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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION**

LYNDA CARTWRIGHT and LLOYD
CARTWRIGHT, on behalf of themselves
and all others similarly situated,

Plaintiffs,

v.

VIKING INDUSTRIES, INC., an Oregon
Corporation, and DOES 1-100, inclusive,

Defendants.

Case No. 2:07-cv-2159-FCD-EFB

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
SAN JOAQUIN COUNTY
STOCKTON**

JOHN DEIST, et al., on behalf of himself
and all others similarly situated,

Plaintiffs,

v.

VIKING INDUSTRIES, INC., an Oregon
Corporation, et al.,

Defendants.

Case No. CV025771

ORDER:

**1. PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT AND
NOTICE PLAN; AND**

2. SCHEDULING ORDER

Judge: Hon. Carter Holly
Dept: C-42

Hearing date: June 4, 2010
Hearing time: 9:30 a.m.

1 **ORDER**

2 Counsel for the Plaintiff Settlement Class and Defendant Viking Industries, Inc
3 (“Defendant”) have moved the Courts for preliminary approval of a proposed Class Action
4 Settlement (the “proposed Settlement”), as detailed in the Class Action Settlement Agreement
5 (“Agreement”) executed by the Representative Plaintiffs and Defendant, and approval of proposed
6 notices and a proposed notice plan to advise the Plaintiff Settlement Class of the proposed
7 Settlement, and have requested the Courts set a final approval hearing and issue a scheduling order.

8 The proposed Settlement concerns Defendant’s Series 3000 Aluminum Windows. The
9 Representative Plaintiffs for the Plaintiff Settlement Class are the representative plaintiffs for the
10 litigation class certified by the Superior Court of the State of California, County of San Joaquin, on
11 April 9, 2009, in the action entitled *Deist, et al. v. Viking Industries, Inc.*, Action No. CV025771
12 (filed March 30, 2005), and for the litigation class certified in the later filed action (filed August 16,
13 2007) entitled *Lynda Cartwright, et al. v. Viking Industries, Inc.*, Action No. 2:07-cv-2159
14 FCD/FEB, pending in United States District Court, Eastern District of California, Sacramento
15 Division. Both the State and Federal Courts have agreed to coordinate the Preliminary and Final
16 Approval process and hearings.

17 Each Court has received the executed Agreement. Each Court, having reviewed the
18 executed Agreement and the exhibits attached thereto, having reviewed the Notice of Motion and
19 Motion for Preliminary Approval of Class Action Settlement, along with the supporting
20 memorandum of points and authorities, supporting declarations and exhibits thereto, and having
21 conducted a preliminary hearing regarding the matters set forth herein, and good cause appearing,

22 IT IS HEREBY ORDERED as following:

- 23 1. Each Court, for purposes of this order (the “Order”), adopts all defined terms as set
24 forth in the Agreement;
- 25 2. Each Court preliminarily approves the proposed Settlement as sufficiently fair,
26 reasonable and adequate to warrant sending notice to the Plaintiff Settlement Class;
- 27

1 3. Solely for purposes of effectuating the proposed Settlement, each Court hereby
2 adopts the definition of the term "Plaintiff Settlement Class" as found in section 1.16 of the
3 Agreement, which definition is as follows:

4 “all persons who own or owned property in California with a building or
5 buildings in which Viking Series 3000 Aluminum Windows were installed at any
6 time on or after January 1, 1989 and who own the property as of the Initial Notice
7 Date, or at one time owned the property prior to the Initial Notice Date, except
8 for: (a) all persons who previously opted out of the litigation classes certified in
9 *Deist, et al. v. Viking Industries, Inc.*; (b) all persons who, in accordance with the
10 terms of this Agreement, properly execute and timely file, during the Opt-Out
11 Period, a request for exclusion from the Plaintiff Settlement Class; (c) all persons
12 represented by counsel who, individually or as members of a class, initiated legal
13 proceedings against Defendant that were resolved prior to the Initial Notice Date
14 by settlement, judgment, release, dismissal or other final disposition resulting in
15 the termination of the proceedings against Defendant; or (d) all persons who, on
16 or before Preliminary Approval of the Settlement, were a plaintiff in a lawsuit,
17 other than the Actions, that allege, whether in whole or in part, defects in the
18 design and/or manufacturing of Series 3000 Aluminum Windows.”

19 4. For purposes of effectuating the proposed Settlement, each Court hereby appoints as
20 Representative Plaintiffs of the Plaintiff Settlement Class: Clements and Reina Ott, Stephen and
21 Toni Jaffe, Charles Stark and Lloyd and Lynda Cartwright.

22 5. Each Court appoints the following attorneys as Class Counsel: Stuart M. Eppsteiner,
23 of Eppsteiner & Fiorica Attorneys, LLP, and Paul D. Stevens, Milstein, of Adelman & Kreger, LLP
24 in the *Deist* action; David M. Birka-White of Birka-White Law Offices, and Robert J. Nelson, of
25 Loeff, Cabraser, Heimann & Bernstein, LLP in the *Cartwright* action.

26 6. Each Court, having considered the moving papers, declarations and exhibits
27 submitted in support of the Motion for Preliminary Approval of the Class Action Settlement, and

1 taking into account its earlier rulings and orders in each Action, hereby preliminarily certifies,
2 solely for the purposes of effectuating the proposed Settlement, the Plaintiff Settlement Class as
3 defined in item 3 above.

4 7. Each Court finds a Final Approval Fairness Hearing, at which the Court will hear all
5 timely filed objections and evidence and timely requested argument, is appropriate for consideration
6 of final approval of the proposed Settlement and to determine: (1) whether the proposed Settlement,
7 and the terms and conditions set forth in the Agreement, are fair, reasonable and adequate, and
8 should be finally approved by the Courts; (2) whether notice has been given to the Plaintiff
9 Settlement Class Members in accordance with this Order; (3) whether Judgment should be entered
10 based on the proposed Settlement, which Judgment would bind all Plaintiff Settlement Class
11 Members in the Plaintiff Settlement Class; (4) whether Class Counsel's application for an award of
12 attorneys' fees and costs should be approved; and (5) whether the incentive awards for the
13 Representative Plaintiffs should be approved.

14 8. The respective Courts will hold a joint Final Approval Fairness Hearing on August
15 27, 2010, at 9:30 a.m. in Department 42 of the Superior Court of the State of California, San
16 Joaquin County, Stockton Division, located at 222 E. Weber Avenue, Stockton, California, 95202 to
17 consider the fairness, reasonableness and adequacy of the proposed Settlement, and to approve
18 Class Counsel's request for an award of attorney's fees and costs, and incentive awards to the
19 Representative Plaintiffs.

20 9. Moving papers for Final Approval of the proposed Settlement and Class Counsel's
21 application for attorneys' fees and costs and for incentive payments to the Representative Plaintiffs
22 shall be filed on or before July 30, 2010.

23 10. Reply papers to any Objections to Final Approval of the proposed Settlement and
24 Class Counsel's application for attorneys' fees and costs and for incentive payments to the
25 Representative Plaintiffs and/or update on number of Opt Outs, if any respectively, shall be filed on
26 or before August 20, 2010.

1 11. Each Court approves, as to form and content, the long-form Notice of Pendency of
2 Class Action and Class Action Settlement and the Summary Notice attached as Exhibit "A" to the
3 declaration of Dennis A Gilardi, the principal of the Settlement Administrator, Larkspur Design
4 Group ("LDG"), for publication and distribution to Plaintiff Settlement Class Members.

5 12. Each Court approves the Notice Plan described in the Agreement and in the Gilardi
6 declaration.

7 13. Each Court finds that the notice to be provided to Plaintiff Settlement Class
8 Members in this case, including both the content of the long-form Notice of Pendency of Class
9 Action and Class Action Settlement and the Summary Notice attached as Exhibit "A" to the Gilardi
10 declaration and the means by which the long-form Notice of Pendency of Class Action and Class
11 Action Settlement and the Summary Notice attached as Exhibit "A" to the Gilardi declaration will
12 be disseminated: (a) is the best practicable notice; (b) is reasonably calculated, under the
13 circumstances, to apprise the Plaintiff Settlement Class Members of the pendency of the Actions
14 and of their right to object or to exclude themselves from the proposed Settlement; (c) is reasonable
15 and constitutes due, adequate and sufficient notice to all persons entitled to receive notice; and (d)
16 meets all applicable requirements of the Federal Rules of Civil Procedure, the Class Action Fairness
17 Act, the United States Constitution (including the Due Process Clause), the Rules of Court, and any
18 other applicable law.

19 14. The Representative Plaintiffs and Defendant are hereby authorized to: (a) establish
20 the means necessary to administer the proposed Settlement and to distribute and process the Claim
21 Forms in accordance with the Agreement; and (b) retain or specially employ one or more Settlement
22 Administrators to help administer the proposed Settlement, including providing notice to the
23 Plaintiff Settlement Class, in accordance with the Agreement;

24 15. Each Court confirms the appointment of LDG as the Settlement Administrator, and
25 directs LDG to perform the responsibilities of the Settlement Administrator as set forth in the
26 Agreement.

1 16. LDG is directed to mail or to cause the long-form Notice of Pendency of Class
2 Action and Class Action Settlement to be mailed to each Plaintiff Settlement Class Member who
3 can be identified through reasonable effort by first class, postage prepaid, to such Plaintiff
4 Settlement Class Member's last known address no later than June 16, 2010;

5 17. LDG is directed to cause the Summary Notice to be published in the publications set
6 forth in the Gilardi declaration no later than July 4, 2010;

7 18. LDG is directed to cause the Class Notice to be published on the Settlement Website
8 no later than June 11, 2010;

9 19. Each Plaintiff Settlement Class Member who wishes to exclude himself or herself
10 from the Class must submit a valid and timely written request for exclusion, postmarked no later
11 than the date specified in the long-form Notice of Pendency of Class Action and Class Action
12 Settlement and the Summary Notice, to the addresses provided in the long-form Notice of Pendency
13 of Class Action and Class Action Settlement and the Summary Notice.

14 19. Any Plaintiff Settlement Class Member who does not submit a valid and timely
15 written request for exclusion from the Plaintiff Settlement Class will be bound by all proceedings,
16 orders, and judgments in these Actions relating to the Agreement.

17 20. Each Plaintiff Settlement Class Member who wishes to object to the fairness,
18 reasonableness or adequacy of the Settlement Agreement, to any terms of the proposed Settlement,
19 or to the proposed Attorneys' Fees and Expense, must file with the Court no later than August 18,
20 2010, and must serve Class Counsel and Defendant's Counsel, whether in person, by mail or by
21 facsimile, so received no later than August 18, 2010, a statement containing each objection, as well
22 as the specific reasons, if any, for each objection, including any legal support the Plaintiff
23 Settlement Class Member wishes to bring to the Courts' attention, and any evidence the Plaintiff
24 Settlement Class Member wishes to introduce in support of each objection, or be forever barred
25 from objecting.

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COUNSEL FOR THE PLAINTIFF CLASS:

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21. Any attorney hired by a Plaintiff Settlement Class Member at that Plaintiff Settlement Class Member's expense for the purpose of objecting to the fairness, reasonableness, or adequacy of the proposed Settlement, to any terms of the proposed Settlement, to the proposed Attorneys' Fees and Costs, or to the Incentive Awards, must file with the Court no later than August 18, 2010, and must serve Class Counsel and Defendant's Counsel, whether in person, by mail or by facsimile, so received no later than August 18, 2010, any opposition or objections, including any legal or evidentiary support;

22. Any Plaintiff Settlement Class Member who files and serves a written objection and who intends to make an appearance at the Final Fairness Hearing, either in person or through counsel hired at that Plaintiff Settlement Class Member's expense, must file with the Court no later than August 18, 2010, and must serve Class Counsel and Defendant's Counsel, whether in person,

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1 by mail or by facsimile, so received no later than August 18, 2010, a notice of intention to appear
2 and a statement identifying any documents the Plaintiff Settlement Class Member will seek to
3 introduce or witnesses the Plaintiff Settlement Class Member will seek to call at the Final Fairness
4 Hearing.

5 23. Any Plaintiff Settlement Class Member who wishes to Opt Out of the Proposed
6 Class Action Settlement must serve the Settlement Administrator, Class Counsel and Defendant's
7 Counsel, whether in person, by mail or by facsimile, so received no later than August 18, 2010,
8 written request for exclusion.

9 24. Defendants' Counsel and Class Counsel, and any other counsel for any Plaintiff
10 Settlement Class Member must promptly furnish each other with copies of any and all objections or
11 written requests for exclusion that might come into their possession;

12 25. A means for individuals filing objections must be provided to allow any objector, at
13 his/her own expense, access, at Class Counsel's office, to the discovery materials in the Actions,
14 provided that such individuals shall not be given access to these materials unless and until they
15 enter into the Stipulation and Order of Confidentiality agreed upon by Class Counsel and
16 Defendants;

17 26. All proceedings in both Actions are stayed until further orders of the Courts, except
18 as may be necessary to implement the proposed Settlement or comply with the terms of the
19 Agreement or this Order.

20 27. The Courts order the following schedule for further proceedings;

Event	Proposed Date	Date Ordered
Preliminary Approval Hearing	June 4, 2010	*****
Deadline for Settlement Administrator to Mail Notice to Class Members	June 16, 2010	June 16, 2010
Published notice is first published in USA Weekend and Parade	July 4, 2010	July 4, 2010
Last published notice is published	July 25, 2010	July 25, 2010
Deadline by which LDG will confirm that dissemination of notice to the class has been completed	July 30, 2010	July 30, 2010
Deadline for Class Counsel to File Motion For	July 30, 2010	July 30, 2010

1	Final Approval of Settlement		
2	Deadline for Class Counsel to File Motion For Attorneys' Fees, Costs and Service Payments	July 30, 2010	July 30, 2010
3	Deadline for Opt Outs to be received by class counsel and notice administrator (45 days after published notice begins).	August 18, 2010	August 18, 2010
4	Deadline for Objections to be received by class counsel, defendant's counsel and the Court (45 days after published notice begins)	August 18, 2010	August 18, 2010
5	Deadline for Reply to any objections and/or update on additional opt outs.	August 20, 2010	August 20, 2010
6	Final Approval Hearing	August 27, 2010	August 27, 2010
7	Deadline for Class Members to Postmark/Mail Claim Forms	December 1, 2010	December 1, 2010

9 **IT IS SO ORDERED.**

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12 DATE: June 4, 2010



13 Frank C. Damrell, Jr.
14 U.S. District Court Judge

15
16
17 **IT IS SO ORDERED.**

18 DATE: _____, 2010

19 _____
20 Carter Holly, III
21 Judge of the Superior Court