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Superior Court of California
County of Los Angeles

SEP 24 2018

Sherri R. Carter, Executive Officer/Clerk
By: V. Jaime, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES – CENTRAL CIVIL WEST

RECEIVED
LOS ANGELES SUPERIOR COURT
SEP 05 2018
R. NAZARYAN
SSC

MILES HOUZE, individually and on behalf of all others similarly situated, SUSAN HOUZE, individually and on behalf of all others similarly situated, KEVIN NGAI, individually and on behalf of all others similarly situated, MARCIA PRICE, individually and on behalf of all others similarly situated, HENRY OKONKWO, individually and on behalf of all others similarly situated,

Plaintiffs,

vs.

BRASSCRAFT MANUFACTURING COMPANY, a Michigan corporation, EZ-FLO INTERNATIONAL, INC., a California corporation, and DOES 1 through 1,000, inclusive,

Defendants.

Case No.: BC493276

Assigned for all Purposes to:
Judge: Hon. Ann I. Jones
Dept.: 308

CLASS ACTION

BY FAX

SECOND AMENDED [PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF SETTLEMENT, CERTIFYING PROVISIONAL SETTLEMENT CLASS, APPOINTING SETTLEMENT CLASS COUNSEL, SETTING HEARING ON FINAL APPROVAL OF SETTLEMENT, AND DIRECTING NOTICE TO THE CLASS

Hearing Date: August 27, 2018
Hearing Time: 9:00 a.m.
Hearing Location: Spring Street Dept. 11

Action Filed: October 4, 2012
Trial Date: None Set

1 ORDER

2 Pursuant to California Rules of Court Rule 3.769(c), Plaintiffs Miles Houze, *et*
3 *al.*, on behalf of themselves and a nationwide class of others similarly situated,
4 (collectively "Plaintiffs") moved this Court for an Order preliminarily approving the
5 Settlement Agreement and Release as to Defendant EZ-Flo International, Inc.
6 ("Settlement Agreement"), certifying a provisional settlement class, appointing
7 settlement class counsel, setting a hearing on the final approval of the settlement, and
8 directing notice to the class (the "Motion"). Defendant EZ-Flo International, Inc.
9 ("Defendant EZ-Flo") joined in Plaintiffs' request for an order preliminarily approving
10 the settlement between Plaintiffs and EZ-Flo.

11 Upon consideration of the Motion, the Settlement Agreement,¹ the materials
12 previously submitted in this case, the arguments of counsel, and other materials relevant
13 to this matter, and good cause appearing therefore, **THE COURT HEREBY FINDS**
14 **AND ORDERS AS FOLLOWS:**

- 15 1. The Court grants preliminary approval of the Settlement Agreement.
- 16 2. The terms of the Settlement Agreement are sufficiently fair, reasonable,
17 and adequate to allow dissemination of notice according to the Notice Plan provided in
18 the Settlement Agreement. Specifically, the Court approves the Notice Plan and
19 approves, as to form and content the Notices attached to the Second Amended Stipulated
20 First Addendum to the Settlement Agreement. This determination is not a final finding
21 that the Settlement Agreement is fair, reasonable, and adequate, but instead is a
22 determination that there is reasonable cause to submit the proposed Settlement
23 Agreement to Settlement Class Members and to hold a hearing on the fairness of the
24 proposed settlement and on the final approval of the settlement ("Fairness Hearing"),
25 and ultimately approve the Settlement.

26 _____
27 ¹ All capitalized terms have the same definitions provided in the final Class Action Settlement
28 Agreement as to Defendant EZ-Flo International, Inc. executed by the parties unless otherwise
provided herein.

1 3. The Court hereby approves the provisions for disseminating the above
2 materials substantially as described in the Notice Plan in the Settlement Agreement and
3 the declarations of Carla Peak Regarding Notice Plan. These materials (a) provide the
4 best practicable notice, (b) are reasonably calculated, under the circumstances, to apprise
5 Settlement Class Members of the pendency of the action, the terms of the proposed
6 settlement, and of their right to appear, object to, or exclude themselves from the proposed
7 settlement, (c) are reasonable and constitute due, adequate, and sufficient notice to all
8 persons entitled to receive notice, and (d) comply fully with the requirements of the
9 California Rules of Court, the California Code of Civil Procedure, the California Civil
10 Code, the Constitution of the State of California, the United States Constitution, and any
11 other applicable law.

12 4. The Notice Administrator shall be responsible for providing notice of the
13 proposed settlement to the Settlement Class Members in accordance with the provisions
14 of the Settlement Agreement. The Notice Administrator shall disseminate Notices and
15 Claim Forms per the Notice Plan within twenty (20) days of the entry of this Order.
16 Within fifteen (15) days after the deadline to disseminate Notices and Claim Forms to
17 Settlement Class Members, the Notice Administrator shall provide declarations to the
18 Court, with a copy to Class Counsel and Counsel for Defendant EZ-Flo, attesting to the
19 measures undertaken to provide Notices and Claim Forms to the Settlement Class.

20 5. The Court preliminarily certifies a class for settlement purposes only,
21 consisting of persons who meet the following criteria:

22 All Persons that own or have owned a Residential Property Unit(s) and/or a
23 Commercial Property Unit(s) located in the United States that contain or have
24 ever contained a Covered Product manufactured on or before the Effective Date.

25 6. Excluded from the Settlement Class are:

- 26 a. Persons who validly and timely exclude themselves using the
27 procedures set forth in the Settlement Agreement;
28 b. Retailers, wholesalers, and claims aggregators or persons or entities

1 who claim to be an assignee of rights associated with any of the
2 Covered Products, except associations of homeowners may seek
3 Settlement Benefits for common areas only;

4 c. Except as specified in the Settlement Agreement, insurers and/or
5 providers of extended service contracts or warranties for the
6 Settlement Class Structures; and

7 d. The Honorable Ann I. Jones and members of her family.

8 7. If, for any reason, the Settlement Agreement is not ultimately approved,
9 the proposed settlement and any order certifying a Settlement Class shall be vacated
10 *nunc pro tunc* and the Litigation shall proceed as though the Settlement Class had never
11 been certified, without prejudice to the Parties' rights to either request or oppose class
12 certification for purposes of litigation.

13 8. In making the findings set forth in Paragraphs 5 and 6 herein, the Court
14 has exercised its discretion in conditionally certifying the Settlement Class on a
15 nationwide basis. The Court designates named Plaintiffs Miles Houze, Susan Houze,
16 Kevin Ngai, and Marcia Price to serve as the Class Representatives.

17 9. The Court also hereby appoints Kenneth S. Kasdan, Graham B.
18 LippSmith, and Michael D. Turner of Kasdan LippSmith Weber Turner LLP, and the
19 successors of these attorneys and this law firm, to serve as Class Counsel. For purposes
20 of these settlement proceedings, the Court finds that these counsel are adequate,
21 competent, and capable of performing their responsibilities as Class Counsel.

22 10. The Settlement Agreement is for settlement purposes only. Neither the
23 fact of, any provision contained in, nor any action taken under the Settlement Agreement
24 shall be construed as an admission of the validity of any claim, argument claiming
25 offensive collateral estoppel, or any factual allegation that was or could have been made
26 by Plaintiffs and Settlement Class Members in the Action, or of any wrongdoing, fault,
27 violation of law, or liability of any kind on the part of EZ-Flo. The Settlement
28 Agreement shall not be offered or be admissible in evidence against EZ-Flo or cited or

1 referred to in any other action or proceeding against EZ-Flo, except for an action or
2 proceeding (1) brought by or against the Parties to enforce or otherwise implement the
3 terms of the Settlement Agreement; (2) involving any Plaintiff or Settlement Class
4 Member to support a defense of *res judicata*, defense of collateral estoppel, defense of
5 release, or other theory of claim preclusion, issue preclusion, or similar defense; or
6 (3) involving an attempt to enforce a stay of other litigation pursuant to the terms set
7 forth in the Settlement Agreement and the Court's Order preliminarily approving the
8 Settlement Agreement.

9 11. This is a claims-made settlement. Claimants with Eligible Condition(s)
10 shall qualify for Settlement Benefits upon timely submission of required items to the
11 Claims Administrator in accordance with the Settlement Agreement. Payments for
12 Settlement Benefits shall be issued by check, each of which will become void if not
13 cashed within 180 days of the date of issuance. For any first payment to a Settlement
14 Claimant voided by that provision, the Claims Administrator will issue a second
15 payment by check to that Claimant, which will become void if not cashed within 180
16 days of issuance. For any second payment voided by that provision, the unpaid residue
17 will revert to EZ-Flo.

18 12. Anyone who wishes to be excluded from the Settlement Class must submit
19 a written request for exclusion (in the form set forth in the Notice Plan, and at [www.EZ-
21 FLoSettlement.com](http://www.EZ-
20 FLoSettlement.com)) by sending it to the Notice Administrator at the address in
22 Paragraph 13, below, by first-class U.S. mail. Requests for exclusion must contain all
23 information described in the Settlement Agreement, and otherwise meet the
24 requirements set forth therein. The envelope containing the request for exclusion must
25 be postmarked no later than ninety (90) days after the date of final publication of the
26 Notice in *Good Housekeeping*, or February 11, 2019. The date of final publication of
27 Notice shall also be posted on the Settlement Website.

28 13. Any Settlement Class Member who does not submit a request for
exclusion in accordance with the deadlines and other specifications set forth in this

1 Order and the Settlement Agreement shall be bound by all proceedings, orders, and
2 judgments of this Court pertaining to the Settlement Class.

3 14. Any Settlement Class Member who intends to object to the fairness,
4 reasonableness, or adequacy of the proposed Settlement may mail a written objection to
5 EZ-Flo Notice Administrator, P.O. Box 404041, Louisville, KY, by first-class mail with
6 postage paid. The Notice Administrator will then serve any Objections received on Class
7 Counsel and Counsel for Defendant EZ-Flo. If Objections are not already filed with the
8 Court by Objectors, Class Counsel and/or EZ-Flo will file any Objections received with
9 the Court. Objections must contain all information described in the Settlement
10 Agreement, and otherwise meet the requirements of that agreement. Only Settlement
11 Class Members may object to the Settlement. The envelope containing the objection to
12 the Settlement must be postmarked no later than ninety (90) days after the final date of
13 publication of Notice, or February 11, 2019. The Court will consider oral objections
14 made at the Fairness Hearing, and Objectors do not need to comply with the advance
15 objection procedure listed above to be heard at the Fairness Hearing.

16 15. In addition to its obligation to serve and file objections, the Notice
17 Administrator will also serve any notice of a Settlement Class Member's intention to
18 appear at the Fairness Hearing and associated briefing received on Class Counsel,
19 Counsel for Defendant EZ-Flo, and all other parties due notice in this case via Case
20 Anywhere. The Notice Administrator will also file any such notices of a Settlement
21 Class Member's intention to appear at the Fairness Hearing and associated briefing with
22 the Court by filing such documents directly or arranging for such documents to be filed
23 by Class Counsel or Counsel for Defendant EZ-Flo.

24 16. Plaintiffs and Defendant EZ-Flo shall file their briefs in support of
25 settlement approval and Plaintiffs shall file their briefs in support of any requests for
26 attorney fees, costs reimbursements, and class representative incentive awards on or
27 before February 21, 2019. Plaintiffs and Defendant EZ-Flo shall concurrently file
28

1 responses to Objections made by Settlement Class Members on or before February 21,
2 2019.

3 17. On March 8, 2019, at 10:00 a.m., the Court will hold the Fairness Hearing.
4 It shall be held in Department 11 of the Los Angeles County Superior Court, located at
5 312 North Spring Street, Los Angeles, CA 90012. The Fairness Hearing may be
6 continued or rescheduled by the Court with notice to Class Counsel, Counsel for
7 Defendant EZ-Flo, and any objecting Settlement Class Member who has filed a notice of
8 intention to appear in accordance with this Order. At the Fairness Hearing, or as soon
9 thereafter as practicable, the Court will determine whether the proposed settlement is
10 fair, reasonable, and adequate and whether it should be approved by the Court. At the
11 Fairness Hearing, the Court will also consider the amount of attorney fees, costs
12 reimbursements, and class representative incentive awards. If appropriate, the Court
13 will issue a Final Order and Judgment memorializing its decision, in the form
14 contemplated by the Settlement Agreement.

15 18. The pleadings shall conform to the Settlement Agreement between
16 Plaintiffs and EZ-Flo. The Proposed Fifth Amended Complaint filed and served by
17 Plaintiffs on March 21, 2018 will be deemed filed and served, pending final approval of
18 the Settlement Agreement. Because the previously pending allegations and claims
19 against BrassCraft are not modified in the Fifth Amended Complaint, and all of those
20 claims were resolved by the BrassCraft settlement for which the Court granted final
21 approval on September 26, 2016, BrassCraft need not answer the Fifth Amended
22 Complaint.

23 19. Pending further orders by this Court, all proceedings in this case and all
24 other cases raising related issues shall be stayed, as to all claims concerning EZ-Flo
25 fittings, except for proceedings pursuant to this Order or as necessary to effectuate the
26 dismissal of any Related Action. All Settlement Class Members who do not request
27 exclusion from the Settlement Class in accordance with this Order and the Settlement
28 Agreement shall be barred from commencing and thereafter prosecuting any action, suit,

1 proceeding, claim, or cause of action (except those based on or relating to personal injury
2 or wrongful death) in any jurisdiction or court against EZ-Flo, which relates to or arises
3 out of the subject matter of this action.

4 20. Class Counsel and Counsel for Defendant EZ-Flo are authorized to
5 establish other means necessary to effectuate the terms of the Settlement Agreement.

6
7 **IT IS SO ORDERED.**

8 **LISA HART COLE**
JUDGE

9 Dated: Sept 24, 2018

10 HON. AMY D. HOGUE

PROOF OF SERVICE

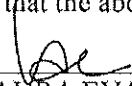
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. I am an employee of or agent for Kasdan LippSmith Weber Turner LLP, whose business address is 360 East 2nd Street, Suite 300, Los Angeles, CA 90012.

On September 5, 2018, I served the foregoing document(s): **SECOND AMENDED [PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF SETTLEMENT, CERTIFYING PROVISIONAL SETTLEMENT CLASS, APPOINTING SETTLEMENT CLASS COUNSEL, SETTING HEARING ON FINAL APPROVAL OF SETTLEMENT, AND DIRECTING NOTICE TO THE CLASS** to the following parties in this action addressed as follows:

(BY ELECTRONIC FILING & SERVICE CASE ANYWHERE) I caused the above-entitled document(s) to be served through Case Anywhere at www.caseanywhere.com addressed to all parties appearing on the electronic service list for the above-entitled case. The service transmission was reported as complete and a copy of the Case Anywhere Filing Receipt Page/Confirmation will be maintained with the original document(s) in this office.

Executed on September 5, 2018 in Los Angeles, California. I declare under penalty of perjury under the laws of the State of California that the above is true and correct.



LAURA EVANS