

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE: STERICYCLE, INC., STERI-SAFE
CONTRACT LITIGATION

No. 1:13-cv-05795
MDL No. 2455

Judge Robert W. Gettleman

FINAL APPROVAL ORDER

WHEREAS Plaintiffs Lyndon Veterinary Clinic, PLLC, ResearchDx, LLC, Cochranon Veterinary Hospital, Amores Dental Care, McMackin & Zimnoch, P.C., Madison Avenue Professional Building, and Greater Hampstead Family Medicine, PC (“Plaintiffs”) and Defendant Stericycle, Inc. (“Stericycle”) have entered into a Class Action Settlement Agreement and Release dated October 17, 2017 (“Agreement” or “Settlement Agreement”) to settle the above-captioned litigation (“Litigation”);

WHEREAS the Settlement Agreement, together with its exhibits, sets forth the terms and conditions for a proposed settlement and dismissal with prejudice of the Litigation;

WHEREAS Plaintiffs have filed a Motion for Final Approval of Class Settlement (“Motion”);

WHEREAS the Court certified a Class in this matter by Order dated February 16, 2017 (Dkt. No. 261) that is identical in substance to the Class to which the Settlement will apply if approved; and

WHEREAS the Court, having read and considered the Settlement and its exhibits, the Motion, the pleadings and other papers on file in this action, and statements of counsel, and after a hearing in open court on this matter on March 8, 2018,

THE COURT HEREBY FINDS that the Motion should be GRANTED, the Settlement is approved, and that this Final Approval Order should be entered. Terms and phrases used in this Final Approval Order shall have the same meaning ascribed to them in the Settlement Agreement.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

A. The Court certifies the Class for purposes of the Settlement.

1. The Court, having previously certified the Class pursuant to Federal Rules of Civil Procedure 23(b)(2) and (b)(3), finds that the previously certified Class is appropriate for Settlement purposes as modified. The Class is defined as follows:

All persons and entities that, between March 8, 2003, through the date of Preliminary Approval^[1] of the Settlement Agreement resided in the United States (except Washington and Alaska), were identified by Stericycle as a “small quantity” or “SQ” customer, and were charged and paid more than their contractually-agreed price for Stericycle’s medical waste disposal goods and services pursuant to Stericycle’s automated price increase policy.^[2]

2. Specifically excluded from the Class are governmental entities whose claims were asserted in *United States ex rel. Perez v. Stericycle Inc.* as well as any entities that have previously settled similar claims with Stericycle and released those claims.

3. Also excluded from the Class are those persons, entities, and/or organizations who timely and properly excluded themselves (or “opted out”) from the Class. Therefore, in accordance with this Court’s previous Orders relating to the identification of timely and proper opt-outs, including the Court’s Order on the Parties’ Joint Motion to Enforce the Provision of the

¹ The Class certified in the Court’s February 16, 2017 Order stated a class period “between March 8, 2003 through the date of trial . . .” (Emphasis added.) The class definition has been changed appropriately to extend only through the date of preliminary approval, a necessary and *de minimis* change.

² The “United States” includes all U.S. territories. Class Members in the relevant U.S. territories were provided notice of the Settlement and are included on the list of Class Members.

Settlement Agreement Regarding Exclusions from the Class (Dkt. No. 372), the Settlement Administrator shall file with the Court (or Plaintiffs' Class Counsel shall file on its behalf) by April 10, 2018, or such further date set by the court, the final list of persons, entities, and organizations that have timely and properly excluded themselves and are not bound by this Final Order Approving Class Action Settlement or the Final Judgment ("Final Exclusion List"). Upon filing and approval by the court, such Final Exclusion List shall be incorporated as part of this Final Approval Order.

4. Any Class member who or which did not submit a timely, written request for exclusion from the Class (i.e., become an Opt-Out) shall be bound by all proceedings, orders and judgments in the Litigation, even if such Class member has previously initiated or subsequently initiates individual litigation or other proceedings encompassed by the release.

5. The Court finds, for purposes of final approval and settlement, and for the reasons set forth in its Memorandum Opinion and Order dated February 16, 2017 (Dkt. No. 261), that: (a) the more than 283,000 members of the Class, dispersed across the United States, are so numerous as to make joinder of all members of the Class impracticable; (b) there are questions of law and fact common to members of the Class; (c) the claims of the Class Representatives are typical of the claims of the members of the Class; and (d) the Class Representatives and Plaintiffs' Class Counsel will fairly and adequately protect the interests of the Class.

6. Questions of law and fact common to the Class Members, as pertains to consideration of the Settlement, predominate over any questions affecting any individual Class Member. Finally, the Court finds that the class action mechanism provides a superior procedural vehicle for settlement of this matter compared to other available alternatives. Class certification

promotes efficiency and uniformity of judgment because many Class Members will not be forced to pursue claims or execute settlements separately in various courts around the country.

7. Pursuant to Rule 23(b)(2), the Court finds, for purposes of final approval and settlement, final injunctive relief or corresponding declaratory relief as embodied in the Settlement Agreement is appropriate respecting the Class as a whole.

8. Should the Settlement Agreement fail or be rescinded according to its terms, or in the event this Final Approval is reversed on appeal, Stericycle shall retain its existing ability to assert that the Litigation may not be certified as a class action except for settlement purposes.

9. The Court appoints Lyndon Veterinary Clinic, PLLC, ResearchDx, LLC, Cochran Veterinary Hospital, Amores Dental Care, McMackin & Zimnoch, P.C., Madison Avenue Professional Building, and Greater Hampstead Family Medicine, PC as representatives of the Class.

10. The Court confirms the appointment of the following attorneys as Plaintiffs' Class Counsel:

Steve W. Berman, Esq.
Garth D. Wojtanowicz, Esq.
HAGENS BERMAN SOBOL SHAPIRO LLP
1918 Eighth Avenue, Suite 3300
Seattle, Washington 98101
Telephone: (206) 623-7292
Facsimile: (206) 623-0594
Email: steve@hbsslaw.com
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Elizabeth A. Fegan
HAGENS BERMAN SOBOL SHAPIRO LLP
455 Cityfront Plaza Drive, Suite 2410
Chicago, IL 60611
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Facsimile: (708) 628-4950
Email: beth@hbsslaw.com

B. The Court finds that the Class notice program was appropriately administered, and was the best practicable notice to the Class under the circumstances, satisfying the requirements of Rule 23 and due process.

11. Pursuant to Rule 23(d) and (e)(1), the Court finds that appropriate notice was given to the Class, and that Members of the Class were given reasonable and sufficient opportunity to exclude themselves from the Settlement or object to its terms.

12. The Court finds that such Class Notice: (i) constitutes reasonable and the best practicable notice to Class Members under the circumstances of the Actions; (ii) constitutes notice that was reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Actions and the terms of the Agreement, their right to exclude themselves from the Class or to object to any part of the Settlement, their right to appear at the Fairness Hearing (either on their own or through counsel hired at their own expense) and the binding effect of the orders and Final Order and Final Judgment in the Actions, whether favorable or unfavorable, on all persons, entities, and/or organizations that fail to exclude themselves from the Class; (iii) constitutes due, adequate, and sufficient notice to all persons, entities, and/or organizations entitled to receive notice; (iv) fully satisfied the requirements of the Constitution of the United States (including the Due Process Clause), Rule 23 of the Federal Rules of Civil Procedure, and any other applicable law; and (v) is based on the Federal Judicial Center's illustrative class action notices.

13. The Court further finds that the Parties, through the Settlement Notice Administrator, provided notice of the Settlement to the appropriate state and federal government officials pursuant to 28 U.S.C. § 1715. Furthermore, the Court has given the appropriate state and federal government officials the requisite 90-day period to comment or object to the

Settlement before entering its Final Order and Final Judgment. No comments or objections were filed by any state or federal government official.

14. The Court finds that the Settlement Administrator's direct mailing of the approved notice postcards to over 183,000 members of the Class, the publication of a settlement website containing the approved Notices and other pertinent information about the litigation and proposed Settlement, and the telephone and other services provided by the Settlement Administrator were reasonable, adequate, and achieved the purposes for which they were intended.

15. In all respects, the Court finds that the proposed Notice Plan was properly implemented, and: (i) was reasonable and constitutes due, adequate, and sufficient notice to all persons entitled to receive notice; (ii) fairly and adequately described the terms and effects of the Settlement Agreement; (iii) fairly and adequately described the date by which Plaintiffs' Class Counsel must file the motion for final approval and motion for award of attorneys' fees and expenses; (iv) fairly and adequately described the method and date by which any member of the Class may object to or comment upon the Settlement or exclude themselves from the Class; (v) set a date by which Plaintiffs' Class Counsel may respond to any objections to the Settlement; (vi) provided notice to the Class of the time and place of the fairness hearing; and (vii) constituted reasonable notice under the circumstances and otherwise meets all requirements of applicable law, including but not limited to Fed. R. Civ. P. 23 and the due process clause of the United States Constitution.

C. The Court finds that the proposed Settlement is fair, adequate, and reasonable, and grants final approval of the Settlement.

16. The Court finds that the proposed Settlement is fair, adequate, and reasonable.

The Settlement provides significant compensation to the Class, comprising both a monetary payment of \$295,000,000 and prospective relief that has a real, substantial, and calculable value.

17. The Court finds that the Settlement resulted from extensive arm's-length, good-faith negotiations between Class Counsel and Stericycle, through experienced counsel, and that the Agreement was not the result of collusion.

18. The Court finally approves the Settlement Agreement, and finds that the Agreement, along with its Exhibits and Allocation Plan, are: a) in all respects, fair, adequate, and reasonable; b) in the best interest of the Class; and c) are in full compliance with all applicable requirements of the Federal Rules of Civil Procedure, the Constitution of the United States (including the Due Process Clause), the Class Action Fairness Act, and any other applicable law.

19. The Court finds that the Settlement is fair, adequate, and reasonable based on the following factors, among other things: a) the absence of any fraud or collusion underlying the Settlement; b) the complexity, expense, uncertainty and likely duration of litigation if the Settlement were rejected; c) the Settlement's provision of meaningful and significant benefits to the Class; and d) the lack of any meaningful opposition to the Settlement, including the lack of any meritorious objections.

20. The certification of the Class and approval of the proposed Settlement, and all actions associated with them, are undertaken on the condition that they shall be vacated if the Settlement is terminated or disapproved in whole or in part by the Court, or any appellate court and/or other court of review, in which event the Settlement Agreement and the fact that the Settlement was entered into shall not be offered, received, or construed as an admission or as

evidence for any purpose, including but not limited to an admission by any party of liability or non-liability or of the certifiability of a litigation class, or otherwise be used by any person for any purpose whatsoever, in any trial of this Litigation or any other action or proceedings, and each party will be restored to his, her or its respective position as it existed prior to the execution of the Settlement Agreement.

D. The Hon. Wayne R. Andersen (ret.) is confirmed as Settlement Monitor.

21. The Court confirms the appointment of Hon. Wayne R. Andersen (ret.) as Settlement Monitor, who shall have the responsibilities as set forth in the Settlement Agreement. The Settlement Monitor's term shall last through the period provided for in the Agreement, or until such time as the Court may order.

E. Garden City Group, LLC is confirmed as Class Action Settlement Administrator.

22. The Court confirms the appointment of Garden City Group, LLC as Class Action Settlement Administrator ("Settlement Administrator"), which shall, at the appropriate time after any appeals have been exhausted in favor of the Settlement and the Settlement is finally effective according to its terms, distribute payments to the Class in the manner described in the Plan of Allocation, and by methods substantially similar to those described in the Settlement Agreement.

23. The Court directs that the Settlement Administrator shall, after the Settlement Agreement has become Finally Effective according to its terms, distribute the Settlement Fund in accordance with the terms of the Settlement Agreement and all applicable Orders of the Court.

F. The Court has given due consideration to the two objectors to the Settlement, and denies or overrules such objections.

24. The Court finds that the process employed for providing members of the Class the opportunity to object to the Settlement was fair, adequate, and reasonable.

25. Any Class member who failed to file and serve timely a written objection to the Settlement is foreclosed from seeking any adjudication or review of the Settlement by appeal or otherwise.

26. The Court received two timely objections to the Settlement. Upon due consideration, a review of the materials submitted by the Objectors, their counsel, and Class Counsel, the Court finds that the objections are without merit. For the reasons stated in open court, the objections are denied.

G. Class Counsel's motion for attorney's fees and costs is granted.

27. The Court finds that Class Counsel is entitled to an award of reasonable attorney's fees in the amount of \$35,000,000.00. The Court finds that the efforts of Class Counsel showed significant skill and dedication on behalf of the Class, and that Class Counsel achieved excellent results. The Court finds that the case was litigated aggressively by both parties and that the litigation presented challenging defenses and required Class Counsel to assume a significant risk of an adverse result without any guarantee of recompense for its efforts.

28. The Court finds that the Settlement Agreement provides significant recovery for the Class, including a cash component of \$295 million and prospective relief that has a real and calculable value to the Class.

29. Considering the foregoing, the Court exercises its discretion to award fees based on the percentage of recovery achieved by Class Counsel on behalf of the Class. Class Counsel has requested an award of \$40 million, of which the Court finds \$35 million reasonable and justified under the circumstances.

30. The Court finds that the fees awarded Class Counsel constitute approximately 7.7% of the total value of the Settlement to the Class, which is less than the percentages frequently awarded to Class Counsel in cases of similar size, complexity, and magnitude.

Moreover the Court finds that such a fee approximates, or is lower than, the fee that may have been negotiated in *ex ante* negotiations or through an auction process.

31. Taking into consideration (1) the fee contract between plaintiffs and counsel, (2) data from similar cases, (3) information from class-counsel auctions, (4) the risk that Class Counsel assumed by undertaking the representation, and (5) all other relevant factors including the efforts of Class Counsel, the skill demonstrated, and the results achieved, the Court finds that the fees awarded are fair and reasonable under the circumstances and awards Class Counsel \$35,000,000.00 to be awarded out of the Settlement Fund following the Final Effective Date of the Settlement Agreement.

32. The Court also finds that Class Counsel is entitled to the award of the costs it advanced on behalf of the Class. Having reviewed the records submitted, the Court finds that the costs were reasonably and necessarily incurred in connection with the litigation of this matter and were comprised mostly of fees for expert services and analysis which were of critical importance to the litigation of the matter and contributed significantly to the results achieved.

33. The Court finds that such costs were reasonable in kind and amount, comprising just 0.6% of the total value of the Settlement, which compares very favorably to the ratio of costs to recovery typical in cases of this size, magnitude, and complexity.

34. The Court therefore finds that Class Counsel is entitled to an award of **\$2,716,506.16** in reasonable costs and expenses to be awarded out of the Settlement Fund following the Final Effective Date of the Settlement Agreement.

H. The Court approves Incentive Awards of \$5,000.00 for the Class Representatives.

35. The Court approves incentive awards in the amount of \$5,000.00 for each Class Representative, to be paid out of the Settlement Fund.

36. The Court finds that the Class Representatives provided significant benefits and services to the Class, including responding to discovery, preparing for and sitting for deposition, conferring with Class Counsel, and staying apprised of the litigation. The Court further finds that the requested incentive awards are reasonable and justified in light of the Class Representatives' efforts expended on behalf of the Class, and that awards in the amounts requested will serve an important role in providing incentives for plaintiffs to serve as class representatives in other cases—this is especially true in cases like this one, where the Class is comprised mostly of small businesses that otherwise may not wish to expend time and resources for the benefit of a class.

I. The Court approves the payment of Settlement Administration costs out of the Settlement Fund.

37. The Court further finds that the expenses of Settlement Administration shall be paid out of and deducted from the Settlement Fund. These expenses include costs already incurred in connection with the Notice Program preceding Final Approval. Pursuant to the Settlement Agreement, Section V.A.1., Stericycle has paid \$175,000.00 of the Settlement Fund for purposes of funding the Notice Program approved by the Court and implemented by the Class Action Settlement Administrator, which shall be deducted from the payment required of Stericycle when the Agreement reaches its Final Effective Date. The Court further approves the payment out of the Settlement Fund of the additional costs of Settlement Administration following this Final Approval Order, including the costs of distributing payments to Class Members.

J. Dismissal of Claims, Release, and Injunction

38. The Actions are hereby dismissed with prejudice on the merits and without costs to any party, except as otherwise provided herein or in the Agreement.

39. Upon entry of this Final Order Approving Class Action Settlement and final judgment, Plaintiffs, Class Representatives, and each member of the Class (except those listed on the Final Exclusion List) shall be bound by the release and discharge of claims set forth in the Settlement Agreement. Without in any way limiting the release and discharge of claims set forth in the Settlement Agreement, it is agreed that Class Members are not precluded from contacting and/or complying with requests and/or inquiries from any governmental authorities relating to the issues raised in this class action settlement.

40. The Court enjoins all Class Members (except those listed on the Final Exclusion List) from (i) filing, commencing, prosecuting, intervening in or participating as a plaintiff, claimant, or member of the class in any other lawsuit or administrative, regulatory, arbitration or other proceeding in any jurisdiction based on the released claims; (ii) filing, commencing, or prosecuting a lawsuit or administrative, regulatory, arbitration, or other proceeding as a class action on behalf of any Class members who have not timely excluded themselves (including by seeking to amend a pending complaint to include class allegations or seeking class certification in a pending action), based on claims made in this Litigation; (iii) pursuing any released claims; and (iv) attempting to effect opt-outs of individuals or a class of individuals in any lawsuit or administrative, regulatory, arbitration, or other proceeding based on the released claims.

K. Class Settlement Fund

41. The Court finds and confirms that the Escrow Account to be established for the Settlement Fund is a “qualified settlement fund” as defined in Section 1.468B-1(c) of the Treasury Regulations in that it satisfies each of the following requirements:

- a. The Escrow Account is established pursuant to an Order of this Court and is subject to the continuing jurisdiction of the Court;

- b. The Escrow Account is established to resolve or satisfy one or more claims that have resulted or may result from an event that has occurred and that has given rise to at least one claim asserting liabilities; and
- c. The assets of the Escrow Account are segregated from other assets of Defendant, the transferor of the payment to the Settlement Funds and controlled by an Escrow Agreement.

L. Other Provisions

42. Without affecting the finality of the Final Order Approving Class Action Settlement or the final judgment, the Court retains continuing and exclusive jurisdiction over the Actions and all matters relating to the administration, consummation, enforcement, and interpretation of the Agreement and of this Final Order, to protect and effectuate this Final Order, and for any other necessary purpose.

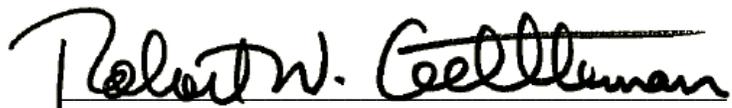
43. In the event the Final Effective Date does not occur, certification of the Class for purposes of this Settlement shall be automatically vacated and this Final Order and the final judgment, and other orders entered in connection with the Settlement and releases delivered in connection with the Settlement, shall be vacated and rendered null and void as provided in the Agreement.

44. Nothing in this Final Order or the final judgment shall preclude any action in this Court to enforce the terms of the Agreement.

45. A copy of this Final Order shall be filed in, and applies to, the Actions consolidated in this MDL for pretrial proceedings, except proceedings maintained by a plaintiff who submitted a timely and proper request for exclusion and is listed on the Final Exclusion List.

SO ORDERED.

ENTER: March 8, 2018


Robert W. Gettleman
United States District Judge