

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division**

**IN RE: INTERIOR MOLDED DOORS  
ANTITRUST LITIGATION**

**Lead Civil Action No. 3:18-cv-00718-JAG**

**REVISED SETTLEMENT AGREEMENT**

This agreement (the “Revised Settlement Agreement”) is made and entered into this 27th day of January, 2021 (the “Execution Date”), by and between JELD-WEN, Inc. (“JELD-WEN”) and Masonite Corporation (“Masonite”) (collectively, “Defendants”) and the Direct Purchaser Plaintiffs (“Plaintiffs”), individually and on behalf of a class of direct purchasers of interior molded doors (“IMDs”), as defined in Paragraph 4.

WHEREAS, Plaintiffs allege that Defendants participated in a conspiracy to raise, fix, maintain, or stabilize prices for IMDs in violation of Section 1 of the Sherman Act; and

WHEREAS, Defendants deny Plaintiffs’ allegations, have asserted defenses to Plaintiffs’ claims, and have not conceded or admitted any liability; and

WHEREAS, arm’s-length settlement negotiations have taken place between Plaintiffs’ Co-Lead Counsel and counsel for Defendants, and this Revised Settlement Agreement has been reached as a result of those negotiations; and

WHEREAS, Plaintiffs have conducted an investigation into the facts and the law regarding the claims asserted in the Direct Purchaser action pending in the United States District Court for the Eastern District of Virginia, Lead Civil Action No. 3:18-cv-00718-JAG (the “Action”), including having (1) briefed and argued in opposition to Defendants’ motion to dismiss, (2) analyzed over 1.7 million pages of documents and attended over 20 depositions, and (3) briefed Plaintiffs’ motion for class certification, and have concluded that a settlement with Defendants

according to the terms set forth below is fair, reasonable, adequate, and in the best interest of Plaintiffs and the Settlement Class Members, as defined in Paragraph 18;

WHEREAS, Defendants believe that they are not liable for the claims asserted and have good defenses to Plaintiffs' claims, but nevertheless have decided to enter into this Revised Settlement Agreement in order to avoid further expense, inconvenience, and distraction from burdensome and protracted litigation; to obtain the releases, orders, and judgment contemplated by this Revised Settlement Agreement; and to put to rest with finality all claims that Plaintiffs have or could have asserted against the Releasees, as defined in Paragraph 12; and

WHEREAS, pursuant to Paragraph 53 below, this Revised Settlement Agreement supersedes and replaces the Settlement Agreement the Settling Parties executed on August 31, 2020.

NOW, THEREFORE, in consideration of the agreements and releases set forth herein and other good and valuable consideration, and intending to be legally bound, it is agreed by and between Plaintiffs and Defendants that the Action be settled, compromised, and dismissed with prejudice, without costs or expenses to Plaintiffs, the Settlement Class Members, or Defendants except as provided for herein, subject to the approval of the Court, on the following terms and conditions:

**A. Definitions**

The following terms, as used in this Revised Settlement Agreement, have the following meanings:

1. "Court" means the United States District Court for the Eastern District of Virginia.
2. "Defendants" means JELD-WEN and Masonite.
3. "Final Approval" means that the approval of the Revised Settlement Agreement by the Court has become final when (a) the Court has entered (i) a final judgment order approving the

Settlement set forth in this Revised Settlement Agreement under Federal Rule of Civil Procedure 23(e), and (ii) a final judgment dismissing the Action against Defendants with prejudice and without costs; and (b) the time for appeal or to seek permission to appeal from the Court's approval of the Settlement and the entry of a final judgment has expired or, if appealed, approval of the Settlement and the final judgment have been affirmed in their entirety by the Court of last resort to which such appeal has been taken and such affirmance is no longer subject to further appeal or review. Neither the provisions of Federal Rule of Civil Procedure 60 nor the All Writs Act, 28 U.S.C. § 1651, shall be taken into account in determining the above-stated times.

4. "Interior Molded Doors" or "IMDs" means a type of interior door made by sandwiching a wood frame and a hollow or solid core between two doorskins composed of a high-density fibrous mat and formed into a raised panel design. For purposes of this Settlement Agreement, IMDs includes slabs, which may be sold as a single slab or as "bifolds," as well as pre-hung IMDs, which consist of an IMD slab affixed to a door frame.

5. "Co-Lead Counsel" means the following law firms:

Boni, Zack & Snyder LLC  
15 St. Asaphs Road  
Bala Cynwyd, PA 19004

Spector Roseman & Kodroff, P.C.  
Two Commerce Square  
2001 Market Street, Suite 3420  
Philadelphia, PA 19103

6. "Opt-Out Measurement Period" means the period from and including October 19, 2014, to and including December 31, 2018.

7. "Opt-Out Purchasers" means members of the Settlement Class that have timely and validly exercised their right to be excluded from the Settlement Class.

8. "Opt-Out Percentage" means the aggregate Purchased Percentage of Opt-Out Purchasers.

9. “Plaintiffs” means Grubb Lumber Co., Inc. and Philadelphia Reserve Supply Company, as representatives of the Settlement Class.

10. “Purchased” means IMDs that were bought directly from either Defendant during the Settlement Class Period as reflected in Defendants’ transactional sales data.

11. “Purchased Percentage” means, for any member of the Settlement Class, the total dollar amount of IMDs Purchased (as defined in Paragraph 10) in the United States by such member of the Settlement Class during the Opt-Out Measurement Period divided by the total dollar amount of IMDs Purchased in the United States by all members of the Settlement Class during the Opt-Out Measurement Period.

12. “Releasees” means JELD-WEN and Masonite, and all of their respective current and former, direct and indirect parents, owners, subsidiaries, affiliates, divisions, predecessors, successors, assigns, insurers, and shareholders; and all respective current and former officers, directors, principals, partners, members, heirs, attorneys, representatives, agents, and employees of each of the foregoing entities.

13. “Releasors” means Plaintiffs and the Settlement Class Members, as defined in Paragraph 18, and all of their current and former, direct and indirect parents, owners, subsidiaries, affiliates, divisions, predecessors, successors, assigns, insurers, and shareholders; all respective current and former officers, directors, principals, partners, members, heirs, attorneys, representatives, agents, and employees of each of the foregoing entities; and assignees of any claim that is subject to release, as described in Paragraphs 29 through 31.

14. “Settlement” means the settlement of the Action contemplated by this Revised Settlement Agreement.

15. “Settlement Amount” means \$30.8 million (\$30,800,000.00) in United States currency from each of JELD-WEN and Masonite.

16. “Settlement Class Period” means the period from and including October 19, 2014, to and including December 31, 2018.

17. “Settlement Class” means the class consisting of all persons or entities that Purchased IMDs in the United States during the Settlement Class Period directly from either Defendant. Excluded from the Settlement Class are Defendants, their parent companies, subsidiaries and affiliates, and federal governmental entities and instrumentalities of the federal government and any judicial officer presiding over the Action, and any member of his or her immediate family and judicial staff.

18. “Settlement Class Member” means a member of the Settlement Class that does not timely and validly elect to be excluded from the Settlement Class.

19. “Settling Parties” means Plaintiffs and Defendants.

**B. Expert Witnesses**

20. As part of this Revised Settlement Agreement, Plaintiffs have withdrawn their designation of Dr. Russell Lamb as an expert witness in the Action, except Dr. Lamb may continue as an expert witness for Plaintiffs in connection with preliminary and final approval of this Settlement. However, should, for whatever reason, the Settlement not receive Final Approval or be otherwise rescinded, Plaintiffs’ withdrawal of Dr. Lamb as an expert witness in the Action as part of the Settlement shall become null and void.

**C. Stipulation to Class Certification**

21. The Settling Parties hereby stipulate for purposes of this Settlement only that the requirements of Federal Rules of Civil Procedure 23(a) and 23(b)(3) are satisfied and that subject to Court approval, the Settlement Class, as defined in Paragraph 17, shall be certified for settlement purposes as to Defendants. The Settling Parties stipulate and agree to the conditional certification of the Settlement Class for purposes of this Settlement only. Should, for whatever reason, the

Settlement not receive Final Approval or otherwise be rescinded, the Settling Parties' stipulation to class certification as part of the Settlement shall become null and void, and no party may cite to or refer to the Court's approval of the Settlement Class as persuasive or binding authority with respect to any motion to certify any such class or any Defendants' motion opposing such certification. Defendants expressly reserve their rights to oppose class certification should this Settlement not be granted Final Approval.

22. The Settling Parties agree that any filings or orders related to conditional class certification sought pursuant to Paragraph 21 are irrelevant and may not be cited or referred to in any way in the Indirect Purchaser action pending in the United States District Court for the Eastern District of Virginia, Lead Civil Action No. 3:18-cv-00850-JAG.

**D. Approval of this Revised Settlement Agreement and Dismissal of the Action**

23. The Settling Parties agree to make reasonable best efforts to take actions to effectuate this Revised Settlement Agreement and shall cooperate to promptly seek and obtain the Court's preliminary and Final Approval of this Revised Settlement Agreement, including without limitation seeking the Court's approval of procedures (including the dissemination of class notice under Federal Rules of Civil Procedure 23(c) and (e), and scheduling a final fairness hearing) to obtain Final Approval of the Settlement and the final dismissal with prejudice of the Action as to Defendants and the Releasees.

24. By January 29, 2021, Plaintiffs shall submit to the Court a motion requesting that the Court preliminarily approve this Settlement and authorize dissemination of notice to the Settlement Class (the "Motion"). The Motion shall include: (a) a proposed form of order preliminarily approving the Settlement; (b) proposed forms of, and methods for, dissemination of notice to the Settlement Class; and (c) a proposed form of final judgment order—all of which shall be furnished to Defendants for review and prior approval by January 28, 2021, such approval not

to be unreasonably withheld. Notwithstanding the foregoing, if Plaintiffs include information in the Motion and accompanying material regarding the proposed distribution of settlement funds in this Action, such information shall not be subject to Defendants' review and prior approval. The Settling Parties agree that notice of the Settlement as approved by the Court shall be mailed and/or emailed (if possible) to persons and entities identified as members of the Settlement Class by Defendants. Notice of the Settlement shall also be published once in an industry publication and on a website that is under the supervision of Co-Lead Counsel. If the Settlement is preliminarily approved by the Court, (i) as soon as reasonably practicable, but in any event no more than sixty (60) calendar days thereafter, Plaintiffs shall provide mailed notice to the Settlement Class, and (ii) Plaintiffs shall provide notice to the Settlement Class in an industry publication on the first available publication date on or after seven (7) calendar days from the provision of individually mailed notice. Plaintiffs may provide each Defendant a machine-readable list of its customers to whom Plaintiffs intend to mail notice. Within fourteen (14) calendar days thereafter, Defendants agree to provide Plaintiffs with any reasonably available, up-to-date mailing address and, if reasonably available, email address for each listed customer. Subject to the lead time required for publication in the industry publication selected, Plaintiffs shall exercise reasonable efforts to mail and publish notice to the Settlement Class within forty-five (45) calendar days of preliminary approval of the Settlement.

25. Within ten (10) calendar days after this Revised Settlement Agreement and the accompanying motion papers seeking preliminary approval are filed with the Court, Defendants shall cause notice of this Revised Settlement Agreement to be served upon appropriate State and Federal officials as provided in the Class Action Fairness Act, 28 U.S.C. § 1715.

26. If the Settlement is preliminarily approved by the Court, Plaintiffs shall promptly seek Final Approval of the Settlement and entry of a final judgment order as to Defendants, the

text of which shall be furnished to Defendants for review and prior approval, such approval not to be unreasonably withheld. The text shall include provisions:

- (a) certifying the Settlement Class under Federal Rule of Civil Procedure 23(b)(3), solely for the purpose of this Settlement;
- (b) granting final approval of the Settlement as fair, reasonable, and adequate within the meaning of Federal Rule of Civil Procedure 23(e), and directing the consummation of the Settlement according to its terms;
- (c) directing that, as to Defendants, the Action be dismissed with prejudice and, except as provided for herein, without costs;
- (d) reserving exclusive jurisdiction over the Settlement and this Revised Settlement Agreement, including its administration and consummation, to the United States District Court for the Eastern District of Virginia, Richmond Division; and
- (e) directing entry of final judgment as to Defendants.

Plaintiffs shall inform Defendants of the date by which Plaintiffs will move for Final Approval, at least fourteen (14) calendar days before filing the motion.

27. On the Execution Date, the Settling Parties shall be bound by the terms of this Revised Settlement Agreement, and this Revised Settlement Agreement shall not be rescinded except in accordance with Section H.

28. Neither this Revised Settlement Agreement (whether or not it becomes final) nor the final judgment, nor any and all negotiations, documents, and discussions associated with them, shall be deemed or construed to be an admission by Defendants, or evidence of any violation of any statute or law or of any liability or wrongdoing whatsoever by Defendants, or of the truth of any of the claims or allegations contained in any complaint or any other pleading filed in the Action; and evidence thereof shall not be discoverable or used directly or indirectly, in any way, whether in the Action, or in any other arbitration, action or proceeding whatsoever, against Defendants. Neither this Revised Settlement Agreement, nor any of its terms and provisions, nor any of the negotiations or proceedings connected with it, nor any other action taken to carry out



this Revised Settlement Agreement by Defendants, shall be referred to, offered as evidence, or received in evidence in any pending or future civil, criminal, or administrative action, arbitration, or proceedings, except in a proceeding to enforce this Revised Settlement Agreement, or to defend against the assertion of Released Claims, as defined in Section E, or as otherwise required by law.

**E. Releases, Discharge, and Covenant Not to Sue**

29. Upon Final Approval and in consideration of payment of the Settlement Amount into the Escrow Account as specified in Section F, Releasees shall be fully, finally, and forever released and discharged by Releasers from any and all causes of action asserted or that could have been or could still be alleged or asserted, including without limitation claims, demands, actions, suits, injuries, causes of action, damages, judgments, losses, and rights of action of any nature, whenever and however incurred (whether actual, punitive, treble, compensatory, or otherwise), including without limitation costs, fees, expenses, penalties, and attorneys' fees, whether class, individual, or otherwise in nature, that Releasers, or any of them, ever had, now has, or hereafter can, shall, or may have, directly, representatively, derivatively, or in any other capacity, against Releasees (or any of them), whether known or unknown, suspected or unsuspected, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, asserted or unasserted, whether in law or equity or otherwise, in whole or in part or arising out of or relating in any way to any conduct, act, or omission of Releasees (or any of them) prior to and including the preliminary approval date, based upon any of the facts, occurrences, transactions, agreements, conspiracies, communications, announcements, notices, or other matters alleged in the Action, under the Sherman Act, 15 U.S.C. § 1, *et seq.*, or any other antitrust, unjust enrichment, unfair competition, unfair practices, trade practices, price discrimination, unitary pricing, racketeering, contract, civil conspiracy or consumer protection law, whether under federal, state, local or foreign law, or any facts, circumstances, acts or omissions arising out of or related to the allegations, including without

limitation in any other complaints filed in this Action or any related actions (the “Released Claims”); provided, however, that nothing in this Settlement Agreement shall release: (a) any claims based upon indirect purchases of IMDs brought by prospective members of any class of indirect purchasers (the “Indirect Purchaser Class”); or (b) claims arising in the ordinary course of business for any product defect, breach of contract, product performance, or warranty claims relating to IMDs. Releasors covenant and agree that they will not, after the Execution Date of this Revised Settlement Agreement, seek to recover from any Releasee based, in whole or in part, upon any of the Released Claims or conduct at issue in the Released Claims. Released Claims do not include any claims arising out of the enforcement of this Revised Settlement Agreement.

30. In addition to the provisions of Paragraph 29, Releasors hereby expressly waive and release, upon Final Approval of this Revised Settlement Agreement, any and all provisions, rights, and benefits conferred by Section 1542 of the California Civil Code, which states:

Certain claims not affected by general release. A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party;

or by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Section 1542 of the California Civil Code. Each Releasor may hereafter discover facts other than or different from those the Releasor knows or believes to be true with respect to the claims that are released pursuant to provisions of Paragraph 29, but each Releasor hereby expressly waives and fully, finally, and forever settles and releases, upon this Revised Settlement Agreement becoming final, any known or unknown, suspected or unsuspected, contingent or non-contingent claim with respect to the subject matter of the provisions of Paragraph 29, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

31. Upon Final Approval, Defendants shall be deemed to have fully released Releasors from any claims relating to the institution or prosecution of the Action.

**F. Payment of the Settlement Amount**

32. The Settlement Amount includes the full and complete cost of the settlement notice, claims administration, Settlement Class Members' compensation, class representatives' service awards, attorneys' fees (other than attorneys' fees and costs to be borne by any Opt-Out Plaintiff), and reimbursement of all actual expenses of the Action, any other litigation costs of Plaintiffs, and all applicable taxes, if any, assessable on the Settlement Fund or any portion thereof (subject to Court approval as appropriate). In no event shall each of JELD-WEN's or Masonite's individual liability with respect to the Settlement exceed \$30.8 million (\$30,800,000.00) each. Releasors shall look solely to the Settlement Amount for settlement and satisfaction against the Releasees of all Released Claims and shall have no other recovery against the Releasees.

33. Each of JELD-WEN and Masonite has paid by wire transfer \$50,000 of the Settlement Amount to an account at a bank designated by Co-Lead Counsel (the "Notice Fund"), to be used to pay the costs of providing notice of the Settlement to the Settlement Class and for notice administration. After preliminary approval of the Settlement, Co-Lead Counsel may spend the funds in the Notice Fund to provide notice of the Settlement to the Settlement Class, pursuant to the notice plan approved by the Court, and for notice administration, without an order from the Court. The amount spent or incurred for notice and notice administration is not refundable to Defendants in the event the Revised Settlement Agreement is not approved, rescinded, or otherwise fails to become effective.

34. No later than ten (10) business days after entry of the final judgment order, each Defendant shall pay or cause to be paid by wire transfer the remainder of that party's Settlement Amount, less any reduction pursuant to Paragraphs 35 through 37, into an escrow account or

accounts that will be established by Co-Lead Counsel (the “Escrow Account”). The Settling Parties understand and agree that neither Masonite nor JELD-WEN shall be responsible for the payment of the other’s share of the Settlement Amounts. Those amounts, along with any interest earned thereon and any funds that may remain from the \$100,000 provided for notice costs pursuant to Paragraph 33, shall be held in escrow and constitute the settlement fund (the “Settlement Fund”). The Escrow Account and the Settlement Fund shall be administered in accordance with the provisions of Section G.

35. As set forth in Paragraph 36, the Settlement Amount shall be reduced, in accordance with the terms of Paragraph 36, if one or more members of the Settlement Class elects to be an Opt-Out Purchaser. If, at any time, either Defendant reaches an agreement, either formal or informal, written or verbal, with any Opt-Out Purchaser to settle any of the claims that would have been Released Claims, as defined in Section E (an “Opt-Out Settlement”) had the Opt-Out Purchaser not opted out, and obtains a release of any of the Released Claims from such Opt-Out Purchaser, the Defendant that entered into that Opt-Out Settlement will, within seven (7) calendar days, disclose the fact of that Opt-Out Settlement to Co-Lead Counsel. That disclosure shall be in writing and include (1) the name and business address of the Opt-Out Purchaser, (2) counsel information for the Opt-Out Purchaser or, if no counsel was involved in the Opt-Out Settlement, the appropriate point of contact for the Opt-Out Purchaser, including name and contact information, and (3) the date the Opt-Out Settlement was reached. Defendants understand that Plaintiffs may subpoena Defendants to ascertain the value of such Opt-Out Settlement, and agree they will not object to or move to quash any such subpoena. Defendants agree to accept service of such a subpoena sent to their undersigned counsel. Defendants shall not object to Co-Lead Counsel disclosing the dollar value of any Opt-Out Settlement to the Court if necessary, subject to the terms of disclosure to “Outside Counsel” only, under the Protective Order entered by the Court on

February 28, 2019 in the above-captioned case (ECF No. 106). Further, Defendants do not have any objections to and shall not object to Co-Lead Counsel seeking fees from any Opt-Out Purchaser.

36. In the event the Settlement Amount is to be reduced pursuant to Paragraph 35, each of JELD-WEN's and Masonite's Settlement Amounts shall be reduced by the Opt-Out Percentage, rounded to two decimal places, or if the Settlement Amounts have already been paid by Defendants, such amounts shall be refunded to them no later than seven (7) calendar days after the date Plaintiffs move for Final Approval.

37. Within fourteen (14) calendar days after the end of the period to request exclusion from the Settlement Class established by the Court and set forth in the notice, Co-Lead Counsel shall provide Defendants, through their counsel, with a written list of all Opt-Out Purchasers. With respect to any potential Opt-Out Purchaser, Defendants reserve all of their legal rights and defenses, including without limitation any defenses relating to whether the Opt-Out Purchaser is a direct purchaser of any allegedly price-fixed IMDs or has standing to bring any claim. Co-Lead Counsel and Defendants will ascertain the Opt-Out Percentage. Plaintiffs and Defendants agree to cooperate on determining the Purchased Percentage attributable to any Opt-Out Purchaser. In the event the Settling Parties are unable to agree upon the Opt-Out Percentage under this Paragraph, they shall submit the issue to the Court adjudicating the Action. Plaintiffs may attempt to obtain final rescission of any decision by an Opt-Out Purchaser to request exclusion from the Settlement Class, up until seven (7) calendar days before Plaintiffs move for Final Approval (the "Opt-Out Rescission Deadline"). If Plaintiffs provide Defendants with one or more written notices from Opt-Out Purchasers to rescind their requests for exclusion from the Settlement Class, then those purchasers who have so rescinded their requests for exclusion shall no longer be considered Opt-Out Purchasers. Neither Plaintiffs nor Defendants shall solicit or advise potential members of the

Settlement Class to request exclusion from the Settlement Class. Defendants will take no action to encourage opt-outs or advise potential members of the Settlement Class to opt out of the Settlement Class. If contacted by potential members of the Settlement Class about opting out of the Settlement Class, Defendants will promptly refer such potential members of the Settlement Class to Co-Lead Counsel. If Defendants have already funded the entire Settlement Amounts pursuant to Paragraph 34, any amounts due to Defendants as a result of a reduction in the Settlement Amounts as provided above shall be refunded to Defendants no later than seven (7) calendar days after the date Plaintiffs move for Final Approval. If Defendants have not already funded the entire Settlement Amounts, the Settlement Amounts due to Plaintiffs pursuant to Paragraph 32 shall be reduced by the amounts specified in Paragraph 36.

**G. The Settlement Fund**

38. The Escrow Account shall be established as a “qualified settlement fund” as defined in Section 1.468B-1(a) of the United States Treasury Regulations.

39. The cost of settlement notice, claims administration, class representatives’ incentive awards, attorneys’ fees, reimbursement of all actual expenses of the Action, any other litigation costs of Plaintiffs, and all applicable taxes, if any, shall be paid from the Notice Fund and the Settlement Fund. The Settling Parties shall have the right to audit amounts paid from the Settlement Fund prior to the Final Approval of the Settlement.

40. The Settlement Fund shall be invested in United States Government Treasury obligations or United States Treasury money market funds. The Notice Fund may be deposited in a bank account, in which case it will be deposited in a federally insured interest-bearing account.

41. Defendants shall not have any responsibility, financial obligation, or liability whatsoever with respect to the investment, distribution, use, or administration of the Settlement

Fund, including, but not limited to, the costs and expenses of such investment, distribution, use, or administration, except as expressly otherwise provided in this Revised Settlement Agreement.

42. Each Defendant's only payment obligation is to pay the Settlement Amount. Defendants shall not be liable for any costs, expenses, or fees of any of Plaintiffs' respective attorneys, experts, advisors, agents, or representatives. Payment of all such costs, expenses, and fees, as approved by the Court, shall be paid only out of the Settlement Fund. No disbursements shall be made from the Notice Fund or the Settlement Fund prior to Final Approval of this Revised Settlement Agreement except as described in Paragraphs 33 and 39.

43. The distribution of the Settlement Fund shall be administered pursuant to a plan of allocation (the "Plan of Allocation") proposed by Co-Lead Counsel and subject to the approval of the Court. If such approval is not obtained, Co-Lead Counsel shall revise the Plan of Allocation as necessary until approval of the Court is obtained. Defendants shall have no participatory or approval rights with respect to the Plan of Allocation, and the Court's rejection of the Plan of Allocation shall not affect the validity or enforceability of this Revised Settlement Agreement.

44. Defendants will take no position on any application for fees or reimbursement of expenses made by Co-Lead Counsel or by the Settlement Class Members, or any application for class representatives' service awards, out of the Settlement Fund.

#### **H. Rescission**

45. If the Court refuses to approve this Revised Settlement Agreement or any material part hereof, including if the Court does not certify the Settlement Class in accordance with the specific Settlement Class definition set forth in this Revised Settlement Agreement; or if such approval is modified in material way or set aside on appeal; or if a final judgment order with the provisions generally described in Paragraph 26 is not entered; or if the Court enters the final judgment order and appellate review is sought, and on such review, such final judgment order is

not affirmed in material part, then Defendants, on the one hand, and Plaintiffs, on the other, shall each, in their sole discretion, have the option to rescind this Revised Settlement Agreement in its entirety (except as hereafter provided in this Paragraph) by written notice to the Court and to counsel for the other Settling Parties filed and served within fourteen (14) calendar days of the entry of an order not granting court approval or Final Approval, or having the effect of disapproving or materially modifying the terms of the Revised Settlement Agreement. A modification or reversal on appeal of any amount of the Settlement Fund that the Court authorizes to be used to pay Plaintiffs' attorneys fees or litigation expenses shall not be deemed a modification of all or part of the terms of this Revised Settlement Agreement or such final judgment order, and shall not be grounds for rescission.

46. If the Opt-Out Percentage exceeds thirty percent (30%), then Defendants shall, in their sole discretion, have the option to rescind this Revised Settlement Agreement in its entirety, by written notice to the Court and to counsel for the other Settling Parties filed and served at any time after the Opt-Out Rescission Deadline and before Plaintiffs move for Final Approval.

47. A decision by either Defendant to rescind this Revised Settlement Agreement, for any reason under this Section H, will have the effect of rescinding the Revised Settlement Agreement as to both Defendants.

48. If the Settlement or Revised Settlement Agreement is rescinded for any valid reason, then the balance of the Settlement Amount in the Notice Fund and the Settlement Fund shall be returned to Defendants within fourteen (14) calendar days. In the event the Revised Settlement Agreement is rescinded, the funds already properly expended for the costs of notice and administration will not be returned to Defendants. Additionally, in such event, funds to pay for notice, administration expenses, or taxes that have been properly incurred but not yet paid will also not be returned to Defendants.



49. If the Settlement or Revised Settlement Agreement is rescinded for any valid reason before payment of claims to Settlement Class Members, then the Settling Parties will be restored to their respective positions in the Action as of the Execution Date. In that event, the Action will proceed as if this Revised Settlement Agreement had never been executed, and this Revised Settlement Agreement, and representations made in conjunction with this Revised Settlement Agreement, may not be used in the Action or otherwise for any purpose. Plaintiffs and Defendants expressly reserve all rights if the Revised Settlement Agreement does not become effective or if it is rescinded by Plaintiffs or Defendants pursuant to this Section H.

50. Defendants' right to rescind this Revised Settlement Agreement is a material term of this Revised Settlement Agreement.

51. Defendants reserve all their legal rights and defenses with respect to any potential Opt-Out Purchaser.

**I. Taxes**

52. Co-Lead Counsel shall be solely responsible for filing all informational and other tax returns necessary to report any net taxable income earned by the Settlement Fund, shall file all informational and other tax returns necessary to report any income earned by the Settlement Fund, and shall be solely responsible for taking out of the Settlement Fund, when legally required, any tax payments, including interest and penalties due on income earned by the Settlement Fund. All taxes (including any interest and penalties) due with respect to the income earned by the Settlement Fund shall be paid from the Settlement Fund. Defendants shall have no responsibility to make any filings related to the Settlement Fund and shall have no responsibility to pay taxes on any income earned by the Settlement Fund. However, in the event the Settlement does not become final and any funds including interest or other income are returned to Defendants, Defendants shall be responsible for the payment of all taxes (including any interest or penalties), if any, on said interest

or other income. Defendants make no representations regarding, and shall not be responsible for, the tax consequences of any payments made pursuant to this Revised Settlement Agreement to Co-Lead Counsel or to any Settlement Class Member.

**J. Miscellaneous**

53. This Revised Settlement Agreement constitutes the entire agreement between Plaintiffs and Defendants pertaining to the Settlement of the Action against Defendants. Plaintiffs and Defendants agree that the Settlement Agreement they entered into on August 31, 2020 is null and void and that this Revised Settlement Agreement shall replace that previous agreement in its entirety. This Revised Settlement Agreement may be modified or amended only by a writing executed by Plaintiffs and Defendants.

54. Neither this Revised Settlement Agreement nor any negotiations or proceedings connected with it shall be deemed or construed to be an admission by any party or any Releasee of any wrongdoing or liability or evidence of any violation by Defendants of any federal or state statute or law either in the Action or in any related actions or proceedings, and evidence thereof shall not be discoverable or used, directly or indirectly, in any way, except in a proceeding to interpret or enforce this Revised Settlement Agreement. This Revised Settlement Agreement represents the settlement of disputed claims and does not constitute, nor shall it be construed as, an admission or disparagement of the correctness of any position asserted by any party, or an admission of liability or lack of liability or of any wrongdoing or lack of any wrongdoing by any party, or as an admission of any strengths or weaknesses of Plaintiffs' claims or Defendants' defenses. The Settlement Amounts are paid as a commercial settlement and not as a fine. Defendants specifically deny any wrongdoing or liability by any of the Releasees.

55. Any delay in the completion of any settlement between Defendants and the Indirect Purchaser Class or any other party shall not form the basis of any delay in finalizing the Revised

Settlement Agreement, nor shall the inability of Defendants to complete a settlement with the Indirect Purchaser Class or any other party serve as an impediment to finalizing the Revised Settlement Agreement, seeking preliminary approval of the Revised Settlement Agreement, or seeking Final Approval of the Revised Settlement Agreement.

56. This Revised Settlement Agreement may be executed in counterparts by Plaintiffs and Defendants, and a fax or scanned signature shall be deemed an original signature for purposes of executing this Revised Settlement Agreement.

57. Neither Plaintiffs nor Defendants shall be considered the drafter of this Revised Settlement Agreement or any of its provisions for the purpose of any statute, the common law, or rule of interpretation that would or might cause any provision of this Revised Settlement Agreement to be construed against the drafter.

58. The provisions of this Revised Settlement Agreement shall, where possible, be interpreted in a manner to sustain their legality and enforceability.

59. The Court shall retain jurisdiction over the implementation and enforcement of this Revised Settlement Agreement and the Settlement.

60. Any disputes between Plaintiffs and Defendants concerning this Revised Settlement Agreement shall, if they cannot be resolved by the Settling Parties, be submitted to the Court.

61. This Revised Settlement Agreement shall be governed and interpreted according to the substantive laws of the Commonwealth of Virginia, without regard to its choice of law or conflict of law principles.

62. Each Settling Party acknowledges that it has been and is being fully advised by competent legal counsel of such party's own choice and fully understands the terms and conditions of this Revised Settlement Agreement, and the meaning and import thereof, and that such party's

execution of this Revised Settlement Agreement is with the advice of such party's counsel and of such party's own free will. Each Settling Party represents and warrants that it has sufficient information regarding the transaction and the other Settling Parties to reach an informed decision, and has, independently and without relying upon the other Settling Parties, and based on such information as it has deemed appropriate, made its own decision to enter into this Revised Settlement Agreement, and was not fraudulently or otherwise wrongfully induced to enter into this Revised Settlement Agreement.

63. Each of the undersigned attorneys represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Revised Settlement Agreement.

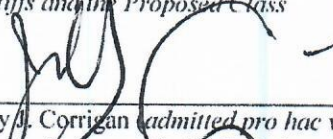
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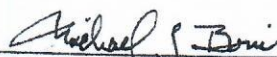
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Agreed to on behalf of Defendant JELD-WEN, Inc.:

*James H. Mutchnik*

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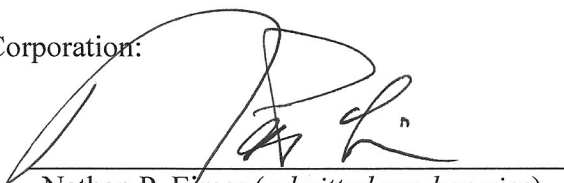
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