

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

IN RE:

WIRSBO NON-F1807 YBFs

Case No: 08-CV-1223-F

**ORDER GRANTING JOINT MOTION TO AMEND THE CLASS DEFINITION
AND FILE AMENDED COMPLAINT FOR THE PURPOSES OF SETTLEMENT**

This matter is before the Court on the parties' Joint Motion to Amend the Class Definition and File Amended Complaint for the Purposes of Settlement. The parties seek to file a Fourth Amended Class Action Complaint to amend the class definition to include non-residential property. The Fourth Amended Class Action Complaint also seeks to clarify the class representatives and include Defendants who were previously unnamed, but are making material contributions towards settlement. The Court has reviewed the motion and is fully informed in the premises and FINDS and ORDERS as follows:

DISCUSSION

A court can amend or alter the class definition at any time, for any reason, before a decision on the merits. Fed.R.Civ.P. 23(c)(1)); *Vizcaino v. U.S. Dist. Court for Western Dist. of Washington*, 173 F.3d 713, 721 (9th Cir. 1999) (citing Rule 23(c)(1), which gives the court “explicit permission to alter or amend a certification order before [a] decision on the merits . . .”); *Andrews Farms v. Ca/cot, Ltd.*, 268 F.R.D. 380, 384 (E.D. Cal. 2010)(citing *Armstrong v. Davis*, 275 F.3d 849, 871 (9th Cir. 2001))(“[e]ven after a

certification order is entered, the judge remains free to modify it in light of subsequent developments in the litigation”); *Prado-Steiman v. Bush*, 221 F.3d 1266, 1273 (11th Cir. 2000) (the power to amend certification orders is “critical, because the scope and contour of the class may change radically as discovery progresses and more information is gathered about the nature of the putative class members' claims”); *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions v. Prudential Ins. Co. of Am.*, 148 F.3d 83, 326 (3rd Cir. 1998) (a district court is permitted to expand the scope of a settlement class so long as it generally corresponds to the allegations set forth in the complaint). An amendment to the class definition must satisfy the requirements of Rule 23. *Plascenia v. Lending 1st Mortg.*, 2012 WL 253319 (N.D. Cal. 2012)(citing *Gen. Tel. Co. of the Sw. v. Falcon*, 457 U.S. 147, 160, 102 S.Ct. 2364, 72 L.Ed.2d 740 (1982)).

In order to certify a class under Rule 23, Plaintiffs must demonstrate that (1) the class is so numerous that joinder of all members is impractical, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class. Fed.R.Civ.P 23(a). Under FRCP 23(b), Plaintiffs must satisfy at least one of three criteria to establish that maintaining a class action is logistically possible and superior to other actions.

Proposed Amended Class Definition and Clarification of Parties

The parties seek to amend the class definition to the following:¹

¹ All capitalized terms shall have the definition assigned in the Settlement Agreement.

All Persons that own (or owned or subsequently purchase/own) buildings, homes, residences, Common Areas, Residential Units, or Non-Residential Properties located in the Las Vegas Valley which contain Uponor Yellow Brass Fittings. The class includes, without limitation all individuals and entities, including those in active litigation, the Complaints, and/or arbitration, seeking arbitration or ordered to arbitration by any state or federal court, as well as their spouses, joint owners, heirs, executors, administrators, subrogated insurance companies, insurers, mortgagees, tenants, creditors, lenders, predecessors, successors, subsequent owners or occupants, trusts and trustees, attorneys, agents, and assigns and all Persons who have legal standing and are entitled to assert a claim on behalf thereof. The class includes, without limitation, all Persons who subsequently purchase or otherwise obtain an interest in a property covered by this definition without the need of any formal assignment by contract or court order.

This amended definition includes non-residential property owners. The parties assert that regardless of whether owners are residential or non-residential owners, the yellow brass fitting are made of the same material and used for the same purpose. The Fourth Amended Class Action Complaint also limits the named Plaintiffs to those identified as Class Representatives and adds Defendants who were previously unnamed, but making material contributions towards settlement.

The parties have submitted the Affidavit of Julius Ballanco, who asserts that fixtures involved in this case would generally be limited to non-residential properties of three stories in height or less. This Affidavit alleviates the Court's concern that the expanded class definition would include a significant number of properties that might not be appropriate for this Settlement Agreement. The Court has previously certified the liability class and finds the amended class definition also meets the requirements of Rule 23.

However, in considering the proposed class definition, the Court finds the term “buildings” in the first sentence of the proposed amended class definition has the potential to cause confusion. Therefore, the Court will approve the following amended class definition:

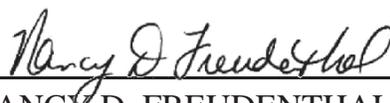
All Persons that own (or owned or subsequently purchase/own) homes, residences, Common Areas, Residential Units, or Non-Residential Properties located in the Las Vegas Valley which contain Uponor Yellow Brass Fittings. The class includes, without limitation all individuals and entities, including those in active litigation, the Complaints, and/or arbitration, seeking arbitration or ordered to arbitration by any state or federal court, as well as their spouses, joint owners, heirs, executors, administrators, subrogated insurance companies, insurers, mortgagees, tenants, creditors, lenders, predecessors, successors, subsequent owners or occupants, trusts and trustees, attorneys, agents, and assigns and all Persons who have legal standing and are entitled to assert a claim on behalf thereof. The class includes, without limitation, all Persons who subsequently purchase or otherwise obtain an interest in a property covered by this definition without the need of any formal assignment by contract or court order.

CONCLUSION

The Court finds the parties’ Joint Motion to Amend the Class Definition and File Amended Complaint for the purpose of Settlement is GRANTED. The amended class definition, as modified by the Court as described above, satisfies the requirements of Rule 23. The parties shall be allowed to file the Fourth Amended Complaint, with the Court’s revised class definition, for settlement purposes only and the Fourth Amended Complaint will be vacated in the event the settlement is not completed.

IT IS ORDERED that the parties' Joint Motion to Amend the Class Definition and File Amended Complaint for the Purposes of Settlement is GRANTED. The parties shall file the Fourth Amended Complaint with the Clerk of Court.

Dated this 15th day of June, 2015.



NANCY D. FREUDENTHAL
CHIEF UNITED STATES DISTRICT JUDGE