

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

IN RE BRIGHTVIEW HOLDINGS, INC.
SECURITIES LITIGATION

CIVIL ACTION

Consolidated Case No. 2019-07222

FINAL ORDER AND JUDGMENT¹

WHEREAS:

A. On 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

¹ *This Order is substantially in the form proposed by Co-Lead Counsel. For ease of reference, the Court’s modifications to the proposed Order appear in italics.*

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”);

B. Pursuant to the Order Granting Preliminary Approval of Class Action Settlement, Approving Form and Manner of Notice, and Setting Date for Hearing on Final Approval of Settlement, entered on September 15, 2020 (the “Preliminary Approval Order”), the Court scheduled a hearing for December 14, 2020, at 1:30 p.m. (the “Settlement Hearing”) to, among other things: (i) determine whether the proposed Settlement of the Action on the terms and conditions provided for in the Stipulation is fair, reasonable, and adequate, and should be approved by the Court; (ii) determine whether a judgment as provided for in the Stipulation should be entered; and (iii) rule on Co-Lead Counsel’s Fee and Expense Application;

C. The Court ordered that the Notice of Pendency of Class Action, Proposed Settlement, and Motion for Attorneys’ Fees and Expenses (the “Notice”) and a Proof of Claim and Release form (“Proof of Claim”), substantially in the forms attached to the Preliminary Approval Order as Exhibits 1 and 2, respectively, be mailed by first-class mail, postage prepaid, on or before ten (10) business days after the date of entry of the Preliminary Approval Order (“Notice Date”) to all potential Settlement Class Members who could be identified through reasonable effort, and that a Summary Notice of Pendency of Class Action, Proposed Settlement, and Motion for Attorneys’ Fees and Expenses (the “Summary Notice”), substantially in the form

attached to the Preliminary Approval Order as Exhibit 3, be published in *The Wall Street Journal* and transmitted over *PR Newswire* within fourteen (14) calendar days of the Notice Date;

D. The Notice and the Summary Notice advised potential Settlement Class Members of the date, time, place, and purpose of the Settlement Hearing. The Notice further advised that any objections to the Settlement were required to be filed with the Court and served on counsel for the Parties such that they were received by November 23, 2020;

E. The provisions of the Preliminary Approval Order as to notice were complied with;

F. On November 9, 2020, Lead Plaintiff moved for final approval of the Settlement, as set forth in the Preliminary Approval Order. The Settlement Hearing was duly held before this Court on December 14, 2020, at which time all interested Persons were afforded the opportunity to be heard; and

G. This Court has duly considered Lead Plaintiff's motion, the affidavits, declarations, memoranda of law submitted in support thereof, the Stipulation, and all of the submissions and arguments presented with respect to the proposed Settlement;

NOW, THEREFORE, after due deliberation, IT IS ORDERED, ADJUDGED AND DECREED that:

1. This Judgment incorporates and makes a part hereof: (i) the Stipulation filed with the Court on August 31, 2020; and (ii) the Notice, which was filed with the Court on November 9, 2020. Capitalized terms not defined in this Judgment shall have the meaning set forth in the Stipulation.

2. This Court has jurisdiction over the subject matter of the Action and over all parties to the Action, including all Settlement Class Members.

3. The Court hereby affirms its determinations in the Preliminary Approval Order and finally certifies, for purposes of the Settlement only, pursuant to Pa. R. Civ. P. 1702, 1708 & 1709, 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) and 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. No Person has requested exclusion from the Settlement Class.

4. Pursuant to Pa. R. Civ. P. 1709, and for purposes of the Settlement only, the Court hereby re-affirms its determinations in the Preliminary Approval Order and finally certifies Lead Plaintiff Gregory S. McComas, Sr. as Class Representative for the Settlement Class; and finally appoints the law firms of Labaton Sucharow LLP, Thornton Law Firm LLP, and Pomerantz LLP as Class Counsel and Goldman Scarlato & Penny P.C. as Liaison Counsel for the Settlement Class.

5. The Court finds that the mailing and publication of the Notice, Summary Notice, and Proof of Claim: (i) complied with the Preliminary Approval Order; (ii) constituted the best notice practicable under the circumstances; (iii) constituted notice reasonably calculated to apprise Settlement Class Members of the effect of the Settlement, of the proposed Plan of Allocation, of Co-Lead Counsel's request for an award of attorney's fees and payment of

litigation expenses incurred in connection with the prosecution of the Action, of Settlement Class Members' right to object or seek exclusion from the Settlement Class, and of their right to appear at the Settlement Hearing; (iv) constituted due, adequate, and sufficient notice to all Persons entitled to receive notice of the proposed Settlement; and (v) satisfied the notice requirements of Pa. R. Civ. P. 1712, the United States Constitution (including the Due Process Clause), and Section 27 of the Securities Act of 1933 (to the extent applicable, if at all).

6. There have been no objections to the Settlement.

7. In light of the risks of establishing liability and damages; the range of reasonableness of the Settlement in light of the best possible recovery and the attendant risks of litigation; the complexity, expense, and likely duration of the litigation; the state of proceedings and the amount of discovery completed; the recommendations of Co-Lead Counsel; and the reaction of the Settlement Class to the Settlement, the Court hereby fully and finally approves the Settlement as set forth in the Stipulation in all respects, and finds that the Settlement is, in all respects, fair, reasonable and adequate, and in the best interests of Lead Plaintiff and the Settlement Class. This Court further finds the Settlement set forth in the Stipulation is the result of arm's-length negotiations between experienced counsel representing the interests of Lead Plaintiff, the Settlement Class, and Defendants. The Settlement shall be consummated in accordance with the terms and provisions of the Stipulation.

8. The Amended Class Action Complaint, filed on May 31, 2019, is **DISMISSED IN ITS ENTIRETY, WITH PREJUDICE** as of the Effective Date and without costs to any Party.

9. *[Omitted by the Court]*

10. The releases set forth in the Stipulation, together with the definitions contained in the Stipulation relating thereto, are expressly incorporated herein in all respects and are effective as of the Effective Date. Each Settlement Class Member, whether or not such Settlement Class Member executes and delivers a Proof of Claim, is bound by this Judgment, including, without limitation, the release of claims as set forth in the Stipulation.

11. Upon the Effective Date, Lead Plaintiff and each and every other Settlement Class Member, on behalf of themselves and each of their respective heirs, executors, trustees, administrators, predecessors, successors, and assigns, shall be deemed to have fully, finally, and forever waived, released, discharged, and dismissed each and every one of the Released Claims against each and every one of the Released Defendant Parties and shall forever be barred and enjoined from commencing, instituting, prosecuting, or maintaining any and all of the Released Claims against any and all of the Released Defendant Parties.

12. Upon the Effective Date, Defendants, on behalf of themselves and each of their respective heirs, executors, trustees, administrators, predecessors, successors, and assigns, shall be deemed to have fully, finally, and forever waived, released, discharged, and dismissed each and every one of the Released Defendants' Claims against each and every one of the Released Plaintiff Parties and shall forever be barred and enjoined from commencing, instituting, prosecuting, or maintaining any and all of the Released Defendants' Claims against any and all of the Released Plaintiff Parties.

13. 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 Judgment and the Stipulation, whether or not consummated, and any discussion, negotiation,

proceeding, or agreement relating to the Stipulation, the Settlement, and/or any matter arising in connection with settlement discussions or negotiations, proceedings, or agreements, shall not be 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 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 Lead Plaintiff 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.

14. Notwithstanding the foregoing, this Judgment, including the releases herein, has full preclusive effect on all Parties, including the Settlement Class, and the Parties and other Released Party may file or refer to this Judgment, the Stipulation, and/or any Proof of Claim: (i) to effectuate the liability protections granted hereunder, including without limitation, to support a

defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, statute of limitations, statute of repose, good-faith settlement, judgment bar or reduction, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim; (ii) to enforce any applicable insurance policies and any agreements relating thereto; or (iii) to enforce the terms of the Stipulation and/or this Judgment. The Parties and other Released Parties submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement.

15. The administration of the Settlement, and the decision of all disputed questions of law and fact with respect to the validity of any claim or right of any Person to participate in the distribution of the Net Settlement Fund, shall remain under the authority of this Court.

16. In the event that the Settlement does not become effective in accordance with the terms of the Stipulation, then this Judgment shall be rendered null and void and shall be vacated to the extent provided by and in accordance with the Stipulation, and in such event, all orders entered and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Stipulation.

17. Without further order of the Court, the Parties may agree to reasonable extensions of time to carry out any of the provisions of the Stipulation.

18. The Parties are hereby authorized, without further approval of the Court, to unanimously agree to and adopt in writing such amendments, modifications, and expansions of the Stipulation, provided that such amendments, modifications, and expansions of the Stipulation are not materially inconsistent with this Judgment, and do not materially limit the rights of the Members of the Class under the Stipulation.

19. Subject to the ability to amend or modify the Stipulation in accordance with paragraph 18 above, the Parties are hereby directed to consummate the Stipulation and to perform its terms.

APPROVAL OF THE PLAN OF ALLOCATION

20. Copies of the Notice, which included the proposed Plan of Allocation, were mailed to 17,936 potential Settlement Class Members and nominees. No objections to the Plan of Allocation have been received.

21. The Court hereby finds and concludes that the Plan of Allocation for the calculation of the claims of claimants and distribution of the Net Settlement Fund, which was set forth in the Notice disseminated to Settlement Class Members, provides a fair and reasonable basis upon which to allocate the Net Settlement Fund among eligible Settlement Class Members.

22. Pursuant to the Plan of Allocation, distributions will be made to eligible Authorized Claimants after all claims have been processed and after the Court has finally approved the Settlement. If there is any balance remaining in the Net Settlement Fund (whether by reason of tax refunds, uncashed checks or otherwise) after at least six (6) months from the date of initial distribution of the Net Settlement Fund, the Claims Administrator shall, if feasible and economical after payment of Notice and Administration Expenses, Taxes, and attorneys' fees and expenses, if any, redistribute such balance among Authorized Claimants who have cashed their checks in an equitable and economic fashion. Redistributions, after payment of Notice and Administration Expenses, Taxes, and attorneys' fees and expenses, if any, shall continue to Authorized Claimants who have cashed their checks in an equitable and economic fashion until it is no longer feasible or economical to do so. Once it is no longer feasible or economical to make further distributions, any balance that still remains in the Net Settlement

Fund after re-distribution(s) and after payment of outstanding Notice and Administration Expenses, Taxes, and attorneys' fees and expenses, if any, shall be donated as follows: 50% of the unclaimed balance to the Pennsylvania Interest on Lawyers Trust Account Board and 50% of the unclaimed balance to the Consumer Federation of America, a private, non-profit, non-sectarian 501(c)(3) organization, or as otherwise approved by the Court.

23. The Court hereby finds and concludes that the Plan of Allocation, as set forth in the Notice, is, in all respects, fair and reasonable and the Court hereby approves the Plan of Allocation.

24. The Court's approval of the Plan of Allocation is a matter separate and distinct from approval of the Settlement and shall in no way disturb or affect the finality of the Judgment entered with respect to the Settlement.

CO-LEAD COUNSEL'S FEE AND EXPENSE APPLICATION

25. Co-Lead Counsel is hereby awarded, on behalf of all Plaintiff's Counsel, attorneys' fees *equal to thirty percent (30%) of the Settlement Fund (including interest earned in the Settlement Fund) plus reimbursement* of litigation expenses in the amount of \$86,071.14, which sums the Court finds to be fair and reasonable.²

26. The award of attorneys' fees and litigation expenses may be paid to Co-Lead Counsel from the Settlement Fund immediately upon entry of this Judgment, subject to the terms, conditions, and obligations of the Stipulation, which terms, conditions, and obligations are incorporated herein. *Supplemental distributions of attorneys' fees in the amount of 30% of*

² *For reasons expressed during the Settlement Hearing, the Court finds the 30% figure to be more appropriate than the 33.3% figure requested by Co-Lead Counsel. It is also noted that this percentage is applied to the gross amount of the Settlement Fund, without first subtracting the litigation expenses and the service award to the Lead Plaintiff.*

interest hereafter earned in the Settlement Fund may be made at reasonable intervals, to the extent feasible.

27. In making this award of attorneys' fees and payment of litigation expenses to be paid from the Settlement Fund, the Court has found that:

(a) The Settlement has created a common fund of \$11.5 million in cash and that numerous Settlement Class Members who submit acceptable Claim Forms will benefit from the Settlement created by the efforts of Co-Lead Counsel;

(b) The requested attorneys' fees and payment of litigation expenses have been reviewed and approved as fair and reasonable by Lead Plaintiff, who was directly involved in the prosecution and resolution of the Action and who has a substantial interest in ensuring that any fees paid to Plaintiff's Counsel are duly earned and not excessive;

(c) Co-Lead Counsel undertook the Action on a contingent basis, and have received no compensation during the Action, and any fee and expense award has been contingent on the result achieved;

(d) The Action involves complex factual and legal issues and, in the absence of settlement, would involve lengthy proceedings whose resolution would be uncertain;

(e) Co-Lead Counsel conducted the Action and achieved the Settlement with skillful and diligent advocacy;

(f) Plaintiff's Counsel have devoted approximately 3,197 hours *[language omitted by the Court]* to achieve the Settlement;

(g) The amount of attorneys' fees awarded are fair and reasonable and consistent with fee awards approved in cases with similar recoveries;

(h) Notice was disseminated to putative Settlement Class Members stating that Co-Lead Counsel would be submitting an application for attorneys' fees in an amount not to exceed 33 1/3% of the Settlement Fund, which includes interest, and payment of litigation expenses incurred in connection with the prosecution of this Action in an amount not to exceed \$150,000, plus interest, and that such application also might include a request for a service award for Lead Plaintiff related to its representation of the Settlement Class; and

(i) There were no objections to the application for attorneys' fees or expenses.

28. The Court hereby awards Lead Plaintiff \$15,000 for his representation of the Settlement Class.

29. The Court's approval of the Fee and Expense Application is a matter separate and distinct from approval of the Settlement and shall in no way disturb or affect the finality of the Judgment entered with respect to the Settlement.

30. The Parties are to bear their own costs, except as otherwise provided herein or in the Stipulation.

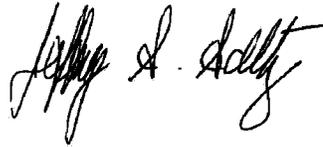
31. Without affecting the finality of this Judgment in any way, this Court hereby retains continuing jurisdiction over: (i) implementation of the Settlement; (ii) the disposition of the Settlement Fund; (iii) any applications for attorneys' fees, costs, interest and payment of expenses in the Action; (iv) all parties for the purpose of construing, enforcing and administering

the Settlement and this Judgment; and (v) other matters related or ancillary to the foregoing.

[Language omitted by the Court.]

DATED this 17th day of December, 2020

BY THE COURT:



JEFFREY S. SALTZ, J.

efiled on 12/17/20
copy emailed on 12/17/20 to:
Michael Jorgensen, Court Administration – Civil Division