

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
ROCK HILL DIVISION

IN RE: NEW INDY EMISSIONS LITIGATION	)	Case No.: 0:21-cv-01480-SAL
	)	0:21-cv-01704-SAL
	)	
	)	
	)	<b>ORDER</b>
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This matter is before the court on plaintiffs Kenny N. White, Candice Cherrybone, Shane Nickell, Tracie Nickell, Amanda Swager, Shara Swager, Terri Kennedy, Marty Kennedy, Enrique Lizano, Sansanee Lizano, Melda Gain and Orrin Gain, by and on behalf of others similarly situated’s (“Plaintiffs”) unopposed motion to preliminarily approve class settlement, ECF Nos. 350 in 0:21-cv-1480-SAL and 334 in 0:21-cv-1704-SAL.

Plaintiffs and New-Indy Catawba, LLC and New-Indy Containerboard, LLC d/b/a New-Indy Catawba (together, “Defendants”), have entered into a proposed Settlement Agreement to resolve Plaintiffs’ claims in these matters. The court, having reviewed and duly considered the proposed Class Action Settlement and Release (the “Settlement Agreement”), the parties’ Joint Motion for Preliminary Approval of Class Action Settlement Agreement (the “Motion”), and the arguments and documentation presented in support thereof, finds good cause to grant the motion.

The court thus **GRANTS** THE Motion and further **ORDERS** as follows:<sup>1</sup>

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<sup>1</sup> The court adopts the definitions set forth in the Settlement Agreement.

**PRELIMINARY APPROVAL**

1. The court preliminarily approves the Settlement Agreement, including all exhibits thereto, including the Plan of Allocation attached as Exhibit B to the Motion, as fair, reasonable, and adequate and within the range of reasonableness for preliminary settlement approval. The court finds that: (1) the Settlement Agreement resulted from extensive arm's length negotiations through mediation and directed discussion; and (2) the Settlement Agreement and accompanying Plan of Allocation and other documentation are sufficient to warrant notice of the Settlement Agreement to Settlement Class Members and a full hearing on the approval of the Settlement Agreement.

2. All proceedings in this action shall remain stayed pending the court's order on Plaintiffs' Motion to Preliminarily Approve Class Settlement, except as to proceedings relating to the Settlement Agreement.

**PRELIMINARY FINDINGS ON CLASS CERTIFICATION**

3. Pursuant to the Settlement Agreement and for purposes of the Motion only, the court preliminarily certifies the following Settlement Class pursuant to Federal Rule of Civil Procedure Rule 23:

All Persons who meet any of the following criteria:

- (a) during the period from January 31, 2021, until September 11, 2021, owned a single-family home located in whole or part within the Class Settlement Impact Area<sup>2</sup>; or
- (b) spouses or children of those who, during the period from January 31, 2021, until September 11, 2021, owned a single-family home located in whole or in part within the Class Impact Area, and resided at that home for at least 30 days between January 31, 2021, until September 11, 2021; or

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<sup>2</sup> As defined in the Class Action Settlement Agreement and represented by the blue line on Exhibit A to the Class Action Settlement Agreement.

- (c) retained the representation of interim class counsel in connection with alleged emissions from New Indy on or before April 25, 2024, as set forth on the list attached as Exhibit B to the Class Action Settlement Agreement.

Excluded from the definition of the class are: (1) Defendants; (2) any entity in which Defendants have a controlling interest; (3) any Person with an ownership interest in Defendants; (4) any current or former officer or director of Defendants; (5) any current or former employee of any Defendant with respect to any potential exposure during their employment by such Defendant; (6) Persons who have entered into separate settlement agreements with any Defendant related to claims similar to those claims made in the Action; and (7) the legal representatives, successors, or assigns of Defendants.

- 4. In connection with this preliminary certification, the court makes the following findings for purposes of this Motion and Settlement Agreement only:
  - a. The Settlement Class appears to be so numerous that joinder of all members is impracticable;
  - b. The class definition is ascertainable, and the class is defined using objective criteria to establish a membership with definitive boundaries;
  - c. There appear to be questions of law or fact common to the Settlement Class for purposes of determining whether this Settlement should be approved;
  - d. The Class Representatives' claims appear to be typical of the claims being resolved through the proposed Settlement;
  - e. The Class Representatives appear to be capable of fairly and adequately protecting the interests of the Settlement Class;
  - f. The questions of law or fact common to the Settlement Class predominate over individual questions, and a class action is superior to other available methods for the fair and efficient adjudication of this controversy.
- 5. The court appoints Kenny N. White, Candice Cherrybone, Shane Nickell, Tracie Nickell, Amanda Swager, Shara Swager, Terri Kennedy, Marty Kennedy, Enrique Lizano, Sansanee Lizano, Melda Gain and Orrin Gain as Class Representatives.

6. The court appoints Chase T. Brockstedt and Philip C. Federico of Baird Mandalas Brockstedt & Federico LLC; T. David Hoyle of Motley Rice LLC; and Richard A. Harpootlian of the Richard A. Harpootlian Law Firm, P.A. as Class Counsel.

### **NOTICE AND ADMINISTRATION**

7. The court designates RG/2 Claims Administration LLC as Notice Administrator and Claims Administrator.

8. The court finds that giving Class Members notice of the Settlement Agreement is justified under Rule 23(e), Fed. R. Civ. P., because, as described above, the court will likely be able to approve the Settlement under Rule 23(e) and certify the Settlement Class for purposes of judgment.

9. Plaintiffs, through the Claims Administrator, shall provide publication notice of this Preliminary Approval Order and the Settlement Agreement pursuant to the Notice Plan set forth in Exhibit C to the Motion.

10. The court finds that the program of class notice described in the Notice Plan and the manner of its dissemination are consistent with Rule 23(c)(2), Fed. R. Civ. P.. The program of class notice represents the best practicable notice under the circumstances and is reasonably calculated to apprise Class Members of the nature of this litigation; the scope of the Settlement Class; a summary of the class claims; that the Court will exclude the Class Members if they so request by a specified date; that the judgment will include all members who do not request exclusion; and that any member who does not request exclusion may object to the terms of this settlement and/or enter an appearance through their counsel.

11. The court further finds that the class notice program constitutes due, adequate, and sufficient notice to all persons entitled to receive notice such that it meets the requirements of due process, Rule 23(e), Fed. R. Civ. P.

12. Notice shall be initiated within 7 days of the entry of this Order. The Notice shall provide specific dates for the deadlines set forth below. If any deadline falls on a weekend or holiday, the deadline shall run until the end of the next business day.

13. The court appoints Judge Marina Corodemus as Special Master for the purposes of administering the Allocation Plan.

#### **ESTABLISHMENT OF QUALIFIED SETTLEMENT FUND**

14. A Qualified Settlement Fund is hereby established as a Qualified Settlement Fund within the meaning of Treasury Regulation Section 1.468B-1.

15. RG/2 Claims Administration LLC is hereby appointed as Administrator of the QSF pursuant to the terms, conditions, and restrictions of the motion, the terms of the Class Settlement Agreement, and is hereby granted the authority to conduct any and all activities necessary to administer the QSF as described in the motion and Class Settlement Agreement.

16. Sandy Springs Bank is appointed as the financial institution that will hold settlement funds.

#### **EXCLUSIONS AND OBJECTIONS**

17. Class members who wish to opt out and exclude themselves from the Settlement may do so by notifying the Claims Administrator in writing postmarked no later than 60 days after the entry of this Order.

18. To be valid, each request for exclusion must:

- a. Include the Class Member's full name, address, and telephone number;

- b. Include the statement: “I want to be excluded from 0:21-CV-01480-SAL and 0:21-CV-01704-SAL and understand that by excluding myself, I will not be able to get any money or benefits from the settlement” or substantially similar clear and unambiguous language;
- c. Include the Class Member’s signature;
- d. Be signed, postmarked and mailed to the mailing address, or be submitted electronically to the email address, of the Claims Administrator, noted below:

New Indy Emissions Litigation Settlement Administrator  
RG/2 Claims Administration LLC P.O. Box 59479  
Philadelphia, Pennsylvania 19102-9479  
Email: newindy@rg2claims.com

19. If a Class Member’s request for exclusion is materially defective as to the requirements listed above (and detailed in the Notice), the Claims Administrator will send the Class Member a letter advising of the defect(s) and give the Class Member an opportunity to cure. If a Class Member fails to cure the request for exclusion, the Claims Administrator will have no further obligation to give notice of a need to cure.

20. All Class Members who do not opt out and exclude themselves from the Settlement Class shall be bound by the terms of the Settlement Agreement upon entry of a final order and judgment.

21. Settlement Class Members who wish to object to the Settlement Agreement or Class Counsel’s application for an award of attorneys’ fees may do so in a written submission to the Court, postmarked no later than 60 days after the entry of this Order.

22. Only Settlement Class Members who have filed such written notices of objection will be entitled to be heard at the Fairness Hearing, unless the court orders otherwise.

23. A written objection must:

- a. Include the Class Member’s full name, address, and telephone number;
- b. If represented by counsel, include their attorney’s full name, address, and telephone number;

- c. Include a written statement of all grounds for your objection accompanied by any legal support for the objection (if any);
- d. Include a statement of whether the Class Member intends to appear at the Final Fairness (Approval) Hearing;
- e. Include proof of membership in the Class;
- f. Include the Class Member’s Signature or that of their attorney (if any);
- g. Be postmarked and mailed to each of the following addresses on or before the Response Deadline, which is 60 days after entry of this Order:

Clerk of Court	Class Counsel	Defendants’ Counsel
Clerk of Court United States District Court District of South Carolina <i>In re: New Indy Emissions Litigation</i> 901 Richland Street Columbia, SC 29201	T. David Hoyle MOTLEY RICE LLC 28 Bridgeside Blvd. Mount Pleasant, SC 29464	Scott T. Schutte MORGAN, LEWIS & BOCKIUS LLP 110 North Wacker Drive Suite 2800 Chicago, IL 60606-1511

24. Any Settlement Class Member who does not timely submit a written objection in accordance with the procedures listed above (and detailed in the Notice) shall: (1) be deemed to have waived their right to object to the Settlement Agreement; (2) be foreclosed from objecting (whether by subsequent objection, intervention, appeal, or any other process) to the Settlement Agreement; (3) not be entitled to speak at the Final Approval Hearing; and (4) be precluded from seeking any review of the Settlement Agreement and/or the Final Approval Order and judgment by appeal or other means.

**FINAL APPROVAL AND HEARING SCHEDULE**

25. Plaintiffs’ Counsel shall file a Motion for Attorneys’ Fees and Reimbursement of Expenses (“Plaintiffs’ Motion for Attorneys’ Fees and Costs”) on or before July 22, 2024.

26. The Parties shall file a Motion for Final Approval of the Settlement Agreement (“Motion for Final Approval”) on or August 14, 2024, along with any necessary supporting information.

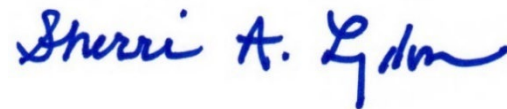
27. A Fairness Hearing will be held before the Honorable Sherri A. Lydon on Thursday, September 5, 2024, at 10:00 a.m., at the Matthew J. Perry Courthouse, for the purpose of determining: (1) whether the Settlement Class should be certified; (2) whether the Settlement Agreement is fair, adequate, and reasonable; (3) whether to enter a Final Judgment in this Action; and (4) to consider Plaintiffs’ Motion for Attorneys’ Fees and Costs. The specific date and time of the Fairness Hearing shall be included in the notice.

28. To the extent that the Court enters final judgment after the Fairness Hearing, the deadline for Settlement Class Members to register as Claimants for potential distributions from the settlement fund shall be August 14, 2024 (the “Bar Date”).

29. The Court may, for good cause shown by any party, extend any of the deadlines set forth in the Order without further notice to the Settlement Class.

**IT IS SO ORDERED.**

June 5, 2024  
Columbia, South Carolina



Sherri A. Lydon  
United States District Judge