

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

Ricky Martinez, Josh LeClair, Norberto Suarez, Tyler Fox, and Jared Hutman, individually, on behalf of all others similarly situated, and on behalf of the general public,

Plaintiffs,

v.

Incom Mechanical, Inc., Joe Locati, Jeffrey Locati, Phil Locati, and DOES 1 through 50 inclusive,

Defendants.

Case No. 3:11-CV-01392 SI

~~PROPOSED~~ ORDER OF FINAL APPROVAL OF CLASS ACTION SETTLEMENT

TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

Plaintiffs' unopposed Motion for Final Approval of Class Action Settlement came before this Court on March 16, 2012. The proposed settlement in this case was preliminarily approved by this Court on October 7, 2011. Pursuant to the Court's Preliminary Approval Order and the Notice provided to the Class, the Court conducted a final fairness hearing as required by Federal Rule of Civil Procedure 23(e). The Court reviewed the materials submitted by the parties and heard arguments presented by counsel at the hearing. On March 20, 2012, the Court indicated its intention to grant final approval to the settlement on May 18, 2012, after expiration of the Class Action Fairness Act (CAFA) waiting period under 28 U.S.C. §1715(d).

For the reasons cited in the March 20, 2012 Order, and herein, the Court hereby grants final

1 approval of the Class Settlement based upon the terms set forth in the Preliminary Approval Order  
2 and the Joint Stipulation of Settlement and Release Between Plaintiffs and Defendants ("Settlement"  
3 or "Settlement Agreement") filed by the parties, with an additional 2% simple interest charge against  
4 Defendants based upon Defendants' delayed filing of the required CAFA notice.

5 The Settlement appears to be fair, adequate, and reasonable to the Class.

- 6 1. The Court finds that this action satisfies the requirements of Rule 23 and further finds  
7 that the Class has at all times been adequately represented by the Named Plaintiffs  
8 and Class Counsel.
- 9 2. The Notice approved by the Court was provided by First Class direct mail to the last-  
10 known address of each of the individuals identified as Class Members. In addition,  
11 follow-up efforts were made to send the Notice to those individuals whose original  
12 notices were returned as undeliverable. The Notice adequately described all of the  
13 relevant and necessary parts of the proposed Settlement Agreement, the request for  
14 incentive payments to the Named Plaintiffs, and Class Counsel's motion for an award  
15 of attorneys' fees and costs.
- 16 3. The Court finds that the Notice given to the Class fully complied with Rule 23, was  
17 the best notice practicable, satisfied all constitutional due process concerns, and  
18 provides the Court with jurisdiction over the Class Members.
- 19 4. The Court has concluded that the Settlement, as set forth in the Settlement Agreement  
20 executed by the parties, is fair, reasonable, and adequate under state and federal laws,  
21 including the Fair Labor Standards Act 29 U.S.C. § 200 et. seq. The Court finds that  
22 the uncertainty and delay of further litigation strongly supports the reasonableness  
23 and adequacy of the \$550,000 Settlement Fund established pursuant to the Settlement  
24 Agreement.
- 25 5. Out of the identified Class Members who were notified, none have objected to any  
26 aspect of the proposed settlement. The reaction of the Class to the proposed  
27 settlement (with nearly 75% affirmatively opting into the settlement class) strongly  
28 supports the conclusion that the proposed Settlement is fair, reasonable, and adequate.

- 1           6.       The Court finds that the delayed CAFA notice warrants a 2% simple interest for 60  
2                    days, based upon Defendants' delayed filing CAFA notice – equal to \$1,808.22  
3                    (\$550,000 X 0.02 / 365 X 60).
- 4           7.       The Settlement is HEREBY APPROVED in its entirety.
- 5           8.       The Settlement Fund shall be dispersed in accordance with the Settlement Agreement  
6                    as detailed in the Motion for Conditional Certification of Settlement Class,  
7                    Preliminary Approval of Settlement, and Approval of Class Notice and Settlement  
8                    Administrator, granted on October 7, 2011.
- 9           9.       Representative Plaintiffs Ricky Martinez, Josh LeClair, Norberto Suarez, Tyler Fox,  
10                   and Jared Hutman are hereby awarded \$5,000 each for their time and effort in  
11                   pursuing this litigation.
- 12          10.       Plaintiffs' application for Attorneys' fees in the amount of \$137,500, and litigation  
13                   costs in the amount of \$8,668.69 is hereby granted in accordance with *In re Immune*  
14                   *Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1175 (S.D. Cal. 2007); *Staton v. Boeing*  
15                   *Co.*, 327 F.3d 938, 967 (9th Cir. 2003); and *Boeing Co. v. Van Gemert*, 444 U.S. 472,  
16                   478 (1980). Further, the Court approves \$8,250 for the Settlement Administrator,  
17                   Simpluris, Inc.
- 18          11.       This case is hereby DISMISSED WITH PREJUDICE, with each party to bear his,  
19                   her, or its own costs, except as set forth herein, and with this Court retaining  
20                   exclusive jurisdiction to enforce the Settlement Agreement, including over  
21                   disbursement of the Settlement Fund.

22   This is a final judgment.

23   Dated:   May 21  , 2012



24  
25  
26                   THE HONORABLE SUSAN Y. ILLSTON  
                    JUDGE OF THE UNITED STATES DISTRICT COURT