

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

BRANDON LEIDEL, individually,
and on behalf of All others Similarly Situated,

CASE NO. 9:16-cv-80060-KAM

Plaintiffs,

v.

PROJECT INVESTORS, INC. d/b/a
CRYPTSY, a Florida corporation, and
PAUL VERNON, an individual,

Defendants.

**PLAINTIFF’S MOTION FOR APPROVAL OF NOTICE AND CLAIM FORM
FOR DISTRIBUTION OF ADDITIONAL FUNDS TO CLASS MEMBERS**

Plaintiff Brandon Leidel, as the Class Representative of the Certified Class, through Court Appointed Class Counsel Wites Law Firm and Silver Miller (“Plaintiff”), and James D. Sallah, Esq., not individually, but solely in his capacity as the Court-appointed Receiver for Project Investors, Inc. d/b/a Cryptsy, through Court Appointed Special Counsel for Receiver Wites Law Firm and Silver Miller (hereinafter “Receiver”), hereby move this Court for approval of the Notice and Claim Form for use in the distribution of additional funds to Class Members; and in support thereof, state as follows:

1. On May 24, 2021, Plaintiff and Receiver filed their Unopposed Motion to Distribute Additional Funds to Class Members. D.E. 158. As set forth in such Motion, Plaintiff and Receiver sought approval to distribute to the Class additional monies obtained in a settlement with intervenor Bittrex, Inc. in the matter styled *James D. Sallah, Esq., not individually, but solely in his capacity as the Court-appointed Receiver for Project Investors, Inc., d/b/a Cryptsy v. Xiuxia Liu*, U.S. Dist. Ct. - S.D. Fla. -- Case No. 9:20-cv-81041-MARRA (the “Liu Action”).

2. This Court approved the settlement with Bittrex in the Liu Action on March 31, 2021. D.E. 50.

3. On June 8, 2021, the Court granted the Motion to Distribute. Order at D.E. 174. The Order requires that “[p]rior to sending notice to the Class of this subsequent distribution, Class Counsel shall submit such notice to the Court for approval.” *Id.* at p. 2.

4. The Proposed Notice and Claim Form are attached hereto as Exhibits A and B, respectively.

5. The Notice and Claim Form are modeled on those which this Court approved in the previous distributions to the Class in the instant matter and the related matter styled *Brandon Leidel v. Coinbase, Inc.*, U.S. Dist. Ct. - S.D. Fla. -- Case No. 9:16-cv-81992-MARRA (the Coinbase Action”). *See* Coinbase Action at D.E. 146.

6. The instant Notice and Claim Form differ from those typically submitted to a court in connection with a motion for preliminary approval of a class action settlement. In such instances, the purpose of notice is to “afford members of the class due process which, in the context of the Rule 23(b)(3) class action, guarantees them the opportunity to be excluded from the class action and not be bound by any subsequent judgment.”

7. Here, this purpose has already been achieved; because the instant class action has already received preliminary (January 1, 2017 Order at D.E. 100) and final approval (June 13, 2017 Order at D.E. 118), and the monies from such original settlement were distributed to the Class.

8. However, the instant Notice and Claim Form still satisfy the applicable requirements of Rule 23, Fed.R.Civ.P. Like the prior similar notices approved by this Court in the instant case and Coinbase Action, the Notice provides “the best notice practicable under the

circumstances, including individual notice to all members who can be identified through reasonable efforts.” Rule 23(c)(2), Fed. R. Civ. P.

9. The content of the proposed Notice and Proof of Claim Form satisfies the Rule 23 standard. Rule 23(c)(2)(B) requires the notice to fairly describe the litigation and its legal significance. The Parties’ proposed Class Notice describes, in plain terms, a description of the instant case, and the related Liu and Coinbase Actions; a definition of the class; the reasons for the Liu Action settlement with Bittrex and the instant distribution; the amount of attorneys’ fees and expenses that Class Representative’s counsel and the Receiver will receive; the applicable deadline to make a claim; and where the class can get additional information about the settlement.

10. The Notice also satisfies Rule 23(c)(2)(B) because it will be sent by email and/or first-class mail to all potential class members whose contact information has already been provided to Class Counsel or can be reasonably identified from Cryptsy’s available records. Notice will also be posted on Class Counsel’s websites.

11. The Claims Administrator will also use the existing website from the Cryptsy and Coinbase Settlements - with which claimants in that case are already presumably familiar – to provide Class Members with information and documents about the case and proposed Settlement, to make the Proof of Claim form available for download, and to allow Class Members to submit claims online. Accordingly, the proposed notice to the Settlement Class Members is reasonably calculated to notify the Class of the settlement with Bittrex, provides the Class with the best notice practicable under the circumstances, and otherwise satisfies Due Process.

WHEREFORE, Plaintiff and Receiver respectfully request that the Court authorize them to issue the proposed Notice and Claim Form and in so doing distribute to the Class the additional monies obtained in the Liu Action.

Respectfully submitted,

By: /s/ Marc A. Wites

WITES LAW FIRM

MARC A. WITES

Florida Bar No. 24783

E-mail: mwites@witeslaw.com

4400 N. Federal Highway

Lighthouse Point, Florida 33064

Telephone: (954) 933-4400

SILVER MILLER

DAVID C. SILVER

Florida Bar No. 572764

E-mail: DSilver@SilverMillerLaw.com

JASON S. MILLER

Florida Bar No. 072206

E-mail: JMiller@SilverMillerLaw.com

11780 W. Sample Road

Coral Springs, Florida 33065

Telephone: (954) 516-6000

*Special Litigation Counsel for the Receiver
and Class Counsel*

CERTIFICATE OF SERVICE

Pursuant to Rule 5(d)(1)(B), the foregoing will be served on this 30th day of July 2021 upon all counsel of record through the Court's electronic filing system, and via email PAUL VERNON (PAULEVERNON@YAHOO.COM) and XIUXIA LIU (DANIELCHEN777@ZOHO.COM).

/s/ Marc A. Wites

MARC A. WITES