SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 1, Honorable Brian C. Walsh Presiding

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LAW AND MOTION TENTATIVE RULINGS
DATE: JULY 28, 2017 TIME: 9:00 A.M.

LINE #	CASE #	CASE TITLE	RULING
LINE 1	16CV299728	Perez v. California Drywall Co.	Click on LINE 1 for Ruling
LINE 2	113CV254274	Hershey v. Intuitive Surgical, Inc.	Click on LINE 2 for Ruling
LINE 3	115CV278566	Koninklijke Philips N.V., et al. v. Elec-Tech International Co., Ltd., et al.	CONTINUED TO September 8, 2017
LINE 4	115CV287794	City Of Warren Police And Fire Retirement System v. Revance Therapeutics, Inc., et al	Click on LINE 4 for Ruling
LINE 5	115CV288498	Machine Zone, Inc. v. Peak Web, LLC [Consolidated Action] [Lead Case]	Continued to August 11, 2017 at 9am
LINE 6	113CV257676	Siciliano v. Apple Inc.	Specially Set for 2PM in Department 1 Click on LINE 6 for Ruling

Calendar Line 4

Case Name: *City of Warren Police and Fire Retirement System v. Revance Therapeutics, Inc., et al.*
Case No.: 2015-1-CV-287794

This is a putative securities class action arising from the June 19th, 2014 follow-on public stock offering of defendant Revance Therapeutics, Inc. Currently before the Court are plaintiff's motions (1) for final approval of class action settlement and (2) for an award of attorney fees and expenses, both of which are unopposed.

This matter initially came on for hearing on May 19, 2017, but was continued to enable plaintiff to submit a supplemental declaration by the claims administrator addressing the results of the claims process. The supplemental declaration was filed on June 29, 2017.

I. Legal Standard for Approving a Class Action Settlement

Generally, "questions whether a settlement was fair and reasonable, whether notice to the class was adequate, whether certification of the class was proper, and whether the attorney fee award was proper are matters addressed to the trial court's broad discretion." (*Wershba v. Apple Computer, Inc*. (2001) 91 Cal.App.4th 224, 234-235, citing *Dunk v. Ford Motor Co*. (1996) 48 Cal.App.4th 1794.)

> In determining whether a class settlement is fair, adequate and reasonable, the trial court should consider relevant factors, such as the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.

(*Wershba v. Apple Computer, Inc., supra*, 91 Cal.App.4th at pp. 244-245, internal citations and quotations omitted.)

The list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case. (*Wershba v. Apple Computer, Inc., supra*, 91 Cal.App.4th at p. 245.) The court must examine the "proposed settlement agreement to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." (*Ibid.*, quoting *Dunk v. Ford Motor Co*., *supra*, 48 Cal.App.4th at p. 1801, internal quotation marks omitted.)

> The burden is on the proponent of the settlement to show that it is fair and reasonable. However "a presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3)

counsel is experienced in similar litigation; and (4) the percentage of objectors is small."

(*Wershba v. Apple Computer, Inc., supra*, 91 Cal.App.4th at p. 245, citing *Dunk v. Ford Motor Co*., *supra*, 48 Cal.App.4th at p. 1802.) The presumption does not permit the Court to "give rubber-stamp approval" to a settlement; in all cases, it must "independently and objectively analyze the evidence and circumstances before it in order to determine whether the settlement is in the best interests of those whose claims will be extinguished," based on a sufficiently developed factual record. (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.)

II. Analysis

The terms of the settlement are as follows. The $6.4 million non-reversionary settlement will be distributed in accordance with a plan of allocation developed in consultation with plaintiff's damages expert, as described in the notice. In exchange, class members who do not opt out of the settlement will release any and all claims, etc. "that concern, arise out of, are based on or relate in any way, directly or indirectly, to (i) the purchase or sale of Revance common stock, and (ii) the allegations, [etc.] which were or could have been alleged in the Litigation, including, but not limited to, allegations relating to the Prospectus or Registration Statement dated June 18, 2014." Class members are required to submit proofs of claim to receive their settlement payments.

Subject to the Court's final approval, $2,112,000 in attorney fees, up to $85,000 in litigation costs, and up to $275,000 in costs of administering the settlement will be deducted from the gross settlement before it is distributed to class members. Any balance remaining in the net settlement fund more than six months from the initial date of distribution will be reallocated among claimants until the remaining balance is de minimis, at which point it will be donated to Bay Area Legal Aid.

According to the administrator, in February 2017, claim packages and cover letters were mailed to 263 brokerages, banks, and other institutions that hold securities in "street name" for beneficial owners; 4,669 institutions on the United States Securities and Exchange Commission's list of active brokers and dealers; and 407 registered electronic filers qualified to submit electronic claims on behalf of beneficial owners. The claim package was also published by the Depository Trust Company on its Legal Notice System, and a summary notice was published in the *Wall Street Journal* and transmitted over the *PR Newswire*. In response to these efforts, the administrator received the names and addresses of over three thousand potential class members and sent over two thousand claim packages to institutions to be forwarded to their clients. As of June 29, the administrator had mailed 11,592 claim packages to potential class members and nominees.

The administrator has received no requests for exclusion from the class and had received 1,469 proofs of claim as of June 28. This is in line with the expected 20-30 percent response rate based on the 6,253 claim packages mailed to potential class members, whether directly or through their nominees. No written objections have been received, and no objectors appeared at the originally-noticed final fairness hearing on May 19.

At preliminary approval, the Court found that the proposed settlement provides a fair and reasonable compromise to the class's claims. It finds no reason to deviate from this finding now, particularly considering there are no objections to the settlement. The Court thus finds that the settlement is fair and reasonable for purposes of final approval.

Plaintiff seeks a fee award of $1,760,000, or 27.5 percent of the gross settlement, which is not an uncommon contingency fee allocation. This award is facially reasonable under the "common fund" doctrine, which allows a party recovering a fund for the benefit of others to recover attorney fees from the fund itself. Plaintiff indicates that this fee was actively negotiated with counsel, and the fee is less than the amount estimated in the class notice. Plaintiff provides a lodestar figure of $853,083.75, based on 1,835 hours expended on the case by attorneys with billing rates from $350 to $930 per hour, as well as other professionals. The lodestar results in a multiplier of 2.06, which also is not uncommon. (See *Laffitte v. Robert Half Intern. Inc.* (Cal. 2016) 1 Cal.5th 480, 488, 503-504 [trial court did not abuse its discretion in approving fee award of 1/3 of the common fund, cross-checked against a lodestar resulting in a multiplier of 2.03 to 2.13].) While the billing rates of some partners who worked on the case are on the high end, the time spent on the case and the billing rates are otherwise reasonable, and the settlement provides real value to the class. As a cross-check, the lodestar supports the percentage fee requested, particularly given that there are no objections to the attorney fee request.

Plaintiff also requests $67,907.66 in costs, below the estimate that was provided at preliminary approval. The costs appear to be reasonable based on the summary provided by plaintiff. Plaintiff does not address the administrative costs that are requested in connection with the Court's final approval of the settlement, and counsel shall address this issue at the hearing.

III. Conclusion and Order

The motion for final approval is GRANTED, subject to counsel's presentation regarding administrative expenses. The following class is certified for settlement purposes:

> All persons or entities who purchased or otherwise acquired Revance common stock pursuant and/or traceable to the Registration Statement and accompanying documents effective June 18, 2014 issued in connection with the Company's June 19, 2014 Secondary Offering. Excluded from the Class are Defendants and their families, the officers, directors and affiliates of the Defendants, at all relevant times, members of their immediate families, heirs, successors or assigns and any entity in which Defendants have or had a controlling interest.

The Court will prepare the order.

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