IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

THORE SAUERLAND, ON BEHALF OF HIMSELF AND ALL OTHERS SIMILARLY SITUATED, Plaintiff, v. BLUEFLY, INC., MARIO CIAMPI, MICHAEL HELFAND, HABIB KAIROUZ, MARTIN MILLER, JOSEPH C. PARK, ANTHONY PLESNER, ANDREW RUSSELL, DENISE SEEGAL, DAVID WASSONG, CLEARLAKE CAPITAL GROUP, L.P., CLEAR MODE, LLC, and RUNWAY ACQUISITION SUB, INC., Defendants.	C.A. No. 8743-VCL

ORDER AND FINAL JUDGMENT

1. The parties presented for the court's approval the settlement documented in the a Stipulation and Agreement of Compromise, Settlement, and Release dated October 17, 2017 (the "Settlement Agreement"), which is incorporated herein by reference. Unless otherwise defined in this order, capitalized terms herein have the same meaning as they have in the Settlement Agreement.

2. Kenneth Sulinski objected to the settlement. Several other objectors who have connections to Sulinski also objected. Sulinski and his wife, who was one of the other objectors, attended the settlement hearing in person, and Sulinski

spoke in support of his objection. The court appreciates their diligence in bringing information to the court's attention.

3. Sulinski raised concerns about whether adequate notice of the settlement was provided to stockholders.

a. Court of Chancery Rules 23(e) require that notice of a proposed compromise of a representative action be provided to stockholders or class members "in such manner as the Court directs." Ct. Ch. R. 23(e). "[I]n the context of a proposed settlement, the Court typically enters a scheduling order that, in addition to setting a date for a settlement hearing, tentatively approves the form and content of the notice and sets forth the manner in which notice is to be given." Donald J. Wolfe, Jr. & Michael A. Pittenger, *Corporate and Commercial Practice in the Delaware Court of Chancery* § 9.04[e] at 9-193 (2012). There is no requirement to mail a settlement notice to every single class member who ever owned a share of a publicly held company. *Cf.* Ct. Ch. R. 23(e) (permitting notice "by mail, publication or otherwise"). Notice need only be sent to record holders. *Am. Hardware Corp. v. Savage Arms Corp.*, 136 A.2d 690, 692 (Del. 1957).

b. The court previously approved the form and content of the notice and method of distribution. The record reflects that notice was provided in compliance with the court's order and in a manner designed to reach the members of the class. The settlement administrator, A.B. Data, mailed 6,857 notice packets to class members. A.B. Data also established a case-specific, toll-free helpline. The court determines that the notice as provided was the best notice practicable

under the circumstances, complied with Rule 23, and satisfied the requirements of due process.

4. The Action is properly certified, for settlement purposes only, as a class action with the following Class definition:

> All record holders and beneficial owners of Bluefly common stock as of May 23, 2013, whose shares of Bluefly common stock were involuntarily cashed out under the Merger, including their legal representatives, heirs, successors in interest, successors, predecessors in interest, predecessors, trustees, executors, administrators, estates, assignees, and transferees, immediate and remote, and any person or entity acting for or on behalf of, or claiming under, any of them, and each of them, together with their predecessors-in-interest, predecessors, successors-in-interest, successors, transferees, and assigns. Excluded from the Class are Defendants, members of the immediate family of any Defendant, and any subsidiary, firm, trust, corporation, or other entity related to, or affiliated with, any of Defendants.

a. Numerosity under Rule 23(a)(1) is satisfied. As of May 23, 2013, there were more than 3 million public shares of Bluefly common stock issued and outstanding held by numerous stockholders that comprise the Class.

b. Commonality under Rule 23(a)(2) is satisfied. There are common issues of fact and law sufficient to satisfy Rule 23(a)(2), including whether Defendants breached their fiduciary duties to Class Members, and whether Plaintiffs and the Class Members were damaged as a consequence of Defendants' actions.

c. Typicality under Rule 23(a)(3) is satisfied. The claims of the representative Plaintiff are typical of the claims of absent Class Members in that they all arise from the same allegedly wrongful course of conduct and are based on the same legal theories, satisfying Rule 23(a)(3).

d. The representative Plaintiff and Class Counsel are adequate representatives of the Class, satisfying Rule 23(a)(4).

e. The class is properly certified as a non-opt-out class under Rules 23(b)(1) and 23(b)(2) because (i) the prosecution of separate actions by Class Members would create a risk of inconsistent or varying adjudications with respect to individual Class Members which would establish incompatible standards of conduct for Defendants, (ii) because the prosecution of any one action by a Class Members could, as a practical matter, be dispositive of the interests of the other Class Members, and (iii) the Defendants acted on grounds generally applicable to the Class, thereby making appropriate final injunctive relief or declaratory relief with respect to the Class as a whole. *See, e.g., Leon N. Weiner & Assocs., Inc. v. Krapf*, 584 A.2d 1220, 1227 (Del. 1991) (finding class action properly maintainable under Rule 23(b)(1)(A) and 23(b)(2)); *In re Mobile Commc'ns Corp. of Am., Inc., Consol. Litig.*, 1991 WL 1392 (Del. Ch. Jan. 7, 1991) (Allen, C.) ("Typically an action challenging the propriety of director action in connection with a merger transaction is certified as a (b)(1) or (b)(2) class because . . . all members of the stockholder class are situated precisely similarly with respect to every issue of liability and damages"), *aff'd*, 608 A.2d 729 (Del.

1992) (ORDER); *see also Turner v. Bernstein*, 768 A.2d 24, 31 (Del. Ch. 2000) (Strine, V.C.) (declining to certify a class under Rule 23.1(b)(3) where "any monetary remedy due to the Proposed Class will be calculated on a per share, rather than per shareholder, basis"); *Joseph v. Shell Oil Co.*, 1985 WL 21125, at *5 (Del. Ch. Feb. 8, 1985) (declining to certify a class under Rule 23.1(b)(3) because "if a finding of damages occurs, the damages will be mathematically allocated on a per share basis to all the stockholders in similar circumstances").

5. The Settlement of this Action as provided for in the Settlement Agreement is approved as fair, reasonable and adequate to Plaintiff and the Class, and is approved pursuant to Court of Chancery Rule 23(e).

a. Sulinski objected to the consideration provided in the underlying merger as grossly inadequate, and he likewise objects to the sufficiently of the settlement consideration.

b. Although the case on liability at the pleadings stage was strong, the plaintiffs faced risk at trial. To prevail, the plaintiffs would have to prove *scienter*, and the outcome likely would turn on credibility determinations.

c. Assuming the plaintiff prevailed on the merits, the case on damages was weak. The company engaged in a broad shopping process. Although it secured a potential buyer, the acquirer dropped out. The unwillingness of any market participant to pay more would constitute strong evidence against a large damages award.

d. Given these risks, the settlement falls within a range of reasonableness.

e. Sulinski pointed to factors that cause him to suspect a wider conspiracy involving the hedge fund, SAC, and the company. The court has considered those assertions, and Sulinski deserves credit for the time he expended to develop his theories. Having considered the matter, the court does not believe that these possibilities undermine the case for approving the settlement.

6. The Parties to the Settlement Agreement are hereby authorized and directed to consummate the Settlement in accordance with the terms and provisions of the Settlement Agreement.

7. This Action and all Released Claims are hereby dismissed on the merits and with prejudice, and without costs except those contemplated in the Settlement Agreement and herein, in full and final discharge and settlement of any and all claims or obligations that were or could have been asserted in the Action against Defendants.

8. All Class Members are bound by the Settlement Agreement and this Order and Final Judgment. This Order and Final Judgment, including the release of all Released Claims against all Released Parties, shall have res judicata, collateral estoppel, and other preclusive effect in all pending and future lawsuits, arbitrations or other proceedings maintained by or on behalf of the Plaintiff and each and every other member of the Class, on behalf of themselves and each and all of their respective successors, successors in interest, predecessors, predecessors

in interest, representatives, trustees, executors, administrators, agents, heirs, estates, assigns, or transferees, immediate and remote, and any other person or entity acting who has the right, ability, standing or capacity to assert, prosecute, or maintain on behalf of, or claim under, any member of the Class any of the Released Claims (or to obtain the proceeds of any recovery therefrom), whether in whole or in part.

9. The Releasing Parties, excluding Defendants and any firm, trust, corporation, or other entity controlled by any Defendant, have, fully, completely, and forever released and discharged the Released Claims against the Released Parties.

a. The Released Parties are (i) the current and former Defendants (*i.e.*, Mario Ciampi, Michael Helfand, Habib Kairouz, Martin Miller, Joseph C .Park, Anthony Plesner, Andrew Russell, Denise Seegal, David Wassong, Bluefly, Inc. ("Bluefly"), Clearlake Capital Group, L.P., Clear Mode, LLC, and Runway Acquisition Sub, Inc.), (ii) any Person who is or was related to, managed by, or affiliated with any or all of the Defendants or in which any or all of the Defendants has, had, or will have a controlling interest, and (iii) each and all of the foregoing's respective past or present family members, spouses, heirs, trusts, trustees, executors, estates, administrators, beneficiaries, distributees, foundations, agents, employees, fiduciaries, general or limited partners or partnerships, joint ventures, member firms, limited liability companies, corporations, parents, subsidiaries, divisions, affiliates, associated entities,

stockholders, principals, officers, managers, directors, managing directors, members, managing members, managing agents, predecessors, predecessors-in-interest, successors, successors-in-interest, assigns, financial or investment advisors, advisors, consultants, investment bankers, entities providing any fairness opinion, underwriters, brokers, dealers, lenders, commercial bankers, attorneys, primary and excess insurers, personal or legal representatives, accountants, and associates (consistent with the Settlement Agreement, the "Released Parties").

b. The Released Claims are all manner of claims, demands, rights, liabilities, losses, obligations, duties, damages, costs, debts, expenses, interest, penalties, sanctions, fees, attorneys' fees, actions, potential actions, causes of action, suits, agreements, judgments, decrees, matters, issues and controversies of any kind, nature or description whatsoever, whether known or unknown, disclosed or undisclosed, accrued or unaccrued, apparent or not apparent, foreseen or unforeseen, matured or not matured, perfected or not perfected, choate or inchoate, ripened or unripened, suspected or unsuspected, liquidated or not liquidated, fixed or contingent, including Unknown Claims (as defined in the Settlement Agreement), that any Releasing Party ever had, now have, or may have, in their capacity as stockholders of Bluefly, whether direct, derivative, individual, class, representative, legal, equitable or of any other type, against any of the Released Parties, whether based on state, local, foreign, federal, statutory, regulatory, common or other law or rule (including, but not limited to, any claims under federal securities laws, including such claims within the exclusive

jurisdiction of the federal courts, or state disclosure law or any claims that could be asserted derivatively on behalf of Bluefly), which, now or hereafter, are based upon, arise out of, or relate to, (i) the Merger; (ii) any deliberations or negotiations in connection with the Merger; (iii) the consideration received by Class Members in connection with the Merger; (iv) any disclosures, public filings, periodic reports, press releases, proxy statements or other statements issued, made available or filed relating, directly or indirectly, to the Merger (including but not limited to the Forms 8-K filed by Bluefly on or about May 23, 2013 and the Notices of Appraisal to the registered and beneficial stockholders of Bluefly dated May 31, 2013); (v) the fiduciary duties and obligations of the Released Parties in connection with the Merger; (vi) any of the allegations in any complaint or amendment(s) thereto filed in the Action; or (vii) any other actions, transactions, occurrences, statements, representations, misrepresentations, omissions, allegations, facts, practices, events or claims related, directly or indirectly, in any way to, the Action or to the subject matter of the Complaint or Amended Complaint; *provided, however*, that the Released Claims shall not include claims to enforce this Settlement Agreement (consistent with the Settlement Agreement.

10. Defendants and all Released Parties hereby have fully, completely, finally, and forever released, relinquished, and discharged Plaintiff, the Class Members, and their counsel from all claims, allegations, sanctions or liabilities, including Unknown Claims, arising out of or relating to the investigation, institution, prosecution, settlement, or resolution of the Action; provided, however,

that this release, relinquishment and discharge shall not include claims by the Parties hereto to enforce the terms of the Settlement or Settlement Agreement.

11. During the hearing on the Settlement, Sulinski asked whether the order would limit his ability to provide information about the subject matter of this litigation to any regulatory body, governmental agency, or law enforcement agency. For the avoidance of doubt, this Order does not limit the ability of Sulinski or any other Class Member to provide information to any regulatory body, governmental agency, or law enforcement agency. The court intimates no view as to whether any report should be made or whether any action is warranted. This paragraph is included only to address the issue that Sulinski raised.

12. Neither the Settlement Agreement nor this Order and Final Judgment, nor the facts or any terms of the Settlement, is to be considered in this or any other proceeding as evidence, or a presumption, admission, or concession by any Party in the Action, or any Released Party, of any fault, liability, or wrongdoing whatsoever, or lack of any fault, liability, or wrongdoing, as to any facts or claims alleged or asserted in the Action, or any other actions or proceedings. Neither the Settlement Agreement nor this Order and Final Judgment is a finding or evidence of the validity or invalidity of any claims or defenses in the Action or any other actions or proceedings, or any wrongdoing by any of the Defendants named therein or any damages or injury to any Class Member. Neither the Settlement Agreement nor this Order and Final Judgment, nor any of the terms and provisions thereof, nor any of the negotiations or

proceedings in connection therewith, nor any of the documents or statements referred to herein or therein, nor the Settlement, nor the fact of the Settlement, nor the settlement proceedings, nor any statements in connection therewith, may (i) be argued to be, used or construed as, offered or received in evidence as, or otherwise constitute an admission, concession, presumption, proof, evidence, or a finding of any liability, fault, wrongdoing, injury or damages, or of any wrongful conduct, acts or omissions on the part of any of the Released Parties, or of any infirmity of any defense, or of any damage to Plaintiff or any Class Member, (ii) otherwise be used to create or give rise to any inference or presumption against any of the Released Parties concerning any fact alleged or that could have been alleged, or any claim asserted or that could have been asserted, in the Action, or of any purported liability, fault, or wrongdoing of the Released Parties, or of any injury or damages to any person or entity, or (iii) otherwise be admissible, referred to or used in any proceeding of any nature, for any purpose whatsoever; *provided, however*, that (x) the Settlement Agreement and/or this Order and Final Judgment may be introduced in any proceeding, whether in this Court or otherwise, as may be necessary to argue that the Settlement Agreement and/or this Order and Final Judgment has *res judicata*, collateral estoppel, or other issue or claim preclusion effect or to otherwise consummate or enforce the Settlement and/or this Order and Final Judgment and (y) Plaintiff and Plaintiff's Counsel may refer to the final, executed version only of the Settlement Agreement in connection with the Fee Application.

13. Plaintiff's Counsel in the Action are hereby awarded attorneys' fees and expenses in the sum of $192,470 in connection with the Action, which sum the Court finds to be fair and reasonable. Such sums shall be paid solely from the Settlement Payment pursuant to the provisions of the Settlement Agreement. No counsel representing any Plaintiff in the Action shall make any further or additional application for fees and expenses to the Court or any other court, nor shall counsel for any other Class Member make any further or additional application for fees and expenses to the Court pursuant to the Settlement.

14. Plaintiffs' counsel is authorized to make an incentive fee payment of $1,000 to the named plaintiff, which shall be deducted from the award of fees and expenses.

15. The procedures and plan for allocating the Settlement Payment provide a fair, reasonable, and adequate basis upon which to allocate the Net Settlement Proceeds among Settlement Payment Recipients.

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

17. The binding effect of this Order and Final Judgment and the obligations of Plaintiff and Defendants under the Settlement shall not be conditioned upon or subject to the resolution of any appeal from this Order and Final Judgment that relates solely to the issue of the Fee Application.

18. Without affecting the finality of this Order and Final Judgment in any way, this Court reserves jurisdiction over all matters relating to the administration, consummation, and enforcement of the Settlement and this Order and Final Judgment.

Vice Chancellor J. Travis Laster
February 6, 2018