

**Attention IMVU Users Who Purchased Certain  
Audio Files On IMVU Before December 1, 2010**

**This notice may affect your rights. Please read it carefully.**

*A court authorized this notice. This is not a solicitation from a lawyer.*

- The class action settlement will resolve a lawsuit against IMVU, Inc. (“IMVU”). The lawsuit claims that from September 21, 2008 to December 1, 2010, IMVU sold full-length audio files to its customers for use in IMVU’s 3D messaging application and later substantially reduced the value of those audio files by reducing their playback length to 20 seconds. IMVU contends that the file modifications were lawful, and denies any wrongdoing.
- To settle the case, IMVU has agreed to eliminate the restrictions that prevented the files from playing at their full length and to ensure that the preview length of an audio item does not exceed the length of playback after purchase, absent any modification by the IMVU member-developer. IMVU also has agreed to make clarifying changes to its terms of service agreement and to its other online notifications regarding the non-refundability of purchases. The agreement does not change IMVU’s obligation to comply with U.S. copyright laws, including requirements to remove audio files from its site if notified of copyright infringement by the copyright owner or if it has actual knowledge of copyright violation.
- The lawyers who brought the lawsuit will ask the Court for up to \$1,150,000.00 to be paid by IMVU as fees and expenses for investigating the facts, litigating the case, and negotiating the settlement. They will additionally ask for \$10,000.00 for the Plaintiff who brought this lawsuit, as an incentive award.
- Your legal rights are affected whether you act, or don’t act. Read this notice carefully.
- This notice summarizes the proposed settlement. For the precise terms and conditions of the settlement, please see the settlement agreement available at [www.audiofilessettlement.com](http://www.audiofilessettlement.com), by contacting class counsel at Gutride Saifer LLP, 100 Pine Street, Suite 1250, San Francisco, CA 94111, by accessing the Court docket in this case at <http://www.scefilng.org> or <http://www.sccaseinfo.org> (enter case number 111CV193767), or in person at Records, Superior Court for the State of California, County of Santa Clara, 191 North First Street, San Jose, CA 95113, from 8:30 a.m. and 3:00 p.m., Monday through Friday, excluding Court holidays.

**PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK’S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.**

YOUR RIGHTS AND OPTIONS IN THIS SETTLEMENT		DEADLINE
<b>DO NOTHING</b>	You will automatically receive a refund, to your IMVU Account, of IMVU promotional credits (“Predits”), computed as 60% of the IMVU Credits you used to purchase Affected Audio Products.	
<b>SUBMIT A BENEFIT ELECTIONS FORM</b>	<p>If you do not want the automatic refund of IMVU Predits, you may request your refund to be paid as one of the following:</p> <p>(a) IMVU Credits, computed as 30% of the IMVU Credits you used to purchase Affected Audio Products or</p> <p>(b) Cash, computed as \$0.00040 per IMVU Credit, multiplied by the number of IMVU Credits in (a).</p>	March 20, 2016
<b>EXCLUDE YOURSELF</b>	Get out of the lawsuit and the settlement. This is the only option that allows you to ever bring or join another lawsuit against IMVU that raises the same claims in this case. You will receive no payment.	January 22, 2016 (received)
<b>OBJECT OR COMMENT</b>	Write to the Court about why you do or don’t like the settlement, the amount of attorneys’ fees, or the payments to Mr. MacKinnon.	January 22, 2016 (postmarked)
<b>GO TO A HEARING</b>	Ask to speak in Court about the fairness of the settlement, the amount of attorneys’ fees, or the payments to Mr. MacKinnon.	February 19, 2016 at 9:00 a.m.

- These rights and options—and the deadlines to exercise them—are explained in this notice.
- The Court in charge of this case still has to decide whether to approve the settlement. Payments will be made if the Court approves the settlement and after appeals are resolved. Please be patient.

## FAIRNESS HEARING

On February 19, 2016, at 9:00 a.m., the Court will hold hearings to determine (1) whether the proposed settlement is fair, reasonable and adequate and should receive final approval; (2) whether the applications for attorneys’ fees and/or expenses brought by the Class Counsel should be granted; and (3) whether the application for a special incentive payment to the Plaintiff who brought the lawsuit should be granted. The hearing will be held at the Superior Court for the State of California, County of Santa Clara, 191 North First Street, San Jose, CA 95113, in Department 1, courtroom of the Honorable Judge Peter H. Kirwan. This hearing date may change without further notice to you. Consult the settlement website at [www.audiofilesettlement.com](http://www.audiofilesettlement.com), or the Court docket in this case at <http://www.scefileing.org> or <http://www.sccaseinfo.org> (enter case number 111CV193767), for updated information on the hearing date and time.

## IMPORTANT DATES

- January 22, 2016 – Objection Deadline
- January 22, 2016 – Exclusion Deadline
- February 19, 2016 – Fairness Hearing
- March 20, 2016 – Benefit Elections Form Deadline

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## **1. HOW DO I KNOW IF I AM AFFECTED BY THE SETTLEMENT?**

For purposes of settlement only, the Court has certified a settlement class. You are a member of the settlement class if you: (1) after September 21, 2008 and before December 1, 2010, used IMVU Credits to purchase from the IMVU virtual catalog at least one audio product whose playback length was greater than twenty seconds, (2) subsequently logged into the IMVU service at least once after January 31, 2011, (3) as of April 20, 2015, had not held an IMVU Account that had been terminated by IMVU for violations of IMVU terms of service, and (4) as of September 16, 2015, had your country of residence setting in the IMVU Application set as the United States. However, the settlement class excludes (1) the Honorable Judges Peter H. Kirwan, James P. Kleinberg, and Patricia J. Hamilton, (2) Randall W. Wulff; (3) any member of their immediate families; (4) any government entity; (5) IMVU; (6) any entity in which IMVU has a controlling interest; (7) any of IMVU's subsidiaries, parents, affiliates, and officers, directors, employees, legal representatives, heirs, successors, or assigns; and (8) any persons who timely opt-out of the settlement class.

If you are a member of the settlement class, you will be bound by the settlement and judgment in this case, unless you request to be excluded.

## **2. WHAT IS THE LAWSUIT ABOUT?**

A lawsuit was brought against IMVU. The suit claims that IMVU offers an application that permits users to interact with each other using virtual characters, otherwise known as avatars, and allows users to customize their experience by purchasing virtual items such as clothing, jewelry, furniture and audio files. IMVU lists these items in a virtual catalog where users can purchase them by exchanging "IMVU Credits," which in turn can be purchased for cash. The suit claims that prior to September 21, 2008, the IMVU virtual catalog contained many "full length" audio products, which were several minutes long. On September 2008, IMVU announced that any new audio files added to the IMVU catalog would be "cut down" to twenty seconds, but that audio files added prior to September 21, 2008 would not be affected and could continue to be purchased and played at full length. After the announcement, IMVU continued to allow persons to sample the pre-2008 audio files before purchase and played them at full length. On January 31, 2011, IMVU announced that all audio files, including those added prior to September 21, 2008 but purchased after that date, would be "cut down" to twenty seconds. IMVU provided refunds only to persons who had made such purchases after December 1, 2010. The suit alleges that IMVU's conduct is illegal and unconscionable, and it seeks an injunction against IMVU and refunds for all persons who bought the Affected Audio Products. "Affected Audio Products" means all audio products offered for sale in the IMVU virtual catalog that were purchased after September 21, 2008 and before December 1, 2010, whose original playback length was greater than twenty seconds.

IMVU denies that there is any factual or legal basis for Plaintiff's allegations. IMVU contends that its user agreement makes all purchases non-refundable and gives it sole discretion to remove or alter any audio products, and that the agreement is enforceable. It also argues that it truthfully marketed and advertised its service. IMVU therefore denies any liability and denies that Plaintiff or any other members of the settlement class have suffered injury or are entitled to monetary or other relief. IMVU also denies that this case can be certified as a class action, except for purposes of settlement.

The Court has not determined whether Plaintiff or IMVU is correct.

## **3. WHAT DOES PLAINTIFF SEEK TO RECOVER IN THE LAWSUIT?**

Plaintiff contends that IMVU is legally obligated to refund the purchase price for the Affected Audio Products. Plaintiff contends that approximately 3.3 billion IMVU Credits (equivalent to \$3.3 million) was spent on the Affected Audio Products by approximately 432,000 persons. Plaintiff asserts that, if he is successful at trial on all of his claims for a nationwide class of IMVU users, he could win damages and restitution of at least this amount.

IMVU denies that there is any legal entitlement to a refund or any other monetary relief.

#### **4. WHY IS THIS CASE BEING SETTLED?**

This case has been pending since February 2011. Since then, the Plaintiff has conducted substantial investigation into the operation of the IMVU application and its communications to users. IMVU has produced more than 100,000 pages of documents, data and programming code, which Plaintiff's counsel have reviewed. In addition, the parties have taken depositions of numerous witnesses. The parties also have exchanged written responses, under oath, to questions posed by the other party.

Based on this investigation, Plaintiff's Counsel has determined that there are significant risks of continuing the litigation. In particular, there may be substantial difficulties establishing: (1) that an ascertainable group of persons saw the September 2008 announcement stating that earlier audio files would not be "cut down" or sampled the audio files before purchase, (2) that IMVU violated its contract or took action that was likely to deceive reasonable persons, or that its interpretation of the contract is unconscionable; (3) that the alleged misrepresentations and omissions were material to reasonable persons; (4) that IMVU is required to provide a refund if it modifies the audio files, (5) that common questions predominate over individual issues such that a class may be certified on some or all claims; and/or (6) that damages or restitution should be awarded or, if so, that any such award should be more than nominal. Further, even if all these problems were overcome, because the purchases were made with IMVU Credits rather than cash, and such IMVU Credits might have been "earned" by IMVU users in exchange for activities on the IMVU application rather than purchased with cash, it would be difficult to establish that IMVU had an obligation to pay cash damages to affected users.

In April 2015, Plaintiff and IMVU participated in an all-day mediation session in Oakland, California in an attempt to settle the litigation. This settlement was reached as a result of the mediation.

After taking into account the risks and costs of further litigation, Plaintiff and his counsel believe that the terms and conditions of the settlement are fair, reasonable, adequate and equitable, and that the settlement is in the best interest of the settlement class Members.

#### **5. WHAT IS THE SETTLEMENT?**

IMVU has agreed to make changes to the operation of the IMVU application so that all audio products that were uploaded to the IMVU virtual catalog prior to September 2008 and that remain in the catalog play at their full length.<sup>1</sup> IMVU also has agreed to make clarifying revisions to its terms of service agreement as detailed in section 3.2 of the settlement agreement. The settlement does not change IMVU's obligations to comply with U.S. copyright laws such as the Digital Millennium Copyright Act (17 U.S.C. §§512(c)(3) and 512(d)(3)) ("DMCA"), including without limitation its obligation to remove from the IMVU virtual catalog and the IMVU application any audio product for which it receives a valid DMCA takedown notice or which it knows was uploaded to the virtual catalog in violation of U.S. copyright laws.

In addition, as part of the settlement, IMVU will provide refunds to settlement class members and payments to class counsel and the named Plaintiff, as described in the next sections.

<sup>1</sup> Most items are added to the virtual catalog by third-party developers, i.e. other IMVU users, who retain the right to remove or alter them. IMVU also has the duty to remove items from the catalog in response to a valid DMCA notice.

## **6. WHAT CAN I GET IN THE SETTLEMENT?**

Each settlement class member will automatically receive benefits under the settlement. The settlement class member can elect to receive any one of the following:

- (1) A refund to his or her IMVU Account, of IMVU Predits, computed as 60% of the IMVU Credits that he or she used to pay for the Affected Audio Products.
- (2) A refund, to his or her IMVU Account, of IMVU Credits, computed as 30% of the IMVU Credits that he or she used to pay for the Affected Audio Products.
- (3) A cash refund, computed as 30% of the IMVU Credits that he or she used to pay for the Affected Audio Products, times \$0.00040 per IMVU Credit.

The difference between IMVU Predits and IMVU Credits is that Credits can be transferred to other IMVU users (with some limitations). IMVU Predits are non-transferrable and non-exchangeable. In all other respects IMVU Predits and IMVU Credits are the same, meaning that items can be purchased from the IMVU virtual catalog for the same number of IMVU Predits as IMVU Credits.

## **7. HOW DO I MAKE A CLAIM?**

If you are a member of the settlement class, you will automatically receive the settlement benefit (1) listed in the prior section. You do not need to make a claim. However, if you wish to obtain the settlement benefit (2) or (3) listed in the prior section, you must file a benefit election form available on the settlement website, [www.audiofilesettlement.com](http://www.audiofilesettlement.com). You can submit the benefit election form online, or you can print it and mail it to the claim administrator at: MacKinnon v. IMVU, Inc., c/o GCG, P.O. Box 10261, Dublin, OH 43017-5761. Benefit election forms are due by March 20, 2016.

## **8. WHAT IF I NO LONGER HAVE ACCESS TO MY IMVU ACCOUNT?**

If you have forgotten your IMVU user ID (avatar name) or password, you can follow the instructions at [http://www.imvu.com/catalog/password\\_forgotten.php](http://www.imvu.com/catalog/password_forgotten.php) to obtain the user ID and a link to reset your password. If you no longer have access to the email address that you used to create your IMVU Account, IMVU will modify your account to associate it with your current email address, and you can then use the link above and your current email address to obtain your user ID and reset your IMVU password. To have IMVU modify your account to be associated with your current email address, please send an email to the claim administrator at [info@audiofilesettlement.com](mailto:info@audiofilesettlement.com), which includes (1) your full name, (2) your current email address, (3) the email address that was used to create the IMVU Account, and (4) at least two of the following: (a) your IMVU avatar name, (b) the dates and amounts of at least one transaction in which you purchased IMVU Credits through the IMVU application, (c) the name of at least one virtual product you purchased through the IMVU application, and/or (d) the last four digits of the credit card that you used for a purchase in the IMVU application or on [www.imvu.com](http://www.imvu.com).

## **9. WHAT DO PLAINTIFF AND THEIR LAWYERS GET?**

To date, Plaintiff's lawyers have not been compensated for any of their work on this case. Plaintiff's lawyers estimate that they have spent more than 1700 hours litigating this case. In addition, Plaintiff's lawyers have paid out-of-pocket expenses (including deposition transcript fees, court reporter fees, filing fees, service costs, copying costs, and travel expenses) of approximately \$65,000. None of these expenses has yet been reimbursed. As part of the settlement, Plaintiff's lawyers may apply to the Court to award them up to \$1,150,000.00 to pay their attorneys' fees and expenses.

In addition, the named Plaintiff in this case may apply to the Court for an incentive award of up to \$10,000.00. This incentive award is designed to compensate the named Plaintiff for the time, effort, and risks he undertook in pursuing this litigation and for executing a broader release of claims than other settlement class members.

Plaintiff and his lawyers will file a motion with the Court on or before January 8, 2016 in support of their applications for attorneys' fees, costs and expenses, and incentive awards. A copy of that motion will be available on the settlement website.

The award of attorneys' fees, costs, and expenses will be paid to Plaintiff's lawyers within seven days after the Court grants final approval to the settlement, except that \$50,000.00 of the award will be held in an interest-bearing account until the parties certify, and the Court finds, that all required distributions have been made to settlement class members. If the order finally approving the settlement is later reversed on appeal, Plaintiff's lawyers will be required to repay the previously paid fees, costs and expenses, plus interest.

The Court will determine the amount of fees, costs, expenses, and incentives to award.

#### **10. WHAT CLAIMS ARE RELEASED BY THE SETTLEMENT?**

The settlement releases all claims by settlement class members against IMVU and any person or entity affiliated with IMVU that were or could have been asserted by Plaintiff that relate to the truncation of the playback time of the Affected Audio Products. This release includes claims that may not yet be known or suspected. For further information, please see Section 8.3 of the settlement agreement.

#### **11. HOW DO I EXCLUDE MYSELF FROM THE SETTLEMENT?**

You can exclude yourself from the settlement class if you want to be able to sue IMVU separately for the claims released by the settlement. If you exclude yourself, you cannot file a claim or object to the settlement.

To exclude yourself, you must complete and submit the online form at the settlement website or mail an exclusion request to the claim administrator at MacKinnon v. IMVU, Inc., c/o GCG, P.O. Box 10261, Dublin, OH 43017-5761. If mailed, the exclusion request must contain your name, address, the words "I wish to be excluded from the IMVU Class Action Settlement," and your signature.

If submitted online, exclusion requests must be made by January 22, 2016. If mailed, exclusion requests must be *received* (not postmarked) by January 22, 2016.

#### **12. HOW DO I OBJECT TO THE SETTLEMENT?**

You can ask the Court to deny approval by filing an objection. You can't ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval to the entire settlement, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object.

You can also ask the Court to disapprove the requested payments to Plaintiff and to his attorneys. If those payments are disapproved, the money will not be paid to the settlement class, but instead, the funds earmarked for Plaintiff and his attorneys will be returned to IMVU.

You may also appear at the final fairness hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for paying that attorney. You may appear at the final fairness hearing even if you have not filed a written objection to the settlement.

Any objection must include your name, address and telephone number; shall provide documents or testimony sufficient to establish your membership in the settlement class; and shall provide a detailed statement of any objection asserted, including the grounds therefor and reasons, if any, for requesting the opportunity to appear and be heard at the final fairness hearing. Failure to include the foregoing information shall be grounds for striking an objection.

All written objections, requests to appear, and supporting papers must (a) clearly identify the case name and number, *MacKinnon v. IMVU*, Case No. 1-11-cv-193767, (b) be submitted to the Court either by mailing them to the Clerk, Superior Court for the State of California, County of Santa Clara, 191 North First Street, San Jose, CA 95113, or by filing them in person at that location, from 8:30 a.m. and 3:00 p.m., Monday through Friday, excluding Court holidays, (c) be served on

counsel for Plaintiff and IMVU at the addresses shown on the settlement website, and (d) be filed or postmarked on or before January 22, 2016.

### **13. WHEN WILL THE COURT DECIDE IF THE SETTLEMENT IS APPROVED?**

The Court will hold a final fairness hearing on February 19, 2016 at 9:00 a.m. to consider whether to approve the settlement. The hearing will be held in the San Jose Superior Court, 191 North First Street, San Jose, CA 95113, Department 1. The hearing is open to the public. However, only persons who have filed a request to appear at the hearing may actually address the Court. This hearing date may change without further notice to you. Consult the settlement website at [www.audiofilesettlement.com](http://www.audiofilesettlement.com) or the Court docket in this case at <http://www.sccaseinfo.org> or <http://www.scefilng.org> (enter case number 111CV193767), for updated information on the hearing date and time.

### **14. HOW DO I GET MORE INFORMATION?**

You can inspect many of the court documents connected with this case on the settlement website. Other papers filed in this lawsuit are available by accessing the Court docket in this case at <http://www.sccaseinfo.org> or <http://www.scefilng.org> (enter case number 111CV193767), or by visiting the office of the Clerk of the Court for the Superior Court for the State of California, County of Santa Clara, 191 North First Street, San Jose, CA 95113, from 8:30 a.m. and 3:00 p.m., Monday through Friday, excluding Court holidays.

You can also obtain additional information by contacting Plaintiff's Counsel at IMVU Settlement, Gutride Safier LLP, 100 Pine Street, Suite 1250, San Francisco, CA 94111.