

Court File No. CV-09-13459

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

NICHOLAS ROSATI and ANTHONY BELLISSIMO

Plaintiffs

and

IPEX USA LLC and IPEX INC.

Defendants

Proceeding Under the *Class Proceedings Act, 1992*

AMENDED NOTICE OF MOTION

The Plaintiffs will make a motion to ~~the court in writing,~~ to the Honourable Justice Raikes, at the Court House, 245 Windsor Avenue, Windsor, Ontario, N9A 1J2, on May 16, 2024 @ 2:00 pm

PROPOSED METHOD OF HEARING: This Motion is to be heard

- in writing under subrule 37.12(1);
- in writing as an opposed motion under subrule 37.12.1(4);
- orally via Zoom.

THE MOTION IS FOR AN ORDER:

- (a) approving a plan for the allocation of the final payment of settlement funds to qualifying settlement class members and related relief (the “Final Plan of Allocation”);
- (b) that payments be issued to eligible claimants in accordance with the Final Plan of Allocation;

- (c) approving late claims filed and approved on or before March 1, 2021 that would otherwise qualify for settlement;
- (d) that any claims filed after March 1, 2021 (other than those approved by the Quebec Court) were filed out of time and declared invalid;
- (e) that any residual funds after the payment of valid claims are to be distributed in accordance with the Final Plan of Allocation (and will not revert back to the IPEX Funding Entities, as that term is defined in the Settlement Agreement);
- (f) that the itemized expenses, identified in Exhibit 2 submitted to the Special Master, were properly dispersed from the settlement funds;
- (g) that the request to reserve and distribute as necessary US\$308,496.92 for the continuing and future work of claims administrator KCC be approved;
- (h) that the request to reserve US\$400,000 for future tax liabilities of the common fund, and US\$20,000 for the services of the accountancy fund of Miller Kaplan, LLP is hereby approved, subject to the recognition that the tax liabilities are only an estimate and may increase or decrease when the tax returns are finally prepared. Class Counsel is authorized without further order of the Court to pay the actual tax liabilities from the common fund;
- (i) approving the reimbursement of lawyers' fees of US\$2,741,530 and disbursements of US\$108,068.45, to be paid out of interest earned on the settlement fund;

- (j) authorizing payment to Ontario Class Counsel of the remainder of the holdback from their fees awarded in respect of the settlement achieved, in the amount of CDN\$119,391.37;
- (k) requiring that the Order is contingent upon approval by the United States District Court for the Northern District of Texas, Dallas Division (the “MDL Court”), which has already been obtained, and the Quebec Court (to be obtained) and declaring that this Order shall have no force and effect if such approval is not granted in Quebec; and
- (l) such further and other relief as to this Honourable Court may seem just.

THE GROUNDS FOR THE MOTION ARE:

- (a) Similar relief was sought and granted before the MDL Court;
- (b) The applications before the MDL Court proceeded first on the basis that the MDL Court has been the lead court on this matter;
- (c) In the MDL action, the applications were heard by Special Master Furgeson, who has had carriage of this matter since its inception. Special Master Furgeson issued Reports and Recommendations, which were then sent to the MDL Court for approval;
- (d) The application before the MDL Court proceeded in two stages. As part of stage one, the MDL Court issued an order:
 - (a) approving of the Final Plan of Allocation;

- (b) approving late claims filed and approved on or before March 1, 2021 that would otherwise qualify for settlement;
- (c) declaring that any claims filed after March 1, 2021 (other than those approved by the Quebec Court) were filed out of time and declared invalid;
- (d) declaring that any residual funds after the payment of valid claims are to be distributed in accordance with the Final Plan of Allocation (and will not revert back to the IPEX Funding Entities, as that term is defined in the Settlement Agreement);
- (e) requiring Class Counsel to provide an accounting of expenditures, a proposed holdback for estimated remaining administration costs, and a proposed schedule of payments to Class Members;
- (e) On August 9, 2023, Justice Furgeson issued a Report and Recommendation and on August 21, 2023, the MDL Court issued an Order Accepting Report and Recommendation of Special Master Royal Furgeson;
- (f) As part of stage two, the MDL Court issued an order:
 - (a) approving the “Schedule of Payments” to eligible claimants, subject to a provision that the settlement fund may increase due to interest earned and payments can be increased proportionally to account for interest earned;
 - (b) declaring that the itemized expenses were properly dispersed from the settlement funds. The itemized expenses included all withdrawals and expenses paid from the settlement fund to date;

- (c) approving a holdback to account for ongoing work by the claims administrator, taxes on interest earned, and fees for tax accounting services;
- (d) approving the reimbursement of attorneys' fees of US\$2,741,530 and costs of US\$108,068.45, to be paid out of interest earned on the settlement fund; and
- (e) requiring a final accounting after the final distribution;
- (g) On November 5, 2023, Justice Furgeson issued a Report and Recommendation and on November 13, 2023, the MDL Court issued an Order Accepting Report and Recommendation of Special Master Royal Furgeson;
- (h) The MDL orders are contingent on parallel orders being issued by the Ontario and Quebec courts. In Ontario and Quebec, Plaintiffs' counsel are bringing a single motion seeking relief parallel to that which was granted by the MDL Court;
- (i) The proposed Final Plan of Allocation is fair, reasonable and in the best interests of Class Members;
- (j) Allowing the late claims filed and approved on or before March 1, 2021 would be in the interests of justice;
- (k) Section 12 of the *Class Proceedings Act, 1992*; and
- (l) Such further and other grounds as the lawyers may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (a) Affidavit of Linda Visser, sworn January 30, 2024 and exhibits thereto; and
- (b) Such further and other material as counsel may advise and this Honourable Court may permit.

~~January 30, 2024~~ April 11, 2024

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**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Windsor

Proceeding under the *Class Proceedings Act, 1992*

**AMENDED NOTICE OF MOTION
Approval of Final Plan of Allocation, Late Claims &
Class Counsel Fees and Disbursements**

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