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15

16 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
17 IN AND FOR THE COUNTY OF SAN FRANCISCO

18

19 NANCIE WILLIAMS, EAST COTATI)
AVENUE PARTNERS, LP, DAVID H.)
20 CHAMBERS, JOSEPH EGGERS, RAJ)
BHOWMIK, TRAVIS WOLDEN, DAVID L.)
21 WHITMORE, SHARON L. WHITMORE,)
JOSEPH G. RAKOSKI, and ROBERT P.)
22 SEWITSKY, on behalf of themselves and all)
others similarly situated,)

23 Plaintiffs,)

24 vs.)

25 WEYERHAEUSER COMPANY,)

26 Defendant.)
27

CIVIL ACTION NO. 995787

CLASS ACTION

**[REVISED PROPOSED] ORDER
GRANTING FINAL APPROVAL TO
CLASS ACTION SETTLEMENT; AND
JUDGMENT, FINAL ORDER AND
DECREE THEREON**

Date: December 21, 2000

Time: 11:00 a.m.

Judge: Hon. Alfred G. Chiantelli

Dept.: 206

28

EXHIBIT B

1 On July 12, 2000, this Court granted preliminary approval to the proposed class action
2 Settlement between Class Plaintiffs and defendant Weyerhaeuser Company (“Weyerhaeuser”). The
3 proposed Settlement resolves all of the Class’ claims against Weyerhaeuser, in exchange for
4 Weyerhaeuser’s commitment to compensate, pursuant to the parties’ negotiated claims
5 administration protocols and compensation formulae as set forth in the Settlement Agreement, all
6 qualified claims submitted by Settlement Class members for up to nine years from the date of entry
7 of this Final Order and Judgment. Also on July 12, 2000, the Court provisionally certified a multi-
8 state Settlement Class, approved a class notice program, and set the date of December 21, 2000 to
9 hear Class Plaintiffs’ motion for final approval of the Settlement. The Class is defined as:

10 All Persons who own or owned structures in the United States on
11 which Weyerhaeuser-brand hardboard siding has been installed from
12 January 1, 1981 through December 31, 1999.

13 Excluded from the Class are: (1) Weyerhaeuser, any entity in which
14 Weyerhaeuser has a controlling interest, and its legal representatives,
15 officers, directors, assigns and successors; (2) the judge to whom this
16 case is assigned and any member of the judge’s immediate family; (3)
17 claims for personal injury; (4) any Person who owns or owned any
18 Structure that was the subject of a lawsuit in which Weyerhaeuser was
19 a party and where the lawsuit was resolved by payment, release or
20 adjudication; (5) any Person who while represented by counsel
21 resolved a claim relating to Weyerhaeuser Hardboard Siding with a
22 full release; (6) any Person who [in accordance with the terms of the
23 Settlement Agreement] properly executes and files a timely request for
24 exclusion from the Class; and (7) any Person other than Plaintiffs who
25 otherwise falls within the Class definition but who had pending
26 litigation where a claim has been made against Weyerhaeuser relating
27 to hardboard siding as of February 4, 1999 and in which no class had
28 been certified.

21 Counsel for the Home Builders Association of Northern California and certain of its
22 members had raised a question regarding whether home builders and developers were intended to all
23 within the “Class” preliminarily approved by the Court and whether home builders are intended to
24 constitute “Class Members” for purposes of the Settlement Agreement. Class Counsel and counsel
25 for Weyerhaeuser confirmed that the definitions of “Class” and “Class Member” do not include nor
26 were they intended to include builders and developers who previously owned but no longer own
27 structures with Weyerhaeuser Hardboard Siding. On November 29, 2000 following an in-person
28 conference before the Court, and for good cause shown, the Court issued the Special Findings and

1 Order Re: Terms of Settlement, a copy of which is attached hereto and incorporated by reference
2 herein.

3 On December 21, 2000, this Court held a duly noticed formal fairness hearing to
4 consider whether to grant final approval to the Settlement, and to consider Class Counsel's
5 application for an award of attorneys' fees and costs, during which the Court heard argument from
6 the parties and all others who elected to appear to voice their support for, or objection to, the
7 Settlement. Prior to this hearing, the Court reviewed extensive papers submitted in support of and in
8 opposition to the Settlement.

9 Having read, reviewed and considered the papers filed with this Court, the oral
10 arguments of counsel, and presentations by members of the Class who appeared at the hearing, and
11 based on its familiarity with the history of these proceedings, this Court finds and concludes as
12 follows.

13 **I. THE CLASS NOTICE COMPLIED WITH THIS COURT'S ORDER, WAS THE**
14 **BEST PRACTICABLE NOTICE, AND COMPORTS WITH DUE PROCESS**

15 On July 12, 2000, this Court ordered that Class Notice be disseminated in
16 substantially the form submitted by Plaintiffs at the preliminary approval hearing, and further
17 specified the manner in which such dissemination should occur.

18 Based upon the uncontroverted proof Class Counsel have submitted to the Court, the
19 Court finds that the settling parties undertook an extensive notice campaign designed by Todd Hilsee
20 of Hilsoft Notifications, a nationally recognized expert in this specialized field. The detailed "Long
21 Form" Notice — which identified Weyerhaeuser as the settling defendant, and described the lawsuit,
22 the certified Settlement Class, the Settlement consideration, the claims procedures, the costs of
23 notice and administration of the Settlement, and the amount Class Counsel intended to seek as
24 attorneys' fees and litigation costs, and advised Class members of their rights to opt out of, comment
25 upon or object to the Settlement — was initially mailed in August 2000, together with claim form
26 request cards and and related materials, directly to all Class members known or reasonably
27 identifiable at the time of the preliminary approval hearing, including persons whose names and
28 addresses appeared in Weyerhaeuser's records, or who had communicated with Class Counsel. To

1 date, over 35,000 notices have been mailed. Additional "Full Page Magazine Advertisement" and
2 "Short-form" notices, a Press Release, and a Public Service Announcement were created for print
3 media publication and broadcast dissemination. Class Notice was published in Newsweek, Time,
4 People, TV Guide, Reader's Digest, National Geographic, Better Homes and Gardens (a major
5 home/lifestyle magazine), and two national newspaper supplements, Parade and USA Weekend,
6 which appear in approximately 900 Sunday newspapers in every market of every state in the United
7 States, as well as in twenty-two (22) major daily and Sunday newspapers in eleven high-claim/sales
8 States. Notice of the Settlement was also broadcast by radio in twenty-eight (28) high-claim/sales
9 markets. In addition, the parties created an interactive website, "www.weyerclaims.com," which
10 gave Class members Internet access to the Settlement information, and allowed Class members to
11 register to receive the long-form Notice, download available information, and post questions to Class
12 Counsel on-line. All inquiries posed to Class Counsel were addressed. A 1-800 number was also
13 established, with specialists to return telephone calls upon request. Copies of the lengthy Settlement
14 Agreement, which could not practicably have been incorporated into the published form of Notice,
15 were made available upon request to Class members, as the Manual for Complex Litigation (Third)
16 § 30.212 (the "MCL 3d") recommends.

17 As to the forms of Notice as they were disseminated, the Court finds and concludes
18 that they fully apprised the Class members of the Court's class certification Order, the terms of the
19 Settlement, and Class members' rights in the litigation. The Notice described the Class and the
20 proposed Settlement with sufficient specificity to allow Class members to make an informed choice
21 whether to participate in the Settlement, or to exclude themselves from the Class. The Notice also
22 explained the deadline and the method for Class members to object to, or opt out of, the Class and
23 the Settlement. Finally, the Notice provided the schedule for the hearing on final approval of the
24 Settlement and Class Counsel's request for attorneys' fees and litigation costs. The Notice also
25 informed Class members that they could obtain additional information from Class Counsel and
26 inspect the Court records.

27 The Court finds and concludes that the Notice Program as a whole provided the best
28 practicable notice to the members of the Class, and satisfies the requirements of due process. (See

1 Phillips Petroleum Co. v. Shutts (1985) 472 U.S. 797, 811-12; Eisen v. Carlisle & Jacquelin (1974)
2 417 U.S. 156, 174-75; Mullane v. Central Hanover Bank & Trust Co. (1950) 339 U.S. 306, 314;
3 Cartt v. Superior Court (1975) 50 Cal. App. 3d 960, 974.) The potential Class members number in
4 the tens or hundreds of thousands, and many of their identities could not have been reasonably
5 ascertained because there exists no inclusive list or central registry of Class members. Because it
6 would have been prohibitively expensive to identify and provide individual notice to such Class
7 members, reliance on print publication and other media, as described above, was required in addition
8 to direct mail notice.

9 Accordingly, the Court finds and concludes that the method and content of the Notice
10 satisfied all applicable legal requirements.

11 **II. FINAL SETTLEMENT APPROVAL IS APPROPRIATE**

12 To approve a proposed class action settlement under California Code of Civil
13 Procedure section 382, this Court must find that the proposed settlement is "fair, adequate and
14 reasonable." (Dunk v. Ford Motor Company (1996) 48 Cal. App. 4th 1794, 1801 (quoting Officers
15 for Justice v. Civil Serv. Comm'n (9th Cir. 1982) 688 F.2d 615, 625, cert. denied (1983) 459 U.S.
16 1217).) While the Court is to exercise its "broad discretion" in approving a settlement, Dunk,
17 48 Cal. App. 4th at 1801, the Court recognizes that its function is to determine that the settlement
18 agreement is not the product of fraud, overreaching, or collusion, and "taken as a whole, is fair,
19 reasonable and adequate to all concerned." (Officers for Justice, 688 F.2d at 625.)^{1/} Accordingly, this
20 Court gives due regard:

21 to what is otherwise a private consensual agreement between the
22 parties. The inquiry must be limited to the extent necessary to reach a
23 reasoned judgment that the agreement is not the product of fraud or
24 overreaching by, or collusion between, the negotiating parties, and that
25 the settlement, taken as a whole, is fair, reasonable and adequate to all
26 concerned. Ultimately, the [trial] court's determination is nothing
27 more than an amalgam of delicate balancing, gross approximations and
28 rough justice.

28 ^{1/}In the absence of California law on class actions, California courts look to federal authority
for guidance. See, e.g., Dunk, 48 Cal. App. 4th at 1801 n.7 (citing Vasquez v. Superior Court (1971)
4 Cal. 3d 800, 821).

1 (Dunk, 48 Cal. App. 4th at 1801 (citations omitted) (emphasis added); accord Officers for Justice,
2 688 F.2d at 625; Church v. Consolidated Freightways, Inc. (N.D. Cal. May 3, 1993) No. C-90-2290-
3 DLJ, 1993 U.S. Dist. LEXIS 6439; In re Washington Pub. Power Supply Sys. Sec. Litig. (D. Ariz.)
4 720 F. Supp. 1379, aff'd sub nom. Class Plaintiffs v. Seattle (9th Cir. 1989) 955 F.2d 1268.)

5 A. **All of the Relevant Criteria Support Final Approval of the Settlement.**

6 In deciding whether to grant final approval to class action settlements, California
7 courts consider the amount offered in settlement, the risks involved in continued litigation, the
8 discovery completed and the stage of the proceedings, the complexity, expense and likely duration of
9 litigation in the absence of settlement, the experience and views of counsel, and the reaction of class
10 members. (Dunk, 48 Cal. App. 4th at 1801.) The Court finds that all of the relevant criteria support
11 final approval of the instant Settlement.

12 1. **The Value of the Settlement.**

13 The Settlement is structured on a “claims-made” basis, with no limit on the number of
14 claims or amount of compensation Weyerhaeuser will pay to Class members with damaged siding
15 during the claim period. Weyerhaeuser will compensate, pursuant to the parties’ negotiated claims
16 administration protocols and compensation formulae, all qualified claims submitted by Settlement
17 Class members for up to nine years from the date of entry of this final order and judgment. Class
18 members will not be required to pay for any attorneys’ fees or costs, nor will the amount of their
19 recoveries be reduced in any way to pay for attorneys’ fees and costs. Instead, Class Counsels’ fees
20 and costs (to be addressed by separate Order) will be paid by Weyerhaeuser on top of, and not out of,
21 Class members’ recoveries, and are tied directly to the number of claims paid under the Settlement.
22 The Court finds that the Settlement is sufficient to ensure that all Class members who submit timely,
23 qualified claims will be compensated for their damaged siding, net of attorneys’ fees, costs, and
24 claims administration expenses.

25
26 2. **The Risks of Establishing Liability and Compensable Damages Support**
27 **Final Approval.**

28 In assessing the fairness, adequacy, and reasonableness of the Settlement, this Court
has balanced the immediate and certain benefits of settlement against the risks of continued

1 litigation. (MCL 3d § 30.42 at 238 ("this analysis entails a comparison of the amount of the proposed
2 settlement with the present value of the damages plaintiffs would likely recover if successful,
3 appropriately discounted for the risk of not prevailing"); see also Dunk, 48 Cal.App.4th at 1801-02;
4 Girsh v. Jepson (3d Cir. 1975) 521 F.2d 153, 157.)

5 This factor supports final approval here, where the Settlement affords Plaintiffs and
6 the Class prompt and substantial relief, while avoiding significant legal and factual hurdles that
7 otherwise may have prevented them from obtaining any recovery at all. Weyerhaeuser has forgone
8 an array of potentially dispositive legal and factual defenses in acquiescing to the Settlement, and has
9 waived those defenses for Class members in all States included in the Class definition. Such
10 defenses include: statutes of limitations and repose, lack of reliance, privity, estoppel, failure to
11 mitigate, lack of causation, various commercial code defenses, and failure to state a claim. As a
12 large, multinational company capable of funding lengthy litigation, the Court can reasonably expect
13 that Weyerhaeuser would have continued to put on a zealous defense to Plaintiffs' claims had
14 continued litigation and/or trial proved necessary. Indeed, Weyerhaeuser had potentially dispositive
15 motions for summary judgment pending at the time this action was settled.

16 The resolution of the foregoing and other key issues, the outcome of a trial, and the
17 outcome of any appeals that would inevitably follow were Plaintiffs successful at trial, would have
18 been inherently uncertain in terms of both outcome and duration. These risks must be considered in
19 assessing the fairness of the Settlement, which guarantees against a result that would leave Plaintiffs
20 and the Class without any recovery, or with less than they are guaranteed under the Settlement.

21 Here, the Court finds that the Settlement provides immediate and substantial relief,
22 without the attendant risks of continued litigation. In light of the serious potential risks present in
23 this action, the Settlement provides a fair, reasonable, and adequate result.

24 3. **Substantial Factual Investigation and Discovery Demonstrating the**
25 **Strengths And Weaknesses of the Case Was Done Prior to Entering Into**
the Settlements.

26 "[T]he extent of discovery completed and the stage of the proceedings" are factors this
27 Court has considered in determining the fairness, adequacy and reasonableness of these settlements.
28 (Dunk, 48 Cal. App. 4th at 1801; see Boyd v. Bechtel (N.D. Cal. 1979) 485 F. Supp. 610, 616-17;

1 MCL 3d § 30.42 at 238 (“generally, the court will first consider whether counsel had sufficient
2 information” to enter into an appropriate settlement; “[t]he extent of discovery may be relevant in
3 determining the adequacy of the parties’ knowledge of the case.”).)

4 The parties reached the present Settlement after approximately two years of highly
5 adversarial litigation and extensive discovery. Over a two and a half-year period, Plaintiffs
6 undertook an extensive legal and factual investigation into the design, manufacture, application
7 protocols, and performance of Weyerhaeuser hardboard siding products, and conducted extensive
8 investigation and formal discovery. Class Counsel reviewed over 300 boxes of documents, which
9 constituted all relevant hardboard siding-related documents Weyerhaeuser possessed; conducted two
10 rounds of expert depositions of the parties’ wood science and construction installation experts;
11 retained and worked with R.S. Means and Company to develop a damages analysis, and defended the
12 deposition of Phil Waier of R.S. Means; retained and worked with Professor Richard Oliver, to
13 provide testimony relating to the relationship between claims rates and failure rates; and worked
14 extensively with wood science and construction installation experts who together inspected
15 Weyerhaeuser hardboard siding-clad structures in approximately 15 states.

16 By the time the Settlement was reached, the parties thus had sufficient information to
17 assess the strengths and weaknesses of their respective cases, and Class Counsel in particular had
18 sufficient grasp of the legal and factual issues to make a thorough appraisal of the adequacy of the
19 Settlement to provide meaningful relief to the Class. (See Dunk, 48 Cal.App.4th at 1801; MCL 3d
20 § 30.42 at 238; see generally Class Counsel Decls.)

21
22 4. **The Complexity, Expense, and Likely Duration of the Litigation But For
Settlement Also Support Final Approval of the Settlements.**

23 Another factor this Court has considered is the complexity, expense, and likely
24 duration of the litigation had the partial Settlement not been reached. (Dunk, 48 Cal. App. 4th
25 at 1801; Officers For Justice, 688 F.2d at 625; Marshall v. Holiday Magic, Inc. (9th Cir. 1977)
26 550 F.2d 1173, 1178.) The Court has balanced the proposed Settlement against the expense and
27 delay involved in achieving an equivalent or more favorable result from Weyerhaeuser at trial, and,
28 in light of the complex issues involved, finds that the Settlement guarantees a substantial recovery

1 for the Class while obviating the need for lengthy, uncertain and expensive pretrial practice, trial and
2 appeals.

3 This Court also finds that the policy under California law in favor of settlement in
4 class actions and other complex cases applies with particular force in this case. Class action cases
5 can be extraordinarily expensive and time-consuming to prosecute. Here, a trial of Class Plaintiffs'
6 claims against Weyerhaeuser would likely require a significant amount of additional time and
7 expense, while the hardboard siding on Class members' homes and other structures would allegedly
8 continue to deteriorate and cause further damage. This militates in favor of the settlement.

9 The Court also concludes that the Settlement here is consistent with the "overriding
10 public interest in settling and quieting litigation," which is "particularly true in class action suits."
11 Van Bronkhorst v. Safeco Corp. (9th Cir. 1976) 529 F.2d 943, 950 (footnote omitted).

12 **5. The Experience And Views Of Counsel Favor Settlement Approval.**

13 This Court finds that this action has been prosecuted by experienced and competent
14 counsel. Plaintiffs are represented by attorneys who are among the most experienced in construction
15 product defect class actions in the United States. These attorneys investigated and vigorously
16 litigated against Weyerhaeuser for approximately two and one-half years. Settlement discussions
17 between counsel for Plaintiffs and for Weyerhaeuser lasted for approximately six months. The
18 negotiations were lengthy, vigorous, and conducted at arms'-length. There is no evidence that the
19 negotiations were collusive or fraudulent or intended to adversely affect the interests of others. Class
20 Counsel support the settlement as fair, reasonable, and adequate. The endorsement of the settlement
21 as fair, reasonable, and adequate by qualified and well-informed counsel operating at arm's-length is
22 entitled to significant weight. (See Dunk, 48 Cal.App.4th at 1801.)^{2/}

23 **6. The Response To The Settlement Has Been Overwhelmingly Positive.**

24 This Court has also considered the response of the Class members. (See Officers for
25 Justice, 688 F.2d at 624.) The response to the proposed Settlement has been overwhelmingly
26 positive. Altogether, only a handful of Class members have voiced objections to the proposed
27

28 ^{2/}The Court has awarded Class Counsel's reasonable attorneys' fees and costs by separate
Order.

1 Settlement, and only approximately 230 individuals have opted out. By contrast, over 18,350 Class
2 members have already requested claim forms under the Settlement. These numbers evidence the
3 overwhelming support that the Settlement has received among Class members.

4 A court may appropriately infer that a class action settlement is fair, adequate and
5 reasonable when few class members object to it. (Marshall, 550 F.2d at 1178.) Indeed, a court can
6 approve a class action settlement as fair, adequate and reasonable over the objections of a significant
7 percentage of class members. (See Class Plaintiffs v. City of Seattle, 955 F.2d at 1291-96
8 (upholding trial court's grant of final approval over class member objections); see also Kirkorian v.
9 Borelli (N.D. Cal. 1988) 695 F. Supp. 446, 451 ("[A] settlement can be fair, notwithstanding
10 opposition from a large segment of the class"); In re Wash. Pub. Power Supply Sys. Sec. Litig., 720
11 F. Supp. at 1394-95 ("[A] settlement is not to be deemed unfair or unreasonable simply because a
12 large number of class members oppose it.") Here, there is little opposition to the Settlement, as
13 evidenced by a small number of objections and the presence of so few opt-outs, and a strong
14 affirmative expression of Class member support for the Settlement, as evidenced by the large number
15 of claim forms requests already submitted. This makes for a strong showing of Class member
16 support for the Settlement as fair, adequate and reasonable.

17 **III. ENTRY OF JUDGMENT AS TO THE SETTLEMENT CLASS IS APPROPRIATE**

18 The Court further finds that Class certification for settlement purposes is appropriate
19 here. On February 4, 1999, Judge Garcia of this Court certified a California state-wide class for
20 litigation purposes, finding that all of the relevant criteria were satisfied. Both the Court of Appeal
21 and the Supreme Court denied writ review of that ruling. To effectuate the Settlement, as is proper
22 under California law, the Court now expands the Class to include owners of homes and other
23 structures nationwide on which Weyerhaeuser hardboard siding has been installed. (See Dunk, 48
24 Cal.App.4th at 1800.)

25 The Court has carefully considered all of the criteria for class certification under Code
26 of Civil Procedure § 382, Civil Code § 1781 et seq., Federal Rule of Civil Procedure 23, and
27 Amchem Prods., Inc. v. Windsor (1997) 521 U.S. 591, in the context of settlement, and finds that
28 they are satisfied. The Court's class related findings herein are made specifically in the context of

1 the Settlement and in light of Weyerhaeuser's agreement to class certification for settlement
2 purposes only, as Amchem allows. This Court need not determine, and does not determine, whether
3 a class would be manageable for trial purposes; as Amchem instructs, a court "need not inquire . . .
4 whether the case, if tried, would present intractable management problems, since the proposal is that
5 there be no trial." 521 U.S. at 620. All parties will be free to argue for or against certification of a
6 multi-state Class for litigation purposes if the Settlement fails to become effective, and this Order is
7 without prejudice to that determination.

8 The Court finds that the Class is composed of an easily ascertainable, self-identifying
9 set of individuals and entities who own homes and other structures on which Weyerhaeuser
10 hardboard siding was installed from January 1, 1981 to December 31, 1999. Weyerhaeuser siding is
11 a "branded" product; Class membership can be ascertained based on the Weyerhaeuser-specific
12 stamp on the back of the siding.

13 The Court further finds that the numerosity requirement is met because the Class
14 consists of tens or hundreds of thousands of property owners in California and throughout the United
15 States, making it impracticable, if not impossible, to join individual members of a Class of this size
16 and geographic dispersion. The commonality requirement is also met. In the absence of class
17 certification and settlement, each individual plaintiff Class member would be forced to litigate a long
18 list of core common issues of law and fact, all relating to Weyerhaeuser Hardboard Siding and
19 Weyerhaeuser's common course of conduct in relation to the members of the Class. Because the
20 Representative Plaintiffs' and Class members' claims all arise from the same events and course of
21 conduct, and are based on the same legal theories, the typicality requirement is satisfied. The
22 adequacy of representation requirement is also met here because they Class Representatives have the
23 same interests as the Class, and are represented by experienced and competent counsel.

24 Plaintiffs have satisfied the requirements of Code of Civil Procedure § 382, Civil
25 Code § 1781 et seq. and Federal Rule of Civil Procedure 23(b)(3) as relevant to certification for
26 settlement purposes. The Court finds that common questions predominate as to the alleged defective
27 design of Weyerhaeuser Hardboard Siding, Weyerhaeuser's liability, and general causation as to the
28 Class' damages. The Court finds class treatment superior to other means of resolving this litigation,

1 because employing the class device here will not only achieve economies of scale for class members
2 with relatively small individual claims, but will also conserve the resources of the judicial system
3 and preserve public confidence in the integrity of the system by avoiding the waste and delay of
4 repetitive proceedings, and prevent the inconsistent adjudications of similar issues and claims.
5 Additionally, the Court finds settlement class certification appropriate under Amchem, supra, in this
6 product-related consumer case, involving a single product, identifiable and self-identified class
7 members, and relatively modest, essentially identical, and objectively calculable economic (rather
8 than personal injury) damages.

9 **IV. NONE OF THE OBJECTIONS HAS MERIT**

10 The Court has considered all objections to the Settlement and to certification of the
11 Settlement Class that have been lodged by Class members, and concludes that all of these objections
12 lack merit. The overarching theme of all of the objections is that the Settlement before the Court is
13 less favorable than what might have been obtained at trial, or that the Settlement could have been
14 “better.” However, this Court agrees with other courts who have recognized that

15 [o]f course it is possible . . . that the settlement could have been better.
16 But this possibility does not mean the settlement presented [is] not fair,
17 reasonable or adequate. Settlement is the offspring of compromise; the
18 question we address is not whether the final product could be prettier,
19 smarter or snazzier, but whether it is fair, adequate and free from
20 collusion. In this regard, the fact that the overwhelming majority of the
21 class willingly approved the offer and stayed in the class presents at
22 least some objective positive commentary as to its fairness. There [is]
23 no disparate treatment between class members; all stood to benefit
24 equally, a fact which lessens the likelihood that the named plaintiffs
25 and their attorneys colluded with [the defendant] to increase their own
26 recovery at the expense of the unnamed plaintiffs who class counsel
27 had a duty to represent. No objector stepped forward and suggested
28 that his or her personal claim was being sacrificed for the greater
good--and if any thought that was the case, they had the right to
opt-out of the class.

24 (Hanlon v. Chrysler Corp. (9th Cir. 1998) 150 F.3d 1011, 1027.) The Court finds that the Settlement
25 here is a compromise that was negotiated at arms’-length, that it appropriately reflects both the
26 strengths and weaknesses of Plaintiffs’ claims and Weyerhaeuser’s defenses, and that all of the
27 objections should be overruled. Nevertheless, the Court generally and briefly addresses the
28 substance of the as follows:

1 Objectors contend, in various manners, that the procedural requirements for class
2 certification have not been met. However, the Court is satisfied that all of the procedural
3 requirements for class certification are met here (see Section III, supra.), and that the characteristics
4 that united the February 4, 1999 California litigation class, making it appropriate for class
5 certification, apply with equal force to the nationwide Settlement Class.

6 In particular, the Court finds that the dismissal of the Washington Chambers
7 complaint does not, as the Objectors claim, show that California law is substantially more favorable
8 than the laws of other states, create a rift between California and out-of-state Class members, or
9 preclude certification of a unitary class. Instead, it appears that in the Washington action,
10 Weyerhaeuser made a strategic decision to seek summary judgment *before* the class certification
11 issue was heard, whereas in this action, Weyerhaeuser waited until after class certification was
12 granted to file similar motions. Weyerhaeuser's dispositive motions were pending in this action
13 when the Settlement was reached, and the risk that Weyerhaeuser may have prevailed on those
14 motions here, as it did in Washington, is one that Class Counsel appropriately considered in
15 negotiating the Settlement. Although the Objectors contend that conflict-of-laws issues prevent a
16 finding of Class cohesiveness here, the Court finds that the Objectors never met their burden to show
17 that there exists a genuine conflict between California law and any other state laws that might apply
18 to the claims asserted here. (See Clothesrigger, Inc. v. GTE Corp. (1987) 191 Cal.App. 3d 605, 614
19 [236 Cal.Rptr. 605] (California courts presumptively apply California law to the entire case before
20 them; only after a party timely invokes the law of a foreign jurisdiction must a Court conduct a
21 "governmental interest analysis" to determine the choice-of-law issue); Church v. Consol.
22 Freightways, Inc. (N.D. Cal. 1992) 1992 U.S. Dist. LEXIS 18234, *11-12 (Jensen, J.) ("In class
23 certification motions, th[e] Court generally presumes that California law will apply unless [opposing
24 parties] demonstrate conclusively that the laws of other states will apply.")) Instead, based upon the
25 sound legal authority and analysis Class Plaintiffs have supplied, together with the full evidentiary
26 record in this case, the Court finds that all of the prerequisites for certification of a nationwide class
27 for settlement purposes are met here.

28

1 Objectors also object to California Class members being bound by the same
2 settlement terms as other Class members, contending that the February 1999 certification of a
3 California-only class, the Eagle Square verdict, and purportedly “more liberal” strict liability and
4 unfair business practices law in California require that California residents get a “better deal” than
5 the rest of the Class. The Court finds, however, that no California Class member’s claim was
6 diluted, compromised, or in any way impaired as a result of the expansion of the Settlement to
7 encompass non-California residents. Enlarging a class for settlement purposes is common, and is
8 proper where, as here, Class Counsel and the Class Representatives have satisfied their fiduciary
9 responsibilities to all Class members, and all Class members have been provided notice of their right
10 to opt out if they so choose. (MCL 3d § 30.45 at 245.) Such was the case, for example, in Dunk v.
11 Ford Motor Co. (1996) 48 Cal.App.4th1794, 1800 [56 Cal.Rptr.2d 483], which affirmed a trial
12 court’s final approval of a class action settlement on behalf of a nationwide settlement class, where
13 the trial court had initially certified for litigation purposes a consumer class limited to California
14 residents. The Court also recognizes that the February 1999 class certification Order was not final,
15 but rather purely provisional in nature and subject to modification or decertification at any time
16 before final judgment, and that the risk that Plaintiffs may not have been successful in maintaining
17 the Class through trial is one that Class Counsel appropriately considered in negotiating the
18 Settlement Agreement. The Court further finds that the Eagle Square verdict does not guarantee that
19 Class Plaintiffs would have won a huge verdict had this case proceeded to a trial on the merits,
20 particularly in light of the Eagle Square jury’s allocation of only partial (17%) liability to
21 Weyerhaeuser, the ongoing appeal of that verdict by Weyerhaeuser, and defense verdicts
22 Weyerhaeuser has obtained in similar cases, including the more recent Ennis case in Tulare County,
23 California. Finally, the Court rejects the argument that California Class members are given short-
24 shrift here due to the “liberality” of California’s strict liability and unfair competition laws. No strict
25 liability claim is asserted here, and such a claim would be of questionable viability in light of the
26 Supreme Court’s recent ruling in Aas v. Super. Ct. (Dec. 4, 2000) ___ Cal.4th ___ [___ Cal.Rptr.
27 ___], 2000 WL 1772766. Nor is it at all clear that the relief potentially available under the UCL
28 would be any more valuable than relief that might be obtained under other States’ laws.

1 Objectors contend that the damage definitions and causation exceptions in the
2 Settlement Agreement are unfair to homeowners. The Court finds, however, that the damage
3 protocols and causation exceptions were the subject of intense and adversarial negotiation, and that
4 Class Counsel consulted extensively with their wood science and construction experts, Dr. Albert L.
5 Debonis and Kenneth B. Kellermeyer, to ensure that the damage definitions capture all damaged
6 siding, and that the causation exceptions are carefully crafted and are narrowly drawn. Unlike the
7 experts proffered by the Dvorsky Objectors, the evidence here shows that Dr. Debonis and
8 Mr. Kellermeyer have inspected homes in fifteen (15) States with Weyerhaeuser Hardboard Siding,
9 reviewed and analyzed all of Weyerhaeuser's research and development documents pertaining to the
10 product, and, perhaps most importantly, have the benefit of working with Class Counsel on previous
11 siding settlements where similar damage definitions and causation exceptions are being successfully
12 applied by the same independent inspection company that will serve here. As Dr. DeBonis and
13 Mr. Kellermeyer have confirmed in detail, based on their extensive experience, the damage
14 definitions and causation exceptions do not render the unfair, inadequate, or unreasonable.

15 The Court finds that the Objectors are plainly mistaken insofar as they complain that
16 Class members are not entitled to copies of their inspection reports. The Objectors complain that
17 there will no third-party arbitrator for Class members to appeal to if they are dissatisfied with their
18 recoveries under the Settlement. However, the Settlement Agreement entitles Class members to a
19 second inspection if they are dissatisfied with the result of their first inspection. There will also be a
20 Court-appointed Special Master, who will have the power to make decisions in all matters brought to
21 him by agreement of the Parties or pursuant to provisions of the Settlement Agreement pertaining to
22 the administration, implementation and enforcement of the Settlement Agreement, subject to review
23 by the Court. The Court finds that this is an adequate, and perhaps preferable, substitute to an
24 arbitration provision.

25 The Objectors object that consequential damages are not compensable under the
26 Settlement, but based on the evidence Class Plaintiffs have submitted, the Court finds no merit to
27 Objectors' concern. Class Counsel's work with experts, and their experience in related litigation,
28 shows that instances of consequential damages caused by siding failure are rare. In any event, Class

1 Members were notified that consequential damages were not covered by this Settlement, and were
2 free to opt out of the Settlement if they were concerned about the unavailability of compensation for
3 any consequential damages they may have.

4 Objectors contend that paragraph 5.17 of the Settlement Agreement should provide a
5 mechanism whereby the Notice of Individual Settlement is filed by the Claims Administrator. Since
6 it is not entirely clear what the Objectors intend to express by this objection, and given the filing of
7 such a Notice is not even required under the Settlement Agreement, the Court finds this objection
8 without merit.

9 Objectors claim that the Court has no jurisdiction over out-of-state Class members
10 who are not given "individual" notice and an opportunity to opt-out. First, this Court finds that it can
11 exercise jurisdiction over out-of-state Class members because they were given the "best notice
12 practicable under the circumstances" of the Settlement and their exclusion rights, including
13 individual notice to all Class members who could be identified through reasonable efforts. (See
14 Philips Petroleum Co. v. Shutts (1985) 472 U.S. 797, 811-12 (provision of "best notice practicable"
15 with description of the litigation and explanation of opt-out rights satisfies due process); Eisen v.
16 Carlisle & Jacquelin (1974) 417 U.S. 156, 174-75 (individual notice must be sent to all class
17 members who can be identified through reasonable efforts); Mullane v. Central Hanover Bank &
18 Trust Co. (1950) 339 U.S. 306, 314 (best practicable notice is that which is "reasonably calculated,
19 under all the circumstances, to apprise interested parties of the pendency of the action and afford
20 them an opportunity to present their objections."); Dunk v. Ford Motor Co., 48 Cal.App.4th at 1805-
21 07 (approving nationwide settlement certification of previously certified California-only litigation
22 class against out-of-state defendant). Second, this Court possesses broad discretion in fashioning an
23 appropriate notice program. (Cal. Civ. Code § 1781; Cartt v. Super. Ct. (1975) 50 Cal.App.3d 960,
24 973-74 [124 Cal.Rptr. 376].) There is no statutory or due process requirement that all Class
25 members receive actual or "individual" notice by mail or other means; rather, "individual notice must
26 be provided to those class members who are identified through reasonable efforts." (Eisen, 417 U.S.
27 at 175-76; see also Manual for Complex Litigation 3d (Fed. Judicial Center 1995) § 30.211 at 225 &
28 n.709 ("Rule 23 . . . requires that individual notice in [opt-out] actions be given to all class members

1 'who can be identified through reasonable efforts' with others given the 'best notice practicable under
2 the circumstances' Due process does not require actual notice to parties who cannot reasonably
3 be identified.".) The evidentiary record here shows that this standard has been met. In fact, as
4 Plaintiffs' notice expert Todd B. Hilsee attests, the Notice Program in this case "ranks among the
5 most extensive, broad-reaching and effective class action settlement notice programs in recent
6 history."

7 The Court finds no merit in the Objectors' charge that it is "impossible" for Class
8 members to identify Weyerhaeuser Hardboard Siding; that the Notice does not contain pictures; "nor
9 is the product identifiable without ripping siding off and having expertise to identify the product."
10 Nor are Objectors correct in their contention that individual notice was inappropriately mailed to
11 only 10,000 Class members. The uncontroverted evidence submitted by Plaintiffs shows that, to
12 date, over 35,000 individual notices have been mailed,^{3/} and a massive, nationwide, multi-media
13 notice program has been implemented. Because there was no central registry of persons with
14 Weyerhaeuser Hardboard Siding, the parties appropriately relied upon extensive paid publication
15 notices, third-party notice, and earned media to deliver notice of the Settlement to Class members.

16 Objectors complain that the definitions of "damage" and "replacement cost" do not
17 take into account "consequential damages caused by the repair," but there has been no showing by
18 the Objectors that repairing their siding has or will cause consequential damage.

19 Objectors contend that the Settlement Agreement inappropriately releases claims of
20 those who "do not know that they have hardboard siding, do not know that their siding was
21 manufactured by Weyerhaeuser, and/or have not presently sustained damage." However, this Court
22 finds, as Judge Garcia earlier found, that Weyerhaeuser hardboard siding is a "branded product,"
23 such that the ascertainability requirement is satisfied, and due process notice has been provided to all
24 Class members.

25 Objectors' contention that the Settlement compensation is inadequate takes several
26 additional different forms, none of which have merit. However, the Court finds that Class counsel

27 _____
28 ^{3/}The record here shows that Class notice was initially mailed to all persons in
Weyerhaeuser's warranty claims database, as well as to all persons who had contacted Class Counsel
regarding Weyerhaeuser Hardboard Siding during the course of the litigation

1 have extensive experience in litigating cases of this sort, and that they have determined that the
2 compensation provided for in this Settlement is fair, adequate, and reasonable compensation not only
3 for damaged siding, but for labor and other materials incident to repairing or replacing damaged
4 siding. As Mr. Waier has testified in his Declaration, the value of the Settlement is supported by
5 objective, geographically-specific criteria and data derived therefrom.

6 Objectors complain that the modest “use deduction” provided for in the Settlement
7 Agreement renders the Settlement compensation unfair and inadequate. (Settlement Agreement,
8 ¶ 1.38.) However, the Court finds that the concept of depreciation embodied in the use deduction
9 provision is well-settled in the law, and commonly applied in circumstances where individuals have
10 obtained some value from the use of a product. It is beyond question that class members who have
11 had siding on their home beyond five years have obtained some value from the use of that siding.
12 Further, the modest 4% per year reduction for each year beyond the fifth year after installation of the
13 siding, capped at 30%, is a very modest depreciation, and compares favorably with other settlements
14 in similar cases.

15 Objectors also complain that the criteria for “totaling out” compensation for entire
16 sides and structures are unfair and inadequate. (Settlement Agreement, ¶¶ 5.14.1-.2.) However, it
17 appears to the Court that Class members who are not “toaled out” after their first inspection are
18 entitled to subsequent inspections every two years, and the results from each inspection are
19 aggregated for purposes of totaling out a side or structure. Given that the Objectors do no more than
20 express a generalized dissatisfaction with this provision, without any constructive criticism, insight
21 or analysis as to how or why it renders the Settlement as a whole unfair or inadequate, and keeping in
22 mind that this Settlement is a compromise, this “objection” is overruled.

23 The Objectors have also lodged several objections specific to the Class Notice. They
24 complain that the Notice did not indicate that a litigation class had previously been certified or
25 provide information on the Eagle Square verdict. However, a class action settlement notice should
26 describe the essential terms of the proposed settlement; disclose any special benefits provided to the
27 Class representatives; provide information regarding attorneys' fees; indicate the time and place of
28 the hearing to consider approval of the settlement, and the method for objecting to or opting out of

1 the settlement; explain the procedures for allocating and distributing settlement funds, and, if the
2 settlement provides different kinds of relief for different categories of Class members, clearly set out
3 those variations; and prominently display the address and phone number of Class Counsel and the
4 procedure for making inquiries. (Cal. Civ. Code § 1781(e); MCL 3d § 30.212.) The Court finds that
5 the notice here satisfied all applicable criteria.

6 Nor is there any merit to the Objectors' contention that the Settlement Agreement was
7 hidden from the Class. Class Counsel promptly supplied a copy of the Agreement to anyone who
8 expressed an interest in seeing it (including the Objectors' counsel, to whom Class Counsel sent a
9 copy of the Settlement Agreement on October 27, 2000.). The Court finds that parties' treatment of
10 the Settlement Agreement is entirely consistent with class action practice, and endorsed by the
11 Manual for Complex Litigation. (MCL 3d § 30.212 at 228 ("The text of the proposed settlement
12 may or may not be included in the notice, depending on its length and clarity. If the agreement itself
13 is not distributed, the notice must . . . tell class members where they can examine or secure a copy,
14 such as from the clerk's office . . .").)

15 The Court finds no merit in Objectors' complaint that the opt-out procedure was
16 unduly burdensome or unfair to Class members, but is instead satisfied that the opt-out procedures
17 were designed to be as easy, and as reliable, as is possible under the circumstances.

18 To the extent that the Objectors attempt to analogize the Class here to the "futures"
19 class disapproved in Amchem Prods., Inc. v. Windsor (1997) 521 U.S. 591, the Court does not agree.
20 The United States Supreme Court's concern in Amchem arose out of three unique conditions, none
21 of which are present here: first, at issue were highly individualized and valuable personal injury
22 claims; second, the class was defined to include persons who could not be alerted to their class
23 membership because they were not yet class members — i.e., future spouses and children of asbestos
24 victims; and third, the settlement imposed annual numerical and dollar caps on claims. (521 U.S. at
25 602-04 & n.5.) Here, on the other hand, the Settlement is structured on a "claims-made" basis, and
26 there are no limits whatsoever on the number or dollar amount of claims Weyerhaeuser will pay
27 during any given year of the Settlement. Moreover, unlike the "future" class members in Amchem,
28 the Class members here need not wait to determine whether they are Class members. Instead, the

1 **IT IS HEREBY ADJUDGED, ORDERED, AND DECREED** that:

2 1. This Court has jurisdiction over the claims of the Class members asserted in
3 this proceeding, personal jurisdiction over the settling parties (including the Class members), and
4 subject matter jurisdiction to approve the Settlement Agreement.

5 2. This Court confirms that the applicable requirements of the Code of Civil
6 Procedure § 382, Civil Code § 1781 et seq., and Federal Rule of Procedure 23 have been satisfied
7 with respect to the Class. Accordingly, the Court makes final its July 12, 2000 Order Provisionally
8 Certifying Settlement Class with respect to the Class' claims against Weyerhaeuser, and for purposes
9 of effectuating the Settlement.

10 3. Notice given to the members of the Class was reasonably calculated under the
11 circumstances to apprise the Class members of the pendency of this action, all material elements of
12 the Settlement, and their opportunity to exclude themselves from, to object to, or to comment on the
13 Settlement and to appear at the final fairness hearing; was reasonable and the best notice practicable
14 under the circumstances; was due, adequate, and sufficient notice to all Class members; and
15 complied fully with the laws of the State of California, the Code of Civil Procedure, due process, and
16 any other applicable rules of the Court. A full opportunity has been afforded to the Class members
17 to participate in the final fairness hearing, and all Class members and other persons wishing to be
18 heard have been heard. Accordingly, the Court determines that all members of the certified Class,
19 except to the extent such Class members have timely excluded themselves from the Class as set forth
20 in paragraph 4 below, are bound by this Judgment, Final Order and Decree.

21 4. Within fifteen (15) days of the date of this Order, the parties shall submit to
22 the Court a final list of the Class members who timely requested to be excluded from the Class.

23 5. The Court directs the Clerk of the Court to maintain, for a period of nine
24 years, the record of those members of the Class who have timely excluded themselves from the
25 Class.

26 6. The Court hereby grants final approval to the Settlement and finds that it is
27 fair, reasonable and adequate, and in the best interests of the Class as a whole. The Court finds that
28 the Settlement Agreement was the product of arms'-length negotiations, is not collusive or

1 fraudulent, and is not intended to adversely affect the interests of others. All of the objections which
2 have been filed were considered by the Court and are hereby overruled.

3 7. Upon entry of this Order, the Release provisions set forth in Settlement
4 Agreement paragraphs 11.1 to and including 11.7 shall be given full force and effect.

5 8. The parties have agreed upon the designation of Philip E. Cutler, Esq. to
6 mediate any disputes arising out of the claims administration procedures set forth in the Settlement
7 Agreement, and the Court hereby appoints Philip E. Cutler, Esq. to serve as Special Master for that
8 purpose.

9 9. The parties have agreed upon the designation of Crawford & Company to the
10 conduct the Independent Inspections under the Settlement Agreement, and the Court hereby appoints
11 Crawford & Company to serve as the Independent Inspector for that purpose.

12 10. The parties have agreed upon the designation of the Garden City Group to
13 administer the claim program under the Settlement Agreement, and the Court hereby appoint the
14 Garden City Group to serve as Claims Administrator for that purpose.

15 11. In connection with the administration of the Settlement Agreement, the
16 Claims Administrator shall distribute to Class members Claim Forms that are substantially similar to
17 the model Claim Form attached hereto.

18 12. In addition to any recovery they may receive under the Settlement Agreement,
19 and in recognition of their efforts on behalf of the Class, the Court approves payment of the
20 following Class Representative stipends: \$22,500.00 to East Cotati Avenue Partners, LP; and
21 \$7,500.00 each to Nancie Williams, Travis Wolden, David H. Chambers, Joseph Eggers, Raj
22 Bhowmik, Robert P. Sewitsky, Joseph G. Rakoski, David L. Whitmore, and Sharon L. Whitmore.
23 Such stipends shall be limited, however, to one payment of \$7,500.00 per married couple, and shall
24 be paid within ten (10) business days after the date which this Final Order, Judgment and Decree
25 becomes final.

26 13. Without affecting the finality of this Judgment, Final Order and Decree, the
27 Court reserves continuing and exclusive jurisdiction over parties to the Settlement Agreement,
28

1 including Weyerhaeuser and Class members, to administer, supervise, construe and enforce the
2 Settlement Agreement in accordance with its terms for the mutual benefit of the parties.

3 14. The Settlement Agreement is expressly incorporated herein by this reference,
4 and has the full force and effect of an order of this Court. The parties shall consummate the
5 Settlement Agreement according to its terms.

6 15. As to Weyerhaeuser, and except as to Class members who have timely
7 requested exclusion from the Class, the operative complaint in this action is dismissed with prejudice
8 and without costs.

9 16. Under California Code of Civil Procedure sections 578, 579 and 664.6, the
10 Court, in the interests of justice, there being no just reason for delay, expressly directs the Clerk of
11 the Court to enter this Judgment, Final Order and Decree, and hereby decrees, that upon entry, it be
12 deemed as a final judgment and appealable in accordance with the terms of the Settlement.

13 17. The Dvorsky Intervenors'/Objectors' renewed request for intervention is
14 granted for the limited purposes of preserving their right to appeal from this Order.

15
16 Dated: December ^{DEC 22 2000}____, 2000

ALFRED G. CHIANTELLI

HON. ALFRED G. CHIANTELLI
Superior Court of the State of California

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ENDORSED
FILED
San Francisco County Superior Court

NOV 29 2000

ALAN CARLSON, Clerk
BY: KEVIN B. DOLAN, Deputy Clerk

SUPERIOR COURT OF CALIFORNIA
CITY AND COUNTY OF SAN FRANCISCO

NANCIE WILLIAMS, EAST COTATI
AVENUE PARTNERS, LP, DAVID H.
CHAMBERS, JOSPH EGGERS, RAJ
BHOWMIK, TRAVIS WOLDEN, DAVID
L. WHITMORE, SHARON L.
WHITMORE, JOSEPH G. RAKOSKI, and
ROBERT P. SEWITSKY on behalf of
themselves and all others similarly situated,

Plaintiff(s),

vs.

WEYERHAEUSER COMPANY, et al.

Defendant(s).

CASE NO. 995787

SPECIAL FINDINGS AND ORDER RE:
TERMS OF SETTLEMENT

Following an in-person conference before the Court on November 29, 2000, and for good cause shown to the satisfaction of the Court, the Court hereby makes the following special findings and issues the following Order.

RECITALS

1. On February 4, 1999, this Court certified a class of current and former owners of homes and other structures in California on which hardboard siding manufactured by Weyerhaeuser had been installed.
2. A settlement has been reached between the Plaintiffs and Weyerhaeuser, as set forth in the Settlement Agreement dated July 7, 2000 on file with the Court (hereinafter, the "Settlement Agreement"). The Court preliminarily approved the Settlement on July 12, 2000.

1 ORDER

2 GOOD CAUSE APPEARING TO THE SATISFACTION OF THE COURT, THE COURT
3 ORDERS:

- 4 1. The definition in the Settlement Agreement of "Class" and "Class
5 Member" does not include, nor was it intended to include, builders and
6 developers who previously owned but no longer own structures clad
7 with Weyerhaeuser hardboard siding. Such builders and developers
8 are not Parties to the Settlement Agreement.
- 9 2. These SPECIAL FINDINGS AND ORDER RE: TERMS OF
10 SETTLEMENT shall be incorporated into the Order Granting Final
11 Approval to Class Action Settlement; and Judgment, Final Order &
12 Decree Thereon, substantially in accordance with the terms of this
13 Order.

14 IT IS SO ORDERED.

15
16 Dated: November 29, 2000

ALFRED G. CHIANTELLI

HONORABLE ALFRED G. CHIANTELLI
PRESIDING JUDGE
SUPERIOR COURT OF CALIFORNIA
CITY & COUNTY OF SAN FRANCISCO

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19
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21 APPROVED AS TO FORM:

22 TOUSLEY BRAIN PLLC

APPROVED AS TO FORM:

PERKINS COIE LLP

23
24 By _____
25 Christopher Brain, Esq.
26 Beth Terrell, Esq.
CLASS COUNSEL

By _____
Steve Koh, Esq.
Counsel for WEYERHAEUSER COMPANY

**Tousley
Brain
Stephens
PLLC**

Attorneys and Counselors

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CHRISTOPHER I. BRAIN
cbrain@tousley.com

OUR FILE NO:
W-3210.001.L1A

November 8, 2000

Alan H. Packer
Cooper, White & Cooper LLP
201 California Street, Seventeenth Floor
San Francisco, CA 94111

Re: Weyerhaeuser Class Action Settlement

Dear Mr. Packer:

Your October 27, 2000, letter to Thomas L. Boeder references certain issues related to the definition of "Class Members" and "Class" and whether or not these definitions include home builders who "own or owned" structures before the sale to consumers.

The definition in Section 1.11 of the settlement agreement is intended to include persons who "owned" structures so that the same could make claims for unreimbursed repairs pursuant to Sections 1.7 and 5.6 of the agreement. The definition of "Class" or "Class Members" does not include nor was it intended to include builders and developers who previously owned but no longer own structures clad with Weyerhaeuser hardboard siding.

Class Counsel submits this letter to you to clarify any outstanding issues you may have with respect to the definition of Class and Class Members. In addition, it is our intent to include this "clarification" of the class definition in the findings entered at the fairness hearing. We understand that Weyerhaeuser concurs with our position and will be confirming by separate letter.

Very truly yours,

Class Counsel
TOUSLEY BRAIN STEPHENS PLLC


Christopher I. Brain

CIB/mas

cc: Thomas L. Boeder

3210001115238

PERKINS COIE LLP

1201 THIRD AVENUE, SUITE 4800 • SEATTLE, WASHINGTON 98101-3099
TELEPHONE: 206 583-8888 • FACSIMILE: 206 583-8500

THOMAS L. BOEDER
(206) 583-8416
boedr@perkinscoie.com

November 13, 2000

VIA FACSIMILE AND MAIL

Alan H. Packer, Esq.
Cooper White & Cooper LLP
201 California Street, 17th Floor
San Francisco, CA 94111

Re: Weyerhaeuser HBS Class Action Settlement

Dear Mr. Packer:

I am writing in response to your letter of October 27 and Christopher Brain's letter of November 8 on behalf of Class Counsel in the referenced litigation. This is simply to confirm as counsel for Weyerhaeuser in this case that Weyerhaeuser concurs in the position stated by Mr. Brain in his letter of November 8.

If you have any additional questions in this regard, please feel free to call.

Sincerely,


Thomas L. Boeder

TLB:tlb

cc: Christopher I. Brain, Esq.
Neal Sullins, Esq.
Elizabeth A. Alaniz, Esq.

[03030-0000/SL003765.835]