

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

IN RE: READY-MIXED CONCRETE ANTITRUST LITIGATION,)	Master Docket No.
)	1:05-cv-00979-SEB-JMS
)	
)	
THIS DOCUMENT RELATES TO:)	
ALL ACTIONS)	
)	

**PLAINTIFFS’ MOTION FOR PRELIMINARY APPROVAL OF
SETTLEMENT AGREEMENT WITH DEFENDANTS IRVING MATERIALS, INC.,
FRED R. (PETE) IRVING, DANIEL BUTLER, JOHN HUGGINS, AND PRICE IRVING**

The Plaintiffs, Kort Builders, Inc., Dan Grote, Cherokee Development, Inc., Wininger/Stolberg Group, Inc., Marmax Construction, LLC, Boyle Construction Management, Inc., and T&R Contractor, Inc. (collectively “Plaintiffs”), by Interim Co-Lead Counsel, respectfully move this Court for an Order preliminarily approving the Settlement Agreement With Defendants Irving Materials, Inc., Fred R. (Pete) Irving, Daniel Butler, John Huggins and Price Irving (“IMI Settlement”), preliminarily certifying a Plaintiff Settlement Class, and directing notice of the IMI Settlement to members of the Settlement Class. In support of this Motion, Plaintiffs state as follows:

1. On April 24, 2008, the Plaintiffs, through Interim Co-Lead Counsel, executed a settlement agreement with Defendants Irving Materials, Inc. ("IMI"), Fred R. (Pete) Irving, Daniel Butler, John Huggins and Price Irving (collectively “IMI Defendants”) resolving the claims asserted in this action by the Plaintiffs and proposed Plaintiff Class against the IMI Defendants in exchange for payment of the sum of \$29 million. A copy of the IMI Settlement is submitted herewith and marked Exhibit “1.”

2. The IMI Settlement was achieved following extensive arms-length negotiations between the counsel for Plaintiffs and counsel for the IMI Defendants with the assistance of mediator Eric D. Green, confers substantial benefits on the Settlement Class, and is within the range of reasonableness.

3. Pursuant to the IMI Settlement, Plaintiffs, with the stipulation of the IMI Defendants as set forth in the IMI Settlement, respectfully move the Court for the entry of an Order, in the form of the proposed Preliminary Approval Order attached to the IMI Settlement as Exhibit "C," which:

- a. Certifies as to the IMI Defendants, pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3) and the terms of the IMI Settlement, the Settlement Class to which the Plaintiffs and the IMI Defendants have stipulated in the IMI Settlement;
- b. Preliminarily approves the IMI Settlement as fair, reasonable and adequate to the Plaintiffs and members of the Settlement Class;
- c. Approves and directs, as the best notice practicable under the circumstances: (i) mailed notice to Settlement Class members in the form attached to the IMI Settlement as Exhibit "A" and (ii) published notice to Settlement Class members in the form attached to the IMI Settlement as Exhibit "B";
- d. Approves the form of notice to be provided by the IMI Defendants to federal and state government officials as required by 28 U.S.C. § 1715 substantially in the form attached to the IMI Settlement as Exhibit "D", inclusive of the attachments thereto; and
- e. Schedules a hearing on final approval of this Agreement at the convenience of the Court.

4. Plaintiffs have submitted herewith their Memorandum in Support of Motion for Preliminary Approval of Settlement Agreement With Defendants Irving Materials, Inc., Fred R. (Pete) Irving, Daniel Butler, John Huggins and Price Irving.

WHEREFORE, the Plaintiffs respectfully request the preliminary approval the Settlement Agreement With Defendants Irving Materials, Inc., Fred R. (Pete) Irving, Daniel Butler, John Huggins and Price Irving, preliminary certification of the Settlement Class, approval of the form and method of notice of the IMI Settlement to members of the Settlement Class and to federal and state government officials as required by 28 U.S.C. § 1715, and approval and entry of the Preliminary Approval Order submitted herewith.

Dated: December 15, 2009

Respectfully submitted,

/s/ Irwin B. Levin

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CERTIFICATE OF SERVICE

I hereby certify that on December 15, 2009 a copy of the foregoing document, was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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