



IBIT

GRANTED WITH MODIFICATIONS

EFiled: Oct 23 2017 04:19PM EDT
Transaction ID 8743217
Case No. 8743-VCL



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

THORE SAUERLAND, ON BEHALF OF)
HIMSELF AND ALL OTHERS)
SIMILARLY SITUATED,)

Plaintiff,)

v.)

BLUEFLY, INC., MARIO CIAMPI,)
MICHAEL HELFAND, HABIB)
KAIROUZ, MARTIN MILLER, JOSEPH)
C. PARK, ANTHONY PLESNER,)
ANDREW RUSSELL, DENISE SEEGAL,)
DAVID WASSONG, CLEARLAKE)
CAPITAL GROUP, L.P., CLEAR MODE,)
LLC, and RUNWAY ACQUISITION SUB,)
INC.,)

C.A. No. 8743-VCL

Defendants.)

**SCHEDULING ORDER ON APPROVAL
OF CLASS ACTION SETTLEMENT**

WHEREAS, the Parties to the above-captioned putative class action (the “Action”) have agreed to settle the Action; and

WHEREAS, Plaintiff in the Action and Defendants are applying pursuant to Court of Chancery Rule 23(e) for an Order approving the proposed Settlement of the Action and determining certain matters in accordance with the Stipulation and Agreement of Compromise, Settlement, and Release entered into by the Parties,

dated October 17, 2017 (the “Settlement Agreement”),¹ and for the dismissal of the Action upon the terms and conditions set forth in the Settlement Agreement;

NOW, after review and consideration of the Settlement Agreement filed with the Court and the Exhibits annexed thereto, and after due deliberation,

IT IS HEREBY ORDERED AND ADJUDGED this ____ day of _____, 2017, that:

1. For purposes of settlement only, the Action shall be maintained as a non-opt out class action under Court of Chancery Rules 23(a), 23(b)(1) and 23(b)(2) on behalf of the following class (the “Class”):

All record holders and beneficial owners of Bluefly common stock as of May 23, 2013, whose shares of Bluefly common stock were involuntarily cashed out under the Merger, including their legal representatives, heirs, successors in interest, successors, predecessors in interest, predecessors, trustees, executors, administrators, estates, assignees, and transferees, immediate and remote, and any person or entity acting for or on behalf of, or claiming under, any of them, and each of them, together with their predecessors-in-interest, predecessors, successors-in-interest, successors, transferees, and assigns. Excluded from the Class are Defendants, members of the immediate family of any Defendant, and any subsidiary, firm, trust, corporation, or other entity related to, or affiliated with, any of Defendants.

2. The Court appoints Plaintiff as class representative for the Class. The Court appoints Class Counsel as counsel for the Class.

¹ Capitalized terms that are not defined herein shall have the meanings as set forth in the Settlement Agreement.

3. A hearing (the “Settlement Hearing”) will be held on _____, 2017, at ____:____ __.____, in the Court of Chancery (the “Court”) in the Leonard L. Williams Justice Center, 500 North King Street, Wilmington, Delaware 19801, to (i) determine whether to provide for the certification of the Class for settlement purposes pursuant to Court of Chancery Rules 23(a) and 23(b)(1) and/or (b)(2); (ii) determine whether Plaintiff and Class Counsel have adequately represented the Class, (iii) determine whether the proposed Settlement should be approved as fair, reasonable, and adequate to the Class and in the best interests of the Class, (iv) determine whether all Released Claims should be dismissed with prejudice, (v) determine whether an Order and Final Judgment in the form attached as Exhibit D to the Settlement Agreement approving the Settlement should be entered, (vi) consider any application of Plaintiff’s counsel for an award of attorneys’ fees and reimbursement of expenses, and any objections thereto; and (vii) hear such matters as the Court may deem necessary and appropriate. The Court may adjourn and reconvene the Settlement Hearing, including with respect to the consideration of the Fee Application, without further notice to Class Members other than by oral announcement at the Settlement Hearing or any adjournment thereof.

4. The Court may approve the Settlement, according to the terms and conditions of the Settlement Agreement, as it may be modified by the Parties thereto, with or without further notice to Class Members. Further, the Court may enter the

Order and Final Judgment dismissing with prejudice the Action against Defendants, approving releases by Plaintiff and the Class of all of the Released Claims against the Defendants and the Released Parties, and ordering the payment of attorneys' fees and expenses, all without further notice.

5. The Court approves, in form and substance, the Notice of Proposed Settlement of Class Action, Settlement Hearing, and Right to Appear (the "Notice") substantially in the form attached as Exhibit B to the Settlement Agreement. The Court finds that the mailing of the Notice in substantially the manner set forth in Paragraph 8 of this Order constitutes the best notice practicable under the circumstances to all persons entitled to such notice of the Settlement Hearing and the proposed Settlement, and meets the requirements of Rule 23 of the Rules of the Court of Chancery and of due process.

6. Class Members who wish to participate in the Settlement and to be eligible to receive a distribution from the proceeds of the Settlement must complete and submit a claim form in accordance with the instructions contained therein. Unless the Court orders otherwise, all claim forms must be postmarked no later than one-hundred and fifty (150) calendar days after the Notice Date. Notwithstanding the foregoing, Class Counsel may, at their discretion, accept for processing late Claims, provided such acceptance does not delay the distribution of the Net Settlement Fund to the Class. By submitting a claim form, a Person shall be deemed

to have submitted to the jurisdiction of the Court with respect to its/her/his Claim and the subject matter of the Settlement.

7. Any Class Member who does not timely and validly submit a Claim Form, or whose Claim Form is rejected or otherwise not approved by the Court (regardless of whether such person: (i) actually submits a Claim Form, (ii) seeks or obtains a distribution from the Net Settlement Fund, or (iii) is entitled to receive such a distribution under the plan of allocation approved by the Court) shall be: (a) deemed to have waived its/her/his right to share in the Settlement Fund; (b) forever barred from participating in distributions from the Net Settlement Fund; and (c) bound by all of the terms and provisions of the Settlement Agreement and the Settlement and all proceedings, determinations, judgments, and orders in the Action relating thereto, including without limitation the terms of the Judgment to be entered in the Action and the releases provided for therein.

8. At least sixty (60) days before the Settlement Hearing, Class Counsel shall cause the Notice, along with a Proof of Claim form substantially in the form attached as Exhibit C to the Settlement Agreement, to be mailed by United States mail, first class, postage pre-paid, to each person who is shown on the records of Bluefly, Inc. (“Bluefly”), its successors-in-interest or their respective transfer agents, to be a record holder of any shares who held any such shares as of May 23, 2013, at his, her or its last known address appearing in the stock transfer records maintained

by or on behalf of Bluefly, other than the Excluded Persons. All record holders in the Class who were not also the beneficial owners of any shares of common stock held by them of record shall be requested in the Notice to forward the Notice to such beneficial owners of those shares. Plaintiff shall use reasonable efforts to give notice to such beneficial owners by causing additional copies of the Notice: (a) to be made available to any record holder who, prior to the Settlement Hearing, requests the same for distribution to beneficial owners; or (b) to be mailed to beneficial owners whose names and addresses Plaintiff receives from record owners.

9. At least thirty (30) days before the Settlement Hearing, Class Counsel shall file with the Court papers in support of final approval of the Settlement and the Fee Application.

10. At least seven (7) days prior to the Settlement Hearing, Class Counsel shall file with the Court an appropriate declaration or affidavit with respect to the preparation and mailing of the Notice.

11. Any objection to the Settlement Agreement or Fee Application shall be filed no later than twenty-one (21) days before the Settlement Hearing. Any reply papers in support of final approval of the Settlement Agreement or the Fee Application shall be filed no later than seven (7) days before the Settlement Hearing.

12. At the Settlement Hearing, any Member of the Class who desires to do so may appear personally or by counsel, and show cause, if any, why the Class

should not be permanently certified, pursuant to Court of Chancery Rules 23(a) and 23(b)(1) and/or (b)(2), for settlement purposes only; why the settlement of this Action in accordance with and as set forth in the Settlement Agreement should not be approved as fair, reasonable and adequate to the Class; why the Order and Final Judgment should not be entered in accordance with and as set forth in the Settlement Agreement; or why the Court should not grant an award of reasonable attorneys' fees and expenses to Class Counsel in the Action for their services and actual expenses incurred in the Action; *provided, however*, that unless the Court in its discretion otherwise directs, no Class Member, or any other person, shall be entitled to contest the approval of the terms and conditions of the Settlement or (if approved) the Order and Final Judgment to be entered thereon, or the allowance of fees and expenses to Class Counsel in the Action, and no papers, briefs, pleadings, or other documents submitted by any Class Member or any other person (excluding a party to the Settlement Agreement) shall be received or considered, except by order of the Court for good cause shown, unless, no later than twenty-one (21) days before the Settlement Hearing, such person serves upon the attorneys listed below: (a) a written notice of intention to appear; (b) proof of membership in the Class; (c) a detailed summary of the objections to any matter before the Court; (d) the grounds therefor or the reasons for wanting to appear and be heard; and (e) all documents or writings the Court shall be asked to consider. These papers must be served upon the

following attorneys by hand delivery, overnight mail, or electronic filing and service:

Rigrodsky & Long, P.A.

Gina M. Serra
2 Righter Parkway, Suite 120
Wilmington, DE 19803

**Morris, Nichols, Arsht & Tunnell
LLP**

William M. Lafferty
1201 North Market Street
Wilmington, DE 19801

**Stradling Yocca Carlson & Rauth,
P.C.**

John F. Cannon
660 Newport Center Drive, Suite 1600
Newport Beach, CA 92660

13. Any member of the Class who desires to be heard at the Settlement Hearing must also contemporaneously deliver a copy of the papers described in the preceding paragraph to the Register in Chancery, Court of Chancery, 500 North King Street, Wilmington, Delaware 19801. Even if any such Class Member does not appear at the Settlement Hearing, the Court may consider that Class Member's written submission if it is served and filed in accordance with the foregoing procedures.

14. Any person who fails to object in the manner described 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 or any other action or proceeding. Class Members who do not object need not appear at the Settlement Hearing or take any other action to indicate their approval.

15. If the Court approves the Settlement provided for in the Settlement Agreement following the Settlement Hearing, judgment shall be entered substantially in the form attached as Exhibit D to the Settlement Agreement.

16. In the event that (a) the Court does not enter the Order and Final Judgment, (b) the Court enters the Order and Final Judgment but on or following appellate review the Order and Final Judgment is modified or reversed in any material respect, or (c) any of the other conditions of Paragraph 14 of the Settlement Agreement are not satisfied, the Settlement Agreement shall be cancelled and terminated unless, within ten (10) business days after receipt of such ruling or notice of such event, counsel for each of the Parties to the Settlement Agreement agrees in writing with counsel for the other Parties hereto to proceed with the Settlement Agreement, including such modifications, if any, as to which all other Parties in their sole judgment and discretion may agree in writing. For purposes of this provision, the grant or denial (whether in whole or in part) of any Fee Application shall not be deemed an amendment, modification, or disapproval of the Settlement or the Order and Final Judgment.

17. Pending final determination of whether the Settlement should be approved and further order of the Court, Plaintiff, and all members of the Class, are barred and enjoined from commencing or prosecuting, either directly,

representatively or in any other capacity, any action asserting any claims that are, or relate in any way to, Released Claims against Released Parties.

18. All proceedings in the Action, other than proceedings as may be necessary to carry out the terms and conditions of the Settlement Agreement, are hereby stayed and suspended until further order of this Court.

Vice Chancellor J. Travis Laster

This document constitutes a ruling of the court and should be treated as such.

Court: DE Court of Chancery Civil Action

Judge: J Travis Laster

File & Serve

Transaction ID: 61254545

Current Date: Oct 23, 2017

Case Number: 8743-VCL

Case Name: CONF ORD ON DISC - Sauerland, Thore vs Bluefly Inc

Court Authorizer: Laster, J Travis

Court Authorizer

Comments:

A hearing (the "Settlement Hearing") will be held on Tuesday, January 30, 2018, at 2:00 p.m.

/s/ Judge Laster, J Travis