

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Daniel D. Domenico**

Civil Action No. 1:23-cv-02511-DDD-STV

DAVID PLOWDEN, individually and on behalf of all others similarly
situated;
MARIO ORTEGA; and
KAMILLE FAYE VINLUAN-JULARBAL,

Plaintiffs,

v.

SIMILASAN CORP.,

Defendant.

**ORDER ADOPTING RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE
AND
PRELIMINARILY APPROVING CLASS-ACTION SETTLEMENT**

Before me is the recommendation, Doc. 69, of United States Magistrate Judge Scott T. Varholak that I grant the plaintiffs' motion, Doc. 66, for preliminary approval of a class-action settlement. The recommendation states that any objections must be filed within fourteen days after its service on the parties. Doc. 69 at 14-15 n.3 (citing 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)). The recommendation was served on January 31, 2025, and no party has objected to it.

In the absence of a timely objection, I may review a magistrate judge's recommendation under any standard I deem appropriate. *Summers v. Utah*, 927 F.2d 1165, 1167 (10th Cir. 1991) (citing *Thomas v. Arn*, 474 U.S. 140, 150, 154 (1985)). In this matter, I have reviewed the recommendation to satisfy myself that there is "no clear error on the face of the record." Fed. R. Civ. P. 72(b) Advisory Committee Notes. Based on

that review, I have concluded that the recommendation is a correct application of the facts and the law. As Judge Varholak determined, the Federal Rule of Civil Procedure 23 requirements for preliminary approval of the class-action settlement have been satisfied.

Accordingly, it is **ORDERED** that:

The Recommendation of United States Magistrate Judge, **Doc. 69**, is **ACCEPTED** and **ADOPTED**; and

Plaintiffs' Unopposed Motion for Preliminary Approval of Settlement, Certification of Settlement Class and Appointment of Settlement Class Counsel, **Doc. 66**, is **GRANTED**.

It is **FURTHER ORDERED** that:¹

The following Settlement Class is **PRELIMINARILY CERTIFIED**—

All Persons in the United States, its territories, and/or the District of Columbia who purchased, for personal use and not for resale, any Covered Product from September 11, 2017, until the Preliminary Approval Date.

The following persons are **SPECIFICALLY EXCLUDED** from the Settlement Class—

- (i) Defendant and its respective subsidiaries and affiliates, members, employees, officers, directors, agents, and representatives and their family members;
- (ii) Class Counsel;
- (iii) The judges who have presided over this action;
- (iv) Local, municipal, state, and federal governmental agencies; and

¹ Capitalized terms below that are not otherwise defined have the meaning ascribed to them in the Class Action Settlement Agreement and Release, Doc. 67-2.

(v) All persons who have timely elected to become Opt-Outs from the Settlement Class in accordance with the Court's Orders.

The Class Action Settlement Agreement and Release, Doc. 67-2, is **PRELIMINARILY APPROVED**;

Named Plaintiffs David Plowden, Mario Ortega, and Kamille Faye Vinluan-Jularbal are **PRELIMINARILY APPOINTED** as Class Representatives;

Melissa S. Weiner of Pearson Warshaw, LLP; Nick Suciu and Rachel Soffin of Milberg Coleman Bryson Phillips Grossman, PLLC; Jonas Jacobson of Dovel & Luner, LLP; and William H. Anderson of Handley Farah & Anderson PLLC are **PRELIMINARILY APPOINTED** as Class Counsel;

Angeion Group, LLC is **APPOINTED** as Claims Administrator;

In order to be a Valid Claim under the Settlement, a Claim Form must be postmarked or electronically submitted no later than **ninety (90) days** after the Fairness Hearing;

All requests to Opt Out of the proposed Settlement must be received by the Claims Administrator no later than **ninety-five (95) days** after the date of this Order;

Settlement Class Members may submit an objection to the proposed Settlement under Federal Rule of Civil Procedure 23(e)(5). For an Objection to be valid, it must be filed with the Court (or mailed to the Clerk of Court at Alfred A. Arraj United States Courthouse, Room A-105, 901 19th Street, Denver, Colorado 80294-3589) no later than **ninety-five (95) days** after the date of this Order and include each and all of the following—

- a. the Settlement Class Member's printed name, address and telephone number;
- b. whether the Settlement Class Member is represented by counsel and, if so, contact information for their counsel;

- c. evidence showing that the objector is a Settlement Class Member;
- d. whether the objection applies to that Settlement Class Member or to a specific subset of the Settlement Class, or to the entire Settlement Class, and state with specificity the grounds for the objection;
- e. any other supporting papers, materials or briefs that the Settlement Class Member wishes the Court to consider when reviewing the objection;
- f. the actual written or electronic signature of the Settlement Class Member making the objection; and
- g. a statement on whether the objecting Settlement Class Member and/or their counsel intend to appear at the Fairness Hearing.

Any Settlement Class Member who fails to timely file a written objection and, if planning to appear, a notice of their intent to appear at the Fairness Hearing in accordance with this paragraph and as detailed in the Class Notice will not be permitted to object to the approval of the Settlement at the Fairness Hearing and will be foreclosed from seeking any review of the Settlement or the terms of the Agreement by appeal or other means;

All Settlement Class Members who have not excluded themselves from the Settlement Class will be bound by the Settlement Agreement and the Release, and all of their respective claims will be dismissed with prejudice and released, irrespective of whether they received actual notice of this Action or the Settlement;

The Notice of Proposed Class Action Settlement, Doc. 67-2 at 68-74; Settlement Claim Form, Doc. 67-2 at 65-66; and Proposed Notice Plan, Doc. 67-2 at 76-87, are **APPROVED** as the best notice that is practicable under the circumstances. Non-substantive changes, such as typographical errors, may be made to the Class Notice documents by agreement of the Parties without leave of the Court;

A Fairness Hearing to consider final approval of the parties' settlement is **SET** for **July 17, 2025 at 10:30 a.m.** before Judge Daniel D. Domenico in Courtroom A1002 of the Alfred A. Arraj United States Courthouse. If the Fairness Hearing is postponed, adjourned, or continued, the updated hearing date must be posted on the Settlement Website, but other than the Settlement Website posting the Parties will not be required to provide any additional notice to Settlement Class Members;

The following schedule is **SET** for dissemination of Class Notice to the Settlement Class and for the Fairness Hearing—

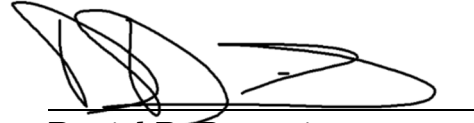
Date	Event
Thirty (30) days after the date of this Order ("Notice Date")	Claims Administrator to commence the Class Notice Program.
No later than sixty (60) days after the date of this Order	Class Counsel to file their Motion for Attorney Fees, Costs, and Class Representative Service Awards ("Fee and Cost Application").
No later than sixty (60) days after the date of this Order	Class Counsel to file their Motion for Final Approval of Class Action Settlement.
Ninety-five (95) days after the date of this Order ("Opt-Out and Objection Date")	Last day for Settlement Class Members to postmark an appropriate, timely request for exclusion from the Settlement Class, or file an objection to the Settlement or the Fee and Cost Application with the Court or mail the objection to the Court at the address specified in the Official Notice.
Seven (7) days before the Fairness Hearing	Any response to an objection must be filed with the Court.
No later than one hundred eight (108) days after the date of this Order	Class Counsel to file with the Court the Opt-Out List with an affidavit from the Claims Administrator attesting to its completeness and accuracy.

and

All proceedings in this Action except the settlement proceedings are **STAYED** until final approval of the Settlement Agreement has been determined.

DATED: February 20, 2025

BY THE COURT:

A handwritten signature in black ink, appearing to read "Daniel D. Domenico", is written over a horizontal line.

~~Daniel D. Domenico~~
United States District Judge