

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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CAROL CHESEMORE, DANIEL  
DONKEL, THOMAS GIECK, MARTIN  
ROBBINS, and NANETTE STOFLET, on  
behalf of themselves, individually, and on  
behalf of all others similarly situated,

Plaintiffs,

v.

ORDER

09-cv-413-wmc

ALLIANCE HOLDINGS, INC., DAVID B.  
FENKELL, PAMELA KLUTE, JAMES  
MASTRANGELO, STEPHEN W. PAGELOW,  
JEFFREY A. SEEFELDT, TRACHTE  
BUILDING SYSTEMS, INC. EMPLOYEE  
STOCK OPTION PLAN, ALLIANCE HOLDINGS,  
INC. EMPLOYEE STOCK OPTION PLAN,  
A.H.I., INC., ALPHA INVESTMENT  
CONSULTING GROUP, LLC, JOHN MICHAEL  
MAIER, AH TRANSITION CORPORATION, and  
KAREN FENKELL,

Defendants;

PAMELA KLUTE, JAMES MASTRANGELO,  
and JEFFREY A. SEEFELDT,

Cross Claimants,

v.

ALLIANCE HOLDINGS, INC., and STEPHEN W.  
PAGELOW,

Cross Defendants.

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Before the court is a second motion by plaintiffs seeking preliminary approval of two additional class settlements: (1) a partial settlement with David Fenkell consisting of a \$375,000 cash payment (and possibly more) in exchange for plaintiffs' release of their

interest in Fenkell's Alliance ESOP account and (2) a settlement with the Alpha Investment Consulting Group, LLC and John Michael Maier (the "Alpha defendants"), whereby the Alpha defendants agree not to seek attorney's fees or costs and not to serve as fiduciaries in exchange for plaintiffs' economic interests in the ESOPs. (Dkt. #910.) The court previously granted preliminary approval for another set of class settlements, concerning different claims and other defendants. (Dkt. #889.) The court will also grant preliminary approval for these more recent settlements, as well as reset certain deadlines across all settlements and reschedule the fairness hearing for July 24, 2014, to take up all of the settlements for which the court has granted preliminary approval at one hearing.

#### **A. Preliminary Approval**

1. Based upon the court's review of plaintiffs' motion and all papers submitted in connection with this motion, the court preliminarily concludes that the proposed settlements are "within the range of possible approval." *Armstrong v. Bd. of Sch. Dirs. of City of Milwaukee*, 616 F.2d 305, 314 (7th Cir. 1980), *overruled on other grounds by Felzen v. Andreas*, 134 F.3d 873 (7th Cir. 1998).

2. Specifically, the court finds that the proposed settlements appear "fair, reasonable, and adequate." *Uhl v. Thoroughbred Tech. & Telecomms., Inc.*, 309 F.3d 978, 986 (7th Cir. 2002). More specifically, the court finds that (a) the settlement figures and other provisions falls within a reasonable range; (b) the settlement factors in defendants' ability to recover and to pay; (c) the settlement take into account the complexity, expense and

duration of further litigation, including an appeal; (d) the settlement resulted out of arms-length negotiations; and (e) at this advanced stage of litigation, plaintiffs were well equipped to evaluate the merits of their case.

3. While the court is satisfied that the settlement is facially reasonable, it intends to scrutinize class counsel's application for attorneys' fees when the time comes for its final approval. Class counsel are put on notice that the court may use their hourly billing records and billing rates as a factor in determining an appropriate fee award, as well as that defendants and their counsel will not be precluded from taking any reasonable position with regard to such an award notwithstanding any provision in a settlement agreement to the contrary.

#### **B. Class Notice and Settlement Procedure**

1. The court approves plaintiffs' revised class notice and class questionnaire (dkt. #910-2), which includes the addition of the partial settlement with David Fenkell and the settlement with the Alpha defendants.

2. The content of the notice fully complies with due process and Fed. R. Civ. P. 23.

3. Pursuant to Fed. R. Civ. P. 23(c)(2)(B), a notice must provide:

the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice must concisely and clearly state in plain, easily understood language: the nature of the action; the definition of the class certified; the class claims, issues, or defenses; that a class member may enter an appearance through counsel if the member so desires; that the court will exclude from the class any member who requests exclusion, stating when and how members may elect to be

excluded; and the binding effect of a class judgment on class members under Rule 23(c)(3).

Fed. R. Civ. P. 23(c)(2)(B).

4. The court finds the revised notice satisfies each of these requirements and adequately put class members on notice of the proposed settlements. Specifically, the notice describes the terms of the settlements, instructs class members about their rights and options under those settlements, adequately informs the class about the allocation of attorneys' fees, and provides specific information regarding the date, time, and place of the final approval hearing.

5. The court will, therefore, approve the following settlement procedure and timeline:

- a) On or before April 16, 2014, defendants shall provide notices and materials required by CAFA, 28 U.S.C. § 1715(b), for the two new settlements.
- b) On or before April 21, 2014, notice should be issued to the class members.
- c) On or before May 19, 2014, class counsel shall file a declaration to the court confirming compliance with notice procedures.
- d) On or before June 12, 2014, class counsel shall file a motion for attorney's fees and costs and a motion for service award for class representative.
- e) Class members shall have until July 3, 2014, to review the terms of the settlement, return the questionnaire (for subclass members), or object.
- f) On or before July 10, 2014, plaintiffs shall file a motion for final approval of the class action settlement.
- g) The court will hold a fairness hearing on the class action settlement on July 24, 2014, at 1:00 p.m.

ORDER

IT IS ORDER that plaintiffs' motion for preliminary approval of class action settlements (dkt. #910) is GRANTED.

IT IS ORDERED this 9th day of April, 2014.

BY THE COURT:

/s/

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WILLIAM M. CONLEY  
District Judge