

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

Bent for Microfilming

MAY 29 1998

Filed on [REDACTED]

ROBERT I. FALK,

Plaintiff,

v.

THETA GROUP, L.L.C., SCOTT S. BELL and  
R. SCOT RUBEL,

Defendants.

CIVIL ACTION NO.  
97-C-0565

DOCKETED  
MAY 29 1998

**PRELIMINARY APPROVAL AND IMPLEMENTATION ORDER**

Upon reviewing the Stipulation and Agreement of Compromise and Settlement Between plaintiff Robert I. Falk ("Plaintiff") and defendant Scott S. Bell ("Bell" or "Settling Defendant") dated May 19, 1998, including the exhibits annexed thereto (the "Settlement Agreement"), as executed by the attorneys for Plaintiff and Settling Defendant in the above-captioned action (the "Action"), and upon the Court's familiarity with the proceedings held herein,

It is hereby **ORDERED** that:

1. Notice be given to the Class of the proposed Settlement and motion for class certification, pursuant to the requirements of Rule 23 of the Federal Rules of Civil Procedure and the Settlement Agreement, and for purposes of this settlement only, with respect to the Released Claims (as that term is defined in the Settlement Agreement), with respect to the following class:

All persons and entities who purchased membership interests in Theta Group, L.L.C. ("Theta") from October 1, 1995 to November 26, 1996, and who have suffered damage as a result.

Excluded from the Class are defendants, their immediate families, successors and assigns, the officers, directors, subsidiaries and affiliates of Theta, and all defendants' former and present counsel.

2. The proposed Settlement is sufficiently fair, reasonable and adequate to warrant notice of a full hearing on the Settlement to members of the Class. The Court hereby preliminarily approves the Settlement and directs that a hearing be held on July 8, 1998, at 9:30 a.m. to consider the Motion for Class Certification and the fairness, reasonableness and adequacy of the Settlement to the Class (the "Fairness Hearing"). The Court further directs that Plaintiff's Counsel's memoranda in support of the settlement, and application for fees, costs and expenses, shall be filed no later than July 1, 1998, and shall be available for inspection in the clerk's office at the above address, after they have been filed.

3. The Notice of Pendency, Proposed Partial Class Action Settlement and Settlement Hearing" (the "Notice") in substantially the form annexed hereto as Exhibit A, shall be mailed by First Class United States Mail by the Claims Administrator on or before June 5, 1998, at the direction and under the supervision of Plaintiff's Counsel, to all persons and entities who can be identified as Class Members through reasonable effort from the records of the Settling Defendant, Theta, and the Securities and Exchange Commission, and to counsel for Bell. Proof of mailing of the Notice shall be filed by Plaintiff's Counsel at or prior to the Fairness Hearing.

4. Notice given in the form and manner directed in paragraph 3 of this Order is hereby found to be due, adequate, and sufficient notice and the best notice practicable under the

circumstances, and shall constitute the notice required by due process and Rule 23 of the Federal Rules of Civil Procedure.

5. All members of the Class who wish to exclude themselves therefrom shall do so by mailing, by first class mail, a timely and valid request for exclusion to Plaintiff's Counsel or the Claims Administrator, at the address set forth in the Notice, postmarked on or before June 26, 1998. Any Request for Exclusion shall be deemed to have been made in each and every capacity in which the person requesting the exclusion is acting. Any Class member who does not timely request exclusion shall be included in the Class and shall be bound by any judgment entered pursuant to the terms of the Settlement. If the Settlement is approved, any Class members who do not exercise the right to be excluded from the Class shall be bound by the judgment and releases in this Action as set forth in the Settlement Agreement.

6. Any member of the Class who does not elect to exclude himself, herself or itself from the Class may appear at the Fairness Hearing, in person or by counsel, solely at such Class member's expense, and be heard in support of or in opposition to the fairness, reasonableness and adequacy of the Settlement Agreement, the Plan of Allocation described in the Notice and/or Plaintiff's Counsel's request for reimbursement of expenses. No Class member will be heard or entitled in any way to contest the approval of the Settlement Agreement, the Plan of Allocation or Plaintiff's Counsel's request for reimbursement of expenses, unless, on or before June 26, 1998, such Class member files with the Clerk of the Court, United States District Court, Northern District of Illinois, a notice of intention to appear and a written statement of the basis for his/her objection(s), proof of Class membership (by copy of confirmation slip or otherwise), along with all other papers or briefs he/she wishes the Court to consider, and on or before that date, serves copies of all such papers filed with the Court, in person or by mail, on Fred T. Isquith, Wolf Haldenstein Adler Freeman & Herz LLP, 270 Madison Avenue, New York, New York 10016; and on Settling Defendant's Counsel Mark E. Shure, Keating & Shure, Ltd., 150 North Wacker Drive, Suite 1550, Chicago, Ill., 60606. Any member of the Class who fails to

object in the manner prescribed herein shall be deemed to have waived, and shall be foreclosed from raising any objections.

7. Plaintiff's Counsel may, at their option, select a Claims Administrator for the Settlement Fund. The Claims Administrator shall be responsible for administering the Settlement pursuant to the procedure set forth in the Settlement Agreement, under the direction of Plaintiff's Counsel. Plaintiff's Counsel is hereby authorized to provide for payment of the reasonable costs of notice and administration from the Settlement Fund as set forth in paragraph 11 of the Settlement Agreement. The Escrow Agent for the Settlement Fund is also hereby authorized to make any quarterly or annual tax payments required with respect to any amounts paid under the terms of the Settlement Agreement and the amounts shall be treated for the purposes of payment of taxes as a "Qualified Settlement Fund" as that term is used in the United States Income Tax Code, pursuant to Treasury Regulation 1.468B-1.

8. Pending the Court's Final Order in this matter, all proceedings in connection with prosecution of this Action as to defendant Bell (but not as to the other defendants) are hereby stayed, except those proceedings in connection with effectuating the Settlement Agreement, and all Class members are barred and enjoined from commencing or prosecuting, either directly, representatively, or in any other capacity, any of the "Released Claims," as that term is defined in Settlement Agreement against Bell.

9. Settling Defendant will make himself available for discovery in New York and court appearances, as necessary.

10. This Order, the Settlement Agreement and all negotiations, papers, writings, statements and/or proceedings in connection with the settlement shall not in any way be construed or used as or deemed to be evidence of: (a) an admission or concession on the part of Bell of any liability or wrongdoing of any kind; (b) an admission or concession on the part of Bell that any and all Class members have suffered any damage; or (c) an admission or concession on

the part of any and all of the Class members that any of the claims asserted in this Action are without merit or that damages recoverable in this Action do not exceed the Settlement Amount.

11. In the event the Settlement Agreement is not approved by the Court or the approval does not become final pursuant to the terms of the Settlement Agreement, or for any reason the Settlement Agreement is terminated or does not become effective, then the Settlement Agreement shall become null and void and of no further force and effect, and shall not be used or referred to for any purpose whatsoever. In such event, the Settlement Agreement and all negotiations and proceedings relating thereto shall be withdrawn without prejudice as to the rights of any and all parties thereto, who shall be restored to their respective positions prior to the execution of the Settlement Agreement, except with respect to the Notice provisions of the Settlement Agreement.

12. The Court hereby reserves the right to extend any of the foregoing dates, for good cause shown, and specifically retains the right to adjourn the Fairness Hearing by oral announcement on the original hearing date described above without further written notice to the Class.

Dated: \_\_\_\_\_, 1998

MAY 28 1998

  
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U.S.D.J.