

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 08-60953-CIV-COHN/SELTZER

MICHAEL G. PLUNKETT, derivatively on behalf
of SIMPLY FIT HOLDINGS GROUP, INC.,

Plaintiff,

vs.

CORT L. POYNER; DANIEL MINAHAN; DP
MINAHAN, INC.; SILVERMAN & MINAHAN
BEVERAGE COMPANY, LLC; THE
SILVERMAN & MINAHAN GROUP, LLC;
MAZEL TUFF, LLC; ROBERT L. COX;
CARL FELDMAN; SMITTEN PRESS;
LOCAL LORE AND LEGEND, INC. and
ALTMAN & COMPANY P.C.,

Defendants,

SIMPLY FIT HOLDINGS GROUP, INC.,

Derivative Plaintiff and
Nominal Defendant.

/

ORDER SETTING SCHEDULE TO ADDRESS OBJECTION

THIS CAUSE is before the Court upon the hearing held today on the parties' Motion for Approval of Mediated Settlement of Rule 23.1 Shareholder Derivative Suit [DE 82], the Objection thereto [DE 85/86], and the Motion to Withdraw as Local Counsel for Defendants by Howard Kahn, Esq. [DE 76]. The Court has carefully considered the submissions and arguments of the parties and is otherwise fully advised in the premises.

The Objectors to the Settlement, Vincent Beatty and Devken, Inc., assert that as shareholders of Simply Fit Holdings Group, Inc., their right to sue on their contract to recover funds from the company would be unfairly extinguished by approval of the settlement. At the preliminary hearing to approve the Settlement Agreement (“Agreement”), Defendants took the position that the settlement agreement did not extinguish these contract claims against the company, while Plaintiff took the position that the Agreement would extinguish the claims. Plaintiff argued that Objectors were not proper shareholders and sought rejection of the objections for lack of standing. The Court concludes that there are issues of fact in dispute at this time that preclude a legal determination of the Objectors’ standing. An evidentiary hearing is required to determine whether Objectors have standing as shareholders of Simply Fit Holdings Group, Inc.


Accordingly, it **ORDERED AND ADJUDGED** as follows:

1. An evidentiary hearing is set on the issue of Objectors’ standing at 9:15am on Wednesday, July 29, 2009 in Courtroom 203E of the United States Courthouse, 299 East Broward Blvd., Fort Lauderdale, Florida;
2. Any motions regarding legal issues should be filed by July 10, 2009, with responses filed by 4:30pm on Thursday, July 23, 2009;
3. All counsel shall cooperate with scheduling of the few depositions that may be necessary prior to this hearing;
4. By July 27, 2009, Plaintiff and Objectors shall submit brief memorandum (seven pages at most), with legal citations, on the legal requirements, if any, for

registration of shares for a Florida corporation, and how a failure to register such shares affects standing to object to settlement of a shareholder derivative action.

5. Motion to Withdraw as Local Counsel for Defendants by Howard Kahn, Esq. [DE 76] is hereby **GRANTED**. Attorney Howard Kahn, Esq. and the firm of Kahn, Chenkin & Resnik, P.L., is hereby relieved of further responsibility in this action. The Court waives the requirement for local counsel for Defendants at this time (the Court reserves the right to reimpose a local counsel requirement if it becomes necessary to facilitate attendance at court proceedings).

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 29th of June, 2009.



JAMES I. COHN
United States District Judge

Copies furnished to:

counsel of record on CM/ECF