

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 13-80456-CIV-MARRA/MATTHEWMAN

NORMAN HIRSCH, MATTHEW DWYER,
and RALPH WILLARD, individually
and on behalf of all others similarly situated,

Plaintiffs,

v.

JUPITER GOLF CLUB LLC, a Delaware
LLC d/b/a TRUMP NATIONAL GOLF
CLUB JUPITER and RBF, LLC d/b/a
THE RITZ-CARLTON GOLF CLUB &
SPA JUPITER,

Defendants.

**PLAINTIFFS' UNOPPOSED MOTION AND SUPPORTING MEMORANDUM FOR
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

Plaintiffs, Norman Hirsch, Matthew Dwyer and Ralph Willard, through Class Counsel move the Court for preliminary approval of their proposed class action settlement pursuant to Federal Rule of Civil Procedure 23. The grounds and authority for this motion are set forth in the following memorandum. The memorandum is incorporated as part of this motion.

MEMORANDUM

Plaintiffs respectfully submit this Memorandum in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement.

I. INTRODUCTION

After more than four years of aggressive litigation, Plaintiffs won a substantial monetary judgment for themselves and the class following a bench trial. The principal sum of the judgment, \$4,849,000, represented 100% of the damages sought by Plaintiffs at trial. In addition, the judgment included \$925,010 of prejudgment interest, totaling \$5,774,010. Defendant appealed

the judgment. In addition to the judgment, Plaintiffs were awarded taxable costs, attorney fees, non-taxable costs and incentive awards. Oral argument before the U.S. Court of Appeals in the Eleventh Circuit is presently set in May. The parties have entered into a proposed class Settlement Agreement¹ (“Settlement Agreement”). The terms of the Settlement Agreement require Defendant Jupiter Golf Club LLC dba Trump National Golf Club Jupiter (“Trump National”) to pay \$5,446,278.72 (the “Settlement Fund”). This Settlement provides for a fundamentally fair, reasonable, and adequate resolution that will produce a substantial cash payment for every Class Member. The Settlement easily satisfies the criteria for preliminary approval.

The Settlement Fund will be distributed to Class members on a pro rata basis, following the distribution of attorney fees, costs and incentive awards.

The Settlement Agreement further requires direct mail notice to be sent to each of the Class Members. *Id.*, ¶ 4. The Settlement Agreement also requires that notice be published to the website www.membershipdepositlawsuit.com. *Id.*

Class Members have the option to object to the proposed settlement. *Id.*, ¶ 5.

Class Members will be advised of their rights and options through direct mail notice and a dedicated web-site through which they can receive updates, access settlement documents and receive answers to frequently asked questions. *Id.*, ¶ 4 and Declaration of Seth Lehrman (“Lehrman Decl.”) ¶¶ 8-9. This type of notice has been regularly approved by courts as the best notice practicable. Moreover, this precise type of notice has been approved by this Court several times in the instant action and has been provided to Class Members several times. *See e.g.* DEs 131, 183 and 311, Lehrman Decl., ¶ 9.

¹ The Settlement Agreement is attached to this motion as Exhibit A.

The proposed settlement provides significant monetary benefits to Class Members on fair, reasonable, and adequate terms. See Lehrman Decl., ¶¶ 10-12. As established below and in the Parties' other submissions, preliminary approval of the proposed settlement should be granted.

II. NATURE OF THE CASE

The Parties and their counsel have considered the inherent issues and risks in pursuing the appeal of the judgment. Lehrman Decl., ¶ 6. They have determined that it is in the best interests (and in the best interest of the Class) to enter into a fair, reasonable, and adequate settlement. *Id.*

III. THE PROPOSED SETTLEMENT

A. The Settlement Fund

The proposed Settlement establishes a Settlement Fund of \$5,446,278.72. The Settlement Fund would pay for: (1) attorneys' fees to Class Counsel in the percentage amount previously awarded by the Court, (2) costs to Class Counsel and incentive awards to Plaintiffs in the amounts previously approved by the Court, and (3) a cash settlement benefit to Class Members equal to approximately 71% of the principal sum of each Class Member's refundable deposit. The Settlement Fund will be distributed to Class Members upon final approval of the Settlement. This is not a claims made settlement. Class Members are not required to submit any claim form to receive the full benefit of the Settlement. Upon Final Approval, Class Counsel will send a check to each of the sixty-five Class Members. No portion of the Settlement Fund will revert to Defendant.

B. Notice and Settlement Administration

Class Counsel will give notice through First Class U.S. Mail and Website Notice.

By the Notice Deadline, which is the first business date five (5) days after the entry of the Preliminary Approval Order, Class Counsel shall establish and oversee a dedicated settlement Website (www.MembershipDepositLawsuit.com) containing settlement information and related

documents, including: Notice, the Settlement Agreement, and the Preliminary Approval Order. These documents will be available on the Website Notice website no later than the Notice Deadline and remain at least until Final Approval. Class Counsel will maintain a toll-free telephone number concurrent in time with the Settlement Administration period.

C. Objections Procedure

Settlement Class Members will have an opportunity to object to approval of the Settlement. The deadlines for filing objections will be conspicuously listed in the Notice, as well as on the settlement website. The process for filing objections will also be explained in the Notice and outlined in documents available on the website. With regard to objections, the Notice informs Settlement Class Members that the Final Approval Hearing will be the only opportunity for them to appear and have their objections heard.

IV. ARGUMENT

A. The Settlement Should Be Preliminarily Approved.

The Settlement represents a fair and reasonable resolution of this dispute and is worthy of notice to, and consideration by, the Class Members. It will provide financial relief to Class Members and will relieve the Parties and Settlement Class Members of the burden, uncertainty, and risk of continued litigation.

Under Rule 23(e)(2), a court may approve a class action settlement if it is “fair, reasonable, and adequate.” There is an initial presumption of fairness when a proposed class settlement “is the product of arm’s length **negotiations**, sufficient discovery has been taken to allow the parties and the court to act intelligently, and counsel involved are competent and experienced.” H. Newberg & A. Conte, *Newberg on Class Actions* §11.41 (4th ed. 2002).

B. The Proposed Settlement is Fair, Reasonable, and Adequate, and Should be Warrants Preliminary Approval.

After determining that a proposed Settlement Class is appropriate for certification, courts consider whether the proposed settlement itself warrants preliminary approval. The procedure for review of a proposed class action settlement is a well-established two-step process. Alba & Conte, 4 Newberg on Class Actions, § 11.25, at 38–39 (4th ed. 2002). The first step is a preliminary, pre-notification hearing to determine whether the proposed settlement is “within the range of possible approval.” *Id.* (quoting Manual for Complex Litig., § 30.41 (3d ed. 1995)); *Fresco v. Auto Data Direct, Inc.*, No. 03-61063, 2007 WL 2330895, at *4 (S.D. Fla. May 14, 2007). “Preliminary approval is appropriate where the proposed settlement is the result of the parties’ good faith negotiations, there are no obvious deficiencies and the settlement falls within the range of reason.” *Smith v. Wm. Wrigley Jr. Co.*, No. 09-60646, 2010 WL 2401149, at *2 (S.D. Fla. Jun. 15, 2010).

Moreover, settlement negotiations that involve arm’s-length, informed bargaining with the aid of experienced counsel support a preliminary finding of fairness. *See* Manual For Complex Litig. at § 30.42. Further, there is a strong judicial and public policy favoring the voluntary conciliation and settlement of complex class action litigation. *In re U.S. Oil & Gas Litig.*, 967 F.2d 489, 493 (11th Cir. 1992) (“Public policy strongly favors the pretrial settlement of class action lawsuits”); *Warren v. City of Tampa*, 693 F. Supp. 1051, 154 (M.D. Fla. 1998), *aff’d*, 893 F. 2d 347 (11th Cir. 1998); *Access Now, Inc. v. Claires Stores, Inc.*, No. 00-14017, 2002 WL 1162422, at *4 (S.D. Fla. May 7, 2002). This is because class action settlements ensure class members a benefit as opposed to the “mere possibility of recovery at some indefinite time in the future.” *In re Domestic Air Transport.*, 148 F.R.D. 297, 306 (N.D. Ga. 1993).

Accordingly, while district courts have discretion in deciding whether to approve a proposed settlement, deference should be given to the consensual decision of the parties. *Warren*,

693 F. Supp. at 1054 (affording “great weight to the recommendations of counsel for both parties, given their considerable experience in this type of litigation”). There should be no question that the proposed Settlement in this case is “within the range of possible approval.” To start, the process used to reach the settlement was exceedingly fair. That is, the proposed Settlement was reached after more than four years of contentious litigation, contested class certification, summary judgment motions, a trial, multiple appeals and extensive arm’s-length settlement negotiations. Lehrman Decl., ¶ 7.

The relief afforded to the Class further demonstrates the fairness, reasonableness and adequacy of the proposed Settlement. The Settlement Fund is more than 93% of the judgment. *Id.*, ¶ 10. Class Members will be sent a cash payment from the Settlement Fund that will be approximately 71% of the deposit which they sought to recover through this litigation. *Id.*, ¶ 11. Given the relief offered under the proposed Settlement, coupled with the robust notice plan, Counsel believe that the results achieved clearly merit preliminary approval.

For all of these reasons, Plaintiffs and Class Counsel firmly believe that the monetary relief provided by the Settlement weighs heavily in favor of a finding that it is fair, reasonable, and adequate, and well within the range of approval. Accordingly, the Court should grant preliminary approval.

C. The Notice Should Be Approved in Form and Substance.

To satisfy the requirements of both Rule 23 and Due Process, Rule 23(c)(2)(B) provides that “the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B); *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). Rule 23(e)(1) similarly requires that the notice be reasonably disseminated to those who

would be bound by the court's judgment. Notice is proper as long as the average class member would be able to understand it, Newberg § 11:53 at 167, and the substance of the notice describes the nature of the action, the definition of the class to be certified, and the class claims and defenses at issue. *See* Fed. R. Civ. P. 23(c)(2)(B). Further, notice must also explain that Settlement Class Members may enter an appearance through counsel or object to the Settlement. *Id.*

The Parties have agreed upon a notice plan that satisfies the notice requirements of both Rule 23 and Due Process. Class Counsel will send direct notice via U.S. mail to Class Members. The Notice fully describes the Settlement, the pending appeal, and directs recipients to the Settlement Website for additional information. Lehrman Decl., ¶ 8-9. Class Counsel will also maintain the same toll-free phone number which has been used in all previous notices sent to Class Members in this action. *Id.*

The proposed methods for providing notice to the Settlement Class therefore satisfy both Rule 23 and Due Process and should be approved by the Court.

V. CONCLUSION

The proposed class action settlement is fair, reasonable, and adequate. It is well within "the range of possible approval." Preliminary approval should therefore be granted.

A proposed agreed order granting this motion is attached.

Dated: February 23, 2018

Respectfully submitted,

/s/ Seth Lehrman

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Plaintiffs' and Class Counsel

CERTIFICATE OF SERVICE

I hereby certify that on February 23, 2018, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will automatically send notification to all attorneys of record.

/s/ Seth Lehrman
Seth M. Lehrman