

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

MATHEW LaPRADE, *individually and on behalf of
all others similarly situated,*

Plaintiff,

v.

INDECK POWER EQUIPMENT COMPANY,

Defendant.

Case No. 2021-CH-00805

The Honorable Eve M. Reilly

PRELIMINARY APPROVAL ORDER

This matter having come before the Court on Plaintiff’s Renewed Unopposed Motion for Preliminary Approval of Class Action Settlement (“Motion for Preliminary Approval” or “Motion”), the Court having reviewed and considered the Motion, the Memorandum in Support and attachments, including the Amended Class Action Settlement Agreement (the “Settlement Agreement”) and its attachments, and the Court being fully advised in the premises,

IT IS ORDERED AS FOLLOWS:

1. Terms and phrases in this Order shall have the same meaning as ascribed to them in the Settlement Agreement.

2. The Parties have moved the Court for an order approving the settlement of the Action in accordance with the Settlement Agreement, which, together with the documents incorporated therein, sets forth the terms and conditions for a proposed settlement and dismissal of the Action with prejudice, and the Court having read and considered the Settlement Agreement and having heard the parties and being fully advised in the premises, hereby preliminarily approves the Settlement Agreement in its entirety subject to the Final Approval Hearing referred to in Paragraph 5 of this Order.

3. This Court finds that it has jurisdiction over the subject matter of this action and over all Parties to the Action.

4. The Court finds that, subject to the Final Approval Hearing, the Settlement Agreement is fair, reasonable, and adequate, within the range of possible approval, and in the best interests of the Settlement Class set forth below. The Court further finds that the Settlement Agreement substantially fulfills the purposes and objectives of the class action, and provides substantial relief to the Settlement Class without the risks, burdens, costs, or delay associated with continued litigation, trial, and/or appeal. The Court also finds that the Settlement Agreement (a) is the result of arm's-length negotiations between experienced class action attorneys with the assistance of a neutral mediator; (b) is sufficient to warrant notice of the settlement and the Final Approval Hearing to be disseminated to the Settlement Class; (c) meets all applicable requirements of law, including 735 ILCS 5/2-801 to 807; and (d) is not a finding or admission of liability by the Defendant or any other person, nor a finding of the validity of any claims asserted in the Action or of any wrongdoing or any violation of law.

Final Approval Hearing

5. The Final Approval Hearing shall be held before this Court on June 29, 2023, at 9:30 a.m. via Zoom (Meeting I.D.: 943 7767 4389 and Password: 980847) at the Daley Center, 50 W. Washington, Rm. 2305, Chicago, Illinois, to determine (a) whether the proposed settlement of the Action on the terms and conditions provided for in the Settlement Agreement is fair, reasonable, and adequate and should be given final approval by the Court; (b) whether a judgment and order of dismissal with prejudice should be entered; (c) whether to approve the payment of attorneys' fees, costs, and expenses to Class Counsel; and (d) whether to approve the payment of an incentive award to the Class Representative. Settlement Class Members may, but are not required, to appear at the Final Approval Hearing or to speak in favor or against the

settlement. At least two weeks before the Final Approval Hearing, Class Counsel shall ensure the Settlement Administrator posts the Final Approval Hearing details on the Settlement website.

6. The Court may postpone, adjourn or continue by order the Final Approval Hearing without further notice to members of the Settlement Class. At or following the Final Approval Hearing, the Court may enter a Final Judgment approving the settlement and entering a Final Approval Order in accordance with the settlement that adjudicates the rights of all Settlement Class Members and dismisses the case with prejudice.

7. Class Counsel shall file a motion for attorneys' fees, litigation costs, and the Class Representative's Service Award (collectively, the "Fee Petition") with the Court on or before May 1, 2023. Class Counsel shall ensure the Settlement Administrator posts the Fee Petition on the Settlement website at least 14 days prior to the Objection/Exclusion Deadline set forth below, *see infra* ¶¶ 16-17, 21.

8. Papers in support of final approval of the Settlement Agreement and any supplementation to the Fee Petition, including a sworn Declaration from the Class Administrator that contains a report of the number of opt-outs and objections, shall be filed with the Court on or before June 15, 2023, Class Counsel shall provide that motion and supporting exhibits in advance to Indeck's counsel for review and approval, which shall not be unreasonably withheld.

Certification of the Settlement Class

9. For purposes of settlement only: (a) Philip L. Fraietta, Joseph I. Marchese, and Julia K. Venditti of Bursor & Fisher, P.A. are appointed Class Counsel for the Settlement Class; and (b) Plaintiff Matthew LaPrade is appointed named Class Representative. The Court finds that these attorneys are competent and capable of exercising the responsibilities of Class Counsel and that Plaintiff Matthew LaPrade will adequately protect the interests of the Settlement Class defined below.

10. For purposes of settlement only, the Court conditionally certifies the following Settlement Class as defined in the Settlement Agreement:

All individuals who worked or are currently working for Defendant in the State of Illinois, including current or former temporary workers or contractors engaged by Defendant, who had their Biometric Identifiers and/or Biometric Information allegedly collected, captured, received, or otherwise obtained or disclosed by Defendant or its agents, without first signing a written consent form, for the period extending from February 19, 2016, to and through the date of this Order (*i.e.*, the date of preliminary approval).¹

11. The Court finds, subject to the Final Approval Hearing referred to in Paragraph 5 above, that the Settlement Agreement is fundamentally fair, adequate, and reasonable, and, solely within the context of and for the purposes of settlement only, that the Settlement Class satisfies the requirements of 735 ILCS 5/2-801, specifically, that: the Settlement Class is so numerous that joinder of all members is impracticable; there are questions of fact and law common to the Settlement Class (*e.g.*, whether Defendant unlawfully collected, captured, received, or otherwise obtained or disclosed Biometric Identifiers and/or Biometric Information without consent in a manner that violated the Illinois Biometric Information Privacy Act,⁷⁴⁰ ILCS 14/1, *et seq.* (“BIPA”), and whether Plaintiff and the Settlement Class members are entitled to uniform statutory damages under the BIPA); the claims of the Class Representative is typical of the claims of the members of the Settlement Class; the Class Representative and Class Counsel will fairly and adequately protect the interests of the members of the Settlement Class; common questions of law or fact predominate over questions affecting individual members; and

¹ Excluded from the Settlement Class are (1) any Judge or Magistrate presiding over this Action and members of their families; (2) Indeck, Indeck’s subsidiaries, parent companies, owners, successors, predecessors, and any entity in which Indeck or its parents have a controlling interest and their current or former officers, directors, agents, attorneys, and employees; (3) Persons who properly execute and file a timely request for exclusion from the class; and (4) the legal representatives, successors or assigns of any excluded Persons.

a class action is a superior method for fairly and efficiently adjudicating the Action.

12. If the Settlement Agreement does not receive the Court's final approval, or if final approval is reversed on appeal, or if the Settlement Agreement is terminated or otherwise fails to become effective, the Court's grant of class certification shall be vacated, and the Class Representative and the Settlement Class will once again bear the burden of establishing the propriety of class certification. In such case, neither the certification of the Settlement Class for settlement purposes, nor any other act relating to the negotiation or execution of the Settlement Agreement shall be considered as a factor in connection with any class certification issue(s).

Notice and Administration

13. The Court approves, as to form, content, and distribution, the Notice Plan set forth in the Settlement Agreement, including the Notice Plan and all forms of Notice to the Settlement Class as set forth in the Settlement Agreement and Exhibits A-C thereto, and finds that such Notice is the best notice practicable under the circumstances, and that the Notice complies fully with the requirements of 735 ILCS 5/2-803. The Court also finds that the Notice constitutes valid, due and sufficient notice to all persons entitled thereto, and meets the requirements of Due Process. The Court further finds that the Notice is reasonably calculated to, under all circumstances, reasonably apprise members of the Settlement Class of the pendency of this action, the terms of the Settlement Agreement, and the right to object to the settlement and to exclude themselves from the Settlement Class. In addition, the Court finds that no notice other than that specifically identified in the Settlement Agreement is necessary in this Action. The Parties, by agreement, may revise the Notice in ways that are not material, or in ways that are appropriate to update those documents for purposes of accuracy or formatting.

14. The Court approves the request for the appointment of Analytics Consulting, LLC as Settlement Administrator of the Settlement Agreement.

15. Pursuant to Paragraph 4.1 of the Settlement Agreement, the Settlement Administrator is directed to publish the Notice on the Settlement Website and to send direct notice via U.S. Mail in accordance with the Notice Plan called for by the Settlement Agreement. The Settlement Administrator shall also maintain the Settlement Website to provide full information about the Settlement and allow for the filing of claims online.

Requests for Exclusion from Class

16. Any person falling within the definition of the Settlement Class may, upon valid and timely request, exclude themselves or “opt out” from the Class. Any such person may do so if, on or before the Objection/Exclusion Deadline of May 15, 2023, they comply with the exclusion procedures set forth in the Settlement Agreement and Notice. Any members of the Class so excluded shall neither be bound by the terms of the Settlement Agreement nor entitled to any of its benefits.

17. Any members of the Settlement Class who elect to exclude themselves or “opt out” of the Settlement Agreement must submit a written opt-out request with the Settlement Administrator, received or postmarked no later than the May 15, 2023, Objection/Exclusion Deadline. The request for exclusion must comply with the exclusion procedures set forth in the Settlement Agreement and Notice and include the Settlement Class member’s name and address, a signature, the name and number of the case, and a statement that he or she wishes to be excluded from the Settlement Class for the purposes of this Settlement. Each request for exclusion must be submitted individually. So called “mass” or “class” opt-outs shall not be allowed.

18. Individuals who opt out of the Class relinquish all rights to benefits under the Settlement Agreement and will not release their claims. However, members of the Settlement Class who fail to submit a valid and timely request for exclusion shall be bound by all terms of

the Settlement Agreement and the Final Judgment, regardless of whether they have requested exclusion from the Settlement Agreement.

Appearances and Objections

19. At least twenty-one (21) calendar days before the Final Approval Hearing, any person who falls within the definition of the Settlement Class and who does not request exclusion from the Class may enter an appearance in the Action, at their own expense, individually or through counsel of their own choice. Any Settlement Class Member who does not enter an appearance will be represented by Class Counsel.

20. Any members of the Settlement Class who have not timely filed a request for exclusion may object to the fairness, reasonableness, or adequacy of the Settlement Agreement or to a Final Judgment being entered dismissing the Action with prejudice in accordance with the terms of the Settlement Agreement, or to the attorneys' fees and expense reimbursement sought by Class Counsel in the amounts specified in the Notice, or to the award to the Class Representative as set forth in the Notice and Settlement Agreement. At least fourteen (14) days prior to the Objection/Exclusion Deadline, Class Counsel will ensure that the Settlement Administrator posts the Fee Petition to the settlement website. Members of the Class may object on their own, or may do so through separate counsel at their own expense.

21. To object, members of the Class must sign and file a written objection no later than on or before the Objection/Exclusion Deadline of May 15, 2023. To be valid, the objection must comply with the objection procedures set forth in the Settlement Agreement and Notice, and include his or her name and address; an explanation of the basis upon which he or she claims to be a Settlement Class Member; a signature; all grounds for the objection, including all citations to legal authority and evidence supporting the objection; the name and contact information of any and all attorneys representing, advising, or in any way assisting him or her in

connection with the preparation or submission of the objection or who may profit from the pursuit of the objection (the “Objecting Attorneys”); and a statement indicating whether he or she intends to appear at the Final Approval Hearing (either personally or through counsel who files an appearance with the Court in accordance with the Court Rules). If a Settlement Class Member or any of the Objecting Attorneys has objected to any class action settlement where the objector or the Objecting Attorneys asked for or received any payment in exchange for dismissal of the objection, or any related appeal, without any modification to the settlement, then the objection must include a statement identifying each such case by full case caption.

22. Members of the Class who fail to file and serve timely written objections in compliance with the requirements of this paragraph and the Settlement Agreement shall be deemed to have waived any objections and shall be foreclosed from making any objections (whether by appeal or otherwise) to the Settlement Agreement or to any of the subjects listed in Paragraph 5, above, *i.e.* (a) whether the proposed settlement of the Action on the terms and conditions provided for in the Settlement Agreement is fair, reasonable, and adequate and should be given final approval by the Court; (b) whether a judgment and order of dismissal with prejudice should be entered; (c) whether to approve the payment of attorneys’ fees and expenses to Class Counsel; and (d) whether to approve the payment of a service award to the Class Representative.

23. To be valid, objections must be filed with the Court and sent to the following: Class Counsel Philip L. Fraietta of Bursor & Fisher, P.A., 888 Seventh Avenue, New York, NY 10019; and Defendant’s Counsel George M. Ferreti of Foran Glennon Palandech Ponzi & Rudloff PC, 222 North LaSalle Street, Suite 1400, Chicago, IL 60601. In addition, any objections made by a Class member represented by counsel must be filed through the Court’s electronic filing system.

Further Matters

24. All further proceedings in the Action are ordered stayed until Final Judgment, except for those matters necessary to obtain and/or effectuate final approval of the Settlement Agreement.

25. Members of the Settlement Class shall be bound by all determinations and judgments in the Action concerning the Action and/or Settlement Agreement, whether favorable or unfavorable.

26. The Court retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement Agreement. The Court may approve the Settlement, with such modifications as may be agreed to by the Parties, if appropriate, without further notice to the Class.

27. Any Settlement Class Member who does not timely and validly opt out of the Settlement: (a) shall automatically receive their pro rata share of the Settlement Fund; (b) shall be bound by the provisions of the Settlement Agreement and all proceedings, determinations, orders and judgments in the Action relating thereto, including, without limitation, the Judgment or Alternate Judgment, if applicable, and the Releases provided for therein, whether favorable or unfavorable to the Class; and (c) shall forever be barred and enjoined from directly or indirectly filing, commencing, instituting, prosecuting, maintaining, or intervening in any action, suit, cause of action, arbitration, claim, demand, or other proceeding in any jurisdiction, whether in Illinois or elsewhere, on their own behalf or in a representative capacity, that is based upon or arises out of any or all of the Released Claims against any of the Defendant and the other Released Parties, as more fully described in the Settlement Agreement.

Judge Eve M. Reilly

MAR 10 2023

Circuit Court-2122

IT IS SO ORDERED, this _____ day of _____, 2023.



Honorable Eve M. Reilly