



GRANTED WITH MODIFICATIONS

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Transaction ID: 20003
Case No. 2021-0103-PAF



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.

[PROPOSED] ORDER AND FINAL JUDGMENT

A hearing having been held before this Court on June 13, 2022 pursuant to the Court's Scheduling Order dated January 26, 2022 (the "Scheduling Order"), for the purpose of determining whether the settlement ("Settlement") in the above-captioned action (the "Action") provided for in the Stipulation of Settlement, dated as of January 4, 2022 (the "Stipulation"), is fair and reasonable and should be approved pursuant to Court of Chancery Rule 23; and it appearing that due notice of the hearing has been given in accordance with the Scheduling Order and that the notice was adequate and sufficient; the parties having appeared by their respective attorneys of record; the Court having heard and considered evidence in support of

the proposed Settlement; the attorneys for the respective parties having been heard; notice and an opportunity to be heard having been given to all other persons in accordance with the Scheduling Order; and the entire matter of the proposed Settlement having been heard and considered by the Court,

IT IS HEREBY ORDERED, this ____ day of _____, as follows:

1. This Order and Final Judgment incorporates and makes part hereof the Stipulation filed with this Court on January 5, 2022, including all exhibits thereto. Unless otherwise defined herein, all defined terms shall have the meanings set forth in the Stipulation and the Scheduling Order, and such definitions are hereby incorporated.

2. The mailing of the Notice of Proposed Settlement of Class Action, Settlement Hearing, and Right to Appear (the “Notice”) pursuant to and in the manner prescribed in the Scheduling Order, which was mailed by first class mail beginning March 3, 2022, according to the proof of such mailing of the Notice to the Class filed with the Court by Plaintiffs’ Counsel, is hereby determined to be the best notice practicable under the circumstances and in full compliance with Rule 23 of the Rules of the Court of Chancery, the requirements of due process, and applicable law.

3. The Settlement as provided for in the Stipulation is approved as fair, reasonable, and adequate to Plaintiff and the Class, and is approved pursuant to Court of Chancery Rule 23(e).

4. Based on the record of the Action, the Court hereby finds, pursuant to Court of Chancery Rules 23(a), 23(b)(1) and 23(b)(2), as follows:

a. that (i) the Class, as defined below, is so numerous that joinder of all members is impracticable, (ii) there are questions of law and fact common to the Class, (iii) the claims of Plaintiff are typical of the claims of the Class, and (iv) Plaintiff and Plaintiff's Counsel have fairly and adequately protected the interests of the Class;

b. that the requirements of Court of Chancery Rules 23(a), 23(b)(1) and 23(b)(2) have been satisfied;

c. that the requirements of the Court of Chancery Rules and due process have been satisfied in connection with the Notice;

d. that the Action is hereby certified as a non-opt-out class action pursuant to Court of Chancery Rules 23(a), 23(b)(1) and 23(b)(2), with the class consisting of any and 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”); and

e. that Plaintiff is hereby certified as the Class representative, and Plaintiff’s Counsel are certified as Class counsel.

5. The parties to the Stipulation are hereby bound by such terms and authorized and directed to comply with and to consummate the Settlement in accordance with its terms and provisions, and the Register in Chancery is directed to enter and docket this Judgment in this Action.

6. The Action and the Complaint are hereby dismissed with prejudice. The Action and all Released Claims are hereby dismissed on the merits and with prejudice, and without costs except those contemplated in the Stipulation and herein, in full and final discharge and settlement of any and all claims or obligations that were or could have been asserted in the Action against Defendants.

7. All Class Members shall be and are deemed bound by the Settlement Agreement and this Order and Final Judgment.

8. This Order and Final Judgment, including the release of all Released Claims against all Released Parties, shall have *res judicata*, collateral estoppel, and other preclusive effect in all pending and future lawsuits, arbitrations or other proceedings maintained by or on behalf of the Plaintiff.

9. Upon the Effective Date, Plaintiff and all Class Members, on behalf of themselves and their predecessors, successors and assigns shall thereupon be deemed to have fully, finally and forever, released, settled and discharged (i) Defendants, Darrell M. Trent, Peter E. Thieriot and CMC, (ii) the past or present Immediate Family of any Defendant, and (iii) any of the foregoing's respective direct or indirect parent entities, controlling persons, associates, predecessors, successors, assigns, affiliates, or subsidiaries, and each and all of their past or present officers, directors, managers, members, managing members, executives, stockholders, principals, representatives, employees, attorneys, financial or investment advisors, consultants, accountants, auditors, investment bankers, commercial bankers, lenders, entities providing fairness opinions, underwriters, brokers, dealers, insurers, advisors or agents, heirs, executors, trusts, beneficiaries, distributees, foundations, trustees, general or limited partners or partnerships, limited liability companies, members, managers, joint ventures, personal or legal representatives, estates, and administrators (the "Released Defendant Parties") from and with respect to every one of all Claims, including Unknown Claims, that have been or could have been asserted by Plaintiff in the Action on behalf of himself and the Class, and any and all Claims, including Unknown Claims, arising out of the same set of operative facts as the claims asserted by Plaintiff against Released Defendant Parties in the Action, including but not limited to Claims based upon,

arising out of, involving, or relating to (i) the Transaction, (ii) any deliberations or negotiations in connection with the Transaction, including all deliberations and negotiations by any of Defendants and any of their respective officers, directors, agents, or advisors, (iii) the consideration received by Class Members in connection with the Transaction, (iv) the disclosures, SEC filings (including without limitation the Schedule TO and the Schedule 14D-9), public filings, periodic reports, press releases, recommendation statements, tender offer statements and materials, or other statements issued, made available or filed relating, directly or indirectly, to the Transaction, including without limitation Claims under any and all federal securities laws (including those within the exclusive jurisdiction of the federal courts), (v) the fiduciary obligations of the Released Defendant Parties in connection with the Transaction, (vi) the fees, expenses or costs incurred in prosecuting, defending or settling the Action, or (vii) any deliberations, negotiations, representations, omissions or other conduct leading to the execution of this Stipulation; *provided, however*, that the Released Plaintiff's Claims shall not include claims to enforce this Stipulation (the "Released Plaintiff's Claims"), and shall thereupon be forever barred and enjoined from commencing, instituting, prosecuting, instigating, or continuing to prosecute, or in any way participating in the commencement or prosecution of, any Released Plaintiff's Claims, either directly, representatively,

derivatively, or in any other capacity, against any and all of the Released Defendant Parties.

10. Upon the Effective Date, each of Defendants, on behalf of themselves and their predecessors, successors and assigns shall thereupon be deemed to have fully, finally and forever, released, settled and discharged (i) Plaintiff, (ii) and all other Class Members, and (iii) any of the foregoing's respective parent entities, controlling persons, associates, predecessors, successors, assigns, affiliates, or subsidiaries, and each and all of their past or present officers, directors, executives, stockholders, principals, representatives, employees, attorneys, financial or investment advisors, consultants, accountants, auditors, investment bankers, commercial bankers, entities providing fairness opinions, underwriters, brokers, dealers, insurers, advisors or agents, heirs, executors, trustees, general or limited partners or partnerships, limited liability companies, members, managers, joint ventures, personal or legal representatives, estates, and administrators (the "Released Plaintiff Parties") from and with respect to any and all Claims, including Unknown Claims, that have been or could have been asserted in the Action, or in any court, tribunal, forum or proceeding, by Defendants or any of their respective successors and assigns against any of the Released Plaintiff Parties, that arise out of (i) the institution, prosecution, settlement or dismissal of the Action, including, but not limited to alleged litigation misconduct, breaches of confidentiality orders,

violations of court rules, and defamation, (ii) the alleged conduct underlying Defendants' affirmative defenses, and (iii) and Claims, including Unknown Claims, of bad faith or abuse of process against Plaintiff or Plaintiff's Counsel relating to their prosecution of the Action; *provided, however*, that the Released Defendants' Claims shall not include Claims to enforce the Stipulation (the "Released Defendants' Claims"), and shall thereupon be forever barred and enjoined from commencing, instituting or prosecuting any of the Released Defendants' Claims against any of the Released Plaintiff Parties.

11. The Court approves a Fee and Expense Award in the aggregate amount of \$ _____ in connection with the Action, which the Court finds to be reasonable. Such amount shall be paid pursuant to the terms of the Stipulation.

12. The Court hereby finds and concludes that the procedures and plan for allocating the Settlement Payment provide a fair, reasonable, and adequate basis upon which to allocate the Net Settlement Fund among Eligible Class Members.

13. Without further order of this Court, the Parties may agree in writing to reasonable extensions of time to carry out any of the provisions of the Stipulation.

14. The binding effect of this Order and Final Judgment and the obligations of Plaintiff and Defendants under the Settlement shall not be conditioned upon or subject to the resolution of any appeal from this Order and Final Judgment that relates solely to the issue of the Fee and Expense Application.

15. This Court has jurisdiction over the subject matter of the Action, including all matters necessary to effectuate the Settlement and this Final Order and over all parties to the Action.

16. None of the Parties shall have any responsibility or liability for the Taxes or expenses related to Taxes associated with this Settlement. No Defendant will have any responsibility or liability for the administration of this settlement, or the allocation or distribution of the Settlement Amounts.

17. The Register in Chancery is directed to enter and docket this Order and Final Judgment.

Vice Chancellor

This document constitutes a ruling of the court and should be treated as such.

Court: DE Court of Chancery Civil Action

Judge: Paul A Fioravanti Jr

File & Serve

Transaction ID: 67700294

Current Date: Jun 13, 2022

Case Number: 2021-0103-PAF

Case Name: CONF ORD - Alan Kahn v. James G. Gidwitz, et al.

Court Authorizer: Paul A Fioravanti Jr

Court Authorizer

Comments:

Plaintiff's counsel are awarded attorneys' fees and expenses in the amount of \$332,000 in total.

/s/ Judge Paul A Fioravanti Jr