

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:) Chapter 7
)
PEREGRINE FINANCIAL GROUP, INC.,) Case No. 12-27488
)
) Honorable Judge Carol A. Doyle
Debtor.)
)
)

NOTICE OF CLASS CLAIM SETTLEMENT AND FAIRNESS HEARING

TO: The former employees of Peregrine Financial Group, Inc. d/b/a PFG (“Debtor”) who are members of the Court-defined Class.

On July 10, 2012 (“Petition Date”), the Debtor filed a voluntary petition for relief in the United States Bankruptcy Court for the Northern District of Illinois (“Bankruptcy Court”) under chapter 7 of title 11 of the United States Code (“Bankruptcy Code”). The filing of the Debtor’s chapter 7 petition commenced a bankruptcy case pending before the Bankruptcy Court and styled *In re Peregrine Financial Group, Inc.*, Case No. 12-27488 (“Case”).

On July 11, 2012, the Office of the United States Trustee appointed Ira Bodenstein, not personally, but as the chapter 7 trustee (“Trustee”) for the Debtor’s bankruptcy estate (“Estate”).

Ronald Kotulak (“Class Representative”) is a former employee of the Debtor and filed a class proof of claim (“Class Claim”) in the Case on behalf of himself and the Class (defined below).

The parties to the Class Claim have reached a proposed settlement (“Settlement”) of the Class Claim under which, among other things, benefits would be provided to Class Members, the Class Representative and Class Counsel (each defined below).

The Bankruptcy Court has authorized the dissemination of this Notice. You should review this Notice carefully as your rights may be affected by the proposed Settlement.

I. SUMMARY OF THE CLASS

The class members (referred to collectively as “Class Members” and individually as a “Class Member”) are the former employees of the Debtor who either (1) allege that they were terminated without cause as part of, or as the result of, a mass layoff ordered by the Debtor on or about July 9, 2012, and within thirty (30) days of that date, and thereafter, and who were not provided 60 days advance written notice of their terminations by the Debtor in violation of the Worker Adjustment and Retraining Notification Act, 29 U.S.C. §§ 2101 *et seq.* (“WARN Act”), and/or (2) did not receive their final paychecks in alleged violation of the Illinois Wage Payment and Collection Act, (“Illinois Wage Act”) and/or the Iowa Wage Payment Collection Act (“Iowa Wage Act,” and together with the Illinois Wage Act, the “Wage Acts”); and (3) who have not filed

a timely request to opt-out of the class (collectively, the “Class”).

II. BACKGROUND OF THE CASE

Prior to the Petition Date, the Debtor employed certain employees, including the Class Members, in its business operations. The Class Representative asserts that on or about July 9, 2012, the Debtor terminated certain of its employees, including the Class Representative and each Class Member.

The Trustee represents the Estate and asserts that all of the terminations made were in compliance with all applicable laws, including the WARN Act.

On or about July 11, 2012, the Class Representative filed a class-action adversary complaint in the Bankruptcy Court commencing an adversary proceeding (“WARN Action”) against the Debtor, on behalf of himself and the Class Members, alleging that the Debtor violated the WARN Act, by ordering a mass layoff on or about July 9, 2012 without providing sixty (60) days advance notice thereof.

On October 1, 2012, the Class Representative voluntarily dismissed the WARN Action and filed the Class Claim against the Estate. The Class Claim contains allegations that the Debtor violated the WARN Act by failing to give its employees 60 days’ notice prior to their terminations. The Class Claim also alleges that the Debtor violated the Wage Acts.

On February 20, 2013, the Bankruptcy Court entered an Order certifying the Class. In addition, the Bankruptcy Court appointed Outten & Golden LLP and Fisher Cohen Waldman Shapiro LLP as class counsel (collectively, “Class Counsel”) and Ronald Kotulak as the Class Representative.

The parties have identified all persons that, to the best of the parties’ knowledge, information and belief, all currently fall within the Class definition and who are eligible to share in the Settlement Fund (as hereinafter defined) created under the Settlement.

Class Counsel has conducted informal discovery, including the examination of documents and the interview of members of the Class. Class Counsel has analyzed the applicable law and weighed the likelihood of success and recovery from the Estate, which does not have sufficient assets to pay all of its creditors in full. To avoid extensive, costly, and uncertain litigation over these issues, and the further dissipation of the Estate’s resources, the parties have engaged in good faith, arms-length negotiations regarding a possible consensual resolution of the Class Claim.

At a hearing held on November 6, 2019 the Bankruptcy Court (i) preliminarily approved the Settlement, (ii) approved this Notice, and (iii) established a date for a final hearing (“Fairness Hearing”) for approval of the Settlement.

III. THE PROPOSED SETTLEMENT

The proposed Settlement is set out in the Settlement and Release Agreement (“Settlement Agreement”). The following description of the proposed Settlement is only a summary and is qualified in its entirety by the terms set forth in the Settlement Agreement, and any inconsistency shall be governed by the terms of the Settlement Agreement.¹

Subject to Court approval, the material terms of the Settlement Agreement are as follows:

a. The Allowance and Payment of the Class Claim: The Class shall be awarded an allowed unsecured priority claim pursuant to 11 U.S.C. §§ 507(a)(4) and (5) in the amount of \$1,850,000.00 against the Estate (i.e., the Allowed Class Claim). The Allowed Class Claim shall be satisfied in full by a payment from the Estate in the amount of \$1,850,000.00 (“Settlement Payment”) from which the Class Representative Service Payment and Class Counsel’ Fees and Class Counsel’s Expenses (each defined below) shall be paid, to the extent approved by the Court. All distributions made by the Trustee on account of the Allowed Class Claim shall be referred to herein as the “Class Claim Distributions” and the Settlement Payment to be distributed pursuant to this Agreement shall be referred to herein as the “Settlement Fund.” For the avoidance of any doubt, the Estate shall be responsible for the payment of the employer’s share of applicable taxes and those administrative costs of the settlement set forth in Section 6(a) of the Agreement (i.e., the costs associated with disbursement of the Settlement Fund payments), which are the only payments of the Estate under the Settlement that shall not be paid from the Settlement Fund on account of the Allowed Class Claim.

b. Distribution of Settlement Fund: The Class Claim Distributions, after being first reduced by (i) the Class Representative Service Payment, (ii) Class Counsel’s Fees, and (iii) Class Counsel’s Expenses, shall be allocated to each Class Member on a pro rata basis based on the relationship that such Class Member’s potential damages under the WARN Act and the Wage Acts bears to the aggregate potential damages of all Class Members under the WARN Act and the Wage Acts, and shall be made directly to Class Members (“Class Members’ Pro Rata Share”).

c. Disallowance of Class Members’ Claims. The Settlement Order will provide that all other proofs of claim filed in the Case by Class Members for any all claims, asserted or assertible, arising out of or related to the allegations asserted in the Class Claim, including the termination of their former employment with the Estate by any of the Released Parties (defined below) are disallowed, including, but not limited to the proofs of claim identified in Exhibit A to the Settlement Agreement.

d. Released Claims of Class Members: Upon the Effective Date, the Class Members, for and on behalf of themselves, and their respective predecessors, successors, assigns, heirs, personal representative and estates grant the releases set for in **Section V** below.

¹ You may request a copy of the Settlement Agreement from Class Counsel. Class Counsel’s contact information is provided on the last page of this notice.

e. Residual Funds: In the event that there are any Settlement Funds remaining for any reason, including Settlement checks which are not deposited, endorsed or negotiated, within ninety (90) days of their issuance, such residual funds shall be held for another sixty (60) days ("Residual Fund Waiting Period") to be used to make distributions to any individual who is subsequently determined to have been eligible to receive a distribution as a Class Member but was not on the Class Member distribution list. Undistributed funds remaining after the Residual Fund Waiting Period, shall become property of the Estate, free and clear of any and all claims and interests of the Class Members, but subject to further redistribution in accordance with the Bankruptcy Code.

IV. CLASS COUNSEL FEES AND CLASS REPRESENTATIVE PAYMENT

The Class Representative will be entitled to a one-time payment of \$15,000, payable from the Settlement Fund as compensation for his services to the Class, in addition to his pro rata share of the Settlement Fund ("Class Representative Service Payment").

Class Counsel will be entitled to a payment in the amount of one-third of the Settlement Amount ("Class Counsel's Fees"), net of litigation expenses (including the costs associated with the production and mailing of the class notice to the Class) not to exceed \$15,000 ("Class Counsel's Expenses"), and together with Class Counsel Fees, the "Class Counsel Fees & Expenses") and the Class Representative's Service Payment.

V. RELEASE OF ALL CLAIMS RELATED TO YOUR TERMINATION AND EFFECT OF APPROVAL OF SETTLEMENT AGREEMENT

Upon final approval by the Court, the Settlement will result in the dismissal of the Class litigation on the merits and with prejudice to all Class Members. Except for the rights arising out of, provided for, or reserved in the Settlement Agreement, upon the Effective Date, the Class Members, for and on behalf of themselves, and their respective predecessors, successors, assigns, heirs, personal representative and estates (collectively, the "Releasing Parties"), do hereby fully and forever release and discharge (i) the Trustee, the Estate, the Debtor, Best Direct Securities, LLC, Peregrine Asset Management, Inc., Peregrine Financial Group Canada, Inc., Peregrine Capital Advisor, Inc., CHI FX, Inc., BestDirect Australia, Pty Ltd., PFG Depository, Ltd., Best Kids, LLC, Peregrine Diversified Investment Services Corp. and Peregrine Charities, Inc. and (ii) for each of the persons and entities listed in (i), their current and former shareholders, officers, directors, employees, accountants, attorneys, representatives and other agents, and all of their respective predecessors, successors and assigns (collectively, the "Released Parties"), of and from any and all claims, demands, debts, liabilities, obligations, liens, actions and causes of action, costs, expenses, attorneys' fees and damages of whatever kind or nature, at law, in equity and otherwise, whether known or unknown, anticipated, suspected or disclosed, which the Releasing Parties may now have or hereafter may have against the Released Parties, which relate to or are based on the WARN Act, the Wage Acts, or back- or severance pay or benefits under any federal, state or local law or regulation arising out of the termination of the Class Members' employment by any Released Party, including, but not limited to: (a) all claims asserted or that could have been asserted as part of the WARN Action or Class Claim filed on behalf of the Class Members; (b) all individual WARN Act claims; (c) all individual Wage Act claims;

(d) any other claims for wages, salaries, bonuses, expense reimbursements, back pay, severance pay or other benefits based on or arising out of any contract or any federal, state or local statute, ordinance or regulation; and (e) rights, if any, under the Debtor's 401(k) plan or other benefit plans of any type whatsoever (collectively, the "Released Claims"); provided, however, any claims for continuation of health or medical coverage, at the Class Member's expense, or at the expense of a beneficiary or dependent of a Class Member, to the extent allegedly required by the relevant provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985 are not Released Claims.

VI. CLASS COUNSEL'S RECOMMENDATION

Class Counsel recommends the Settlement, believing that it is fair, reasonable and adequate to the Class.

VII. FINAL FAIRNESS HEARING

The proposed Settlement will be presented to the Bankruptcy Court for final approval at the Fairness Hearing to be held before the Honorable Carol A. Doyle on **December 19, 2019 at 11:00 a.m. Central Time**, in the Courtroom 742 of the United States Bankruptcy Court for the Northern District of Illinois, Everett McKinley Dirksen United States Courthouse, 219 South Dearborn Street, Chicago, IL 60604.

The Bankruptcy Court will, at that time, decide whether the Settlement is fair, reasonable and adequate to the Class Members and whether the Class Counsel Fees & Expenses and the Class Representative Service Payment should be approved.

As explained below, you have the right to object to the proposed Settlement, including the Class Counsel Fees & Expenses and the Class Representative Service Payment and to appear in person at the Fairness Hearing to be heard, or to engage counsel to do so on your behalf.

VIII. HOW TO OBJECT

If you are satisfied with the proposed Settlement, you need to do nothing and you will receive a payment, net of Class Counsel Fees & Expenses and the Class Representative Service Payment, in accordance with the terms of the Settlement.

If, on the other hand, you believe that the proposed Settlement is unfair or inadequate or that Class Counsel Fees & Expenses and the Class Representative Service Payment should not be approved, you may object to the Settlement by mailing a written statement, as described below, bearing the caption of this Case to the Clerk of the United States Bankruptcy Court for the Northern District of Illinois, 219 S. Dearborn, Chicago, IL 60604, and by sending copies of that statement to (1) Fox Rothschild LLP, 321 N. Clark Street, Suite 1600, Chicago, IL 60654, Attn: Ira Bodenstein and Allen J. Guon; and (2) Outten & Golden LLP, 685 Third Avenue, 25th Floor, New York, New York 10017, Attn: René S. Roupinian.

Objections must be filed with the Bankruptcy Court and served no later than December 12, 2019, and must include your name, address, and telephone number together with a detailed statement of the basis for your objection and whether you wish to be heard personally or

by counsel at the final hearing at which the parties will be requesting binding Court approval of the Settlement and the award of the Class Counsel Fees & Expenses and the Class Representative Service Payment.

IX. OTHER INFORMATION

Any questions from Class Members concerning this Notice, the Class Claim or requests for a complete copy of the Settlement Agreement should be directed to René S. Roupinian, Esq., at Outten & Golden LLP, 685 Third Avenue, 25th Floor, New York, New York 10017, by telephone at (212) 245-1000, or by fax to her attention at (646) 509-2070, or by email to RSR@outtengolden.com

While the Court has approved the sending of this Notice, that does not indicate that the Court has any opinion as to the respective claims or defenses asserted by the parties in the Class Action. Please do not write to or call the Court concerning this matter.

Date of Notice: November 8, 2019

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