

This is the sample settlement scheduling order referenced in Section C5(b)(ii)(E) (“Settlements”), page 38 of the Guidelines on Best Practices for Litigating Cases Before the Court of Chancery. It should be modified to fit the circumstances and used in conformity with the Guidelines.

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

_____,)
)
Plaintiff,)
)
v.) C.A. No. ____ - ____
)
_____,)
)
Defendants.)

[PROPOSED] SCHEDULING ORDER

WHEREAS, the parties have made application, pursuant to Court of Chancery Rule 23(e), for an Order approving the proposed settlement of the above-captioned action (the “Action”) in accordance with a Stipulation and Agreement of Compromise, Settlement, and Release entered into by the parties on _____ (the “Stipulation”), and for a dismissal of the Action on the merits with prejudice upon the terms and conditions set forth in the Stipulation (the “Settlement”);

WHEREAS, the Stipulation contemplates certification by this Court of a class in the Action, solely for purposes of settlement;

WHEREAS, the Court has read and considered the Stipulation and the accompanying documents; and

WHEREAS, all parties have consented to the entry of this Order;

NOW, THEREFORE, IT IS HEREBY ORDERED this ___ day of _____, 20__ that:

1. Except for terms defined herein, the Court adopts and incorporates the definitions in the Stipulation for purposes of this Order.

2. For purposes of the Settlement only, and pending the Settlement Hearing (defined below), the Action is provisionally certified as a non-opt-out class action pursuant to Court of Chancery Rule 23, on behalf of all persons or entities who owned shares of _____ Corporation common stock, either of record or beneficially, at any time on or after _____ through and including _____, including any and all of their respective successors in interest, predecessors, trustees, heirs, executors, administrators, representatives, agents, transferees, and assigns, immediate and remote, and any person acting for or on behalf of, or claiming under, any of them, and each of them (the “Class”). Excluded from the Class are Defendants, members of the immediate family of any Defendant, any entity in which a Defendant has or had a controlling interest, officers of the Company, and the legal representatives, heirs, successors, or assigns of any such excluded person. For purposes of Settlement only, the Plaintiff shall be provisionally certified as the representative of the Class, and _____ (“Plaintiff’s Counsel”) shall be designated class counsel.

3. A hearing (the “Settlement Hearing”) shall be held on _____, 20__ at _____ .m., in the _____ Courthouse, _____, Delaware _____, to:

(a) Determine whether the provisional class action certification herein should be made final;

(b) Determine whether the Settlement should be approved by the Court as fair, reasonable, adequate, and in the best interests of the Class;

(c) Determine whether an Order and Final Judgment should be entered pursuant to the Stipulation;

(d) Consider Plaintiff’s Counsel’s application for an award of attorneys’ fees and expenses;

(e) Hear and determine any objections to the Settlement or Plaintiff’s Counsel’s application for an award of attorneys’ fees and expenses; and

(f) Rule on such other matters as the Court may deem appropriate.

4. The Court reserves the right to adjourn the Settlement Hearing or any adjournment thereof, including the consideration of the application for attorneys’ fees, without further notice of any kind other than oral announcement at the Settlement Hearing or any adjournment thereof, and retains jurisdiction over this Action to consider all further applications arising out of or connected with the proposed Settlement.

5. The Court reserves the right to approve the Stipulation and the Settlement, at or after the Settlement Hearing, with such modifications as may be consented to by the Parties and without further notice to the Class, and retains jurisdiction over this Action to consider all further applications arising out of or connected with the proposed Settlement.

6. The Court approves, in form and content, the Notice of Pendency of Class Action, Proposed Settlement of Class Action, Settlement Hearing and Right to Appear (the “Notice”) attached as Exhibit [B] to the Stipulation and finds that the mailing by standard mailing or postcard and distribution of the Notice substantially in the manner and form set forth in this Order meets the requirements of Court of Chancery Rule 23 and due process, is the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons entitled thereto.

(a) No less than 60 days before the Settlement Hearing, the Company shall cause a copy of the Notice to be mailed by first-class mail to all members of the Class at their last-known address appearing in the stock transfer records maintained by or on behalf of the Company. All record holders who were not also the beneficial owners of the shares of the Company’s common stock held by them of record shall be requested to forward the Notice to the beneficial owners of those shares. The Company shall use reasonable efforts to give notice to such

beneficial owners by (i) making additional copies of the Notice available to any record holder who, prior to the Settlement Hearing, requests the same for distribution to beneficial owners, or (ii) mailing additional copies of the Notice to beneficial owners as reasonably requested by record holders who provide names and addresses for such beneficial holders.

(b) At least 10 business days before the Settlement Hearing provided for in Paragraph 3 of this Order, the Company shall file proof, by affidavit, of such mailings.

7. Any member of the Class who objects to the class action determination, the Settlement, the Order and Final Judgment to be entered in the Action, and/or Plaintiffs' Counsel's application for fees and expenses, or otherwise wishes to be heard, may appear personally or by counsel at the Settlement Hearing and present evidence or argument that may be proper and relevant; provided, however, that no member of the Class may be heard and no briefs, pleadings, or other documents submitted by or on behalf of any member of the Class shall be considered by the Court, except by Order of the Court for good cause shown, unless, not later than 10 business days prior to the Settlement Hearing, copies of (a) a written notice of intention to appear, identifying the name, address, and telephone number of the objector and, if represented, their counsel, (b) proof of membership in the Class, (c) a written statement of such person's objections to any matter before the Court, (d)

the grounds for such objections and any reasons for such person's desiring to appear and be heard, and (e) all documents and writings such person desires the Court to consider, shall be filed with the Court of Chancery and, on or before such filing, served electronically via LexisNexis e-service, by hand, or by overnight mail upon the following counsel:

[Plaintiff's counsel]

[Defendant's counsel]

8. Unless the Court otherwise directs, no member of the Class shall be entitled to object to the Settlement, or to the Order and Final Judgment to be entered herein, or to the award of attorneys' fees and expenses to Plaintiff's Counsel, or otherwise to be heard, except by serving and filing written objections as prescribed in Paragraph 7. Any person who fails to object in the manner provided above shall be deemed to have waived the right to object (including any right of appeal) and shall be forever barred from raising such objection in this Action or in any other action or proceeding.

9. Plaintiff shall file and serve its opening brief in support of the Settlement and its application for attorneys' fees and expenses no later than 30 business days prior to the Settlement Hearing. Any objections to the application for attorneys' fees and expenses shall be filed and served no later than 15 business days prior to the Settlement Hearing. If any objections to the Settlement are received or

filed, Plaintiff and/or Defendants may file and serve a brief response to those objections no later than five business days prior to the Settlement Hearing.

10. If the Court approves the Settlement provided for in the Stipulation following the Settlement Hearing, judgment shall be entered substantially in the form attached as Exhibit [C] to the Stipulation.

11. In the event that: (a) the Court declines, in any material respect, to enter the Order and Final Judgment provided for in the Stipulation and any one of the parties hereto fails to consent to the entry of another form of order in lieu thereof; (b) the Court disapproves the Settlement proposed in the Stipulation, including any amendments thereto agreed upon by all of the parties; or (c) the Court approves the Settlement proposed in the Stipulation or any amendment thereto approved by all of the parties, but such approval is reversed or substantially modified on appeal and such reversal or modification becomes final by a lapse of time or otherwise; then, in any of such events, the Stipulation, the Settlement proposed in the Stipulation (including any amendments thereof), the provisional Class certification herein, any actions taken or to be taken with respect to the Settlement proposed in the Stipulation, and the Order and Final Judgment to be entered shall be of no further force or effect, shall be null and void, and shall be without prejudice to any of the parties hereto, who shall be restored in all respects to their respective positions existing prior to the execution of the Stipulation, except for the obligation of the Company to pay for any

expenses incurred in connection with the Notice and administration provided for by this Scheduling Order. For purposes of this provision, a disallowance, modification, or reversal of the fees and/or expenses sought by Plaintiff's Counsel shall not be deemed a disapproval, modification, or reversal of the Settlement or the Order and Final Judgment.

12. The Stipulation, and any negotiations, statements, or proceedings in connection therewith, shall not be construed or deemed evidence of, a presumption, concession, or admission by any Released Person or any other person of any fault, liability, or wrongdoing as to any facts or claims alleged or asserted in the Action or otherwise, or that Plaintiff or Plaintiff's Counsel, the Class, or any present or former stockholders of the Company, or any other person, has suffered any damage attributable in any manner to any Released Person. The Stipulation, and any negotiations, statements, or proceedings in connection therewith, shall not be offered or admitted in evidence or referred to, interpreted, construed, invoked, or otherwise used by any person for any purpose in the Action or otherwise, except as may be necessary to enforce or obtain Court approval of the Settlement.

13. All proceedings in the Action, other than such proceedings as may be necessary to carry out the terms and conditions of the Settlement, are hereby stayed and suspended until further order of this Court. Pending final determination of whether the Settlement should be approved, Plaintiff and all members of the Class,

and any of them, are hereby barred and enjoined from asserting, commencing, prosecuting, assisting, instigating, or in any way participating in the commencement or prosecution of any action asserting any Settled Claims, either directly, representatively, derivatively, or in any other capacity.

14. The Court may, for good cause, extend any of the deadlines set forth in this Order without further notice to Class members.

[Vice] Chancellor