

FEB 17 2017

MICHAEL D. PLANET  
Executive Officer and Clerk

BY: \_\_\_\_\_, Deputy

SUSANNE LEON

**RECEIVED**  
VENTURA SUPERIOR COURT

FEB 15 2017

1 Michael A. Strauss, SBN 246718  
2 Andrew C. Ellison, SBN 283884  
3 **STRAUSS & STRAUSS, APC**  
4 121 North Fir Street, Suite F  
5 Ventura, CA 93001  
6 Telephone: (805) 641-6600  
7 Facsimile: (805) 641-6607  
8 E-mail: mike@strausslawyers.com

Attorneys for Plaintiff and the Putative Class

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF VENTURA

10 ERIC HERAUX, an individual,

11 Plaintiff,

12 v.

13 C & C BOATS, INC., a California  
14 Corporation; and DOES 1 through 100,  
15 inclusive,

16 Defendants.

Case No. 56-2015-00469765-CU-OE-VTA

[Case Assigned for All Purposes to the Hon.  
Kevin DeNoce, Dept. 43]

**CLASS ACTION**

**[PROPOSED] ORDER OF FINAL  
APPROVAL AND FINAL JUDGMENT**

Hearing Date: February 17, 2017  
Time: 8:30 a.m.  
Dept.: 43  
Reservation No.: 2217056

Complaint filed: July 13, 2015

21 **TO ALL INTERESTED PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

22 WHEREAS, this matter came on before the Court for hearing on February 17, 2017 at  
23 8:30 a.m. in Department 43 of the above-captioned Court pursuant to the Order of this Court  
24 entered on October 18, 2016, on the motions of Plaintiff ERIC HERAUX ("Plaintiff") for final  
25  
26  
27  
28

1 approval of the terms of the settlement set forth in the Joint Stipulation of Settlement and  
2 Release<sup>1</sup> (“Settlement Agreement”), attorney’s fees and costs, and an award of service payment;

3 WHEREAS, the Settlement Agreement sets forth the terms and conditions for a proposed  
4 settlement;

5 WHEREAS, all defined terms contained herein have the same meanings as set forth in  
6 the Settlement Agreement;

7 WHEREAS, the Court has previously granted preliminary approval of the settlement;

8 WHEREAS, the Court has before it the Settlement Agreement, Plaintiffs’ Motion for  
9 Final Approval of Class Action Settlement, Attorney’s Fees and Costs, and Award of Service  
10 Payment, the Declaration of the Claims Administrator, and the Declaration of Michael Strauss  
11 in Support of Motions for Final Approval of Class Action Settlement, Attorney’s Fees and Costs,  
12 and Award of Service Payment, and the Declaration of Eric Heraux in Support of Motion for  
13 Award of Service Payment;

14 WHEREAS, the Court has heard the attorneys for the parties with respect to the proposed  
15 settlement;

16 WHEREAS, the Court is satisfied that the settlement set forth in the Settlement  
17 Agreement was the result of good-faith, arm’s length settlement negotiations between competent  
18 and experienced counsel for both the Plaintiff and Defendant; and,

19 WHEREAS, due and adequate notice having been given to the Settlement Class as  
20 required by the Preliminary Approval Order, and the Court having considered all papers filed  
21 and proceedings had herein and otherwise been fully informed, and good cause appearing  
22 therefore,

23 IT IS HEREBY ORDERED, ADJUDGED, AND DECLARED that:

24 1. This Court has jurisdiction over the subject matter of the Class Action and over  
25 all Parties to the Class Action, including all Members of the Settlement Class.

26 \_\_\_\_\_  
27 <sup>1</sup> A copy of the Settlement Agreement was filed on September 16, 2016 as Exhibit 1 to the  
28 Declaration of Michael A. Strauss in Support of the Motion for Preliminary Approval of Class  
Action Settlement and for Class Certification for Settlement Purposes (Register of Action  
number 56).

1           2.       The Court conducted a hearing on October 18, 2016 for preliminary approval of  
2 the Parties' Settlement Agreement. After fully considering all supporting papers, evidence, and  
3 arguments, the Court granted preliminary approval of the Settlement Agreement on October 18,  
4 2016 (the "Preliminary Approval Order"), and further found that the proposed Class Notice met  
5 all constitutional and statutory requirements, including due process.

6           3.       The Court now finds that notice given to the Settlement Class, including the  
7 mailing of the Class Notice, as delineated in the Settlement Agreement, has been completed in  
8 conformity with the Preliminary Approval Order, including individual notice to all Class  
9 Members who could be identified through reasonable effort.

10          4.       The Court finds that said notice was the best notice practicable under the  
11 circumstances, which satisfied the requirements of law and due process, and was reasonably  
12 calculated, under all the circumstances, to apprise interested parties of the pendency of the action  
13 and afford them the opportunity to present their objections.

14          5.       The Court finds and determines that this notice procedure afforded due and  
15 adequate protections to Settlement Class Members and provides the basis for the Court to make  
16 an informed decision regarding approval of the Settlement based on the response of the  
17 Settlement Class. The Class Notice provided due and adequate notice of the proceedings of the  
18 matters set forth therein, including the proposed settlement set forth in the Settlement  
19 Agreement, to all persons entitled to such notice, and the Class Notice fully satisfied the  
20 requirements of due process.

21          6.       The Court finds that no member of the Settlement Class filed written objections  
22 to the proposed settlement as part of this notice process and that no member of the Settlement  
23 Class stated an intention to appear at the final approval hearing.

24          7.       Subsequently, and in accordance with the Court's Preliminary Approval Order and  
25 the Class Notice, the Court conducted a further hearing on February 17, 2017, for the purpose  
26 of considering the final approval of the Settlement Agreement. The Court, after fully  
27 considering all supporting papers, evidence, and arguments, having reviewed the declaration of  
28 the Settlement Administrator regarding the giving of the Class Notice in accordance with the

1 Court's Preliminary Approval Order, and having fully and carefully considered said matters,  
2 good cause appearing, issues its Order and Judgment of Final Approval of the Class Action  
3 Settlement, finding said settlement to be fair, reasonable, and adequate to the Settlement Class  
4 and to each Class Member. The Settlement is hereby ordered finally approved and all terms and  
5 provisions of the Settlement are ordered to be completed.

6 8. The Court further finds and determines that the settlement payments to be paid to  
7 eligible, participating Settlement Class Members are fair and reasonable. The Court hereby  
8 gives final approval to those amounts and orders that the settlement payments be made to the  
9 eligible, participating Settlement Class Members in accordance with the terms of the Settlement.

10 9. This Court hereby approves the settlement set forth in the Settlement Agreement,  
11 including the settlement award, released claims, and other terms therein, and directs the Parties  
12 to effectuate the settlement according to its terms. The Settlement Agreement, as amended by  
13 this Order, is hereby deemed incorporated herein as if expressly set forth, and has the full force  
14 and effect of an order and judgment of this Court.

15 10. The Court finds and determines that the payments to be made to Class Counsel in  
16 the sum of \$297,500.00 in attorneys' fees (35% of the Gross Settlement Amount) and \$6,525.16  
17 in costs are fair and reasonable. The Court finds and determines that the payment to be made to  
18 the Settlement Administrator in the sum of \$16,500.00 is fair and reasonable. The Court finds  
19 that the payments to Representative Plaintiff Eric Heraux in the amount of \$7,500.00 for his  
20 general release and as an enhancement is fair and reasonable. Thus, the Court hereby grants the  
21 Motions for Attorney's Fees and Costs and for Award of Service Payments and gives final  
22 approval to the foregoing payments and orders that the payments be made in accordance with  
23 the terms of the Settlement Agreement.

24 11. The Settlement Agreement is not an admission by Defendant, nor is this final  
25 approval order and judgment thereon, a finding of the validity of any claims in the Class Action,  
26 or of any wrongdoing by Defendant. Furthermore, the Settlement Agreement is not a concession  
27 by Defendant and shall not be used as an admission of any fault, omission or wrongdoing by  
28 Defendant. Neither this final approval order and judgment, the Settlement Agreement, any

1 document referred to herein, any exhibit to any document referred to herein, any action taken to  
2 carry out the Settlement Agreement, nor any negotiations or proceedings related to the  
3 Settlement Agreement, are to be construed as, or deemed to be evidence of, or an admission or  
4 concession with regard to, the denials or defenses of Defendant, and shall not be offered in  
5 evidence in any action or proceeding against the Parties hereto in any Court, administrative  
6 agency or other tribunal for any purpose whatsoever other than to enforce the provisions of this  
7 Order and judgment. This final approval order and judgment, the Settlement Agreement and  
8 exhibits thereto, and any other papers and records on file in the Class Action may be filed in this  
9 Court or any other action as evidence of the settlement by Defendant to support a defense of res  
10 judicata, collateral estoppel, release, or other theory of claim or issue preclusion or similar  
11 defense as to the Released Claims (as defined in the Amended Settlement Agreement).

12       12. The Court hereby enters final judgment in the action in accordance with the terms  
13 of the Settlement Agreement.

14       13. Without affecting the finality of this order and judgment in any way pursuant to  
15 CRC Rule 3.769(h), the Court shall retain continuing jurisdiction over: (a) interpretation,  
16 implementation and enforcement of the class settlement in this action, and (b) enforcement and  
17 administration of this Settlement Agreement, and any and all related matters, and all Settling  
18 Parties, Settlement Class Members, and counsel for each hereby specially submit to the  
19 jurisdiction of the Court for the purposes of implementing and enforcing the Settlement  
20 Agreement.

21       14. Nothing in this final approval order and judgment shall preclude any action to  
22 enforce the Parties' obligations under the Settlement Agreement, including the requirement that  
23 Defendant make the Settlement Payments to the eligible, participating Settlement Class  
24 Members in accordance with the Settlement Agreement.

25       15. Pursuant to CRC 3.771, the judgment in this action shall be binding on the  
26 Representative Plaintiff, and all of the Settlement Class members who did not timely request  
27 exclusion are hereby deemed to have waived and released all Released Claims (as Released  
28 Claims is defined in the Settlement Agreement). Every person in the Settlement Class who did

1 not opt out is a settlement class member (Settlement Class Member).

2 16. The Parties shall bear their own costs and attorneys' fees, except as otherwise  
3 provided by the Settlement Agreement and this Order and Judgment, the Class Representatives  
4 enhancement, and the Settlement Administrator's Costs.

5 **IT IS SO ORDERED.**

6  
7 DATED: FEB 17 2017, 2017

**KEVIN G. DENOCE**

\_\_\_\_\_  
HONORABLE KEVIN DENOCE  
Judge of the Superior Court

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**PROOF OF SERVICE**

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is STRAUSS & STRAUSS, APC, 121 N. Fir Street, Suite F, Ventura, California 93001. On February 15, 2017, I served the within documents:

**[PROPOSED] ORDER OF FINAL APPROVAL AND FINAL JUDGMENT**

\_\_\_\_\_ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.

  X   by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Ventura, California addressed as set forth below.

**SEE ATTACHED MAILING LIST**

\_\_\_\_\_ by placing the document(s) listed above in a sealed envelope and depositing for pick-up in a designated FedEx box via **FedEx Overnight** delivery at Ventura, California addressed as set forth below.

\_\_\_\_\_ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

  X   (*State*) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

\_\_\_\_\_ (*Federal*) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on February 15, 2017, at Ventura, California.

*Jacqueline Villarreal*  
\_\_\_\_\_  
JACQUELINE VILLARREAL

1 **Re: *Heraux v. C & C Boats, Inc.***  
2 **Ventura Superior Court Case No.: 56-2015-00469765-CU-OE-VTA**

3 **MAILING LIST**

4  
5 James S. Brown, Esq.  
6 SEDGWICK, LLP  
7 333 Bush Street, 30<sup>th</sup> Fl.  
8 San Francisco, CA 94104-2834  
9 Telephone: (415) 781-7900  
Facsimile: (415) 781-2635  
E-mail: james.brown@sedgwicklaw.com

10 ***Attorney for Defendant, C & C Boats, Inc., a California***  
11 ***Corporation***

12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27 updated on 4/18/16  
28