



BURSOR & FISHER
P.A.

2665 S. BAYSHORE DRIVE
SUITE 220
MIAMI, FL 33133
www.bursor.com

SCOTT A. BURSOR
Tel: 305.330.5512
Fax: 305.676.9006
scott@bursor.com

February 5, 2020

Via ECF and U.S. Mail

The Honorable William H. Pauley III
United States District Court for the Southern District of New York
500 Pearl Street
New York, New York 10007

Re: *Hart, et al. v. BHH, LLC d/b/a Bell + Howell, et al.*, Case No. 15-cv-04804, Plaintiffs'
Renewed Motion For Preliminary Approval

Dear Judge Pauley:

I represent Plaintiffs and the certified classes in the above matter. I write pursuant to Rule III.A of Your Honor's Individual Practices to request a pre-motion conference in advance of Plaintiffs' anticipated renewed motion for preliminary approval.

On February 3, 2020, the parties executed a new Stipulation of Settlement (the "Agreement") which addresses the concerns raised by the Court in its January 17, 2020 Order denying Plaintiffs' first motion for preliminary approval (ECF No. 295) (the "Order"). The Agreement is attached hereto as **Exhibit 1**. This letter sets forth below how each of the Court's concerns are addressed in the Agreement.

First, the Court's Order took issue with the fact that under the previous settlement agreement, "counsel is paid before any class member." Order at 3. That is no longer the case. The Agreement provides for payment to counsel, the Class Representatives, and all class members at the same time: 30 days following final approval. *See* Agreement ¶¶ 71, 87, 90.

The Court's Order also raised a concern about ensuring that counsel remain financially incentivized to expend time and resources following final approval because "[v]alid objectors may come forward, and Plaintiffs would need to stave them off." Order at 4. Under the terms of the Agreement, my firm will be required to sign an undertaking to return all monies paid thereunder in the event that the "settlement agreement is terminated pursuant to its terms" including termination by a party if "the Final Approval Order and Judgment do not become Final by reason of a higher court reversing final approval by the Court, and the Court thereafter declines to enter a further order or orders approving the Settlement on the terms set forth herein." *See* Agreement ¶¶ 87, 99, & Exh. B. Thus, our financial incentive to defend the Agreement against objectors will remain until all potential appeals are exhausted.

Finally, the Order takes issue with a provision of the old settlement agreement that calls for arbitration of the sum of attorneys' fees to be paid. That provision is no longer present. The Agreement now states that:

Class Counsel shall submit a request for an award of attorneys' fees, costs and expenses, including expert fees and costs incurred for the dissemination of the notice of pendency of class action, in an amount not to exceed \$6,500,000.00 (Six Million Five Hundred Thousand Dollars and Zero Cents). Defendants reserve the right to oppose any amounts sought to be recovered as attorney's fees by Class Counsel.

Agreement ¶ 85. Thus, the amount of any award of attorneys' costs, fees, and expenses will be determined solely by the Court.

Other than those outlined herein, the Agreement makes no other substantive changes from the terms of the previous settlement agreement.

A proposed preliminary approval order is attached as **Exhibit F to the Agreement**. While the proposed order leaves blank spaces for future case management deadlines, Plaintiffs propose the following deadlines:

Final approval hearing (¶ 5)	150 days following entry of preliminary approval order
Plaintiffs' motion for fee and incentive awards (¶ 7)	14 days before objection/exclusion deadline
Responses to Plaintiffs' motion for fee and incentive awards (¶ 7)	21 days before final approval hearing
Replies in support of Plaintiffs' motion for fee and incentive awards (¶ 7)	14 days before final approval hearing
Papers in support of final approval (¶ 8)	14 days before final approval hearing
Objection/exclusion deadline (¶¶ 13, 18)	75 days after the Notice Date

Very truly yours,

Scott A. Bursor

CC: All counsel of record (via ECF)