

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

IN RE HEELYS INC. DERIVATIVE ) Master Docket No. 3:07-CV-1682-K  
LITIGATION )  
\_\_\_\_\_ ) **ECF**  
This Document Relates To: )  
\_\_\_\_\_ )  
ALL ACTIONS. )

**[PROPOSED] ORDER PRELIMINARILY APPROVING  
DERIVATIVE SETTLEMENT AND PROVIDING FOR NOTICE**

WHEREAS, the Settling Parties have made application, pursuant to Federal Rule of Civil Procedure 23.1, for an order: (i) preliminarily approving the settlement of the Derivative Action, in accordance with a Stipulation of Settlement dated July 17, 2009 (the "Stipulation"), which, together with the exhibits annexed thereto, sets forth the terms and conditions for the proposed settlement ("Settlement") and dismissal of the Derivative Action with prejudice, upon the terms and conditions set forth therein; and (ii) approving the form and content of the Summary Notice of Proposed Settlement of Shareholder Derivative Action ("Summary Notice") for publication and the Notice of Proposed Settlement of Shareholder Derivative Action ("Notice") for posting on the websites of Robbins Umeda LLP, Johnson Bottini, LLP, and Heelys, Inc.; and for filing with the U.S. Securities and Exchange Commission ("SEC") via a Form 8-K.

WHEREAS, all capitalized terms contained herein shall have the same meanings as set forth in the Stipulation (in addition to those capitalized terms defined herein); and

WHEREAS, the Court having considered the Stipulation and the exhibits annexed thereto and having heard the arguments of the Settling Parties at the preliminary hearing.

NOW THEREFORE, IT IS HEREBY ORDERED:

1. The Court does hereby preliminarily approve, subject to further consideration at the Settlement Hearing described below, the Stipulation and the Settlement set forth therein, including the terms and conditions for settlement and dismissal with prejudice of the Derivative Action.

2. A hearing (the "Settlement Hearing") shall be held before this Court on \_\_\_\_\_, 2009 at \_\_\_\_\_ .m. to determine: (i) whether the Settlement of the Derivative Action on the terms and conditions provided for in the Stipulation is fair, reasonable, and adequate to the Current Heelys Shareholders and to Heelys and should be finally approved by the Court; (ii) whether a Judgment as provided in ¶1.13 of the Stipulation and attached as Exhibit A thereto should be entered

herein; (iii) whether the agreed upon Fees and Expenses Award should be awarded to Derivative Plaintiffs' Counsel; and (iv) whether an incentive fee should be awarded to each Derivative Plaintiff.

3. The Court approves, as to form and content, the Summary Notice and the Notice attached as exhibits to the Stipulation and for convenience, annexed as **Exhibits A** and **B** hereto, and finds that the publishing and posting of such notices, respectively, substantially in the manner and form set forth in this Order, meets the requirements of Federal Rule of Civil Procedure 23.1 and due process, and is the best notice practicable under the circumstances and shall constitute due and sufficient notice to all Persons entitled thereto.

4. Not later than twenty (20) calendar days following entry of this Order, Heelys shall cause the Summary Notice substantially in the form annexed as **Exhibit A** hereto to be published once in *Investor's Business Daily*.

5. Not later than twenty (20) calendar days following entry of this Order, Heelys, Robbins Umeda LLP, and Johnson Bottini, LLP shall cause the Notice, substantially in the form annexed as **Exhibit B**, and the Stipulation to be posted on each of their respective websites.

6. Not later than twenty (20) calendar days following entry of this Order, Heelys shall cause a copy of the Notice to be filed with the SEC as a filing on Form 8-K.

7. At least seven (7) calendar days prior to the Settlement Hearing, Heelys shall serve on counsel in the Derivative Action and file with the Court proof, by affidavit or declaration, of the publication of the Summary Notice in the *Investor's Business Daily* and filing of the Form 8-K.

8. At least seven (7) calendar days prior to the Settlement Hearing, Heelys and Derivative Plaintiffs' Counsel shall file with the Court proof, by affidavit or declaration, of the posting of the Notice and Stipulation on their respective websites.

9. All Current Heelys Shareholders shall be bound by all orders, determinations, and judgments in the Derivative Action concerning the Settlement, whether favorable or unfavorable to the Current Heelys Shareholders.

10. Pending final determination of whether the Settlement should be approved, no Current Heelys Shareholder, either directly, representatively, or in any other capacity, shall commence or prosecute against any of the Individual Defendants or Heelys, or derivatively on behalf of Heelys, any action or proceeding in any court or tribunal asserting any of the Released Claims.

11. All papers in support of the Settlement and the Settling Parties' responses to objections, if any, by Current Heelys Shareholders shall be filed with the Court and served at least seven (7) calendar days prior to the Settlement Hearing.

12. Any Current Heelys Shareholder may object and/or appear and show cause, if he, she or it has any concern, why the Settlement of the Derivative Action should not be approved as fair, reasonable and adequate, or why a judgment should not be entered thereon, or why the Fees and Expenses Award should not be awarded to Derivative Plaintiffs' Counsel, or Incentive Awards granted to Derivative Plaintiffs; provided, however, unless otherwise ordered by the Court, no Current Heelys Shareholder shall be heard or entitled to contest the approval of the terms and conditions of the Settlement, or, if approved, the Judgment to be entered thereon approving the same, or the attorneys' fees and expenses to be awarded to Derivative Plaintiff's Counsel unless that shareholder has, at least fourteen (14) calendar days prior to the Settlement Hearing: (1) filed with the Clerk of the Court a written objection to the Settlement setting forth: (a) the nature of the objection; (b) proof of ownership of Heelys common stock through the date of the Settlement Hearing, including the number of shares of Heelys common stock and the date of purchase; and (c) any documentation in support of such objection; and (2) if a Current Heelys Shareholder intends to appear and requests to be heard at the Settlement Hearing, such shareholder must have, in addition to

the requirements of (1) above, filed with the Clerk of the Court: (a) a written notice of such shareholder's intention to appear; (b) a statement that indicates the basis for such appearance; and (c) the identities of any witnesses the shareholder intends to call at the Settlement Hearing and the subjects of their testimony. If a Current Heelys Shareholder files a written objection and/or written notice of intent to appear, such shareholder must also simultaneously serve copies of such notice, proof, statement and documentation, together with copies of any other papers or briefs such shareholder files with the Court (either by hand delivery or by first class mail) upon each of the following thereof:

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*Attorneys for Defendants*

The written objections and copies of any papers and briefs in support thereof to be filed in Court shall be delivered by hand or sent by first class mail to:

Clerk of the Court  
U.S. District Court, Northern District of Texas  
1100 Commerce St., Room 1452  
Dallas, TX 75242

Any Current Heelys Shareholder who does not make his, her, or its objection in the manner provided herein shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness, reasonableness, or adequacy of the Settlement as incorporated in the Stipulation, to the Fees and Expenses Award to Derivative Plaintiffs' Counsel, and the Incentive Awards to Derivative Plaintiffs, unless otherwise ordered by the Court, but shall otherwise be bound by the Judgment to be entered and the releases to be given.

13. Neither the Stipulation nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the Settlement: (a) is or may be deemed to be or may be offered, attempted to be offered or used in any way by the Settling Parties as a presumption, a concession or an admission of, or evidence of, any fault, wrongdoing or liability of the Individual Defendants or Heelys, or of the validity of any Released Claims; or (b) is intended by the Settling Parties to be offered or received as evidence or used by any other person in any other Action or proceedings, whether civil, criminal, or administrative. Released Parties may file the Stipulation and/or a Judgment in any action that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, full faith and credit, release, good faith settlement, judgment or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

14. The Court reserves the right to adjourn the date of the Settlement Hearing or modify any other dates set forth herein without further notice to the Current Heelys Shareholders, and retains jurisdiction to consider all further applications arising out of or connected with the Settlement.

15. The Court may approve the Settlement, with such modifications as may be agreed to by the Settling Parties, if appropriate, without further notice to the Current Heelys Shareholders.

IT IS SO ORDERED:

DATED: \_\_\_\_\_

\_\_\_\_\_  
HONORABLE ED KINKEADE  
UNITED STATES DISTRICT JUDGE