

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS**

DALLAS DIVISION

In re Kitec Plumbing System Products § MDL No. 2098
Liability Litigation § Case No. 09-md-2098-F

**ONTARIO SUPERIOR COURT OF JUSTICE
ONTARIO, CANADA**

Rosati et al. Case No. CV-09-13459
v. IpeX Inc. et al.

**SUPERIOR COURT OF QUÉBEC
QUÉBEC, CANADA**

Cooke et al. Case No. 200-06-000121-098
v. IpeX Inc. et al.

**PLAN OF ALLOCATION – FINAL PAYMENT
(Effective ●, 2023)**

I. OVERVIEW

1. This Plan applies to the United States Class and the Canada Classes, as defined and described in the Agreement of Compromise and Settlement ("Settlement Agreement").
2. This Plan replaces the original Plan of Distribution and Allocation (the "Original Plan"). The Original Plan provided for interim payments to Class Members who experienced a leak in their Kitec System. The interim payment was calculated in a conservative manner to ensure fund sufficiency during eight-year claims period. The interim payment provided for a portion of the estimated repair/replacement costs based on the three common

installation types for fittings and pipe (open and accessible, behind drywall, and in concrete).

3. The Original Plan provided for an eight-year Claims Period, which expired on January 9, 2020. All claims were subject to review and approval by the Claims Administrator. That review and approval process is now complete. Any approved claims are eligible for compensation under this Plan.
4. The Original Plan contemplated that a final payment would be made to approved Class Members at the end of the eight-year Claims Period. This Plan addresses the allocation and distribution of the final payment.

II. THE SETTLEMENT FUND

5. Pursuant to the Settlement Agreement, Class Counsel and Defendants IPEX Inc., IPEX USA, Inc., and IPEX USA LLC established a Settlement Fund into which certain cash payments and insurance proceeds totaling U.S. \$125 million were deposited into an interest-bearing trust account.
6. The Settlement Fund, plus interest, less court-approved fees, court-approved expenses, notice costs, administration costs, and taxes on interest earned, was made available for compensation for Class Members. Interim payments to qualifying Class Members were paid from the Settlement Fund. As of May 31, 2023, the balance of the trust account was U.S. \$101,094,277.05.
7. Prior to the distribution of the Settlement Fund, a holdback will be created to fund the estimated remaining administration costs, including cost of issuing payments, banking fees, and accounting and tax filing fees, and any other Court-approved fees or expenses.

III. ALLOCATION OF THE FINAL PAYMENT

8. The following categories of approved Class Members will receive compensation as part of the final payment:

(a) Category A: Approved Class Members who incurred out-of-pocket expenses associated with their Kitec System will be eligible for payment of their uncompensated out-of-pocket expenses. These expenses may include:

(i) the cost of repairing or replacing the Kitec System. This may include the cost of replumbing and/or other remedial steps, such as replacing radiant heating with an alternative heat source; and

(ii) consequential losses caused by the leak beyond repair and/or replacement costs. This may include, for example, damage to drywall, carpet, furniture, and/or cabinetry;

(b) Category B: Approved Class Members who have the Kitec System (regardless of whether they have experienced a leak) and did not replumb and/or replace the Kitec System will be eligible for payment of the estimated cost of replumbing and/or replacing the Kitec System. The estimated cost replumb and/or replacement will be valued at U.S. \$4.50 per square foot. For greater certainty, no payments shall be made to Class Members who are the former owner of a property with the Kitec System under this provision, unless such former owner has the right to such claim by virtue of an assignment or other agreement.

9. An Approved Class Member may qualify as both a Category A and Category B Class Member. For example, an Approved Class Member may have experienced a leak and paid for repairs to the Kitec System, but not yet replaced the Kitec System.
10. Category A claims will be paid at 63% of their total value (i.e., \$0.63 per dollar). The remaining Settlement Funds (after accounting for the holdback described in paragraph 7) will be allocated for the payment of Category B claims. Category B claims will be paid prorata (proportional) based on the value of the claims.
11. Any amount received by an Approved Class Member from the interim payment or from any other source (including insurance and third-party claims, etc.) will be deducted against the amount paid out on the final payment.
12. Payments to Approved Class Members in Canada will be converted to Canadian dollars prior to payment.

Late Claims

13. Claims that were postmarked after January 9, 2020 and fully received and approved as of March 1, 2021 will be treated as eligible claims, assuming they otherwise meet the eligibility requirements. Any claims received thereafter shall be barred as untimely.

Reissuance of Payment

14. The Claims Administrator shall have the discretion, but is not required, to reissue payments to Class Members returned as undeliverable under such policies and procedures as the Claims Administrator deems appropriate.

Residual Funds

15. The claims made on the fund exceed the value of the fund so no claimant will be made 100% whole. As a consequence and to the extent that the full Settlement Funds are not paid out due to uncashed cheques, residual fund interest or otherwise and subject to any withholding to the *Fonds d'aide aux actions collectives*, the residual funds will be used to pay any unexpected or subsequent expenses incurred during the administration of the Settlement Funds and completing the claims process. To the extent that there are residual funds remaining after payment of such expenses, the Claims Administrator will issue additional payments to approved Class Members prorata based on their outstanding claim value. However, if the prorata distribution would result in payments of less than \$20, no additional payment will be issued to the claimant.
16. To the extent that there are residual funds after the additional payments due to uncashed cheques or otherwise, subject to any withholding to the *Fonds d'aide aux actions collectives*, the residual funds will be used to pay any outstanding expenses incurred in issuing additional payments. To the extent that there are residual funds remaining after payment of such expenses, the funds will be distributed *cy pres* to Habitat for Humanity Canada, Habitat for Humanity Quebec, and Habitat for Humanity (US). The *cy pres* distribution shall be allocated proportional to the total claim value submitted by claimants in these regions.

Amendment to this Plan

17. On motion by Class Counsel, this Plan of Allocation may be amended by further order of the Courts.