SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

IN RE HANSEN MEDICAL, INC. SHAREHOLDER LITIGATION

Consolidated Action, Including

Liu v. Hansen Medical, Case No. 16CV294288
Huggins v. Hansen Medical, Case No. 16CV294554
Lax v. Eagle, Case No. 16CV294858
Simonson v. Vance, Case No. 16CV294862

Lead Case No.: 16CV294288

Consolidated With:
Case No. 16CV294554
Case No. 16CV294858
Case No. 16CV294862

ORDER AFTER HEARING ON MARCH 8, 2019

Motion by Plaintiffs for Preliminary Approval of Class Action Settlement

The above-entitled consolidated matter came on regularly for hearing on Friday, March 8, 2019 at 9:00 a.m. in Department 1 (Complex Civil Litigation), the Honorable Brian C. Walsh presiding. The appearances are as stated in the record. The Court issued a tentative ruling on March 5, 2019. The tentative ruling directed plaintiffs to file a supplemental declaration addressing certain issues, which they filed on March 7, 2019. Having reviewed and considered the written submissions of all parties, including plaintiffs' supplemental declaration, and pursuant to its discussion with the parties at the hearing, the Court orders as follows:

These consolidated putative shareholder class actions arise from the sale of defendant Hansen Medical, Inc. to defendant Auris Surgical Robotics, Inc. Before the Court is plaintiffs' motion for preliminary approval of a settlement, which is unopposed.

I. Factual and Procedural Background

Hansen was formerly a Delaware corporation headquartered in Mountain View. Founded in 2002, it became a leader in intravascular robotics, developing products and technology designed to enable the accurate positioning, manipulation, and control of catheters and catheter-based technologies. (Consolidated Amended Complaint for Breach of Fiduciary Duty and Violations of State Law ("Amended Complaint"), ¶¶ 56-57.) On July 27, 2016, Auris and its subsidiary acquired Hansen for $4.00 per share in an all-cash transaction valued at approximately $80 million. (*Id.* at ¶ 1.)

Plaintiffs allege that the transaction was orchestrated by Auris's co-founder and CEO, Frederic Moll, who also co-founded Hansen and served on its board and as its CEO from 2002 to 2010. (Amended Complaint, ¶ 3.) They contend that the transaction was the product of a fundamentally flawed process designed to ensure the sale to Auris at a price substantially below Hansen's fair value and under terms preferential to Hansen's board (the "Individual Defendants") and controlling stockholders (the "Rollover Stockholders"). (*Id.* at ¶¶ 1, 3.) Hansen had traded above the offer price as recently as April 4, 2016 (when it reached $4.20 per share), reached a 52-week trading high of $12.20 per share on July 22, 2016, and had positive growth prospects due to recent technological developments and regulatory approvals. (*Id.* at ¶ 4.)

A. Background to the Sale as Alleged in the Amended Complaint

Despite generally strong performance and a positive future outlook, in meetings during July of 2015, Hansen stated that it was having liquidity issues. (Amended Complaint, ¶ 66.) The board began exploring its options, including divesting Hansen's Sensei product line, reducing headcount, restructuring Hansen's facilities lease, and pursuing financing alternatives. (*Ibid.*) The board reportedly contacted 10 companies, including Auris, about divesting the

Sensei product line, but these efforts were unsuccessful. (*Id.* at ¶ 67.) Ultimately, these short-lived efforts were the extent of the board's attempts to pursue strategic alternatives that would have allowed Hansen to remain a standalone company. (*Ibid.*)

On September 24, 2015, Moll reached out to Hansen's President and CEO, Cary Vance, to discuss potential collaborations between Auris and Hansen. (Amended Complaint, ¶ 68.) On September 25, a representative of Company B called Vance to explore a potential acquisition of Hansen, and the two companies executed a confidentiality agreement. (*Id.* at ¶ 69.) Moll expressed interest in an acquisition as well, and received permission to reach out directly to key stockholders. (*Id.* at ¶ 70.) He proceeded to work out the terms of the merger agreement with these stockholders directly, cutting Hansen's board and its Transaction/Special Committee out of the loop. (*Ibid.*) Furthermore, the Transaction Committee was initially chaired by Rollover Stockholder Jack W. Schuler, despite his conflicted status as a controlling stockholder. (*Id.* at ¶¶ 71-73.)

On October 8, 2015, Company B made an initial proposal to buy all of Hansen's intellectual property for $40 million in cash, subject to an agreement to license back certain intellectual property to Hansen. (Amended Complaint, ¶ 77.) The Transaction Committee decided to defer a response to Company B until Hansen received a formal proposal from Auris. (*Id.* at ¶ 79.) Around this time, Schuler agreed to resign from the Transaction Committee, but he continued to attend almost all of its meetings despite his material conflicts. (*Id.* at ¶ 80.) On October 18, 2015, Vance received an expression of interest from Auris proposing an acquisition of Hansen for cash and stock. (*Id.* at ¶ 81.)

At meetings on October 19 and 20, 2015, the board decided to proceed with soliciting offers to sell the company, and determined that the company should focus of strategic acquirers rather than financial sponsors. (Amended Complaint, ¶ 82.) In addition to Auris and Company B, Hansen's financial advisor reportedly contacted six other potential counterparties, but only two agreed to meet with Hansen. (*Id.* at ¶ 83.) Auris continued to reach out to Schuler and other Rollover Stockholders directly during this time. (*Id.* at ¶ 84.)

On November 3, 2015, Hansen made a counter-offer to Company B for $60 million over its initial proposal, a dramatic increase suggesting Hansen was trying to make Company B drop out of the process. (Amended Complaint, ¶ 85.) By November 24, only Auris and Company B remained interested in a transaction. (*Id.* at ¶ 88.) It is unclear why the other two potential acquirers dropped out of the process. (*Ibid.*)

Auris made an initial proposal valued at $4.50 per share on December 4, 2015. (Amended Complaint, ¶ 90.) On the same day, Company B made a counter-offer of $50 million for Hansen's intellectual property. (*Id.* at ¶ 91.) The Transaction Committee held a meeting with Schuler and another Rollover Stockholder, who expressed disapproval of both Auris's and Company B's terms. (*Ibid.*) This marked the beginning of a trend wherein key Rollover Stockholders were given rights of first refusal and permitted "to blatantly call the shots" with regard to the negotiations. (*Ibid.*)

On December 8, 2015, the board reconstituted the Transaction Committee as a "Special Committee," which never attracted interest beyond the parties already in play. (Amended Complaint, ¶ 92.) Rather than retaining its own financial and legal advisors, the Special Committee continued to rely on Perella Weinberg, the company's existing financial and legal advisor. (*Id.* at ¶ 93.) Rollover Stockholders again met directly with Moll to discuss the potential transaction. (*Id.* at ¶ 94.)

On December 22, 2015, Hansen made a counter-proposal to Company B for an upfront payment of over $50 million and three subsequent payments of $15 million. (Amended Complaint, ¶ 95.) Auris made a second proposal of $5.50-$6.00 per share, with payment in the upper half of the range dependent on key Rollover Stockholders' reinvestment of their consideration from the deal back into Auris. (*Id.* at ¶ 96.) On December 29, Perella Weinberg represented to the Special Committee that the Rollover Stockholders did not support the second Auris proposal, but encouraged the company to keep negotiating. (*Id.* at ¶ 98.) Throughout the process, the Rollover Stockholders refused Hansen's pleas to refinance its debt, pushing the company toward the deal with Auris. (*Id.* at ¶¶ 98-99.) Schuler resigned from the board in

January of 2016, ostensibly because he was considering proposing a transaction with Hansen himself. (*Id.* at ¶ 101.)

The Special Committee met again on January 8, 2016 to discuss indications that Company B might be willing to acquire Hansen's intellectual property for a $60 million upfront payment and a $20 million loan, but Company B expressed concerns with these terms, suggesting it might be disengaging from the process. (Amended Complaint, ¶¶ 101, 103.) On January 14, the Company made its first public announcement that it was pursuing strategic alternatives. (*Id.* at ¶ 104.) On the same day, it received a third proposal from Auris, still offering between $5.50 and $6 per share but dropping the condition of mandatory reinvestment in Auris by key stockholders. (*Ibid.*)

Auris refused to increase its deal consideration until Rollover Stockholders proposed a target price, and they finally proposed $8 per share on January 26, 2016. (Amended Complaint, ¶ 107.) Auris would not agree to this and indicated it was becoming uncertain of even $6 per share due to recent market volatility and the status of Hansen's debt obligations. (*Id.* at ¶ 108.) Auris rejected a proposal in which Hansen shareholders other than the Rollover Stockholders would be able to receive Auris stock rather than being cashed out. (*Id.* at ¶ 111.) After a month of silence, Vance finally re-engaged with Company B and obtained an offer of $60 million plus a $10 million loan for Hansen's intellectual property. (*Id.* at ¶ 112.) From February 19 through March 6, 2016, Hansen pursued discussions with both Auris and Party B, with Auris ultimately offering $5.50 per share with no financial contingency for Hansen's debt. (*Id.* at ¶¶ 113-114.) Hansen discontinued talks with Company B. (*Id.* at ¶ 114.)

Then, on March 27, 2016, Auris suddenly slashed its proposal to $3.50 per share. (Amended Complaint, ¶ 115.) On March, 29, it offered $4 per share, with the requirement that key Rollover Stockholders reinvest in Auris, "and the assumption of [Hansen's] debt." (*Id.* at ¶ 116.) Auris rejected outright a counteroffer of $4.25 per share. (*Ibid.*) Perella Weinberg issued a formal opinion concluding that Auris's offer price was fair, the Special Committee and the Board approved the merger, and the Rollover Stockholders executed agreements to reinvest their merger proceeds into Auris. (*Id.* at ¶ 117.)

The Rollover Stockholders and other insiders, holding approximately 65.4 percent of the company's shares, executed voting agreements requiring them to vote in favor of the transaction. (Amended Complaint, ¶ 120.) The Rollover Stockholders agreed to reinvest $49 million into Auris in exchange for preferred stock, a substantial benefit not shared by Hansen's unaffiliated, non-insider minority stockholders. (*Ibid.*) Inexplicably, the deal did not include a "majority-of-the-minority" provision to protect these stockholders. (*Id.* at ¶ 123.) Hansen also agreed to a number of inappropriate deal protection devices (*id.* at ¶¶ 144-156, 158), and the Individual Defendants benefitted from lucrative "golden parachute" clauses (*id.* at ¶ 157).

On July 22, 2016, a majority of Hansen's shareholders voted to approve the merger, which closed on July 27, 2016. "[A] three-fourths majority of the non-rollover shares voted *against* the Merger." (*In re Hansen Medical, Inc. Stockholders Litigation* (Del. Ch., June 18, 2018, No. CV 12316-VCMR) 2018 WL 3025525, at *9, fn. 102, italics original.)

B. The Litigation Arising from the Sale

The Declaration of Evan J. Smith filed in support of plaintiffs' motion summarizes the litigation arising from the sale. Mr. Smith declares that after the merger was publicly announced, complaints were filed in both California and Delaware state courts on behalf of Hansen shareholders. The California and Delaware actions were consolidated in each respective state court. Meanwhile, other shareholders obtained relevant books and records through a request under Section 220 of the Delaware General Corporation Law.

In the instant California actions, plaintiffs obtained expedited discovery to support a motion for a preliminary injunction. They obtained substantially the same documents that had been provided to the Section 220 shareholders and deposed board member and Individual Defendant Christopher P. Lowe, Hansen's interim Chief Financial Officer. The Delaware plaintiffs obtained the same documents and participated in the deposition. On July 12, 2016, the California plaintiffs filed a motion for preliminary injunction delaying the sale to enable the provision of supplemental disclosures to the shareholders, but that motion was denied and the merger proceeded.

The California and Delaware plaintiffs amended their complaints, and defendants answered. On April 6, 2017, the parties participated in mediation before Robert A. Meyer of JAMS, but they did not achieve a settlement.

In June of 2017, the defendants filed motions for judgment on the pleadings in the Delaware action, and the parties agreed to stay the California action pending the resolution of those motions. In an order dated June 18, 2018, the Delaware court denied the motion as to all claims other than the aiding and abetting claims against Auris. (See *In re Hansen Medical, Inc. Stockholders Litigation* (Del. Ch., June 18, 2018, No. CV 12316-VCMR) 2018 WL 3025525.) Applying the "minimal" Federal Rule of Civil Procedure 12(b)(6) pleading standard, the court held that "Plaintiffs have stated a reasonably conceivable claim that the Merger should be considered under the entire fairness standard of review because it was a conflicted transaction involving a controlling stockholder." (*Id.* at *5.) As the court explained,

> Entire fairness is "Delaware's most onerous standard." "Once entire fairness applies, the defendants must establish 'to the court's satisfaction that the transaction was the product of both fair dealing and fair price.' " Generally, the determination that the entire fairness standard of review could reasonably apply will prevent dismissal of an action at the motion to dismiss stage ....

(*In re Hansen Medical, Inc. Stockholders Litigation*, *supra,* 2018 WL 3025525, at *9.) The court went on to find that "Plaintiffs have pled non-exculpated claims against Defendant Schuler in his capacity as a controller, Lowe for a violation of his duty of loyalty, and Vance in his capacity as an officer." (*Id.* at *9.) "Plaintiffs have stated a reasonably conceivable claim that Schuler was part of a control group that competed with Hansen's minority stockholders for consideration during the Merger, resulting in a merger price for the minority stockholders that Plaintiffs argue was unfairly depressed." (*Id.* at *10.) Finally, the court found that plaintiffs stated a claim against Lowe and Vance for failing to disclose management's view that the highest of three valuations of the company provided in the proxy was the most likely, and the other valuations were provided only to keep the Chief Financial Officer from "looking stupid."

(*Ibid.*)[1] Plaintiffs agreed to dismiss Auris and related defendants from the California action as a result of the Delaware court's ruling that they did not state a claim for aiding and abetting liability against these defendants.

In July of 2018, certain defendants moved to quash and dismiss the California action for lack of personal jurisdiction and to stay the proceedings in favor of the Delaware action. Before those motions were heard, the parties engaged in another mediation before Michelle Yoshida of Phillips ADR, which resulted in the settlement before the Court. On October 31, 2018, lead counsel in the Delaware action informed the Delaware court that the parties had reached a settlement, which would be presented to this Court for approval. The parties have agreed to dismiss the Delaware action with prejudice in the event that this Court approves their settlement.

II. 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, disapproved of on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260.)

> 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.)

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[1] The plaintiffs in the California action did not raise this alleged nondisclosure in their unsuccessful motion for a preliminary injunction.

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.)

III. Settlement Process

According to counsel's declaration, plaintiffs have reviewed discovery materials including presentations to the Hansen board; other board materials prepared by Hansen management in connection with the consideration of strategic alternatives; emails among Hansen's board members; emails between members of the Special Committee; emails and documents exchanged by Hansen and Auris; internal Auris emails and documents; emails between Auris directors; and documents related to Perella Weinberg's fairness opinion.

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After numerous meet and confer negotiation sessions and the unsuccessful first mediation, and following the motion practice described above, lead counsel in the California and Delaware actions, defendants' counsel, and counsel for Auris, along with defendants' insurers and certain of their counsel, participated in a successful mediation on October 29, 2018 before Michelle Yoshida. The settlement is for $7.5 million in cash.

Confirmatory discovery was subsequently conducted, and lead counsel in the California actions deposed a representative of Hansen's financial advisor, Perella Weinberg. The parties formally executed their stipulation of settlement on February 5, 2019.

IV. Provisions of the Settlement

The settlement will be funded $7.125 million by defendants' insurers and $375,000 by one of the Rollover Shareholders (the "Feinberg Defendants"). Defendants' insurers will also pay $12,000 to cover the initial costs of notice to the class, with any remaining portion of this sum to be returned after the notice costs are paid.

The settlement fund shall be used to pay any additional administrative costs, all relevant taxes, and an attorney fee and expense award of up to 1/3 of the gross settlement ($2.5 million), plus up to $250,000 in litigation expenses. Incentive awards not to exceed $1,000 per plaintiff will be paid from the attorney fee and expense award. The net settlement will be distributed pro rata to Eligible Class Members who owned Hansen stock as of the date of the merger, based on their eligible shares. (Excluded from the class are defendants and their immediate family and affiliated entities, as well as shareholders who opt out or the settlement or who exercised their appraisal rights under Delaware law.[2]) Given the 6,579,293 estimated eligible shares, class members are expected to receive 76 cents per share.

Class members will not be required to submit a claim to receive their payments. With respect to stock held of record by Cede as nominee for the Depository Trust Company ("DTC"), the settlement administrator will cause eligible beneficial owners' payments to be

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[2] Delaware's appraisal statute "allows stockholders who perfect their appraisal rights to receive 'fair value' for their shares as of the merger date"—as independently assessed by the Court of Chancery—"instead of the merger consideration." (*Dell, Inc. v. Magnetar Global Event Driven Master Fund Ltd* (Del. 2017) 177 A.3d 1, 5.)

paid to DTC and DTC will distribute the funds using the same mechanism it employed to distribute the merger consideration. For other stock, payment will be made by the administrator directly to the record owner. The settlement provides that in the event any payment is undeliverable or is not cashed within six months of its issue date, the record holders "shall follow their respective policies with respect to further attempted distribution or escheatment."

Class members who do not opt out of the class will release all claims "that were asserted or could have been asserted by Plaintiffs in the Actions on behalf of themselves and/or the Class, and any and all Claims, including Unknown Claims, that are based on, arise out of, relate in any way, or involve the same set of operative facts as the claims asserted by Plaintiffs against Released Defendant Parties in the Actions and which relate to the ownership of Hansen common stock."

V. Fairness of the Settlement

The settlement is entitled to a presumption of fairness considering the substantial discovery, negotiations, and motion practice described above, which have resulted in the endorsement of experienced counsel. Still, the Court must not "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., supra,* 168 Cal.App.4th at p. 130.) At the Court's direction, plaintiffs submitted a supplemental declaration providing their valuation of the case and assessment of its strengths and weaknesses. Based on the testimony of Hansen's interim Chief Financial Officer, plaintiffs estimated their maximum recovery based on the highest of the three valuations of the company provided in the proxy statement: $5.78 per share. Under that methodology, the settlement represents a 64 percent recovery to the class. In its tentative ruling, the Court noted that the allegations of the Amended Complaint suggest a maximum recovery of $2-4 per share, somewhat higher than the $1.78 per share maximum recovery

assumed by plaintiffs based on their findings during discovery. However, even if a recovery in the range initially estimated by the Court were possible, a settlement yielding a net recovery of 76 cents per share is well within the range of reasonableness. The Court accordingly finds that the settlement consideration is fair and reasonable to the class for purposes of preliminary approval.

The Court has reviewed a copy of the parties' Supplemental Side Agreement, which was lodged confidentially by the plaintiffs at the Court's direction, and finds no issue with its terms. The Court also directed the parties to meet and confer to address how to bring their settlement into compliance with Code of Civil Procedure section 348, which requires that "unpaid residue or unclaimed or abandoned class member funds, plus any interest that has accrued thereon," be paid "to nonprofit organizations or foundations to support projects that will benefit the class or similarly situated persons, or that promote the law consistent with the objectives and purposes of the underlying cause of action, to child advocacy programs, or to nonprofit organizations providing civil legal services to the indigent." (Code Civ. Proc., § 384, subd. (b).) The parties have indicated that they will comply with this provision, and are directed to select an appropriate recipient for unclaimed funds prior to the final fairness hearing.

Finally, the Court retains an independent right and responsibility to review the requested attorney fees and award only so much as it determines to be reasonable. (See *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) While 1/3 of the common fund for attorney fees is generally considered reasonable, counsel shall submit lodestar information prior to the final approval hearing in this matter so the Court can compare the lodestar information with the requested fees. (See *Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 504 [trial courts have discretion to double-check the reasonableness of a percentage fee through a lodestar calculation].)

VI. Proposed Settlement Class

Plaintiffs request that the following settlement class be provisionally certified:

> Any and all record and beneficial owners and holders of Hansen common stock, as of July 27, 2016 (the date of the consummation of the Merger), including any and all of their respective successors-in-interest, successors, predecessors-in-interest, predecessors, representatives, trustees, executors, administrators, estates, heirs, assigns and transferees, immediate and remote, and any person or entity acting for or on behalf of, or claiming under, any of them, and each of them, together with their predecessors-in-interest, predecessors, successors-in-interest successors, and assigns, but excluding (i) Defendants, their Immediate Family, and any trust or other entity affiliated with or controlled by any Defendant, other than employees of such entities who were not directors or officers of such entities as of the Closing; (ii) any and all record and beneficial owners and holders of Hansen common stock who exercised their appraisal rights under Section 262 of the General Corporation Law of the State of Delaware; and (iii) any and all record and beneficial owners and holders of Hansen common stock who timely and validly opt out of the Class and Settlement pursuant to Paragraphs 25-26 of [the] Stipulation.

A. Legal Standard for Certifying a Class for Settlement Purposes

Rule 3.769(d) of the California Rules of Court states that "[t]he court may make an order approving or denying certification of a provisional settlement class after [a] preliminary settlement hearing." California Code of Civil Procedure Section 382 authorizes certification of a class "when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court ...." As interpreted by the California Supreme Court, Section 382 requires the plaintiff to demonstrate by a preponderance of the evidence (1) an ascertainable class and (2) a well-defined community of interest among the class members. (*Sav-On Drug Stores, Inc. v. Superior Court (Rocher)* (2004) 34 Cal.4th 319, 326, 332.)

The "community-of-interest" requirement encompasses three factors: (1) predominant questions of law or fact, (2) class representatives with claims or defenses typical of the class, and (3) class representatives who can adequately represent the class. (*Ibid.*) "Other relevant considerations include the probability that each class member will come forward ultimately to prove his or her separate claim to a portion of the total recovery and whether the class approach would actually serve to deter and redress alleged wrongdoing." (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.) The plaintiff has the burden of establishing that class treatment

will yield "substantial benefits" to both "the litigants and to the court." (*Blue Chip Stamps v. Superior Court (Botney)* (1976) 18 Cal.3d 381, 385.)

In the settlement context, "the court's evaluation of the certification issues is somewhat different from its consideration of certification issues when the class action has not yet settled." (*Luckey v. Superior Court (Cotton On USA, Inc.)* (2014) 228 Cal.App.4th 81, 93.) As no trial is anticipated in the settlement-only context, the case management issues inherent in the ascertainable class determination need not be confronted, and the court's review is more lenient in this respect. (*Id.* at pp. 93-94.) However, considerations designed to protect absentees by blocking unwarranted or overbroad class definitions require heightened scrutiny in the settlement-only class context, since the court will lack the usual opportunity to adjust the class as proceedings unfold. (*Id.* at p. 94.)

B. Ascertainable Class

"The trial court must determine whether the class is ascertainable by examining (1) the class definition, (2) the size of the class and (3) the means of identifying class members." (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 873.) "Class members are 'ascertainable' where they may be readily identified without unreasonable expense or time by reference to official records." (*Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 932.)

Here, the class members are readily identifiable based on defendants' and record shareholders' records, and the class is clearly defined. The Court finds that the class is numerous, ascertainable, and appropriately defined.

C. Community of Interest

With respect to the first community of interest factor, "[i]n order to determine whether common questions of fact predominate the trial court must examine the issues framed by the pleadings and the law applicable to the causes of action alleged." (*Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 916.) The court must also give due weight to any evidence of a conflict of interest among the proposed class members. (See *J.P. Morgan & Co., Inc. v. Superior Court (Heliotrope General, Inc.)* (2003) 113 Cal.App.4th 195, 215.) The ultimate question is whether the issues which may be jointly tried, when compared with those

requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants. (*Lockheed Martin Corp. v. Superior Court, supra,* 29 Cal.4th at pp. 1104-1105.) "As a general rule if the defendant's liability can be determined by facts common to all members of the class, a class will be certified even if the members must individually prove their damages." (*Hicks v. Kaufman & Broad Home Corp., supra,* 89 Cal.App.4th at p. 916.)

Here, common legal and factual issues predominate. Plaintiffs' claims all arise from the impact of the merger process on the similarly-situated class members.

As to the second factor,

> The typicality requirement is meant to ensure that the class representative is able to adequately represent the class and focus on common issues. It is only when a defense unique to the class representative will be a major focus of the litigation, or when the class representative's interests are antagonistic to or in conflict with the objectives of those she purports to represent that denial of class certification is appropriate. But even then, the court should determine if it would be feasible to divide the class into subclasses to eliminate the conflict and allow the class action to be maintained.

(*Medrazo v. Honda of North Hollywood* (2008) 166 Cal. App. 4th 89, 99, internal citations, brackets, and quotation marks omitted.)

Like other members of the class, plaintiffs were unaffiliated, non-insider minority stockholders impacted by the merger. The anticipated defenses are not unique to plaintiffs, and there is no indication that plaintiffs' interests are otherwise in conflict with those of the class.

Finally, adequacy of representation "depends on whether the plaintiff's attorney is qualified to conduct the proposed litigation and the plaintiff's interests are not antagonistic to the interests of the class." (*McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450.) The class representative does not necessarily have to incur all of the damages suffered by each different class member in order to provide adequate representation to the class. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 238.) "Differences in individual class members' proof of damages [are] not fatal to class certification. Only a conflict that goes to the very subject matter of the litigation will defeat a party's claim of representative status." (*Ibid.*, internal citations and quotation marks omitted.)

Plaintiffs have the same interest in maintaining this action as any class member would have. Further, they have hired experienced counsel. Plaintiffs have sufficiently demonstrated adequacy of representation.

D. Substantial Benefits of Class Certification

"[A] class action should not be certified unless substantial benefits accrue both to litigants and the courts. . . ." (*Basurco v. 21st Century Ins.* (2003) 108 Cal.App.4th 110, 120, internal quotation marks omitted.) The question is whether a class action would be superior to individual lawsuits. (*Ibid.*) "Thus, even if questions of law or fact predominate, the lack of superiority provides an alternative ground to deny class certification." (*Ibid.*) Generally, "a class action is proper where it provides small claimants with a method of obtaining redress and when numerous parties suffer injury of insufficient size to warrant individual action." (*Id.* at pp. 120-121, internal quotation marks omitted.)

Here, putative class members owned millions of eligible shares impacted by the merger. It would be inefficient for the Court to hear and decide the same issues separately and repeatedly for each class member. Further, it would be cost prohibitive for each class member to file suit individually, as each member would have the potential for little to no monetary recovery. It is clear that a class action provides substantial benefits to both the litigants and the Court in this case.

VII. Notice

The content of a class notice is subject to court approval. (Cal. Rules of Court, rule 3.769(f).) "The notice must contain an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement." (*Ibid.*) In determining the manner of the notice, the court must consider: "(1) The interests of the class; (2) The type of relief requested; (3) The stake of the individual class members; (4) The cost of notifying class members; (5) The resources of the parties; (6) The possible prejudice to class members

who do not receive notice; and (7) The res judicata effect on class members." (Cal. Rules of Court, rule 3.766(e).)

Here, the long-form notice describes the lawsuit, explains the settlement, and instructs class members that they may opt out of the settlement or object. The gross settlement amount and estimated deductions are provided, along with the estimated payment per share. Class members are given until 21 days prior to the final fairness hearing to request exclusion from the class or submit a written objection.

At the Court's direction, the notice was modified to instruct class members that they may appear at the final fairness hearing and make an oral objection even if they do not submit a written objection. The estimated payment per share is also displayed in bold within a box set off from the rest of the text on the first page of the notice. The notice was also modified to provide a process by which class members may dispute defendants' records regarding their stock ownership. The summary notice was also modified in conformity with these changes, and now reflects the estimated payment per share and estimated deductions from the gross settlement, including the estimated attorney fee and expense award. Finally, the estimated notice and settlement administration costs are now included in the notices. With these modifications, the forms of notice are approved.

Turning to the notice procedure, the parties have selected Epiq Class Action & Claims Solutions, Inc. as the settlement administrator. They propose that within 7 calendar days of preliminary approval, the administrator will publish the summary notice once over the Business Wire. Within 14 calendar days of preliminary approval, Epiq will mail the long-form notice "to all members of the Class who can be identified with reasonable effort." The administrator will also post the stipulation and notice on a dedicated web site.

As directed by the Court, paragraph 13 of plaintiffs' supplemental declaration provides further detail regarding the procedure for mailing the long form notice. The procedure described in paragraph 13 is adequate and, along with the other notice procedures, is approved.

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VIII. Conclusion and Order

Plaintiffs' motion for preliminary approval is GRANTED. The final fairness hearing will take place on **July 12, 2019** at 9:00 a.m. in Dept. 1.

The following class is provisionally certified for settlement purposes:

> Any and all record and beneficial owners and holders of Hansen common stock, as of July 27, 2016 (the date of the consummation of the Merger), including any and all of their respective successors-in-interest, successors, predecessors-in-interest, predecessors, representatives, trustees, executors, administrators, estates, heirs, assigns and transferees, immediate and remote, and any person or entity acting for or on behalf of, or claiming under, any of them, and each of them, together with their predecessors-in-interest, predecessors, successors-in-interest successors, and assigns, but excluding (i) Defendants, their Immediate Family, and any trust or other entity affiliated with or controlled by any Defendant, other than employees of such entities who were not directors or officers of such entities as of the Closing; (ii) any and all record and beneficial owners and holders of Hansen common stock who exercised their appraisal rights under Section 262 of the General Corporation Law of the State of Delaware; and (iii) any and all record and beneficial owners and holders of Hansen common stock who timely and validly opt out of the Class and Settlement pursuant to Paragraphs 25-26 of [the] Stipulation.

IT IS SO ORDERED.

Dated: 3-8-19

Honorable Brian C. Walsh
Judge of the Superior Court