

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LEONARD SOKOLOW, Individually and on)	No. 1:18-cv-01039
Behalf of All Others Similarly Situated,)	
) <u>CLASS ACTION</u>
Plaintiff,)	
) Judge Robert M. Dow, Jr.
vs.)	
)
LJM FUNDS MANAGEMENT, LTD., et al.,)	
)
Defendants.)	
_____)	

DECLARATION OF JAMES E. BARZ IN SUPPORT OF: (1) LEAD PLAINTIFFS' MOTION FOR FINAL APPROVAL OF PARTIAL CLASS ACTION SETTLEMENT AND APPROVAL OF PLAN OF ALLOCATION; AND (2) LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES AND AN AWARD TO LEAD PLAINTIFFS PURSUANT TO 15 U.S.C. §77z-1(a)(4)

I, JAMES E. BARZ, declare as follows:

1. I am a partner of the law firm of Robbins Geller Rudman & Dowd LLP (“Robbins Geller”). Robbins Geller and Labaton Sucharow LLP (“Labaton Sucharow”) serve as Court-approved Lead Counsel for Lead Plaintiffs Justin and Jenny Kaufman, Joseph N. Wilson, Dr. Larry and Marilyn Cohen, Tradition Capital Management LLC (“Tradition”), and SRS Capital Advisors, Inc. (“SRS”) (collectively, “Lead Plaintiffs”), and the proposed Settlement Class in the Action.¹ I have been actively involved in prosecuting and resolving the Action, am familiar with its proceedings, and have knowledge of the matters set forth herein based upon my participation in this Action and my supervision of, or communications with, other lawyers and staff assigned to this matter. This declaration was prepared with the assistance of other lawyers at Robbins Geller, reviewed by me before signing, and the information contained herein is believed to be accurate based on what I know and what I have been told by others.

2. I submit this declaration in support of Lead Plaintiffs’ motion for approval of the proposed Settlement of claims against the Settling Defendants and approval of the proposed Plan of Allocation for the proceeds of the Settlement, as well as in support of Lead Counsel’s motion for an award of attorneys’ fees and expenses. Both motions have the support of Lead Plaintiffs, as set forth in their concurrently filed declarations.

¹ All capitalized terms used herein that are not otherwise defined shall have the meanings provided in the Stipulation and Agreement of Partial Settlement, dated as of August 19, 2019 (ECF No. 192) (the “Stipulation”), which was entered into by and among: (a) Lead Plaintiffs, on behalf of themselves and the Settlement Class; and (b) defendants Two Roads Shared Trust (the “Trust”), Northern Lights Distributors, LLC (“NLD”), NorthStar Financial Services Group, LLC (“NorthStar”), and Mark D. Gersten, Mark Garbin, Neil M. Kaufman, Anita K. Krug, Andrew B. Rogers, and James Colantino (collectively, the “Individual Settling Defendants” and, with the Trust, NLD, and NorthStar, the “Settling Defendants”). Defendants LJM Funds Management, Ltd., Anthony J. Caine, and Anish Parvataneni (the “Non-Settling Defendants”) are not parties to the Settlement.

I. THE SETTLEMENT

3. The relevant facts and allegations are set forth in Lead Plaintiffs': (i) Consolidated Complaint for Violations of the Federal Securities Laws (ECF No. 114) (the "Complaint"); (ii) concurrently filed Memorandum of Points and Authorities in Support of Lead Plaintiffs' Motion for Final Approval of Partial Class Action Settlement and Approval of Plan of Allocation ("Settlement Memorandum"); and (iii) concurrently filed Memorandum of Points and Authorities in Support of Lead Counsel's Motion for an Award of Attorneys' Fees and Expenses and an Award to Lead Plaintiffs Pursuant to 15 U.S.C. §77z-1(a)(4) ("Fee Memorandum").

4. The risks to continued litigation are also apparent from those materials. Those risks include Defendants' challenges to: (i) Lead Plaintiffs' ability to plead and prove the elements of their claims, including falsity and materiality; (ii) the timeliness of Lead Plaintiffs' claims; (iii) Lead Plaintiffs' ability to establish that NLD could not prove a due diligence defense; (iv) Lead Plaintiffs' ability to establish that NorthStar was a "controlling person" under the Securities Act of 1933; and (v) Lead Plaintiffs' loss causation and damages theories for Fund shares, which were set by the Fund's daily net asset value, rather than a trading price on a national exchange.

5. In addition, as set forth in the accompanying materials, the Fund has been liquidated and closed, making any available insurance the most likely source of a recovery in this case from the Settling Defendants. Lead Counsel have reviewed the applicable insurance policies and the policies are limited and wasting. The insurance has also been depleting by the defense costs from four defense firms. Had the case continued in litigation for several years, as many securities class actions do, the expenses of litigation could have depleted the available insurance to fund a recovery as the parties proceeded to discovery, expert discovery, summary judgment, trial, and any appeals.

6. The Settlement was reached on August 19, 2019. Prior to that date, Lead Counsel and Lead Plaintiffs had engaged in litigation and negotiations that allowed them to be informed about the benefits and risks of settlement. For example:

(a) Lead Counsel conducted a comprehensive investigation into the facts, circumstances, and potential claims and defenses, including analysis of SEC filings, substantial media and analyst reports, press releases and other publicly-available information, shareholder communications, and relevant case law and authorities;

(b) Lead Counsel prepared the initial complaint in one of the consolidated actions and then prepared the Complaint after appointment of Lead Plaintiffs and Lead Counsel;

(c) Because the Fund was liquidated and there was limited and wasting insurance, the parties engaged in earlier than typical settlement talks, during which Lead Counsel prepared mediation briefs (with exhibits and demands), analyzed Defendants' mediation briefs (with exhibits and demands), and analyzed Defendants' assets and insurance policies;

(d) Lead Counsel and Lead Plaintiffs communicated before and throughout the settlement negotiations and exchange of information;

(e) Lead Counsel participated in (and Lead Plaintiffs received updates regarding) an all-day settlement conference before Magistrate Judge Sidney I. Schenkier, during which each side made joint-session presentations regarding their respective views on the claims, defenses, and damages, and had separate breakouts with Judge Schenkier;

(f) After the settlement conference failed, Lead Counsel analyzed Defendants' motion to dismiss the Action in its entirety and prepared opposition and sur-reply briefs detailing Lead Plaintiffs' factual and legal theories; and

(g) Lead Counsel and Lead Plaintiffs continued to engage in extensive settlement negotiations with Defendants.

7. The litigation and settlement negotiations were hard-fought, as reflected by the extensive motion to dismiss briefing, failed settlement conference before an experienced Magistrate Judge, and continued settlement negotiations over several months.

8. The \$12,850,000 all cash Settlement is a favorable result considering the immediate benefit to the Settlement Class and risks posed by continuing litigation. As set forth more fully in the Settlement Memorandum, the Settlement was reached after more than a year of litigation, briefing, and negotiations; the Settlement was the result of an arm's-length settlement process between experienced parties and counsel, overseen by Magistrate Judge Schenkier who has substantial experience conducting mediations; and the Settlement provides immediate recovery without the risks, uncertainties, and delay of continued litigation, including the risks that the Settling Defendants' available (and wasting) insurance policies were limited and would continue to be depleted by ongoing litigation, trial, and appeals.

9. Lead Plaintiffs and Lead Counsel could have settled the Action at the settlement conference at a lower amount, but instead continued to litigate the motion to dismiss and engage in contested settlement negotiations spanning several months. Lead Counsel have determined that the Settlement is fair, reasonable, and in the best interest of the Settlement Class.

II. THE PLAN OF ALLOCATION

10. Upon approval by the Court, the Plan of Allocation governs the method by which the Net Settlement Fund will be distributed on a *pro rata* basis to Settlement Class Members who submit valid, timely Proof of Claim and Release forms. The proposed Plan of Allocation is set forth in the Notice.

11. The proposed Plan of Allocation was developed in consultation with Robbins Geller's in-house damages consultant, reflects the statutory formula for damages under Section 11(e) of the

Securities Act (15 U.S.C. §77k(e)), and is similar to plans of allocation used in other settlements resolving Securities Act claims.

12. Thus, the Plan of Allocation is designed to fairly and rationally allocate the Net Settlement Fund among eligible Settlement Class Members. For the reasons set forth in the Settlement Memorandum, Lead Plaintiffs and Lead Counsel respectfully submit that the Plan of Allocation is fair and reasonable and should be approved.

III. THE APPLICATION FOR ATTORNEYS' FEES AND EXPENSES

13. Lead Counsel respectfully request that the Court award 28% of the \$12,850,000 Settlement for attorneys' fees. Lead Counsel believe such a fee is reasonable and appropriate. Lead Counsel further request an award of \$25,869.93 in litigation expenses and charges in connection with the prosecution of this Action. The arguments and authorities supporting the requested fees and expenses are set forth in the Fee Memorandum.

14. The time and resources in the research, investigation, and prosecution of this Action are set forth in the concurrently submitted declarations on behalf of Robbins Geller and Labaton Sucharow. Included in those declarations are summaries of the time and expenses incurred in this Action.

15. As set forth in the Fee Memorandum, Lead Counsel worked diligently to obtain a favorable result for the Settlement Class. The recovery obtained for the Settlement Class is the direct result of the significant efforts of attorneys who possess substantial experience in the prosecution of complex securities class actions. *See* www.rgrdlaw.com; www.labaton.com.

16. On the other side, Defendants were represented by experienced lawyers from large and well-known defense firms: Sidley Austin LLP, Goodwin Procter LLP, Drinker Biddle & Reath LLP, and Blank Rome LLP. The ability of Lead Counsel to obtain the Settlement in the face of such opposition confirms the quality of Lead Counsel's representation.

17. From the outset, Lead Counsel understood that their attorneys and paraprofessionals would have to devote a significant amount of time and effort to the prosecution. The time spent by Lead Counsel on this case was at the expense of the time that they could have devoted to other matters. Lead Counsel undertook this case solely on a contingent fee basis, assuming a risk that the case would yield no recovery and leave Lead Counsel uncompensated. The only way Lead Counsel would be compensated was to achieve a successful result.

18. Unlike counsel for Defendants, who are generally paid an hourly rate and paid for their expenses on a regular basis, Lead Counsel have not been compensated for any time or expenses since this case began. To date, Lead Counsel have litigated and negotiated the Action without any payment, during which time Lead Counsel, *inter alia*, conducted a thorough investigation, filed an initial complaint and Complaint, opposed Defendants' joint motion to dismiss, and engaged in extensive settlement negotiations that included the exchange of mediation briefs and settlement demands, and an all-day settlement conference overseen by Magistrate Judge Schenkier.

19. Lead Counsel's substantial experience and advocacy was required in presenting the strengths of this case in pleadings, briefing, mediation briefs, and at the settlement conference in an effort to achieve the best possible settlement and convince the Settling Defendants, their insurers, defense counsel, and Judge Schenkier of the risks Defendants faced from not settling and proceeding to trial. To that end, Lead Counsel assembled an experienced litigation team, as set forth in the firms' respective resumes.

20. The undersigned, for example, is an experienced trial attorney, has passed the certified public accounting exam, was formerly an Assistant United States Attorney, has been an adjunct professor at Northwestern University School of Law for over ten years, teaching courses on trial advocacy and class action litigation, and had previously been a partner in a large defense firm that defended securities class action cases. Since joining Robbins Geller in 2011, the undersigned

has been lead or co-lead counsel in several cases resulting in substantial recoveries, including those that have proceeded to within days or weeks of trial prior to settling. If the case had not settled, Lead Counsel were fully prepared to litigate this case through the complex stages of pre-trial litigation, trial, and appeal. Lead Counsel only recommended settlement after extensive efforts to obtain the best possible result for the Settlement Class.

21. As detailed in the Fee Memorandum, in light of the favorable recovery obtained, the complexity of the issues presented, the effort and skill exhibited by Lead Counsel, the contingent nature of Lead Counsel's representation, the fee awards in comparable class actions, and Lead Plaintiffs' endorsement of the requested fee, Lead Counsel believe the requested fee and litigation expense awards are reasonable and appropriate, particularly when considering the policy of incentivizing counsel to take on and diligently pursue meritorious securities class actions.

IV. CONCLUSION

22. In view of the immediate, certain, and favorable recovery to the Settlement Class and the challenges presented by the claims against the Settling Defendants and facts of this case, as described above and in the accompanying Settlement Memorandum, Lead Counsel submit that the Settlement should be approved as fair, reasonable, and adequate and that the proposed Plan of Allocation should likewise be approved as fair, reasonable, and adequate. In view of the recovery achieved and the quality of work performed, among other things, as described above and in the accompanying Fee Memorandum, Lead Counsel submit that the Fee and Expense Application should be approved.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on November 13, 2019.

/s/ James E. Barz

JAMES E. BARZ

CERTIFICATE OF SERVICE

I hereby certify that on November 13, 2019, I caused the foregoing DECLARATION OF JAMES E. BARZ IN SUPPORT OF: (1) LEAD PLAINTIFFS' MOTION FOR FINAL APPROVAL OF PARTIAL CLASS ACTION SETTLEMENT AND APPROVAL OF PLAN OF ALLOCATION; AND (2) LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES AND AN AWARD TO LEAD PLAINTIFFS PURSUANT TO 15 U.S.C. §77z-1(a)(4) to be served electronically through the Court's ECF system upon all registered ECF participants.

/s/ James E. Barz

JAMES E. BARZ