 - c. Ashton Dallas Residential L.L.C.
 - d. Ashton Houston Residential L.L.C.
 - e. Ashton Orlando Residential L.L.C.
 - f. Ashton Tampa Residential, LLC
 - g. Ashton Charleston Residential L.L.C.
 - h. Ashton Raleigh Residential L.L.C.
 - i. Ashton Austin Residential L.L.C.
 - j. Ashton San Antonio Residential L.L.C.
 - k. Ashton Woods Construction, L.L.C.

5. **Toll Brothers, Inc.**, 250 Gibraltar Road, Horsham, PA 19044, and each of its subsidiaries and affiliates, including:
 - a. Jupiter CC L.L.C.,
 - b. Provost Square I L.L.C.
 - c. TMF Kent Partners L.L.C.

6. **TRI Pointe Homes, Inc.**, 19540 Jamboree Road, Suite 300, Irvine, CA 92612, and the following affiliated entities:
 - a. Tri Pointe Contractors, L.P.
 - b. The Quadrant Corporation
 - c. Winchester Homes, Inc.
 - d. Maracay Homes, L.L.C.
 - e. Trendmaker Homes, Inc.
 - f. Pardee Homes
 - g. Pardee Homes of Nevada

7. **Pulte Home Corporation**, 3350 Peachtree Road NE, Atlanta, GA 30326.

8. **KB Home**, 10990 Wilshire Boulevard, Los Angeles, CA 90024.

9. **Meritage Homes Corporation**, 8800 East Raintree Drive, Suite 300, Scottsdale, AZ 85260.

10. **M/I Homes, Inc.**, Three Easton Oval, Suite 500, Columbus, OH 43219, and the following affiliated entities:
 - a. M/I Homes Service, LLC
 - b. M/I Homes of Indiana, L.P.
 - c. M/I Homes of Tampa, LLC

- d. M/I Homes of Orlando, LLC
- e. M/I Homes of Central Ohio, LLC
- f. M/I Homes of Cincinnati, LLC
- g. M/I Homes of Raleigh, LLC
- h. M/I Homes of Charlotte, LLC
- i. M/I Homes of DC, LLC
- j. M/I Homes of Chicago, LLC
- k. M/I Homes of Houston, LLC
- l. M/I Homes of San Antonio, LLC
- m. M/I Homes of Austin, LLC
- n. M/I Homes of DFW, LLC

11. The Drees Company, 211 Grandview Drive, Fort Mitchell, KY 41017.

- a. Drees Custom Homes L.P.
- b. Drees Premier Homes, Inc.
- c. Drees Homes of Florida, Inc.
- d. Saber Ridge, L.L.C.
- e. Ausherman Homes, Inc.

12. The Ryland Group, 3011 Townsgate Road, Suite 200, Westlake Village, CA 91361.