

**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

ALAN KAHN,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 2021-0103-PAF
	)	
JAMES G. GIDWITZ, RALPH W.	)	
GIDWITZ, STEVEN GIDWITZ,	)	
SCOTT GIDWITZ, THEODORE R.	)	
TETZLAFF, DARRELL M. TRENT,	)	
PETER E. THIERIOT, RYAN	)	
SULLIVAN, BEE STREET	)	
HOLDINGS LLC, and BEE STREET	)	
II, INC.,	)	
	)	
Defendants.	)	

**SCHEDULING ORDER**

The parties to the above-captioned action (the “Action”), having applied for an order approving the proposed settlement of the Action (the “Settlement”), in accordance with the terms of an in the form required by the Stipulation of Settlement entered into by the parties, dated as of January 4, 2022 (the “Stipulation”), dismissing the Action upon the terms and conditions set forth in the Stipulation, and making other related determinations in accordance with the Stipulation;

NOW, upon consent of the Parties, after review and consideration of the Stipulation filed with the Court, and after due deliberation,

IT IS HEREBY ORDERED, this 26th day of January, 2022, that:

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

2. For settlement purposes only, and pending the Settlement Hearing (defined below), the Action is conditionally certified as a non-opt out class pursuant to Delaware Court of Chancery Rules 23(a), 23(b)(1) and (b)(2) consisting of all record holders and beneficial owners of CMC common stock whose shares were (i) tendered and exchanged into the right to receive \$9.50 cash per share in connection with the first step Tender Offer and subsequent offering period that expired on April 17, 2020; and/or (ii) exchanged into the right to receive \$9.50 cash per share in connection with the second step Merger consummated on October 14, 2020, but in each case excluding the Excluded Stockholders as defined in the Stipulation (the “Class”).

3. A hearing to review the Settlement (the “Settlement Hearing”) shall be held on June 13, 2022, at 1:30 p.m. at the Court of Chancery (the “Court”), Leonard L. Williams Justice Center, 500 North King Street, Wilmington, Delaware 19801, to:

a. Consider whether the conditional class action certification herein should be made final;

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

c. Consider whether the Order and Final Judgment (the “Judgment”) should be entered pursuant to the Stipulation dismissing the Action with prejudice and extinguishing and releasing all released claims;

d. Consider Plaintiff’s application for an award of attorneys’ fees and reimbursement of expenses (the “Fee and Expense Application”);

e. Consider any objections to the Settlement; 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, without further notice to the Class, and reserves the right to conduct the Settlement Hearing as in-person hearing or a virtual hearing, and retains jurisdiction over this Action to consider all further applications arising out of or connected with the proposed Settlement.

5. The Court may approve the Settlement at or after the Settlement Hearing with such modification as may be consented to by the parties to the Stipulation and without further notice of any kind.

6. Plaintiff’s Counsel is hereby authorized to retain RG/2 Claims Administration LLC as the settlement administrator (the “Administrator”) to provide notice to the Class and administer the Settlement, including the distribution of the Net Settlement Fund.

7. As provided in the Stipulation, Defendants shall provide the Stockholder Information (as defined in the Stipulation) to Plaintiffs' Counsel and/or the Administrator to identify Class Members.

8. No later than twenty-five (25) business days after entry of this Order, the Administrator shall cause a copy of the Notice of Proposed Settlement of Class Action, Settlement Hearing, and Right to Appear, in the form attached as Exhibit B to the Stipulation (the "Notice"), to be mailed by First Class United States mail to all identifiable Class Members. All record holders of CMC common stock who were not also the beneficial owners of the CMC common stock held by them of record shall be requested to forward the Notice to the beneficial owners of those shares.

9. The Court preliminary approves the Notice, in form and content, and finds that the giving of notice as specified herein fully satisfies the requirements of due process, Court of Chancery Rule 23, and applicable law, is the best notice practicable under the circumstances and shall constitute due and sufficient notice to all persons and entities entitled to receive notice. Counsel for Plaintiff shall, no less than ten (10) business days before the Settlement Hearing, file with the Court an appropriate affidavit of proof of service showing compliance with the Notice provisions of this Order.

10. All objections to the proposed Settlement or the Fee and Expense Application must be filed with the Court no later than ten (10) business days prior

to the Settlement Hearing and must identify the case known as *Kahn v. Gidwitz, et al.*, C.A. No. 2021-0103-PAF and must include: (a) the name, address, and telephone number of the objector and, if represented by counsel, the name, address, and telephone number of the objector's counsel; (b) a written notice if the objector and/or the objector's counsel intends to appear at the Settlement Hearing; (c) a statement setting forth all of such person's objections to any matters before the Court and the grounds for such objections and the reasons that such person desires to appear and be heard; (d) documentation evidencing proof of membership in the Class; and (e) all documents or writings such person desires the Court to consider. Such objection must also be served by e-filing through File & ServeXpress and by hand or first class mail or overnight mail so that they are received no later than 10 business days prior to the Settlement Hearing by the following counsel of record:

**COOCH AND TAYLOR, P.A.**  
Carmella P. Keener  
The Nemours Building  
1007 North Orange Street  
Suite 1120  
Wilmington, DE 19801

**MORRIS, NICHOLS, ARSHT &  
TUNNELL LLP**  
Susan W. Waesco  
1201 N. Market Street  
Wilmington, DE 19801

11. Counsel for the parties are directed to promptly furnish each other with copies of any and all objections that might come into their possession.

12. Unless the Court otherwise directs, any person who fails to object in the manner described above shall be deemed to have waived and forfeited any and all rights they may otherwise have to object to the Settlement and/or any Fee and

Expense Award (including any right of appeal) and shall be forever barred from raising such objection in the Action 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.

13. Plaintiff shall file and serve his opening brief in support of the Settlement and Fee and Expense Application no later than twenty (20) business days prior to the Settlement Hearing. Any objections shall be filed and served no later than ten (10) business days prior to the Settlement Hearing. Any reply papers shall be filed and served no later than five (5) business days prior to the Settlement Hearing.

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

15. If the Settlement is not approved by the Court or shall not become effective for any reason whatsoever, the Stipulation (including any modification thereof) and any actions taken or to be taken in connection therewith shall be terminated and shall become null and void and of no further force and effect, except as provided in the Stipulation. Except as expressly provided for in the Stipulation, the terms and conditions of the Settlement and Stipulation shall have no further force and effect, and shall not be used in the Action or any other proceeding for any

purpose, and any judgment that may have been entered by the Court shall be treated as vacated *nunc pro tunc*.

16. If the Court approves the Settlement following the Settlement Hearing, the Judgment will be entered as described in the Stipulation.

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

  
Vice Chancellor