

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

FILED

SEP 23 2021

SONJA CHILDERS
CIRCUIT CLERK
PHELPS COUNTY, MO

**FINAL APPROVAL OF THE SETTLEMENT AGREEMENT; FINAL JUDGMENT;
AWARD OF ATTORNEYS' FEES, COSTS, AND CLASS REPRESENTATIVE
INCENTIVE AWARDS; AND ORDER OF DISMISSAL WITH PREJUDICE**

WHEREAS, on June 7, 2021, this Court entered an Order Preliminarily Approving Class Settlement, Approving Class Notice, and Scheduling Fairness Hearing ("Preliminary Approval Order") that:

- a. Conditionally certified, for settlement purposes only, pursuant to Mo. R. Civ. P. 52.08, a class consisting of "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."
- b. Appointed as Lead Class Counsel for the Settlement Class: (i) Steelman & Gaunt;

and (ii) Bursor & Fisher, P.A.

- c. Preliminarily approved the Class Action Settlement Agreement (the “Settlement”) as fair, adequate and reasonable;
- d. Set a hearing to take place before this Court (the “Final Approval Hearing”), upon notice to Members of the Settlement Class, to determine whether the proposed Settlement in accordance with the terms set forth in therein should be approved as fair, adequate and reasonable to the Class and whether a Final Approval Order and Judgement should be entered;
- e. Approved the Claim Form and set the Claims Deadline;
- f. Designated Digital Settlement Group (“DSG”) as the Settlement Administrator and instructed DSG to perform the following functions, as set forth in the Settlement:
 - 1. Process Opt-Out requests from the Settlement in accordance with Section 7 of the Settlement;
 - 2. Process Objections to the Settlement in accordance with Section 8 of the Settlement;
 - 3. Process Claim Forms in accordance with Section 11 of the Settlement;
 - 4. 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 Claim Forms; and
 - 5. Set up and operate a toll-free automated interactive voice response system through which Settlement Class Members can access Settlement

information.

- g. Prescribed the method and period of time for providing notice to Members of the Settlement Class of the certification of the Settlement Class and found that the distribution of Settlement Notice substantially in accordance with Section 6 of the Settlement 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;
- h. Prescribed the method and period of time during which Members of the Settlement Class may file Objections to the Settlement and found that any Settlement Class Member who fails to serve timely and properly a written Objection containing all of the information listed in items (a) through (k) of paragraph 11 of the Preliminary Approval Order , including notice of whether he/she intends to appear at the Final Approval Hearing, shall not be permitted to object to the Settlement and shall be foreclosed from seeking any review of the Settlement or its terms by any means, including but not limited to appeal; and
- i. Prescribed the method and period of time during which Members of the Settlement Class may file requests to be excluded (or “Opt-Out”) from the Settlement Class and found that any Member of the Settlement Class who does not properly and timely request exclusion from the Settlement Class 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.

WHEREAS, this Court finds that the papers are detailed and sufficient to rule on Plaintiffs' Motion for Final Approval of Class Action Settlement and Plaintiffs' Unopposed Motion for Attorneys' Fees, Costs, and Class Representative Incentive Awards ("Motions"); and

WHEREAS, this Court, having heard from counsel in this matter, and having reviewed all other arguments and submissions presented by all interested persons and entities with respect to the Settlement and Plaintiffs' Motions; and

WHEREAS, except as stated herein, capitalized terms used herein have the meanings set forth and defined in the Settlement entered into by the parties as of April 26, 2021, it is hereby:

I. ORDERED, ADJUDGED, DECREED, AND FOUND THAT:

1. This case arises out of Plaintiffs' allegations that Defendant United Industries Corporation ("Defendant") engaged in deceptive and unlawful conduct in the manufacture, packaging, marketing and labeling of numerous brands of insect repellent candles and insect foggers (the "Products"). Plaintiffs contend that Defendant's representations and conduct give rise to claims for violation of: the Missouri Merchandising Practices Act; Fraud; Unjust Enrichment; and Breach of Express Warranty. Without admitting the truth of any allegations made in the Action, or any liability with respect thereto, Defendant concluded that it is desirable that the claims against it be settled and dismissed on the terms reflected in the Settlement in order to resolve costly and burdensome litigation and to avoid further expense, inconvenience, and interference with ongoing business operations

2. After extensive settlement negotiations spanning several months, the Parties agreed to settle the Action.

3. The Settlement provides substantial and meaningful Programmatic Relief to the Settlement Class as follows: Starting twelve (12) months after the entry of the Preliminary Approval Order, Defendant will continue to sell the Covered Candles with efficacy claims only if it obtains and provides to Settlement Class Counsel additional substantiation for such claims. This Court shall have continuing jurisdiction if a dispute arises between Class Counsel and Defendant concerning Section 12.1. Also, within 12 months of the entry of the Preliminary Approval Order, Defendant will review the substantiation for efficacy claims on the Covered Foggers and make and provide to Settlement Class Counsel any necessary modifications to the packaging. This Court shall have continuing jurisdiction if a dispute arises between Class Counsel and Defendant concerning Section 12.2.

4. The Settlement also provides substantial and meaningful monetary benefits to the Settlement Class, including as follows: Tier 1 (With Proof of Purchase): Settlement Class Members who submit a valid Claim Form, along with Proof of Purchase establishing purchase of the Covered Products and revealing the actual price paid for the Covered Products, will receive a full refund of the purchase price for up to six (6) Unit purchases of the Covered Products during the Class Period. Settlement Class Members who submit a valid Claim Form, along with Proof of Purchase that does not reveal the actual price paid for the Covered Products will receive a refund of \$7.00 for each such Unit up to six (6) Units. *See* Settlement § 11.7(a); Tier 2 (Without Proof of Purchase): Settlement Class Members who submit a valid Claim Form without Proof of Purchase, but who submit attestation of Claimant's purchase, will receive up to \$14, i.e., \$7.00 each for up to two (2) Unit purchases of the Covered Products during the Class Period. *See* Settlement § 11.7(b). Defendant is also separately paying for all notice and administration costs.

5. The Settlement and Preliminary Approval Order establish an Objection and Opt-Out deadline of September 7, 2021. The Claims Period runs through September 7, 2021.

6. The Settlement Class as provided in the Preliminary Approval Order is unconditionally certified pursuant to Mo. R. Civ. P. 52.08(a), (b)(2) and (b)(3). The prerequisites for a class action under Rule 52.08 have been satisfied in that: (a) the Settlement Class Members are so numerous that joinder of all Settlement Class Members is impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) the claims of Plaintiffs are typical of the claims of the Settlement Class they seek to represent; (d) Plaintiffs have and will fairly and adequately represent the interests of the Settlement Class; (e) the questions of law and fact common to the Settlement Class Members predominate over any questions affecting only individual Settlement Class Members; and (f) a class action is superior to all other available methods for the fair and efficient adjudication of this controversy.

7. For purposes of the Programmatic Relief specified in Section 12.1 and 12.2 of the Settlement, the prerequisites for a class action under Rule 52.08(b)(2) have been satisfied in that: (a) the number of Settlement Class Members is so numerous that joinder of all Settlement Class Members is impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) the claims of Plaintiffs are typical of the claims of the Settlement Class they seek to represent; (d) Plaintiffs have and will fairly and adequately represent the interests of the Settlement Class; and (e) Defendant has acted or refused to act on grounds generally applicable to the Settlement Class, thereby making appropriate final declaratory relief with respect to the Settlement Class as a whole.

8. Christine Mendoza and Tonya Dooley are appointed as Class Representatives of the Settlement Class.

9. The Court confirms the following as Lead Class Counsel for the Settlement Class:

(i) Steelman & Gaunt; and (ii) Bursor & Fisher, P.A.

10. The Settlement is in all respects fair, reasonable, and adequate, is in the best interests of the Settlement Class Members, and is approved in all respects in accordance with Rules 52.08(a), (b)(2) and (b)(3).

11. The Settlement was negotiated at arm's length by experienced counsel who were fully informed of the facts and circumstances of the Action and of the strengths and weaknesses of their respective positions. The Settlement was reached after the Parties engaged in extensive negotiations. Class Counsel and Defendant's Counsel are therefore well positioned to evaluate the benefits of the Settlement, taking into account the expense, risk, and uncertainty of protracted litigation over numerous questions of fact and law.

12. Notice to the Settlement Class Members required by Mo. R. Civ. P. 52.08(b)(3) has been provided as directed by this Court in the Preliminary Approval Order, and such notice constituted the best notice practicable, including, but not limited to, the forms of notice and methods of identifying and providing notice to the Settlement Class Members, and satisfied the requirements of the Missouri Rules of Civil Procedure and all other applicable laws.

13. No Objections were received to the Settlement. One opt-out was received by a Settlement Class Member named Linda Anderson. Ms. Anderson is therefore not bound by the terms of the settlement and release. This positive reaction by the Settlement Class demonstrates the strength of the Settlement.

14. Plaintiffs and Defendant are directed to promptly consummate the Settlement in accordance with all of its terms.

15. The Settlement shall not be deemed to constitute an admission or finding of

liability or wrongdoing on the part of the Defendant, Plaintiffs, Class Representatives, or any of the Settlement Class Members or Released Parties.

16. The Action is hereby dismissed, with prejudice, on the merits, as against Defendant.

17. Upon the Effective Date, Plaintiffs, Class Representatives, each Settlement Class Member, and each Releasing Party shall be deemed to have, and by operation of this Final Approval Order and Judgment shall have, fully, finally, and forever released, relinquished and discharged all Released Claims against the Released Parties in the manner(s) set forth in Section 14 of the Settlement.

18. Upon the Effective Date, Plaintiffs, Class Representatives, each Settlement Class Member, and each Releasing Party shall be permanently barred and enjoined from asserting, commencing, prosecuting or continuing any of the Released Claims as set forth in Sections 14 of the Settlement.

19. Service Awards are hereby awarded in the total amount of \$30,000, comprised of \$5,000 to each of Class Representatives Christine Mendoza and Tonya Dooley, and \$5,000 each to Plaintiffs Elba Poppiti, Michael Destio, Shivan Bassaw, and Sylvia Fields. Lead Class Counsel shall pay these Service Awards to the Class Representatives following payment of this amount by Defendant as compensation for their efforts in bringing the Action and achieving the benefits of the Settlement on behalf of the Settlement Class.

20. Lead Class Counsel are hereby awarded \$900,000 in (i) attorneys' fees and (ii) reimbursement of their reasonable expenses in accordance with Section 13 of the Settlement. Defendant shall deposit the sums awarded and approved by the Court in an account established and maintained by the Settlement Administrator no later than ten (10) business days following

the earlier of (i) the Effective Date or (ii) such date that Class Counsel provides payment security in a form agreed by Class Counsel and each Defendant in its sole discretion (which security shall provide for recovery of all fees and expenses paid to Class Counsel in the event that the final judgment or Awards of Attorneys' Fees and Costs is reversed or otherwise reduced); provided, that the date described in clause (ii) shall not occur prior to the following entry of the Final Approval Order and award of the Attorneys' Fees and Costs Award.

21. The award of attorneys' fees to Lead Class Counsel shall be allocated among Class Counsel in a fashion that, in the opinion of Lead Class Counsel, fairly compensates them for their respective contributions in the prosecution of the Action. Neither Defendant nor Defendant's Counsel shall have any responsibility for, or interest in, or liability whatsoever with respect to allocation among Class Counsel, and/or any other person who may assert some claim thereto, of any Attorneys' Fees and Costs Award that the Court may make. In making its award of attorneys' fees and reimbursement of expenses, in the amounts described in paragraph 21 above, the Court has considered and finds as follows:

- a. The Settlement has provided significant relief to the Settlement Class.
- b. Defendant's adoption of the Programmatic Relief was a negotiated, material term of Settlement.
- c. The Settlement Notice constituted the best notice practicable to Settlement Class Members.
- d. Class Counsel have conducted the litigation and achieved the Settlement with skill, perseverance, and diligent advocacy on behalf of Plaintiffs, Class Representatives and the Settlement Class as a whole.
- e. The Action involves complex factual and legal issues and, in the absence

of Settlement, would involve further lengthy proceedings and uncertain resolution of such issues.

- f. Had the Settlement not been achieved, there would remain a significant risk that the Settlement Class may have recovered less or nothing from Defendant, and that any recovery would have been significantly delayed, which would have resulted in the continued exposure of Settlement Class Members to the challenged representations.
- g. The amount of attorneys' fees and reimbursable expenses awarded to Lead Class Counsel is fair and reasonable given: the results of the Settlement, which are substantial; that there has been a substantial number of Products sold by Defendant; Class Counsel was able to secure a significant benefit for the Settlement Class in terms of both programmatic and monetary relief; significant skill was required to prosecute this case, including the experience, reputation, and ability of Class Counsel; the fact that the fees were always contingent; and the fee is not disproportionately excessive in light of the benefits conferred on the Settlement Class Members. Moreover, the amount awarded is within the norms in class action cases in the state of Missouri.

22. Defendant and the Released Parties shall not be liable for any additional fees or expenses for Class Counsel or counsel of any Plaintiffs, Class Representative or Settlement Class Members in connection with the Action, beyond those expressly provided in the Settlement.

23. By reason of the Settlement, and approval hereof, there is no just reason for delay

and this Final Order and Judgment shall be deemed a final judgment pursuant to Rule 74 of the Missouri Rules of Civil Procedure.

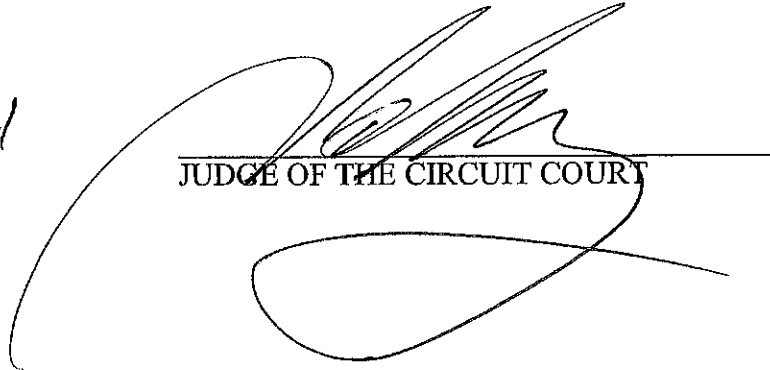
24. Jurisdiction is reserved, without affecting the finality of this Final Approval Order and Judgment, over:

- a. Effectuating the Settlement and the terms of the Class Action Settlement Agreement, including the payment of Lead Class Counsel's attorneys' fees and reimbursement of expenses, including any interest accrued thereon;
- b. Supervising all aspects of the administration of the Settlement;
- c. Determining whether, in the event an appeal is taken from any aspect of this Final Approval Order and Judgment, notice should be given at the appellant's expense to some or all Settlement Class Members apprising them of the pendency of the appeal and such other matters as the Court may order;
- d. Enforcing and administering the Settlement, including any releases executed in connection therewith, and the provisions of this Final Approval Order and Judgment;
- e. Adjudicating any disputes that arise under the Settlement; and
- f. Any other matters related or ancillary to the foregoing.

25. The above-captioned Action is dismissed in its entirety with prejudice.

IT IS SO ORDERED.

Dated: 9.23.2021



A large, stylized handwritten signature in black ink, written over a horizontal line. The signature is highly cursive and loops around the line.

JUDGE OF THE CIRCUIT COURT