

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

**DEBORAH DONOGHUE,**

Plaintiff,

– v. –

**ICONIX BRAND GROUP, INC.,**

Nominal Defendant,

– and –

**MONECOR (LONDON) LIMITED  
(TRADING AS ETX CAPITAL),**

Defendant.

**ECF CASE**

**17 CIVIL 10083 (AJN)**

**NOTICE OF PENDENCY OF SHAREHOLDER ACTION  
AND OF HEARING ON PROPOSED SETTLEMENT**

**TO: ALL PERSONS WHO OWN SHARES OF  
ICONIX BRAND GROUP, INC.**

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY.  
THE RIGHTS OF ICONIX BRAND GROUP INC.  
WILL BE AFFECTED BY PROCEEDINGS IN THIS ACTION.

This Notice is given pursuant to an Order of the United States District Court for the Southern District of New York (the “Court”). The purpose of this Notice is to advise of a proposed settlement (the “Settlement”) of the above-captioned action (the “Action”), which was brought by Plaintiff Deborah Donoghue (“Plaintiff”) on behalf of Iconix Brand Group, Inc. (“Iconix”) under Section 16(b) of the Securities Exchange Act, 15 U.S.C. § 78p(b) (the “Act”) to recover “short swing” profits allegedly realized by Defendant Monecor (London) Limited (trading as ETX Capital) (“Monecor” or “Defendant”) from putative transactions in Iconix securities.

The terms of the Settlement are set forth in the Stipulation of Settlement dated August 23, 2018, and filed with the Court on August 28, 2018 (Dkt. 41). A hearing will be held before Judge Alison J. Nathan in Courtroom 906 of the United States Courthouse, 40 Foley Square, New York, New York on February 21, 2019 at 3:00 p.m. (the “Settlement Hearing”) to determine: (i) whether the Settlement of this action is fair, reasonable, and adequate; (ii) whether the Proposed Order and Final Judgment appended to the Stipulation of Settlement as Exhibit A (Dkt. 41-1) should be entered by the Court; and (iii) whether Plaintiff’s counsel’s agreed-to fees and expenses should be approved.

The Settlement provides for Monecor to pay Iconix a total of \$350,000 (USD) (the “Settlement Payment”), out of which attorney’s fees in the total amount of \$88,526 (including costs and disbursements) (the “Attorney’s Fee Payment”) will be paid directly by Monecor to Plaintiff’s counsel, as agreed by Iconix, in consideration of Plaintiff’s counsel’s efforts in prosecuting the Action and obtaining the Settlement for the benefit of Iconix. Should the Settlement be approved, the Proposed Order and Final Judgment appended as Exhibit A to the Stipulation of Settlement (Dkt. 41-1) will be entered.

## **THE ACTION**

### **I. Nature of the Claims and Defenses**

This is a shareholder action brought pursuant to the so-called “short-swing” profit recapture provisions of Section 16(b) of the Act. Any officer, director or – to the point of this case – beneficial owner of more than 10% of a class of equity securities of a company registered under Section 12 of the Act, 15 U.S.C. § 78l, must pay to its issuer any profit it realized through purchases and sales of that issuer’s equity securities within periods of less than six months.

This case involves Monecor’s entry into various “Contracts for Difference” or “CFD’s” with Sports Direct International PLC (“Sports Direct”), by which Monecor allegedly provided Sports Direct with economic interests based on the market value of Iconix common stock, which Monecor allegedly hedged by purchasing and selling Iconix securities. One of Monecor’s defenses to liability in the Action is that Monecor’s securities transactions are covered by the market maker exemption under Rule 16(d) of the Act. It is claimed that purchases and sales on a national securities exchange in the United States were incident to the making of a CFD market in the United Kingdom. Plaintiff argues that the market maker exemption does not apply because: (i) Monecor’s trading on an exchange (i.e., the NASDAQ) is excluded from the exemption; (ii) the exemption cannot be invoked to support Monecor’s claimed foreign market making activities in CFD’s, which Plaintiff alleges are illegal in the United States; (iii) Monecor’s CFD activities did not constitute “market making” within the scope of the exemption, because the CFD’s were not publicly-traded instruments (but rather contracts negotiated by and created for Sports Direct); and (iv) Monecor did not make bid and ask quotes for the bespoke CFD’s available to the public or to any third parties. Monecor vigorously disagrees with Plaintiff’s positions and believes there is case law, including in the Second Circuit, which supports its position regarding the market maker exemption.

All parties to the Action support the Settlement and request the Court’s entry of the Proposed Order and Final Judgment ordering Monecor to pay the Settlement Payment, including the Attorney’s Fee Payment. For a full discussion of the parties’ views concerning the fairness and adequacy of the Settlement, please review the Memorandum of Law in Support of Settlement Approval And Award of Attorneys’ Fees & Disbursements (Dkt. 44), requesting that the Court approve the Proposed Order and Final Judgment filed in the Action.

## **II. Status of the Action**

This proposed Settlement comes after Monecor's filing of a Motion to Dismiss, which Plaintiff opposed, and which was pending before the Court at the time the parties agreed on the proposed Settlement. (*See* Dkts. 18-26).

## **III. The Terms of Settlement**

Pursuant to the Settlement, Monecor has agreed to settle the Action by paying the Settlement Payment of \$350,000, which will be paid to Iconix, as reduced by the Attorney's Fee payment in the total amount of \$88,526, which is to be paid directly by Monecor to Plaintiff's counsel (as agreed by Iconix). The remainder of the Settlement Payment will be paid by Monecor to Iconix. There will be no distribution or payments made directly to Iconix's shareholders by Monecor.

If the Settlement is approved by the Court, all claims asserted against Monecor in the Action will be concluded on the merits and dismissed with prejudice.

If the Court does not approve the Settlement, or if the Order approving the Settlement is reversed on appeal, then the rights and duties of the respective parties to the terminated Settlement will revert to their respective statuses as of the date immediately prior to the execution of the Stipulation of Settlement.

## **NOTICE OF SETTLEMENT AND SETTLEMENT HEARING**

This Notice of Settlement is provided to Iconix shareholders as ordered by the Court (Dkt. 50). Iconix shareholders are further advised that a hearing will be held before Hon. Alison J. Nathan, United States District Judge for the Southern District of New York, in Courtroom 906 at the United States Courthouse, 40 Foley Square, New York, New York, at 3:00 p.m., on February 21, 2019 (or at such other time and place as the Court hereafter may set, without further notice other than announcement thereof in open court at the above time and place) to determine: (i) whether the Settlement of this action is fair, reasonable, and adequate; (ii) whether the Proposed Order and Final Judgment appended to the Stipulation of Settlement as Exhibit A (Dkt. 41-1) should be entered herein; and (iii) whether Plaintiffs counsel's agreed-to fees and expenses should be approved.

If you are an Iconix shareholder, you may appear personally or by counsel and be heard at the Settlement Hearing; and you may support or object to or express your views regarding the Settlement. However, you will not be heard or entitled to contest the approval of the Settlement unless, on or before February 7, 2019, you file a notice of intention to appear: (i) setting forth the dates you purchased, and the number of shares that you own of, Iconix common stock; (ii) stating your objections or support or comments, in writing, with the Clerk of the District Court, together with a list of any witnesses you intend to call, a list of any exhibits you intend to present and all briefs or other papers in support of their position; and (iii) on or before that date, such papers are also served by email on the following:

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### **FURTHER INFORMATION**

This Notice is not all-inclusive. For the full details of the matters disclosed in the Notice, including the Stipulation of Settlement described above, and for further information concerning this Action, you may wish to refer to the pleadings or other papers filed with the Court in this Action, all of which may be inspected online via PACER, or at the office of the Clerk of the United States District Court for the Southern District of New York, 500 Pearl Street, New York, New York, during normal business hours.

For further information regarding this Notice, the Action or the proposed settlement, Iconix shareholders can contact Plaintiff's counsel in writing (by mail or email):

Miriam Tauber  
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885 Park Ave. 2A  
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**PLEASE DO NOT CALL OR WRITE THE COURT OR THE CLERK'S OFFICE  
OTHER THAN TO FILE NOTICES OF YOUR INTENTION TO SUPPORT  
OR OPPOSE THE SETTLEMENT (WITH ACCOMPANYING DOCUMENTS)**