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 INDIRECT-PURCHASER PLAINTIFF CASES

ORDER

Indirect-Purchaser Plaintiffs (IPPs), together with Hayward Industries, Inc. and Zodiac Pool Systems, Inc., move the Court to preliminarily approve a class action settlement between IPPs and Hayward and a class action settlement between IPPs and Zodiac.[1] The parties also move the Court to certify a class for the purposes of the Hayward and Zodiac settlements. For the reasons specified in the order and reasons issued today in conjunction with this procedural order, IT IS HEREBY ORDERED THAT:

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 settlement only ("Settlement Class"):

> all individuals residing or entities operating in Arizona, California, Florida or Missouri, who or which, between January 1, 2008 and July 16, 2013, purchased indirectly from PoolCorp (and not for resale) Pool Products in Arizona, California, Florida or Missouri

[1] R. Doc. 500.

> manufactured by Hayward, Pentair, or Zodiac. Excluded from the Settlement Class are (1) individuals residing or entities operating in Missouri, who or which did not purchase Pool Products primarily for personal, family, or household purposes, and (2) Defendants and their subsidiaries, or affiliates, whether or not named as a Defendant in this Action, and governmental entities or agencies.[2]

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 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

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[2] R. Doc. 500-3 ¶ 5 (Hayward settlement agreement addendum); R. Doc. 500-4 ¶ 5 (Zodiac settlement agreement).

waiver of the rights of any nonsettling defendant to contest class certification. In addition, Hayward 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 Hayward, and 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, the Court appoints plaintiffs Kevin Kistler, Jean Bove, Peter Mougey, and Ryan Williams (collectively "Named Plaintiffs") as Class Representatives of the Settlement Class.

4. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court appoints Thomas J.H. Brill (Law Office of Thomas H. Brill) as Lead Counsel for the Class and Gainsburgh, Benjamin, David, Meunier & Warshauer, L.L.C.; Edgar Law Firm LLC, Sharp McQueen PA; and Brady & Associates as Co-Counsel for the Settlement Class, finding that the prerequisites of Rule 23(g) are fully satisfied by such appointment.

5. Angeion Group ("Angeion") is appointed Claims Administrator, to be responsible for managing, accounting for, and disbursing funds from the settlement funds for the IPPs' settlements with Hayward and Zodiac. Angeion is also appointed Notice Agent, to be responsible for implementing the notice plan for the IPPs' settlements with Hayward and Zodiac. Angeion 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. First NBC Bank is hereby appointed as the Escrow Agent for the settlements, to be responsible for accepting deposit of, safeguarding, and disbursing the settlement funds consistent with the Settlement Agreements and further orders of the Court. First NBC Bank 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 any 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 at 10:00 a.m.**, 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 (a) long form notice[3] (Long Notice) and (b) short form notice[4] (Short Notice), with one modification. Under question 18 of the Long Notice, the parties are directed to add the address for the Clerk of the Court to the list of addresses to which objections should be sent:

Clerk of Court
U.S. District Court, Eastern District of Louisiana
500 Poydras Street
New Orleans, LA 70130

9. The Court finds that the method of notice set out in the Notice Plan[5] meets the requirements of due process and Rule 23 of the Federal Rules of Civil Procedure. Notice shall be carried out according to this plan.

10. The Court also approves the Proof of Claim[6] form, subject to one modification. The Court orders that the parties strike the fourth eligibility question, which reads: "Did you buy Pool Products (defined above) from a company other than Hayward, Pentair, or Zodiac? For example, if you bought one of these products from a retailer, pool service provider, or through your pool builder, your answer should be yes." This question is confusing and redundant with the seventh eligibility question.

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[3] R. Doc. 500-12.

[4] R. Doc. 500-13.

[5] R. Doc. 500-11.

[6] R. Doc. 468-11.

11. Long Notice and the Proof of Claim, both modified as described above, shall be emailed pursuant to Section 2.a. of the Notice Plan, **within 28 calendar days** of the entry of this Order, to all class members for whom an email address is available. Short Notice shall be published in the newspapers listed in Section 2.a. of the Notice Plan **within 14 calendar days** of the emailing of the Long Notice.

12. 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.

13. 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 in the Notice Plan, and as represented in the Declaration of Steven Weisbrot in Support of the Notice Plan.[7]

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

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[7] R. Doc. 500-15.

A class member who wishes to be excluded shall mail the request in written form, by first class mail, postage prepaid, and postmarked by **Thursday, April 9, 2015,** to the following four addresses:

Thomas J.H. Brill
Law Office of Thomas H. Brill
8012 State Line Road, Suite 102
Leawood, KS 66208

Richard Hernandez
McCarter & English, LLP 100 Mulberry Street
Four Gateway Center
Newark, NJ 07102

J. Brent Justus
McGuire Woods LLP
901 East Cary Street
Richmond, VA 23219

Angeion Group
1801 Market Street
Suite 660
Philadelphia, PA 19103

A request for exclusion shall include the following:

- A statement requesting exclusion from the Settlement Class;
- The case name: *In Re: Pool Products Distribution Market Antitrust Litigation*, 2:12-md-02328-SSV-JCW; and
- The name, address, telephone number, and signature of the person requesting exclusion.

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 class shall not be entitled to receive any payment out of the Settlement Funds as described in the Settlement Agreements and Notice.

16. The Court will consider comments and/or objections to the Settlements, the allocation plan, or the award 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:

Thomas J.H. Brill
Law Office of Thomas H. Brill
8012 State Line Road, Suite 102
Leawood, KS 66208

Richard Hernandez
McCarter & English, LLP 100 Mulberry Street
Four Gateway Center
Newark, NJ 07102

J. Brent Justus
McGuire Woods LLP
901 East Cary Street
Richmond, VA 23219

Angeion Group
1801 Market Street
Suite 660
Philadelphia, PA 19103

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. Objections must include the objector's full name, address, e-mail address (if any; an e-mail address is not required), and telephone number. Objections must also include the caption of this Litigation (*In re: Pool Product*

Distribution Market Antitrust Litigation, Case No. 2:12-md-02328-SSV-JCW).

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 do not need to 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 settlement shall mail a completed claim form, with all required documentation, by first class mail, postage prepaid, and postmarked by **December 11, 2015** to:

POOL PRODUCTS END-USER CLAIMS ADMINISTRATOR
Angeion Group
1801 Market Street, Suite 660
Philadelphia, PA 19103

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 31st day of December, 2014

SARAH S. VANCE
UNITED STATES DISTRICT JUDGE