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5 David H. Yamasaki
6 Chief Executive Officer/Clerk
7 Superior Court of CA,
8 County of Santa Clara
9 2015-1-CV-278055
10 Reviewed By:Rowena Walker

11 SUPERIOR COURT OF CALIFORNIA
12 COUNTY OF SANTA CLARA

13 IN RE PHARMACYCLICS, INC.
14 SHAREHOLDER LITIGATION

Lead Case No.: 2015-1-CV-278055

15 Consolidated Action, Including:

Consolidated With:
2015-1-CV-278088
2015-1-CV-278215
2015-1-CV-278260

16 Evangelista, Case No. 2015-1-CV-278055
17 Treppel, Case No. 2015-1-CV-278088
18 Wang, Case No. 2015-1-CV-278215
19 Wallach, Case No. 2015-1-CV-278260

**ORDER AFTER HEARING ON
JULY 19, 2016**

Final Fairness Hearing

20 The above-entitled matter came on regularly for hearing on Tuesday, July 19, 2016 at
21 3:30 p.m. in Department 1 (Complex Civil Litigation), the Honorable Peter H. Kirwan
22 presiding. The appearances are as stated in the record. The Court, having reviewed and
23 considered the written submission of all parties, having heard and considered the oral argument
24 of counsel, and being fully advised, orders that the tentative ruling, attached as Exhibit A, shall
25 be adopted and incorporated herein as the Order of the Court.

26 SO ORDERED.

27 Dated: 7 | 20 | 16


28 
Honorable Peter H. Kirwan
Judge of the Superior Court

EXHIBIT A

Case Name: In Re Pharmacyclics, Inc. Shareholder Litigation
Case No.: I-15-CV-278055

This litigation involves the consolidation of four separately filed lawsuits brought on behalf of a class of stockholders of Pharmacyclics against the Company and members of its Board of Directors ("Board"), Parent, Purchaser, a Delaware Corporation and direct wholly owned subsidiary of Parent (Merger Sub, Parent and Purchaser are collectively referred to as "AbbVie"). The respective actions brought by Plaintiffs Anthony Evangelista, Lawrence Treppel, Qiang Wang and Kurt Wallach were consolidated on or about Jan. 19, 2016. The actions challenged the sale of Pharmacyclics to AbbVie pursuant to which AbbVie acquired via a tender offer all of the outstanding stock of Pharmacyclics for \$261.25 per share, which was first announced on March 4, 2015 ("the Acquisition").

On or about March 23, 2015, the Company filed with the United States Securities and Exchange Commission ("SEC") a Solicitation and Recommendation Statement on a Schedule 14D-9 which included information concerning the background of the Acquisition, the process leading to the agreement to sell Pharmacyclics to AbbVie and the financial analysis performed by the Company's financial advisors in support of their fairness opinion.

On April 1, 2015, Defendants provided to Plaintiffs certain confidential documents that were prepared in connection with the Acquisition. After further negotiations, Defendants provided supplemental disclosures to Plaintiffs' Counsel and engaged in arm's length negotiations over the proposed supplemental disclosures. Shortly thereafter, the parties entered into an agreement to resolve the actions which resulted in a Memorandum of Understanding dated April 16, 2015. On April 17, 2015, the Company issued the supplemental disclosures previously negotiated.

On February 19, 2016, this Court issued an Order Granting Preliminary Approval to the Proposed Class Settlement. In its Order, the Court granted conditional certification of the Proposed Class and requested additional information to fairly assess the request for attorney's fees and approved the Proposed Notice subject to some minor modifications.

Plaintiffs now move for Final Approval of the Class Action Settlement.

I. Plaintiff's Motion for Final Approval of Class Action Settlement

A. Legal Standard

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, citing *Dunk, supra*, 48 Cal.App.4th at p. 1801 and *Officers for Justice v. Civil Service Com’n, etc.* (9th Cir. 1982) 688 F.2d 615, 624.)

“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, supra*, 48 Cal.App.4th at p. 1801 and *Officers for Justice v. Civil Service Com’n, etc.*, *supra*, 688 F.2d at p. 625; 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, supra*, 48 Cal.App.4th at p. 1802.)

B. Analysis

The terms of the Settlement are set forth fully in the Stipulation of Settlement (and attached Exhibits) which is attached as Exhibit A to the Declaration of Stephen J. Oddo in support of the Motion for Preliminary Approval. Specifically, Pharmacyclics issued Supplemental Disclosures with the SEC on a Schedule 14D-9 which disclosed : (1) potential conflicts of interest of Pharmacyclics directors and executive officers in connection with the Acquisition; (2) reasons for the Board’s recommendation of the Acquisition; (3) the background of the Acquisition and why it would maximize value to the shareholders; (4) discussions Pharmacyclics had with its financial advisors and other

potential bidders or strategic partners; (5) the Board's consideration of strategic alternatives for Pharmacyclics including partnership with other participants in the industry; (6) financial projections for the calendar year; (7) the effect of the Acquisition on options held by Pharmacyclics directors and executives; (8) the financial analysis underlying the fairness opinions of J.P. Morgan and Centerview. By making these Supplemental Disclosures, the Defendants agreed to provide material information sought in the Actions to Pharmacyclics' shareholders and thus allowed them to make an informed decision whether to tender their shares in the Acquisition or seek statutory appraisal of their shares.

In their moving papers, Plaintiffs argue that following the announcement of the Tender Offer and proposed Acquisition ("the Merger Agreement") wherein AbbVie would commence a tender offer and acquire Pharmacyclics for \$261.25 per share, Pharmacyclics filed with the U.S. Securities and Exchange Commission ("SEC") a Solicitation and Recommendation Statement on Schedule 14D-9 which included information concerning the background of the Acquisition, the process leading to the agreement to sell, and the financial analyses performed by the financial advisors in support of their fairness opinion. Shortly thereafter, four class action lawsuits were filed and ultimately consolidated by this Court on January 19, 2016. The lawsuits alleged breaches of fiduciary duties in connections with the Acquisition. According to the Final Approval moving papers, Plaintiffs' Counsel conducted an investigation of the Tender Offer and the Acquisition, including a review and analysis of the SEC filings, press releases, analyst reports, and other public documents. Counsel also conducted negotiations with Defendants' counsel for discovery, reviewed confidential documents, consulted an expert regarding corporate valuation and demanded that Defendants fully disclose all material information to Pharmacyclics' shareholders that was not disclosed in the Recommendation Statement so that the shareholders would have the opportunity to make an informed decision. As a result of the Settlement, Defendants agreed to disclose previously omitted material information going to the true value of the Company and its shares which were disclosed in Amendment 1 to the Schedule 14D-9 filed with the SEC on April 17, 2015. According to the moving party, the information included in the Supplemental Disclosures was material to the ability of each shareholder to decide whether to accept or reject the \$261.25 Tender Offer from AbbVie and/or seek appraisal of the shares.

The final moving papers argue that the Supplemental Disclosures included providing shareholders with previously undisclosed valuation information regarding the Company's financial projections for years 2015-2018. This information included what services the management relied on to derive the forecasts and the assumptions behind the revenue forecasts, including the revenues for the Company's lead asset. Plaintiffs argue that the financial projections were important to the shareholders as information regarding a company's prospects allowed the shareholders to assess the reliability of the summary financial projections disclosed in the Recommendation Statement, formulate a view on Pharmacyclics true value and make an informed decision as to whether or not to accept the stock price of \$261.25. The Supplemental Disclosures also provided information concerning Centerview's and J.P. Morgan's Discounted Cash Flow Analysis which

allowed the shareholders to evaluate the key assumptions and inputs underlying the analysis. As Pharmacylics is a Delaware Corporation, Plaintiffs cite to Delaware law for the proposition that shareholders are entitled to be fully informed of all material facts concerning transactions requiring their approval. (See *Stroud v. Grace*, 606 A.2nd 75 (Del. 1992)) Plaintiffs further argue that under Delaware law, directors of Delaware corporations are under a fiduciary duty to disclose fully and fairly all material information within the board's control when it seeks shareholder action. Plaintiffs' counsel argues that the Supplemental Disclosures provided material information which assisted the shareholders in their decision making process and therefore, it provided a benefit to the proposed class.

Plaintiffs argue that the settlement is entitled to a presumption of fairness because it was reached through arms-length negotiations between experienced counsel after sufficient investigation and discovery and there are only two objections. Plaintiffs moving papers further document the risks associated with the litigation and the benefits to an early resolution. The papers also raise some of the legal defenses that were anticipated including the application of the "business judgment rule" and the exculpatory provision in Pharmacylics certification of incorporation which shielded its Board from liability for monetary damages for breaches of the duty of care. According to the final approval moving papers, Notices explaining the Settlement were sent to more than 67,000 potential Class Members and there have been only two objections. The first Objection was submitted by Howard McPherson who objects claiming the class action lawsuit was unsuccessful because it did not result in any benefit to the class because the share price did not increase and to the contrary, the payment of attorneys fees represents a small decrease in the value of AbbVie stock.

In addition to the McPherson Objection, the Court has reviewed and considered the Objection filed by Sean J. Griffith. Mr. Griffith's Objection refers to a trend of "routine disclosure-only settlements, entered into quickly after ritualized quasi-litigation, that plague the M&A landscape." According to the Griffith Objection, the past ten years has seen a dramatic increase in the swift settlement of quickly filed lawsuits for supplemental disclosures, and "broad releases to defendants and six-figure fees to plaintiffs' counsel have caused "deal litigation to explode in the United States beyond the realm of reason." *In re Trulia, Inc. S'holder Litigation*, 129 A. #d 884, 894 (Del. Ch. 2016). The Griffith Objection contends that the immediate litigation follows the "Disclosure-Only Playbook from Trulia." and that in actuality, the Supplemental Disclosures cited by Plaintiffs had no material value to the shareholders.

The crux of the Griffith Objection focuses on the lack of materiality of the Supplemental Disclosures and resultant fact that little to no benefit was conferred to the Class in exchange for a broad release of claims, many of which were never prosecuted by the Plaintiffs. With respect to the data underlying the Company's financial projections, the Objection notes that the values never changed with the Supplemental Disclosures and that Delaware Courts have found similar disclosures regarding underlying minutiae unlikely to be material. Additionally, the Objection argues that the Supplemental Disclosures relating to the Centerview and J.P. Morgan analyses are no more material

and did not alter the range of discount rates, but merely added non-specific detail regarding the process in choosing those rates. A disclosure is material only if it presents a "substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote." *Trulia* 129 A.3rd at 899. In sum, the Objection contends that the Settlement trades immaterial disclosures for a broad release of claims and essential provides no benefit to the Class Members who are releasing any potential claims relating to the Tender Offer and Acquisition.

In their Reply papers, Plaintiffs argue that the immediate case is readily distinguishable from *Trulia* as there was no viable damages claims that counsel gave up without investigation. According to Plaintiffs, *Trulia* was a case in which the Delaware Chancery Court criticized a specific phenomenon in shareholder litigation which consisted of firms that did not want to litigate the case longterm, gave up potential damages claims without actually investigation or caring about the strength of those claims, and then settled the case for immaterial disclosures. Plaintiffs argue that Griffith's Objection does not point to any viable monetary damages claim and that Plaintiffs analyzed the chances and risks of shareholders being able to succeed on a money damages claim including consulting with a valuation and financial expert before concluding that such a claim was not viable. In addition, Plaintiffs again advocate the materiality of the disclosures and in further support, submit the Declaration of their financial expert, Matthew R. Morris. The Court has had the opportunity to review the Declaration of Matthew Morris which addresses, in part, the materiality of the disclosures. The Morris Declaration concludes that the information contained in the Supplemental Disclosures "reflected a significant improvement in the quality and quantity of information available to Pharmacyclics' shareholders in making an informed decision to support or oppose the Transaction." The Morris Declaration addresses different categories of information which Plaintiffs allege provided material supplemental information to the shareholders to assist them in how to vote.

This matter came before the Court on July 19th, 2016. At the hearing, the Court directed questions to counsel regarding the alleged materiality of the supplemental disclosures. While the information in the supplemental disclosures did not ultimately change or modify the valuations set forth in the original proxy statement, the Court is satisfied that it provided material information going directly to each Class member's ability to assess the value of the Company and the future of its sole marketed product (IMBRUVICA). As set forth in the Morris Declaration, the information in the Disclosures provided shareholders with information about how management risk-adjusted the projections which was necessary to assess the value of IMBRUVICA. Additionally, there was information provided that could possibly lead to the conclusion that the value of the stock could be higher than \$261.25. While there is no evidence that the original proxy statement was misleading in terms of the fairness analyses, this additional information was important in assisting the shareholders in deciding how to vote in this particular case involving a pharmaceutical company with one marketed product.

The Court is further satisfied that there was sufficient investigation and analysis of the breach of fiduciary claim to conclude that there was no viable claim for monetary

damages. At the hearing, both counsel for Plaintiffs and Defendants argued that there was a significant amount of documentation and information exchanged in an expedited fashion which allowed Plaintiffs, with the assistance of their expert, to assess the claim and conclude that pursuit of monetary damages was not warranted. At the hearing, counsel for the Objector confirmed that he was not contending that a viable claim for monetary damages existed, but simply challenging the breadth of the release of these potential claims given the brevity of the investigation and discovery conducted.

As the Court stated at the hearing, the Court must be mindful of the fact that each Settlement should be reviewed and analyzed on its own unique facts. In other words, the Court must be careful not to employ a "cookie-cutter" approach to approving or rejecting settlements, but must look to the underlying facts giving rise to each settlement. In this particular case, Plaintiffs are shareholders in a pharmaceutical company with really one marketed product. It is not unreasonable to assume that many of the shareholders have some experience and/or expertise in the pharmaceutical industry and would find information about the projections for the viability and value of the product (IMBRUVICA) to be important in connection with their decision on how to vote. The Court also finds the particular facts of this case to be distinguishable from the *Trulia* case relied upon by the Objector.

Turning to the issue of attorney's fees, the Court must consider the overall benefit to the Class in assessing the reasonableness of the fee request. Regarding the request for attorney's fees and expenses, the Court also has an independent right and responsibility to review the requested attorney's fees and only award so much as it determines reasonable. (See *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) Plaintiffs' counsel seeks attorneys' fees and costs in the amount of \$750,000. Counsel points out that this amount was negotiated with Defendants after the terms of the Stipulation for Settlement were agreed to. According to the moving papers and the Declarations of Stephen J. Oddo, David Wissbroecker, Evan Smith and Shane Rowley, the total amount of time expended in prosecuting the consolidated cases was 470.70 hours.¹ These hours were multiplied by counsel's respective hourly rates which resulted in a lodestar of \$243,102.50. In assessing the reasonableness of the fee request, the Court acknowledges that while the information set forth in the Supplemental Disclosures had some tangible benefit to the voting shareholders, it was not so significant as to warrant a multiplier of three to the lodestar amount. Put another way, the Supplemental Disclosures did not remedy any misleading or inaccurate information in the original proxy and did not change the analyses, but simply provided additional information which helped inform the shareholders prior to the vote. Under the present facts and circumstances, the Court finds that a multiplier of two to the original lodestar is appropriate. This also factors in the additional time and expense in responding to the brief submitted by Objector Griffith. Accordingly, the Court awards reasonable fees in

¹ According to Mr. Wissbroecker at the hearing, the total amount of time and fees increased after the filing of the moving papers in order to substantively respond to the points raised in the Griffiths' Objection. Mr. Wissbroecker offered to submit updated records on the total time spent, but the Court did not find that necessary.

the amount of \$486,205. In addition, the Court awards costs and expenses in the sum of \$22,953.62.