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U.S. DISTRICT COURT E.D.N.Y.
★ APR 12 2018 ★

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

LONG ISLAND OFFICE

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LINDA J. KINDLE and MICHAEL
BREWLEY,

Plaintiffs,

ORDER

CV 14-6784 (SJF) (ARL)

- against -

PETER DEJANA, JOHN SIPALA, SADDLE
CREEK, LLC, WILLIAM F. WYNPERLE, JR.,
ATRIUM MANAGEMENT SERVICES, INC.,
ADMINISTRATIVE COMMITTEE FOR THE
ATRIUM MANAGEMENT SERVICES, INC.
EMPLOYEE STOCK OWNERSHIP PLAN,
ATRIUM FUNDING LLC and ATRIUM
MANAGEMENT SERVICES, INC.
EMPLOYEE STOCK OWNERSHIP PLAN,

Defendants.

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FEUERSTEIN, District Judge:

**ORDER GRANTING PLAINTIFF'S
MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT,
AND APPROVAL OF PLAINTIFF'S PROPOSED NOTICE OF SETTLEMENT**

The above-entitled matter came before the Court on Plaintiff's Motion for Preliminary Approval of Class Action Settlement, and Approval of Plaintiff's Proposed Notice of Settlement ("Motion for Preliminary Approval"). ECF No. 153.

I. Preliminary Approval of Settlement

1. Based upon the Court's review of the Memorandum of Law in Support of Plaintiff's Motion for Preliminary Approval and the Declaration of Daniel Feinberg ("Feinberg

Declaration”) and the exhibits attached thereto, the Court grants preliminary approval of the Settlement read into the record on September 5, 2017, attached to the Feinberg Declaration as Exhibit A.

2. Following the notice period, the Court will be able to evaluate the settlement with the benefit of the class members’ input. *See In re IPO Litig.*, 226 F.R.D. 186, 191 (S.D.N.Y. 2005); *In re Nasdaq Antitrust Litig.*, 176 F.R.D. 99, 102 (S.D.N.Y. 1997) (citing Fed.R.Civ.P. 23(e)).

3. Preliminary approval of a settlement agreement requires only an “initial evaluation” of the fairness of the proposed settlement on the basis of written submissions and, in some cases, an informal presentation by the settling parties. *Gatto v. Sentry Services, Inc.*, 2014 WL 7338721, at *1 (S.D.N.Y. Dec. 19, 2014). To grant preliminary approval, the court need only find: (1) “probable cause to submit the [settlement] to class members and hold a full-scale hearing as to its fairness,” *In re Traffic Exec. Ass’n*, 627 F.2d 631, 634 (2d Cir.1980) (internal citation omitted); and (2) that the proposed settlement “appears to fall within the range of possible approval.” *Gatto*, 2014 WL 7338721, at *1. If these two requirements are met, the court should order that the class members receive notice of the settlement. *See id.*

4. As the proposed Settlement Agreement appears to fall within the range of possible settlement approval, notice to the class is appropriate. *See In re Traffic Exec. Ass’n*, 627 F.2d at 634; *Danieli v. IBM*, No. 08 Civ. 3688, 2009 WL 6583144, at *4-5 (S.D.N.Y. Nov. 16, 2009) (granting preliminary approval where settlement “has no obvious defects” and proposed allocation plan is “rationally related to the relative strengths and weaknesses of the respective claims asserted”).

5. The Settlement Agreement is the result of extensive, arm's length negotiations by counsel well-versed in the prosecution of ERISA litigation and class actions. The Court's participation in the settlement negotiations reinforces that the Settlement Agreement is non-collusive.

II. Class Notice

6. The Court approves the Proposed Notice of Class Action Settlement ("Class Notice") which is attached as Exhibit B to the Feinberg Declaration and directs its distribution to the Class. Class Counsel is directed to insert amounts awarded in the Court's Order on Plaintiff's Motion for Attorneys' Fees, Costs and Class Representative Service Award.

7. Pursuant to Federal Rule of Civil Procedure 23(c)(2)(B), a notice must provide:

the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice must concisely and clearly state in plain, easily understood language: the nature of the action; the definition of the class certified; the class claims, issues, or defenses; that a class member may enter an appearance through counsel if the member so desires; that the court will exclude from the class any member who requests exclusion, stating when and how members may elect to be excluded; and the binding effect of a class judgment on class members under Rule 23(c)(3).

Fed. R. Civ. P. 23(c)(2)(B).

8. The content of the Class Notice fully complies with due process and Federal Rule of Civil Procedure 23.

9. The proposed Class Notice satisfies each of these requirements and fully complies with the requirements of Rule 23(c). *See In re Michael Milken & Assocs. Sec. Litig.*, 150 F.R.D. 57, 60 (S.D.N.Y. 1993) (class notice "need only describe the terms of the settlement generally"); *Dorn*, 2011 WL 382200, at *4; 57, 60 (class notice "need only describe the terms of the settlement generally" (internal quotation marks and citation omitted)). It also describes the terms

of the settlement, informs the class about the request for attorneys' fees, and provides specific information regarding the date, time, and place of the final approval hearing. *Dorn*, 2011 WL 382200, at *4.

III. Class Action Settlement Procedure

10. The Court hereby sets the following settlement procedure:
 - A. Within 7 calendar days of the date of this Order, Dejana Defendants will provide Class data to Class Counsel and the Settlement Administrator;
 - B. Within 14 calendar days of the date of this Order, the Settlement Administrator will mail the Class Notice to all Class Members;
 - C. 40 calendar days after the mailing of the Class Notice will be the postmark deadline for class members to object to the Settlement;
 - D. The Court will hold a Final Approval and Fairness Hearing on June 27, 2018 at 11:15 a.m. at the U.S. District Court for the Eastern District of New York, 100 Federal Plaza, Central Islip, New York, Courtroom 1010;
 - E. Plaintiff will file a Motion for Final Approval of the Settlement no later than 14 calendar days before the Final Approval and Fairness Hearing;
 - F. The Parties shall abide by the terms of the Settlement.

SO ORDERED.

Dated: Central Islip, New York
April 12, 2018

/s/ Sandra J. Feuerstein
SANDRA J. FEUERSTEIN
U.S. District Judge