

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

MDL No. 2328

IN RE: POOL PRODUCTS
DISTRIBUTION MARKET ANTITRUST
LITIGATION

SECTION: R(2)
JUDGE VANCE
MAG. JUDGE WILKINSON

THIS DOCUMENT RELATES TO ALL DIRECT-PURCHASER PLAINTIFF CASES

ORDER

Before the Court is Direct Purchaser Plaintiffs' (DPPs) Motion for Preliminary Approval of Settlement Between Direct Purchaser Plaintiffs and Zodiac Pool Systems, Inc. and Certification of a Settlement Class.¹ The parties propose combining notice for the Zodiac settlement with notice for the settlement between DPPs and Hayward Industries, Inc. For that reason, the dates provided in the procedural order regarding the Hayward settlement are hereby VACATED. The Hayward settlement shall be subject to the dates provided in this order.

In addition, for the reasons specified in the order and reasons issued today in conjunction with this procedural order, IT IS HEREBY ORDERED THAT:

¹ R. Doc. 501.

1. Pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure, the Court certifies the following class for the purposes of the Zodiac settlement only (the "Settlement Class"):

All persons and entities located in the United States that purchased Pool Products in the United States directly from PoolCorp, during the Class Period from November 22, 2007 to November 21, 2011. Excluded from the Settlement Class are Defendants and their subsidiaries, parents, or affiliates, whether or not named as a Defendant in the Second Consolidated Amended Class Action Complaint, and government entities.

Also excluded from the class are any putative class members who exclude themselves by filing a timely, valid request for exclusion.

2. The Court finds, for the purposes of the Zodiac settlement only, that the prerequisites for a class action under Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure have been satisfied in that: (a) the number of class members is so numerous that joinder of all members of the class is impracticable; (b) there are questions of law and fact common to each member of the class; (c) the claims of the Class Representatives are typical of the claims of the class they represent; (d) the Class Representatives will fairly and adequately represent the interests of the class; (e) the questions of law and fact common to the members of the class predominate over any questions affecting only individual members of the class; and (f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The reasons for this ruling are contained in the separate order issued simultaneously with this one. The

Court's certification of the Settlement Class as provided herein is without prejudice to, or waiver of the rights of any nonsettling defendant to contest class certification. In addition, Zodiac does not waive its objections, arguments, or defenses with respect to class certification should there be no final settlement of the action with respect to Zodiac.

3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Aqua Clear Pools & Decks; A Plus Pools Corp.; Liquid Art Enterprises d/b/a Carl Boucher; Oasis Pool Service, Inc.; Pro Pool Services; SPS Services, LLC d/b/a Premier Pools & Spas; and Thatcher Pools, Inc. are appointed as the Class Representatives.

4. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court appoints as Settlement Class Counsel the law firms of Herman, Herman & Katz, LLC, 820 O'Keefe Avenue, New Orleans, LA 70113; Bernstein Liebhard LLP, 10 East 40th Street, 22nd Floor, New York, NY 10016; Kaplan Fox & Kilsheimer LLP, 850 Third Avenue, New York, NY 10022; and Labaton Sucharow LLP, 140 Broadway, New York, NY 10005.

5. Garden City is hereby appointed as the Claims Administrator for the settlement to be responsible for: (a) establishing a P.O. Box and website (to be included in the Notice of Settlement of Class Action) for the purpose of communicating with Settlement Class Members; (b) disseminating Notice to the Settlement Class; and (c) accepting and maintaining documents sent

from the Settlement Class Members, including exclusion requests. Garden City shall be paid from the settlement funds in escrow, pursuant to further orders of this Court on *ex parte* motion for payment with itemized invoices and other appropriate documentation attached.

6. Citibank, N.A. is hereby appointed as the Escrow Agent for the settlement. Citibank, N.A. shall be paid from the settlement funds in escrow, pursuant to further orders of this Court on *ex parte* motion for payment with itemized invoices and other appropriate documentation attached.

7. A final fairness hearing pursuant to Federal Rule of Civil Procedure 23(e) is hereby scheduled to be held before the Court on **May 14, 2015**, for the following purposes:

- (a) to determine whether the settlement is fair, reasonable, and adequate, and should be approved by the Court;
- (b) to determine whether the proposed allocation plan for the settlement fund is fair and reasonable and should be approved by the Court;
- (c) to consider the application of Class Counsel for an award of attorneys' fees and expenses; and
- (d) to rule upon such other matters as the Court may deem appropriate.

8. The Court approves the form, substance, and requirements of (a) the Notice of Pendency of Class Action and Proposed Settlement and (b) the Proof of Claim form.

9. The Notice and the Proof of Claim, approved by this Court, shall be mailed, by first class mail, postage prepaid, **within 28 calendar days** of the entry of this Order to all class members for whom an address is available from PoolCorp's transaction data.

10. The Claims Administrator shall also, **within 28 calendar days** of the entry of this Order establish (1) a case-specific website, which shall include information about the proposed settlement and its status and links to court filings and settlement documents, including the Settlement Agreement, Long Notice, Short Notice, and Proof of Claim Form; and (2) a toll-free settlement hot-line to respond to Settlement Class Member questions.

11. The Court approves the form of the Short Notice and directs that the Claims Administrator shall cause this notice to be published in the *Pool & Spa News* and *Aqua* **within 14 calendar days** of the mailing of the Notice.

12. Class Counsel shall, no later than **ten calendar days before** the date of the Final Fairness Hearing, file with the Court evidence that notice has been carried out as set out above.

13. The Court finds that the form and method of notice meet the requirements of due process and Rule 23 of the Federal Rules of Civil Procedure.

14. Class members shall be bound by all of the Court's orders in this case applicable to direct purchasers, unless they request exclusion from the class in a timely and proper manner according to the following directions.

A class member who wishes to be excluded from the Hayward settlement, the Zodiac settlement, or both settlements shall mail the request in written form, by first class mail, postage prepaid, and postmarked by **Thursday, April 9, 2015**, to the Post Office Box address listed in the Notice. A request for exclusion shall include the following:

- A statement requesting exclusion from the Hayward Settlement Class, the Zodiac Settlement Class, or both Settlement Classes;
- The case name: *In Re: Pool Products Distribution Market Antitrust Litigation, 2:12-md-02328-SSV-JCW*;
- The name, address, telephone number, and signature of the person requesting exclusion; and
- All trade names or business names and addresses used by the person requesting exclusion or used by a business of the person requesting exclusion, as well as any subsidiaries.

The request for exclusion shall not be effective unless the request provides the required information and is made in a timely manner, unless the exclusion is otherwise accepted by the Court.

15. Class members requesting exclusion from the Zodiac Settlement Class shall not be entitled to receive any payment out of the Settlement Fund as described in the Settlement Agreement and Notice.

16. The Court will consider comments and/or objections to the Settlements, the allocation plans, or the awards of attorneys' fees and reimbursement of expenses only if such comments or objections and any supporting papers are served by **Thursday, April 9, 2015** upon each of the following:

Liaison Counsel

Russ M. Herman
HERMAN, HERMAN & KATZ LLC
820 O'Keefe Avenue
New Orleans, LA 70113

Robert N. Kaplan
KAPLAN FOX & KILSHEIMER LLP
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Counsel for Hayward Industries, Inc.

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MCCARTER & ENGLISH LLP
Four Gateway Center
100 Mulberry Street
Newark, NJ 07102

Counsel for Zodiac Pool Systems, Inc.

J. Brent Justus
MCGUIREWOODS LLP
One James Center
901 East Cary Street
Richmond, VA 23219

and the objector has filed the objections with the Clerk of the Court, U.S. District Court, Eastern District of Louisiana, 500 Poydras Street, New Orleans, LA 70130. Attendance at the hearing is not necessary, but persons who wish to be heard orally in opposition to the approval of the Settlement, the allocation plan, and/or Class Counsel's request for attorneys' fees are required to indicate in their written objections their intention to appear at the hearing. Persons who intend to object and desire to present evidence at the hearing must include in their written objections the identity of any witnesses they intend to call to testify and exhibits they intend to introduce into evidence at the hearing. Class members need not appear at the hearing or take any other action to indicate their approval.

17. Unless otherwise ordered by this Court, any class member who does not object in the manner prescribed above shall be deemed to have waived all such objections and shall forever be foreclosed from making any objection to the fairness, adequacy, or reasonableness of the settlement, the Order and Final Judgment approving the settlement, the allocation plan, or Class Counsel's

application for an award of attorneys' fees and reimbursement of expenses.

18. The Court retains exclusive jurisdiction over the action to consider all further matters arising out of or connected with the Settlement.

19. All papers in support of the settlement, allocation plan, and any application for attorneys' fees or expenses shall be filed and served by **Thursday, March 12, 2015**.

20. Any reply motions in support of the settlement, allocation plan, and any application for attorneys' fees or expenses and/or responses to objections shall be filed and served by **Thursday, April 23, 2015**.

21. A class member who wishes to file a claim in the Hayward settlement, the Zodiac settlement, or both settlements shall mail a completed claim form, with all required documentation, by first class mail, postage prepaid, and postmarked by **December 11, 2015** to the Post Office Box address listed on the Claim Form. Failure to postmark a complete Claim Form by the Claim Filing Deadline shall bar the Settlement Class member from receiving any monetary award pursuant to the proposed Settlement Agreements absent a showing of good cause or unless the claim is otherwise accepted by the Court.

22. At the close of the claims period, the Court will require the claims administrator to provide a report to the Court summarizing the following data:

- number of class members to whom notice was sent
- number of claims made
- number of opt-outs
- median recovery per claimant
- the pro rata recovery rate (if applicable)

Therefore, the claims administrator is ordered to keep accurate records of this information throughout the administration of the settlements.

New Orleans, Louisiana, this 22nd day of December, 2014.



SARAH S. VANCE
UNITED STATES DISTRICT JUDGE