

1 Penelope A. Prevolos, Esq. (State Bar No. 87607)  
pprevolos@mof.com

2 William F. Tarantino, Esq. (State Bar No. 215343)  
[wtarantino@mof.com](mailto:wtarantino@mof.com)

3 **MORRISON & FOERSTER LLP**

4 425 Market Street  
San Francisco, CA 94105-2482  
Telephone: (415) 268-7000  
5 Facsimile: (415) 268-7522

6 Attorneys for Defendant IMVU, Inc.

7  
8 SUPERIOR COURT OF CALIFORNIA

9 SANTA CLARA COUNTY

10 PETER MACKINNON, JR., an individual, on  
11 behalf of himself, the general public and those  
similarly situated

12 Plaintiff,

13 v.

14 IMVU, INC.,

15 Defendant.

Case No. 111 CV 193767

**CLASS ACTION**

DECLARATION OF KEVIN HENSHAW  
IN SUPPORT OF MOTION FOR FINAL  
APPROVAL OF CLASS ACTION  
SETTLEMENT

16 Date: February 19, 2016

17 Time: 9:00 a.m.

18 Department: 1

Honorable Judge Peter H. Kirwan

1 I, Kevin Henshaw, declare and state that:

2 1. I am Senior Vice President of Business Development and General Manager,  
3 Revenue for IMVU, Inc.,

4 2. I make this Declaration in support of Plaintiff's motion for final approval of the class  
5 action settlement. The information below is stated based on personal knowledge. I am competent to  
6 testify to the facts set forth below, and if called as a witness and placed under oath, I would testify  
7 to those facts. Capitalized terms in this declaration have the same meaning as in the Settlement  
8 Agreement dated September 16, 2015.

9 3. Prior to the filing of the motion for preliminary approval of this settlement, IMVU  
10 was provided a copy of the data queries run of IMVU's data tables by Plaintiff's counsel. Those  
11 queries concluded that there were 432,168 persons who made purchases of the Affected Audio  
12 Products during the Class Period in 3,460,187 transactions, and expending 3,306,292,915 IMVU  
13 Credits. At the time, IMVU had no reason to believe that these calculations were inaccurate.

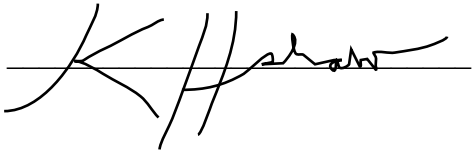
14 4. After the issuance of the order for preliminary approval, I caused IMVU to query its  
15 databases to determine the number of persons who met the class definition. Those queries showed  
16 that only 119,417 of persons met the definition of the Settlement Class. The others were excluded  
17 because they (1) made their purchases with IMVU Predits rather than IMVU Credits, (2) previously  
18 had been terminated by IMVU for violations of IMVU terms of service, or (3) failed to set their  
19 country of residence in the IMVU Application as the United States. If we eliminated the exclusion  
20 of persons whose country of residence in the IMVU Application was set as something other than the  
21 United States, there would have been 209,938 persons.

22 5. As required by Part V of the Settlement Agreement, IMVU has provided notice to  
23 the Settlement Class Members as follows:

24 a. On November 12, 2015, IMVU provided the Claim Administrator with the names  
25 and email addresses of 122,688 unique persons whom it believed may be Settlement  
26 Class Members, as well as the number of IMVU Credits each such person expended  
27 on Affected Audio Products.



1 I declare under penalty of perjury under the laws of the state of California that the foregoing  
2 is true of my own personal knowledge. Executed at Mountain View, California, this 13th of  
3 January, 2016.

4  
5  
6  A handwritten signature in black ink, appearing to read 'K. H. Shaw', is written over a horizontal line. The signature is cursive and somewhat stylized.  
7  
8  
9

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

# **EXHIBIT A**

IMVU Message Content (will be read by IMVU Customers after logging into their account)

## **Notice of Class Action and Proposed Settlement**

**Hello [avatarname],**

We are sending you this message to inform you of a legal settlement that affects your account. The notice below is being sent to you on behalf of the court-approved settlement administrator. You have various rights under the settlement, including the right to select settlement benefits, the right to opt out of the settlement, and the right to object to the settlement. You also have the right to speak to the court, which will decide whether to approve the settlement and whether to award attorneys' fees to the plaintiff. Please make sure you read the entire message by clicking on the "Read More" link at the bottom.

### **NOTICE:**

#### **Why are you receiving this notice?**

You are receiving this message because according to our records, during the period September 21, 2008 to December 1, 2010, you used IMVU Credits to purchase, from the IMVU virtual catalog, one or more audio file products whose playback length was greater than twenty seconds; you used the IMVU service at least once after January 31, 2011, when IMVU limited the playback length of all audio file products to twenty seconds; your IMVU Account has not been terminated by IMVU for violations of IMVU terms of service; and you have your country of residence setting in the IMVU application set as the United States.

#### **What's this about?**

A lawsuit was brought against IMVU. It claims that IMVU promised not to shorten the audio files that you purchased and should give refunds because it broke that promise. IMVU contends that the file size reduction was necessary, that it complied with the terms of service, and that IMVU has always truthfully marketed its service. The Court has not determined who is correct.

[Read More>>>](#) [Links to a webpage listing the entire message]

**Webpage will have the following content:**

## **Notice of Class Action and Proposed Settlement**

#### **Why are you receiving this notice?**

You are receiving this message because according to our records, during the period September 21, 2008 to December 1, 2010, you used IMVU Credits to purchase, from the IMVU virtual catalog, one or more audio file products whose playback length was greater than twenty seconds; you used the IMVU service at least once after January 31, 2011, when IMVU limited the playback length of all audio file products to twenty seconds; your IMVU Account has not been terminated by IMVU for violations of IMVU terms of service; and you have your country of residence setting in the IMVU application set as the United States.

#### **What's this about?**

A lawsuit was brought against IMVU. It claims that IMVU promised not to shorten the audio files that you purchased and should give refunds because it broke that promise. IMVU contends that the file size

reduction was necessary, that it complied with the terms of service, and that IMVU has always truthfully marketed its service. The Court has not determined who is correct.

To avoid the costs and risks of continued litigation, the parties have agreed to a settlement. Under the settlement, IMVU has agreed to remove the restrictions that prevented full playback length of the affected audio files. It also has agreed to give partial refunds to purchasers of the affected audio files, pay Court-approved incentives to the customer who brought the lawsuit, pay Court-approved fees and costs to their counsel, and pay all settlement administration costs. The settlement releases all class members' claims against IMVU regarding the truncation of the affected audio files.

### **What can I receive?**

If the Court approves the settlement, and you fall within the group described in the first paragraph of this email, you will automatically receive a refund of IMVU promotional credits ("Predits"). The Predits will be computed as 60% of the IMVU Credits that you used to pay for the affected audio products. They will be deposited in your IMVU Account. If you do not wish to receive IMVU Predits, you can choose to receive a refund of IMVU Credits, computed as 30% of the IMVU Credits that you used to pay for the affected audio products. Alternatively, you can choose to receive a cash refund, computed as 30% of the IMVU Credits that you used to pay for the Affected Audio Products, times \$0.00040 per IMVU Credit.

### **How do I make a claim?**

It is not necessary to make a claim. You will automatically receive the refund of IMVU Predits. If you wish to receive the IMVU Credits or cash instead of the IMVU Predits, you must file a benefit elections form, available [here](#). Benefit election forms are due by March 20, 2016.

### **What are my other options?**

You can [exclude yourself](#) from the 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. Alternatively, you can object to the settlement by filing papers in the California Superior Court in San Jose, California (*Mackinnon v. IMVU*, Santa Clara Super. Ct. Case No. 1-11-cv-193767) and serving them on counsel for Plaintiff. You may appear at the final approval hearing even if you have not filed a

written objection to the settlement. You can also hire your own attorney to appear, although your objection will be considered even if you do not appear or hire an attorney.

You must submit, not just mail, your exclusion or objection by January 22, 2016 by following the specific instructions at the settlement website: [www.audiofilesettlement.com](http://www.audiofilesettlement.com).

The Court will hold a hearing on February 19, 2016 at 9:00 a.m. to consider whether to approve the settlement. If the settlement is approved, the attorneys for the class will ask the Court to award them up to \$1,150,000.00 in fees, reasonable costs and expenses, and to award up to \$10,000 as an incentive to the customer who started the lawsuit. This hearing date may change without further notice to you.

For updated information on the hearing date and time, or to view the precise terms and conditions of the settlement, please see the settlement agreement available at the settlement website:

[www.audiofilesettlement.com](http://www.audiofilesettlement.com); contact class counsel at Gutride Safier LLP, 100 Pine Street, Suite 1250, San Francisco, CA 94111; or access the Court's docket in this case in this case at <http://www.sccaseinfo.org> or <http://www.scefiling.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.

# **EXHIBIT B**





Sign Up Now to Chat in 3D!  
Member Login

# IMVU's settlement for audio file related lawsuit

new topic

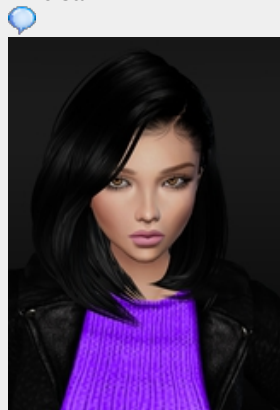
locked

[IMVU Forum Index](#) -> [IMVU News, Announcements and Release Notes](#)

[View previous topic](#) :: [View next topic](#)

Author	Message
--------	---------

**Varsha**   
IMVU Staff



Joined: 01 Feb 2010  
Posts: 10778  
Location: USA  
Client version: 523.4

Posted: Mon Nov 16, 2015 10:19 am Post subject: IMVU's settlement for audio file related lawsuit

**IMVU settles class action re 20-second limit on audio, agrees to lift limit and give refunds for pre-December 2010 purchases. Details [here](#).**

**IMPORTANT: Following information is applicable to the IMVU customers who are affected by this lawsuit as determined by the court. Go to the court-approved settlement website to see who is affected.**

Affected customers will receive an email notice from the independent settlement administrator and an Inbox message from IMVU.

The settlement reached by IMVU is related to a lawsuit (MacKinnon v. IMVU, Inc) stemming from IMVU announcements made on [September 22, 2008](#) and [January 31, 2011](#) regarding audio products in IMVU's catalog. IMVU has reached this settlement without admission of any wrongdoing.

This forum post is intended to inform affected IMVU users that a settlement has been reached between IMVU and the plaintiff. Affected customers will receive an email from the independent settlement administrator and an IMVU Inbox message from us on or around November 17, 2015. Details as well as next steps for members of the class must be obtained from the court-approved [settlement website](#).

**As a reminder, legal discussions are not permitted in our forums as per our forum guidelines. You should seek legal counsel for assistance.**

This announcement post will remain locked. A separate [forum topic](#) is available for on-topic posts not involving legal discussion.

Varsha - Director, Community Experience & User Safety

Last edited by Varsha on Wed Jan 06, 2016 9:21 am; edited 2 times in total

[Back to top](#)

[profile](#) [pm](#)

**Varsha**   
IMVU Staff

Posted: Mon Nov 16, 2015 10:25 am Post subject:

**FAQs:**

**amazon**

(2) CHAUVET ...  
**\$49.99**

58% off

Chauvet Haze ...  
~~\$55.99~~ **\$23.38**

(4) CHAUVET ...  
**\$96.95**

[Hide ads? Get VIP!](#)



Joined: 01 Feb 2010  
Posts: 10778  
Location: USA  
Client version: 522.26

### **Where can I get more details about the settlement?**

Detailed information is available on the court-approved [settlement website](#).

I received a notification about the settlement; can I get my refund today?

No. Dates for the refund process will be determined by the court. Updates will be provided on the [settlement website](#).

Can I file a IMVU help ticket regarding the settlement?

No. All information must be obtained from the settlement website. [Contact information](#) for the administrator is available there.

### **What if I no longer have access to my IMVU account that is affected by the settlement?**

If you have forgotten your IMVU user ID (avatar name) or password, you can follow the instructions available [here](#) 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 on IMVU.

### **Can I get a refund on my alternate account instead?**

No. Refunds will only be issued to the affected account.

### **I own affected audio products. What will happen to them?**

As part of the settlement agreement reached, IMVU will make a change so that all audio products uploaded to the catalog prior to September 21, 2008 and that currently remain in the catalog will play at their full length. This does not include products that violate U.S. copyright laws.

Date of this change will be determined by the court based on final approval of this settlement.

You may visit the settlement website for [additional FAQs](#).

### **I have questions about how this affects me.**

Please visit the [settlement website](#).

---

Varsha - Director, Community Experience & User Safety

[Back to top](#)

[profile](#) [pm](#)

Display posts from previous:

[new topic](#)

[locked](#)

[IMVU Forum Index -> IMVU News, Announcements and Release Notes](#)

All times are GMT - 8 Hours

Page 1 of 1

Jump to:

You **cannot** post new topics in this forum  
You **cannot** reply to topics in this forum  
You **can** edit your posts in this forum  
You **cannot** delete your posts in this forum  
You **cannot** vote in polls in this forum

[FAQ](#) [Usergroups](#) [Register](#) [Profile](#) [Log in for private messages](#)

Search the forums:

Powered by phpBB

[Mobile](#) | [People](#) | [Groups](#) | [Forums](#) | [3D Chat Rooms](#) | [3D Virtual Catalog](#) | [Buy Credits](#) | [Earn Credits](#) | [Creator Center](#) | [Download](#)

[About Us](#) | [Policies](#) | [Blog](#) | [Contact Us](#) | [Advertise](#) | [Jobs](#) | [Safety](#) | [Avatar](#) | [Help](#)

© 2016 IMVU All rights reserved

# **EXHIBIT C**

IMVU Message Content (will be read by IMVU Customers after logging into their account)

**Subject: Notice of Class Action and Proposed Settlement**

**Hello [avatarname],**

We are sending you this message to inform you of a lawsuit settlement reached by IMVU that affects your account. You can select settlement benefits (refunds for your audio product purchases) as per the options outlined on the court-approved [settlement website](#).

You are receiving this message because according to our records, during the period September 21, 2008 to December 1, 2010, you used IMVU Credits to purchase, from the IMVU virtual catalog, one or more audio file products whose playback length was greater than twenty seconds; you used the IMVU service at least once after January 31, 2011, when IMVU limited the playback length of all audio file products to twenty seconds; and your IMVU Account has not been terminated by IMVU for violations of IMVU terms of service.

As a non-US customer, you are not an official member of the settlement class nor are you legally bound by the settlement. The settlement benefits are being provided to you by IMVU as a courtesy extended to our non-US customers.

[Read More>>>](#)

## Forum post related to inclusion of non-US customers for refunds:

This post provides an important update regarding our announcements [here](#) and [here](#) regarding IMVU's recent settlement for audio file related lawsuit.

Detailed information regarding the settlement including terms, definition of the class, and, process for refunds is available on the court-approved [settlement administrator's website](#).

## **Update relevant to non-US customers:**

Effective today, we are making a change to who is eligible for refunds for purchase of affected audio products and including all customers irrespective of their country of residence.

As such, you automatically will receive a refund if you: 1) after September 21, 2008 and before December 1, 2010, used IMVU Credits (not promotional Credits or 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.

*\*Please visit the settlement website for additional restrictions/exclusions*

A refund of Credits will be made to your IMVU account automatically. If you do not wish to receive the automatic Credit refund, you can exercise additional options as described below.

**IMPORTANT: Non-US customers are not official members of the settlement class nor are they legally bound by the settlement. The settlement benefits are being extended to our non-US customers in addition to our US customers.**

Affected non-US customers will receive an email notice from the independent settlement administrator and an Inbox message from IMVU on or around January 15, 2016. Affected US customers were sent such communication in November 2015.

Details as well as information about next steps must be obtained from the court-approved [settlement website](#).

## **Refund process:**

Each affected US and non-US IMVU customer has following refund options available for their purchase of eligible audio products:

- 1) A refund to his or her IMVU Account, of IMVU Credits (promotional Credits), 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 first option is automatic for all users i.e. they do not need to do anything to receive those refunds. For options 2 and 3, users have to follow the instructions on the website to file a [Benefit Election Form](#) [***The website administrator will make necessary modifications to the form to facilitate non-US users to complete the relevant information***].

Information about timeline for refunds as well as how refunds will be paid to US and non-US customers will be provided on the [settlement administrator website](#) and updated here when available.

This forum topic will remain locked. On-topic discussion in compliance with our forum guidelines regarding legal discussions may take place [here](#).