

# **APPENDIX B**

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

STANLEY and BETTY PELLETZ, by  
themselves and on behalf of themselves  
and all others similarly situated,

Plaintiffs,

v.

WEYERHAEUSER COMPANY and  
ADVANCED ENVIRONMENTAL  
RECYCLING TECHNOLOGIES, INC.,

Defendants.

NO. C08-00334 JCC

JOSEPH JAMRUK, STACEY JAMRUK,  
MICHAEL MUSTAC, and GREG  
KNUDTSON, on behalf of themselves and  
all others similarly situated,

Plaintiffs,

v.

ADVANCED ENVIRONMENTAL  
RECYCLING TECHNOLOGIES, INC., a  
Delaware corporation; WEYERHAEUSER  
COMPANY, a Washington corporation,

Defendants.

NO. C08-00403 JCC

SETTLEMENT AGREEMENT

**WHEREAS** Plaintiffs in this Action have purchased ChoiceDek decking and railing products installed on each of their homes and manufactured by defendant Advanced Environmental Recycling Technologies, Inc. and distributed by Weyerhaeuser Company;

**WHEREAS** Plaintiffs in this action have alleged that this product has experienced mold and mildew spotting and fungal growth and assert various claims and causes of action against Defendants relating to these allegations on behalf of themselves and a class they seek to represent;

**WHEREAS** Defendants and each of them have denied, and continue to deny, each and every allegation and claim by Plaintiffs and all claims of wrongdoing or liability that have been or could have been asserted in this action or related to this Action;

**WHEREAS** Defendants and each of them have agreed to enter into the Settlement Agreement without in any way acknowledging any fault or liability in order to put to rest all controversy and to avoid further expense and burden of protracted and costly litigation; and

**WHEREAS** Plaintiffs and Defendants have agreed that an appropriate compromise of Plaintiffs' and Class Members' claims is through the process set forth in this Settlement Agreement,

**NOW, THEREFORE, THIS SETTLEMENT AGREEMENT** is entered into by and among Plaintiffs in this action, for themselves and on behalf of the Class as defined below and, Defendants. Subject to the Court's approval, it is hereby stipulated and agreed by Plaintiffs and Defendants in this action that in consideration of the promises and covenants set forth in this Settlement Agreement, and upon the entry by the Court of a final order and judgment approving

this Settlement Agreement and directing implementation of its terms, this action shall be settled and compromised upon the terms and conditions set forth below.

## **1. DEFINITIONS**

As used in this Settlement Agreement, and in addition to any definitions elsewhere in the Settlement Agreement, the following terms shall be defined as set forth below.

1.1 "Action" means the above-captioned, consolidated litigation which combined the following matters: Joseph Jamruk, et al v. Advanced Environmental Recycling Technologies, Inc., et al., Case No. C08-0403 JLR, United States District Court for the Western District of Washington, and Stanley & Betty Pelletz v. Weyerhaeuser Company, et al., Case No. C08-334C, United States District Court for the Western District of Washington.

1.2 "Calculation of Cost" shall mean an estimate of the original cost of a deck based upon the size of the deck using the Calculation of Cost Formula set forth in Exhibit 8 to this Settlement Agreement.

1.3 "Claim Form" shall mean the form that must be used by a Class Member to participate in the Claim Resolution Process. The Claim Form shall be in substantially the form set forth in Exhibit 1 to this Settlement Agreement.

1.4 "Claim Resolution Cleaning Instructions" shall mean the cleaning instructions set forth in Exhibit 9 to this Settlement Agreement which should be followed by Class Members after their decks are treated with a mold inhibitor under Section 4.2.5.1.

1.5 "Claim Resolution Process" is the process for submitting a claim available to Plaintiffs and Class Members under Section 4.2 and as set forth in Exhibit 7 attached to this Settlement Agreement.

1.6 "Claim Reviewer" means the individuals designated by AERT to process and adjust any claim submitted by Class Members pursuant to the Claim Resolution Process.

1.7 "Claimant" means any person who completes and submits a Claim Form to AERT in the Claim Resolution Process.

1.8 "Class" or "Class Members" means all persons and entities who own decks constructed of Product originally purchased on or after January 1, 2004 and before January 1, 2008, and additionally persons and entities who own decks constructed of Product originally purchased after December 31, 2007 and can establish that the Product was manufactured between January 1, 2004 and October 1, 2006 using the manufacture date stamped onto the end of the Product. Included within the Class are the legal representatives, heirs, successors in interest, transferees and assigns of all such foregoing holders and/or owners, immediate and remote, who currently own decks constructed of Product originally purchased on or after January 1, 2004 and before January 1, 2008 (the "Class"). Notwithstanding the foregoing, the following Persons shall be excluded from the Class: (1) Defendants and their subsidiaries and affiliates; (2) all Persons who make a timely election to be excluded from the proposed Class; (3) governmental entities; and (4) the judge(s) to whom this case is assigned and any immediate family members thereof. In addition, notwithstanding the foregoing, all claims for personal injury and wrongful death are excluded from the Class.

1.9 "Class Counsel" are counsel for Plaintiffs in this Action. "Lead Class Counsel" are the firms of Lief, Cabraser, Heimann & Bernstein, LLP (Jonathan D. Selbin) and Gary, Naegele & Theado, LLC (Jori Bloom Naegele).

1.10 "Class Notice" is notice to Class Members of the class action settlement as provided in this Settlement Agreement. Class Notice shall be provided as described in the Class Notice Plan set forth in Exhibit 3 to this Settlement Agreement.

1.11 "Class Notice Administrator" shall mean any third party administrator that AERT retains to help implement the Class Notice Plan.

1.12 "Class Notice Plan" shall mean the class notice plan set forth in Exhibit 3 of this Settlement Agreement.

1.13 "Defendants" means Advanced Environmental Recycling Technologies, Inc. ("AERT") and Weyerhaeuser Company ("Weyerhaeuser").

1.14 "Fairness Hearing" shall mean the hearing to be conducted by the Court under Rule 23 of the Federal Rules of Civil Procedure to consider the fairness, adequacy, and reasonableness of this Settlement Agreement.

1.15 "Fee Award" shall mean the attorneys' fee award set forth in Section 8 of this Settlement Agreement.

1.16 "Final Order and Judgment" shall mean the order of the Court approving this Settlement Agreement and the final judgment substantially in the form attached hereto as Exhibit 11 to this Settlement Agreement.

1.17 "Gapped Upon Installation" shall mean gapping of a minimum of 3/32 of an inch between boards. When measuring for gapping, AERT will also measure the adjacent boards which were used to measure gapping to determine if they exceed manufactured specifications and, if they do, will take the amount in excess into consideration when calculating the amount of gapping.

1.18 “Gift Card” shall mean a Lowe’s gift card provided by AERT in the Claim Resolution Process that can be used toward purchases at a Lowe's store. A Gift Card must be used within 12 months from when it is sent to a Class Member in the Claim Resolution Process. A Gift Card may be transferred or assigned to a family member of a Class Member but may not be honored if it is transferred or assigned to any other third party.

1.19 "Parties" means collectively the Plaintiffs and the Defendants in this action.

1.20 "Person" or "Persons" means one or more individuals or legal entities or their successors or assigns.

1.21 “Photographic Proof” means the date-stamped photographs that a Class Member submits with a Claim Form or Supplemental Claim Form in the Claim Resolution Process. Photographic Proof requires a minimum of ten color photographs taken with a film camera or digital camera with a minimum resolution of three megapixels and consisting of:

1.21.1. Three (3) deck photographs taken during the day that captures the entire top surface of the deck, taken from three different vantage points;

1.21.2. One (1) deck photograph taken during the day as close to the center of the deck as practicable, from a height of approximately four feet, with at least six inches of a ruler or tape measure laying across the deck and visible in the photograph;

1.21.3. Three (3) deck photographs taken in three different locations at approximately noon with each photograph taken at a distance from the deck such that six inches of a standard ruler or tape measure consumes the majority of the shorter edge of each photograph. The ruler should be placed across the width of a board which measures approximately 5.4 inches across; and

1.21.4. Three (3) photographs taken in the same three locations as Section 1.21.3 at approximately dusk with each photograph taken at a distance from the deck such that six inches of a standard ruler or tape measure consumes the majority of the shorter edge of each photograph. The ruler should be placed across the width of a board which measures approximately 5.4 inches across.

1.22 "Plaintiffs" means the named plaintiffs in this Action, Joseph and Stacey Jamruk, Michael Mustac, Greg Knudtson, and Stanley and Betty Pelletz.

1.23 "Preliminary Approval Order" shall mean the preliminary order of the Court approving this Settlement Agreement substantially in the form attached hereto as Exhibit 12.

1.24 "Prior Cleaning Instructions" shall mean the cleaning instructions/requirements set forth in Exhibit 10 to this Settlement Agreement.

1.25 "Product" means ChoiceDek decking and railing products manufactured by AERT and distributed by Weyerhaeuser.

1.26 "Reasonable Proof" may be established using inspections, photographs and the Class Member's sworn declaration made under penalty of perjury. Defendants reserve the right to investigate further any claim submitted in the Claim Resolution Process.

1.27 "Release" shall refer to the release and covenant not to sue set forth in Section 6 of this Settlement Agreement.

1.28 "Request for Official Claim Form" shall mean the form as approved as to content and form by the Court and substantially similar in form to Exhibit 6 of this Settlement Agreement.



1.29 "Settlement Agreement" or "Agreement" means this Settlement Agreement, all exhibits hereto and its terms as set forth herein.

1.30 "Settlement Final Approval Date" means the date upon which the Court's Final Order and Judgment become final and unappealable. For purposes of this definition, the Final Judgment and Order shall become final and unappealable:

1.30.1 If no appeal is taken therefrom, on the date on which the time to appeal and file a motion for extension of time under Rule 4(a) of the Federal Rules of Appellate Procedure has expired.

1.30.2 If an appeal or other review is taken therefrom, on the date on which all appeals therefrom, including petitions for rehearing or reargument, petitions for rehearing en banc, petitions for review, and petitions for certiorari or any other form of review, have been finally disposed in a manner resulting in a final affirmance of the Final Judgment and Order.

1.31 "Significant Mold Spotting."

1.31.1 A deck has "Significant Mold Spotting" when the Photographic Proof evidences a deck with Deck Surface Mold Coverage of at least 20% and Mold Density of at least 20%.

1.31.2 To determine Mold Density, a grid of 5 inches by 5 inches resulting in 25 squares will be placed on the three Photographic Proof photographs referenced in Sections 1.21.3 with six inches of a ruler or tape measure in their frame. For each of these 3 photographs, a Claim Reviewer will count the number of squares in which a mold spot falls. A spot that falls on a gridline will count as a single mold spot falling within a single square and will not be counted as more than one spot. The Claim Reviewer will add up the results for all 3 photographs and

divide the total by 3 for a Mold Spot Average. The Mold Spot Average will be divided by a factor of 25 representing the 25 squares, to determine the Mold Density percentage. Thus, for example, if the Mold Spot Average is 5 or more representing an average of 5 squares in which a mold spot is found for all of the six photographs, the Mold Density will be equal to at least 20 percent. If necessary, because a photograph has poor resolution, a Claim Reviewer may substitute one or more of the three Photographic Proof photographs referenced in Section 1.21.4 taken at the same deck location(s).

1.31.3 To determine Deck Surface Mold Coverage, the Claim Reviewer will look to the Photographic Proof photograph of the entire deck referenced in Sections 1.21.1 and determine the approximate percentage of deck surface which is covered by mold.

1.32 "Supplemental Claim Form" shall mean the form that must be used by a Class Member to submit a claim in the Claim Resolution Process for relief under Sections 4.2.5.2 through 4.2.5.5. The Supplemental Claim Form shall be in substantially the form set forth in Exhibit 2 to this Settlement Agreement.

## **2. SETTLEMENT PURPOSES ONLY**

2.1 This Agreement is for settlement purposes only, and neither the existence of, nor any provision contained in, this Agreement, nor any action taken pursuant to this Agreement, shall be admissible in evidence as any admission of the validity of any claim or any fact alleged by any Parties in this Action or in any other pending or subsequently filed action or of any wrongdoing, fault, violation of law, or liability of any kind on the part of Defendants or either of them, nor as an admission by any of the parties to this Action, of any Class Members, or any

counsel for any of the Parties to this Action of the validity of any fact, claim, or defense asserted in this Action or any other action.

### **3. SUBMISSION FOR PRELIMINARY APPROVAL**

3.1 As soon as possible after execution of the Settlement Agreement, the Parties, through their respective attorneys, shall jointly submit this Settlement Agreement to the Court for preliminary approval.

### **4. SETTLEMENT RELIEF**

4.1 **General Relief.** The following relief will be available to all Class Members:

#### **4.1.1 Marketing Relief**

Defendants will discontinue the use of the following marketing language to describe the Product: “minimum maintenance,” “low maintenance,” “easy to maintain,” or “virtually maintenance free.”

#### **4.1.2 Customer Hotline and Additional Cleaning Information**

4.1.2.1 AERT will maintain and staff a toll-free customer hotline from 8:00 a.m. until 5:00 p.m. Central time during business days and will maintain a voice messaging service so that messages can be left after business hours. AERT’s customer service representatives will be available to answer questions regarding the cleaning of the Product and provide instructions as to how to clean the Product.

4.1.2.2 AERT will provide additional information on the ChoiceDek website regarding the cleaning of the Product and the fact that additional cleaning may be necessary in high-moisture areas.

## 4.2 **Claim Resolution Process**

4.2.1 After the Settlement Final Approval Date, all members of the Class will be eligible, subject to the following conditions, to submit a Claim Form in a Claim Resolution Process to be administered by AERT and jointly overseen by AERT and Class Counsel.

4.2.2 It is the intention of all the Parties to this Settlement Agreement that the Claim Resolution Process be administered in a manner consistent with the terms of this Settlement Agreement.

4.2.3 To participate in the Claim Resolution Process, a Class Member will be required to timely complete and submit to AERT a Claim Form and declaration under penalty of perjury providing detailed information regarding their deck. The Claim Form will be substantially in the form attached hereto as Exhibit 1 and will require, among other things: (a) Photographic Proof; (b) one or more photographs of a board end showing the date of manufacture, if reasonably available; (c) detailed information regarding dates of purchase and product type; (d) a copy of the purchase receipt or similar proof, if reasonably available; (e) detailed information regarding gapping and installation; (f) detailed information regarding frequency and type of cleaning that had been performed; (g) detailed information regarding when mold spotting first appeared; (h) if spotting returned after cleaning, detailed information regarding when it returned; and (i) proof of deck ownership. A Claimant may also submit a video of their deck to assist AERT with the Claim Resolution Process.

4.2.4 The Claim Resolution Process will be closed to Class Members who have previously received relief from Defendants, or any one of them, and: (a) have executed a release for mold, mildew and/or fungal spotting claims; and (b) were represented by counsel or who

were or are licensed attorneys. Class Members who have previously received relief from Defendants, but do not satisfy both criteria will be entitled to participate in the Claim Resolution Process but shall have any recovery to which they might otherwise be entitled under the Claim Resolution Process reduced dollar for dollar to the extent the Claim Resolution Process claim relates to or arises from the same Product for which the Class Member previously received relief. To the extent this reduction applies to cleaning relief under the Claim Resolution Process, Class Members may, at AERT's option, be provided only with coupons toward the difference in the cost of cleaning or, alternatively, be required to pay the reduction amount to Defendants. For purposes of this Section, the cleaning relief shall be valued at \$2.50 a square foot, with a minimum value of \$500.00.

4.2.5. **Relief for Significant Mold Spotting.** The Claim Resolution Process will offer the following relief for Claimants whose Product exhibits Significant Mold Spotting and who qualify under the terms of the Claim Resolution Process:

4.2.5.1. **Initial Claim Showing Significant Mold Spotting.** Upon receipt of a timely Claim Form with Photographic Proof that clearly exhibits Significant Mold Spotting and not just a dirty deck that had not been cleaned, AERT will provide:

4.2.5.1.1. One (1) free Product cleaning conducted by AERT or a vendor of its choice, including application of a mold inhibitor on the decking after cleaning, with AERT or its vendors to use their best efforts to conduct such cleanings within: (a) the later of 3 months of receiving the claim or 3 months after the Final Settlement Approval Date if claims are 400 or less; or (b) the later of 6 months of receiving the claim or 6 months after the Final Settlement Approval Date if claims are greater than 400. The foregoing time requirements

shall be subject to the limitations of the Annual Limitations and subject to delays caused by weather, the particular Claimant, unexpected circumstances, acts of God, and a determination that a deck does not exhibit Significant Mold Spotting and any review of such determination; and

4.2.5.1.2. An instructional DVD about proper techniques for deck cleaning.

4.2.5.1.3. The cleaning set forth in Section 4.2.5.1.1 will not be provided for a deck that simply appears to be dirty from lack of periodic cleaning and is not exhibiting Significant Mold Spotting. Such determination shall be made in the first instance by AERT personnel, but shall be subject to review by Class Counsel. On a monthly basis, AERT will notify Class Counsel of the claims it proposes to reject pursuant to this Section, and the reason for the rejection, prior to sending out a rejection letter, and Class Counsel shall have 15 days within which to challenge such proposed rejections. At AERT's sole discretion, AERT may provide such notifications to Class Counsel with greater frequency.

**4.2.5.2. Subsequent Significant Mold Spotting within Six Months of Cleaning.** For Claimants who received the cleaning referenced in Section 4.2.5.1, if after the cleaning referenced in Section 4.2.5.1, the Product exhibits in a documented manner Significant Mold Spotting within 6 months after the cleaning, a Claimant may submit a Supplemental Claim Form and declaration under penalty of perjury providing detailed information regarding their deck in order to qualify for the relief in Section 4.2.5.2. The Supplemental Claim Form will be in a format substantially in the form attached hereto as Exhibit 2 and will require, among other things: (a) Photographic Proof; (b) detailed information regarding frequency and type of cleaning that had been performed by the Claimant after the cleaning referenced in Section 4.2.5.1; (c) if

spotting returned after the cleaning referenced in Section 4.2.5.1, detailed information regarding when spotting first appeared. A Claimant may also submit a video of their deck to assist AERT with the Claim Resolution Process. To qualify for the relief in Section 4.2.5.2, a Claimant must provide verifiable, date stamped Photographic Proof evidencing Significant Mold Spotting within 6 months of the cleaning referenced in Section 4.2.5.1 or have an inspection by Defendants or their representatives within 6 months of the cleaning referenced in Section 4.2.5.1.

4.2.5.2.1. **If All Requirements Met.** If a Claimant's deck was Gapped Upon Installation, there is Reasonable Proof that the Claimant periodically and regularly cleaned the deck in the past reasonably in accordance with Defendants' Prior Cleaning Instructions, there is Reasonable Proof that the Claimant periodically and regularly cleaned the deck reasonably in accordance with Claim Resolution Cleaning Instructions after the cleaning referenced in subsection 4.2.5.1. above, and the Claimant permits an inspection and sampling of the deck, then AERT will provide, at the Claimant's election, one of the following options: (a) 100% cash reimbursement of the purchase price of the Class Member's Product based upon proof of receipt or, if a receipt is not available, by Calculation of Cost, subject to the limitations of the Annual Limitations; (b) replacement decking of new ChoiceDek material for construction of a new deck of the same dimension, subject to the limitations of the Annual Limitations; however, Class Members will be responsible for all labor; or (c) 3 additional Product cleanings along with mold inhibitor applications in the following three successive years or until the mold spots no longer reappear, whichever is sooner, subject to the limitations of the Annual Limitations.

**4.2.5.2.2. If All Requirements Except Gapping Met.**

Alternatively, if there is Reasonable Proof that the Claimant periodically and regularly cleaned the deck in the past reasonably in accordance with Defendants' Prior Cleaning Instructions, there is Reasonable Proof that the Claimant periodically and regularly cleaned the deck reasonably in accordance with Claim Resolution Cleaning Instructions after the cleaning referenced in subsection 4.2.5.1. above, and the Claimant permits an inspection and sampling of the deck, but subsection 4.2.5.2.1 above is not applicable, then AERT will provide: a Gift Card of \$100 toward purchases at a Lowe's store subject to the limitations of the Annual Limitations; 2 additional Product cleanings along with mold inhibitor applications in the following two successive years or until the mold spots no longer reappear, whichever is sooner, subject to the limitations of the Annual Limitations; and 2 coupons for deck cleaning at a nationally negotiated rate by a company selected by AERT, with the cleaning to be paid by the Claimant at the coupon's nationally negotiated rate, subject to the limitations of the Annual Limitations.

**4.2.5.2.3. If Claimant Has Properly Cleaned Their Deck Following Claim Resolution Cleaning But Other Requirements Have Not Been Met.**

Alternatively, if subsection 4.2.5.2.1 above is not applicable and there is not Reasonable Proof that the Claimant periodically and regularly cleaned the deck in the past reasonably in accordance with Defendants' Prior Cleaning Instructions, but there is Reasonable Proof that the Claimant periodically and regularly cleaned the deck reasonably in accordance with Claim Resolution Cleaning Instructions after the cleaning referenced in Section 4.2.5.1 above, and the Claimant permits an inspection and sampling of the deck, then AERT will provide: 1 additional Product cleaning in the following year along with a mold inhibitor application, subject to the



limitations of the Annual Limitations; and 2 coupons for deck cleaning at a nationally negotiated rate by a company selected by AERT, with the cleaning to be paid by the Claimant at the coupon's nationally negotiated rate, subject to the limitations of the Annual Limitations.

**4.2.5.3. Subsequent Mold Spotting after Six Months but within Twelve Months.** For Claimants who received the cleaning referenced in Section 4.2.5.1, if after the cleaning referenced in Section 4.2.5.1, the Product exhibits in a documented manner Significant Mold Spotting after 6 months but within 12 months of the cleaning, a Claimant may submit a Supplemental Claim Form and declaration under penalty of perjury providing detailed information regarding their deck in order to qualify for the relief in Section 4.2.5.3. The Supplemental Claim Form will be in a format substantially in the form attached hereto as Exhibit 2 and will require, among other things: (a) Photographic Proof; (b) detailed information regarding frequency and type of cleaning that had been performed by the Claimant after the cleaning referenced in Section 4.2.5.1; (c) if spotting returned after the cleaning referenced in Section 4.2.5.1, detailed information regarding when spotting first appeared. A Claimant may also submit a video of their deck to assist AERT with the Claim Resolution Process. To qualify for the relief in Section 4.2.5.3, a Claimant must provide verifiable, date stamped Photographic Proof evidencing Significant Mold Spotting after 6 months but within 12 months of the cleaning referenced in Section 4.2.5.1 or have an inspection by Defendants or their representatives within 12 months of the cleaning referenced in Section 4.2.5.1.

**4.2.5.3.1. If All Requirements Met.** If a Claimant's deck was Gapped Upon Installation, there is Reasonable Proof that the Claimant periodically and regularly cleaned the deck in the past reasonably in accordance with Defendants' Prior Cleaning

Instructions, there is Reasonable Proof that the Claimant periodically and regularly cleaned the deck reasonably in accordance with Claim Resolution Cleaning Instructions after the cleaning referenced in Section 4.2.5.1 above, and the Claimant permits an inspection and sampling of the deck, then AERT will provide: a Gift Card of \$500 toward purchases at a Lowe's store subject to the limitations of the Annual Limitations; 1 additional Product cleaning along with mold inhibitor applications in the following year, subject to the limitations of the Annual Limitations; and 2 coupons for deck cleaning at a nationally negotiated rate by a company selected by AERT, with the cleaning to be paid by the Claimant at the coupon's nationally negotiated rate, subject to the limitations of the Annual Limitations.

**4.2.5.3.2. If All Requirements Except Gapping Met.**

Alternatively, if there is Reasonable Proof that the Claimant periodically and regularly cleaned the deck in the past reasonably in accordance with Defendants' Prior Cleaning Instructions, there is Reasonable Proof that the Claimant periodically and regularly cleaned the deck reasonably in accordance with Claim Resolution Cleaning Instructions after the cleaning referenced in Section 4.2.5.1 above, and the Claimant permits an inspection and sampling of the deck, but Section 4.2.5.3.1 above is not applicable, then AERT will provide: a Gift Card of \$100 toward purchases at a Lowe's store subject to the limitations of the Annual Limitations; 1 additional Product cleaning along with mold inhibitor applications in the following year, subject to the limitations of the Annual Limitations; and 2 coupons for deck cleaning at a nationally negotiated rate by a company selected by AERT, with the cleaning to be paid by the Claimant at the coupon's nationally negotiated rate, subject to the limitations of the Annual Limitations.

**4.2.5.3.3. If Claimant Has Properly Cleaned Their Deck**

**Following Claim Resolution Cleaning But Other Requirements Have Not Been Met.**

Alternatively, if Section 4.2.5.3.1 above is not applicable and there is not Reasonable Proof that the Claimant periodically and regularly cleaned the deck in the past reasonably in accordance with Defendants' Prior Cleaning Instructions, but there is Reasonable Proof that the Claimant periodically and regularly cleaned the deck reasonably in accordance with Claim Resolution Cleaning Instructions after the cleaning referenced in Section 4.2.5.1 above, and the Claimant permits an inspection and sampling of the deck, then AERT will provide 2 coupons for deck cleaning at a nationally negotiated rate by a company selected by AERT, with the cleaning to be paid by the Claimant at the coupon's nationally negotiated rate, subject to the limitations of the Annual Limitations.

**4.2.5.4. Subsequent Mold Spotting after Twelve Months but within**

**Eighteen Months.** For Claimants who received the cleaning referenced in Section 4.2.5.1, if after the cleaning referenced in Section 4.2.5.1, the Product exhibits in a documented manner Significant Mold Spotting after 12 months but within 18 months of the cleaning, a Claimant may submit a Supplemental Claim Form and declaration under penalty of perjury providing detailed information regarding their deck in order to qualify for the relief in Section 4.2.5.4. The Supplemental Claim Form will be in a format substantially in the form attached hereto as Exhibit 2 and will require, among other things: (a) Photographic Proof; (b) detailed information regarding frequency and type of cleaning that had been performed by the Claimant after the cleaning referenced in Section 4.2.5.1; (c) if spotting returned after the cleaning referenced in Section 4.2.5.1, detailed information regarding when spotting first appeared. A Claimant may

also submit a video of their deck to assist AERT with the Claim Resolution Process. To qualify for the relief in Section 4.2.5.4, a Claimant must provide verifiable, date stamped Photographic Proof evidencing Significant Mold Spotting after 12 months but within 18 months after the cleaning referenced in Section 4.2.5.1 or have an inspection by Defendants or their representatives within 18 months of the cleaning referenced in Section 4.2.5.1.

4.2.5.4.1. **If All Requirements Met.** If a Claimant's deck was Gapped Upon Installation, there is Reasonable Proof that the Claimant periodically and regularly cleaned the deck in the past reasonably in accordance with Defendants' Prior Cleaning Instructions, there is Reasonable Proof that the Claimant periodically and regularly cleaned the deck reasonably in accordance with Claim Resolution Cleaning Instructions after the cleaning referenced in Section 4.2.5.1 above, and the Claimant permits an inspection and sampling of the deck, then AERT will provide: a Gift Card of \$250 toward purchases at a Lowe's store subject to the limitations of the Annual Limitations; and 2 coupons for deck cleaning at a nationally negotiated rate by a company selected by AERT, with the cleaning to be paid by the Claimant at the coupon's nationally negotiated rate, subject to the limitations of the Annual Limitations.

4.2.5.4.2. **If All Requirements Except Gapping Met.** Alternatively, if there is Reasonable Proof that the Claimant periodically and regularly cleaned the deck in the past reasonably in accordance with Defendants' Prior Cleaning Instructions, there is Reasonable Proof that the Claimant periodically and regularly cleaned the deck reasonably in accordance with Claim Resolution Cleaning Instructions after the cleaning referenced in Section 4.2.5.1 above, and the Claimant permits an inspection and sampling of the deck, but Section 4.2.5.2.1 above is not applicable, then AERT will provide: a Gift Card of \$50 toward purchases

at a Lowe's store subject to the limitations of the Annual Limitations; and 2 coupons for deck cleaning at a nationally negotiated rate by a company selected by AERT, with the cleaning to be paid by the Claimant at the coupon's nationally negotiated rate, subject to the limitations of the Annual Limitations.

**4.2.5.4.3. If Claimant Has Properly Cleaned Their Deck Following Claim Resolution Cleaning But Other Requirements Have Not Been Met.**

Alternatively, if Section 4.2.5.4.1 above is not applicable and there is not Reasonable Proof that the Claimant periodically and regularly cleaned the deck in the past reasonably in accordance with Defendants' Prior Cleaning Instructions, but there is Reasonable Proof that the Claimant periodically and regularly cleaned the deck reasonably in accordance with Claim Resolution Cleaning Instructions after the cleaning referenced in Section 4.2.5.1 above, and the Claimant permits an inspection and sampling of the deck, then AERT will provide 2 coupons for deck cleaning at a nationally negotiated rate by a company selected by AERT, with the cleaning to be paid by the Claimant at the coupon's nationally negotiated rate, subject to the limitations of the Annual Limitations.

**4.2.5.5. Subsequent Mold Spotting within 18 Months--Testing.** For Claimants who received the cleaning referenced in Section 4.2.5.1, if after the cleaning referenced in Section 4.2.5.1, the Product exhibits in a documented manner Significant Mold Spotting within 18 months of the cleaning, a Claimant may request to sample the plastic percentage of their decking. Along with the request, if it has not already been provided to AERT, a Claimant must also submit a Supplemental Claim Form and declaration under penalty of perjury providing detailed information regarding their deck in order to qualify for the relief in

Section 4.2.5.5. The Supplemental Claim Form will be in a format substantially in the form attached hereto as Exhibit 2 and will require, among other things: (a) Photographic Proof; (d) detailed information regarding frequency and type of cleaning that had been performed by the Claimant after the cleaning referenced in Section 4.2.5.1; (e) if spotting returned after the cleaning referenced in Section 4.2.5.1, detailed information regarding when spotting first appeared. A Claimant may also submit a video of their deck to assist AERT with the Claim Resolution Process. To qualify for the relief in Section 4.2.5.5, a Claimant must provide verifiable, date stamped Photographic Proof evidencing Significant Mold Spotting within 18 months of the cleaning referenced in Section 4.2.5.1 or have an inspection by Defendants or their representatives within 18 months of the cleaning referenced in Section 4.2.5.1.

4.2.5.5.1. If the plastic percentage of the sample is less than 43% as determined under Section 4.2.5.5.4, then AERT will provide, at the Claimant's election and as an alternative to the other relief provided in Sections 4.2.5.2 through 4.2.5.4 above: (a) 100% cash reimbursement of the purchase price of the Claimant's Product based upon proof of receipt or, if a receipt is not available, by Calculation of Cost, subject to the limitations of the Annual Limitations; (b) replacement decking of new ChoiceDek material for construction of a new deck of the same dimension, subject to the limitations of the Annual Limitations; however, Claimants will be responsible for all labor; or (c) 3 additional Product cleanings along with mold inhibitor applications in the following three successive years or until the mold spots no longer reappear, whichever is sooner, subject to the limitations of the Annual Limitations.

4.2.5.5.2. **Payment for Cost of Testing.** If a Claimant's deck was Gapped Upon Installation, there is Reasonable Proof that the Claimant periodically and regularly

cleaned the deck in the past reasonably in accordance with Defendants' Prior Cleaning Instructions, there is Reasonable Proof that the Claimant periodically and regularly cleaned the deck reasonably in accordance with Claim Resolution Cleaning Instructions after the cleaning referenced in Section 4.2.5.1 above, and the Claimant permits an inspection and sampling of the deck, then AERT will pay the fee for testing, subject to the limitations of the Annual Limitation.

4.2.5.5.3. **Claimant Payment of Portion of Testing Fee.** As to all Claimants other than those covered under Section 4.2.5.5.2, the Claimant will pay a \$25.00 testing charge prior to testing, and AERT will pay the remainder of the fee for the testing, subject to the limitations of the Annual Limitations. In the event a Claimant pays the fee and is found entitled to relief under Section 4.2.5.5.1, that \$25.00 fee will be refunded.

4.2.5.5.4. To determine the plastic percentage for use in Section 4.2.5.5.1, AERT will test three separate samples for polyethylene content using a variation of either the ASTM C613 soxhlet testing protocol or other similar beaker protocol using trichlorobenzene. (The exact testing protocol may be modified or varied in the future if AERT's third party testing labs believe that the modifications will improve the accuracy of its results, subject to consultation with Lead Class Counsel.) If any of the three samples has a polyethelene content of less than 43%, AERT will repeat the same test on another sample from the same board for any sample under 43%. AERT will average all of the sample results for the final percentage to be used in Section 4.2.5.5.1.

4.2.6 The relief provided in Section 4.2.5.2, Section 4.2.5.3, Section 4.2.5.4, and Section 4.2.5.5 are alternative forms of relief, and a Claimant is only entitled to relief under one of those Sections.

4.2.7 **Records.** AERT will keep records and statistics of the outcomes of the Claim Resolution Process which will be made available for Class Counsel to review by way of monthly reports showing the number of claims received, the number of claims processed, the number of claims rejected/accepted, the date of receipt of claims, and current status of claims.

4.2.8 **Reservation of Rights.** Defendants reserve the right to offer any greater relief on a case by case basis at their sole discretion.

4.2.9 **Cleaning.** During the Claim Resolution Process, AERT will initially clean decks generally according to the protocols set forth in Exhibit 9 attached hereto. The exact protocol may vary depending upon the deck. The protocol will include a general cleaning of a deck along with an application of an antimicrobial. The Parties acknowledge that the method(s) of cleaning may change over time using different cleaning techniques and solutions. AERT will advise Lead Class Counsel if it intends to use a different cleaning solution product line for cleanings in the Claim Resolution Process in the future, prior to using them in the Claim Resolution Process. Lead Class Counsel will advise AERT within 14 days if it has an objection, and if so, the Parties will work in good faith to resolve any disagreements.

4.2.10 **Annual Limitation.** The internal cost to AERT of offering the relief provided in the Claim Resolution Process shall not exceed the following amounts in any given year: \$2,000,000 in 2008, \$2,750,000 in 2009, \$2,750,000 in 2010, or \$2,000,000 in any subsequent year(s) (the "Annual Limitation"). If the internal cost to AERT of the offering of the relief exceeds these limits in a given year, any cleaning or relief provided for herein shall roll-over and be performed in a subsequent year. If the internal cost to AERT of offering the relief provided in the Claim Resolution Process in a given year does not reach these limits in a given



year, the difference between the internal cost for the given year and the Annual Limitation will not carry over to the following year's Annual Limitation. Notice costs and attorney's fees shall not count toward these annual caps. This Annual Limitation does not provide a limit as to the total cost of offering relief over time. When calculating internal costs incurred by AERT for purposes of the Annual Limitation, such internal costs will include, without limitation: (a) expenses related to Lowe's gift cards; (b) third-party vendor costs related to the inspection, cleaning, and/or sampling of claimant decks; (c) deck replacement product and product delivery costs; (d) costs incurred related to the inspection, cleaning, and/or sampling of claimant decks conducted by AERT personnel (including the cost of hotel accommodations, meals, rental vehicles and/or mileage expenses, other fuel expenses, materials and tools, and internal personal managerial costs, all based on managerial cost accounting); (e) postage and handling costs; (f) laboratory testing fees and related expenses; (g) material and processing costs related to DVD printing; (h) copy costs related to the processing and review of claimant photographs submitted during the claims process; (i) other costs incurred related to claims processing conducted by AERT personnel (including the cost of supplies and other materials along with internal personal managerial costs, all based on managerial cost accounting); and (j) arbitrator fees.

**4.2.11 Claim Period for Claim Resolution Process.** The Claim Resolution Process claim period will remain open for 6 months after the Settlement Final Approval Date, and AERT will accept Claim Forms during that period. All Class Members who do not submit a timely official Claim Form shall be barred from recovering under the Claim Resolution Process.

**4.2.12 Resolution of Claims Dispute by Claimant.** Any Claimant dissatisfied with the results under Sections 4.2.5.2 through 4.2.5.5 of the Claim Resolution Process will have

60 days to submit a notice to Lead Class Counsel and AERT that he or she will contest that result. The 60 day time period will be calculated from the date listed on AERT's notice letter determining relief available under Sections 4.2.5.2 through 4.2.5.5.

4.2.12.1. Lead Class Counsel shall review the results and attempt to address any concerns, as appropriate, with the Class Member and/or with AERT. Claimants, Lead Class Counsel, and AERT all shall make a good faith effort to resolve any such disputes informally.

4.2.12.2. In the event such resolution is not possible, Claimants shall have 30 days from the date that Claimant, Lead Class Counsel, or AERT provide notice that a resolution is not possible, to submit a demand for arbitration before the arbitrator selected by Lead Class Counsel and AERT pursuant to Section 4.2.12.10 (the "Arbitrator"), who shall conduct a desk-top arbitration based upon a written submission without oral argument.

4.2.12.3. AERT and the Class Member at their option shall each submit to the Arbitrator a written submission setting forth their respective positions regarding the disputed claim.

4.2.12.4. The Arbitrator shall make his or her determination based upon the written brief and relevant, supporting documentation submitted by the Class Member or AERT. The written brief may not exceed five (5) pages.

4.2.12.5. The Arbitrator's review shall be a desk-top review without oral argument or a hearing with the Claimant bearing the burden of proof.

4.2.12.6. The Arbitrator shall mail his or her determination to the Class Member and AERT. The Arbitrator may not provide any relief outside or beyond that allowed

by the Claim Resolutions Process set forth herein and only within the constraints of the requirements and limitations set forth within the Claim Resolution Process. The Arbitrator may not provide any relief that is not allowed under the Claim Resolution Process.

4.2.12.7. The Arbitrator shall allocate his \$250 fee on a fair and equitable basis as between AERT and the Class Member as the Arbitrator deems appropriate, and include the allocation of the \$250 fee in the Arbitration Award. The arbitrator shall be entitled to award his fee in favor of the prevailing party.

4.2.12.8. The determination of the Arbitrator shall be binding, final, conclusive, and non-appealable.

4.2.12.9. There will be no calculation of interest on the final claim evaluation or the Arbitrator's determination.

4.2.12.10. AERT shall select a licensed attorney, subject to approval by Lead Class Counsel, who will serve as the arbitrator for a fee of \$250 for each individual arbitration. In the event that this individual is later unable to serve as the arbitrator, AERT and Lead Class Counsel shall agree on a mutually acceptable arbitrator whose fee shall not exceed \$250 and who shall be a licensed attorney.

4.3 Except for those Claimants who receive a cash reimbursement through the Claim Resolution Process and except as otherwise previously released or resolved outside of the provisions of this Settlement Agreement, at the conclusion of the Claim Resolution Process, Class Members shall revert to their rights, if any, under the Product's original express written warranty. However, in no event shall a Class Member retain any claims under a Product

warranty, if any, for, relating to, or arising from mold, mildew, fungi, or fungal rot, which claims will be released pursuant to the terms of the Settlement Agreement.

## **5. NOTICE OF PROPOSED CLASS ACTION SETTLEMENT NOTICE**

5.1 The Parties agree that AERT will pay for the Class Notice set forth in the Class Notice Plan. The Class Notice Plan is attached to this Settlement Agreement as Exhibit 3.

## **6. RELEASES**

6.1 Upon final approval of the Settlement, the Plaintiffs and the Class shall dismiss with prejudice all claims in the Action.

6.2 The Plaintiffs and the Class release and discharge any and all past, present and future claims, causes of action, demands, damages, attorneys' fees, equitable relief including but not limited to injunctive and declaratory relief, suits seeking damages, legal relief, and demands or rights, whether known or unknown, liquidated or unliquidated, accrued or unaccrued, fixed or contingent, or based on any statute, regulation or common law of any country, state, province, county, city or municipality that have been, could have been, may be, or could be alleged or asserted now, in the past, or in the future by the Plaintiffs or any member of the Class against the Defendants, Defendants' Affiliates,<sup>1</sup> Lowe's HIW, Inc. (and its parent corporation, corporate affiliates, subsidiaries, officers, directors, employees, shareholders, and insurers), and all other persons and businesses involved in the distribution chain and installation of the Product (collectively the "Released Parties"), in this matter or in any other court action or before any

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<sup>1</sup> "Defendants' Affiliates" are defined as all of Defendants' past, present and future officers, directors, employees, agents, attorneys, representatives, shareholders, retailers, parents, subsidiaries, affiliates, predecessors, successors, assigns, and/or persons acting on behalf of any of the foregoing.

administrative or regulatory body, tribunal or arbitration panel on the basis of, connected with, arising out of, or related in whole or in part in any way to:

6.2.1. The claims in the Action and any and/or all of the acts, omissions, facts, matters, transactions, occurrences or representations that were directly or indirectly alleged, asserted, described, set forth or referred to in this matter including, but not limited to, those regarding mold, mildew, or fungi on the Product;

6.2.2. Except as provided in paragraph 6.4 of this Agreement, any and all other acts, omissions, facts, matters, transactions, occurrences or representations made in connection with the marketing, manufacturing process, sale, purchase, solicitation, pricing, acceptance, selection and categorization, descriptions regarding, explanations regarding, operation, maintenance, cleaning of, servicing, or replacement of the Product, including without limitation, claims regarding mold, mildew, or fungi on the Product.

6.2.3. Any and all acts, omissions, facts, matters, transactions, claims handling, occurrences or representations relating to the Settlement Agreement and the Claim Resolution Process including, but not limited to, the claims released herein.

6.2.4. This release shall not deprive Class Members of the class relief provided in this Settlement Agreement.

6.2.5. This release expressly includes, without limitation, claims based on negligence, gross negligence, breach of contract, breach of express and implied warranties, fraud, negligent misrepresentation, violations of consumer and deceptive trade practices acts, violations of the Magnuson-Moss Warranty Act, intentional misconduct, statutory violations, and

any other tortious or other conduct of the Released Parties. This release expressly includes claims for emotional distress and mental anguish, which are hereby released.

6.2.6. With the exception of claims for emotional distress and mental anguish, notwithstanding the foregoing, or any other provisions of this Agreement, this release does not release any claims for personal injury or wrongful death, including such claims allegedly arising out of mold or fungus. Additionally, except for those Class Members who receive a cash reimbursement through the Claim Resolution Process, this release does not release an express written warranty claim under an express written Product warranty other than for, relating to, or arising from mold, mildew, fungi or fungal rot, if any.

6.2.7. The release will cover, without limitation, any and all claims for attorneys' fees, expenses, costs and/or disbursements incurred by Class Counsel or any other counsel representing the Plaintiffs or any Class Member, or by the Plaintiffs or any Class Member in connection with or related in any manner to this matter, the settlement of this matter, the administration of such settlement, the Claim Resolution Process, and the release except to the extent otherwise specified in the Settlement Agreement.

6.2.8. The Plaintiffs and Class Members acknowledge that they are aware that they may hereafter discover claims presently unknown or unsuspected, or facts in addition to or different from those that they now know or believe to be true with respect to the matters released herein or with respect to the Product. Nevertheless, it is the intention of the Plaintiffs, individually and on behalf of Class Members, to fully, finally and forever settle and release all such matters, and all claims relating thereto, which exist, hereafter may exist, or might have existed (whether or not previously or currently asserted in any action or proceeding).

6.2.9. The release contemplated shall extend to and include claims that the Plaintiffs and the Class (the “Releasing Parties”) do not know or suspect to exist at the time of the release, which if known, might have affected their decision to enter into the release. The Releasing Parties shall be deemed to relinquish, to the extent it is applicable, and to the full extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code. The Releasing Parties also shall be deemed to waive any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to California Civil Code § 1542.

6.3 Nothing in the release shall: (a) preclude the enforcement of the terms of the Settlement Agreement or the Final Order and Judgment in this Action; or (b) preclude the Plaintiffs or Class Members from participating in the Claim Resolution Process.

6.4 In the event that AERT no longer funds up to the Annual Limitation the Claim Resolution Process on a global class-wide basis (as opposed to disputed individual claims in the Claim Resolution Process which are subject to arbitration under Section 4.2.12) prior to the conclusion of the Claim Resolution Process for any reason and the Court has declared that AERT is no longer funding up to the Annual Limitation the Claim Resolution Process on a global classwide basis, the release described above shall no longer apply to Class Members who: (a) have submitted or remain entitled to submit a timely claim under Section 4 of the Settlement Agreement; and (b) have not exhausted their potential for relief under Section 4 (“Section 6.4 Class Member”). To the extent that the Settlement Agreement release no longer applies to a Section 6.4 Class Member who has received partial relief in the Claim Resolution Process, but not full relief, the value of relief such Class Member has already received under the Claim

Resolution Process shall be treated as an offset against any claims for damages against any Defendants. To the extent that the Settlement Agreement release no longer applies to a Section 6.4 Class Member, Defendants agree that the release in this Settlement Agreement will not bar a Section 6.4 Class Member's claims in a future proceeding and that a Section 6.4 Class Member's claims that are currently asserted in this Action and otherwise released under Section 6 of this Agreement will be tolled from February 26, 2008 through the date that the Court has declared that AERT is no longer funding up to the Annual Limitation the Claim Resolution Process on a global classwide basis.

## **7. STIPEND TO PLAINTIFFS**

7.1. AERT will pay to the Plaintiffs the following stipends for their work on behalf of the Class: \$7,500.00 to Stacey and Joseph Jamruk; \$7,500.00 to Michael Mustac; \$7,500.00 to Greg Knudtson, and \$7,500.00 to Stanley and Betty Pelletz.

7.2. This amount shall be in addition to the relief to which the Plaintiffs are entitled under the Claim Resolution Process.

## **8. ATTORNEYS' FEES AND EXPENSES**

8.1 Defendants acknowledge that Class Counsel have asserted a claim for attorneys' fees and reimbursement of expenses in this matter.

8.2. Subject to the terms and conditions of this Settlement Agreement and any order of the Court, AERT shall pay to Class Counsel an amount awarded by the Court, up to the sum of \$1,750,000.00, in settlement of this claim for attorneys' fees and expenses (the "Fee Award").

8.3. The Fee Award shall be submitted for approval by the Court, which approval Class Counsel shall seek as part of the Court approval of this Settlement Agreement. Class



Counsel agree not to seek or recover an award of attorneys' fees and expenses greater than the Fee Award, and Defendants agree not to oppose Class Counsel's request up to the Fee Award.

8.4. If and when the Fee Award is approved by the Court, AERT will make the following payments:

8.4.1. AERT will pay \$583,333.34 by wire transfer to an account identified by Loeff, Cabraser, Heimann & Bernstein, LLP within twenty (20) business days after the later of (a) date on which the Final Order and Judgment approving the settlement is entered by the Court; and (b) the date on which an order approving the award of Class Counsel's fees is entered by the Court.

8.4.2. AERT will pay \$583,333.33 by wire transfer to an account identified by Loeff Cabraser, Heimann & Bernstein, LLP six months after the payment described in subparagraph 8.4.1 above.

8.4.3. AERT will pay \$583,333.33 by wire transfer to an account identified by Loeff Cabraser, Heimann & Bernstein, LLP another six months after the payment described in subparagraph 8.4.2 above.

8.5 Class Counsel hereby assume joint and several obligations to make refunds or repayments to AERT if, as a result of any appeal and/or further proceedings or successful collateral attack, the Fee Award is lowered or the Settlement Agreement is overturned or modified on appeal or the Settlement Agreement is terminated pursuant to any of its provisions. This provision shall survive termination of the settlement and Settlement Agreement.

## **9. CONDITIONS OF EFFECTIVENESS OF SETTLEMENT AGREEMENT**

9.1. The Settlement Agreement is conditioned upon the fulfillment of each of the following conditions.

9.1.1. Execution of the Settlement Agreement and other agreement or documents necessary to effectuate the terms of the proposed settlement;

9.1.2. The dismissal with prejudice of all claims in the Action without the award of any damages, costs, fees or the grant of any further relief except for the award of attorneys' fees and expenses pursuant to Section 8 of this Settlement Agreement;

9.1.4. The entry of the Final Order and Judgment approving the Settlement Agreement, providing for the dismissal with prejudice of all claims in the Action, and approving the Release by the Class to the Released Parties;

9.1.5. The inclusion in the Final Order and Judgment of a provision enjoining all members of the Class from asserting any of the settled and released claims; and

9.1.6. Such final judgment and dismissal of the Claims being finally affirmed on appeal or such final judgment and dismissal not being subject to appeal (or further appeal) by lapse of time or otherwise.

9.2. This Settlement Agreement shall be null and void and of no force and effect if any of the conditions set forth in the paragraph above are not met.

## **10. REPRESENTATIONS BY PARTIES**

10.1 Class Counsel hereby acknowledge, represent, and warrant that Beth and Randy Gori shall not opt-out, exclude themselves, or object to the Class or the Settlement Agreement.

10.2 Defendants have provided to Class Counsel evidence of the addition of antimicrobial zinc borate to the Product manufactured after October of 2006. Based upon consultation with their experts, Class Counsel accept the representation that zinc borate is a known mold and mildew inhibitor.

## **11. PROCEDURE**

11.1. The Settlement Agreement will be presented to the Court for review and approval.

11.2. Promptly following execution of this Settlement Agreement, Class Counsel shall submit the Settlement Agreement to the Court and request an order that will, among other things:

11.2.1. Preliminarily certify the Class, as defined herein, for settlement purposes and designate the Plaintiffs as the class representatives and their undersigned counsel as Class Counsel, on the condition that the certification and designations shall be automatically vacated if this Settlement Agreement is terminated or is disapproved in whole or in part by the Court, any appellate court and/or any other court of review, or if any of the Parties invoke their right to terminate the Settlement Agreement, in which event the Settlement Agreement and the fact that they were entered into shall not be offered, received or construed as an admission or as evidence for any purpose, including the "certifiability" of any class;

11.2.2. Preliminarily approve the Settlement Agreement as sufficiently fair and reasonable to warrant sending notice to the class preliminarily certified for settlement purposes;

11.2.3. Stay consideration of all other motions and deadlines;

11.2.4. Schedule a fairness hearing at a mutually convenient date after entry of the preliminary approval order to consider the fairness, reasonableness and adequacy of the proposed settlement and whether it should be approved by the Court;

11.2.5. Direct that AERT cause the Class Notice to be given beginning not later than 45 days prior to the fairness hearing;

11.2.6. Determine that distribution of the Class Notice as set forth in the Class Notice Plan is reasonable and the best practicable notice under the circumstances; is reasonably calculated to apprise the Class of the pendency of the Action, the Settlement Agreement, and of their right to object to and opt-out of the proposed settlement; constitutes due, adequate, and sufficient notice to all persons entitled to receive notice; and meets the requirements of due process, the Federal Rules of Civil Procedure, and the United States Constitution;

11.2.7 Require AERT to file proof by affidavit of the Class Notice at or before the fairness hearing;

11.2.8. Require each potential member of the Class who wishes to exclude himself, herself, or itself from the Class to submit to the Clerk of the Court, Lead Class Counsel, and Defendants' counsel a written request for exclusion postmarked not later than 25 days prior to the fairness hearing and received by the Clerk of the Court not later than fifteen 15 days before the date of the fairness hearing;

11.2.9. Rule that any potential member of the Class who does not submit a timely, written request for exclusion will be bound by all proceedings, orders and judgments, which will have preclusive effect in all pending or future lawsuits or other proceedings, except that Defendants, in their sole discretion, may allow a potential member of the Class who does not timely request exclusion from the Class to opt out of the Class up to and including the date of the fairness hearing;

11.2.10. Provide that any potential member of the Class who objects to the Settlement Agreement may appear at the fairness hearing and show cause why such Settlement Agreement should not be approved as fair, reasonable and adequate and why the Final Order and Judgment should not be entered thereon; provided that each such member of the Class shall deliver to the offices of Lead Class Counsel and Defendants' counsel and file with the Court, not later than 25 days prior to the fairness hearing, or as the Court may otherwise direct: (a) a statement under penalty of perjury that the objector is a member of the Class; (b) a statement of the objection, as well as the specific reasons, if any, for each objection, including any legal support the member of the Class wishes to bring to the Court's attention; (c) any evidence the member of the Class wishes to introduce in support of his or her objection; and (d) a list of all class action proceedings in which such objectors or their attorneys previously appeared as objectors or on behalf of objectors. Any member of the Class who fails to comply with these requirements shall be forever barred from objecting to this Settlement Agreement;

11.2.11. Require any attorneys hired by individual members of the Class for the purpose of objecting to the proposed settlement to file with the Clerk of the Court and serve on Class Counsel and Defendants' counsel a notice of appearance, not later than 25 days prior to the fairness hearing;

11.2.12. Require any member of the Class who files and serves a written objection and who intends to make an appearance at the fairness hearing, either in person or through an attorney hired by the individual member of the Class at the Class Member's expense, in order to object to the fairness, reasonableness or adequacy of the proposed settlement, to serve

on Lead Class Counsel and Defendants' counsel and file a notice of intention to appear with the Court, not later than 25 days prior to the fairness hearing;

11.2.13. Direct Lead Class Counsel and Defendants' counsel to promptly furnish each other with copies of any and all objections and requests for exclusion that come into their possession;

11.2.14. Provide that no person shall be entitled in any way to contest the approval of the terms and conditions of the Settlement Agreement or the Final Order and Judgment to be entered thereon except by filing and serving written objections in accordance with the provisions of this Settlement Agreement and further providing that any member of the Class who does not submit a timely, written objection or request for exclusion from the class in compliance with all of the procedures set forth in this Settlement Agreement will be deemed to have waived all such objections and will, therefore, be bound by all proceedings, orders and judgments in this action, which will be preclusive in all pending or future lawsuits or other proceedings;

11.2.15. Provide that any objector requesting access to Confidential materials must first obtain leave of court and agree to be bound by an agreed confidentiality order issued by the Court;

11.2.16. Protect the confidentiality of confidential information pursuant to the terms of this Settlement Agreement;

11.2.17. Approve the Claim Form and Supplemental Claim Form agreed upon by the Parties;

11.2.18. Approve the Claim Resolution Process;

11.2.19. Contain any additional provisions that might be necessary to implement and administer the terms of the Settlement Agreement as agreed upon jointly by Lead Class Counsel and Defendants.

11.3 Plaintiffs shall request the Court to enter a final judgment and order:

11.3.1. Approving the settlement set forth in the Settlement Agreement without material alteration, and directing the Parties and counsel to comply with and consummate the terms of the Settlement Agreement;

11.3.2. Certifying the Class for settlement purposes;

11.3.3. Confirming the appointment of Class Counsel and Plaintiffs as class representatives;

11.3.4. Finding that Class Counsel and Plaintiffs have adequately represented the Class;

11.3.5. Finding that the terms of this Settlement Agreement are fair, reasonable, and adequate to the Class;

11.3.6. Providing that each member of the Class shall be bound by the provisions of this Settlement Agreement, including the releases;

11.3.7. Finding that the Class Notice and Class Notice Plan approved by the Court provided the best practicable notice and satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure and the requirements of due process under the United States Constitution;

11.3.8. Dismissing all claims against all Defendants on the merits and with prejudice, and entering final judgment thereon with a finding that there is no just reason to delay enforcement or appeal; and

11.3.9. Retaining jurisdiction of all matters relating to the interpretation, administration, implementation, effectuation, and enforcement of this Settlement Agreement.

11.4. Defendants shall have the right, to be exercisable within their own discretion, to terminate the Settlement Agreement by delivering written notification of such election to Class Counsel within fourteen days of the particular Defendant becoming aware of the event triggering a right to terminate under Section 11.4.

11.4.1. If the Court or any appellate court(s) rejects, denies approval, disapproves, modifies or attempts to modify the Settlement Agreement or any portion of this Settlement Agreement that Defendants in their sole judgment and discretion believe is material, including, but not limited to, the terms of the Class relief, the provisions relating to notice, the definition of the Class, and the Release;

11.4.2. The Court, or any appellate court(s), does not enter or completely and unconditionally affirm any portion of the Settlement Agreement, Preliminary Approval Order or Final Order and Judgment that Defendants in their sole judgment and discretion believe is material;

11.4.3. If any regulatory agency or governmental agency should challenge any of the terms of the Settlement Agreement in any way that any Defendant believes, in its sole judgment and discretion, is materially adverse to Defendants' interests.



11.4.4. If the number of Persons who exclude themselves from the Class as of the date of the final approval hearing in the sole discretion and opinion of AERT materially and adversely affects the value of the settlement;

11.4.5. If the Plaintiffs or any present or past putative Class Member with an attorney-client relationship to Class Counsel, or their firms, opts-out of, excludes him/her/itself from or objects to the Class or the Settlement Agreement; or

11.4.6. Class Counsel or their firms encourage or recommend that a putative Class Member opt-out of or exclude themselves from the Class or the Settlement Agreement.

11.5 If the proposed settlement shall not be effectuated or fail for any reason or if the Settlement Agreement shall be terminated by Defendants, the provisions of this Section shall survive any termination of the Memorandum of Understanding dated April 18, 2008 ("MOU") and/or Settlement Agreement, and:

11.5.1. The MOU, Settlement Agreement, and the proposed settlement shall have no further force or effect, and all proceedings that have taken place with regard to the MOU, Settlement Agreement, and the proposed settlement shall be without prejudice to the rights and contentions of the Parties hereto and any of the putative Class Members;

11.5.2 The MOU, Settlement Agreement, the proposed settlement, and all of their provisions (including, without limitation, any provisions regarding class certification), and all negotiations, statements and proceedings relating to them shall be without prejudice to the rights of any of the Parties, each of whom shall be restored to their respective positions existing immediately before settlement negotiations;

11.5.3. The MOU, Settlement Agreement, and the proposed settlement (including without limitation the provisions regarding class certification), and the facts surrounding negotiations toward settlement, shall not be admissible or entered into evidence for any purpose whatsoever;

11.5.4. Any order or judgment, including, without limitation, any order certifying the Class, will be vacated and will be without any force or effect. The Parties hereto agree that they will promptly file a joint motion with the court to vacate all orders entered pursuant to the terms of the Settlement Agreement; and

11.5.5. The Parties hereby agree that they will not thereafter argue or raise a claim or defense, including but not limited to waiver, estoppel and other similar or related theories, that the MOU, Settlement Agreement, the proposed settlement, related pleadings and filings, any provision of this settlement (including without limitation the provisions regarding Class certification), and any settlement negotiations preclude Defendants from opposing certification or the claims in any proceeding.

## **12. MISCELLANEOUS PROVISIONS**

12.1 This Settlement Agreement was jointly drafted by all Parties, and, as such, its terms shall not be construed against any party as the drafter.

12.2 This Settlement Agreement, including all attached Exhibits hereto, shall constitute the entire agreement among the Parties with regard to settlement of this Action and shall supersede the MOU between the Parties relating to settlement of this Action that preceded this Settlement Agreement. This Settlement Agreement may not be changed, modified, or amended

except in writing signed by Lead Class Counsel and counsel for Defendants, and subject to Court approval.

12.3. This Agreement may be executed by the Parties in one or more counterparts, transmitted by electronic or regular mail, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

12.4. This Settlement Agreement shall be binding upon, and inure to the benefit of, the Parties, Class Members, and their representatives, heirs, successors, and assigns.

12.5. This Settlement Agreement shall be construed in accordance with the laws of the State of Washington.

12.6. Any notice, objection, exclusion, application for Court approval or application for Court order sought in connection with this Settlement Agreement or other document to be given by any party to any other party shall be in writing and delivered personally or sent by registered or certified mail, postage prepaid to counsel for the Parties as listed below:

For Plaintiffs and the Class  
LIEFF CABRASER, HEIMANN & BERNSTEIN, LLP  
Jonathan D. Selbin

GARY, NAEGELE & THEADO, LLC  
Jori Bloom Naegele

For Defendant Advanced Environmental Recycling Technologies, Inc.  
LOCKE LORD BISSELL & LIDDELL LLP  
Carl C. Scherz

For Defendant Weyerhaeuser Company  
PERKINS COIE  
Thomas L. Boeder  
Cori Gordon Moore

Dated: \_\_\_\_\_

\_\_\_\_\_  
LIEFF, CABRASER, HEIMANN &  
BERNSTEIN, LLP

Jonathan D. Selbin

Attorneys for Joseph and Stacy Jamruk, Michael  
Mustac and Greg Knudtson

Dated: \_\_\_\_\_

\_\_\_\_\_  
GOLDENBERG HELLER ANTOGNOLI  
ROWLAND & SHORT, P.C.

Elizabeth V. Heller

Attorneys for Joseph and Stacey Jamruk, Michael  
Mustac and Greg Knudtson

Dated: \_\_\_\_\_

\_\_\_\_\_  
TOUSLEY BRAIN STEPHENS PLLC

Kim D. Stephens

Attorneys for Joseph and Stacey Jamruk, Michael  
Mustac and Greg Knudtson

Dated: \_\_\_\_\_

\_\_\_\_\_  
COHEN, MILSTEIN, HAUSFELD & TOLL,  
PLLC

Richard Lewis

Attorneys for Stanley and Betty Pelletz

Dated: \_\_\_\_\_

\_\_\_\_\_  
GARY, NAEGELE & THEADO, LLC

Jori Bloom Naegele

Attorneys for Stanley and Betty Pelletz

Dated: \_\_\_\_\_

\_\_\_\_\_  
KELLER ROHRBACK L.L.P.

Mark A. Griffin

Attorneys for Stanley and Betty Pelletz

Dated: \_\_\_\_\_

\_\_\_\_\_  
PERKINS COIE, LLP  
Thomas L. Boeder  
Cori Gordon Moore

Attorneys For Weyerhaeuser Company

Dated: \_\_\_\_\_

\_\_\_\_\_  
LOCKE LORD BISSELL & LIDDELL LLP  
Carl C. Scherz  
Jeff Logan

Attorneys for Advanced Environmental  
Recycling Technologies, Inc.

Dated: \_\_\_\_\_

STANLEY PELLETZ

Dated: \_\_\_\_\_

BETTY PELLETZ

Dated: \_\_\_\_\_

JOSEPH JAMRUK

Dated: \_\_\_\_\_

STACEY JAMRUK

Dated: \_\_\_\_\_

MICHAEL MUSTAC

Dated: \_\_\_\_\_

GREG KNUDTSON

Dated: \_\_\_\_\_

ADVANCED ENVIRONMENTAL RECYCLING  
TECHNOLOGIES, INC.

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

WEYERHAEUSER COMPANY

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

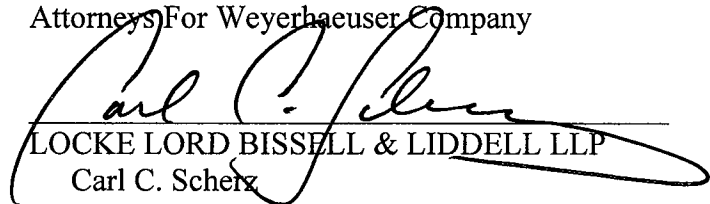
Title: \_\_\_\_\_

Dated: \_\_\_\_\_

PERKINS COIE, LLP  
Thomas L. Boeder  
Cori Gordon Moore

Attorneys For Weyerhaeuser Company

Dated: 8/21/2008

  
LOCKE LORD BISSELL & LIDDELL LLP  
Carl C. Schertz  
Jeff Logan

Attorneys for Advanced Environmental  
Recycling Technologies, Inc.

Dated: \_\_\_\_\_

\_\_\_\_\_  
STANLEY PELLETZ

Dated: \_\_\_\_\_

\_\_\_\_\_  
BETTY PELLETZ

Dated: \_\_\_\_\_

\_\_\_\_\_  
JOSEPH JAMRUK

Dated: \_\_\_\_\_

\_\_\_\_\_  
STACEY JAMRUK

Dated: \_\_\_\_\_

\_\_\_\_\_  
MICHAEL MUSTAC

Dated: \_\_\_\_\_

\_\_\_\_\_  
GREG KNUDTSON

Dated: 8-20-08

\_\_\_\_\_  
ADVANCED ENVIRONMENTAL RECYCLING  
TECHNOLOGIES, INC.

By: 

Printed Name: JOE G. BROOKS

Title: CEO

Dated: \_\_\_\_\_

\_\_\_\_\_  
WEYERHAEUSER COMPANY

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

SETTLEMENT AGREEMENT  
(NO. C08-00403 JCC) - 45



Dated: \_\_\_\_\_

STANLEY PELLETZ

Dated: \_\_\_\_\_

BETTY PELLETZ

Dated: \_\_\_\_\_

JOSEPH JAMRUK

Dated: \_\_\_\_\_

STACEY JAMRUK

Dated: \_\_\_\_\_

MICHAEL MUSTAC

Dated: \_\_\_\_\_

GREG KNUDTSON

Dated: \_\_\_\_\_

ADVANCED ENVIRONMENTAL RECYCLING  
TECHNOLOGIES, INC.

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: 8/20/08

WEYERHAEUSER COMPANY

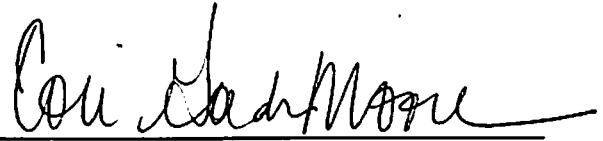
By: [Signature]

Printed Name: Carlos J Guethene

Title: VP Sales

SETTLEMENT AGREEMENT  
(NO. C08-00403 JCC) - 45

Dated: August 20, 2008



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PERKINS COIE, LLP  
Thomas L. Boeder  
Cori Gordon Moore

Attorneys For Weyerhaeuser Company

Dated: \_\_\_\_\_

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Jeff Logan

Attorneys for Advanced Environmental  
Recycling Technologies, Inc.

SETTLEMENT AGREEMENT  
(NO. C08-00403 JCC) – 44

Dated: \_\_\_\_\_

STANLEY PELLETZ

Dated: \_\_\_\_\_

BETTY PELLETZ

Dated: \_\_\_\_\_

JOSEPH JAMRUK

Dated: \_\_\_\_\_

STACEY JAMRUK

Dated: \_\_\_\_\_

MICHAEL MUSTAC

Dated: 8/18/2008

  
GREG KNUDTSON

Dated: \_\_\_\_\_

ADVANCED ENVIRONMENTAL RECYCLING  
TECHNOLOGIES, INC.

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

WEYERHAEUSER COMPANY

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
STANLEY PELLETZ

Dated: \_\_\_\_\_

\_\_\_\_\_  
BETTY PELLETZ

Dated: \_\_\_\_\_

\_\_\_\_\_  
JOSEPH JAMRUK

Dated: \_\_\_\_\_

\_\_\_\_\_  
STACEY JAMRUK

Dated: 08-19-2008

  
\_\_\_\_\_  
MICHAEL MUSTAC

Dated: \_\_\_\_\_

\_\_\_\_\_  
GREG KNUDTSON

Dated: \_\_\_\_\_

\_\_\_\_\_  
ADVANCED ENVIRONMENTAL RECYCLING  
TECHNOLOGIES, INC.

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
WEYERHAEUSER COMPANY

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

SETTLEMENT AGREEMENT  
(NO. C08-00403 JCC) – 45

Dated: \_\_\_\_\_

\_\_\_\_\_  
LIEFF, CABRASER, HEIMANN &  
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Dated: August 19, 2008

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Dated: \_\_\_\_\_

\_\_\_\_\_  
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Attorneys for Joseph and Stacey Jamruk, Michael  
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Dated: \_\_\_\_\_

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Richard Lewis

Attorneys for Stanley and Betty Pelletz

Dated: \_\_\_\_\_

\_\_\_\_\_  
GARY, NAEGELE & THEADO, LLC

Jori Bloom Naegele

Attorneys for Stanley and Betty Pelletz

Dated: \_\_\_\_\_

\_\_\_\_\_  
KELLER ROHRBACK L.L.P.

Mark A. Griffin

Attorneys for Stanley and Betty Pelletz

SETTLEMENT AGREEMENT  
(NO. C08-00403 JCC) – 43

Dated: \_\_\_\_\_

\_\_\_\_\_  
STANLEY PELLETZ

Dated: \_\_\_\_\_

\_\_\_\_\_  
BETTY PELLETZ

Dated: 8-18-08

Joseph J Jamruk  
\_\_\_\_\_  
JOSEPH JAMRUK

Dated: 8-18-08

Stacey Jamruk  
\_\_\_\_\_  
STACEY JAMRUK

Dated: \_\_\_\_\_

\_\_\_\_\_  
MICHAEL MUSTAC

Dated: \_\_\_\_\_

\_\_\_\_\_  
GREG KNUDTSON

Dated: \_\_\_\_\_

\_\_\_\_\_  
ADVANCED ENVIRONMENTAL RECYCLING  
TECHNOLOGIES, INC.

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_


\_\_\_\_\_  
WEYERHAEUSER COMPANY

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: August 20, 2008

 for Jonathan D. Selbin

\_\_\_\_\_  
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Attorneys for Joseph and Stacy Jamruk, Michael  
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Dated: \_\_\_\_\_

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Dated: \_\_\_\_\_

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SETTLEMENT AGREEMENT  
(NO. C08-00403 JCC) – 43



Dated: 8/20/08

Stanley D. Pellet  
STANLEY PELLETZ

Dated: 8/20/08

Betty Pelletz  
BETTY PELLETZ

Dated: \_\_\_\_\_

\_\_\_\_\_  
JOSEPH JAMRUK

Dated: \_\_\_\_\_

\_\_\_\_\_  
STACEY JAMRUK

Dated: \_\_\_\_\_

\_\_\_\_\_  
MICHAEL MUSTAC

Dated: \_\_\_\_\_

\_\_\_\_\_  
GREG KNUDTSON

Dated: \_\_\_\_\_

\_\_\_\_\_  
ADVANCED ENVIRONMENTAL RECYCLING  
TECHNOLOGIES, INC.

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

WEYERHAEUSER COMPANY

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

SETTLEMENT AGREEMENT  
(NO. C08-00403 JCC) - 45

DAL:0507070/00031:1687933v9

Dated: \_\_\_\_\_

\_\_\_\_\_  
LIEFF, CABRASER, HEIMANN &  
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Dated: 8/20/08

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Jori Bloom Naegele

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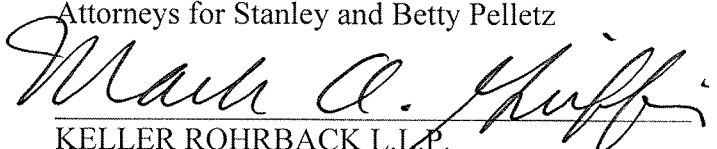
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Attorneys for Stanley and Betty Pelletz

Dated: \_\_\_\_\_

\_\_\_\_\_  
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Mark A. Griffin

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SETTLEMENT AGREEMENT  
(NO. C08-00403 JCC) – 43

**Exhibit 1**

**Claim Form**

**AERT, Inc.**  
**ChoiceDek Class Action Settlement**  
**914 N. Jefferson Street**  
**Springdale, AR 72764**  
**Toll Free Line: (800) 951-5117**

www.\_\_\_\_\_ .com

Complete this form if you are submitting a claim for mold or mildew in the ChoiceDek Class Action Settlement.

Claim Forms must be postmarked no later than 6 months after the "Settlement Final Approval Date," which has yet to be determined. Please call the toll free number, or visit the settlement website for updates on the deadline.

Claimant Name \_\_\_\_\_

**CLAIM FORM**  
**YOU SHOULD ATTACH THE FOLLOWING DOCUMENTS WITH THIS CLAIM FORM:**

- Photographic Proof of the mold and mildew on your ChoiceDek product
- Proof that you own the property on which the deck in question is located
- Photograph of a board end showing the date of manufacture stamp
- Your sales receipt evidencing when you purchased your ChoiceDek product.

**I - GENERAL INSTRUCTIONS**

- A. Type or legibly print all information in blue or black ink.
- B. Answer all questions on the Claim Form.
- C. Sign and date the Claim Form under penalty of perjury. Your signature is certification that all information on this form is true and correct under penalty of perjury and that you authorize AERT to enter your property, clean your deck and remove a sample of your deck as part of its investigation of this claim. If it is necessary to remove a sample of your deck, AERT will replace the sample with a new piece of ChoiceDek material. AERT will attempt to use a similar type of replacement board; however, depending upon the age, color and style of your deck, there may be some variance in style and color.
- D. Make a copy of the completed Claim Form and accompanying documents and photographs for your files. Mail the original Claim Form along with the accompanying photographs and documents to AERT.
- E. If you need additional room to answer the following questions, attach additional sheets.
- F. Check all boxes for which you are supplying the requested documentation.

**II - PRELIMINARY QUESTIONS**

- 1. Was your ChoiceDek Product purchased on or after January 1, 2004?  Yes  No
- 2. Was your ChoiceDek Product purchased before January 1, 2008?  Yes  No
- 3. Are you currently experiencing mold spotting on your ChoiceDek Product?  Yes  No

**III - CLAIMANT INFORMATION**

- 4. **Name of Claimants:**  
Last: \_\_\_\_\_ First \_\_\_\_\_ MI \_\_\_\_\_  
Last: \_\_\_\_\_ First \_\_\_\_\_ MI \_\_\_\_\_
- 5. **Claimants' Address:**  
Street Address \_\_\_\_\_  
City \_\_\_\_\_ State/Prov. \_\_\_\_\_ Zip \_\_\_\_\_
- 6. **Claimant Phone Numbers:**  
Home ( ) \_\_\_\_\_ Work ( ) \_\_\_\_\_ Mobile ( ) \_\_\_\_\_  
Work ( ) \_\_\_\_\_ Mobile ( ) \_\_\_\_\_
- 8. **Dates of Birth** (mm/dd/yyyy): \_\_\_\_\_ and \_\_\_\_\_
- 9. **Proof of Property Ownership:** Who are the legal owners of the property where the deck is located?  
\_\_\_\_\_  
\_\_\_\_\_

When did you purchase the property: \_\_\_\_\_

- You must include documentation proving that you own the property in question such as a copy of the local appraisal assessment, mortgage statement, or deed record showing the name of the owner of the property in question.

Yes  No Have you attached proof that you own the property in question? If no, please explain why:

\_\_\_\_\_  
\_\_\_\_\_

10. **Address and directions to property:** *Directions must begin at a major highway or town.*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

#### IV – CHOICEDEK INFORMATION

For purposes of this settlement, "Product" is defined as ChoiceDek decking and railing products manufactured by AERT. You must provide the following proof in order to participate in the settlement:

11. **Product Information**

Dates of Purchase: \_\_\_\_\_ Purchase Price: \$ \_\_\_\_\_

Type and Color of ChoiceDek Product Purchased: \_\_\_\_\_

Place of Purchase: \_\_\_\_\_ (Store Address, City, and State)

Address where deck installed: \_\_\_\_\_  
\_\_\_\_\_ (Street, City, State, and Zip Code)

List of materials purchased: \_\_\_\_\_

Who installed the deck? \_\_\_\_\_

12. **Receipt** – With this Claim Form, send a photocopy of your itemized sales receipt for the ChoiceDek Product that was purchased. Have you attached a copy of your receipt(s).  Yes  No

If you have not attached a copy of your receipt(s), explain why you have not done so and state whether you have a copy of your receipt(s)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If you have not attached a copy of your receipt(s), state whether you can produce any other evidence establishing the date on which you purchased your ChoiceDek and state what that evidence is. Also, include it with your Claim Form.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If you have not attached a copy of your receipt(s), but you have other evidence establishing the date on which you purchased your ChoiceDek, confirm that you are attaching a copy of that other evidence with your claim form.

Yes  No

13. **Proof of Gapping** – Describe the amount of gapping between the boards on your deck. Please provide the average gapping to the nearest 1/32 of an inch.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

14. **Mold Spotting** – State the approximate date when mold or mildew first appeared on your ChoiceDek product after it was purchased by you:

Date mold first appeared: \_\_\_\_\_

Date decking installed: \_\_\_\_\_

15. **Photo of Board End** – With this Claim Form, send a photograph of a board end which clearly shows the manufacturer’s date stamp.

Yes  No Have you attached a photograph of a board end with the manufacturer’s date stamp?

The manufacturer’s date stamp will appear in one of the following formats:



Do **not** provide a photograph of the following tag because it is **not** the manufacturer’s date stamp:



16. **Cleaning** – Did you periodically sweep your deck and keep it free of debris?  Yes  No If yes, please (a) state the frequency with which you swept your ChoiceDek deck, and (b) the dates on which you swept your deck. If you do not recall exactly, provide the approximate dates: \_\_\_\_\_

\_\_\_\_\_

List the frequency with which you cleaned your ChoiceDek Product, along with all of the dates on which you cleaned it. If you do not recall exactly, provide the approximate dates: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

List the materials and method you used during each cleaning, and any antimicrobials: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

State whether the cleaning(s) were successful: \_\_\_\_\_

\_\_\_\_\_

For each cleaning listed above, state whether mold or mildew spotting returned, if ever, and when. If you do not recall the exact date(s), provide the approximate dates: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

17. Please provide a description of the mold spotting or other issues relating to your ChoiceDek Product:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

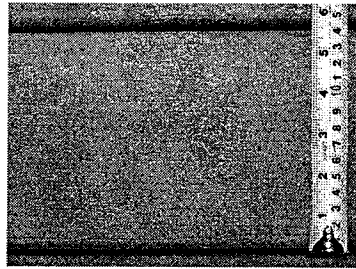
Is there any other staining (grease, debris from trees, BBQ grille, berries, mud, etc.)?

\_\_\_\_\_

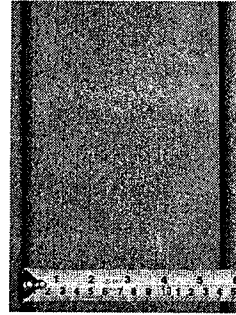
\_\_\_\_\_



18. **Proof of Significant Mold Spotting** – Attach photographs showing that your deck has significant mold spotting. You must send a minimum of ten (10) date-stamped, color photographs taken with a film camera or digital camera with a minimum resolution of 3 megapixels and consisting of:
- a) Three (3) photograph that capture your entire deck, taken from different vantage points;
  - b) Three (3) “close-up” photographs, each from a different location, on your deck taken at approximately noon. Pick locations that show the mold spotting on your deck. Note: please mark or identify the exact locations at which you take these photographs, as you will have to take follow-up photographs of these same 3 locations at dusk, as described in section (c) below. Place a ruler or tape measure across the width of the board you are photographing. Take each photograph so that six inches of the ruler or tape measure consumes the majority of the shorter edge of the photograph. The photographs should look similar to the examples below.



OR



- c) Three (3) “close-up” photographs taken at dusk from the same three locations as in (c) above. Place a ruler or tape measure across the width of the boards you are photographing in the same locations that were photographed earlier at noon. As before, take each photograph so that six inches of the ruler or tape measure consumes the majority of the shorter edge of the photograph. The photographs should look similar to the examples above. When you submit the photographs, staple the noon and dusk photographs of each location together.
  - d) One (1) photograph taken during the day as close to the center of the deck as practicable. Please take the photograph by pointing the camera down at the deck from a height of approximately four feet, without zooming in, and with at least six inches of a ruler or tape measure laying across the deck and visible in the photograph;
19. **Deck Size** – Please provide the square footage of your deck. Please also describe whether your deck includes ChoiceDek railings, facing, etc., and, if so, the linear footage of it.

Square footage, including stairs, etc.: \_\_\_\_\_

Linear footage of any railings, facings, etc.: \_\_\_\_\_

Are other non-ChoiceDek materials incorporated into the deck (i.e., pine, cedar, Trex composite decking, etc.)? If so, please describe the other materials and the manner in which they are incorporated into the deck.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

#### V – PRIOR CLAIM INFORMATION

Have you ever made a warranty claim to AERT or Weyerhaeuser for your ChoiceDek product?  Yes  No

If yes, please provide the approximate date when you made the claim: \_\_\_\_\_

- Please include copies of previous warranty claim documents.

Have you ever received any prior relief, in any form, from AERT, Weyerhaeuser or Lowe's relating to your ChoiceDek product?  Yes  No Type of relief and value of relief received if known? \_\_\_\_\_

- Please include any documentation you received.

**VI – ASSISTANCE WITH THIS CLAIM FORM**

If you paid or plan to pay anyone to help you prepare this Claim Form, please provide that person's name, company, address, and phone number in the space provided:

Name \_\_\_\_\_

Company \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_

**VII – PROPERTY INSPECTION**

**Property Inspection:** You are not required to be present at the inspection and cleaning. By signing this Claim Form you agree that an inspector may: enter your property; clean your deck, and remove a sample of your deck as part of its investigation of this claim. If it is necessary to remove a sample of your deck, AERT will replace the sample with a new piece of ChoiceDek material. AERT will attempt to use a similar type of replacement board; however, depending upon the age, color and style of your deck, there may be some variance in style and color.

Do you wish to be present for the inspection?  Yes  No

If you check yes, the inspector will contact you to set up an appointment. If you set an appointment with the inspector to be present at the time of the inspection, and you are not present when the inspector arrives, the inspector will proceed with the inspection in your absence.

Please indicate the best time to contact you: \_\_\_ a.m. \_\_\_ p.m.

**Please note:** The inspector is not allowed to discuss the results of your claim or any other aspect of the settlement with you at the time of inspection. The findings will be mailed to you by AERT.

Please indicate whether there are dogs, locked gates or other obstructions on the property that will prevent or affect access for the inspector.  Dogs  Locked Gates

What obstructions, if any, exist on the property? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**VIII - CERTIFICATION**

I have read this Claim Form and declare and attest under penalty of perjury that the information contained in this Claim Form and accompanying material(s) are true and correct and that the above statements are true and correct.

I hereby authorize AERT and its vendors to enter my property; clean my deck; and remove a sample of my deck as part of its investigation of this claim. I also agree to cooperate with AERT in the investigation of this claim.

Any person who knowingly supplies false information may be subject to criminal and civil penalties.

\_\_\_\_\_  
Signature of Claimant

\_\_\_\_\_  
Print name here

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Claimant

\_\_\_\_\_  
Print name here

\_\_\_\_\_  
Date

Please mail completed claim form and attachments to:

AERT, Inc.  
ChoiceDek Class Action Settlement  
Claims Administrator  
914 N. Jefferson Street  
Springdale, AR 72764

**Exhibit 2**

**Supplemental Claim Form**

**AERT, Inc.**  
**ChoiceDek Class Action Settlement**  
**914 N. Jefferson Street**  
**Springdale, AR 72764**  
**Toll Free Line: (800) 951-5117**

Claimant Name: \_\_\_\_\_

Complete this form if you have previously submitted a claim for mold or mildew in the ChoiceDek Class Action Settlement, and mold spotting has returned on your deck after it was cleaned by AERT

**SUPPLEMENTAL CLAIM FORM**

**YOU SHOULD ATTACH THE FOLLOWING DOCUMENTS WITH THIS CLAIM FORM:**

- Photographic Proof of the mold and mildew which you claim has returned on your ChoiceDek product
- Proof that you own the property on which the deck in question is located

**I - GENERAL INSTRUCTIONS**

- A. Type or legibly print all information in blue or black ink.
- B. Answer all questions on the Supplemental Claim Form.
- C. Sign and date the Supplemental Claim Form under penalty of perjury. Your signature is certification that all information on this form is true and correct under penalty of perjury and that you authorize AERT to enter your property, clean your deck and remove a sample of your deck as part of its investigation of this claim. If it is necessary to remove a sample of your deck, AERT will replace the sample with a new piece of ChoiceDek material. AERT will attempt to use a similar type of replacement board; however, depending upon the age, color and style of your deck, there may be some variance in style and color.
- D. Make a copy of the completed Supplemental Claim Form and accompanying documents and photographs for your files. Mail the original Claim Form along with the accompanying photographs and documents to AERT.
- E. If you need additional room to answer the following questions, attach additional sheets.
- F. Check all boxes for which you are supplying the requested documentation.

**II - CLAIMANT INFORMATION**

- 1. **Name of Claimants:**  
Last: \_\_\_\_\_ First \_\_\_\_\_ MI \_\_\_\_\_  
Last: \_\_\_\_\_ First \_\_\_\_\_ MI \_\_\_\_\_
  - 2. **Claimants' Address:**  
Street Address \_\_\_\_\_  
City \_\_\_\_\_ State/Prov. \_\_\_\_\_ Zip \_\_\_\_\_
  - 3. **Claimant Phone Numbers:**  
Home ( ) \_\_\_\_\_ Work ( ) \_\_\_\_\_ Mobile ( ) \_\_\_\_\_  
Work ( ) \_\_\_\_\_ Mobile ( ) \_\_\_\_\_
  - 4. **Social Security Numbers:** \_\_\_\_\_ and \_\_\_\_\_
  - 5. **Dates of Birth** (mm/dd/yyyy): \_\_\_\_\_ and \_\_\_\_\_
  - 6. **Proof of Property Ownership:** Who are the legal owners of the property where the deck is located?  
\_\_\_\_\_  
\_\_\_\_\_  
When did you purchase the property: \_\_\_\_\_
- You must include documentation proving that you continue to own the property in question such as a copy of the local appraisal assessment, mortgage statement, or deed record showing the name of the owner of the property in question.
- Yes  No Have you attached proof that you own the property in question? If no, please explain why:  
\_\_\_\_\_  
\_\_\_\_\_

7. **Cleaning** – List all of the dates on which you cleaned your ChoiceDek Product, including sweeping, after it was cleaned and a mold inhibitor was applied by AERT in the Claim Resolution Process of the ChoiceDek Class Action Settlement. If you do not recall exactly, provide the approximate dates: \_\_\_\_\_

\_\_\_\_\_

List the materials and method you used during each cleaning: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

8. **Mold Spotting** – State the date when mold or mildew first reappeared on your ChoiceDek product after it was cleaned and a mold inhibitor was applied by AERT in the Claim Resolution Process of the ChoiceDek Class Action Settlement.

Date of cleaning by AERT: \_\_\_\_\_

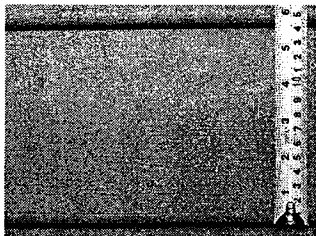
Date mold first reappeared: \_\_\_\_\_

Date of photographs attached in support of your claim: \_\_\_\_\_

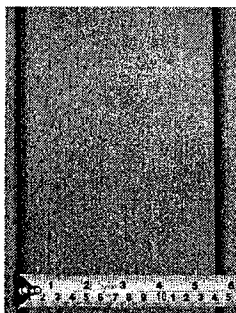
9. **Proof of Significant Mold Spotting** – Attach photographs showing that your deck has significant mold spotting that has returned. You must send a minimum of ten (10) date-stamped, color photographs taken with a film camera or digital camera with a minimum resolution of 3 megapixels and consisting of:

a) Three (3) photograph that capture your entire deck, taken from different vantage points;

b) Three (3) “close-up” photographs, each from a different location, on your deck taken at approximately noon. Pick locations that show the mold spotting on your deck. Note: Please mark or identify the exact locations at which you took these photographs, as you will have to take follow-up photographs of these same 3 locations at dusk, as described in section (c) below. Place a ruler or tape measure across the width of the board you are photographing. Take each photograph so that six inches of the ruler or tape measure consumes the majority of the shorter edge of the photograph. The photographs should look similar to the examples below.



OR



c) Three (3) “close-up” photographs taken at dusk from the same three locations as in (c) above. Place a ruler or tape measure across the width of the boards you are photographing in the same locations that were photographed earlier at noon. As before, take each photograph so that six inches of the ruler or tape measure consumes the majority of the shorter edge of the photograph. The photographs should look similar to the examples above. When you submit the photographs, staple the noon and dusk photographs of each location together.

d) One (1) photograph taken during the day as close to the center of the deck as practicable. Please take the photograph by pointing the camera down at the deck from a height of approximately four feet, without zooming in, and with at least six inches of a ruler or tape measure laying across the deck and visible in the photograph;

**III – ASSISTANCE WITH THIS CLAIM FORM**

If you paid or plan to pay anyone to help you prepare this Claim Form, please provide that person’s name, company, address, and phone number in the space provided:

Name \_\_\_\_\_

Company \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_

**IV – PROPERTY INSPECTION**

**Property Inspection:** You are not required to be present at the inspection and cleaning. By signing this Supplemental Claim Form you agree that an inspector may: enter your property; clean your deck, and remove a sample of your deck as part of its investigation of this claim. If it is necessary to remove a sample of your deck, AERT will replace the sample with a new piece of ChoiceDek material. AERT will attempt to use a similar type of replacement board; however, depending upon the age, color and style of your deck, there may be some variance in style and color.

Do you wish to be present for the inspection?  Yes  No

If you check yes, the inspector will contact you to set up an appointment. If you set an appointment with the inspector to be present at the time of the inspection, and you are not present when the inspector arrives, the inspector will proceed with the inspection in your absence.

Please indicate the best time to contact you: \_\_\_\_ a.m. \_\_\_\_ p.m.

**Please note:** The inspector is not allowed to discuss the results of your claim or any other aspect of the settlement with you at the time of inspection. The findings will be mailed to you by AERT.

Please indicate whether there are dogs, locked gates or other obstructions on the property that will prevent or affect access for the inspector.  Dogs  Locked Gates

What obstructions, if any, exist on the property? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**V - CERTIFICATION**

**I have read this Supplemental Claim Form and declare and attest under penalty of perjury that the information contained in this Supplemental Claim Form and accompanying material(s) are true and correct and that the above statements are true and correct.**

**I hereby authorize AERT and its vendors to enter my property; clean my deck; and remove a sample of my deck as part of its investigation of this claim. I also agree to cooperate with AERT in the investigation of this claim.**

**Any person who knowingly supplies false information may be subject to criminal and civil penalties.**

_____ Signature of Claimant	_____ Print name here	_____ Social Security # or EIN	_____ Date
_____ Signature of Claimant	_____ Print name here	_____ Social Security # or EIN	_____ Date

Please mail completed supplemental claim form and attachments to:

AERT, Inc.  
ChoiceDek Class Action Settlement  
Claims Administrator  
914 N. Jefferson Street  
Springdale, AR 72764

## **Exhibit 3**

### **Class Notice Plan**

1. The Class Notice Plan will include: (a) direct mail to customers of whom AERT, Weyerhaeuser, Class Counsel, or Lowes HIW, Inc. are aware purchased a deck containing the Product on or after January 1, 2004 and before January 1, 2008; (b) e-mail to customers who purchased a deck on or after January 1, 2004 and before January 1, 2008 for whom AERT, Weyerhaeuser, or Class Counsel have an e-mail address; (c) national publication notice; (d) notice on AERT's website and a settlement website; and (e) a press release.

2. Class Notice by Direct Mail: Within thirty (30) days of entry of the Court's Preliminary Approval Order of the Settlement Agreement, AERT shall commence mailing the class notice in substantially the form set forth in Exhibit 4 (the "Class Notice by Direct Mail") to Class Members who purchased the Product on or after January 1, 2004 and before January 1, 2008, for whom AERT, Weyerhaeuser, Class Counsel, or Lowes HIW, Inc. have a direct mailing address, by first-class mail, postage prepaid, to their last known addresses, but not less than 55 days before the Fairness Hearing; accordingly, AERT shall have a period of at least 15 days to begin and complete mailing of the Class Notice by Direct Mail. Before mailing out the Class Notice by Direct Mail, the Class Notice Administrator will run these addresses through the national change-of-address database in an effort to identify the most current address. The mailing to the Class Members that contains the Class Notice by Direct Mail will also include a copy of the Request for Official Claim Form substantially similar to Exhibit 6. The Class Notice Administrator shall re-mail an additional Class Notice by Direct Mail to potential Class Members whose original class notice mailings were returned to the Class Notice Administrator prior to the Settlement Final Approval Date undelivered with a forwarding address. The Class

Notice Administrator and Defendants shall not be required to re-mail any notices returned without a forwarding address or that are returned after the Settlement Final Approval Date.

3. Class Notice by E-Mail: For Class Members who purchased the Product on or after January 1, 2004 and before January 1, 2008 for whom AERT, Weyerhaeuser, or Class Counsel have retained an e-mail address, upon entry of the Court's Preliminary Approval Order of the Settlement Agreement, AERT or the Class Notice Administrator shall e-mail the Class Notice by Direct Mail in .pdf format to their last known e-mail address within thirty (30) days of entry of the Court's Preliminary Approval Order of the Settlement Agreement but not less than 55 days before the Fairness Hearing; accordingly, AERT shall have a period of at least 15 days to begin and complete e-mailing of the Class Notice. The e-mail to the Class Members will also include a copy of the Request for Official Claim Form substantially similar to Exhibit 6 of the Settlement Agreement. AERT and the Class Notice Administrator shall not be obligated to resend any e-mails that are returned undelivered.

4. Publication Notice: AERT or the Class Notice Administrator will publish notice of the proposed settlement, the Fairness Hearing, and Class Member's objection and appeal rights in USA Today (the "Publication Notice"). The Publication Notice will be in a form substantially similar to that set forth in Exhibit 5 to the Settlement Agreement. The published notice shall be at least 1/16 page size. It will be published once in USA Today not later than 55 days before the Fairness Hearing.

5. Form of Class Notice: The Class Notice by Direct Mail and Publication Notice will be approved as to form and content by the Court.

5.1 The Class Notice shall contain a plain, short statement of the background of the Action, the conditional class certification and the class relief.



5.2 The Class Notice will advise potential Class Members that (i) they may exclude themselves from the Class by serving exclusion requests on the Class Notice Administrator, Class Counsel, and AERT's Counsel postmarked no later than 25 days before the date of the Fairness Hearing, (ii) any potential Class Member who does not request exclusion may, if he or she desires, enter an appearance through counsel and/or otherwise object to this Settlement Agreement by filing written objections with the Court no later than 25 days before the Fairness Hearing and serving them upon the offices of Lead Class Counsel and AERT's Counsel, and (iii) any judgment entered in the Action, whether favorable or unfavorable to the Class, will include and be binding on all potential Class Members who have not requested exclusion from the Class, even if they have objected to this Settlement Agreement and even if they have other pending lawsuits or claims against any of the Released Parties.

5.3 The Class Notice will provide information about the attorneys' fees, expenses, and Plaintiffs' stipend payments described in the Settlement Agreement. It also will state that AERT will pay those attorneys' fees, expenses, and incentive payments, and any costs arising from notifying the Class or administering the settlement, except that individual Class Members will be responsible for the fees and costs of any counsel they retain to represent them individually or as otherwise provided herein.

6. AERT will publish a copy of the Class Notice by Direct Mail and Request for Official Claim Form on the ChoiceDek website not later than 55 days before the Fairness Hearing until 6 months after the Settlement Final Approval Date.

7. On a settlement website, AERT or the Class Notice Administrator will publish a copy of the Class Notice, Class Notice by Direct Mail, and Request for Official Claim Form on

the ChoiceDek website not later than 55 days before the Fairness Hearing until 6 months after the Settlement Final Approval Date.

8. The Parties shall issue a joint press release announcing the settlement in a mutually agreeable form.

**Exhibit 4**

**Class Notice**

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## **NOTICE OF CLASS ACTION, PROPOSED SETTLEMENT AND FAIRNESS HEARING**

**IF YOU BOUGHT A CHOICEDEK BRAND DECK ON OR AFTER  
JANUARY 1, 2004, YOU MAY BE ELIGIBLE FOR BENEFITS FROM A  
CLASS ACTION SETTLEMENT. PLEASE CONTINUE READING FOR  
FURTHER DETAILS.**

---

**IMPORTANT -- PLEASE READ THIS NOTICE CAREFULLY.  
IT RELATES TO THE PENDENCY OF THE PROPOSED SETTLEMENT OF THIS CLASS LITIGATION.  
IF YOU ARE A CLASS MEMBER, IT CONTAINS IMPORTANT INFORMATION AS TO YOUR RIGHTS.**

**IMPORTANTE -- POR FAVOR LEA ESTE AVISO CON CUIDADO.  
ESTA RELACIONADO CON LA TRANSACCIÓN O ACUERDO PROPUESTO PENDIENTE DE ESTE LITIGIO  
COLECTIVO DE CLASE. SI USTED ES MIEMBRO DE ESTE LITIGIO COLECTIVO, CONTIENE INFORMACIÓN  
IMPORTANTE RESPECTO A SUS DERECHOS.**

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**TO: PURCHASERS OF CHOICEDEK DECKING AND RAILING MATERIAL PURCHASED FROM JANUARY 1, 2004 THROUGH DECEMBER 31, 2007, AS WELL AS OWNERS OF CHOICEDECK DECKING AND RAILING MATERIAL PURCHASED AFTER DECEMBER 31, 2007 AND WHICH WAS MANUFACTURED BETWEEN JANUARY 1, 2004 AND OCTOBER 1, 2006.**

The purpose of this Notice ("Notice") is to inform you of the proposed settlement ("Settlement") of this class action litigation (the "Action") against Weyerhaeuser Company ("Weyerhaeuser") and Advanced Environmental Recycling Technologies, Inc. ("AERT") (collectively "Defendants") pending in the U.S. District Court for the Western District of Washington at Seattle (the "Court"). This Notice provides only a summary of the terms of the Settlement Agreement. A copy of the complete Settlement Agreement may be obtained as set forth in Section XI of this Notice.

The Action concerns allegations by the Plaintiffs that ChoiceDek decking and railing products manufactured by AERT and distributed by Weyerhaeuser (the "Product" or "ChoiceDek decking material") is susceptible to mold and mildew which causes black and gray spots on the decking surface that is difficult to remove. Defendants deny these allegations. The Plaintiffs and Defendants have agreed to settle the Action to avoid the expense and risk of trial. Plaintiffs believe the settlement is fair, reasonable and adequate.

### **I. INFORMATION REGARDING CLASS NOTICE AND FINAL APPROVAL HEARING**

YOU ARE HEREBY NOTIFIED that a Fairness Hearing will be held on \_\_\_\_\_, at \_\_\_\_\_, before the Honorable John C. Coughenour at the U.S. Courthouse, 700 Stewart Street, Seattle, Washington 98101 to determine: (1) whether the Action should be finally certified as a class action; (2) whether the Settlement should be approved as fair, reasonable and adequate; (3) whether the Action should be dismissed; (4) whether Class Members should be bound by the release contained in the Settlement Agreement; (5) whether Class Members should be barred from filing, commencing, prosecuting, maintaining, intervening in, participating in, or receiving any benefits from, any lawsuit or other proceeding in any jurisdiction based on or relating to the claims and causes of action covered by the release in this Action; (6) whether the application of Plaintiffs for an incentive award should be approved; and (7) whether the application of Plaintiffs' counsel for an award of attorney's fees and expenses should be approved.

### **II. YOUR OPTIONS**

You must decide whether you want to be part of the Settlement. If you are a member of the Class, you are automatically included in the Settlement and can apply for certain settlement relief described in this Notice. You may also object to the Settlement. More detailed information about these options is contained in Section VIII below.

If you do not want to be included in the Settlement, you must request exclusion from the settlement class by [REDACTED]. Otherwise, you will be bound by all terms of the proposed Settlement if the Court approves it. If you do not exclude yourself from the Class, the proposed Settlement (if approved) will affect your right to start or continue any other lawsuit or proceeding involving your ChoiceDek decking material. Additionally, you will be releasing the claims as set forth in this Notice. More detailed information is contained in Section VIII below.

### **III. DESCRIPTION OF THE CLASS**

There are two categories of owners who are part of the Class. First, if you own a deck made of ChoiceDek decking material that was purchased on or after January 1, 2004 and before January 1, 2008, you are a member of the Class. Second, if you own a deck made of ChoiceDek decking material that was purchased on or after January 1, 2008, and the manufacture date stamped on the end of a decking board shows it was manufactured between January 1, 2004 and October 1, 2006, you are a member of the Class. The full Class definition is as follows:

All persons and entities who own decks constructed of Product originally purchased on or after January 1, 2004 and before January 1, 2008, and additionally persons and entities who own decks constructed of Product originally purchased after December 31, 2007 and can establish that the Product was manufactured between January 1, 2004 and October 1, 2006 using the manufacture date stamped onto the end of the Product. Included within the Class are the legal representatives, heirs, successors in interest, transferees and assigns of all such foregoing holders and/or owners, immediate and remote, who currently own decks constructed of Product originally purchased on or after January 1, 2004 and before January 1, 2008 (the "Class"). Notwithstanding the foregoing, the following Persons shall be excluded from the Class: (1) Defendants and their subsidiaries and affiliates; (2) all Persons who make a timely election to be excluded from the proposed Class; (3) governmental entities; and (4) the judge(s) to whom this case is assigned and any immediate family members thereof. In addition, notwithstanding the foregoing, all claims for personal injury and wrongful death are excluded from the Class.

### **IV. SUMMARY OF SETTLEMENT RELIEF**

**A. General Relief.** The following relief will be available to all Class Members: (1) Defendants will discontinue the use of the following marketing language to describe the Product: "minimum maintenance," "low maintenance," "easy to maintain," or "virtually maintenance free"; (2) AERT will maintain and staff a toll-free customer hotline from 8:00 a.m. until 5:00 p.m. Central time during business days to answer questions regarding the cleaning of the Product and provide instructions as to how to clean the Product; and (3) AERT will provide additional information on the ChoiceDek website regarding the cleaning of the Product and the fact that additional cleaning may be necessary in high-moisture areas.

**B. Claim Resolution Process.** After the Settlement becomes final and unappealable (the "Final Settlement Approval Date"), members of the Class will be eligible to submit a claim form in the Claim Resolution Process. The Claim Resolution Process provides different levels of benefits depending on several factors. The procedure for making a claim is as follows:

- Step 1: Submitting a Claim Form. You will be required to prove that you are a member of the Class and that your deck suffers from significant mold spotting. Also, you will be required to submit information regarding the deck's installation and cleaning history, which may affect the level of benefits you receive. The Claim Resolution Process claim period will remain open for 6 months after the Settlement Final Approval Date. Class members who do not submit a timely Claim Form shall be barred from recovering under the Claim Resolution Process.
- Step 2: If your Claim Form proves you fall within the class and that your deck has significant mold spotting, AERT will clean your deck and apply a mold-inhibitor to your deck. You will not be charged for this cleaning.
- Step 3: You may be eligible for additional benefits if significant mold spotting returns within 18 months. The following chart summarizes those benefits. Claimants found entitled to additional relief will be eligible for one, but not more than one, of the forms of relief listed.

If significant mold spotting returns within:	And your deck meets these requirements			You may be eligible for one, but not more than one, of the following forms of relief.
	Gapping	Proof of Cleaning prior to AERT's initial cleaning	Proof of Cleaning after AERT's initial cleaning	
6 months	x	x	x	Your option of: 100% cash reimbursement of decking purchase price, or replacement decking, or 3 additional free deck cleanings
		x	x	Lowe's \$100 gift card, 2 additional cleanings, and 2 coupons for discounted cleanings
			x	1 additional free cleaning, and 2 coupons for discounted cleanings
6-12 months	x	x	x	Lowe's \$500 gift card, 1 additional free cleaning, and 2 coupons for discounted cleanings
		x	x	1 additional free cleaning, and 2 coupons for discounted cleanings
			x	2 coupons for discounted cleanings
12-18 months	x	x	x	Lowe's \$250 gift card, and 2 coupons for discounted cleanings
		x	x	Lowe's \$50 gift card, and 2 coupons for discounted cleanings
			x	2 coupons for discounted cleanings

In this chart, "Gapping" means that your decking boards are gapped by at least 3/32 of an inch. "Proof of Cleaning prior to AERT's initial cleaning" means that you have provided proof that you cleaned your deck in the past as required in the Settlement Agreement. "Proof of Cleaning after AERT's initial cleaning" means that, after AERT came to clean your deck, you followed AERT's instructions for ongoing cleaning as required in the Settlement Agreement.

Step 4: Alternatively, if significant mold spotting returns within 18 months after AERT cleans your deck as described in Step 2, you may be eligible to have a sample of your decking tested in a laboratory. You may need to pay a fee for this testing. If the sample fails to meet certain criteria, then you may be eligible to receive: (A) 100% cash reimbursement of decking purchase price, or (B) replacement decking, or (C) 3 additional deck cleanings with mold-inhibitor applications.

The Claim Resolution Process will be closed to Class Members who have previously received relief from Defendants, or any one of them, and: (a) have executed a release for mold, mildew and/or fungal spotting claims; and (b) were represented by counsel or who were or are licensed attorneys. Class Members who have previously received relief from Defendants, but do not satisfy both criteria will be entitled to participate in the Claim Resolution Process but shall have any recovery to which they might otherwise be entitled under the Claim Resolution Process reduced dollar for dollar to the extent the Claim Resolution Process claim relates to or

arises from the same Product for which the Class Member previously received relief.

## V. RELEASE

If the settlement becomes final, Class Members will be releasing AERT, Weyerhaeuser, and others for claims relating to their ChoiceDek decking material. **Class Members will not be releasing personal injury and wrongful death claims, if any, but will be releasing any claims for emotional distress or mental anguish.** The Settlement Agreement describes the released claims with specific descriptions, in necessarily legal terminology, so read it carefully. The Settlement Agreement is available at [REDACTED]. You can talk to one of the lawyers listed below for free or you can, of course, talk to your own lawyer if you have questions about the released claims or what they mean. The exact terms of the Release are also included at the end of this Notice in Section XI, for your convenience.

## VI. ATTORNEYS' FEES, REPRESENTATIVE'S FEES, AND EXPENSES

At the Fairness Hearing, Class Counsel will ask the Court for an award of attorneys' fees and expenses of \$1,750,000, to be paid by AERT. Additionally, Plaintiff will ask the Court for the following award to compensate Plaintiffs for their service as class representatives: \$7,500.00 to Stacey and Joseph Jamruk; \$7,500.00 to Michael Mustac; \$7,500.00 to Greg Knudtson, and \$7,500.00 to Stanley and Betty Pelletz. You will *not* be required to pay any portion of the attorneys' or representatives' fees and expenses. Payment of attorneys' fees and expenses to Class Counsel, and payment of representative fees to the Plaintiffs, will *not* reduce any funds or benefits being made available to you.

## VII. RIGHTS OF CLASS MEMBERS, INSTRUCTIONS FOR EXCLUDING YOURSELF FROM THE CLASS, RIGHT TO OBJECT TO CLASS SETTLEMENT, AND RIGHT TO APPEAR AT THE FAIRNESS HEARING

### A. **Participating in the Class Action Settlement**

If you are a member of the Class, you do not have to take any action. You are automatically considered a member of the Class. As a member of the Class, you will be bound by any judgment in this Action, whether favorable or unfavorable, even if you have other pending lawsuits or claims against any of the Released Parties.

As a member of the Class, if you wish to submit a claim, you can request an Official Claim Form by submitting the attached Request for Official Claim Form to AERT. Upon receipt of a Request for Official Claim Form, AERT will send you an Official Claim Form after the Settlement Final Approval Date. You can also obtain an Official Claim Form at [REDACTED]. To obtain relief under the Claim Resolution Process, a Class Member must (a) complete and sign an Official Claim Form under the pains and penalties of perjury and (b) provide the requested information to support the claim. The Official Claim Form and any supporting documentation must be sent by U.S. Mail, postmarked no later than 6 months after the Settlement Final Approval Date, to: AERT, Inc., ChoiceDek Class Action Settlement, 914 N. Jefferson Street, Springdale, AR 72764. The deadline for submitting your Official Claim Form is the same same whether you obtain it by mail or the internet. If you receive your Official Claim Form by mail, it will clearly state the final deadline. If you download the claim form from the website, and it does not state the final deadline, it is your responsibility to periodically check [www.\\_\\_\\_\\_.com](http://www.____.com), where the deadline will be posted as soon as it is known. You can also learn the deadline by calling the toll free number provided in this notice, or by contacting Class Counsel.

As a member of the Class, you will be represented by Plaintiffs and Class Counsel unless you enter an appearance through counsel of your own choice. You are not required to obtain your own counsel, but if you choose to do so, it will be at your expense and your counsel must file an appearance on your behalf with the U.S. District Clerk, United States Courthouse, 700 Stewart Street, Seattle, Washington 98101, identifying this Action and its case number, and mail copies of such appearance to on Lead Class Counsel and Counsel for Defendants listed in Sections VIII and IX below, no later than [REDACTED].

### B. **Objecting to the Class Action Settlement**

As a member of the Class, you may object to the terms and conditions of the Settlement Agreement only by filing written objections with the U.S. District Clerk, United States Courthouse, 700 Stewart Street, Seattle, Washington 98101, identifying this Action and its case number, and serving those written objections on Lead Class Counsel and Counsel for Defendants, no later than 25 days prior to the Fairness Hearing on [REDACTED]. Your filing must contain: (1) a statement of your objection and the specific reasons for each objection, including any legal support you wish to introduce in support of the objection; (2) any evidence you wish to introduce in support of the objection; and (3) a list of all class action proceedings in which you or your attorneys previously appeared as objectors or on behalf of objectors. If you fail to comply with these requirements you are forever barred from objecting to the Settlement Agreement.

You may appear at the Fairness Hearing, either in person or through an attorney, hired at your expense to present your objections to the fairness, reasonableness, or adequacy of the Settlement Agreement. You must file a Notice of Intention to appear with the U.S. District Clerk, United States Courthouse, 700 Stewart Street, Seattle, Washington 98101, identifying this Action and its case number, and serve the Notice of Intention to Appear on Lead Class Counsel and Counsel for Defendants no later than [REDACTED].

**C. Excluding Yourself Out of the Class Action Settlement**

If you wish to exclude yourself from the Class, you must file with the U.S. District Clerk, United States Courthouse, 700 Stewart Street, Seattle, Washington 98101, a written request for exclusion identifying this Action and its case number, postmarked not later than 25 days prior to the Fairness Hearing on [REDACTED], and it must be received by the Clerk of the Court not later than 15 days before the date of the Fairness Hearing. You must also serve your request for exclusion upon Lead Class Counsel and Counsel for Defendants no later than 25 days prior to the Fairness Hearing.

**VIII. CLASS COUNSEL**

<b>Lead Class Counsel:</b>	Jonathan D. Selbin Lieff, Cabraser, Heimann & Berstein, LLP 780 Third Avenue, 48th Floor New York, New York 10017-2024	Jori Bloom Naegele Gary, Naegele & Theado, LLC 446 Broadway Avenue Lorain, OH 44052
<b>Additional Class Counsel:</b>	Kim Stephens Tousley Brain Stephens PLLC 700 Fifth Avenue, 5600 Key Tower Seattle, WA 98104	Elizabeth V. Heller Goldenberg Heller Antognoli Rowland & Short, P.C. 2227 South State Route 157 Edwardsville, Illinois 62025
	Richard Lewis Cohen, Milstein, Hausfeld & Toll PLLC 1100 New York Ave., Ste. 500W Washington, DC 20005	Mark A. Griffin Keller Rohrback 1201 Third Avenue, Suite 3200 Seattle, WA 98101-3052

**IX. COUNSEL FOR DEFENDANTS:**

Thomas L. Boeder Perkins Coie LLP 1201 Third Avenue, Suite 4800 Seattle, WA 98101-3099 Attorney for Weyerhaeuser Company	Carl C. Scherz Locke Lord Bissell & Liddell LLP 2200 Ross Avenue, Suite 2200 Dallas, Texas 75201 Attorney for AERT, Inc.
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**X. PRELIMINARY AND PERMANENT INJUNCTIONS:**

The Court has preliminarily enjoined all Class Members from starting, continuing or participating in, or receiving any benefits or other relief from, any other lawsuit, arbitration, or administrative, regulatory or other proceeding or order based on or relating to the claims, facts or circumstances in this case. If you do not ask to be excluded from the Class, you will be bound by this preliminary injunction. Upon final approval of the settlement, Plaintiffs and Defendants will ask the Court to enter a permanent injunction enjoining all Class Members from engaging in the activities described above. All Class Members will be bound by the permanent injunction.

**XI. COMPLETE RELEASE LANGUAGE**

A. Under the terms of the Settlement, the Plaintiffs and the Class release and discharge any and all past, present and future claims, causes of action, demands, damages, attorneys' fees, equitable relief including but not limited to injunctive and declaratory relief, suits seeking damages, legal relief, and demands or rights, whether known or unknown, liquidated or unliquidated, accrued or unaccrued, fixed or contingent, or based on any statute, regulation or common law of any country, state, province, county, city or municipality that have been, could have been, may be, or could be alleged or asserted now, in the past, or in the future by the Plaintiffs or any member of the Class against the Defendants, Defendants' Affiliates (which includes Defendants' past, present and future



officers, directors, employees, agents, attorneys, representatives, shareholders, retailers, parents, subsidiaries, affiliates, predecessors, successors, assigns, and/or persons acting on behalf of any of the foregoing), Lowe's HIW, Inc. (and its parent corporation, corporate affiliates, subsidiaries, officers, directors, employees, shareholders, and insurers), and all other persons and businesses involved in the distribution chain and installation of the Product (collectively the "Released Parties"), in this matter or in any other court action or before any administrative or regulatory body, tribunal or arbitration panel on the basis of, connected with, arising out of, or related in whole or in part in any way to:

1. The claims in the Action and any and/or all of the acts, omissions, facts, matters, transactions, occurrences or representations that were directly or indirectly alleged, asserted, described, set forth or referred to in this matter including, but not limited to, those regarding mold, mildew, or fungi on the Product;

2. Except as provided in paragraph C below, any and all other acts, omissions, facts, matters, transactions, occurrences or representations made in connection with the marketing, manufacturing process, sale, purchase, solicitation, pricing, acceptance, selection and categorization, descriptions regarding, explanations regarding, operation, maintenance, cleaning of, servicing, or replacement of the Product, including without limitation, claims regarding mold, mildew, or fungi on the Product.

3. Any and all acts, omissions, facts, matters, transactions, claims handling, occurrences or representations relating to the Settlement Agreement and the Claim Resolution Process including, but not limited to, the claims released herein.

4. This release shall not deprive Class Members of the class relief provided in this Settlement Agreement.

5. This release expressly includes, without limitation, claims based on negligence, gross negligence, breach of contract, breach of express and implied warranties, fraud, negligent misrepresentation, violations of consumer and deceptive trade practices acts, violations of the Magnuson-Moss Warranty Act, intentional misconduct, statutory violations, and any other tortious or other conduct of the Released Parties. This release expressly includes claims for emotional distress and mental anguish, which are hereby released.

6. With the exception of claims for emotional distress and mental anguish, notwithstanding the foregoing, or any other provisions of the Settlement Agreement, this release does not release any claims for personal injury or wrongful death, including such claims allegedly arising out of mold or fungus. Additionally, except for those Class Members who receive a cash reimbursement through the Claim Resolution Process, this release does not release an express written warranty claim under an express written Product warranty other than for, relating to, or arising from mold, mildew, fungi or fungal rot, if any.

7. The release will cover, without limitation, any and all claims for attorneys' fees, expenses, costs and/or disbursements incurred by Class Counsel or any other counsel representing the Plaintiffs or any Class Member, or by the Plaintiffs or any Class Member in connection with or related in any manner to this matter, the settlement of this matter, the administration of such settlement, the Claim Resolution Process, and the release except to the extent otherwise specified in the Settlement Agreement.

8. The Plaintiffs and Class Members acknowledge that they are aware that they may hereafter discover claims presently unknown or unsuspected, or facts in addition to or different from those that they now know or believe to be true with respect to the matters released herein or with respect to the Product. Nevertheless, it is the intention of the Plaintiffs, individually and on behalf of Class Members, to fully, finally and forever settle and release all such matters, and all claims relating thereto, which exist, hereafter may exist, or might have existed (whether or not previously or currently asserted in any action or proceeding).

9. The release contemplated shall extend to and include claims that the Plaintiffs and the Class (the "Releasing Parties") do not know or suspect to exist at the time of the release, which if known, might have affected their decision to enter into the release. The Releasing Parties shall be deemed to relinquish, to the extent it is applicable, and to the full extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code. The Releasing Parties also shall be deemed to waive any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to California Civil Code § 1542.

B. Nothing in the release shall: (a) preclude the enforcement of the terms of the Settlement Agreement or the Final Order and Judgment in this Action; or (b) preclude the Plaintiffs or Class Members from participating in the Claim Resolution Process.

C. In the event that AERT no longer funds up to the Annual Limitation the Claim Resolution Process on a global class-wide basis (as opposed to disputed individual claims in the Claim Resolution Process which are subject to arbitration under Section 4.2.12 of the Settlement Agreement) prior to the conclusion of the Claim Resolution Process for any reason and the Court has declared that AERT is no longer funding up to the Annual Limitation the Claim Resolution Process on a global classwide basis, the release described above shall no longer apply to Class Members who: (a) have submitted or remain entitled to submit a timely claim under Section 4 of the Settlement Agreement; and (b) have not exhausted their potential for relief under Section 4 ("Section 6.4 Class Member"). To the extent that the Settlement Agreement release no longer applies to a Section 6.4 Class Member who has received partial relief in the Claim Resolution Process, but not full relief, the value of relief such Class Member has already received under the

Claim Resolution Process shall be treated as an offset against any claims for damages against any Defendants. To the extent that the Settlement Agreement release no longer applies to a Section 6.4 Class Member, Defendants agree that the release in the Settlement Agreement will not bar a Section 6.4 Class Member's claims in a future proceeding and that a Section 6.4 Class Member's claims that are currently asserted in this Action and otherwise released under Section 6 of the Settlement Agreement will be tolled from February 26, 2008 through the date that the Court has declared that AERT is no longer funding up to the Annual Limitation the Claim Resolution Process on a global classwide basis.

**XII. EXAMINATION OF PAPERS AND QUESTIONS**

For a more detailed statement of the matters involved in this Action, please refer to the pleadings and other papers in this Action, which may be inspected or obtained from the U.S. District Clerk's Office, United States Courthouse, 700 Stewart Street, Seattle, Washington 98101, during business hours of each weekday.

**If you have any questions about the Settlement, you may call 1-800-951-5117 or visit the Settlement website at \_\_\_\_\_ . A complete copy of the Settlement Agreement can be obtained by visiting [www.\\_\\_\\_\\_\\_.com](http://www._____.com).**

**PLEASE DO NOT CALL THE COURT OR THE CLERK OF THE COURT WITH QUESTIONS REGARDING THE TERMS OF THE SETTLEMENT.**

**Exhibit 5**

**Publication Notice**

## Legal Notice

### **If you bought a ChoiceDek brand Deck after December 31, 2003, you may be eligible for benefits from a class action settlement.**

*Para una notificación en Español, visite [www.\\_\\_\\_\\_.com](http://www.____.com) o llame 1-888-\_\_\_\_\_.*

A nationwide settlement has been reached in a class action lawsuit in which the plaintiffs allege that ChoiceDek composite decking material manufactured between January 1, 2004 and October 1, 2006 is susceptible to mold and mildew discoloration in the form of small spots across the surface of deck.

If you are included in the settlement, you may send in a claim form to request certain benefits, or you can object to the settlement, or you can exclude yourself from it. The U.S. District Court for the Western District of Washington authorized this notice, and will have a hearing to decide whether to approve the settlement. Get a detailed notice at [www.\\_\\_\\_\\_\\_.com](http://www._____.com) or by calling [REDACTED].

#### **Who is Included?**

To be in the Class, you must own a deck constructed of ChoiceDek decking or railing product, and your deck must fall within one of the following two categories: (1) the ChoiceDek decking material was purchased between January 1, 2004 and January 1, 2008, or (2) the ChoiceDek decking material was purchased after December 31, 2007, but you can prove it was manufactured between January 1, 2004 and October 1, 2006. If you fall into the second category, you can find more information on how to determine the manufacturing date by reviewing the detailed notices available at [www.\\_\\_\\_\\_\\_.com](http://www._____.com), or by calling [REDACTED].

#### **How Do You Ask For Benefits?**

If you are in the class, you may receive benefits only if you fill out a claim form. The purpose of the claim form is to determine whether you meet the criteria for the settlement benefits, including whether or not your deck is affected by alleged mold and mildew spotting. If you do meet the criteria, you will be eligible for settlement benefits. The claim form is available online, or you can request a copy be sent to you by calling [REDACTED]. The claim form must be postmarked no later than 6 months after the settlement approval becomes final and unappealable. Please periodically check the website, where the final deadline will be posted once it is known. You can also call the toll free number.

#### **What Does the Settlement Provide?**

If you meet the criteria for settlement benefits, the manufacturer of ChoiceDek, Advanced Environmental Recycling Technologies, Inc. (AERT), will provide a free deck cleaning and application of a mold inhibitor. If spotting returns within 18 months, you may be eligible for additional benefits depending on the severity of the spotting, as described in detail in the Class Notice and the Settlement Agreement, which are both available at the website. These benefits may include additional cleanings, refunds, replacement material, coupons for discounted cleanings, and/or credit vouchers for use at Lowe's Home Improvement stores.

#### **What Are Your Other Rights?**

If you fall within the class definition, you may remain in the class by doing nothing, and you will automatically be considered a member of the class. As a member of the class, you will be bound by the release and judgment in the lawsuit.

If you do not want to be part of and legally bound by the settlement, you must exclude yourself by [REDACTED]. If you do not timely exclude yourself from the class, you may not be able to assert legal claims relating to your ChoiceDek deck in the future. However, this lawsuit will not bar claims for personal injury or wrongful death, if any. The detailed notice explains how to exclude yourself. You must ask the Court to exclude you from the Class by mailing a letter requesting exclusion to the U.S. District Clerk, U.S. Courthouse, 700 Stewart Street, Seattle, Washington 98101, and Lead Class Counsel for Plaintiffs and Counsel for Defendants.

If you do not exclude yourself from the class settlement, you may object to the settlement by [REDACTED]. The detailed notice explains how to exclude yourself.

The Court will hold a hearing in these cases, known as *Pelletz v. Weyerhaeuser Co.*, No. C08-0334 JCC and *Jamruk v. Advanced Environmental Recycling Technologies, Inc.*, No. C08-0403, on [REDACTED], to consider whether to approve the Settlement and a request by Class Counsel for fees, costs, and expenses of \$1,750,000. Class Counsel will also ask for a payment of \$7,500 to each Class Representative, who helped the lawyers on behalf of the whole Class. If you would like, you or your lawyer may ask to appear and speak at the hearing at your own cost, but it is not required.

For more information, go to the website [www.\\_\\_\\_\\_.com](http://www.____.com) or call 1-888-\_\_\_\_.

**Exhibit 6**

**Request for Official Claim Form**

## REQUEST FOR OFFICIAL CLAIM FORM

Official Claim Forms are available online at [www.\\_\\_\\_\\_\\_](http://www._____); however, if you prefer to be mailed a copy of the Official Claim Form, please complete the following form and mail it to AERT at the address listed below.

-----

I hereby request an Official Claim Form so that I can submit a claim in the Claim Resolution Process in the ChoiceDek Class Action Settlement.

**PLEASE SELECT ONLY ONE BOX BELOW:**

I am requesting an Official Claim Form so that I can submit a claim for cleaning of a deck that I own.

PLEASE PROVIDE THE FOLLOWING INFORMATION:

**1. Your Name, Address, and Phone Number:**

Last Name: \_\_\_\_\_ First Name: \_\_\_\_\_ MI: \_\_\_\_\_  
Street Address: \_\_\_\_\_  
City: \_\_\_\_\_ State/Prov.: \_\_\_\_\_ Zip: \_\_\_\_\_  
Home ( ) \_\_\_\_\_ Work ( ) \_\_\_\_\_ Ext. \_\_\_\_\_ Other ( ) \_\_\_\_\_

**Mailing Instructions and Deadlines:**

If you wish to participate in the Claim Resolution Process of the ChoiceDek Class Action Settlement, you **must** submit a completed Request for an Official Claim Form to:

AERT, Inc.  
ChoiceDek Class Action Settlement  
Claims Administrator  
914 N. Jefferson Street  
Springdale, AR 72764

Once you receive your Official Claim Form, you must return the Official Claim Form to AERT and have it postmarked within 6 months after the Settlement Final Approval Date (the Settlement Final Approval Date is currently estimated to be \_\_\_\_\_ which would require the Official Claim Form to be postmarked by \_\_\_\_\_) or you will not be entitled to participate in the settlement Claim Resolution Process.

Upon receipt of a Request for an Official Claim Form, AERT will send you an Official Claim Form to the address designated in this Request no sooner than 30 days after the Settlement Final Approval Date.

You may also download a copy of the Official Claim Form off of the internet at \_\_\_\_\_.

**QUESTIONS? PLEASE CALL 1-800-951-5117**

\_\_\_\_\_  
Signature of Claimant

## **Exhibit 7**

### **CLAIM RESOLUTION PROCESS**

This exhibit along with the terms of the Settlement Agreement sets forth the manner in which Claims submitted to the Claim Resolution Process will be administered. Unless otherwise indicated, all defined terms used herein shall have the same meaning as set forth in the Settlement Agreement to which this exhibit is attached.

#### **SECTION I** **PROCEDURE FOR CLAIM ADJUDICATION**

**A. Claim Reviewers.** AERT will have Claim Reviewers process and adjust all Claims submitted under the Claim Resolution Process.

**B. Claims.** AERT will take Claim Forms and Supplemental Claim Forms that it receives and: (i) maintain a list of Claimants who submitted Claim Forms and Supplemental Claim Forms on a timely basis; (ii) maintain a list of Claimants who submitted Claim Forms and Supplemental Claim Forms that were not completed and returned; and (iii) maintain a list of Claimants who submitted a Claim Forms and Supplemental Claim Forms that were untimely.

**C. Notifications Regarding Claim Forms.** If a Claim Form was not timely submitted, the Claim Reviewer shall send the Claimant a notice that his or her Claim has been rejected. Upon receipt of a timely Claim Form, the Claim Reviewer will review the Claim Form for completeness. If the Claim Form does not contain the following information, the Claim Reviewer will return it to the Claimant and request the missing information before the Claim Form will be processed:

- (a) Adequate Photographic Proof;
- (b) Appropriately detailed information regarding dates of purchase and product type;



- (c) Appropriately detailed information regarding gapping and installation;
- (d) Appropriately detailed information regarding frequency and type of cleaning that had been performed;
- (e) Appropriately detailed information regarding when spotting first appeared;
- (f) If spotting returned after cleaning, appropriately detailed information regarding when it returned;
- (g) Evidence that the Claimant is the deck owner;
- (h) A declaration under penalty of perjury.

To be timely after a request for missing information, a claimant must provide to AERT the missing information set forth in items (a)-(h) above by, the later of: (1) the 6 month claim period set forth in Section 4.2.11 of the Settlement Agreement; or (2) 3 months after AERT mails the request for information. Otherwise, the claim will be denied as untimely.

If the Claim Reviewer cannot reasonably confirm from the Claim Form and accompanying documents that the Claimant is a Class Member because the Claim was not accompanied by either (1) one or more photographs of a board end showing the date of manufacture or (2) a copy of the purchase receipt or similar proof, the Claim Reviewer will return the Claim Form to the Claimant and request the Claimant to provide: either one or more photographs of a board end showing the date of manufacture, or a copy of the purchase receipt or similar proof, before the Claim Form will be processed. Thereafter, a claim will only be processed if: (1) the claimant later comes back within 3 months after AERT mails the request for information and the states that the claimant is unable to supply this information; (2) the claimant is willing to verify this fact under penalty of perjury; and (3) AERT is unable to confirm from the original Photographic Proof that the claimant does not fall within the class definition.

A Claimant may submit supplemental Photographic Proof in support of a claim prior to the end of the 6 month claim period set forth in Section 4.2.11 of the Settlement Agreement.

**D. Notifications Regarding Supplemental Claim Forms.** Upon receipt of a Supplemental Claim Form, if the Supplemental Claim Form was not timely submitted as required under Sections 4.2.5.2 through 4.2.5.5 of the Settlement Agreement, the Claim Reviewer shall send the Claimant a notice that his or her Claim has been rejected. Upon receipt of a timely Supplemental Claim Form, the Claim Reviewer will review the Claim Form for completeness. If the Claim Form does not contain the following information, the Claim Reviewer will return it to the Claimant and request the missing information before the Claim Form will be processed:

- (a) Adequate Photographic Proof;
- (b) Appropriately detailed information regarding frequency and type of cleaning that had been performed;
- (c) Appropriately detailed information regarding when spotting appeared; and
- (d) Declaration under penalty of perjury.

A claimant must provide to AERT the missing information within 3 months after AERT mails the request for information; otherwise, the claim will be denied as untimely. In no event shall this extend the requirement that the Supplemental Claim Form must evidence and establish that significant mold spotting was present prior to the 6 month, 12 month, or 18 month deadlines set forth in Sections 4.2.5.2 through 4.2.5.5.

**E. Notice to Claimants of Claim Review Outcome.** After reviewing and adjusting a Supplemental Claim Form, the Claim Reviewer shall deliver to the Claimant a determination describing the relief to which the Class Member is entitled, if any, under Sections 4.2.5.2 through

4.2.5.4. This communication report shall notify the Claimant that the claim review outcome will become final and not subject to further review unless the Claimant sends a written notice contesting the result to Lead Class Counsel and AERT postmarked within 60 days of the date of AERT's notice letter determining relief. If a Claimant does not timely submit this written notice, the review outcome will be final and not subject to further review.

**F. Informal Review of Claim Review Outcome.** If a Class Member submits a timely written notice contesting the result, then Lead Class Counsel shall review the results and attempt to address any concerns, as appropriate, with the Class Member and/or with AERT. Claimants, Lead Class Counsel, and AERT all shall make a good faith effort to resolve any such disputes informally. In the event such resolution is not possible, Claimants shall have 30 days from the date the Claimant, Lead Class Counsel, or AERT decide that resolution is not possible to submit a demand for arbitration before the arbitrator selected by Lead Class Counsel and AERT pursuant to Section 4.2.12.10 of the Settlement Agreement (the "Arbitrator"), who shall conduct a desk-top arbitration based upon a written submission without oral argument as set forth in Section 4.2.12 of the Settlement Agreement.

**G. No Review Permitted:** The Arbitrator shall not review Claims in which an Official Claim Form, Supplemental Claim Form, and their supporting information, were not timely submitted. The Arbitrator shall not review Claims in which a timely Demand for Arbitration was not submitted by the Claimant. In those situations, the Claim Review Team's decision shall be final.

**Exhibit 8**  
**Calculation of Cost Formula**

If necessary, the Calculation of Cost is calculated using the linear board footage of a Class Member's deck multiplied by one of the following factor based upon the year in which the Product was purchased:

For grey decking

2004	\$1.64 per linear foot
2005	\$1.64 per linear foot
2006	\$1.74 per linear foot
2007	\$1.84 per linear foot

For product other than grey decking

2004	\$1.84 per linear foot
2005	\$1.84 per linear foot
2006	\$1.94 per linear foot
2007	\$2.04 per linear foot

## **Exhibit 9**

### **Claim Resolution Cleaning Instructions After Antimicrobial Treatment**

After a Claimant's Product is cleaned and treated with the antimicrobial as set forth in Section IV.B.1 above of the Settlement Agreement, a Claimant should periodically and regularly clean the Product in accordance with the following cleaning instructions.

1. As necessary, a Claimant should prevent the accumulation of debris on the surface of their deck by sweeping the debris off of their deck with a broom or spraying it off with a water hose.

2. A Claimant should clean their deck at least once every six months using the cleaning instructions set forth below.

a. Sweep any debris off the surface of the deck with a broom;

b. Clean the deck off with a water hose sprayer or power sprayer using a mild detergent or specifically designed deck cleaners that do not contain bleach, alkaline, or acid. Examples of products that may be used include Indusco Distribution's Perfect Solution or a low ph dish soap such as Dawn®Ultra. Although bleach may have been suggested to use for cleaning in the past, a Claimant should not use bleach after the antimicrobial treatment has been applied because the bleach will reduce the effectiveness of the antimicrobial treatment.

c. If the Claimant uses a pressure sprayer, the Claimant should never use so much pressure as to potentially damage the deck surface.

d. The Claimant should never attempt to scrub food or dirt stains as the scrubbing action may reduce the amount of protection provided by the antimicrobial treatment.

## **Exhibit 10**

### **Prior Cleaning Instructions**

1. Class Members should have prevented the accumulation of debris on the surface of their deck by periodically sweeping their decks clean of debris when necessary or spraying their decks clean of debris with a water hose when necessary.

2. Class Members should have cleaned their decks twice a year using one of the following methods:

a. Use of a deck cleaner on the entire deck, such as:

Armor All E-Z Deck wash;

Olympic Deck Cleaner;

Clorox Pro Results for Composite Decking;

Jomax Deck Wash; or

Corte Clean Composite Deck Cleaner; or

b. Use of a cleaning solution on the entire deck such as:

a bleach and water combination; or

another commercial outdoor surface mildew remover.

**Exhibit 11**

**Preliminary Approval Order**

1  
2 THE HONORABLE JOHN C. COUGHENOUR  
3  
4  
5

6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE

9 STANLEY and BETTY PELLETZ, by  
10 themselves and on behalf of themselves  
11 and all others similarly situated,

12 Plaintiffs,

13 v.

14 WEYERHAEUSER COMPANY and  
15 ADVANCED ENVIRONMENTAL  
16 RECYCLING TECHNOLOGIES, INC.,

17 Defendants.

NO. C08-00334 JCC

18 JOSEPH JAMRUK, STACEY JAMRUK,  
19 MICHAEL MUSTAC, and GREG  
20 KNUDTSON, on behalf of themselves and  
21 all others similarly situated,

22 Plaintiffs,

23 v.

24 ADVANCED ENVIRONMENTAL  
25 RECYCLING TECHNOLOGIES, INC., a  
26 Delaware corporation; WEYERHAEUSER  
COMPANY, a Washington corporation,

Defendants.

NO. C08-00403 JCC

**FINDINGS AND ORDER  
PRELIMINARILY CERTIFYING A  
CLASS FOR SETTLEMENT PURPOSES,  
APPOINTING LEAD COUNSEL FOR  
THE CLASS, DIRECTING THE  
ISSUANCE OF NOTICE TO THE CLASS,  
AND SCHEDULING A FAIRNESS  
HEARING**

Date: September 18, 2008

Time: 9:00 a.m.

Courtroom: \_\_\_\_\_

Judge: John C. Coughenour



1 This Court has before it a proposed class action settlement. Plaintiffs Stanley Pelletz,  
2 Betty Pelletz, Joseph Jamruk, Stacey Jamruk, Michael Mustac, and Greg Knudtson, individually  
3 and on behalf of all others similarly situated (collectively “Plaintiffs”), and Defendants  
4 Advanced Environmental Recycling Technologies, Inc., (“AERT”) and Weyerhaeuser Company  
5 (“Weyerhaeuser”) (collectively “Defendants”) (Plaintiff and Defendants are collectively referred  
6 to herein as the “Parties”) appeared by counsel of record and announced ready. Having reviewed  
7 the proposed settlement, including the exhibits attached thereto (collectively, the "Settlement  
8 Agreement"), and having heard the presentations of counsel for the parties, the Court hereby  
9 ORDERS as follows:  
10

11 1. Unless otherwise indicated, all capitalized defined terms used in this Order shall  
12 have the same meaning as described in the Settlement Agreement attached hereto and/or  
13 incorporated by reference hereto.  
14

15 2. This case is preliminarily certified as a class action for settlement purposes  
16 pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure. In this regard, the Court  
17 directs that the settlement Class shall include:  
18

19 All persons and entities who own decks constructed of Product originally  
20 purchased on or after January 1, 2004, and before January 1, 2008, and  
21 additionally persons and entities who own decks constructed of Product originally  
22 purchased after December 31, 2007, and can establish that the Product was  
23 manufactured between January 1, 2004, and October 1, 2006, using the  
24 manufacture date stamped into the end of the Product. Included within the Class  
25 are the legal representatives, heirs, successors in interest, transferees and assigns  
26 of all such foregoing holders and/or owners, immediate and remote, who currently  
own decks constructed of Product originally purchased on or after January 1,  
2004, and before January 1, 2008 (the “Class”).

Notwithstanding the foregoing, the following Persons shall be excluded from the Class:

(1) Defendants and their subsidiaries and affiliates; (2) all Persons who make a timely election to  
be excluded from the proposed Class; (3) governmental entities; and (4) the judge(s) to whom

1 this case is assigned and any immediate family members thereof. In addition, notwithstanding  
2 the foregoing, all claims for personal injury and wrongful death are excluded from the Class.

3 3. Plaintiffs allege causes of action for actionable misrepresentation, breach of  
4 express warranty, breach of implied warranty, violations of the Washington consumer statute and  
5 similar state statutes, violation of the federal Magnusson-Moss Act, and unjust enrichment,  
6 arising from alleged mold and mildew on ChoiceDek decking and railing products manufactured  
7 between January 1, 2004 and October 1, 2006. Defendants deny that Plaintiffs claims have  
8 merit.  
9

10 4. The Parties have entered into a Settlement Agreement to resolve these claims and  
11 to avoid the expense and uncertainties associated with continued litigation.  
12

13 5. The Court appoints Tousley Brain Stephens PLLC; Lieff Cabraser Heimann &  
14 Bernstein, LLP; Goldenberg Heller Antognoli Rowland & Short, P.C.; Cohen, Milstein,  
15 Hausfeld & Toll, PLLC; Gary, Naegele & Theado, LLC; and Keller Rohrback, LLP to serve as  
16 Class Counsel. The firms of Lieff, Cabraser, Heimann & Bernstein, LLP (Jonathan D. Selbin)  
17 and Gary, Naegele & Theado, LLC (Jori Bloom Naegele) are hereby appointed as Lead Class  
18 Counsel. The Court appoints Stanley Pelletz, Betty Pelletz, Joseph Jamruk, Stacey Jamruk,  
19 Michael Mustac, and Greg Knudtson to serve as Class Representatives.  
20

21 6. For purposes of the settlement of this action (and only for such purposes, and  
22 without an adjudication of the merits), the Court preliminarily makes the following findings  
23 under the Federal Rules of Civil Procedure, the United States Constitution, and the Rules of this  
24 Court:  
25  
26

1 (a) For purposes of the settlement of this action, the Court preliminarily finds  
2 that the Class consists of thousands of Persons who own decks constructed  
3 of the product in question.

4 (b) For purposes of the settlement of this action, the Court preliminarily finds  
5 that there exists at least one question of fact and law purportedly common  
6 to the Class in that they complain of alleged misrepresentations by  
7 Defendants and the alleged condition of the product in question.

8 (c) For purposes of the settlement of this action, the Court preliminarily finds  
9 that the claims of the named Plaintiffs are typical of the claims of the  
10 Class that are being settled.

11 (d) For purposes of the settlement of this action, the Court preliminarily finds  
12 that Plaintiffs and Class Counsel will fairly and adequately protect the  
13 interests of the Class.

14 (e) For purposes of the settlement of this action, the Court preliminarily finds  
15 that a resolution of this action in the manner proposed by the Settlement  
16 Agreement is superior to other available methods for a fair and efficient  
17 adjudication of the action and that common issues predominate over  
18 individual issues. The proposed resolution of this action involves a Claim  
19 Resolution Process which will identify and resolve complaints without  
20 burdening the courts or regulators and which will result in the cleaning or  
21 replacement of Class Members decks. The Court also notes that, because  
22 this action is being settled rather than litigated, the Court need not  
23 consider manageability issues that might be presented by the trial of a  
24  
25  
26

1 nationwide class action involving the issues in this case. *See Amchem*  
2 *Prods., Inc. v. Windsor*, 117 S. Ct. 2231, 2248 (1997).

3 7. In making these findings, the Court has considered, among other factors: (i) the  
4 interests of Class Members in individually controlling the prosecution or defense of separate  
5 actions; (ii) the impracticability or inefficiency of prosecuting or defending separate actions; (iii)  
6 the extent and nature of any litigation concerning these claims already commenced; and (iv) the  
7 desirability of concentrating the litigation of the claims in a particular forum. The Court takes  
8 guidance in its consideration of certification issues from *Hanlon v. Chrysler Corp.*, 150 F.3d  
9 1011 (9<sup>th</sup> Cir. 1998).

10 8. The proposed settlement was the product of arms-length negotiation and reached  
11 in good faith, and provides meaningful relief to the Class, including free and discounted  
12 cleanings, full refunds, replacement decking, and sizeable vouchers. The proposed settlement is  
13 sufficiently fair, adequate and reasonable to warrant the distribution of a notice to the Class  
14 regarding the Settlement Agreement. Accordingly, AERT shall cause the Class Notice to be  
15 distributed as established by the Class Notice Plan (Exhibit 3) of the Settlement Agreement and  
16 set forth below, in paragraphs 8.1 through 8.6.

17 8.1 The Class Notice Plan will include: (a) direct mail to customers of whom  
18 AERT, Weyerhaeuser, Class Counsel, or Lowes HIW, Inc. are aware purchased a deck  
19 containing the Product on or after January 1, 2004 and before January 1, 2008; (b) e-mail to  
20 customers who purchased a deck on or after January 1, 2004 and before January 1, 2008 for  
21 whom AERT, Weyerhaeuser, and Class Counsel have an e-mail address; (c) national publication  
22 notice; (d) notice on AERT's website and a settlement website; and (e) a press release.

1           8.2    Class Notice by Direct Mail: Within thirty (30) days of entry of the  
2 Court's Preliminary Approval Order of the Settlement Agreement, AERT shall commence  
3 mailing the class notice in substantially the form set forth in Exhibit 4 (the "Class Notice by  
4 Direct Mail") to Class Members who purchased the Product on or after January 1, 2004 and  
5 before January 1, 2008, for whom AERT, Weyerhaeuser, Class Counsel, or Lowes HIW, Inc.  
6 have a direct mailing address, by first-class mail, postage prepaid, to their last known addresses,  
7 but not less than 55 days before the Fairness Hearing; accordingly, AERT shall have a period of  
8 at least 15 days to begin and complete mailing of the Class Notice by Direct Mail. Before  
9 mailing out the Class Notice by Direct Mail, the Class Notice Administrator will run these  
10 addresses through the national change-of-address database in an effort to identify the most  
11 current address. The mailing to the Class Members that contains the Class Notice by Direct Mail  
12 will also include a copy of the Request for Official Claim Form substantially similar to Exhibit 6.  
13 The Class Notice Administrator shall re-mail an additional Class Notice by Direct Mail to  
14 potential Class Members whose original class notice mailings were returned to the Class Notice  
15 Administrator prior to the Settlement Final Approval Date undelivered with a forwarding  
16 address. The Class Notice Administrator and Defendants shall not be required to re-mail any  
17 notices returned without a forwarding address or that are returned after the Settlement Final  
18 Approval Date.

19           8.3    Class Notice by E-Mail: For Class Members who purchased the Product  
20 on or after January 1, 2004 and before January 1, 2008 for whom AERT, Weyerhaeuser, or Class  
21 Counsel have an e-mail address, within thirty (30) days of entry of the Court's Preliminary  
22 Approval Order of the Settlement Agreement, AERT or the Class Notice Administrator shall  
23 commence e-mailing the Class Notice by Direct Mail in .pdf format to their last known e-mail  
24  
25  
26

1 address not less than 45 days before the Fairness Hearing; accordingly, AERT shall have a  
2 period of at least 15 days to begin and complete e-mailing of the Class Notice. The e-mail to the  
3 Class Members will also include a copy of the Request for Official Claim Form substantially  
4 similar to Exhibit 6 of the Settlement Agreement. AERT and the Class Notice Administrator  
5 shall not be obligated to resend any e-mails that are returned undelivered.  
6

7 8.4 Publication Notice: AERT or the Class Notice Administrator will publish  
8 notice of the proposed settlement, the Fairness Hearing, and Class Member's objection and  
9 appeal rights in USA Today (the "Publication Notice"). The Publication Notice will be in a form  
10 substantially similar to that set forth in Exhibit 5 to the Settlement Agreement. The published  
11 notice shall be at least 1/16 page size. It will be published once in USA Today not later than 55  
12 days before the Fairness Hearing.  
13

14 8.5 AERT will publish a copy of the Class Notice by Direct Mail and Request  
15 for Official Claim Form on the ChoiceDek website not later than 55 days before the Fairness  
16 Hearing until 6 months after the Settlement Final Approval Date.  
17

18 8.6 On a settlement website, AERT or the Class Notice Administrator will  
19 publish a copy of the Class Notice, Class Notice by Direct Mail, and Request for Official Claim  
20 Form on the ChoiceDek website not later than 55 days before the Fairness Hearing until 6  
21 months after the Settlement Final Approval Date.  
22

23 9. Distribution of the Class Notice as described herein is reasonable and the best  
24 practicable notice under the circumstances; is reasonably calculated to apprise Class Members of  
25 the pendency of the action and of their right to object to and opt-out of the proposed settlement;  
26 constitutes due, adequate, and sufficient notice to all persons entitled to receive notice; and meets

1 the requirements of due process, the Federal Rules of Civil Procedure, and the United States  
2 Constitution.

3 10. AERT shall file proof by affidavit of the mailing of the Class Notice by Direct  
4 Mail and publication of the Publication Notice at or before the Fairness Hearing.  
5

6 11. Each Class Member who wishes to exclude himself, herself, or itself from the  
7 Class must submit to the Clerk of the Court, Lead Class Counsel, and Counsel for Defendants a  
8 written request for exclusion postmarked not later than twenty-five (25) days prior to the  
9 Fairness Hearing and received by the Clerk of the Court not later than fifteen (15) days before  
10 the date of the Fairness Hearing. Any Class Member who does not submit a timely, written  
11 request for exclusion will be bound by all proceedings, orders and judgments in this Action,  
12 which will have preclusive effect in all pending or future lawsuits or other proceedings, except  
13 that Defendants, in their sole discretion, may allow a potential Class Member who does not  
14 timely request exclusion from the Class to opt out of the Class up to and including the date of the  
15 Fairness Hearing.  
16

17 12. Any potential Class Member who objects to the Settlement Agreement may  
18 appear at the Fairness Hearing and show cause why such Settlement Agreement should not be  
19 approved as fair, reasonable and adequate and why the Final Order and Judgment should not be  
20 entered thereon; provided that each such Class Member shall deliver to the offices of Class  
21 Counsel and Defendants' counsel and file with the Court, not later than twenty-five (25) days  
22 prior to the Fairness Hearing: (i) a statement of the objection, as well as the specific reasons, if  
23 any, for each objection, including any legal support the Class Member wishes to bring to the  
24 Court's attention; (ii) any evidence the Class Member wishes to introduce in support of his or her  
25 objection; and (iii) a list of all class action proceedings in which such objectors or their attorneys  
26

1 previously appeared as objectors or on behalf of objectors. Any Class Member who fails to  
2 comply with these requirements shall be forever barred from objecting to this Settlement  
3 Agreement;

4  
5 13. Any attorneys hired by individual Class Members for the purpose of objecting to  
6 the proposed settlement shall file with the Clerk of the Court and serve on Class Counsel and  
7 Defendants' counsel a notice of appearance, not later than twenty-five (25) days prior to the  
8 Fairness Hearing;

9  
10 14. Any Class Member who files and serves a written objection and who intends to  
11 make an appearance at the Fairness Hearing, either in person or through an attorney hired by the  
12 individual Class Member at the Class Member's expense, in order to object to the fairness,  
13 reasonableness or adequacy of the proposed settlement, must serve on Class Counsel and  
14 Defendants' counsel and file a notice of intention to appear with the Court, not later than twenty-  
15 five (25) days prior to the Fairness Hearing;

16  
17 15. Any filings, exclusions, objections and appearances shall be filed and/or served at  
18 the following addresses:

19 U.S. District Clerk  
20 United States Courthouse  
21 700 Stewart Street, Lobby Level  
22 Seattle, Washington 98101

23 Jonathan D. Selbin  
24 Lief, Cabraser, Heimann & Bernstein, LLP  
25 780 Third Avenue, 48th Floor  
26 New York, New York 10017-2024

Jori Bloom Naegele  
Gary, Naegele & Theado, LLC  
446 Broadway Avenue  
Lorain, Ohio 44052



1 Carl C. Scherz  
2 Locke Lord Bissell & Liddell LLP  
3 2200 Ross Avenue, Suite 2200  
4 Dallas, Texas 75201

5 Thomas L. Boeder  
6 Perkins Coie LLP  
7 1201 Third Avenue, Suite 4800  
8 Seattle, Washington 98101

9 16. Lead Class Counsel and Defendants' counsel shall promptly furnish each other  
10 with copies of any and all objections, appearances and requests for exclusion that come into their  
11 possession;

12 17. No person shall be entitled in any way to contest the approval of the terms and  
13 conditions of the Settlement Agreement or the Final Order and Judgment to be entered thereon  
14 except by filing and serving written objections in accordance with the provisions of the  
15 Settlement Agreement. Any Class Member who does not submit a timely, written objection or  
16 request for exclusion from the class in compliance with all of the procedures set forth in this  
17 Order and the Settlement Agreement will be deemed to have waived all such objections and will,  
18 therefore, be bound by all proceedings, orders and judgments in this action, which will be  
19 preclusive in all pending or future lawsuits or other proceedings;

20 18. Any objector requesting access to Confidential materials must first obtain leave of  
21 court and agree to be bound by the Agreed Confidentiality Order issued by the Court in the  
22 Action. Confidential information identified and produced in the Action shall remain protected  
23 Confidential information pursuant to this Court's Agreed Confidentiality Order.

24 19. Defendants, including their current and former sales representatives, agents,  
25 affiliates and any other retained personnel, are authorized to communicate with Class Members  
26 about this action and the terms of the proposed settlement in the Settlement Agreement, subject

1 to the other provisions described in the Settlement Agreement, and to engage in any other  
2 communications within the normal course of Defendants' business.

3 20. All other motions and deadlines pending in the Action are hereby stayed.

4 21. All Class Members who have not been timely excluded from the Class are hereby  
5 enjoined from filing, commencing, prosecuting, maintaining, intervening in, participating in (as  
6 class members or otherwise), or receiving any benefits from any other lawsuit, arbitration, or  
7 administrative, regulatory or other proceeding or order in any jurisdiction based on or relating to  
8 the claims and causes of action, or the facts and circumstances relating thereto, in this Action  
9 and/or the Release. In addition, all persons are hereby preliminarily enjoined from filing,  
10 commencing, prosecuting or maintaining any other lawsuit as a class action (including by  
11 seeking to amend a pending complaint to include class allegations, or by seeking class  
12 certification in a pending action in any jurisdiction) on behalf of Class Members who have not  
13 been timely excluded from the Class, if such other class action is based on or relates to the  
14 claims and causes of action, or the facts and circumstances relating thereto, in this Action and/or  
15 the Released Transactions. The Court finds that issuance of this preliminary injunction is  
16 necessary and appropriate in aid of the Court's jurisdiction over this action. The Court finds no  
17 bond is necessary for issuance of this injunction.  
18  
19  
20

21 22. Plaintiffs and Defendants have agreed to settle the Action under the terms and  
22 conditions set forth in the Settlement Agreement. It is understood and acknowledged that  
23 Defendants have denied, and still deny, any liability, wrongdoing, and damages with respect to  
24 the matters alleged in the Action, and that the Settlement Agreement is entered into as a  
25 compromise of disputed claims and for the purpose of avoiding the uncertainty, costs and delay  
26 of litigation. The settlement created by the Settlement Agreement is not and shall not be

1 construed as an admission of liability, wrongdoing or damages by Defendants, nor as evidence of  
2 the validity of any of the claims asserted against Defendants. By entering into the Settlement  
3 Agreement and taking any actions in conformance with the Settlement Agreement, Defendants  
4 shall not be deemed to have admitted in any way any claims or contentions made by any party  
5 nor to have diminished in any way the validity of any defense asserted by Defendants with  
6 respect to the Action. Defendants' execution of this Settlement Agreement and actions in  
7 conformance with the Settlement Agreement are not, and shall not be construed as an admission,  
8 waiver or estoppel by Defendants or deemed to be evidence of the validity of any of the claims  
9 made by the Plaintiffs on behalf of the members of the Class or of any liability to the Plaintiff or  
10 to any member of the Class or that this Action is properly maintainable as a class action.  
11

12  
13 23. Certification shall be automatically vacated and this Order shall become null and  
14 void if the Settlement Agreement is terminated or is disapproved by the Court, any appellate  
15 court and/or any other court of review, or if any of the Parties invoke their right to terminate their  
16 agreement to settle (pursuant to Section 11.4 of the Settlement Agreement), in which event the  
17 Settlement Agreement and the fact that it was entered into shall not be offered, received or  
18 construed as an admission or as evidence for any purpose, including the "certifiability" of any  
19 class as further discussed in Section 11.5 of the Settlement Agreement. The Settlement  
20 Agreement itself, actions in conformance with the Settlement Agreement, and the other  
21 documents prepared or executed by any party in negotiating or implementing the settlement  
22 called for by this Settlement Agreement, including any of the terms of any such documents, shall  
23 never be offered in evidence in or shared with any party to any civil, criminal or administrative  
24 action or proceeding without Defendants express written consent.  
25  
26



**Exhibit 12**

**Final Order and Judgment**

1  
2 THE HONORABLE JOHN C. COUGHENOUR  
3  
4  
5  
6  
7

8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
10 AT SEATTLE

11 STANLEY and BETTY PELLETZ, by  
12 themselves and on behalf of themselves  
13 and all others similarly situated,

14 Plaintiffs,

15 v.

16 WEYERHAEUSER COMPANY and  
17 ADVANCED ENVIRONMENTAL  
18 RECYCLING TECHNOLOGIES, INC.,

19 Defendants.

NO. C08-00334 JCC

20 JOSEPH JAMRUK, STACEY JAMRUK,  
21 MICHAEL MUSTAC, and GREG  
22 KNUDTSON, on behalf of themselves and  
23 all others similarly situated,

24 Plaintiffs,

25 v.

26 ADVANCED ENVIRONMENTAL  
RECYCLING TECHNOLOGIES, INC., a  
Delaware corporation; WEYERHAEUSER  
COMPANY, a Washington corporation,

Defendants.

NO. C08-00403 JCC

**FINAL ORDER APPROVING CLASS  
ACTION SETTLEMENT, AND  
DISMISSING CLASS ACTION WITH  
PREJUDICE**

Date: \_\_\_\_\_

Time: \_\_\_\_\_.

Courtroom: \_\_\_\_\_

Judge: John C. Coughenour

1 WHEREAS, Plaintiffs and Defendants have entered into a class action Settlement  
2 Agreement dated \_\_\_\_\_, 2008, which is attached hereto as Appendix A (the  
3 "Settlement Agreement"), to settle this class action; and

4  
5 WHEREAS, the Court entered its Order Preliminarily Certifying a Class for Settlement  
6 Purposes, Appointing Lead Counsel for the Class, Directing the Issuance of Notice to the Class,  
7 and Scheduling a Fairness Hearing (the "Preliminary Approval Order") dated \_\_\_\_\_,  
8 2008, preliminarily certifying the putative class in this action for settlement purposes under Fed.  
9 R. Civ. P. 23(b)(3), ordering individual and publication notice to potential class members,  
10 scheduling a Fairness Hearing for \_\_\_\_\_, 2008, at \_\_\_\_\_m., and providing  
11 those persons with an opportunity either to exclude themselves from the settlement class or to  
12 object to the proposed settlement; and

13  
14 WHEREAS, the Court held a Fairness Hearing on \_\_\_\_\_, 2008, at \_\_\_\_\_  
15 \_\_\_\_\_m., to determine whether to give final approval to the proposed settlement; and

16  
17 WHEREAS, the parties have complied with the Preliminary Approval Order and the  
18 Court is of the opinion that the Settlement Agreement is fair, adequate, and reasonable, and that  
19 they should be approved.

20 NOW THEREFORE, based on the submissions of the parties and Class Members, the  
21 testimony adduced at the Fairness Hearing, the pleadings on file, and the argument of counsel,  
22 the Court hereby finds, and it is hereby ORDERED as follows:

23  
24 1. Incorporation of Defined Terms. Except where otherwise noted, all capitalized  
25 terms used in this Final Order Approving Class Action Settlement and Dismissing Class Action  
26 with Prejudice (the "Final Order and Judgment") shall have the meanings set forth in the  
Settlement Agreement which is incorporated by reference hereto.

1           2.       Jurisdiction. The Court has personal jurisdiction over all Class Members and has  
2 subject-matter jurisdiction over this action, including, without limitation, jurisdiction to approve  
3 the proposed settlement, to grant final certification of the Class, to settle and release all claims  
4 arising out of the transactions alleged in the Plaintiff's complaint (as amended), and to dismiss  
5 this action on the merits and with prejudice.  
6

7           3.       Final Class Certification. The Class this Court previously certified preliminarily  
8 in its Preliminary Approval Order is hereby finally certified for settlement purposes under Fed.  
9 R. Civ. P. 23(b)(3). The Class consists of:

10                   All persons and entities who own decks constructed of Product originally  
11 purchased on or after January 1, 2004, and before January 1, 2008, and  
12 additionally persons and entities who own decks constructed of Product originally  
13 purchased after December 31, 2007, and can establish that the Product was  
14 manufactured between January 1, 2004, and October 1, 2006, using the  
15 manufacture date stamped into the end of the Product. Included within the Class  
16 are the legal representatives, heirs, successors in interest, transferees and assigns  
of all such foregoing holders and/or owners, immediate and remote, who currently  
own decks constructed of Product originally purchased on or after January 1,  
2004, and before January 1, 2008 (the "Class").

17 Notwithstanding the foregoing, the following Persons shall be excluded from the Class:  
18 (1) Defendants and their subsidiaries and affiliates; (2) all Persons who make a timely election to  
19 be excluded from the proposed Class; (3) governmental entities; and (4) the judge(s) to whom  
20 this case is assigned and any immediate family members thereof. In addition, notwithstanding  
21 the foregoing, all claims for personal injury and wrongful death are excluded from the Class.  
22

23 A list of those persons who have timely excluded themselves from the Class, and who therefore  
24 are not bound by this Final Order and Judgment, is attached hereto as Appendix B, which is  
25 incorporated herein and made a part hereof for all purposes.  
26

          4.       Adequacy of Representation. The Court appoints Stanley Pelletz, Betty Pelletz,  
Joseph Jamruk, Stacey Jamruk, Michael Mustac, and Greg Knudtson to serve as Class



1 Representatives. The Court appoints Tousley Brain Stephens PLLC; Lieff Cabraser Heimann &  
2 Bernstein, LLP; Goldenberg Heller Antognoli Rowland & Short, P.C.; Cohen, Milstein,  
3 Hausfeld & Toll, PLLC; Gary, Naegele & Theado, LLC; and Keller Rohrback LLP to serve as  
4 Class Counsel. The appointment of Jonathan D. Selbin and Jori Bloom Naegele as Lead Class  
5 Counsel for the Class, the appointment of Class Counsel, and the appointment of the Plaintiffs as  
6 the Class representatives, is fully and finally confirmed. The Court finds that Lead Class  
7 Counsel, Class Counsel, and the Plaintiffs have fully and adequately represented the Class for  
8 purposes of entering into and implementing the settlement and have satisfied the requirements of  
9 Fed. R. Civ. P. 23(a)(4).  
10

11  
12 5. Class Notice. The Court finds that the distribution of the Class Notice attached  
13 hereto as Appendix D and the publication of the Publication Notice in accordance with the terms  
14 of the Settlement Agreement and this Court's Preliminary Approval Order, and as explained in  
15 the declarations and affidavits filed before the Fairness Hearing:

- 16 (a) constituted the best practicable notice to Class Members under the  
17 circumstances of this action;  
18  
19 (b) were reasonably calculated, under the circumstances, to apprise Class  
20 Members of (i) the pendency of this class action, (ii) their right to exclude  
21 themselves from the Class and the proposed settlement, (iii) their right to  
22 object to any aspect of the proposed settlement (including final  
23 certification of the settlement class, the fairness, reasonableness or  
24 adequacy of the proposed settlement, the adequacy of the Class's  
25 representation by Plaintiffs or Class Counsel, and/or the award of  
26 attorneys' and representative fees), (iv) if they did not exclude themselves

1 from the Class, their right to appear at the Fairness Hearing (either on their  
2 own or through counsel hired at their own expense), and (v) the binding  
3 effect of the orders and Final Order and Judgment in this action, whether  
4 favorable or unfavorable, on all persons who do not request exclusion  
5 from the Class;  
6

7 (c) was reasonable and constituted due, adequate and sufficient notice to all  
8 persons entitled to be provided with notice, and

9 (d) fully satisfied the requirements of the Federal Rules of Civil Procedure  
10 (including Fed. R. Civ. P. 23(c)(2) and (e), the United States Constitution  
11 (including the Due Process Clause), the Rules of this Court, and any other  
12 applicable law.  
13

14 The Parties have provided the necessary notice under the Class Action Fairness Act, 28 U.S.C. §  
15 1712.  
16

17 6. Class Findings. For purposes of the settlement of this action (and only for such  
18 purposes, and without an adjudication of the merits), the Court finds that the requirements of the  
19 Federal Rules of Civil Procedure, the United States Constitution, the Rules of this Court and any  
20 other applicable law have been met in that:  
21

22 (a) The Class consists of thousands of Persons who own decks constructed of  
23 Product. The Class is so numerous that their joinder before the Court  
24 would be impracticable.

25 (b) The commonality requirement of Fed. R. Civ. P. 23(a) generally is  
26 satisfied when members of the proposed Class share a common factual or  
legal issue. Here, the Court finds for settlement purposes that Plaintiffs

1 have alleged at least one question of fact and law purportedly common to  
2 the Class. Plaintiffs complain of alleged common misrepresentations by  
3 Defendants and an alleged common condition of the product in question.

4 (c) The Court finds for settlement purposes that the claims of the named  
5 Plaintiffs are typical of the claims of the Class that are being settled. The  
6 named Plaintiffs are adequate representatives of the Class they represent,  
7 since their interests are reasonably co-extensive with those of Class  
8 members, and the Plaintiffs have retained experienced counsel to represent  
9 them. The named Plaintiffs and Class Counsel will fairly and adequately  
10 protect the interests of the Class.  
11

12 (d) The Court finds for settlement purposes that a resolution of this action in  
13 the manner proposed by the Settlement Agreement is superior to other  
14 available methods for a fair and efficient adjudication of the action and  
15 that common issues predominate over individual issues. Common  
16 questions include whether Defendants' ChoiceDek product manufactured  
17 during the relevant time period are defective by design and whether  
18 Defendants' alleged marketing was misleading. Class treatment here, in  
19 the context of the Settlement, will facilitate the favorable resolution of all  
20 Class members' claims. The proposed resolution of this action involves a  
21 Claim Resolution Process which will identify and resolve complaints  
22 without burdening the courts or regulators and which will result in the  
23 cleaning or replacement of Class Members decks. Given the numbers of  
24 Class members, use of the class device will offer a more efficient and fair  
25  
26

1 means of adjudicating the claims at issue, conserve judicial resources, and  
2 promotes consistency and efficiency of adjudication, by avoiding multiple  
3 individual suits or piecemeal litigation. The Court also notes that, because  
4 this action is being settled rather than litigated, the Court need not  
5 consider manageability issues that might be presented by the trial of a  
6 nationwide class action involving the issues in this case. *See Amchem*  
7 *Prods., Inc. v. Windsor*, 117 S. Ct. 2231, 2248 (1997).

9 In making these findings, the Court has considered, among other factors: (i) the interests of Class  
10 Members in individually controlling the prosecution or defense of separate actions; (ii) the  
11 impracticability or inefficiency of prosecuting or defending separate actions; (iii) the extent and  
12 nature of any litigation concerning these claims already commenced; and (iv) the desirability of  
13 concentrating the litigation of the claims in a particular forum. The Court takes guidance in its  
14 consideration of certification issues from *Hanlon v. Chrysler Corp.*, 150 F.3d 1011 (9<sup>th</sup> Cir.  
15 1998).

17 7. Final Settlement Approval. The terms and provisions of the Settlement  
18 Agreement, including any and all other amendments, addendums and exhibits, have been entered  
19 into in good faith and are hereby fully and finally approved as fair, reasonable and adequate as  
20 to, and in the best interests of, the Plaintiffs and the Class Members, and in full compliance with  
21 all applicable requirements of the Federal Rules of Civil Procedure, the United States  
22 Constitution (including the Due Process Clause), and any other applicable law.

24 The Court finds that the Settlement Agreement is fair, adequate and reasonable because,  
25 among other things: there is no fraud or collusion underlying this settlement; the complexity,  
26 expense and likely duration of the litigation favors settlement on behalf of the Class; the stage of

1 the proceedings and amount of discovery completed justifies settlement at this juncture; the  
2 probability of success on the merits and the defenses proposed by Defendants support settlement  
3 on behalf of the Class; the range of possible recoveries by the Plaintiffs, the Class and  
4 Defendants supports settlement; and the opinions of Lead Counsel and the Plaintiffs support  
5 settlement under the terms of the Settlement Agreement. The settlement was the product of  
6 arms-length negotiation and reached in good faith, and provides meaningful relief to the Class,  
7 including free and discounted cleanings, full refunds, replacement material, and sizeable  
8 vouchers.  
9

10 All objections to the settlement that were filed with the Court, if any, have been  
11 considered and are overruled. The Parties and Class Members are hereby directed to implement  
12 and consummate the Settlement Agreement according to its terms and provisions.  
13

14 8. Retention of Arbitrator and Administrator. The Parties are authorized to appoint  
15 an Arbitrator for the Claim Resolution Process in accordance with the terms of the Settlement  
16 Agreement, and Defendants are authorized to retain a Class Notice Administrator, in accordance  
17 with the terms of the Settlement Agreement.  
18

19 9. Binding Effect. The terms of the Settlement Agreement, and of this Final Order  
20 and Judgment shall be forever binding on Plaintiffs and all other Class Members, as well as their  
21 heirs, executors and administrators, successors and assigns, and those terms shall have res  
22 judicata and other preclusive effect in all pending and future claims, lawsuits or other  
23 proceedings maintained by or on behalf of any such persons, to the extent those claims, lawsuits  
24 or other proceedings involve matters that were or could have been raised in this action or are  
25 otherwise encompassed by the Release described in the next paragraph of this Final Order.  
26

1           10.     Release. The Release contained in Section 6 of the Settlement Agreement, which  
2 is also set forth in full in Appendix C hereto, of the Settlement Agreement is expressly  
3 incorporated herein in all respects, is effective as of the date of this Final Order and Judgment,  
4 and forever discharges the Released Parties from any claims or liabilities arising from or related  
5 to this Action.  
6

7           11.     Permanent Injunction. All Class Members who have not been timely excluded  
8 from the Class are hereby permanently barred and enjoined from (a) filing, commencing,  
9 prosecuting, maintaining, intervening in, participating in (as class members or otherwise), or  
10 receiving any benefits or other relief from, any other lawsuit, arbitration, or administrative,  
11 regulatory or other proceeding or order in any jurisdiction based on or relating to the claims and  
12 causes of action, or the facts and circumstances relating thereto, in this Action and/or the matters  
13 released in the Release, and (b) organizing or soliciting the participation of any Class Members  
14 in a separate class for purposes of pursuing as a purported class action (including by seeking to  
15 amend a pending complaint to include class allegations, or by seeking class certification in a  
16 pending action) any lawsuit or other proceeding based on or relating to the claims and causes of  
17 action, or the facts and circumstances relating thereto, in this Action and/or the matters released  
18 in the Release. The Court finds that issuance of this permanent injunction is necessary and  
19 appropriate in aid of the Court's jurisdiction over this action and to protect and effectuate the  
20 Court's Final Order and Judgment.  
21  
22

23           12.     Enforcement of Settlement. Nothing in this Final Order and Judgment shall  
24 preclude any action to enforce the terms of the Settlement Agreement; nor shall anything in this  
25 Final Order and Judgment preclude Plaintiffs or Class Members from participating in the Claim  
26

1 Resolution Process described in the Settlement Agreement if they are entitled to do so under the  
2 terms of the Settlement Agreement.

3 13. Attorneys' and Class Representative's Fees and Expenses. Class Counsel for the  
4 Class are hereby awarded attorneys' fees and reimbursement of their disbursements and expenses  
5 in the amount of \$1,750,000.00, to be paid by AERT under the terms set forth in the Settlement  
6 Agreement. Additionally, the Plaintiffs are awarded stipends for their service as Class  
7 representatives as follows: \$7,500.00 to Joseph and Stacey Jamruk; \$7,500.00 to Michael  
8 Mustac; \$7,500.00 to Greg Knudtson; and \$7,500.00 to Stanley and Betty Pelletz. The proposed  
9 attorneys' and class representatives' fees are reasonable in relation to the services performed by  
10 Class Counsel and the named Plaintiffs, the results achieved on behalf of the Class and the  
11 accumulated and anticipated time and resources expended by them. Such fees and expenses are  
12 to be paid as outlined in Sections 7 and 8 of the Settlement Agreement. Lead Class Counsel  
13 shall allocate and distribute the award of attorneys' fees and expenses among Class Counsel, and  
14 they shall also distribute the representative fees to the named Plaintiffs.

15 14. No Other Payments. The preceding paragraph of this Final Order and Judgment  
16 covers, without limitation, any and all claims for attorneys' fees and expenses, representative  
17 fees, costs or disbursements incurred by Lead Counsel or any other counsel representing the  
18 Plaintiffs or Class Members, or incurred by the Plaintiffs or the Class Members, or any of them,  
19 in connection with or related in any manner to this action, the settlement of this action, the  
20 administration of such settlement, and/or the matters released in the Release except to the extent  
21 otherwise specified in this Final Order and Judgment and the Settlement Agreement. Defendants  
22 shall be liable to Plaintiffs and the Class Members for no additional attorneys' fees,  
23 representative fees, or expenses. All costs of court are taxed against the parties incurring same.  
24  
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26

1           15.     Retention of Jurisdiction. The Court has jurisdiction to enter this Final Order and  
2 Judgment. Without in any way affecting the finality of this Final Order and Judgment, this Court  
3 expressly retains jurisdiction as to all matters relating to the administration, consummation,  
4 enforcement and interpretation of the Settlement Agreement and of this Final Order and  
5 Judgment, including, without limitation, for the purpose of:  
6

7           (a)     enforcing the terms and conditions of the Settlement Agreement and  
8 resolving any disputes, claims or causes of action that, in whole or in part,  
9 are related to or arise out of the Settlement Agreement, and/or this Final  
10 Order and Judgment (including, without limitation, whether a person or  
11 entity is or is not a Class Member; whether claims or causes of action  
12 allegedly related to this case are or are not barred or released by this Final  
13 Order and Judgment, etc.);  
14

15           (b)     entering such additional orders, if any, as may be necessary or appropriate  
16 to protect or effectuate this Final Order and Judgment and the Settlement  
17 Agreement, or to ensure the fair and orderly administration of the  
18 settlement; and  
19

20           (c)     entering any other necessary or appropriate orders to protect and effectuate  
21 this Court's retention of continuing jurisdiction.  
22

23           16.     No Admissions. Neither this Final Order and Judgment nor the Settlement  
24 Agreement (nor any other document referred to herein, nor any action taken to negotiate,  
25 effectuate and implement the settlement) is, may be construed as, or may be used as an  
26 admission or concession by or against Defendants as to the validity of any claim or any actual or  
potential fault, wrongdoing or liability whatsoever. Additionally, neither the Settlement



1 Agreement, nor any negotiations, actions, or proceedings related to them, shall be offered or  
2 received in evidence in any action or proceeding against Defendants in any court, administrative  
3 agency or other tribunal for any purpose whatsoever, except to enforce the provisions of this  
4 Final Order and Judgment and the Settlement Agreement. This Final Order and Judgment and  
5 the Settlement Agreement, may be filed and used by Defendants or Releasees to support a  
6 defense of res judicata, collateral estoppel, estoppel, release, waiver, good-faith settlement,  
7 judgment bar or reduction, full faith and credit, or any other theory of claim preclusion, issue  
8 preclusion or similar defense or counterclaim.  
9

10  
11 Certification shall be automatically vacated and this Order shall become null and void if  
12 the Settlement Agreement is disapproved by any appellate court and/or any other court of  
13 review, or if any of the Parties invoke their right to terminate their agreement to settle (pursuant  
14 to Section 11.4 of the Settlement Agreement), in which event this Order, the Settlement  
15 Agreement and the fact that they were entered into shall not be offered, received or construed as  
16 an admission or as evidence for any purpose, including the "certifiability" of any class as further  
17 discussed in Section 2 of the Settlement Agreement. The Settlement Agreement itself, actions in  
18 conformance with the settlement, and the other documents prepared or executed by any party in  
19 negotiating or implementing the settlement called for by the Settlement Agreement, including  
20 any of the terms of any such documents, shall not be construed as an admission, waiver or  
21 estoppel by Defendants and shall never be offered in evidence in or shared with any party to any  
22 civil, criminal or administrative action or proceeding without Defendants express written  
23 consent.  
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**APPENDIX A:**

**SETTLEMENT AGREEMENT**

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**APPENDIX B:**

**LIST OF OPT-OUTS EXCLUDED FROM THE CLASS**

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1 **APPENDIX C:**

2 **RELEASE AND RELATED COVENANTS.**

3  
4 6.1 Upon final approval of the Settlement, the Plaintiffs and the Class shall dismiss  
5 with prejudice all claims in the Action.

6 6.2 The Plaintiffs and the Class release and discharge any and all past, present and  
7 future claims, causes of action, demands, damages, attorneys' fees, equitable relief including but  
8 not limited to injunctive and declaratory relief, suits seeking damages, legal relief, and demands  
9 or rights, whether known or unknown, liquidated or unliquidated, accrued or unaccrued, fixed or  
10 contingent, or based on any statute, regulation or common law of any country, state, province,  
11 county, city or municipality that have been, could have been, may be, or could be alleged or  
12 asserted now, in the past, or in the future by the Plaintiffs or any member of the Class against the  
13 Defendants, Defendants' Affiliates,<sup>1</sup> Lowe's HIW, Inc. (and its parent corporation, corporate  
14 affiliates, subsidiaries, officers, directors, employees, shareholders, and insurers), and all other  
15 persons and businesses involved in the distribution chain and installation of the Product  
16 (collectively the "Released Parties"), in this matter or in any other court action or before any  
17 administrative or regulatory body, tribunal or arbitration panel on the basis of, connected with,  
18 arising out of, or related in whole or in part in any way to:  
19  
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22 6.2.1. The claims in the Action and any and/or all of the acts, omissions, facts,  
23 matters, transactions, occurrences or representations that were directly or indirectly alleged,  
24 asserted, described, set forth or referred to in this matter including, but not limited to, those  
25 regarding mold, mildew, or fungi on the Product;  
26

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<sup>1</sup> "Defendants' Affiliates" are defined as all of Defendants' past, present and future officers, directors, employees, agents, attorneys, representatives, shareholders, retailers, parents, subsidiaries, affiliates, predecessors, successors, assigns, and/or persons acting on behalf of any of the foregoing.

1           6.2.2. Except as provided in paragraph 6.4 herein and the Settlement Agreement,  
2 any and all other acts, omissions, facts, matters, transactions, occurrences or representations  
3 made in connection with the marketing, manufacturing process, sale, purchase, solicitation,  
4 pricing, acceptance, selection and categorization, descriptions regarding, explanations regarding,  
5 operation, maintenance, cleaning of, servicing, or replacement of the Product, including without  
6 limitation, claims regarding mold, mildew, or fungi on the Product.  
7

8           6.2.3. Any and all acts, omissions, facts, matters, transactions, claims handling,  
9 occurrences or representations relating to the Settlement Agreement and the Claim Resolution  
10 Process including, but not limited to, the claims released herein.  
11

12           6.2.4. This release shall not deprive Class Members of the class relief provided  
13 in this Settlement Agreement.

14           6.2.5. This release expressly includes, without limitation, claims based on  
15 negligence, gross negligence, breach of contract, breach of express and implied warranties,  
16 fraud, negligent misrepresentation, violations of consumer and deceptive trade practices acts,  
17 violations of the Magnuson-Moss Warranty Act, intentional misconduct, statutory violations, and  
18 any other tortious or other conduct of the Released Parties. This release expressly includes  
19 claims for emotional distress and mental anguish, which are hereby released.  
20

21           6.2.6. With the exception of claims for emotional distress and mental anguish,  
22 notwithstanding the foregoing, or any other provisions of this Agreement, this release does not  
23 release any claims for personal injury or wrongful death, including such claims allegedly arising  
24 out of mold or fungus. Additionally, except for those Class Members who receive a cash  
25 reimbursement through the Claim Resolution Process, this release does not release an express  
26

1 written warranty claim under an express written Product warranty other than for, relating to, or  
2 arising from mold, mildew, fungi or fungal rot, if any.

3           6.2.7. The release will cover, without limitation, any and all claims for attorneys' fees,  
4 expenses, costs and/or disbursements incurred by Class Counsel or any other counsel  
5 representing the Plaintiffs or any Class Member, or by the Plaintiffs or any Class Member in  
6 connection with or related in any manner to this matter, the settlement of this matter, the  
7 administration of such settlement, the Claim Resolution Process, and the release except to the  
8 extent otherwise specified in the Settlement Agreement.  
9

10           6.2.8. The Plaintiffs and Class Members acknowledge that they are aware that  
11 they may hereafter discover claims presently unknown or unsuspected, or facts in addition to or  
12 different from those that they now know or believe to be true with respect to the matters released  
13 herein or with respect to the Product. Nevertheless, it is the intention of the Plaintiffs,  
14 individually and on behalf of Class Members, to fully, finally and forever settle and release all  
15 such matters, and all claims relating thereto, which exist, hereafter may exist, or might have  
16 existed (whether or not previously or currently asserted in any action or proceeding).  
17  
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19           6.2.9. The release contemplated shall extend to and include claims that the  
20 Plaintiffs and the Class (the "Releasing Parties") do not know or suspect to exist at the time of  
21 the release, which if known, might have affected their decision to enter into the release. The  
22 Releasing Parties shall be deemed to relinquish, to the extent it is applicable, and to the full  
23 extent permitted by law, the provisions, rights and benefits of Section 1542 of the California  
24 Civil Code. The Releasing Parties also shall be deemed to waive any and all provisions, rights  
25 and benefits conferred by any law of any state or territory of the United States, or principle of  
26 common law, which is similar, comparable or equivalent to California Civil Code § 1542.

1           6.3     Nothing in the release shall: (a) preclude the enforcement of the terms of the  
2 Settlement Agreement or the Final Order and Judgment in this Action; or (b) preclude the  
3 Plaintiffs or Class Members from participating in the Claim Resolution Process.  
4

5           6.4     In the event that AERT no longer funds up to the Annual Limitation the Claim  
6 Resolution Process on a global class-wide basis (as opposed to disputed individual claims in the  
7 Claim Resolution Process which are subject to arbitration under Section 4.2.12 of the Settlement  
8 Agreement) prior to the conclusion of the Claim Resolution Process for any reason and the Court  
9 has declared that AERT is no longer funding up to the Annual Limitation the Claim Resolution  
10 Process on a global classwide basis, the release described above shall no longer apply to Class  
11 Members who: (a) have submitted or remain entitled to submit a timely claim under Section 4 of  
12 the Settlement Agreement; and (b) have not exhausted their potential for relief under Section 4  
13 (“Section 6.4 Class Member”). To the extent that the Settlement Agreement release no longer  
14 applies to a Section 6.4 Class Member who has received partial relief in the Claim Resolution  
15 Process, but not full relief, the value of relief such Class Member has already received under the  
16 Claim Resolution Process shall be treated as an offset against any claims for damages against  
17 any Defendants. To the extent that the Settlement Agreement release no longer applies to a  
18 Section 6.4 Class Member, Defendants agree that the release in this Settlement Agreement will  
19 not bar a Section 6.4 Class Member’s claims in a future proceeding and that a Section 6.4 Class  
20 Member’s claims that are currently asserted in this Action and otherwise released under Section  
21 6 of this Agreement will be tolled from February 26, 2008 through the date that the Court has  
22 declared that AERT is no longer funding up to the Annual Limitation the Claim Resolution  
23 Process on a global classwide basis.  
24  
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26





1 notices returned without a forwarding address or that are returned after the Settlement Final  
2 Approval Date.

3       3.     Class Notice by E-Mail: For Class Members who purchased the Product on or  
4 after January 1, 2004 and before January 1, 2008 for whom AERT, Weyerhaeuser, or Class  
5 Counsel have retained an e-mail address, upon entry of the Court's Preliminary Approval Order  
6 of the Settlement Agreement, AERT or the Class Notice Administrator shall e-mail the Class  
7 Notice by Direct Mail in .pdf format to their last known e-mail address within thirty (30) days of  
8 entry of the Court's Preliminary Approval Order of the Settlement Agreement but not less than  
9 55 days before the Fairness Hearing; accordingly, AERT shall have a period of at least 15 days  
10 to begin and complete e-mailing of the Class Notice. The e-mail to the Class Members will also  
11 include a copy of the Request for Official Claim Form substantially similar to Exhibit 6 of the  
12 Settlement Agreement. AERT and the Class Notice Administrator shall not be obligated to  
13 resend any e-mails that are returned undelivered.

14       4.     Publication Notice: AERT or the Class Notice Administrator will publish notice  
15 of the proposed settlement, the Fairness Hearing, and Class Member's objection and appeal  
16 rights in USA Today (the "Publication Notice"). The Publication Notice will be in a form  
17 substantially similar to that set forth in Exhibit 5 to the Settlement Agreement. The published  
18 notice shall be at least 1/16 page size. It will be published once in USA Today not later than 55  
19 days before the Fairness Hearing.

20       5.     Form of Class Notice: The Class Notice by Direct Mail and Publication Notice  
21 will be approved as to form and content by the Court.

22       5.1     The Class Notice shall contain a plain, short statement of the background  
23 of the Action, the conditional class certification and the class relief.  
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1           5.2     The Class Notice will advise potential Class Members that (i) they may  
2 exclude themselves from the Class by serving exclusion requests on the Class Notice  
3 Administrator, Class Counsel, and AERT's Counsel postmarked no later than 25 days before the  
4 date of the Fairness Hearing, (ii) any potential Class Member who does not request exclusion  
5 may, if he or she desires, enter an appearance through counsel and/or otherwise object to this  
6 Settlement Agreement by filing written objections with the Court no later than 25 days before the  
7 Fairness Hearing and serving them upon the offices of Lead Class Counsel and AERT's Counsel,  
8 and (iii) any judgment entered in the Action, whether favorable or unfavorable to the Class, will  
9 include and be binding on all potential Class Members who have not requested exclusion from  
10 the Class, even if they have objected to this Settlement Agreement and even if they have other  
11 pending lawsuits or claims against any of the Released Parties.  
12

14           5.3     The Class Notice will provide information about the attorneys' fees,  
15 expenses, and Plaintiffs' stipend payments described in the Settlement Agreement. It also will  
16 state that AERT will pay those attorneys' fees, expenses, and incentive payments, and any costs  
17 arising from notifying the Class or administering the settlement, except that individual Class  
18 Members will be responsible for the fees and costs of any counsel they retain to represent them  
19 individually or as otherwise provided herein.  
20

21           6.     AERT will publish a copy of the Class Notice by Direct Mail and Request for  
22 Official Claim Form on the ChoiceDek website not later than 55 days before the Fairness  
23 Hearing until 6 months after the Settlement Final Approval Date.  
24

25           7.     On a settlement website, AERT or the Class Notice Administrator will publish a  
26 copy of the Class Notice, Class Notice by Direct Mail, and Request for Official Claim Form on

1 the ChoiceDek website not later than 55 days before the Fairness Hearing until 6 months after  
2 the Settlement Final Approval Date.

3 8. The Parties shall issue a joint press release announcing the settlement in a  
4 mutually agreeable form.  
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2 THE HONORABLE JOHN C. COUGHENOUR  
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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
10 AT SEATTLE

11 STANLEY and BETTY PELLETZ, by  
12 themselves and on behalf of themselves  
13 and all others similarly situated,

14 Plaintiffs,

15 v.

16 WEYERHAEUSER COMPANY and  
17 ADVANCED ENVIRONMENTAL  
18 RECYCLING TECHNOLOGIES, INC.,

19 Defendants.

NO. C08-00334 JCC

20 JOSEPH JAMRUK, STACEY JAMRUK,  
21 MICHAEL MUSTAC, and GREG  
22 KNUDTSON, on behalf of themselves and  
23 all others similarly situated,

24 Plaintiffs,

25 v.

26 ADVANCED ENVIRONMENTAL  
RECYCLING TECHNOLOGIES, INC., a  
Delaware corporation; WEYERHAEUSER  
COMPANY, a Washington corporation,

Defendants.

NO. C08-00403 JCC

FINAL JUDGMENT

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The Court, in accordance with its Order Approving Class Action Settlement and Dismissing Class Action With Prejudice issued concurrently herewith (the "Final Order and Judgment"), ORDERS, ADJUDGES AND DECREES as follows:

1. Pursuant to the Final Order and Judgment, this action is dismissed in its entirety with prejudice;
2. Except as otherwise provided in the Final Order and Judgment, all costs of Court are taxed against the parties incurring same;
3. This is a Final Judgment disposing of all claims asserted by or against any of the parties. Any relief not expressly granted herein or in the Final Order and Judgment is hereby denied.

SIGNED this the \_\_\_\_ day of \_\_\_\_\_, 2008.

---

JOHN C. COUGHENOUR  
UNITED STATES DISTRICT JUDGE

## Exhibit 13

### Cleaning Protocol During Claim Resolution Process

1. AERT anticipates that it will use the following products during the Claim Resolution Process:

Deck cleaner

Bleach and JoMax  
RemedEX - Disinfectant/Sanitizer

Antimicrobial mold inhibitors

DuraBan  
BioShield 75  
ProShield 5000  
Concrobium

2. AERT anticipates that it will initially clean decks generally according the following protocols, but the exact protocol may vary depending upon the deck.
  1. Clean deck of surface debris
  2. Apply deck cleaner such as RemedEX disinfectant
  3. Allow deck to dry completely
  4. Apply antimicrobial mold inhibitor such as DuraBan

**Exhibit 14**

**Photo Analysis Protocol**



# Determination of Mold Density

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A Step-by-Step Guide  
to the Analysis of Submitted Photographs



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Follow the steps outlined for each of the three (3) submitted photographs depicting noon-day light.

*NOTE: If one of those three photos is not clear enough to work with or there is some other flaw precluding its use, you may use the photo taken at dusk in that same location as an alternative.*

# Deck photo analysis process...

- STEP 1.** Using the ruler supplied to you, measure the length of “one inch” of the image of the tape measure represented in the photo to the closest 1/32 of an inch (the smallest markings on your ruler).



*In this instance, the photo is clearly not to scale, as “one inch” of the image of the tape measure in the photo is actually only 23/32 inches long according to the supplied ruler.*

# Deck photo analysis process...

**STEP 2** Take the measurement you just made (e.g. 28/32 of an inch) and invert the fraction (e.g. 32/28).

$$\begin{array}{ccc} 28 & \xrightarrow{\text{red}} & 32 \\ \hline 32 & \xrightarrow{\text{yellow}} & 28 \end{array}$$

**STEP 3** Use a calculator to determine the value of the inverse fraction (e.g.  $32/28 = 1.14$ ).<sup>\*</sup> This will give you your “factor” for purposes of creating a scale copy of the photograph.

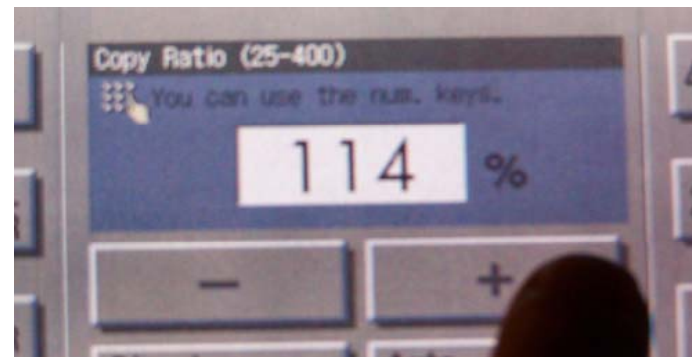
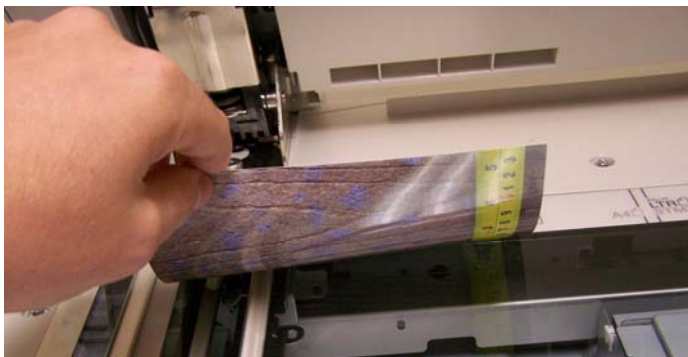


*\* In many instances, the fraction will not yield a round number (e.g.  $32/28 = 1.14285\dots$ ). When this occurs, please round that number appropriately (e.g.  $1.41 \rightarrow 1.4$ ;  $1.44 \rightarrow 1.4$ ;  $1.45 \rightarrow 1.5$ ).*

# Deck photo analysis process...

**STEP 4** Create a scale color copy of the submitted photograph, enlarging it by the factor you just calculated (e.g.  $1.14 = 114\%$  enlargement).

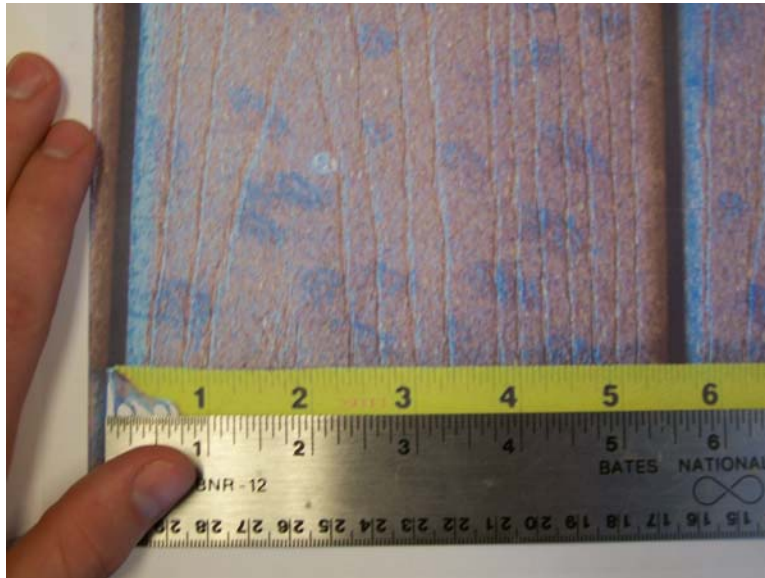
- Orient the photograph in the corner of the copier glass so that it lies flush against both the vertical and the horizontal edges of the copy area.



- Select the appropriate copy ratio and press COPY or START, creating one color scale copy of the photograph.

# Deck photo analysis process...

**STEP 5** Take the scale color copy and your ruler and make sure that one inch on the copied image of the ruler equals one inch on your ruler.



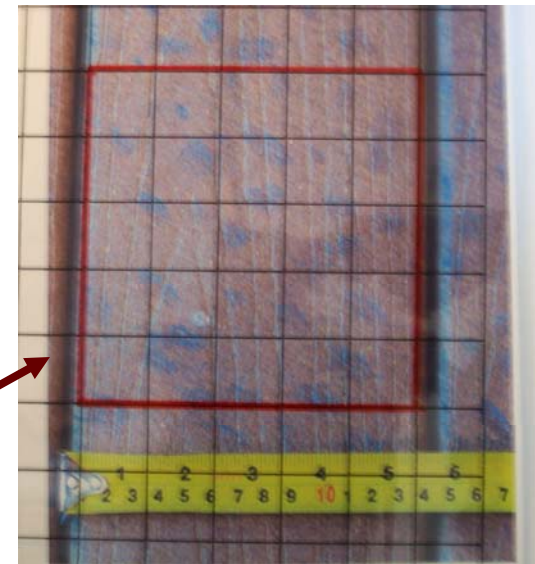
*In this instance, the scale is correct and we can move on to the next step. If the ruler and the copied image of the tape measure do not correlate, you must go back to Step 1, re-measure, and recalculate your factor.*

**STEP 6** Repeat steps 1 through 5 for the other two photographs.

# Deck photo analysis process...

**STEP 7** Take a transparency sheet with pre-printed 1" x 1" grid and lay it over the scale copy of the photo so that a 5 square by 5 square region fits on the image of the deck board. Staple the transparency sheet to the scale copy of the photo to keep it in place.

**STEP 8** Use a permanent marker to draw a border around your chosen 5 square by 5 square area.

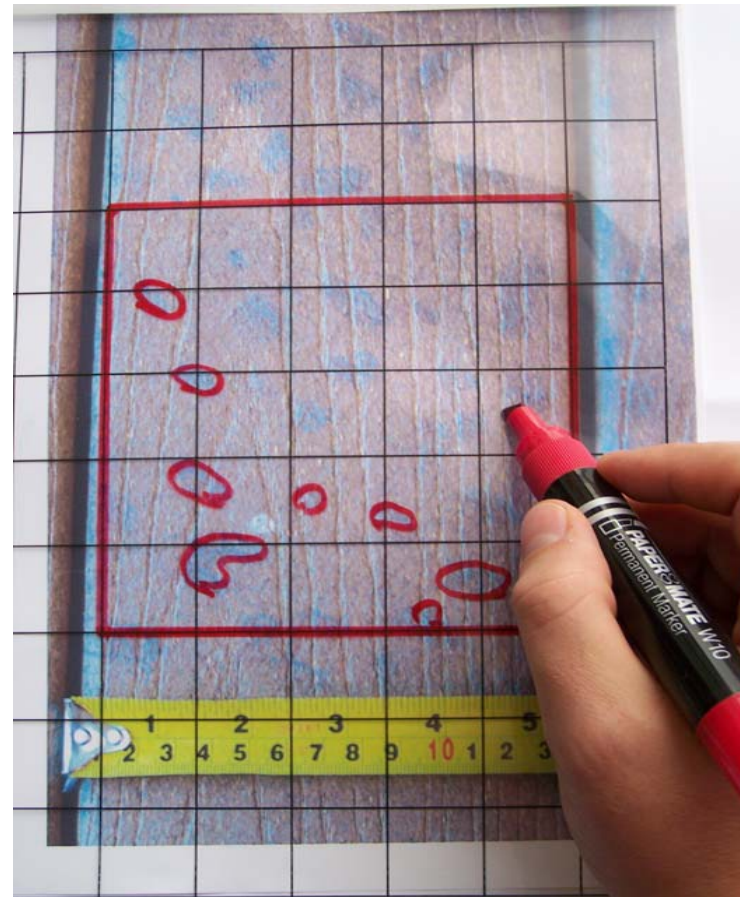


**NOTE:** *If the 5 square by 5 square grid cannot be oriented so as to fit on the image of the single board, the claimant has submitted an unusable, skewed photograph. If this occurs, check the other submitted photographs to see if one of them may serve as an alternative. If not, send the claimant the attached letter indicating that the submitted photographs do not adequately comply with the instructions provided in the Claim Form.*



# Deck photo analysis process...

**STEP 9** With your permanent marker, outline on the transparency all visible mold spots.

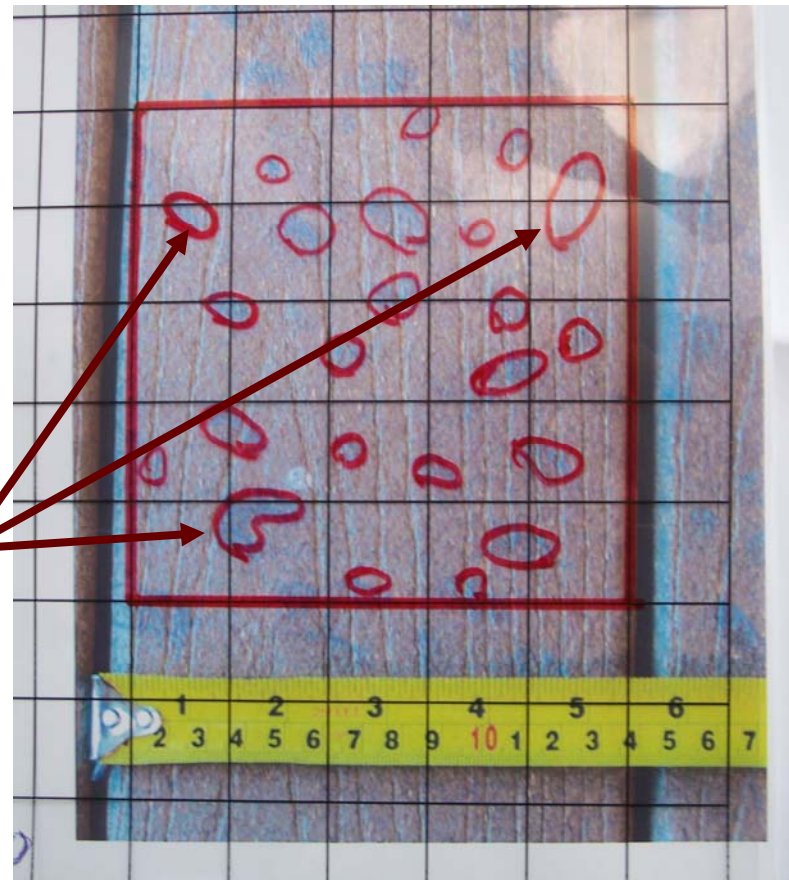




# Deck photo analysis process...

**STEP 10** Count the number of grid squares containing mold spots. If a spot crosses a grid line between two or more squares, only count that spot as appearing in one of those grid squares.

*The example to the right depicts spots covering 22 of 25 squares, as several pairs of neighboring squares share a single spot (see the arrows) that should only be counted once.*



# Deck photo analysis process...

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**STEP 10** Repeat steps 7 through 9 for the scale copies of the other photographs. Remember, if one of the photos or scale copies turns out to be illegible, you may repeat the preceding steps and create a scale copy of the dusk photograph of the same location as an alternative.

**STEP 11** Average the number of grid squares containing mold spots from the three scale copies used. If the average is five (5) or more, the mold density is greater than 20%.

***Example:** If the photo from Step 9 was the first photo you reviewed, (and hypothetically) the second photo reviewed had 13 squares containing mold spots, and the third photograph reviewed had 1 square containing a mold spot, the average number of grid squares containing mold spots for that set of three photos would be 12. Since 12 is greater than or equal to 5, we know that the mold density for that set is greater than or equal to the required 20%.*

$$22 \text{ (in photo 1)} + 13 \text{ (in photo 2)} + 1 \text{ (in photo 3)} / 3 \text{ (# of photos)} = \underline{12}$$



# Deck photo analysis process...

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- If the calculated mold density is equal to or greater than 20%, review the Photographic Proof to determine the approximate percentage of deck surface which is covered by mold – the Deck Surface Mold Coverage.
- If the calculated mold density is less than 20%, the claimant is not eligible for further relief. Please send the attached letter denying relief based on a showing of mold density below the 20% threshold.