



2019-07222-0216 9/15/2020 12:59 PM # 12855646
Rcpt#Z3927101 Fee:\$0.00 Order
Main (Public)
MontCo Prothonotary

**IN THE COURT OF COMMON PLEAS OF
MONTGOMERY COUNTY, PENNSYLVANIA**

IN RE BRIGHTVIEW HOLDINGS, INC.
SECURITIES LITIGATION

CIVIL ACTION

Consolidated Case No. 2019-07222

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

WHEREAS, as of August 27, 2020, Lead Plaintiff Gregory S. McComas, Sr.

("McComas" or "Lead Plaintiff"), on behalf of himself and all other members of the Settlement Class (defined below), on the one hand, and BrightView Holdings, Inc. ("BrightView" or the "Company"); MSD Partners L.P., MSD Valley Investment, LLC (collectively, "MSD"); Kohlberg Kravis Roberts & Co. L.P., and KKR BrightView Aggregator L.P. (collectively "KKR"); Andrew V. Masterman, John A. Feenan; Louay H. Khatib; James R. Abrahamson, David R. Caro, Paul E. Raether, Richard W. Roedel, and Joshua T. Weisenbeck (collectively the "Individual Defendants"); and Goldman Sachs & Co. LLC, J.P. Morgan Securities LLC, KKR Capital Markets LLC, UBS Securities LLC, Robert W. Baird & Co. Incorporated, Credit Suisse Securities (USA) LLC, Macquarie Capital (USA) Inc., Jefferies LLC, Mizuho Securities USA LLC, Morgan Stanley & Co. LLC, RBC Capital Markets, LLC, Nomura Securities International, Inc., Stifel, Nicolaus & Company, Incorporated, William Blair & Company, L.L.C., Moelis & Company LLC, and SMBC Nikko Securities America, Inc. (collectively the "Underwriter Defendants" and with BrightView, MSD, KKR, and the Individual Defendants, collectively, the

“Defendants”), on the other, entered into a Stipulation and Agreement of Settlement (the “Stipulation”) in the above-titled litigation (the “Action”), which is subject to review under Rule 1714 of the Pennsylvania Rules of Civil Procedure, and which, together with the exhibits thereto, sets forth the terms and conditions of the proposed settlement of the Action, including the claims alleged in the Amended Class Action Complaint, filed on May 31, 2019, on the merits and with prejudice (the “Settlement”); and

WHEREAS, the Court has reviewed and considered the Stipulation and the accompanying exhibits; and

WHEREAS, the Parties to the Stipulation have consented to the entry of this order; and

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

NOW, THEREFORE, IT IS HEREBY ORDERED, this 15th day of September, 2020 that:

1. The Court has reviewed the Stipulation and preliminarily finds that the Settlement set forth therein is fair, reasonable, and adequate, subject to further consideration at the Settlement Hearing described below, and that notice of the Settlement should be issued to the Settlement Class, as set forth below.

2. Pursuant to Pa. R. Civ. P. 1702, 1708 & 1709, the Court hereby preliminarily certifies, for the purposes of the Settlement only, the Settlement Class of: all persons and entities who or which purchased or otherwise acquired BrightView’s publicly traded common stock pursuant and/or traceable to the Company’s Offering Materials for its initial public offering of 24,495,000 shares, and who were allegedly damaged thereby. Excluded from the Settlement Class are: (i) Defendants and the Individual Defendants’ immediate family members; (ii) the

Officers and Directors of BrightView, KKR, MSD, and the Underwriter Defendants; (iii) any entity that is an affiliate of a Defendant or in which any Defendant has or had a controlling interest, provided, however, that any "Investment Vehicle" shall not be excluded from the Settlement Class; and (iv) the legal representatives, heirs, successors, or assigns of any excluded person or entity. Also excluded from the Settlement Class are any Settlement Class Members who properly exclude themselves by submitting a valid and timely request for exclusion in accordance with the requirements set forth below and in the Notice.

3. The Court preliminarily finds and concludes that the prerequisites of class action certification under Pa. R. Civ. P. 1702, 1708 & 1709 have been satisfied for the Settlement Class defined herein, and for the purposes of the Settlement only, in that:

- (a) the Settlement Class is so numerous that joinder of all members is impracticable;
- (b) there are questions of law or fact common to the Settlement Class;
- (c) the claims or defenses of the representative parties are typical of the claims or defenses of the Settlement Class;
- (d) the representative parties will fairly and adequately assert and protect the interests of the Settlement Class under the criteria set forth in Rule 1709; and
- (e) a class action provides a fair and efficient method for adjudication of the controversy under the criteria set forth in Rule 1708.

4. Pursuant to Pa. R. Civ. P. 1709, and for the purposes of the Settlement only, Lead Plaintiff Gregory S. McComas, Sr. is preliminarily appointed Class Representative for the Settlement Class; and law firms of Labaton Sucharow LLP, Thornton Law Firm LLP, and

Pomerantz LLP are preliminarily appointed as Class Counsel and Goldman Scarlato & Penny P.C. as Liaison Counsel for the Settlement Class.

5. A hearing (the “Settlement Hearing”), pursuant to Pa. R. Civ. P. 1714, is hereby scheduled to be held before the Court, on **December 14, 2020, at 1:30 p.m.** The Settlement Hearing will be held remotely through video conferencing technology on the Zoom Meetings platform. Approximately four weeks in advance of the Settlement Hearing, the Court will provide log-in information to Class Counsel and Liaison Counsel for the Settlement Class, who shall make such information available to all appropriate persons, including all Settlement Class Members that request it. The Settlement Hearing will have 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 Final Order and Judgment (“Judgment”), as provided under the Stipulation, should be entered, and to determine whether the release by the Settlement Class of the Released Claims, as set forth in the Stipulation, should be provided to the Released Defendant Parties;

(c) to determine, for purposes of the Settlement only, whether the Settlement Class should be finally certified; whether Lead Plaintiff should be finally certified as Class Representative for the Settlement Class; whether the law firms of Labaton Sucharow LLP, Thornton Law Firm LLP, and Pomerantz LLP should be finally appointed as Class Counsel for the Settlement Class; and whether Goldman Scarlato & Penny, P.C. should be finally appointed as Liaison Counsel for the Settlement Class;

(d) 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;

(e) to consider Co-Lead Counsel's application for an award of attorneys' fees and expenses (which may include an application for a service award to Lead Plaintiff related to his representation of the Settlement Class); and

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

6. The Court reserves the right to approve the Settlement with or without modification and with or without further notice to the Settlement Class of any kind. The Court further reserves the right to enter the Judgment approving the Settlement regardless of whether it has approved the Plan of Allocation or awarded attorneys' fees and/or expenses. The Court may also adjourn the Settlement Hearing or modify any of the dates herein without further individual notice to members of the Settlement Class. Any such changes shall be posted on the website of the Claims Administrator.

7. The Court approves the form, substance and requirements of the Notice of Pendency of Class Action, Proposed Settlement, and Motion for Attorneys' Fees and Expenses (the "Notice") and the Proof of Claim and Release form ("Proof of Claim"), substantially in the forms annexed hereto as Exhibits 1 and 2, respectively, with blanks to be filled in as appropriate, consistently with the provisions of this Order

8. The Court approves the retention of A.B. Data, Ltd. as the Claims Administrator. The Claims Administrator shall cause the Notice and the Proof of Claim to be mailed, by first-class mail, postage prepaid, to all Settlement Class Members who can be identified with reasonable effort, on a date ("Notice Date") that is no more than ten (10) business days after entry of this Preliminary Approval Order. BrightView, to the extent it has not already done so, shall use its best efforts to obtain and provide to Co-Lead Counsel, or the Claims Administrator, transfer records in electronic searchable form containing the names and addresses of Persons

who purchased or otherwise acquired the Company's publicly traded common stock issued pursuant to the Company's Offering, no later than seven (7) business days after entry of this Preliminary Approval Order, to the extent available.

9. The Claims Administrator shall use reasonable efforts to give notice to nominee purchasers such as brokerage firms and other persons or entities who purchased or otherwise acquired the publicly traded common stock of BrightView in the Offering as record owners but not as beneficial owners (collectively, "nominees"). Such nominees SHALL EITHER: (a) WITHIN TEN (10) BUSINESS DAYS of receipt of the Notice, request from the Claims Administrator sufficient copies of the Notice to forward to all such beneficial owners and WITHIN TEN (10) BUSINESS DAYS of receipt of those Notices from the Claims Administrator forward them to all such beneficial owners; or (b) WITHIN TEN (10) BUSINESS DAYS of receipt of the Notice, provide a list of the names and addresses of all such beneficial owners to the Claims Administrator and the Claims Administrator is ordered to send the Notice promptly to such identified beneficial owners. Nominees who elect to send the Notice to their beneficial owners SHALL ALSO send a statement to the Claims Administrator confirming that the mailing was made and shall retain their mailing records for use in connection with any further notices that may be provided in the Action. Upon full and timely compliance with these directions, such nominees may seek reimbursement of their reasonable expenses actually incurred by providing the Claims Administrator with proper documentation supporting the expenses for which reimbursement is sought.

10. Co-Lead Counsel shall, at least seven (7) calendar days before the Settlement Hearing, file with the Court proof of mailing of the Notice and Proof of Claim.

11. The Court approves the form of the Summary Notice of Pendency of Class Action, Proposed Settlement, and Motion for Attorneys' Fees and Expenses ("Summary Notice"), substantially in the form annexed hereto as Exhibit 3, with blanks to be filled in as appropriate, consistently with the provisions of this Order, and directs that Co-Lead Counsel shall cause the Summary Notice to be published in *The Wall Street Journal* and be transmitted over *PR Newswire* within fourteen (14) calendar days of the Notice Date. Co-Lead Counsel shall, at least seven (7) calendar days before the Settlement Hearing, file with the Court proof of publication of the Summary Notice.

12. The form and content of the notice program described herein, and the methods set forth herein of notifying the Settlement Class of the Settlement and its terms and conditions, meet the requirements of Pa. R. Civ. P. 1712, Section 27 of the Securities Act of 1933, 15 U.S.C. § 77z-1(a)(7) (to the extent applicable, if at all), and due process, constitute the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all Persons entitled thereto.

13. In order to be eligible to receive a distribution from the Net Settlement Fund, in the event the Settlement is effected in accordance with the terms and conditions set forth in the Stipulation, each Claimant shall take the following actions and be subject to the following conditions:

(a) A properly executed Proof of Claim, substantially in the form annexed hereto as Exhibit 2, must be submitted to the Claims Administrator, at the address indicated in the Notice, postmarked no later than 120 calendar days after the Notice Date. Such deadline may be further extended by Court order or by Co-Lead Counsel in their discretion. Each Proof of Claim shall be deemed to have been submitted when postmarked (if properly addressed and

mailed by first-class or overnight mail, postage prepaid). Any Proof of Claim submitted in any other manner shall be deemed to have been submitted when it was actually received at the address designated in the Notice. Any Settlement Class Member who does not timely submit a Proof of Claim within the time provided for shall be forever barred from sharing in the distribution of the Net Settlement Fund, unless otherwise ordered by the Court, but shall remain bound by all determinations and judgments in this Action concerning the Settlement, as provided by paragraph 15 of this order.

(b) The Proof of Claim submitted by each Claimant must satisfy the following conditions, unless otherwise allowed pursuant to the Stipulation: (i) it must be properly completed, signed and submitted in a timely manner in accordance with the provisions of the preceding subparagraph; (ii) it must be accompanied by adequate supporting documentation for the transactions reported therein, in the form of broker confirmation slips, broker account statements, an authorized statement from the broker containing the transactional information found in a broker confirmation slip, or such other documentation as is deemed adequate by the Claims Administrator and/or Co-Lead Counsel; (iii) if the person executing the Proof of Claim is acting in a representative capacity, a certification of his or her current authority to act on behalf of the Claimant must be included in the Proof of Claim; and (iv) the Proof of Claim must be complete and contain no material deletions or modifications of any of the printed matter contained therein and must be signed under penalty of perjury.

(c) As part of the Proof of Claim, each Claimant shall submit to the jurisdiction of the Court with respect to the claim submitted.

14. Any Settlement 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

Settlement Class Member does not enter an appearance, he, she or it will be represented by Co-Lead Counsel.

15. Settlement Class Members shall be bound by all orders, determinations and judgments in this Action concerning the Settlement, whether favorable or unfavorable, unless such Persons request exclusion from the Settlement Class in a timely and proper manner, as hereinafter provided. A putative Settlement Class Member wishing to make such an exclusion request shall mail the request in written form by first-class mail to the Claims Administrator at the address designated in the Notice for such exclusions, such that it is received no later than twenty-one (21) calendar days prior to the Settlement Hearing. Such request for exclusion must state the name, address, telephone number, and e-mail address of the Person seeking exclusion, must state that the Person requests to be “excluded from the Settlement Class in *In re BrightView Holdings, Inc. Sec. Litig.*, No. 2019-07222” and must be signed by such Person. Such Persons requesting exclusion are also directed to state the information requested in the Notice, including, but not limited to the date(s), price(s), and number(s) of shares of all purchases and acquisitions of BrightView common stock pursuant and/or traceable to the Offering and the date(s), price(s), and number(s) of shares of all sales of BrightView common stock through April 16, 2019, and to provide documentation of the purchases/acquisitions to show they were part of the Offering. The request for exclusion shall not be effective unless it provides the required information and is made within the time stated above, or the exclusion is otherwise accepted by the Court. Upon receiving any request for exclusion pursuant to the Notice, Co-Lead Counsel shall promptly, and certainly no later than five (5) calendar days after receiving a request for exclusion or fifteen (15) calendar days prior to the Settlement Hearing, whichever is earlier, notify Defendants’ Counsel

of such request for exclusion and provide by email copies of such request for exclusion and any documentation accompanying it.

16. Settlement Class Members requesting exclusion from the Settlement Class shall not be eligible to receive any payment out of the Net Settlement Fund as described in the Stipulation and Notice.

17. The Court will consider any Settlement Class Member's objection to the Settlement, the Plan of Allocation, and/or the application for an award of attorneys' fees or expenses only if such Settlement Class Member has served by hand or by mail his, her or its written objection and supporting papers, such that they are received at least twenty-one (21) calendar days before the Settlement Hearing, upon Co-Lead Counsel Representative: Alfred L. Fatale, III., Esq., Labaton Sucharow LLP, 140 Broadway, New York, NY 10005; and Defendants' Counsel Representative: Alan R. Friedman, Esq., Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, NY 10036 and has filed said objections and supporting papers with the Court at the Office of the Prothonotary, Montgomery County Court House, P.O. Box 311, Norristown, PA 19404-0311. To object, a Settlement Class Member must send a signed statement containing all of the components for objections set forth in the Notice (specifically in the answer to Question 16 of the Notice). Any Settlement Class Member who does not make his, her, or its objection in accordance with 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 request for attorneys' fees and expenses, unless otherwise ordered by the Court, but shall otherwise be bound by the Judgment to be entered and the releases to be given. Attendance at the Settlement Hearing by an objector is not necessary; however, persons wishing to be heard orally in opposition to the approval of the

Settlement, the Plan of Allocation, and/or the application for an award of attorneys' fees and other expenses are required to indicate in their written objection their intention to appear at the Settlement Hearing.

18. Settlement Class Members do not need to appear at the hearing or take any other action to indicate their approval.

19. Pending final determination of whether the Settlement should be approved, Lead Plaintiff and all Settlement Class Members, and anyone who acts or purports to act on their behalf, shall not institute, commence or prosecute any action which asserts Released Claims against the Released Defendant Parties without leave of the Court in this case.

20. All papers in support of the Settlement, Plan of Allocation, and Co-Lead Counsel's request for an award of attorneys' fees and expenses shall be filed with the Court and served at least thirty-five (35) calendar days prior to the date set herein for the Settlement Hearing. If reply papers are necessary, they are to be filed with the Court and served at least seven (7) calendar days prior to the Settlement Hearing.

21. All proceedings in the Action are stayed until further order of this Court, except as may be necessary to implement the Settlement or comply with the terms of the Stipulation or as otherwise provided herein.

22. The passage of title and ownership of the Settlement Fund to the Escrow Agent in accordance with the terms and obligations of the Stipulation is approved. No person who is not a Settlement Class Member or Co-Lead Counsel shall have any right to any portion of, or to any distribution of, the Net Settlement Fund unless otherwise ordered by the Court or otherwise provided in the Stipulation.

23. All funds held in escrow shall be deemed and considered to be *in custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court until such time as such funds shall be disbursed pursuant to the Stipulation, the Plan of Allocation, and/or further order of the Court.

24. Except for the obligation concerning transfer records set forth in paragraph 8, in no event shall the Defendants or any of the Released Parties have any responsibility for the administration of the Settlement, and neither the Defendants nor any of the Released Parties shall have any obligation or liability to the Lead Plaintiff, Co-Lead Counsel, Claims Administrator, or the Settlement Class, in connection with such administration.

25. The Defendants have denied, and continue to deny, any and all allegations and claims asserted in the Action, and Defendants have represented that they entered into the Settlement solely in order to eliminate the burden, expense, and uncertainties of further litigation. This Order and the Stipulation, whether the Settlement contemplated by the Stipulation is consummated or not, and any statements made or proceedings taken pursuant to them are not, shall not be deemed to be, and may not be argued to be or offered or received against or to the prejudice of the Parties or their respective counsel, for any purpose other than in an action or any proceeding or motion to enforce the terms hereof, and in particular:

(a) do not constitute, and shall not be offered or received against or to the prejudice of Defendants as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by Defendants or any Released Defendant Party with respect to the truth of any allegation by Lead Plaintiff and the Settlement Class, or the validity of any claim that has been or could have been asserted in the Action or in any litigation,

including but not limited to the Released Claims, or of any liability, damages, negligence, fault or wrongdoing of Defendants or any person or entity whatsoever;

(b) do not constitute, and shall not be offered or received against or to the prejudice of Defendants as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by Defendants or any Released Defendant Party of any fault, misrepresentation, or omission with respect to any statement or written document approved or made by Defendants, or against or to the prejudice of Lead Plaintiff, or any other member of the Settlement Class as evidence of any infirmity in the claims of Lead Plaintiff, or the other members of the Settlement Class;

(c) do not constitute, and shall not be offered or received against or to the prejudice of Defendants as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by Defendants or any Released Defendant Party, Lead Plaintiff, any other member of the Settlement Class, or their respective counsel with respect to any liability, damages, negligence, fault, infirmity, or wrongdoing, or in any way referred to for any other reason against or to the prejudice of any of the Defendants or any Released Defendant Party, Lead Plaintiff, other members of the Settlement Class, or their respective counsel, in any other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation;

(d) do not constitute, and shall not be offered or received against or to the prejudice of Defendants as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by Defendants or any Released Defendant Party, Lead Plaintiff, or any other member of the Settlement Class, that the consideration to be

given hereunder represents the amount that could be or would have been recovered after trial;

(e) do not constitute, and shall not be offered or received against or to the prejudice of Defendants as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by Lead Plaintiff, or any other member of the Settlement Class that any of their claims are without merit or infirm or that damages recoverable under the Complaint or Amended Complaint would not have exceeded the Settlement Amount; and

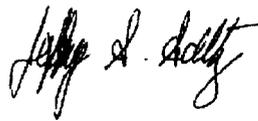
(f) do not constitute, and shall not be offered or received against or to the prejudice of Defendants as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by Defendants or any Released Defendant Party that class certification is appropriate in this Action or any other action, except for the purposes of this Settlement.

26. If the Settlement fails to become effective as defined in the Stipulation or is terminated, then both the Stipulation, including any amendment(s) thereof, except as expressly provided in the Stipulation and this Preliminary Approval Order shall be null and void, of no further force or effect, and without prejudice to any Party, and may not be introduced as evidence or used in any actions or proceedings by any person or entity against the Parties, and the Parties shall be deemed to have reverted to their respective litigation positions in the Action immediately prior to March 25, 2020.

27. The Court retains exclusive jurisdiction over the Action to consider all further matters arising out of or connected with the Settlement, including any modification to or enforcement of this Order upon application of counsel or on the Court's own initiative.

DATED this 15th day of September, 2020

BY THE COURT:

A handwritten signature in black ink, appearing to read "Jeffrey S. Saltz". The signature is written in a cursive, slightly slanted style.

JEFFREY S. SALTZ, J.