

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA  
191 N. FIRST STREET  
SAN JOSE, CA 95113-1090

Electronically ISSUED  
by Superior Court of CA,  
County of Santa Clara,  
on 7/10/2019 4:32 PM  
Reviewed By: R. Walker  
Case #16CV294288  
Envelope: 3112081

TO: FILE COPY

RE: **In Re Hansen Medical, Inc. Shareholder Litigation**

Consolidated Action, including: *Liu v. Hansen Medical, Lead Case No. 16CV294288*  
*Huggins v. Hansen Medical, Case No. 16CV294554*  
*Lax v. Eagle, Case No. 16CV294858*  
*Simonson v. Vance, Case No. 16CV294862*

**NOTICE OF TENTATIVE RULING POSTED**

A tentative ruling has been posted in the above referenced matter for the hearing on July 12, 2019 and is attached herein.

**If you do not have access to the Internet** during the time period when the rulings are posted and you wish to obtain your tentative ruling, please call (408) 882-2515 for assistance.

**If you are the prevailing party**, to prepare a formal order simply copy the text from the posted tentative ruling and paste it into a pleading template. Pursuant to the Rules of Court, forward the proposed order to counsel for review before sending it to the Court for execution and filing.

**Tentative rulings will become Orders of the Court unless contested.** See Rules 3.1308(a)(1) and 3.1312, California Rules of Court .

**Contesting a ruling**

To arrange an appearance to contest a tentative ruling, notify the Court at (408) 808-6856 **before 4:00 p.m.** on the court day before the hearing. You may make your notification to the Court by leaving a message when prompted to do so at the end of the recorded greeting. Messages shall be brief, no longer than 30 seconds. When you leave your message, **state only:**

- the case number
- the case name

- and the name of the attorney, including phone number and area code

**You must also notify opposing counsel.** Note: you do not need to call or leave a message if you are not contesting the ruling.

Parties may arrange a telephonic appearance by calling Court Call Services, an independent vendor, at: (310) 342-0888 or 1-888-88COURT

Parties must also notify the court and opposing counsel of the intended telephonic appearance. Parties who do not call to contest the ruling before 4:00 pm on the court day before the hearing or appear without notice to the Court and opposing counsel will not be heard. If no party has requested oral argument, appearances are not required and the tentative ruling will be adopted as the ruling of the Court

Date Issued: July 10, 2019

Hon. Brian C. Walsh

Judge of the Superior Court

---

If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the American with Disabilities Act, please contact the Court Administrator's office at (408) 882-2700, or use the Court's TDD line, (408) 882-2690 or the Voice/TDD California Relay Service, (800) 735-2922.

## Calendar Line 1

**Case Name:** *In re: Hansen Medical, Inc. Shareholder Litigation*  
**Case No.:** 16-CV-294288 (lead case)

These consolidated putative shareholder class actions arise from the sale of defendant Hansen Medical, Inc. to defendant Auris Surgical Robotics, Inc. The parties have reached a settlement, which the Court preliminarily approved in an order filed on March 8, 2019. The factual and procedural background of the action and the Court's analysis of the settlement and settlement class are set forth in that order.

Before the Court are plaintiffs' motions for final approval of the settlement and for an award of attorney fees and expenses, which are unopposed.

### 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, 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.)

In general, the most important factor is the strength of plaintiffs' case on the merits, balanced against the amount offered in settlement. (See *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.) Still, 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., supra, 168 Cal.App.4th at p. 130.)*

## II. Terms, Administration, and Final Approval of the Settlement

The settlement in this action is for \$7.5 million in cash, to 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. 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 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.”

The notice process has now been completed. According a declaration by the claims administrator filed on June 27, 2019, the administrator published notice of the settlement to Business Wire on March 15, 2019 and also launched a web site and toll-free information line on that date. It mailed notice directly to 127 potential class members and to 1,353 brokerage firms, banks, institutions, and other third-party nominees that hold securities in “street name” for beneficial owners. Nominees responded by providing the names and addresses of 3,125 potential class members, and as of June 24, 2019, the administrator had mailed a total of 4,605 notice packages to class members and nominees. No objections or requests for exclusion from the class have been received.

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

Finally, pursuant to the Court’s preliminary approval order and in compliance with Code of Civil Procedure section 384, the parties have selected Bay Area Legal Aid as the recipient for unclaimed settlement funds. This selection is appropriate and is approved.

### III. Attorney Fees, Costs, and Incentive Awards

Plaintiffs seek a fee award of \$2.5 million, or 1/3 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. Plaintiffs also provide a lodestar figure of \$2,078,475, based on 3,240 hours spent on the case by counsel and paraprofessionals. The fee request results in a reasonable multiplier of 1.18. As a cross-check, the lodestar supports the 1/3 percentage fee requested, particularly given the lack of objections to the attorney fee request. (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].)

Plaintiffs also request \$62,199.64 in costs, well below the estimate provided at preliminary approval. The costs are reasonable based on the summaries provided and are approved. The \$69,702 in administrative costs are also approved.

Finally, plaintiffs request a service award of \$1,000 each to six named plaintiffs. The Court finds that the named plaintiffs are entitled to an enhancement award and the amount requested is reasonable.

#### IV. Order and Judgment

In accordance with the above, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

Plaintiffs' motions for final approval and for an award of attorney fees and expenses are GRANTED.

The following class is 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.

There are no other exclusions from the class.

Judgment shall be entered through the filing of this order and judgment. (Code Civ. Proc., § 668.5.) Plaintiffs and the members of the settlement class shall take from their complaint only the relief set forth in the settlement agreement and this order and judgment. Pursuant to Rule 3.769(h) of the California Rules of Court, the Court retains jurisdiction over the parties to enforce the terms of the settlement agreement and the final order and judgment.

The Court sets a compliance hearing for **April 17, 2020 at 10:00 A.M.** in Department 1. At least ten court days before the hearing, class counsel and the settlement administrator shall submit a summary accounting of the net settlement fund identifying distributions made as ordered herein, the number and value of any uncashed checks, amounts remitted to the *cy pres* beneficiary, the status of any unresolved issues, and any other matters appropriate to bring to the Court's attention. Counsel shall also submit an amended judgment as described in Code of Civil Procedure section 384, subdivision (b). Counsel may appear at the compliance hearing telephonically.

**The Court will prepare the order.**