

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

CENTRAL LABORERS' PENSION FUND,

Plaintiff,

v.

SIRVA, INC., BRIAN P. KELLEY, JOAN E. RYAN, JAMES W. ROGERS, RICHARD J. SCHNALL, CARL T. STOCKER, CREDIT SUISSE FIRST BOSTON LLC, GOLDMAN, SACHS & CO., DEUTSCHE BANK SECURITIES INC., CITIGROUP GLOBAL MARKETS INC., J.P. MORGAN SECURITIES INC., BANC OF AMERICA SECURITIES LLC, MORGAN STANLEY & CO. INCORPORATED, PRICEWATERHOUSECOOPERS LLP, and CLAYTON DUBILIER & RICE, INC.

Defendants.

No. 04 C-7644

Judge Ronald A. Guzmán

**LEAD PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF SETTLEMENT AND
INCORPORATED MEMORANDUM OF LAW**

Lead Plaintiff Central Laborers' Pension Fund hereby moves the Court, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, for an order: (1) preliminarily approving the proposed settlement in this action ("Settlement") as memorialized in the accompanying Settlement Agreement; (2) approving the form of class notice described in the attached Notice of Pendency of Class Action, Proposed Settlement, Motion for Attorneys' Fees and Expenses, and Fairness Hearing; (3) approving the form of the Summary Notice of Pendency of Class Action, Proposed Settlement and Fairness Hearing; and (4) scheduling a hearing to determine whether the Settlement should be given final approval.

The following is a proposed timetable to assist the Court in establishing the necessary deadlines in the Preliminary Order:

<u>Event</u>	<u>Proposed Deadline</u>
Mailing of Notice (<i>see</i> Prelim. Order ¶ 7)	10 days after entry of Preliminary Order
Publication of Summary Notice (<i>see</i> Prelim. Order ¶ 8)	10 days after mailing of the Notice
Submitting Requests for Exclusion (<i>see</i> Prelim. Order ¶ 11)	60 days after mailing of the Notice
Submitting Objections (<i>see</i> Prelim. Order ¶ 13)	60 days after mailing of the Notice
Fairness Hearing (<i>see</i> Prelim. Order ¶ 4)	90 days after entry of Preliminary Order
Deadline for Proofs of Claim (<i>see</i> Prelim. Order ¶ 10)	60 days after the Fairness Hearing

MEMORANDUM OF LAW

The Parties have negotiated a Settlement of the claims asserted on behalf of all persons or entities who purchased or otherwise acquired the common stock of SIRVA, Inc. (“SIRVA”) through any public offering or on the open market between November 25, 2003 and January 31, 2005, inclusive (“Settlement Class Period”). The Cash Settlement Payment of \$53.3 million represents an extremely significant recovery for shareholders of SIRVA.¹ Lead Plaintiff believes that it would face serious obstacles in establishing liability and damages should this case proceed to trial. Even if this case were to proceed to trial, Defendants could appeal any judgment favorable to the Settlement Class, delaying any recovery to Settlement Class Members.

¹ In addition, SIRVA shareholders will further benefit by the corporate governance changes which will be implemented at SIRVA under the terms of the Settlement Agreement. These important modifications are detailed in Section II(D) of the Settlement Agreement.

The accompanying Settlement Agreement has exhibits attached, including: (1) a Preliminary Order for Notice and Hearing in Connection with Settlement Proceedings (“Preliminary Order”) as Exhibit B; (2) a Notice of Pendency of Class Action, Proposed Settlement, Motion for Attorneys’ Fees and Expenses, and Fairness Hearing (“Notice”) as Exhibit B-1; (3) a Proof of Claim and Release (“Proof of Claim”) as Exhibit B-2; (4) a Summary Notice of Pendency of Class Action, Proposed Settlement and Fairness Hearing (“Summary Notice”) as Exhibit B-3; and (5) a proposed Order and Final Judgment as Exhibit A.

The Preliminary Order provides for the members of the Settlement Class to be apprised of the terms of the Settlement by disseminating the Notice via first-class mail to all Settlement Class Members who can be identified through reasonable and customary efforts and by publishing the Summary Notice in *Businesswire*. The Preliminary Order also establishes deadlines for the following events necessary to consummate the Settlement: (1) mailing the Notice; (2) publication of the Summary Notice; (3) Settlement Class Members’ requests for exclusion from the Settlement Class; (4) serving objections to the terms of the Settlement, the Plan of Allocation and attorneys’ fees and expenses, and (5) filing Proofs of Claim by Settlement Class Members.

1. Settlement of the Action Is in the Best Interest of the Settlement Class

Federal Rule of Civil Procedure 23(e) requires court approval for any compromise of a class action. In determining whether to approve the Settlement, the Court should be guided by the strong judicial policy “favor[ing] the settlement of class action litigation.” *Isby v. Bayh*, 75 F.3d 1195, 1196 (7th Cir. 1996) (citations omitted); *see also Airline Stewards &*

Stewardesses Ass'n Local 550 v. Trans World Airlines, Inc., 630 F.2d 1164, 1166–67 (7th Cir. 1980) (“Federal Courts look with great favor upon the voluntary resolution of litigation through settlement This rule has particular force regarding class action lawsuits.”) (citations omitted). Settlements of class actions particularly warrant this approach:

In the class action context in particular, there is an overriding public interest in favor of settlement. Settlement of the complex disputes often involved in class actions minimizes the litigation expenses of both parties and also reduces the strain such litigation imposes upon already scarce judicial resources.

Armstrong v. Bd. of Sch. Dirs. of the City of Milwaukee, 616 F.2d 305, 313 (7th Cir. 1980) (quotations omitted). There is also a “‘strong presumption’ in favor of finding a settlement fair.” *Camp v. Progressive Corp.*, No. 01-2680, 2004 U.S. Dist. LEXIS 19172, at *18 (E.D. La. Sept. 23, 2004).

The Parties here have memorialized their agreement to settle this Action in the Settlement Agreement, which is being filed with this motion. The Settlement Agreement contains all the material terms of the Settlement, including, among other things, the manner and form of notice to the Settlement Class and the conditions to the Settlement’s final approval. Lead Plaintiff believes that the Settlement is in the best interest of the Settlement Class.

2. The Proposed Notice Is Adequate

The Parties have negotiated the form of the Notice and the Summary Notice to notify the Settlement Class of the terms of the Settlement, the Settlement Class Members’ rights in connection with the Settlement, and the date of the Fairness Hearing for final approval by the Court. The Notice, which will be mailed to Settlement Class Members, has been carefully

drafted to comply with the provisions of the Private Securities Litigation Reform Act of 1995. *See* 15 U.S.C. § 78u-4(a)(7). Along with the Notice, Settlement Class Members will receive a Proof of Claim form on which to provide the purchase and sale information for their SIRVA common stock. Settlement Class Members who wish to share in the Settlement proceeds will complete and mail their Proofs of Claim to The Garden City Group, Inc., the Administrator retained by Lead Counsel to administer the claims process in this Settlement.

The Parties have agreed to use the traditional methods for notifying Settlement Class Members of the Settlement: notification by mail and by publication in an investor-oriented publication with national coverage. Upon entry of the Preliminary Order, the Administrator will mail the Notice and the Proof of Claim forms to Settlement Class Members who can be identified from stock transfer records provided by Defendants.² Lead Counsel will cause the Summary Notice to be published in *Businesswire*. Notice by mail to class members who can reasonably be identified and by publication satisfies the requirements of due process in this type of litigation. *See, e.g., Burns v. Elrod*, 757 F.2d 151 (7th Cir. 1985).

Upon notification of the Settlement, members of the Settlement Class have three choices: (1) approve the Settlement and share in the Settlement proceeds by submitting a Proof of Claim; (2) exclude themselves from the Settlement by opting out of the Settlement Class, in which case they will not participate in the Settlement recovery and will retain their

² The Preliminary Order provides that nominees who purchased SIRVA common stock on behalf of beneficial owners shall send the Notice and Proofs of Claim to those beneficial owners upon the receipt of such documents. (Prelim. Order ¶ 7.) This provision ensures that brokers or other entities who purchased SIRVA common stock for others will forward the documents to the beneficial owners, who are the appropriate signatories to the Proof of Claim forms.

individual claims against Defendants; or (3) disapprove of the Settlement, the Plan of Allocation and/or the application for attorneys' fees and expenses by objecting to their terms. To participate in the Settlement, members of the Settlement Class must submit their Proofs of Claim within the time specified in the Preliminary Order. Settlement Class Members who wish to exclude themselves from the Settlement must submit a timely request for exclusion. Settlement Class Members who wish to object to the Settlement must serve a notice of objection and, if applicable a notice of their intention to appear at the Fairness Hearing and object. Lead Counsel shall be responsible for filing with the Court any objections that have not been withdrawn not later than seven days prior to the Fairness Hearing. If they choose, objectors may submit a memorandum of law in opposition to the Settlement and can appear before the Court at the Fairness Hearing. Therefore, Lead Plaintiff respectfully submits that this Court should find that the Notice and the procedures for its dissemination are reasonably calculated to provide notice of the Settlement to the Settlement Class.

3. Certification of the Settlement Class Is Appropriate

This Court should grant the Parties' request for certification of the Settlement Class for Settlement purposes. The Preliminary Order provides for certification of the Settlement Class under Rule 23. Certification of this Action is appropriate and is consistent with the holding in *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591 (1997). Lead Plaintiff, the proposed Class Representative, is a member of the Settlement Class and possesses the same interests and suffered the same injury as the absent Settlement Class Members. The interests of all members of the Settlement Class have been accorded due consideration. Therefore, certification of the Settlement Class is appropriate. *See id.* at 625–26.

4. The Settlement Should Be Preliminarily Approved

Approval of the Settlement is at the discretion of the Court. *In re Jiffy Lube Sec. Litig.*, 927 F.2d 155, 158 (4th Cir. 1991). To preliminarily approve the Settlement, the Court must determine whether the Settlement is in the best interests of those whose claims will be extinguished. *Id.* The Court should examine whether there is a probability that the Settlement could be finally approved, warranting notification to the Settlement Class. *Carnegie v. Household Int'l, Inc.*, 371 F. Supp. 2d 954, 955 (N.D. Ill. 2005). The Court must ensure that the settlement is neither illegal nor “the product of collusion between the parties.” *Newby v. Enron Corp.*, 394 F.3d 296, 301 (5th Cir. 2004) (citations omitted). However, courts should exercise restraint in examining a proposed settlement and recognize that “compromise is the essence of a settlement” and a proponent need not satisfy every concern of the plaintiff class, but may fall anywhere short of the highest expectations. *Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977) (citations omitted). In addition, a court should not engage in a trial of the merits when considering the propriety of the settlement:

The trial court should not . . . turn the settlement hearing into a trial or a rehearsal of the trial nor need it reach any dispositive conclusions on the admittedly unsettled legal issues in the case. It is not part of its duty in approving a settlement to establish that as a matter of legal certainty . . . the subject claim or counterclaim is or is not worthless or valuable.

Flinn v. EMC Corp., 528 F.2d 1169, 1172–73 (4th Cir. 1975) (internal quotations and citations omitted) (granting final approval of settlement).

The Settlement is a product of extensive arm’s-length negotiation between counsel for the Parties. After many weeks of informal discussions between Lead Counsel and Defendants’ Counsel, the Parties were finally able to agree—in the midst of hard-fought

litigation and discovery disputes—to conduct a mediation of this action. As a result, on March 19, 2007, Lead Plaintiff and Defendants jointly requested that the Court grant a temporary stay of the Action so that the Parties, through a mediator, could determine whether a settlement could be reached. The Court granted that request.

The mediation was conducted by Antonio C. Piazza of Gregorio, Haldeman, Piazza, Rotman & Matityahu. Mr. Piazza is a renowned and extremely well-respected mediator of complex securities cases, and was instrumental in assisting the Parties in assessing their respective positions. After preparing and submitting comprehensive mediation statements to Mr. Piazza, the mediation was conducted over a two-day period in San Francisco, California, on Saturday and Sunday, April 14–15, 2007. Prior to the mediation session, Lead Plaintiff had been advised by various consultants and experts, had received—and was in the process of reviewing—over 2.5 million pages of documents produced by the Defendants in discovery, and had conducted approximately 120 interviews of 83 individuals concerning the matters at issue in this Action. After participating in the mediation late into the evening hours on Saturday, April 14, 2007, the Parties had still not reached an agreement. The Parties returned on Sunday morning, April 15, 2007, and finally reached a global resolution of this Action. At all times, the negotiations were an arm’s-length process that required all Parties and their counsel to assess difficult and uncertain outcomes. It is a testament to the Parties’ commitment to realistically evaluate their respective positions, and Lead Plaintiff respectfully submits that the Settlement should be preliminarily approved.

At the Fairness Hearing, Settlement Class Members who have timely served their notices of intention to appear may voice their objections. The Court can then consider the

merits of the Settlement in light of any objections and determine whether to grant final approval of the Settlement. Lead Counsel will have submitted briefs and other documents in support of the Settlement and in support of their request for attorneys' fees and reimbursement of expenses, and the Court will be asked to determine the appropriate amounts to be awarded. If the Court finds the Settlement fair and reasonable, the Court should enter the proposed Order and Final Judgment at that time, dismissing this Action with prejudice and releasing the claims as provided for in the Settlement Agreement.

5. Conclusion

Lead Plaintiff respectfully requests that this Court make a preliminary finding that the Settlement is reasonable and fair, and that notification to the Settlement Class Members of the terms of the Settlement and of their rights in connection with the Settlement is warranted.

Dated: June 20, 2007

Respectfully submitted,

CENTRAL LABORERS' PENSION FUND,
Individually and on Behalf of all Others Similarly
Situated, Lead Plaintiff

Marvin A. Miller
mmiller@millerlawllc.com
MILLER LAW LLC
101 North Wacker
Suite 2010
Chicago, Illinois 60602
Tel: (312) 525-8320
Fax: (312) 525-8231

Liaison Counsel for Plaintiff

By: /s/ Christopher S. Jones
Maya Saxena

msaxena@saxenawhite.com

Joseph E. White, III

jwhite@saxenawhite.com

Christopher S. Jones

cjones@saxenawhite.com

SAXENA WHITE P.A.

2424 N. Federal Highway, Suite 257

Boca Raton, Florida 33431

Tel: (561) 394-3399

Fax: (561) 394-3382

Lead Counsel for Plaintiff and Proposed Class

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 20, 2007, I filed this document on the Court's CM/ECF system, and the system will serve all counsel listed on the following service list by electronic mail.

By: s/ Christopher S. Jones
Christopher S. Jones

SERVICE LIST

<p>Courtney Ann Rosen Matthew Brian Kilby Richard Bradshaw Kapnick Tara Kocheran Charnes Brian A. McAleenan SIDLEY AUSTIN BROWN & WOOD LLP One South Dearborn Street Chicago, IL 60603 (312) 853-7000 Email: crosen@sidley.com mkilby@sidley.com rkapnick@sidley.com tcharnes@sidley.com bmcaleenan@sidley.com</p> <p><i>Attorneys for Defendants SIRVA, Inc., Brian P. Kelley, James W. Rogers, and Richard J. Schnall</i></p>	<p>Howard Steven Suskin Keith V. Porapaiboon JENNER & BLOCK, LLC One IBM Plaza 330 North Wabash Avenue 40th Floor Chicago, IL 60611 (312) 222-9350 Email: hsuskin@jenner.com kporapaiboon@jenner.com</p> <p><i>Attorneys for Defendant Joan E. Ryan</i></p>
<p>Christopher Davies WILMER CUTLER PICKERING HALE AND DORR LLP 2445 M Street, NW Washington, DC 20037 (202) 663-6187 Email: Christopher.davies@wilmerhale.com</p> <p>Peter M. King William H. Jones Canel, Davis & King 10 South LaSalle Street Suite 3400 Chicago, IL 60603 (312) 372-4142 Email: pking@daviskinglaw.com wjones@daviskinglaw.com</p> <p><i>Attorneys for Defendant PricewaterhouseCoopers LLP</i></p>	<p>John H. Hall Steven Klugman DEBEVOISE & PLIMPTON LLP 919 Third Avenue New York, NY 10022 (212) 909-6000 Email: jhhall@debevoise.com sklugman@debevoise.com</p> <p>John Conroy Martin Paul Edwin Greenwalt, III Schiff Hardin LLP 233 South Wacker Drive 6600 Sears Tower Chicago, IL 60606 (312) 258-5500 Email: jmartin@schiffhardin.com pgreenwalt@schiffhardin.com</p> <p><i>Attorneys for Defendant Clayton Dubilier & Rice Inc.</i></p>

Robert Y. Sperling
David E. Koropp
Michael Patrick DiGiannantonio
Ronald Steven Betman
WINSTON & STRAWN LLP
35 West Wacker Drive
Chicago, IL 60601
(312) 558-5600
Email: rsperling@winston.com
dkoropp@winston.com
mdigiannantonio@winston.com
nwigley@winston.com
rbetman@winston.com

*Attorneys for Defendants Banc of America
Securities LLC, Goldman, Sachs & Co.,
Citigroup Global Markets, Inc., J.P. Morgan
Securities, Inc., Credit Suisse First Boston
LLC, Morgan Stanley & Co. Inc., Deutsche
Bank Securities, Inc.*