EXHIBIT A

EXHIBIT A

AGREED PROPOSED JURY INSTRUCTIONS

TABLE OF CONTENTS

Page

I. PRETRIAL INSTRUCTIONS

In accordance with the views expressed by the Court at the pretrial conference, the parties are not submitting proposed pretrial jury instructions, except for the one instruction proposed below, which the parties agree may be given.

Pretrial Ins. No. 1 – Overview of Claims

In Count 1 of its complaint, Plaintiff Steves & Sons asserts that Defendant JELD-WEN's acquisition of a different company, Craftmaster Manufacturing Inc. (which we will call "CMI"), violated Section 7 of the Clayton Antitrust Act (which we will call the "Clayton Act"). Section 7 prohibits corporate mergers or acquisitions that are likely to substantially lessen competition or tend to create a monopoly in any relevant market. JELD-WEN denies that its acquisition of CMI violated Section 7. At the end of the trial, I will give you more detail about Section 7, and it will be your job to apply that law to the facts of this case.

In Count 2 of its complaint, Steves asserts that JELD-WEN breached a contract for the supply of doorskins, which we will refer to as the "Supply Agreement." JELD-WEN denies that it breached this contract.

In Count 3 of its complaint, Steves asserts that JELD-WEN breached a warranty it made to Steves as part of the Supply Agreement. JELD-WEN denies that it breached any such warranty.

II. GENERAL INSTRUCTIONS AT END OF TRIAL

Ins. No. 1 – Province of the Court

Members of the Jury:

Now that you have heard the evidence and the argument, it becomes my duty to give you instructions regarding the law applicable to this case.

It is your duty as jurors to follow the law as stated in the instructions, and to apply the rules of law in these instructions to the facts as you find them from the evidence in the case.

Counsel have quite properly referred to some of the governing rules of law in their arguments. If, however, any difference appears to you between the law as stated by counsel and that stated by the Court in these instructions, you of course are to be governed by the Court's instructions.

You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole.

Neither are you to be concerned with the wisdom of any rule of law stated in these instructions. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your sworn duty to base a verdict upon any view of the law other than that given in these instructions; just as it would be a violation of your sworn duty, as judges of the facts, to base a verdict upon anything but the evidence in the case.[1]

Justice through trial by jury always depends upon the willingness of each individual juror to seek the truth as to the facts from the same evidence presented to all the jurors; and to arrive at a verdict by applying the same rule of law, as given in the instructions of the Court.[2]

---

[1] 3 Devitt, Blackmar & Wolff, *Federal Jury Practice and Instructions*, § 71.01 (4th ed. 1987).

[2] Jury Instructions of the Court, *Samsung Electronics Co. Ltd. v. NVIDIA Corp.*, No. 3:14-cv-00757-REP-DJN (E.D. Va. April 15, 2016), ECF No. 791 (hereafter "*Samsung* ECF No. 791").

Ins. No. 2 – Province of the Jury

You are to perform this duty without bias or prejudice against any party. The law does not permit jurors to be governed by sympathy, prejudice, or public opinion. The parties and the public expect that you will carefully and impartially consider all the evidence in the case, follow the law as stated by the Court and reach a just verdict, regardless of the consequences.[3]

[3] 3 Devitt, Blackmar & Wolff, *Federal Jury Practice and Instructions*, § 71.01 (4th ed. 1987); *Samsung* ECF No. 791.

Ins. No. 3 – All Persons Equal Before the Law

This case should be considered and decided by you as an action between persons of equal standing in the community, of equal worth, and holding the same or similar stations of life. A corporation is entitled to the same fair trial at your hands as a private individual. All persons, including corporation, partnerships, unincorporated associations, and other organizations, stand equal before the law, and are to be dealt with as equals in a court of justice.[4]

[4] *Samsung* ECF No. 791; 3 Devitt, Blackmar & Wolff, *Federal Jury Practice and Instructions*, § 71.04 (4th ed. 1987).

Ins. No. 4 – Judging the Evidence

There is nothing particularly different in the way that a juror should consider the evidence in a trial from that in which any reasonable and careful person would treat any very important question that must be resolved by examining facts, opinions, and evidence. You are expected to use your good sense in considering and evaluating the evidence in the case for only those purposes for which it has been received and to give such evidence a reasonable and fair construction in the light of your common knowledge of the natural tendencies and inclinations of human beings.[5]

[5] 1 Devitt and Blackmar, *Federal Jury Practice and Instructions*, § 12.02 (4th ed. 1992); *Samsung* ECF No. 791.

Ins. No. 5 – Objections and Rulings

It is the sworn duty of the attorney on each side of a case to object when the other side offers testimony or exhibits which that attorney believes is not properly admissible. Only by raising an objection can a lawyer request and obtain a ruling from the court on the admissibility of the evidence being offered by the other side. You should not be influenced against an attorney or his or her client because the attorney has made objections.

Do not attempt, moreover, to interpret my rulings on objections as somehow indicating to you what I believe the outcome of the case should be.[6]

[6] 1 Devitt and Blackmar, *Federal Jury Practice and Instructions*, § 11.03 (4th ed. 1992); *Samsung* ECF No. 791.

Ins. No. 6 – Court's Comments to Counsel

It is the duty of the court to admonish an attorney who, out of zeal for his or her cause, does something which the court feels is not in keeping with the rules of evidence or procedure.

You are to draw absolutely no inference against the side to whom an admonition of the court may have been addressed during the trial of this case.[7]

[7] 1 Devitt and Blackmar, *Federal Jury Practice and Instructions*, § 11.04 (4th ed. 1992).

Ins. No. 7 – Court's Questions to Witness

During the course of a trial, I have occasionally asked questions of a witness. Do not assume that I hold any opinion on the matters to which my questions related. The court may ask a question simply to clarify a matter – not to help one side of the case or hurt another side.[8] The Court's questions are not evidence.[9]

[8] 1 Devitt and Blackmar, *Federal Jury Practice and Instructions*, § 11.05 (4th ed. 1992).

[9] *Samsung* ECF No. 791

Ins. No. 8 – Evidence in Case – Stipulations – Judicial Notice – Inferences Permitted

The evidence in the case consists of the sworn testimony of the witnesses, regardless of who may have called them; and all exhibits received in evidence, regardless of who may have produced them; and all facts which have been admitted or stipulated; and all facts and events which may have been judicially noticed.

When the attorneys on both sides stipulate or agree as to the existence of a fact, however, you must, unless otherwise instructed, accept the stipulation as evidence, and regard that fact as proved.

[THIS PARAGRAPH TO BE GIVEN ONLY IF NECESSARY] The court may take judicial notice of certain facts or events. When the court declares it will take judicial notice of some fact or event, you may accept that court's declaration as evidence, and regard as proved the fact or event which has been judicially noticed, but you are not required to do so since you are the sole judge of the facts.

Statements, arguments, questions and objections of counsel are not evidence in the case. Any evidence as to which an objection was sustained by the court, and any evidence ordered stricken by the court, must be entirely disregarded.

Anything you may have seen or heard outside the courtroom is not evidence, and must be entirely disregarded.

You are to consider only the evidence in the case. But in your consideration of the evidence, you are not limited to the bald statements of the witnesses. In other words, you are not limited solely to what you see and hear as the witnesses testify. You are permitted to draw, from facts which you find have been proved, such reasonable inferences as you feel are justified in the

light of experience. Inferences are deductions or conclusions which reason and common sense lead you to draw from the evidence received in the case.[10]

[10] 1 Devitt and Blackmar, *Federal Jury Practice and Instructions*, § 11.11 (3rd ed. 1977), and 3 Devitt, Blackmar & Wolff, *Federal Jury Practice and Instructions*, § 71.08 (4th ed. 1987); *Samsung* ECF No. 791.

Ins. No. 9 – Use of Depositions as Evidence

During the trial, certain testimony has been presented by way of deposition. The deposition consisted of sworn, recorded answers to questions asked of the witness in advance of the trial by one or more of the attorneys for the parties to the case. Such testimony is entitled to the same consideration and is to be judged as to credibility, and weighed, and otherwise considered by you, insofar as possible, in the same way as if the witness had been present and had testified from the witness stand.[11]

[11] 31 *Fed. Jury Prac. & Instr.,* § 105.02 (5th Ed. 2001)(modified).

Ins. No. 10 – Circumstantial Evidence

There are two types of evidence from which you may find the truth as to the facts of a case — direct and circumstantial evidence. Direct evidence is the testimony of one who asserts actual knowledge of a fact, such as an eyewitness; circumstantial evidence is proof of a chain of facts and circumstances indicating a fact.

For example, suppose that it is necessary to prove in the case that there was a human being on an island. A witness might come and testify, "I saw what I think was a human footprint on the island." If you believe that what the witness saw was a human footprint, you could infer that there were a human being on the island. That is circumstantial evidence.

The law makes no distinction between the weight to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence in the case.[12]

[12] 1 Devitt and Blackmar, *Federal Jury Practice and Instructions*, § 15.02 (3rd ed. 1977); *Samsung* ECF No. 791.

Ins. No. 11 – Consideration of the Evidence – Corporate Party's Agents and Employees

All of the parties in this case are corporations. Corporations may act only through natural persons such as its agents or employees. In general, any agent or employee of a corporation may bind the corporation by his acts and declarations made while acting within the scope of his authority delegated to him by the corporation, or within the scope of his duties as an employee of the corporation.[13]

[13] *Samsung* ECF No. 791; 3 Devitt, Blackmar & Wolff, *Federal Jury Practice and Instructions*, § 71.09 (4th ed. 1987).

Ins. No. 12 – Jury's Recollection Controls

If any reference by the court or by counsel to matters of evidence does not coincide with your own recollection, it is your recollection which should control during your deliberations.[14]

[14] Devitt and Blackmar, *Federal Jury Practice and Instructions*, § 15.05 (1977); *Samsung* ECF No. 791.

Ins. No. 13 – Credibility of Witnesses – Discrepancies in Testimony

You, as jurors, are the sole judges of the credibility of the witnesses and the weight their testimony deserves.

You should carefully scrutinize all the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to show whether a witness is worthy of belief. Consider each witness's intelligence, motive and state of mind, and demeanor and manner while on the stand. Consider the witness's ability to observe the matters as to which he or she has testified, and whether the witness impresses you as having an accurate recollection of these matters. Consider also any relation each witness may bear to either side of the case; the manner in which each witness might be affected by the verdict; and the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause the jury to discredit such testimony. Two or more persons witnessing an incident or a transaction may see or hear it differently; and innocent misrecollection, like failure of recollection, is not an uncommon experience. In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood.

After making your own judgment, you will give the testimony of each witness such credibility, if any, as you may think it deserves. You may believe everything a witness says, or part of it, or none of it. This instruction applies to the testimony of all witnesses, including expert witnesses.[15]

---

[15] 1 Devitt and Blackmar, *Federal Jury Practice and Instructions*, § 17.01 (3rd ed. 1977); *Samsung* ECF No. 791.

Ins. No. 14 – [NOT AGREED] Credibility of Witnesses – Inconsistent Statement

Ins. No. 15 – Demonstrative Exhibits

Certain demonstrative exhibits have been shown to you in the course of the trial. Those demonstrative exhibits are used for convenience and to help explain the facts of the case. These are not themselves evidence or proof of any facts. These will not be available to you during deliberations, although all admitted exhibits will.[16]

[16] *Samsung* ECF No. 791.

Ins. No. 16 – Opinion Evidence – The Expert Witness

The rules of evidence ordinarily do not permit witnesses to testify as to their own opinions or their own conclusions about issues in the case. An exception to this rule exists as to those witnesses who are described as "expert witnesses". An "expert witness" is someone who, by education or by experience, may have become knowledgeable in some technical, scientific, or very specialized area. If such knowledge or experience may be of assistance to you in understanding some of the evidence or in determining a fact, an "expert witness" in that area may state an opinion as to relevant and material matter in which he or she claims to be an expert.

You should consider each expert opinion received in evidence in this case and give it such weight as you may think it deserves. You should consider the testimony of expert witnesses just as you consider other evidence in this case. If you should decide that the opinion of an expert witness is not based upon sufficient education or experience, or if you should conclude that the reasons given in support of the opinion are not sound, or if you should conclude that the opinion is outweighed by other evidence, including that of other expert witnesses, you may disregard the opinion in part or in its entirety. As I have told you several times, you – the jury – are the sole judges of the facts of this case.[17]

[17] 1 Devitt and Blackmar, *Federal Jury Practice and Instructions*, § 14.01 (4th ed. 1992).

Ins. No. 17 – Opinion of Non-Expert

A non-expert witness may also give an opinion if it is based on his or her personal knowledge and is rationally based on his or her perception. If you find that an opinion of a non-expert witness is based on personal knowledge and is rationally based on the witness' perception, you may consider it and give it such weight as you consider appropriate.

Ins. No. 18 – [NOT AGREED] Number of Witnesses

III. OVERVIEW OF CLAIMS

Ins. No. 19 – Multiple Claims

Steves and Sons has alleged several claims in this lawsuit. You must consider each claim separately based on the evidence and the instructions that I give you on each claim.

Ins. No. 20 – [NOT AGREED] List of Claims

Ins. No. 21 – [NOT AGREED] Burden of Proof

IV. CLAYTON ACT CLAIM – COUNT 1 [NOT AGREED]

V. BREACH OF CONTRACT AND WARRANTY – COUNTS 2 AND 3

I am now going to instruct you on the law as it relates to Steves and Sons' claims for breach of contract and breach of warranty. The contract at issue here is the May 1, 2012 Doorskin Product Agreement, often called the Supply Agreement, that you have heard testimony about.

Ins. No. 35 – Contract; Description of Steves' Claims

A contract is a legally binding agreement between two or more parties. Each party to the contract must perform according to the agreement's terms. A party's failure to perform a contractual duty constitutes breach of contract. If a party breaches the contract and that breach causes injury or loss to another party, then the injured party may claim damages.[18]

In this case, Steves alleges that JELD-WEN committed five separate breaches of the 2012 Supply Agreement. JELD-WEN disputes each claim.

(1) Section 1 of the Agreement provides that the terms of the Agreement apply to "the full range of JELD-WEN molded doorksin products." Steves alleges that the Agreement requires JELD-WEN to sell all products at the prices that the Agreement requires, and that JELD-WEN breached the Agreement by refusing to sell two products introduced only after the signing of the Agreement, the Madison and Monroe styles, at the prices that the Agreement requires. JELD-WEN denies that it breached the Agreement because, JELD-WEN alleges, the Agreement only applies to the full range of doorskins products available at the time the parties entered into the Agreement, and not any new products introduced subsequent to signing the Agreement, and also that there was no price specified in the Agreement for future styles.

[18] Excerpt from Del. P.J.I. Civ. § 19.1 (2000) (citing *Leeds v. First Allied Connecticut Corp.*, Del. Ch., 521 A.2d 1095, 1101-02 (1986); *Norse Petroleum A/S v. LVO International, Inc.*, Del. Super., 389 A.2d 771, 773 (1978)).

(2) Section 6 of the Agreement provides for a calculation of Key Inputs to JELD-WEN's doorskin manufacturing process. Steves alleges that the Agreement requires JELD-WEN to reduce Steves' prices when the cost of those Key Inputs declined, and that JELD-WEN breached the Agreement by failing to do so. JELD-WEN denies that the Agreement requires JELD-WEN to reduce Steves' prices when Key Input costs decrease and instead alleges that the Agreement only allows JELD-WEN to increase Steves' prices when Key Inputs increase.

(3) Steves also alleges in connection with Section 6 of the Agreement that for certain years when the cost of Key Inputs increased, JELD-WEN overcharged Steves for doorskins because it used Key Input values that were higher than the actual increase in those Key Inputs. JELD-WEN denies that it did so.

(4) Section 8 of the Agreement requires that doorskins supplied "will at all times be of a quality satisfactory to Steves, meeting JELD-WEN's specifications, fit for the intended purpose, and subject to JELD-WEN's standard warranty applicable to the Product (the "Specifications"). If JELD-WEN ships Product that do not meet JELD-WEN's Specifications (hereinafter "Defective Product"), then JELD-WEN, after notice, inspection and verification of the Defective Product, will be obliged to reimburse Steves for the price of the Defective Product." Steves alleges that JELD-WEN breached Section 8 by shipping defective doorskins to Steves, and failing to reimburse Steves for defective doorskins. JELD-WEN denies that it breached Section 8 of the Agreement because, JELD-WEN alleges, it inspected Steves' claims for defective doorskins, reimbursed Steves for verified claims, and only denied claims for doorskins that were either not defective or the damage to the doorskins was not caused by JELD-WEN.

(5) Steves alleges that JELD-WEN breached Section 8 of the Agreement by failing to reimburse Steves for the full cost of doors manufactured by Steves that incorporated defective

doorskins that JELD-WEN sold to Steves. JELD-WEN denies that it breached the Agreement because, JELD-WEN alleges, the Agreement does not require JELD-WEN to pay for the full cost of doors, only defective doorkins.

In addition, as a contract for the sale of goods, the Supply Agreement contains an implied warranty of merchantability, which I will define for you in a later instruction. Steves alleges that JELD-WEN has breached the implied warranty of merchantability through its sale and delivery to Steves of defective doorskins, and its refusal to inspect and properly credit Steves for its damages caused by the defective JELD-WEN doorskins. JELD-WEN denies that it has breached the implied warranty of merchantability.[19]

[19] The description of Steves' claims is adapted from JELD-WEN's proposed instruction 26, Dkt. No. 803 at 46-47, modified to reflect Steves' objection to that instruction, Dkt. No. 839 at 19.

Ins. No. 36 – Breach of Contract Defined

To establish that JELD-WEN is liable to Steves and Sons for breach of contract, Steves and Sons must prove that one or more terms of Steves and Sons' Supply Agreement with JELD-WEN have not been performed and that Steves and Sons has sustained damages as a result of JELD-WEN's failure to perform.[20]

[20] Del. P.J.I. Civ § 19.20 (2000); *Ridley Inv. Co. v. Croll*, Del. Supr., 192 A.2d 925, 926-27 (1963); *Hudson v. D&V Mason Contractors, Inc.*, Del. Super., 252 A.2d 166, 169-70 (1969); *Emmett S. Hickman Co. v. Emelio Capaldi Developer, Inc.*, Del. Super., 251 A.2d 571, 572-73 (1969); *H-M Wexford LLC v. Encorp, Inc.*, 832 A.2d 129, 140 (Del. Ch. 2003).

Ins. No. 37 –[NOT AGREED] Existence And Validity Of Supply Agreement

Ins. No. 38 – Construction of Ambiguous Terms

To assess Steves' claims you may also need to consider the meaning of any relevant contractual terms that appear ambiguous or unclear. There are certain rules to consider in interpreting contractual terms that appear ambiguous or unclear.

First, if the contract's language is susceptible of two constructions, one of which makes it a fair, customary, and reasonable contract that a prudent person would make, while the second interpretation makes the contract inequitable, unusual, or one that a prudent person would likely not make, the first interpretation must be preferred.

Second, to determine the parties' intent when there are ambiguous terms, you must look to the construction given to the terms by the parties as shown through their conduct during the period after the contract allegedly became effective and before the institution of this lawsuit. The parties' conduct after a contract is made should be given great weight in determining its meaning.

Finally, explanatory circumstances existing when the contract was allegedly made may be considered in order to determine the parties' probable intent. This may include the history of negotiations, earlier drafts of the contract, and customs of the trade.[21]

[21] Del. P.J.I. Civ. § 19.15 (2000) (modified instruction); *LSVC Holdings, LLC v. Vestcom Parent Holdings, Inc.*, 2017 WL 6629209, *6 (Del. Ch. Dec. 29, 2017); *Harrah's Entertainment, Inc. v. JCC Holding Co.*, 802 A.2d 294, 313 (Del. Ch. 2002).

Ins. No. 39 – [NOT AGREED] Express Warranty

Ins. No. 40 – Implied Warranty of Merchantability

In every contract for the sale of goods, there is an implied promise that the goods are merchantable. In order to be merchantable, the goods must:

(1) pass without objection in the trade under the contract description; and

(2) be fit for the ordinary purposes for which the goods are used; and

(3) be within the variations permitted by the contract, of even kind, quality, and quantity within each unit and among all units involved; and

(4) be adequately contained, packaged, and labeled as the contract requires; and

(5) conform to the factual promises or affirmations, if any, made on the container or label.[22]

Whether JELD-WEN supplied doorskins to Steves that did not meet this implied warranty is a question for you to decide.

[22] Del. P.J.I. Civ § 9.16 (2000); DEL. CODE ANN. tit. 6, 2-314 (1999); *Reybold Group, Inc. v. Chemprobe Technologies, Inc.*, Del. Supr. 721 A.2d 1267, 1269 (1998) (plaintiff must prove defect); *Johnson v. Hockessin Tractor, Inc.*, Del. Supr., 420 A.2d 154, 157 (1980) (holding breach of warranty is necessarily a breach of the sales contract). *See also* 6 *Del. C.* " 2A-210 to 2A-216 (implied warranties include goods offered in leases or bailments); *Neilson Bus. Equip. Ctr., Inc. v. Monteleone*, Del. Supr., 524 A.2d 1172, 1174-75 (1987).

Ins. No. 41 – [NOT AGREED] Use Of Product After Defect Is Known To Plaintiff

Ins. No. 42 – [NOT AGREED] Requirement Of Notification Of Breach

Ins. No. 43 – [NOT AGREED] Damages – Breach of Contract Or Warranty – General

VI. FINAL INSTRUCTIONS

Ins. No. 44 – Verdict Instruction

You are being provided with a verdict form. You must carefully follow the instructions on the form.

Ins. No. 45 – Closing—Duty To Deliberate

Upon retiring to your jury room to begin your deliberations, you will elect one of your members to act as your foreperson. The foreperson will preside over your deliberations and will be your spokesperson here in Court.

Your verdict must represent the collective judgment of the jury. In order to return a verdict, it is necessary that each juror agree to it. Your verdict, in other words, must be unanimous.

It is your duty as jurors to consult with one another and to deliberate with one another with a view towards reaching an agreement if you can do so without violence to individual judgment. Each of you must decide the case for himself or herself, but do so only after an impartial consideration of the evidence in the case with your fellow jurors. In the course of your deliberations, do not hesitate to reexamine your own views and to change your opinion if convinced it is erroneous. Do not surrender your honest conviction, however, solely because of the opinion of your fellow jurors or for the mere purpose of returning a verdict.

Remember at all times that you are not partisans. You are judges—judges of the facts of this case. Your sole interest is to seek the truth from the evidence received during the trial.

Your verdict must be based solely upon the evidence received in the case. Nothing you have seen or read outside of Court may be considered. Nothing that I have said or done during the course of this trial is intended in any way to somehow suggest to you what I think your verdict should be. Nothing said in these instructions and nothing in any verdict form prepared for your convenience is to suggest or convey to you in any way or manner any intimation as to what verdict I think you should return. What the verdict shall be is the exclusive duty and responsibility of the jury. As I have told you many time, you are the sole judges of the facts.

A verdict form has been prepared for your convenience.

You will take this form to the jury room and, when you have reached unanimous agreement as to your verdict you will have your foreperson write your verdict, date and sign the form, and then return with your verdict to the courtroom.

If it becomes necessary during your deliberation to communicate with the Court, you may send a note, signed by your foreperson or by one of more of the jury, through the bailiff. No member of the jury should ever attempt to communicate with the Court by any means other than a signed writing and the Court will never communicate with any member of the jury on any subject touching the merits of the case other than in writing or orally here in open Court.

Bear in mind that you are never to reveal to any person—not even to the Court—how the jury stands, numerically or otherwise, on the question of whether or not the plaintiff has sustained its burden of proof until after you have reached a unanimous verdict.[23]

[23] Jury Instructions of the Court, *Samsung Electronics Co., Ltd. v. NVIDIA Corp.*, No. 3:14-cv-00757-REP-DJN (E.D.Va. April 15, 2016) (Payne, J.), ECF No. 791.