

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY  
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In re PATRIOT NATIONAL, INC.  
SECURITIES LITIGATION

Case No. 1:17-cv-01866-ER  
[Consolidated with Case No. 1:17-cv-  
07164-ER]

Honorable Edgardo Ramos

~~PROPOSED~~ ORDER GRANTING LEAD PLAINTIFFS'  
LETTER MOTION TO CONTINUE THE SETTLEMENT HEARING

Having considered Lead Plaintiffs' Letter Motion to Continue the Settlement Hearing (the "Motion"), *see* Doc. 125, and good cause appearing, IT IS SO ORDERED:

1. The Motion is GRANTED.
2. The Settlement Hearing shall take place on Wednesday, November 6, 2019, at 3:30 p.m. in Courtroom 619 of the Thurgood Marshall United States Courthouse, 40 Foley Square, New York, NY 10007.

Dated: July 31, 2019



\_\_\_\_\_  
The Honorable Edgardo Ramos  
United States District Judge



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July 31, 2019

**VIA ECF**

Honorable Edgardo Ramos  
United States District Judge  
Thurgood Marshall  
United States Courthouse  
40 Foley Square  
New York, NY 10007

Re: *In re Patriot National, Inc. Securities Litigation*, 1:17-cv-01866-ER  
[Consolidated with Case No. 1:17-cv-07164-ER],  
Letter Motion to Continue the Settlement Hearing

Dear Judge Ramos:

Lead Plaintiffs ODS Capital LLC, Barry A. Smith, and Sunil Shah (collectively, “Lead Plaintiffs”) hereby submit this letter motion to request that the Court continue the Settlement Hearing<sup>1</sup> currently scheduled for October 3, 2019, to a date on or after November 4, 2019—*i.e.* a date at least 105 days after July 22, 2019, the date the Preliminary Approval Order was entered.

On July 22, 2019, the Court entered the Preliminary Approval Order granting Lead Plaintiffs motion for preliminary approval of the proposed settlement of the above-captioned action (the “Settlement”). In the Preliminary Approval Order, the Court set a Settlement Hearing date of October 3, 2019, at which time the Court will consider final certification of the Settlement Class, approval of the Settlement, approval of the plan of allocation, and Lead Counsel’s motion for an award of attorney’s fees and reimbursement of litigation expenses (Preliminary Approval Order at ¶ 5).

A continuance, however, is necessary to avoid potential due process issues. The Preliminary Approval Order provides that notice of the Settlement shall be mailed to the Settlement Class by August 19, 2019 (the “Notice Date”) (Preliminary Approval Order at ¶ 7(b)). The Preliminary Approval Order also requires that requests for exclusion from the Settlement

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<sup>1</sup> All capitalized terms used in this letter motion that are not otherwise defined herein shall have the meanings ascribed to them in the Order Preliminarily Approving Settlement and Providing for Notice (the “Preliminary Approval Order” or “Order”) (Dkt. No. 124).

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Class and/or objections to the Settlement or Lead Counsel's motion for an award of attorney's fees and reimbursement of litigation expenses be received by September 12, 2019 (Preliminary Approval Order at ¶¶ 13, 16). As such, the current schedule provides only twenty-four (24) days between the Notice Date and the deadline to submit a request for exclusion or an objection. Some courts have found that timelines similar to those provided for in the Preliminary Approval Order raise due process concerns. *See, e.g., Greenfield v. Villager Indus., Inc.*, 483 F.2d 824, 833-34 (3d Cir. 1973) (strongly criticizing a 30-day period to request exclusion or object, and holding "[a] one-month period hardly seems sufficient time for brokerage firms to search their records, notify customers, probably by mail, for whom they held shares in street name, received instructions from these customers, again probably by mail, and file the proofs of claim or requests for exclusion"); *In re Mercedes-Benz Tele Aid Contract Litig.*, 07-cv-2720-DRD, 2010 WL 4740184, at \*2 (D.N.J. July 22, 2010) (rejecting a proposed time period of 35 days from the notice date to the exclusion/objection date as "too short").

The vast majority of Patriot National securities that are the subject of this litigation are, most likely, held in "street name" by brokerage houses and other nominees (collectively "Nominees"). *See In re OCA, Inc. Securities and Derivative Litig.*, 2008 WL 4681369, at \*16 (E.D. La. 2008) ("In securities class actions, the vast majority of shareholder class members own securities in 'street name,' which means the securities are registered to the brokerage house or financial institution rather than directly to the investor."). As a result, Lead Plaintiffs requested, and the Court ordered, that "[b]rokers and other nominees who purchased or otherwise acquired Patriot National's securities during the Settlement Class Period for the benefit of another person or entity shall (a) within seven (7) calendar days of receipt of the Notice, request from the Claims Administrator sufficient copies of the Notice Packet to forward to all such beneficial owners and within seven (7) calendar days of receipt of those Notice Packets forward them to all such beneficial owners; or (b) within seven (7) calendar days of receipt of the Notice, send a list of the names and addresses of all such beneficial owners to the Claims Administrator in which event the Claims Administrator shall promptly mail the Notice Packet to such beneficial owner." Preliminary Approval Order, ¶ 9. It is not uncommon, however, for Nominees to take several weeks to search their databases and (a) provide the names and addresses of potential Settlement Class Members to the Claims Administrator, or (b) request Notice Packets from the Claims Administrators so that the Nominees can themselves perform the mailing, notwithstanding the time limits set forth in the Court's Preliminary Approval Order. Accordingly, Lead Plaintiffs anticipate that normal and common delays and difficulties associated with providing notice to the Settlement Class will cause some Settlement Class Members to receive notice of the Settlement after September 12, 2019—the deadline to submit a request for exclusion or an objection.

For these reasons, Lead Plaintiffs respectfully request that the Settlement Hearing be rescheduled to a date at least 105 calendar days after entry of the Preliminary Approval Order (*i.e.* November 4, 2019), or at the Court's earliest convenience thereafter. Doing so would allow forty-six (46) days between the Notice Date and the deadline to submit a request for exclusion or

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an objection. Courts have approved similar periods between the mailing of notice and the deadline to object or request exclusion in cases involving securities held in street name. *See Weinberger v. Kendrick*, 698 F.2d 61, 71 (2d Cir. 1982) (upholding timing of notice as within the district court's discretion where notices were mailed 46 days before opt-out deadline and 57 days before the objection deadline); *Fidel v. Farley*, 534 F.3d 508, 514 (6th Cir. 2008) (holding that notice comported with Rule 23 and due process when it was mailed to brokers 46 days before the opt-out and objection deadline, with instructions to forward or provide names within 10 days).

There has been no previous request to continue the Settlement Hearing. The settling Defendants do not oppose this request. A Proposed Order granting Lead Plaintiffs' request is enclosed for the Court's convenience.

Respectfully,

s/ Lesley F. Portnoy  
Lesley F. Portnoy

cc: All Counsel of Record

Enclosure: Proposed Order