

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE DIAL CORPORATION, *et al.*,

Individually and on behalf of Similarly
Situated Companies,

Plaintiffs,

v.

NEWS CORPORATION, *et al.*,

Defendants.

Civil Action No. 13-cv-06802-WHP

~~PROPOSED~~ ORDER GRANTING
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT,
APPROVING FORM AND
MANNER OF NOTICE, AND
SETTING DATE FOR HEARING
ON FINAL APPROVAL OF
SETTLEMENT

Hon. William H. Pauley III

WHEREAS, the Class Plaintiffs, on behalf of themselves and the Class, and Defendants News Corporation, News America, Inc., News America Marketing In-Store Services L.L.C., and News America Marketing FSI L.L.C. (collectively, “Defendants”), by and through their respective duly authorized counsel, entered into a Settlement Agreement in the above-entitled litigation (the “Action”), which is subject to approval by the Court under Rule 23 of the Federal Rules of Civil Procedure and which, together with the exhibits thereto, sets forth the terms and conditions of the proposed settlement of the claims in the Action, on the merits and with prejudice (the “Settlement”); and

WHEREAS, the Court has reviewed and considered the Settlement Agreement and the accompanying exhibits; and

WHEREAS, all capitalized terms used in this order that are not otherwise defined herein have the meanings defined in the Settlement Agreement;

WHEREAS, the Settling Parties have consented to the entry of this Preliminary Approval Order; and good cause appearing therefor,

IT IS HEREBY ORDERED as follows:

1. The Court has reviewed the Settlement Agreement and preliminarily finds the Settlement set forth therein to be fair, reasonable, and adequate, subject to further consideration at the Settlement Hearing described below.

2. A hearing (the “Settlement Hearing”) pursuant to Rule 23(e) of the Federal Rules of Civil Procedure is hereby scheduled to be held before the Court on September 21, 2016, at 2:00 p.m. for the following purposes:

(a.) to determine whether the proposed Settlement is fair, reasonable and adequate and should be approved by the Court;

(b.) to determine whether the proposed Judgment as provided under the Settlement Agreement should be entered, and to determine whether the releases, as set forth in the Settlement Agreement, should be provided;

(c.) to determine whether the proposed Plan of Allocation for the proceeds of the Settlement is fair and reasonable and should be approved by the Court;

(d.) to consider Plaintiffs’ Counsel’s application for an award of attorneys’ fees, costs, and expenses; and

(e.) to rule upon such other matters as the Court may deem appropriate.

3. The Court reserves the right to approve the Settlement with or without modification and with or without further notice to the Class of any kind. The Court further reserves the right to enter the Judgment regardless of whether it has approved the Plan of Allocation or awarded attorneys’ fees, costs and expenses. The Court may also adjourn the Settlement Hearing or modify any of the dates herein without further notice to members of the Class.

4. The Court approves the form, substance, and requirements of the Notice and the

Proof of Claim, in the forms attached hereto as Exhibits A and B, respectively.

5. The Court approves the retention of Kurtzman Carson Consultants as the Claims Administrator. The Claims Administrator shall cause the Notice and the Proofs of Claim, in the forms attached hereto, to be mailed, by first-class mail, postage prepaid, on or before June 15, 2016 (“Notice Date”), to all prospective Class members who can be identified with reasonable effort.

6. Plaintiffs’ Counsel shall, at or before the Settlement Hearing, file with the Court proof of mailing of the Notice and Proof of Claim.

7. The form and content of the notice program described herein, and the methods set forth herein of notifying the Class of the Settlement and its terms and conditions, meet the requirements of Rule 23 of the Federal Rules of Civil Procedure and constitutional due process, constitute the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all Persons entitled thereto.

8. Solely for purposes of the Settlement Hearing or an objection pursuant to paragraph 10 below, any Class Member may enter an appearance in this Action, at his, her, or its own expense, individually or through counsel of his, her, or its own choice. If any Class Member does not enter an appearance, he, she, or it will be represented by Plaintiffs’ Counsel.

9. Class Members shall be bound by all orders, determinations, and judgments in this Action concerning the Settlement, whether favorable or unfavorable.

10. The Court will consider any Class Member’s objection to the Settlement, the Plan of Allocation, or the application for an award of attorneys’ fees, costs, and expenses only if such Class Member has served by hand, by mail, or by email his, her, or its written objection and supporting papers such that they are received on or before September 7, 2016, upon Steven F. Benz

of Kellogg, Huber, Hansen, Todd, Evans & Figel, P.L.L.C., James T. Southwick of Susman Godfrey L.L.P., and Kenneth A. Gallo of Paul, Weiss, Rifkind, Wharton & Garrison LLP and has properly and timely filed said objections and supporting papers with the Clerk of the United States District Court for the Southern District of New York. Any Class Member who does not make his, her, or its objection in the manner provided for in the Notice shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to any aspect of the Settlement, to the Plan of Allocation, or to the application for attorneys' fees, costs and expenses, unless otherwise ordered by the Court, but shall otherwise be bound by the Judgment to be entered in the Action and the releases to be given pursuant to the Settlement. Attendance at the Settlement Hearing is not required for any Class Member who files an objection to the Settlement, Plan of Allocation, or application for attorneys' fees and expenses. Class Members who object to the Settlement, the Plan of Allocation, or the application for an award of attorneys' fees, costs and expenses and desire to appear at the Settlement Hearing must include in their written objections a statement explaining whether they intend to appear at the Settlement Hearing, the identity of any witnesses they may call to testify, and exhibits they intend to introduce into evidence at the Settlement Hearing. Class Members do not need to appear at the Settlement Hearing or take any other action to indicate their approval. Class Plaintiffs and/or Defendants shall file any reply or response to any objection no later than September 14, 2016.

11. Pending final determination as to whether the Settlement should be finally approved by the Court, Class Plaintiffs, all Class Members, and each of them, and anyone who acts or purports to act on their behalf, shall not institute, commence or prosecute any action or proceeding that asserts Plaintiffs' Released Claims against the Defendants' Released Parties.

12. As provided in the Settlement Agreement, prior to the Effective Date, Plaintiffs'

Counsel may seek a payment of Notice and Administration Expenses actually incurred, not to exceed \$100,000 from the Settlement Fund without further approval from Defendants. All such expenditures shall not be reimbursable to Defendants or their insurers should the settlement fail to become effective.

13. All papers in support of Plaintiffs' Counsel's application for an award of attorneys' fees, costs and expenses shall be filed with the Court and served on or before July 13, 2016. If reply papers are necessary, they are to be filed with the Court and served no later than September 14, 2016.

14. All papers in support of Plaintiffs' Counsel's Application for Final Approval of Settlement shall be filed with the Court and served on or before August 24, 2016. If Defendants elect to file with the Court papers in further support of Plaintiffs' Counsel's Application for Final Approval of Settlement, such papers shall be filed with the Court and served on or before August 24, 2016.

15. Pursuant to and in accordance with Local Civil Rule 67.1, the Clerk of the United States District Court for the Southern District of New York is directed to invest the \$244,000,000 comprising the Settlement Amount and the \$6,000,000 comprising the February 23 Settlements Fee, which shall be paid by the Defendants no later than July 5, 2016, into an interest bearing Court Registry Investment System ("CRIS") account. The Defendants shall pay the principal amount of the Settlement Amount and the February 23 Settlements Fee by wire transfer to the Clerk of the Court, and the Clerk is directed to provide Defendants with wiring instructions. These funds, together with any interest and income earned thereon, shall constitute a Qualified Settlement Fund in accordance with the provisions of 26 C.F.R. § 1.468B-1 and the terms of the Settlement Agreement. These funds shall only be withdrawn from the interest bearing CRIS account pursuant

to order of this Court in accordance with the terms of the Settlement Agreement. The Clerk is directed to deduct from the income on the investment a fee equal to ten percent (10%) of the income earned, but not exceeding the fee authorized by the Judicial Conference of the United States and set by the Director of the Administrative Office.

16. Neither Defendants nor their counsel shall have any responsibility for the Plan of Allocation or any award for attorney's fees, costs, or expenses requested by Plaintiffs' Counsel, and such matters shall be considered separately from the fairness, reasonableness, and adequacy of the Settlement.

17. If the Effective Date does not occur or the Settlement is terminated pursuant to the terms of the Settlement Agreement, then, in any such event, the Settlement Agreement, including any amendments thereof, except as expressly provided in the Settlement Agreement, and this Preliminary Approval Order shall be null and void, of no further force or effect, and without prejudice to any Settling Party.

18. This Preliminary Approval Order shall not be construed or used as an admission, concession, or declaration by or against Defendants of any fault, wrongdoing, breach or liability and Defendants specifically denies any such fault, breach, liability or wrongdoing. This Preliminary Approval Order shall not be construed or used as an admission, concession, or declaration by or against Class Plaintiffs or the Class that their claims lack merit or that the relief requested in the Action is inappropriate, improper or unavailable. This Preliminary Approval Order shall not be construed or used as an admission, concession, declaration or waiver by any party of any arguments, defenses, or claims he, she or it may have in the event that the Settlement is terminated. Moreover, the Settlement and any proceedings taken pursuant to the Settlement are for settlement purposes only. Neither the fact of, nor any provision contained in the Settlement

Agreement or its exhibits, nor any actions taken thereunder shall be construed as, offered into evidence as, received in evidence as, and/or deemed to be evidence of a presumption, concession, or admission of any kind as to the truth of any fact alleged or validity of any defense that has been, could have been, or in the future might be asserted.

IT IS SO ORDERED.

June 2, 2016

SO ORDERED:



WILLIAM H. PAULEY III

U.S.D.J.