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United States District Court
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re CADENCE DESIGN SYSTEMS, INC.) Case No. 08-4966 SC
SECURITIES LITIGATION)
_____) ORDER RE: MOTIONS FOR
) SETTLEMENT

This Order Relates to:)
)
CASE NOS. 08-4966 SC, 08-5027 SC,)
08-5273 SC, 10-3627 SC, 10-1849)
SC, and 10-3607 SC.)
_____)

I. INTRODUCTION

Before the Court are two unopposed motions for settlement of these related actions. Alaska Electrical Pension Fund ("Alaska"), Lead Plaintiff in the consolidated putative class action, has filed a Motion for Preliminary Approval of Class Action Settlement. ECF No. 149 ("Class Action Mot.").¹ The Shareholder Plaintiffs ("Shareholders") in the three related shareholder derivative actions have filed a Motion for Preliminary Approval of Derivative Settlement. ECF No. 151 ("Deriv. Mot.").² For the following reasons, the Court DEFERS ruling on these motions and invites Plaintiffs to amend their motions or file supplemental papers.

¹ All ECF numbers refer to the lead case, 08-4966 SC.

² The Court refers to Alaska and Shareholders collectively as "Plaintiffs."

1 **II. BACKGROUND**

2 On October 29, 2008, Plaintiff Changhui Hu ("Hu") filed a
3 Complaint alleging violation of federal securities laws by Cadence
4 Design Systems, Inc. ("Cadence"), a publicly traded company, and
5 its officers Michael J. Fister, William Porter, and Kevin S.
6 Palatnik ("Individual Defendants") (collectively, "Defendants").
7 ECF No. 1 ("Hu Compl."). Hu alleged that Defendants made false and
8 misleading statements regarding Cadence's revenue in the first and
9 second quarters of 2008, and he claimed that these statements
10 artificially inflated Cadence's stock price, thus effecting fraud
11 on the market. Id. Hu sought to represent a class of all persons
12 who purchased Cadence common stock during the relevant period. Id.

13 Shortly thereafter, two similar actions were filed against
14 Cadence and its officers by purchasers of Cadence stock. Case Nos.
15 08-5027, 08-5273. On March 4, 2009, the Court consolidated the
16 three actions and appointed Alaska as lead plaintiff in the
17 consolidated putative class action. ECF No. 36. On September 11,
18 2009, the Court granted Cadence's motion to dismiss the action,
19 finding that the consolidated complaint had failed to allege facts
20 supporting an inference that Defendants intentionally falsified
21 Cadence's financial data. ECF No. 48. Alaska filed an amended
22 complaint. ECF No. 53. On March 2, 2010, the Court denied
23 Cadence's second motion to dismiss, finding that Alaska had cured
24 the pleading defects of the earlier complaint. ECF No. 71.

25 During 2010, three shareholder derivative actions were filed
26 against Cadence. Case Nos. 10-3627, 10-1849, 10-3607. In these
27 actions, Shareholders alleged, inter alia, that various Individual
28 Defendants breached their fiduciary duty owed to Cadence and

1 committed waste and professional negligence by falsely reporting
2 Cadence's revenue during 2008. Id. On September 24, 2010, the
3 Court related the consolidated class action with these shareholder
4 derivative actions and stayed litigation pending settlement
5 discussions. ECF No. 136.

6 On June 15, 2011, Alaska and Shareholders separately moved for
7 settlement of the consolidated class action and the shareholder
8 derivative actions. See Mots.

9
10 **III. LEGAL STANDARDS**

11 **A. Preliminary Approval of a Class Action Settlement**

12 No class action may be settled without court approval. Fed.
13 R. Civ. P. 23(e). When the parties to a putative class action
14 reach a settlement agreement prior to class certification, "courts
15 must peruse the proposed compromise to ratify both the propriety of
16 the certification and the fairness of the settlement." Staton v.
17 Boeing Co., 327 F.3d 938, 952 (9th Cir. 2003). First, the Court
18 must assess whether a class exists. Id. (citing Amchem Prods. Inc.
19 v. Windsor, 521 U.S. 591, 620 (1997)). Second, the court must
20 determine whether the proposed settlement "is fundamentally fair,
21 adequate, and reasonable." Hanlon v. Chrysler Corp., 150 F.3d
22 1011, 1026 (9th Cir. 1998). The court must also ensure that the
23 proposed form of notice to all class members who would be bound by
24 the settlement constitutes "the best notice practicable under the
25 circumstances." Fed. R. Civ. P. 23(e)(1) & (c)(2).

26 **B. Preliminary Approval of a Derivative Action Settlement**

27 Rule 23.1(c) of the Federal Rules of Civil Procedure provides:
28 "A derivative action may be settled, voluntarily dismissed, or

1 compromised only with the court's approval. Notice of a proposed
2 settlement, voluntary dismissal, or compromise must be given to
3 shareholders or members in the manner that the court orders."
4 Within the Ninth Circuit, Rule 23's requirements for approval of
5 class action settlements apply to proposed settlements of
6 derivative actions. In re Pacific Enterprises Sec. Litig., 47 F.3d
7 373, 377 (9th Cir. 1995).

8
9 **IV. DISCUSSION**

10 **A. Preliminary Approval of Class Action Settlement**

11 Under the proposed class action settlement, Cadence would pay
12 \$38 million into an escrow account to establish a settlement fund.
13 Class Action Mot. at 1-2. This amount would be distributed to
14 class members after settlement administration costs, attorneys'
15 fees and expenses, and taxes are paid. Id. at 5. The motion is
16 silent on the amount of attorneys' fees and expenses Alaska will
17 seek, but the proposed notice filed in support of the motion states
18 that Alaska will ask the Court for an award of twenty-five percent
19 of the settlement fund (\$9.5 million) and up to \$800,000 in
20 expenses. ECF No. 148 ("Class Action Stip.") Ex. A-1 ("Prop.
21 Notice"). The motion is also silent on the amount of taxes and
22 administration costs to be deducted from the settlement.

23 No class has been certified in this putative class action, and
24 thus Alaska seeks both preliminary approval of the class action
25 settlement and certification of the class. However, there is no
26 discussion of Federal Rule of Civil Procedure 23's requirements for
27 class certification in Alaska's Motion. Alaska has not even
28 attempted to estimate the size of the proposed class or the value

1 of the settlement to the average class member. The Court will not
2 preliminarily approve a settlement and certify a class until it is
3 convinced Rule 23's requirements are satisfied. Similarly, given
4 the minimal information provided about the class and the proposed
5 settlement, the Court cannot even preliminarily conclude that the
6 proposed settlement is "fair, adequate, and reasonable" to the
7 class.

8 Additionally, given the minimal discussion of the proposed
9 notice program in Alaska's motion, the Court cannot conclude that
10 the proposed notice program is adequate. Alaska provides that the
11 notice of proposed settlement will be "disseminated to all persons
12 who fall within the definition of the Class and whose names and
13 addresses can be identified from Cadence's transfer records."
14 Class Action Mot. at 9. It does not attempt to estimate how many
15 names and addresses are known, or whether this contact information
16 is current. It does not describe how this notice will be
17 delivered, or how claim and release forms will be disseminated.
18 The settlement also provides for the proposed claims administrator,
19 Gilardi & Co. LLC ("Gilardi") to "send[] out letters to entities
20 which commonly hold securities in 'street name' as nominees for the
21 benefit of their customers who are the beneficial purchasers of the
22 securities." Id. Alaska does not provide an example of one of
23 these "letters" to be sent, nor does it estimate how many members
24 of the class do not hold securities in their own name. The
25 settlement provides that a summary notice will be published as an
26 advertisement in Investor's Business Daily. Alaska provides no
27 information from which the Court could conclude that publishing of
28 summary notice will adequately reach a portion of the class.

1 In sum, Alaska's motion is woefully inadequate. While a
2 detailed cataloging of its deficiencies is beyond the purview of
3 the Court, the Court considers Alaska's failure to properly discuss
4 notice to be its most egregious. The Court directs Alaska to the
5 Federal Judicial Center's Class Action Notice and Claims Process
6 Checklist and Plain Language Guide, available through the Federal
7 Judicial Center web site, for additional guidance. The Court also
8 refers Alaska to recent orders the Court has issued in other class
9 actions to show the level of scrutiny it applies in deciding
10 settlement motions. E.g., Walter v. Hughes Comm'ns, Inc., No. 09-
11 2136, 2011 WL 3650711 (N.D. Cal. July 6, 2011); Pokorny v. Quixtar
12 Inc., No. 07-0201 (N.D. Cal. Dec. 28, 2010 and July 20, 2011); Song
13 v. KLM Group, Inc., No. 10-3583 (N.D. Cal. June 23, 2011); see also
14 Arellano v. T-Mobile USA, Inc., No 10-5663, 2011 U.S. Dist. LEXIS
15 21441 (N.D. Cal. Mar. 3, 2011) (providing factors that will
16 typically be considered in determining whether to grant preliminary
17 approval of a class settlement).

18 **B. Preliminary Approval of Derivative Action Settlement**

19 Under the proposed derivative action settlement, Cadence would
20 alter its corporate governance practices in a manner Shareholders
21 argue would strengthen Cadence's internal controls. Deriv. Mot. at
22 3. The only economic recovery contemplated in the settlement is a
23 payment of \$1,750,000 in attorneys' fees by Cadence to Plaintiff's
24 counsel and service awards of \$2,500 to each Shareholder. Id. at
25 3-4. The proposed form of notice to shareholders is not discussed
26 in the motion, although in a section entitled "Proposed Schedule of
27 Events," the parties propose "[n]otice published in Investor's
28 Business Daily" and "Filing of Notice via Form 8-K with the SEC"

1 five days after the Court grants preliminary approval. Id. at 19.

2 The Court finds that Shareholders' motion suffers from similar
3 defects as Alaska's motion. As such, the Court cannot determine,
4 at this juncture, if the proposed derivative settlement is fair and
5 reasonable and if the proposed notice is adequate.

6
7 **V. CONCLUSION**

8 For the above reasons, the Court finds it lacks the
9 information required to preliminarily approve the proposed class
10 action and derivative settlements. Accordingly, it DEFERS ruling
11 on Plaintiffs' Motion for Preliminary Approval of Class Action
12 Settlement and Plaintiffs' Motion for Preliminary Approval of
13 Derivative Settlement, and it invites Plaintiffs to file
14 supplemental briefing or amended motions addressing the above
15 issues. Plaintiffs' deadline to file amended motions or additional
16 papers in support of their motions is thirty (30) days from the
17 date of this Order.

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19 IT IS SO ORDERED.

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21 Dated: August 26, 2011


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23 UNITED STATES DISTRICT JUDGE
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