

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DOC #:
DATE FILED: 2/6/17

FRANK SIMMONS, Individually and On
Behalf of All Others Similarly Situated,

Plaintiff,

v.

CHRISTOPHER J. SPENCER, JOHN
BUSSHAUS, and FAB UNIVERSAL CORP.,

Defendants.

Case No.: 13-CV-8216 (RWS)

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JUDGE SWEET CHAMBERS

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~~PROPOSED~~ CLASS DISTRIBUTION ORDER

WHEREAS:

A. Lead Plaintiffs Qingping Deng, Michael Schivo, Joseph Caizzo, Frank Chung, Yang Lu, and Feng Chang (“Lead Plaintiffs”) and Defendants Christopher J. Spencer, John Busshaus and FAB Universal Corp. (“Defendants”) entered into a Stipulation of Settlement dated July 10, 2015 (the “Stipulation”), which provides for a settlement of this Action (the “Settlement”);

B. Unless otherwise defined in this Order, the capitalized terms herein shall have the same meaning as they have in the Stipulation;

C. The Court entered the Final Order and Judgment (“Final Approval Order”) on January 28, 2016 approving the Settlement under the terms set forth in the Stipulation;

D. The Court reserved jurisdiction, without affecting the finality of the Final Approval Order, over Defendants and the Class Members for purposes of the administration, interpretation, and enforcement of the Stipulation and of the Final Approval Order;

E. The Settlement has reached its Effective Date, pursuant to the terms of the Stipulation;

F. Lead Plaintiffs moved this Court for an order approving the determinations of the Court-appointed Claims Administrator, Heffler Claims Group LLC (“Heffler” or “Claims Administrator”) and directing distribution of the Net Settlement Fund; and

WHEREAS, the Court has duly considered Lead Plaintiffs’ motion and memorandum of law submitted in support thereof, the Declaration of Edward J. Radetich III in Support of Lead Plaintiffs’ Motion for Distribution of the Net Settlement Fund (“Radetich Distribution Declaration”) with annexed exhibits, and all of the submissions and arguments presented therewith.

NOW, THEREFORE, after due deliberation, IT IS ORDERED, ADJUDGED AND DECREED that:

1. This Order incorporates by reference the definitions in the Stipulation, and all capitalized terms used herein shall have the same meanings as set forth in the Stipulation, unless otherwise defined.

2. The motion is granted in its entirety and the Court approves the administrative determinations of Heffler in accepting and rejecting the Proof of Claim and Release Forms (“Claims” or “Claim Forms”).

3. The Net Settlement Fund established by the Settlement of this Action shall be distributed to Authorized Claimants according to the determinations of the Claims Administrator and consistent with the Stipulation previously approved by this Court on January 28, 2016.

4. Otherwise eligible Claims that were submitted after the January 18, 2016 Claims-submission deadline but received on or before September 14, 2016 are hereby deemed timely and shall be included in the distribution.

5. Any Claims that are received after September 14, 2016 or any response to deficiency or rejection letters received after September 14, 2016 are hereby rejected as untimely and shall not be accepted.

6. Ineligible or otherwise deficient Claims are hereby rejected.

7. All distribution checks shall bear the notation: "CASH PROMPTLY, VOID AND SUBJECT TO RE-DISTRIBUTION IF NOT CASHED BY DATE 90 DAYS AFTER ISSUE DATE."

8. If any funds remain in the Net Settlement Fund by reason of uncashed checks or otherwise after the initial distribution of the Net Settlement Fund, then, after the Claims Administrator has made reasonable and diligent efforts to have Class Members who are entitled to participate in the distribution of the Net Settlement Fund cash their distribution checks, any balance remaining in the Net Settlement Fund one (1) year after the initial distribution of such funds shall be re-distributed, after payment of any unpaid costs or fees incurred in administering the Net Settlement Fund for such re-distribution, to Class Members who have cashed their checks and who would receive at least \$10.00 from such re-distribution. If any funds shall remain in the Net Settlement Fund six months after such re-distribution, then such balance shall be contributed to a non-sectarian, not-for-profit, 501(c)(3) organization(s) designated by Lead Counsel.

9. Heffler may destroy the paper copies of the Claim Forms and all related documentation one (1) year after the distribution of the Net Settlement Fund, and may destroy

electronic copies of those documents three (3) years after the distribution of the Net Settlement Fund.

10. The Court hereby authorizes payment from the Settlement Fund of \$137,873.50 to the Claims Administrator.

11. The Court retains jurisdiction to consider any further applications concerning the administration of the Settlement, and such other and further relief as this Court deems appropriate.

SO ORDERED this 6th day of February, 2016.


THE HONORABLE ROBERT W. SWEET
UNITED STATES DISTRICT JUDGE