

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

Craftwood Lumber Company, an Illinois corporation, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

Senco Brands, Inc.,

Defendant.

Case No. 14-cv-06866

Honorable John Robert Blakey

FINAL APPROVAL ORDER

THIS MATTER having come before the Court on the motion of Plaintiff and Class Representative Craftwood Lumber Company (“Plaintiff”) requesting final approval of a settlement of this class action litigation (the “Action”) with Defendant Senco Brands, Inc. (“Defendant” or “SBI”), in accordance with a Class Action Settlement Agreement (“Settlement Agreement”) made between them which, together with the exhibits annexed thereto [149], setting forth the terms and conditions for the proposed class settlement, and the Court having heard argument of counsel and being otherwise fully advised in the premises, the Court hereby finds that:

(a) On December 15, 2016, this Court entered an Order [152] granting preliminary approval (the “Preliminary Approval Order”) of the settlement of this action and conditionally certifying, for settlement purposes only, a Settlement

Class.

(b) On April 5, 2017, Plaintiff moved for final approval of the proposed class settlement and certification of the settlement class [156] and for an incentive award for service as class representative [162], and Settlement Class Counsel moved for an award of attorneys' fees and reimbursement of expenses [159].

(c) On June 6, 2017, the Court held a final approval hearing (the "Final Approval Hearing"), for which members of the Settlement Class had been given appropriate notice.

(d) Having considered all papers filed in connection with the Final Approval Motion, the Motion for Fees and the Motion for Incentive Award, as well as statements made on the record in open court,

IT IS HEREBY ORDERED AND ADJUDGED THAT:

1. This Court has jurisdiction over Plaintiff, Defendant, members of the Settlement Class, and the Settlement Administrator.

2. The Court finds that the Settlement Agreement has been entered into in good faith following arms' length negotiations and is non-collusive. Capitalized terms in this Order shall have the same meaning as in the Settlement Agreement.

3. The Court grants final approval of the settlement and Settlement Agreement, including, but not limited to, the release in paragraph 9 thereof, and finds that the settlement and Settlement Agreement are, in all respects fair, reasonable, adequate, and in the best interests of the Settlement Class. Therefore, all members of the Settlement Class who have not timely and validly requested

exclusion from the Settlement Class are bound by this Judgment and Order.

Class Certification

4. The preliminarily certified Settlement Class is now finally certified, for purposes of effectuating the settlement, as follows:

All subscribers of facsimile telephone numbers to which SBI transmitted, on or after September 5, 2010, one or more facsimiles, as recorded in Senco024902 attached as Exhibit 1 to the Settlement Agreement.

5. The Court finds that certification of the Settlement Class is appropriate because (a) the class is so numerous that joinder of all members is impracticable; (b) there are questions of law and fact common to the Settlement Class, and those questions predominate over any questions affecting only individual Settlement Class members; (c) Plaintiff's claims are typical of the claims of the Settlement Class; (d) Plaintiff will fairly and adequately protect the interests of the Settlement Class; (e) Settlement Class Counsel are adequate class counsel; and (f) a class action is the superior method for the fair and efficient adjudication of this controversy. The certification of the Settlement Class is without prejudice to Plaintiff's and Defendant's rights under the Settlement Agreement if the Settlement Agreement, this Order, or the Judgment do not become effective, as provided in the Settlement Agreement.

6. The Court preliminarily designated and appointed C. Darryl Cordero of Payne & Fears LLP, as Lead Settlement Class Counsel, and Frank F. Owen of Frank Owen & Associates P.C., and Charles R. Watkins of Guin, Stokes & Evans LLC, as Settlement Class Counsel. The Court confirms these appointments and,

after considering all factors set forth at Rule 23(g)(1), finds that Settlement Class Counsel are adequate under Rule 23(g)(1) and (4).

7. The designation and appointment of KCC LLC (f/k/a Kurtzman Carson Consultants) as the Settlement Administrator is confirmed.

Class Notice

8. The Declaration of Eric Robin [156-6] shows that the following actions were performed in accordance with the Settlement Agreement and the Court's Preliminary Approval Order: Class Notice (Exhibits 2 and 3 to the Class Action Settlement Agreement) was given by facsimile transmission and, in some cases, was followed by first-class mail; a settlement website (www.sbisettlement.com) was established; and the long-form Notice of Class Action and Proposed Settlement (Exhibit 4 to the Class Action Settlement Agreement) was posted to the settlement website. The foregoing complies with Fed. R. Civ. P. 23(e) and due process, constitutes the best notice practicable under the circumstances, and is due and sufficient notice to all persons entitled to notice of the settlement of this Action.

Objections and Opt-Outs

9. No objections were filed by Settlement Class members in accordance with requirements as set forth in the Class Notice and the Settlement Agreement.

10. Two class members, Fairview Hardware (claim ID 10001347801) and Oakes and McClelland (claim ID 1002755601), have timely and validly requested exclusion from the Settlement Class in accordance with paragraph 11.A of the Settlement Agreement. *See* [156-14]. These persons, having timely filed valid

requests from exclusion, are hereby excluded from and shall not be considered to be members of the Settlement Class.

Class Relief

11. The Settlement Administrator estimates that 988 Settlement Class Members are projected to receive \$600 or more in the distribution. Of these, 946 Settlement Class Members have not returned completed IRS Form W-9 or otherwise provided taxpayer identification numbers to the Settlement Administrator. The Settlement Administrator shall send deficiency notices to these Settlement Class Members by facsimile (and if facsimile transmission fails, by United States Mail), informing them that they are required to provide a taxpayer identification number or be subject to automatic withholding and IRS penalties. The Settlement Administrator shall establish an online portal at the settlement website for class members to submit taxpayer identification numbers. The Settlement Administrator shall send a second notice in the same manner to those class members that fail to provide taxpayer identification numbers within 18 days of the sending of the original deficiency notice. These Settlement Class Members shall have 30 days following the first sending of deficiency notices in which to deliver their taxpayer identification numbers, by completed Form W-9s or otherwise, to the Settlement Administrator.

12. No later than July 27, 2017, the Settlement Administrator shall distribute the Members' Payment Amount to Settlement Class Members in accordance with paragraph 8.A of the Settlement Agreement. Payments to

Settlement Class Members that are projected to receive \$600 or more but fail to provide taxpayer identification numbers to the Settlement Administrator shall be the greater of (a) the calculated payment based on the members' shares, less \$250 and additional amounts required by the IRS to be withheld, or (b) \$599.99.

13. Defendant Senco Brands, Inc., its officers, employees, agents and representatives, are permanently enjoined from sending via facsimile transmission: (1) an advertisement without the recipient's prior express invitation or permission; or (2) an advertisement that does not contain a notice of opportunity to opt-out of future facsimiles required by 47 U.S.C. § 227(b)(2)(D).

Release of Claims

14. Except for the rights and obligations contained in or arising out of the Settlement Agreement on the Effective Date, the Class Representative and each Settlement Class member that did not timely and validly opt out of the settlement class shall release SBI and all of its past and present officers, directors, members, servants, shareholders, sureties, insurers, attorneys, employees, and entities, successors, or predecessors, including Senco Products, Inc., and all such persons' or entities' successors or predecessors in interest, assigns and legal representatives, from all claims arising out of or related to the allegations in the Action, including claims based on violations of the Telephone Consumer Protection Act of 1991, 47 U.S.C. § 227, and regulations of the Federal Communications Commission under that act.

Attorneys' Fees, Reimbursement of Costs, and Incentive Award

15. Except Settlement Class Counsel and other counsel identified below shall be paid a total of \$983,333 as attorneys' fees from the Common Fund in accordance with the terms of the Settlement Agreement. Of this sum, \$801,168.75 shall be paid to Payne & Fears LLP (Lead Settlement Class Counsel's firm); \$98,333.30 shall be paid to Settlement Class Counsel Frank F. Owen; \$17,918.58 shall be paid to Guin, Stokes & Evans LLC (Settlement Class Counsel Charles R. Watkins's firm); and \$ 65,912.37 shall be paid to Scott Z. Zimmermann of the Law Offices of Scott Zimmermann. The Court finds these amounts to be fair, reasonable, and sufficiently supported by the evidence submitted and the record in this Action. The Settlement Administrator shall pay all fees no later than 14 days after the Effective Date (as defined in the Settlement Agreement), provided, however, that some or all fees payable to Payne & Fears LLP and Lead Settlement Class Counsel may be deferred to a date specified by Lead Settlement Class Counsel. This is solely for convenience and does not provide Payne & Fears LLP or Lead Settlement Class Counsel with any ownership interest in any portion of the settlement other than the right to receive the fee payments in the future. The Settlement Administrator shall establish a qualified settlement fund under Internal Revenue Code section 468B for purposes of paying attorneys' fees, and shall execute documents and take such actions as may be necessary to implement this term.

16. Settlement Class Counsel and other counsel identified below shall be paid from the Common Fund a total of \$65,560.26 for reimbursement of costs, of

which \$58,953.23 shall be paid to Payne & Fears LLP; \$1,200.53 shall be paid to Frank F. Owen; \$12.50 shall be paid to Guin, Stokes & Evans LLC; and \$5,394 shall be paid to Scott Z. Zimmermann of the Law Offices of Scott Zimmermann. The Settlement Administrator shall reimburse these costs no later than 14 days after the Effective Date (as defined in the Settlement Agreement).

17. Plaintiff shall be paid an incentive award in the amount of \$35,430 from the Common Fund in accordance with the Settlement Agreement, no later than 14 days after the Effective Date (as defined in the Settlement Agreement). The Court finds this amount to be fair and reasonable, and sufficiently supported.

Other Provisions

18. The Parties and the Settlement Administrator are ordered to take all necessary actions to complete and administer the settlement in accordance with the Settlement Agreement and shall comply with the terms of the Settlement Agreement. The Settlement Administrator's fees and costs shall be paid from the Administrative Costs Advance and the Settlement Payment (as defined in the Settlement Agreement) in accordance with the Settlement Agreement. The Parties expressly recognize and consent to enforcement of the terms of the Settlement Agreement by this Court through a motion for a rule to show cause.

19. No earlier than 120 days after the check issuance date (to be printed on the checks), the Settlement Administrator shall close the account on which the checks were drawn. Within 20 days after the date by which Settlement Class members have to negotiate settlement checks, Settlement Class Counsel shall

report to the Court on the amount of any Uncashed Checks (as defined in the Settlement Agreement) and any remaining Members' Payment Amount. All funds represented by Uncashed Checks and other excess funds shall be distributed in accordance with paragraph 8.B of the Settlement Agreement. Within 14 days after the date Settlement Class Counsel reports to the Court the amount of any Uncashed Checks and other excess funds, the parties shall inform the Court of their positions regarding disposition of such funds under paragraph 8.B. Thereafter the Court will order the distribution of these funds.

20. If the Settlement Agreement and the Judgment entered in accordance with this Order are reversed, vacated, or modified in any material respect, then neither the Settlement Agreement nor this Judgment and Order (including the certification of the Settlement Class provided in paragraph 4 of this Order, or the release provided in paragraph 13 of this Order) shall have any force or effect; the Parties shall be restored, without waiver, to their respective positions immediately prior to entering into the Settlement Agreement; any certification of the Settlement Class shall be vacated; the Action shall proceed as though the Settlement Class had never been certified; Plaintiff shall have the right to move for certification of a class, and Defendant shall have the right to prosecute its renewed motion for summary judgment, motion to dismiss for lack of jurisdiction, and to oppose class certification; the balance of the Settlement Payment (as defined in paragraph 3.A of the Settlement), if paid, shall be returned to Defendant, less incurred costs of administration and notice; and the interim stay provided in paragraph 16 of the

Preliminary Approval Order shall be expunged.


21. Settlement Class Counsel shall submit a report on the accounting of the Common Fund on or before December 15, 2017.

22. A status hearing shall be set for January 17, 2018, at 9:45 a.m.

23. Judgment shall be entered in accordance with this Order and the Settlement Agreement.

DATE: June 8, 2017

ENTERED:



John Robert Blakey
United States District Judge