

MAR 25 2016

Sherri R. Carter, Executive Officer/Clerk  
By: Benigno Del Barrio, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES – CENTRAL CIVIL WEST

MILES HOUZE, individually and on  
behalf of all others similarly situated,  
SUSAN HOUZE, individually and on  
behalf of all others similarly situated,  
KEVIN NGAI, individually and on  
behalf of all others similarly situated,  
MARCIA PRICE, individually and on  
behalf of all others similarly situated,  
HENRY OKONKWO, individually and  
on behalf of all others similarly situated,

Plaintiff,

vs.

BRASSCRAFT MANUFACTURING  
COMPANY, a Michigan corporation,  
EZ-FLO INTERNATIONAL, INC., a  
California corporation, and DOES 1  
through 1,000, inclusive,

Defendants.

Case No.: BC493276

Assigned for all Purposes to:  
Judge: Hon. Jane Johnson  
Dept.: 308

**~~PROPOSED~~ AMENDED ORDER  
GRANTING PRELIMINARY  
APPROVAL OF SETTLEMENT,  
CERTIFYING PROVISIONAL  
SETTLEMENT CLASS,  
APPOINTING SETTLEMENT  
CLASS COUNSEL, SETTING  
HEARING ON FINAL APPROVAL  
OF SETTLEMENT, AND  
DIRECTING NOTICE TO THE  
CLASS**

DATE: March 14, 2016  
TIME: 1:45 p.m.  
DEPT. 308

Action Filed: October 4, 2012  
Trial Date: None Set

1 **AMENDED ORDER**

2 Pursuant to California Rules of Court Rule 3.769(c), Plaintiffs Miles Houze,  
3 *et al.*, on behalf of themselves and a nationwide class of others similarly situated,  
4 (collectively “Plaintiffs”) moved this Court for an Order preliminarily approving  
5 their settlement, certifying a provisional settlement class, appointing settlement  
6 class counsel, setting a hearing on the final approval of the settlement, and  
7 directing notice to the class (the “Motion”). Defendant BrassCraft Manufacturing  
8 Company (“Defendant BrassCraft”) joined in Plaintiffs’ request for an order  
9 preliminarily approving the settlement between Plaintiffs and BrassCraft.

10 Upon consideration of the Motion, Plaintiffs and BrassCraft’s Class Action  
11 Settlement Agreement and Release and all exhibits thereto (collectively, the  
12 “Settlement Agreement” or “Settlement”), Supplemental Briefing in Support of  
13 Motion, the materials previously submitted in this case, the arguments of counsel,  
14 and other materials relevant to this matter, and good cause appearing therefore,  
15 **THE COURT HEREBY FINDS AND ORDERS AS FOLLOWS:**

16  
17 1. The Court grants preliminary approval of the Settlement based upon  
18 the terms set forth in the Class Action Settlement Agreement and Release filed  
19 herewith.

20 2. The terms of the Settlement Agreement are sufficiently fair,  
21 reasonable, and adequate to allow dissemination of notice according to the Notice  
22 Plan attached as Exhibit 5 to the Settlement Agreement (“Notice Plan”).<sup>1</sup>  
23 Specifically, the Court approves the Notice Plan and approves, as to form and  
24 content, (1) the Settlement Claim Form attached as Exhibit 1 to the Settlement  
25 Agreement (“Claim Form”), (2) the mailed notice attached hereto as Exhibit 1 in  
26 redline format (“Mailed Notice”), and (3) the published notice attached hereto as

27  
28 <sup>1</sup> To the extent capitalized terms are not defined in this Order, they shall have the meaning set forth in the Settlement Agreement.

1 Exhibit 2 in redline format (“Published Notice”). This determination is not a final  
2 finding that the Settlement Agreement is fair, reasonable, and adequate, but instead  
3 is a determination that there is reasonable cause to submit the proposed Settlement  
4 Agreement to Settlement Class Members and to hold a hearing on the fairness of  
5 the proposed settlement and on the final approval of the settlement (“Fairness  
6 Hearing”), and ultimately approve the Settlement.

7 3. The Court hereby approves the provisions for disseminating the above  
8 materials substantially as described in the Notice Plan attached as Exhibit 5 to the  
9 Settlement Agreement. These materials (a) provide the best practicable notice,  
10 (b) are reasonably calculated, under the circumstances, to apprise Settlement Class  
11 Members of the pendency of the action, the terms of the proposed settlement, and of  
12 their right to appear, object to, or exclude themselves from the proposed settlement,  
13 (c) are reasonable and constitute due, adequate, and sufficient notice to all persons  
14 entitled to receive notice, and (d) comply fully with the requirements of the  
15 California Rules of Court, the California Code of Civil Procedure, the California  
16 Civil Code, the Constitution of the State of California, the United States  
17 Constitution, and any other applicable law.

18 4. The Notice Administrator shall be responsible for providing notice of  
19 the proposed settlement to the Settlement Class Members in accordance with the  
20 provisions of the Settlement Agreement. The Notice Administrator shall  
21 disseminate the Mailed Notices, Published Notices and Claim Forms per the  
22 Notice Plan on or before April 30, 2016. Within fifteen (15) days after the deadline  
23 to mail the Notices and Claim Forms to Settlement Class Members, the Notice  
24 Administrator shall provide declarations to the Court, with a copy to Class Counsel  
25 and Counsel for Defendant BrassCraft, attesting to the measures undertaken to  
26 provide Notices and Claim Forms to the Settlement Class.

27 5. The Court preliminarily certifies a class for settlement purposes only,  
28 consisting of persons who meet the following criteria:

1 All Persons that own or have owned a Residential Property Unit(s)  
2 and/or a Commercial Property Unit(s) located in the United States that  
3 contain or have ever contained a Covered Product manufactured on or  
4 before the Effective Date.

5 6. Excluded from the Settlement Class are:

- 6 a) Persons who validly and timely exclude  
7 themselves using the procedure set forth in  
8 Paragraphs 8.3 through 8.5 of the Settlement  
9 Agreement;
- 10 b) Retailers, wholesalers, and claims aggregators or  
11 persons or entities who claim to be an assignee of  
12 rights associated with any of the Covered Products,  
13 except associations of homeowners may seek  
14 Settlement Benefits for common areas, only;
- 15 c) Except as specified above, insurers and/or  
16 providers of extended service contracts or  
17 warranties for the Settlement Class Structures; and
- 18 d) The Honorable Jane Johnson and members of her  
19 family.

20 7. If, for any reason, the proposed settlement is not approved, the  
21 proposed settlement and any order certifying a settlement class or subclass shall be  
22 vacated *nunc pro tunc* and the Litigation shall proceed as though the Settlement  
23 Class had never been certified, without prejudice to the Parties' rights to either  
24 request or oppose class certification for purposes of litigation.

25 8. In making the findings set forth in Paragraphs 5 and 6 herein, the  
26 Court has exercised its discretion in conditionally certifying the Settlement Class  
27 on a nationwide basis. The Court designates Named Plaintiffs Miles Houze, Susan  
28

1 Houze, Kevin Ngai, Marcia Price, and Henry Okonkwo as the Class  
2 Representatives.

3 9. The Court hereby appoints the following attorneys as counsel for the  
4 Settlement Class: Kenneth S. Kasdan, Graham B. LippSmith, and Michael D.  
5 Turner of Kasdan LippSmith Weber Turner LLP, and the successors of these  
6 attorneys and this law firm. For purposes of these settlement proceedings, the  
7 Court finds that these counsel are competent and capable of exercising their  
8 responsibility as Class Counsel.

9 10. The Settlement Agreement is for settlement purposes only. Neither the  
10 fact of, any provision contained in, nor any action taken under the Settlement  
11 Agreement shall be construed as an admission of the validity of any claim,  
12 argument claiming offensive collateral estoppel, or any factual allegation that was  
13 or could have been made by Plaintiffs and Settlement Class Members in the  
14 Action, or of any wrongdoing, fault, violation of law, or liability of any kind on the  
15 part of BrassCraft. The Settlement Agreement shall not be offered or be admissible  
16 in evidence against BrassCraft or cited or referred to in any other action or  
17 proceeding against BrassCraft, except for an action or proceeding (1) brought by or  
18 against the Parties to enforce or otherwise implement the terms of the Settlement  
19 Agreement; (2) involving any Plaintiff or Settlement Class Member to support a  
20 defense of *res judicata*, defense of collateral estoppel, defense of release, or other  
21 theory of claim preclusion, issue preclusion, or similar defense; or (3) involving an  
22 attempt to enforce a stay of other litigation pursuant to the terms set forth in the  
23 Settlement Agreement and the Court's Order preliminarily approving the  
24 Settlement Agreement.

25 11. Anyone who wishes to be excluded from the Settlement Class must  
26 submit a written request for exclusion (in the form set forth in the Mailed Notice,  
27 Published Notice, Settlement Agreement, and at  
28 [www.BCyellowbrasssettlement.com](http://www.BCyellowbrasssettlement.com)) by sending it to the Notice Administrator at

1 the address in Paragraph 13, below, by first-class U.S. mail. Requests for exclusion  
2 must contain all information described in the Settlement Agreement, and otherwise  
3 meet the requirements set forth in that agreement. The envelope containing the  
4 request for exclusion must be postmarked no later than June 29, 2016.

5 12. Any Settlement Class Member who does not submit a request for  
6 exclusion in accordance with the deadlines and other specifications set forth in this  
7 Order and the Settlement Agreement shall be bound by all proceedings, orders, and  
8 judgments of this Court pertaining to the Settlement Class.

9 13. Any Settlement Class Member who intends to object to the fairness,  
10 reasonableness, or adequacy of the proposed Settlement should mail a written  
11 objection to BrassCraft Notice Administrator, P.O. Box 40007, College Station, TX  
12 77842-4007, by first-class mail with postage paid. Objecting Settlement Class  
13 Members should state in writing whether they intend to appear at the Fairness  
14 Hearing(s) either with or without separate counsel. The Notice Administrator will  
15 then serve any Objections received on Class Counsel, Counsel for Defendant  
16 BrassCraft, and all other parties due notice in this case via Case Anywhere. The  
17 Notice Administrator will also file any Objections received with the Court.  
18 Objections must contain all information described in the Settlement Agreement, and  
19 otherwise meet the requirements of that agreement. The envelope containing any  
20 written objection to the Settlement must be postmarked no later than June 29, 2016.  
21 Only Settlement Class Members may object to the Settlement.

22 14. In addition to its obligation to serve and file objections, the Notice  
23 Administrator will also serve any notice of a Settlement Class Member's intention  
24 to appear at the Fairness Hearing and associated briefing received on Class  
25 Counsel, Counsel for Defendant BrassCraft, and all other parties due notice in this  
26 case via Case Anywhere. The Notice Administrator will also file any such notices  
27 of a Settlement Class Member's intention to appear at the Fairness Hearing and  
28 associated briefing with the Court by filing such documents directly or arranging

1 for such documents to be filed by Class Counsel or Counsel for Defendant  
2 BrassCraft.

3 15. The Court will consider oral objections made at the Fairness Hearing  
4 even if they were not made in writing in advance of the Fairness Hearing.  
5 Settlement Class Members who fail to file and serve timely Objections in the  
6 manner specified above, or fail to make any objection orally at the Fairness  
7 Hearing, shall be deemed to have waived any objections and shall be foreclosed  
8 from making any objection (whether by appeal or otherwise) to the Settlement.

9 16. Plaintiffs shall file their briefs in support of settlement approval and  
10 any requests for attorney fees, costs reimbursement and class representative  
11 incentive awards on or before June 24, 2016. Plaintiffs and Defendant BrassCraft  
12 shall file responses to written Objections made by Settlement Class Members no  
13 later than July 10, 2016.

14 17. On August 11, 2016 at 9:00 a.m., the Court will hold the Fairness  
15 Hearing. It shall be held in Department 308 of the Los Angeles County Superior  
16 Court, located at 600 South Commonwealth Avenue, Los Angeles, CA 90005. The  
17 Fairness Hearing may be continued or rescheduled by the Court with notice to  
18 Class Counsel, Counsel for Defendant BrassCraft, and any objecting Settlement  
19 Class Member who has filed a notice of intention to appear in accordance with  
20 Paragraph 13 of this Order. At the Fairness Hearing, or as soon thereafter as  
21 practicable, the Court will determine whether the proposed settlement is fair,  
22 reasonable, and adequate and whether it should be approved by the Court. At the  
23 Fairness Hearing, the Court will also consider the amount of attorney fees, costs  
24 reimbursement and class representative incentive awards. If appropriate, the Court  
25 will issue a Final Order and Judgment memorializing its decision, in the form  
26 contemplated by the Settlement Agreement.

27 18. Pending further orders by this Court, all proceedings in this case and  
28 all other cases raising related issues shall be stayed, as to all claims concerning

1 BrassCraft fittings, except for proceedings pursuant to this Order or as necessary to  
2 effectuate the dismissal of any Related Action. All Settlement Class Members who  
3 do not request exclusion from the Settlement Class in accordance with this Order  
4 and the Settlement Agreement shall be barred from commencing and thereafter  
5 prosecuting any action, suit, proceeding, claim, or cause of action (except those  
6 based on or relating to personal injury or wrongful death) in any jurisdiction or court  
7 against BrassCraft, which relates to or arises out of the subject matter of this action.

8 19. Class Counsel and Counsel for Defendant BrassCraft are authorized to  
9 establish other means necessary to effectuate the terms of the Settlement  
10 Agreement.

11  
12 **IT IS SO ORDERED.**

13  
14 Dated: 3/25, 2016

**JANE L. JOHNSON**  
HON. JANE L. JOHNSON