

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

BRIDGET SMITH, RENE TAN,)
VICTOR CASTANEDA, KRISADA)
LUEAMRUNG, DAMON LOVETT, and)
WILLIAM CHALK, individually, on)
behalf of themselves and all others)
similarly situated,)

Plaintiffs,)

Case No. 1:15-cv-04316-ELR

v.)

FLOOR AND DECOR OUTLETS)
OF AMERICA, INC.,)

Defendant.)

**ORDER GRANTING PRELIMINARY APPROVAL
OF SETTLEMENT, CERTIFYING CLASS FOR PURPOSES OF
SETTLEMENT, DIRECTING NOTICE TO THE CLASS, AND
SCHEDULING FINAL FAIRNESS HEARING**

WHEREAS, this matter has come before the Court pursuant to Plaintiffs’ Unopposed Motion for Preliminary Approval of Proposed Settlement, Certification of Class for Purposes of Settlement, and Approval of Form and Notice Plan (the “Motion”) filed by Plaintiffs Bridget Smith, Rene Tan, Victor Castaneda, Krisada Lueamrung, Damon Lovett, and William Chalk, individually, on behalf of

themselves and all others similarly situated (collectively, “Settlement Class Plaintiffs”).

WHEREAS, the Court finds that it has jurisdiction over this action and the parties for purposes of settlement only;

WHEREAS, this Court is otherwise fully advised of the facts and circumstances of the proposed settlement;

IT IS HEREBY ORDERED THAT:

Preliminary Approval of the Settlement Agreement

1. The Court preliminarily approves the Settlement Agreement and Release dated September 1, 2016 between Plaintiffs and Defendant (the “Settlement Agreement”), subject to further consideration thereof at the Final Fairness Hearing provided for below. The Settlement Agreement calls for Defendant to provide benefits to Class Members up to a total of fourteen million dollars (\$14,000,000), plus certain additional product testing costs that may be incurred. This total includes the costs of notice and administration, certain product testing costs, and any attorneys’ fees, costs, and/or service awards that the Court may award. The Settlement Agreement was entered into after extensive litigation and arm’s length negotiation by experienced counsel for the parties, assisted by a neutral mediator. The Court finds that the settlement embodied in the Settlement

Agreement is sufficiently within the range of reasonableness so that notice of the settlement should be given as provided in this Order.

Preliminary Approval of Settlement Class

2. The Court preliminarily finds that the proposed Settlement Class, for the purpose of this settlement only, meets the applicable requirements of Fed. R. Civ. P. 23(a) and (b)(3), and hereby conditionally certifies the following Settlement Class for settlement purposes only:

All End Users of Chinese Laminate Flooring sold by Floor & Decor Outlets of America, Inc. between January 1, 2012 and August 1, 2015.

The Settlement Class includes the following subclasses:

1. Non-Testing Subclass: All End Users of Chinese Laminate Flooring sold by Floor & Decor Outlets of America, Inc. between January 1, 2012 and August 1, 2015 with one of the product SKUs listed on Exhibit A to the Settlement Agreement.
2. Testing Subclass: All End Users of Chinese Laminate Flooring sold by Floor and Decor Outlets of America, Inc. between January 1, 2012 and August 1, 2015 with one of the product SKUs listed on Exhibit B to the Settlement Agreement.

Excluded from the Settlement Class are: (1) persons who are employees, directors, officers, and agents of Defendant; (2) contractors who purchased the products listed in Exhibits A or B to the Settlement Agreement primarily for the purposes of resale; (3) persons or entities who purchased the products listed in Exhibits A or B to the Settlement Agreement primarily for purposes of resale; (4) persons who

timely and properly exclude themselves from the Settlement Class as provided in the Settlement Agreement; (5) any federal, state, or local governmental entity that would otherwise be a member of the Settlement Class; (6) anyone who has previously executed a release of all claims against Defendant related to the products listed in Exhibits A or B to the Settlement Agreement and would otherwise be a member of the Settlement Class; and (7) the Court, the Court's immediate family, and Court staff.

3. The Court preliminarily finds that the following Settlement Class Plaintiffs are adequate representatives of the Settlement Class for settlement purposes only: Bridget Smith, Rene Tan, Victor Castaneda, Krisada Lueamrung, Damon Lovett, and William Chalk.

4. If the Settlement Agreement is terminated or is not consummated for any reason, the certification of the Settlement Class shall be void, and Plaintiffs and Defendant shall be deemed to have reserved all of their rights to propose or oppose any and all certification issues.

5. The Court further preliminarily finds that the following attorneys fairly and adequately represent the interests of the Settlement Class and hereby appoints them as Class Counsel pursuant to Rule 23(g) for settlement purposes only as follows:

Daniel K. Bryson
WHITFIELD BRYSON & MASON, LLP
900 W. Morgan Street
Raleigh, North Carolina 27603

Alexander Robertson, IV
ROBERTSON & ASSOCIATES, LLP
32121 Lindero Canyon Road, Suite 200
Westlake Village, California 91361

Kenneth S. Canfield
DOFFERMYRE SHIELDS CANFIELD & KNOWLES, LLC
1355 Peachtree Street, Suite 1900
Atlanta, Georgia 30309-3238

Robert R. Ahdoot
AHDROOT & WOLFSON
1016 Palm Avenue
West Hollywood, California 90069

6. The Court preliminarily approves the allocation and distribution of settlement proceeds as described in the Settlement Agreement. The Defendant will transfer funds to an Escrow Account established pursuant to the Settlement Agreement, on the date and in the amount provided by the Settlement Agreement. Defendant will also pay the costs of notice and administration, product testing costs, and any attorneys' fees, litigation expenses, and/or service awards awarded by the Court, pursuant to the terms and conditions specified in the Settlement Agreement.

Approval of Notice Plan and Schedule

7. The Court has reviewed and hereby approves the Notice Plan designed by Garden City Group, LLC (the “Notice Plan”), attached as Exhibit E to the Settlement Agreement. The Court finds that the notice to be provided to the Settlement Class as set forth in the Notice Plan to be the best practicable notice under the circumstances and, when completed, shall constitute fair, reasonable, and adequate notice of the settlement to all persons and entities affected by and/or entitled to participate in the settlement, in full compliance with the notice requirements of Fed. R. Civ. P. 23, 28 U.S.C. § 1715, and due process.

8. The Court appoints Garden City Group, LLC as the Settlement Administrator. Responsibilities of the Settlement Administrator include the following: (i) establishing a post office box and toll-free telephone number to be used by members of the Settlement Class to submit claims and requests for exclusion, and to obtain additional instructions and directions concerning these matters; (ii) establishing and maintaining a website for purposes of posting the notices, the complaint and other case pleadings, and related documents; (iii) disseminating the Notice of Class Settlement; (iv) accepting and maintaining documents sent from Settlement Class members, including claim forms, exclusion requests, objections, and other documents relating to claims administration; (v)

determining the amount of benefits due to eligible Settlement Class members in accordance with the terms and conditions of the Settlement Agreement; (vi) resolving any challenges, and associated documentation, to the benefits due to Settlement Class members; (vii) communicating with Class Counsel and Defendant's counsel concerning obtaining funding for expenses and distribution; (viii) administering claims submitted by members of the Settlement Class; and (iv) carrying out any other tasks assigned to the Settlement Administrator by the Settlement Agreement.

9. The Court hereby orders the Settlement Administrator to implement the notice events identified in the Motion and Notice Plan, using the forms attached as Exhibits to the Settlement Agreement, pursuant to the following schedule:

<u>EVENT</u>	<u>DATE</u>
<i>Notice Plan to Begin</i>	<u>No later than September 19, 2016</u>
<i>End of Notice Plan</i>	<u>October 20, 2016</u>
<i>Post-Notice Declaration of Settlement Administrator Attesting to its Compliance with the Notice Plan to be Filed with the Court</i>	<u>January 3, 2017</u>

Objections to the Settlement

10. Any member of the Settlement Class who objects to the Settlement Agreement shall file a written objection with the Court, with a written copy delivered to Class Counsel and Defendant's counsel, pursuant to the schedule below.

EVENT

DATE

*Deadline to File, Postmark, and Send
Objections*

November 21, 2016

11. The written objection must comply with the following requirements:

(a) Objections must include: (i) the objector's name, address, and telephone number; (ii) the name of this Action and the case number; (iii) a statement of each objection; (iv) a valid Proof of Purchase of the Chinese Laminate Flooring or a valid Claim number; and (v) a written brief detailing the specific basis for each objection, including any legal and factual support the objector wishes to bring to the Court's attention and any evidence the objector wishes to introduce in support of the objection.

(b) The objector must include with the objection a statement verifying under penalty of perjury that the objector is a member of the Settlement Class and provide all information required by the Claim Form.

(c) Any class member who files an objection must agree to make themselves available for a deposition by Class Counsel and Defendant's counsel between the time the objection is filed and a date no later than five days before the Final Fairness Hearing and the objection must include the dates when and locations where the objecting class member will be available to be deposed.

(d) If the objection is made through an attorney, the written objection must provide the attorney's name, address, email address, and telephone number and also include: (i) the identity and number of the Settlement Class Members represented by objector's attorney; (ii) the number of such represented Settlement Class Members who have opted out of the Settlement Class; and (iii) the number of such represented Settlement Class Members who have remained in the Settlement Class and have not objected. If the attorney intends to seek fees and expenses from anyone other than the objectors he or she represents, the attorney shall also file with the Court and serve upon Class Counsel and Defendant's counsel not later than fifteen days before the Final Fairness Hearing or as the Court may otherwise direct a document containing the following: (i) a description of the attorney's legal background and prior experience in connection with class action litigation, including the previous cases in which the attorney has represented an objector to a class action settlement; (ii) the amount of fees sought by the attorney for

representing the objector and the factual and legal justification for the fees being sought; (iii) a statement regarding whether the fees being sought were calculated on the basis of a lodestar, contingency, or other method; (iv) the number of hours already spent by the attorney and an estimate of the hours to be spent in the future; and (v) the attorney's hourly rate.

(e) Counsel for the Parties shall file any responses to the objections submitted by objecting Settlement Class Members at least fourteen days before the date of the Final Fairness Hearing.

Requests to Be Excluded from the Settlement

12. Any member of the Settlement Class who wishes to be excluded from the Settlement Class shall mail a written notice of exclusion to the Settlement Administrator, pursuant to the schedule below.

EVENT

DATE

Deadline to Postmark and Send Notice of Exclusion

November 21, 2016

13. Any notice of exclusion shall include the following: (a) the name, address, and telephone number of the person or entity who wishes to be excluded from the settlement; (b) the name of the case (*Smith et al. v. Floor and Decor Outlets of America, Inc.*, Case No. 1:15-cv-04316-ELR); (c) a statement that the

person or entity wishes to be excluded from the settlement; and (d) the authorized signature of the person or entity who wishes to be excluded from the settlement.

14. Settlement Class members requesting exclusion are requested (but are not required) to identify the number of square feet of Chinese-made laminate flooring purchased from Defendant.

15. Any member of the Settlement Class who submits a timely request for exclusion that complies with the requirements set forth in this Order shall not be bound by the settlement, Settlement Agreement, or Final Order and Judgment. Upon receipt, the Settlement Administrator shall promptly provide copies of each notice of exclusion to Class Counsel and Defendant's counsel.

16. Any member of the Settlement Class who does not properly and timely mail a notice of exclusion as set forth herein shall be included in the Settlement Class and shall be bound by the terms of the settlement, Settlement Agreement, and Final Order and Judgment, whether or not such member of the Settlement Class shall have otherwise objected to the settlement or sought exclusion, and whether or not such member submits a claim or participates in the settlement.

17. Any member of the Settlement Class who submits a notice of exclusion that complies with the requirements of this Order and also objects to the

settlement shall be deemed to have excluded himself or herself from the Settlement Class and his or her objections shall not be considered by the Court.

Filing and Administration of Claim Forms

18. To effectuate the settlement and the provisions of the Notice Plan, the Settlement Administrator shall be responsible for the receipt of all notices of exclusion and claim forms. The Settlement Administrator shall preserve (on paper or transferred into electronic format) all notices of exclusion, claim forms, and any and all other written communications from members of the Settlement Class in response to the notices for a period of five (5) years, or pursuant to further order of the Court. All written communications received by the Settlement Administrator from members of the Settlement Class relating to the Settlement Agreement shall be available at all reasonable times for inspection and copying by Class Counsel and Defendant's counsel, until benefits are mailed to each Settlement Class Member entitled to receive them pursuant to the terms and conditions of the Settlement Agreement.

19. To participate in the settlement, each member of the Settlement Class shall take the following actions and be subject to the following requirements:

- a. A Non-Testing Subclass Member who wishes to receive benefits from the Settlement must timely mail or electronically submit a properly

executed claim form in the form attached as Exhibit C to the Settlement Agreement (“Claim Form”) to the Settlement Administrator at the address indicated in the notice. A Testing Subclass Member who wishes to receive benefits from the Settlement must timely mail or electronically submit a properly executed Claim Form and send a flooring sample as directed by the Settlement Administrator. Each Claim Form must satisfy the following conditions: (i) the Claim Form must be properly completed in accordance with the instructions thereon and submitted in a timely manner in accordance with subparagraph (a) of this paragraph; (ii) the Claim Form must be signed (either in writing or electronically) under penalty of perjury; (iii) if the person executing the Claim Form is acting in a representative capacity, certification of such person’s authority to act on behalf of the claimant must be included with the Claim Form; and (iv) the Claim Form must be complete and contain no material deletions or modifications of the printed matter contained therein;

- b. Each Claim Form shall be accompanied by a valid Proof of Purchase or Claim Number as defined in the Settlement Agreement. Each

Settlement Class member shall be required to certify the total number of square feet of flooring purchased and/or used during the Class Period.

- c. Each Claim Form shall be submitted to and reviewed by the Settlement Administrator, who shall make a determination about which claims should be allowed in whole or in part.
- d. The Settlement Administrator will notify each member of the Settlement Class that filed a Claim Form that is disallowed in whole or in part.
- e. There shall only be one claim per flooring installed at a specified property. Only the current owner of the property in which the flooring is or was installed may submit a claim.
- f. All members of the Settlement Class who do not submit timely Claim Forms, or submit Claim Forms that are disallowed and not cured, shall be barred from participating in the Settlement (except to the extent that a Claim Form may be partially allowed) but otherwise shall be bound by all of the terms of the Settlement Agreement; and
- g. Each member of the Settlement Class who submits a Claim Form shall thereby expressly submit to the jurisdiction of the Court with

respect to the claims submitted and shall (subject to final approval of the Settlement) be bound by all the terms and provisions of the Settlement Agreement.

20. Any member of the Settlement Class who wishes to submit a Claim Form shall do so in accordance with the procedures set forth in this order pursuant to the following schedule:

<u>EVENT</u>	<u>DATE</u>
<i>Deadline to Postmark and Send Claim Form</i>	<u>March 7, 2017</u>

21. Any information received by the Settlement Administrator in connection with this Settlement that pertains to a particular member of the Settlement Class, or information submitted in conjunction with a notice of exclusion (other than the identity of the entity requesting exclusion), shall not be disclosed to any other person or entity other than Class Counsel, Defendant's counsel, and the Court, or as otherwise provided in the Settlement Agreement.

Final Fairness Hearing

22. A hearing on final settlement approval (the "Final Fairness Hearing") shall be held before this Court, at the United States District Court for the Northern District of Georgia, 1788 Richard B. Russell Federal Building and United States Courthouse, 75 Ted Turner Drive, SW, Atlanta, GA 30303, on the date set forth

below, to consider matters relating to the settlement, including the following: (a) whether the Settlement Class should be finally certified, for settlement purposes only; (b) the fairness, reasonableness and adequacy of the settlement, the terms of the Settlement Agreement, the dismissal with prejudice of the Litigation as to Defendant, and the entry of final judgment; (c) whether Class Counsel's application for attorneys' fees, expenses, and incentive awards for the Settlement Class Representatives (the "Fee Petition"), and their fees and other costs should be granted; and (d) whether to approve the proposed plan of allocation and distribution of the settlement proceeds.

23. The Court orders Class Counsel to file with the Court any memoranda or other materials in support of final approval of the Settlement and any Fee Petition pursuant to the schedule set forth below.

24. Any member of the Settlement Class that has not filed a notice of exclusion in the manner set forth above may appear at the Final Fairness Hearing in person or by counsel and may be heard, to the extent allowed by the Court, either in support of or in opposition to the fairness, reasonableness and adequacy of the proposed settlement or the other matters to be considered. However, no person shall be heard, and no papers, briefs or other submissions will be considered by the Court, unless such person has filed with the Court and served upon Class Counsel

and Defendant’s counsel a Notice of Intent to Appear pursuant to the schedule set forth below. The Notice of Intent to Appear must (a) state how much time the Class Member anticipates needing to present the objection; (b) identify, by name, address, telephone number all witnesses the Class Member proposes to have testify; (c) summarize the anticipated testimony of all such witnesses; (d) identify all papers, exhibits, or other submissions the Class Member intends to offer; and (e) attach complete copies of all such papers, exhibits, and submissions.

25. Any Settlement Class member may retain an attorney at his or her own expense to appear in the action. Such attorney shall file with the Court and serve a Notice of Appearance on Class Counsel and Defendant’s counsel pursuant to the schedule set forth below.

26. The date and time of the Final Fairness Hearing and related filings as identified herein shall be as follows:

<u>EVENT</u>	<u>DATE</u>
<i>Deadline for Notices of Intent to Appear</i>	<u>December 12, 2016</u>
<i>Motions for Final Approval, Attorneys’ Fees and Expenses, and Service Awards to be Filed by Class Counsel</i>	<u>November 28, 2016</u>
<i>Responses to Motions for Final Approval, Attorneys’ Fees and Expenses, and Incentive Awards Due</i>	<u>December 16, 2016</u>

Replies in Support of Motions for Final Approval, Attorneys' Fees and Expenses, and Incentive Awards Due

December 27, 2016

Final Fairness Hearing to be Held

January 10, 2017 at 10:00 a.m.

27. The date and time of the Final Fairness Hearing shall be set forth in the notice to be disseminated pursuant to this order and Summary Notice, but shall be subject to adjournment by the Court without further notice other than that which may be posted at the Court, on the Court's website, and/or the website to be established pursuant to the Notice Plan.

28. Upon Final Approval, each and every term and provision of the Settlement Agreement (except as may be modified by the Final Approval Order) shall be deemed incorporated into the Final Order and Judgment as if expressly set forth therein and shall have the full force and effect of an Order of the Court.

Service of Objections, Notices of Intent to Appear and Other Documents

29. When this Order directs that papers, briefs, objections, notices and other documents be served upon Class Counsel and Defendant's counsel, service shall be made to the attorneys listed below by United States Mail, first class, addressed as follows:

Class Counsel

Daniel K. Bryson
WHITFIELD BRYSON & MASON, LLP
900 W. Morgan Street
Raleigh, North Carolina 27603

Alexander Robertson, IV
ROBERTSON & ASSOCIATES, LLP
32121 Lindero Canyon Road, Suite 200
Westlake Village, California 91361

Kenneth S. Canfield
DOFFERMYRE SHIELDS CANFIELD & KNOWLES, LLC
1355 Peachtree Street, Suite 1900
Atlanta, Georgia 30309-3238

Robert R. Ahdoot
AHDROOT & WOLFSON
1016 Palm Avenue
West Hollywood, California 90069

Defendant's Counsel

Stephen B. Devereaux
KING & SPALDING LLP
1180 Peachtree Street
Atlanta, Georgia 30309

Status of Litigation and Settlement

30. All discovery and other pretrial proceedings in this action are stayed and suspended, pending the Effective Date of the Class Settlement (“Final

Approval”), except for such proceedings as are provided for in the Settlement Agreement, or which may be necessary to implement the terms of the settlement, Settlement Agreement, or this Order. Pending Final Approval, no Class member, either directly, representatively, or in any other capacity (other than a Class member who validly and timely elects to be excluded from the Class), shall commence, continue or prosecute against any or all Released Parties any action or proceeding in any court or tribunal asserting any of the matters, claims or causes of action that are to be released upon Final Approval pursuant to the Settlement Agreement, and are hereby enjoined from so proceeding.

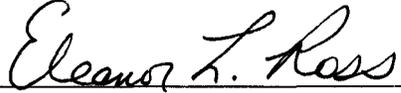
31. Upon Final Approval, all Settlement Class members who do not file a timely notice of exclusion shall be forever enjoined and barred from asserting any of the matters, claims or causes of action released pursuant to the Settlement Agreement, and any such Settlement Class Member shall be deemed to have forever released the Released Parties from any and all such matters, claims and causes of action as provided for in the Settlement Agreement.

32. In the event the Settlement is terminated in accordance with the provisions of the Settlement Agreement, the settlement and all proceedings had in connection therewith shall be null and void, except insofar as expressly provided in

the Settlement Agreement, and without prejudice to the *status quo ante* rights of Settlement Class Plaintiffs or Defendant.

33. Neither this Order nor the Settlement Agreement shall constitute any evidence or admission of liability by any Defendant, or an admission regarding the propriety of any certification of any particular class for purposes of litigation, nor shall they be offered in evidence in this or any other proceeding except to consummate or enforce the Settlement Agreement or the terms of this Order, or by any Released Party in connection with any action asserting Released Claims.

SO ORDERED this 8th day of September, 2016.



HON. ELEANOR L. ROSS
UNITED STATES DISTRICT JUDGE