

APR 23 2007
CHAMBERS OF
WILLIAM B. BAKER
FOR

DOC # 268

U.S. DISTRICT COURT
FILED
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S. D. OF N. Y.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

IN RE POLAROID ERISA LITIGATION) MASTER FILE: 03 CV 8335 (WHP)
THIS DOCUMENT RELATES TO:)
ALL ACTIONS)

**ORDER PRELIMINARILY APPROVING PROPOSED SETTLEMENT,
APPROVING FORM AND DISSEMINATION OF CLASS NOTICE,
AND SETTING DATE FOR HEARING ON FINAL APPROVAL**

This litigation involves claims for alleged violations of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §§ 1001, *et seq.* ("ERISA"), with respect to the Polaroid Retirement Savings Plan dated December 1, 1997 and as amended and/or restated at any time up to and including January 15, 2003 (the "Plan").¹

The Named Plaintiffs have presented to the Court for preliminary approval a settlement of all claims against all Parties. The terms of the Settlement are set out in a Class Action Settlement Agreement (the "Settlement Agreement")² executed on March 15, 2007.

The Court has preliminarily considered the Settlement to determine among other things, whether the Settlement is sufficient to warrant the issuance of notice to members of the Class. Upon reviewing the Settlement Agreement it is hereby ORDERED, ADJUDGED AND

¹ For purposes of the Settlement, the Plan shall include all versions of the Polaroid Retirement Savings Plan and all employee stock ownership plans ("ESOPs") and profit sharing or section 401k plans established and/or maintained by or for the benefit of the Company and/or its current or former employees during the Class Period.

² Capitalized terms not otherwise defined in this Order shall have the same meaning as ascribed to them in the Settlement Agreement.

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DECREED as follows:

1. **Standing** – Based on the Court's prior Class Certification ruling, and the records and pleadings herein, the Court finds that the Named Plaintiffs **have standing** to bring and settle this Action.

2. **Class Certification** – On September 29, 2006, the Court certified the following Class :

All persons who were participants in or **beneficiaries of the Plan at any time between October 1, 1999 and January 15, 2003 (the "Class Period")** and whose accounts included investments in **Polaroid stock**.

For purposes of and pursuant to the Settlement, the Court **excludes from the Class the following persons:**

any of the Individual Defendants, as that term is defined in the Settlement Agreement, or any of their immediate family members, beneficiaries, alternate payees, executors, administrators, Representatives or Successors-In-Interest, except for spouses and immediate family members who themselves were participants in the Plan, who shall be considered members of the Class with respect to their own Plan accounts.

The Court previously appointed Co-Lead Counsel pursuant to Fed. R. Civ. P. 23(g).³⁷

3. **Preliminary Findings Regarding Proposed Settlement** – The Court preliminarily finds that (i) the Settlement resulted from extensive arm's-length negotiations; (ii) the Settlement Agreement was executed only after counsel for the Named Plaintiffs had conducted extensive discovery and engaged in extensive motions practice; (iii) counsel for the Named Plaintiffs has concluded that the Settlement Agreement is fair, reasonable and adequate; and (iv) the Settlement evidenced by the Settlement Agreement is **sufficiently** fair, reasonable and

³⁷ Defendants have filed a petition for appellate review of the class certification order under Fed. R. Civ. P. 23(f). That petition has been stayed, and Defendants have agreed to withdraw it **upon the Settlement becoming Final** as that term is defined in the Settlement Agreement.

adequate to warrant sending notice of the Settlement to the Class.

4. **Fairness Hearing** – A fairness hearing is hereby scheduled for June 22, 2007, at 12:00 p.m. (the “Fairness Hearing”) to determine, among other things:

- a. Whether the Settlement should be approved **as fair, reasonable** and adequate;
- b. Whether the Action should be dismissed **against the Defendants** with prejudice pursuant to the terms of the Settlement;
- c. Whether the Class Notice, summary notice and notice methodology implemented pursuant to the Settlement Agreement (i) constituted the best practicable notice; (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise members of the Class of the pendency of the litigation, their right to object to the Settlement, and their right to appear at the Fairness Hearing; (iii) were reasonable and constituted due, adequate and sufficient notice to all Persons entitled to notice; and (iv) met all applicable requirements of the Federal Rules of Civil Procedure, and any other applicable law;
- d. Whether the Plan of Allocation should be approved.
- e. Whether the motion for attorneys’ fees and expenses filed by Co-Lead Counsel should be approved; and
- f. Whether the request for Case Contribution Awards for each Named Plaintiff should be approved.

5. **Class Notice** – The Parties have presented to the Court a proposed form of Class Notice, which is appended hereto as Exhibit 1. With respect to such form of Class Notice, the Court finds that such form fairly and adequately:

- a. Describes the terms and effect of the Settlement Agreement and of the Settlement;
- b. Notifies the Class concerning the proposed **Plan of Allocation**;
- c. Notifies the Class that Co-Lead Counsel will seek compensation from the Settlement Fund for reimbursement of the **costs and attorneys’ fees of Co-**

Lead Counsel and Case Contribution Awards;

- d. Gives notice to the Class of the time and **place of the Fairness Hearing;**
and
- e. Describes how the recipients of the Class **Notice may object to any of the**
relief requested.

6. **Communicating with Class Members** -- The Parties have proposed the

following manner of communicating the notice to members of the Class, and the Court finds that such proposed manner is the best notice practicable under the circumstances, and directs that Co-Lead Counsel shall:

- a. By no later than May 8, 2007 (45 days before the Fairness Hearing), cause the Class Notice, in a form substantially similar to the Class Notice attached as Exhibit 1, with such modifications thereto as may be agreed by the Parties, to be mailed, by first-class mail, postage prepaid, to the last known address of each Person within the Class who can be identified by reasonable effort;
- b. By no later than May 23, 2007 (30 days before the Fairness Hearing), cause the Class Notice and other Settlement documents to be published on the web site identified in the Class Notice;
- c. By no later than May 23, 2007 (30 days before the Fairness Hearing), cause a summary notice in the form substantially similar to the one attached hereto as Exhibit 2, with such modifications thereto as may be agreed upon by the Parties, to be published on at least one occasion in the national edition of USA Today and the local edition of The Boston Globe;
- d. By no later than May 23, 2007 (30 days before **the Fairness Hearing**), file their motion for attorneys' fees and **reimbursement of expenses** and motion for case contribution awards;
- e. By no later than May 23, 2007 (30 days **before the Fairness Hearing**), file their motion for approval of the Plan of **Allocation**;
- f. By no later than June 15, 2007 (7 days before **the Fairness Hearing**), file

their motion for final approval of the Settlement and respond to any objections to the Settlement; and

- g. At or before the Fairness Hearing, Co-Lead Counsel shall file with the Court a proof of timely compliance with the foregoing mailing and publication requirements.

7. **Objections to Settlement** – Any member of the Class who wishes to object to the fairness, reasonableness or adequacy of the Settlement, to the Plan of Allocation, to any term of the Settlement Agreement, to the proposed Case Contribution Awards, or to the proposed award of attorneys' fees and expenses may file an objection. An objector must file with the Court a statement of his or her objection(s), specifying the reason(s), if any, for each such objection made, including any legal support and/or evidence that such objector wishes to bring to the Court's attention or introduce in support of such objection. The objector must also mail and fax the objection and all supporting law and/or evidence to the representatives of Co-Lead Counsel and counsel for the Defendants identified below. The addresses for filing objections with the Court and service on counsel are as follows:

To the Clerk of the Court:

Clerk of the Court
United States District Court for the Southern District of New York
500 Pearl Street
120 Daniel Patrick Moynihan U.S. Courthouse
New York, New York 10007-1312

To Plaintiffs' Co-Lead Counsel:

Joseph H. Meltzer
Gerald D. Wells, III
SCHIFFRIN BARROWAY TOPAZ & KESSLER, LLP
280 King of Prussia Road
Radnor, PA 19087
Telephone: (610) 667-7706
Facsimile: (610) 667-7056

and

Lynn Lincoln Sarko
Derek Loeser
Amy Williams-Derry
KELLER ROHRBACK L.L.P.
1201 Third Avenue, Suite 3200
Seattle, WA 98101
Telephone: (206) 623-1900
Facsimile: (206) 623-3384

To Defendants' Counsel:

Steven F. Cherry
Joseph Killory
Daniel Levin
WILMER CUTLER PICKERING HALE & DORR LLP
1875 Pennsylvania Avenue, N.W.
Washington, DC 20006
Telephone: (703) 663-6000

Counsel for the Individual Defendants

Wilber H. Boies, P.C.
McDERMOTT WILL & EMERY LLP
227 West Monroe Street
Chicago, IL 60606
Telephone: (312) 984-7686

Counsel for State Street Bank & Trust Company

Counsel identified above shall promptly forward any **objection** to counsel for the other signatories to the Settlement Agreement upon receipt of the **objection**. The **objector or his or her** counsel (if any) must effect service of the objection on **counsel listed above and file it with the** Court by no later than June 7, 2007 (fifteen (15) days before **the date of the Fairness Hearing**). If an objector hires an attorney to represent him, her or it for the **purposes of making such** objection, the attorney must both effect service of a notice of **appearance** on counsel listed above and also file it with the Court by no later than June 7, 2007 (fifteen (15) days before the date of **the Fairness Hearing**). Any member of the Class who does not timely file and serve a written

objection complying with these terms shall be deemed to have waived, and shall be foreclosed from raising, any objection to the Settlement, and any untimely objection shall be barred.

8. **Appearance at Fairness Hearing** – Any objector who files and serves a timely, written objection in accordance with Paragraph 8 above, may also appear at the Fairness Hearing either in person or through counsel retained at the objector's expense. Objectors or their attorneys intending to appear at the Fairness Hearing must effect service of a notice of intention to appear setting forth, among other things, the name, address and telephone number of the objector (and, if applicable, the name, address and telephone number of the objector's attorney) on counsel identified in Paragraph 7 above, and file it with the Court by no later than June 7, 2007 (fifteen (15) days before the date of the Fairness Hearing). Any objector who does not timely file and serve a notice of intention to appear shall not be permitted to appear at the Fairness Hearing, except for good cause shown.

9. **Notice Expenses** – The expenses of all notices, **which include costs for mail notice, publication notice, phone and email inquiry responses, and related expenses, shall be paid** from the Settlement Fund in an amount not to exceed \$100,000.00. Any amount in excess of this amount shall require Court approval.

10. **Financial Institution** – The Financial Institution under the Settlement Agreement is Wells Fargo Bank, N.A., and Wells Fargo Brokerage Services, LLC, 999 Third Avenue, Suite 1400, Seattle, WA 98104.

11. **Termination of Settlement** – This Order shall become null and void, and shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective positions existing immediately prior to the Settlement (which for the Individual Defendants shall be as of February 27, 2006, and for State Street shall be as of January 5, 2007) if the Settlement is

terminated in accordance with the Settlement Agreement. In such event, the terms of the Settlement Agreement shall govern the rights of the Parties.

12. **Use of Order** – Neither this Order nor the Parties' Settlement of the disputed claims shall be construed or used as an admission, concession or declaration by or against the Defendants of any fault, wrongdoing, breach or liability, nor shall this Order or the Parties' Settlement be construed or used as an admission, concession or declaration by or against the Named Plaintiffs or the Class that their claims lack merit or that the relief requested in the Action is inappropriate, improper or unavailable. If the Settlement Agreement is not Finally approved by the Court, no party shall be entitled or permitted to rely on the factual findings and/or conclusions of law set forth in this Order, or otherwise preclude any other party from making arguments different than or inconsistent with those set forth in the Order.

SO ORDERED this 4th day of May, 2007.


William H. Pauley, III U.S.D.J.