

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

Case No. CV 13-9174-MWF (MRWx) **Date: September 25, 2018**

Title: Mark Roberti v. OSI Systems, Inc., et al.

Present: The Honorable MICHAEL W. FITZGERALD, U.S. District Judge

Deputy Clerk:
Rita Sanchez

Court Reporter:
Not Reported

Attorneys Present for Plaintiff:
None Present

Attorneys Present for Defendant:
None Present

Proceedings (In Chambers): ORDER RE: LEAD PLAINTIFF’S MOTION FOR APPROVAL OF DISTRIBUTION PLAN [96]

Before the Court is an unopposed Motion for Approval of Distribution Plan (the “Motion”), filed by Arkansas State Highway Employees Retirement System (“Lead Plaintiff”), on August 20, 2018. (Docket No. 96). No opposition to the Motion has been filed by any Defendant.

The Court held a hearing on the Motion on September 24, 2018.

For the reasons set forth below, the Motion is **GRANTED**. Failure to oppose is alone grounds for granting the Motion, pursuant to Local Rule 7-12. As to the merits, the Court is satisfied with the recommendations offered by A.B. Data, Ltd., Claims Administrator, to distribute to qualified claimants the proceeds from the Settlement Agreement in accordance with its proposed plan and to pay itself a sum in the amount of **\$78,078.51** for administration fees.

I. BACKGROUND

A. Procedural History

On December 12, 2013, Plaintiff Mark Roberti initiated a federal securities class action on behalf of a putative class consisting of all persons other than Defendants who purchased or otherwise acquired OSI Systems, Inc. (“OSI”), securities between January 24, 2012, and December 6, 2013. (Complaint ¶ 1 (Docket No. 1)). The

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Complaint sought recovery for damages caused by Defendants' violations of various federal securities laws. (*Id.*).

Defendant OSI produces medical monitoring and anesthesia systems, security and inspection systems, and lasers, optics, and optoelectronic components. (*Id.* ¶ 2). One of OSI's largest customers is the Transportation Security Administration, an agency of the United States Department of Homeland Security, who use OSI's security imaging products at security checkpoints and screenings in United States airports. (*Id.* ¶ 3). According to the Complaint, "Defendants made materially false and misleading statements regarding [OSI's] business, operational and compliance policies." (*Id.* ¶ 4). After these materially false and misleading statements were revealed by various news sources, the market value of OSI securities suffered a precipitous decline, thereby injuring the financial interest of putative class members holding OSI securities. (*Id.* ¶¶ 5–13).

On March 17, 2014, the Court granted Plaintiff Arkansas State Highway Employees Retirement System's Motion for Appointment of Counsel and Appointment as Lead Plaintiff. (Docket No. 35).

On May 20, 2014, Lead Plaintiff filed a First Amended Complaint ("FAC"). (Docket No. 44). The FAC provided additional details behind OSI's allegedly materially false and misleading statements concerning OSI's development of software to transform "naked body" images to more generic images of travelers undergoing security screening. (*Id.* ¶ 3). The FAC also alleged additional materially false and misleading statements regarding the financial health of OSI. (*Id.* ¶ 11).

On August 29, 2014, Defendants filed a Motion to Dismiss Plaintiff's Amended Class Action Complaint. (Docket No. 51). On February 27, 2015, the Court issued an Order denying Defendants' Motion to Dismiss. (Docket No. 60).

On June 30, 2015, Lead Plaintiff filed a Motion to Certify Class. (Docket No. 74). But rather than litigate the class certification, the parties instead reached a settlement and Lead Plaintiff filed an unopposed Ex Parte Application for Preliminary

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Approval of Class Action Settlement. (Docket No. 80). The Court issued an Order preliminarily approving the proposed settlement and setting a Settlement Hearing for December 7, 2015. (Docket No. 82).

On November 2, 2015, Lead Plaintiff filed a Motion for Final Approval of Class Action Settlement and Plan of Allocation. (Docket No. 84). On the same day, Lead Plaintiff also filed a Motion for Attorney’s Fees and Reimbursement of Litigation Expenses. (Docket No. 85). On December 8, 2015, the Court issued an Order granting final certification of the settlement class; ordering that the settlement funds to be made to claimants in accordance with the method outlined in the proposed Stipulation and Agreement of Settlement (“Settlement Agreement”); and awarding class counsel \$130,205.34 in costs and \$3 million in fees, based on an award of 20% of the \$15 million settlement. (Docket No. 90).

B. Settlement Agreement

The Settlement Agreement applies to the Settlement Class, defined as: “All persons and entities that purchased or otherwise acquired OSI common stock between January 24, 2012, and December 6, 2013, inclusive, and were damaged thereby.” (Settlement Agreement at 17 (Docket 81-1)). Expressly excluded from the Settlement Class are Defendants and their related persons, as well as “putative Settlement Class Members that exclude themselves by submitting a request for exclusion.” (*Id.*)

Under the Settlement Agreement, Defendants shall make a total payment of \$15 million in cash to be held in escrow. (*Id.* at 11, 17). This amount, with interest, will cover taxes, notice and administration costs, any litigation expenses awarded by the Court, and any attorney’s fees awarded by the Court. (*Id.* at 23). The balance remaining, “Net Settlement Fund”, shall be distributed to authorized Settlement Class Members with valid claims as determined by the Claims Administrator. (*Id.* 23, 28–29).

In return, Settlement Class Members agree to release claims “that are based upon, arise from, are in connection with, or relate to: (a) Lead Plaintiff’s or the

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Settlement Class’s purchase, acquisition or sale of OSI common stock for the time period between January 24, 2012, and December 6, 2013, inclusive; (b) the subject matter of the Action for the time period between January 24, 2012, and December 6, 2013, inclusive; or (c) the facts alleged or that could have been alleged in any complaint for the time period between January 24, 2012, and December 6, 2013, inclusive.” (*Id.* at 15–16).

C. Claims Administration

A.B. Data, Ltd. (“A.B. Data”), was retained by Lead Plaintiff to serve as Claims Administrator in connection with the Settlement Agreement. (Declaration of Adam D. Walter ¶ 2 (“Walter Decl.”) (Docket No. 96-2)).

As Claims Administrator, A.B. Data is responsible for, among other tasks, the following: (1) mailing a “Notice Packet” containing various notices, documents, and information related to the class action to potential members of the Settlement Class, brokers, and other nominees; (2) creating and continuing to maintain a toll-free help line for inquiries during the course of administration; (3) creating and continuing to maintain a website and post case-specific updates; and (4) receiving and processing all claims. (*Id.*).

In preparing for receiving and processing claims, A.B. Data: (1) conferred with Lead Plaintiff’s counsel to define the project guidelines; (2) created a unique database to store claim submissions; (3) trained staff to process claims properly; (4) created telephone and email system to which inquiries can be directed; and (5) developed a proprietary “calculation module” to calculate claims. (*Id.* ¶ 7).

D. Notice and Response

Notice was sent to the Settlement Class members pursuant to the method approved by the Court. A.B. Data disseminated a total of 37,049 Notice Packets to potential members of the Settlement Class, brokers, and other nominees. (*Id.* ¶ 4). A.B. Data published required information in the *Investor’s Business Daily* and *PR*

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Newswire on September 24, 2015. (*Id.* ¶ 5). Any claim had to be submitted or postmarked to A.B. Data no later than January 15, 2016, together with supporting documentation. (*Id.* ¶ 6).

Through July 1, 2018, A.B. Data received and processed 19,062 claims in accordance with the terms of the Settlement Agreement. (*Id.* ¶¶ 3, 6, 9–16). Of the processed claims, 7,679 were withdrawn by the filer or rejected by A.B. Data for the following reasons: no purchase of OSI stock during the relevant timeframe, no cognizable claim, duplicates, and uncured conditions of ineligibility. (*Id.* ¶ 35).

This Motion concerns the remaining 11,383 claims.

II. DISCUSSION

“The construction and enforcement of settlement agreements are governed by principles of local law which apply to interpretation of contracts generally.” *Jeff D. v. Andrus*, 899 F.2d 753, 759 (9th Cir.1989). Under California law, “settlements are governed by the legal principles applicable to contracts” *Gorman v. Holte*, 164 Cal. App. 3d 984, 988 (1985) (citation omitted). “A settlement contract also has the attributes of a judgment in that it is decisive of the rights of the parties and serves to bar reopening of the issues settled. Absent a fundamental defect in the agreement itself the terms are binding on the parties.” *Id.* at 988–89 (citations omitted).

The Court is satisfied with A.B. Data’s claims administration process and is persuaded by its recommendations to distribute the Net Settlement Fund in accordance with its proposed plan.

A. Processed Claims and Distribution Plan

Lead Plaintiff first requests distribution of the Settlement Agreement amount in accordance with A.B. Data’s recommendations (“Distribution Plan”). (Mot. at 6).

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A.B. Data has received and processed the 11,383 claims, categorizing them as follows:

- 9,306 timely submitted and valid claims, totaling \$104,858,290.40; and
- 2,077 late but otherwise eligible claims, totaling \$42,759,379.66.

(Walter Decl. ¶ 33).

A.B. Data next recommends disposing the 11,383 processed claims generally as follows:

- Distribute 100 percent of the available balance of the Net Settlement Fund (*i.e.*, \$15 million in escrow with accrued interest less taxes, notice and administration costs, any litigation expenses awarded by the Court, and any attorney's fees awarded by the Court) to claimants who would receive at least \$10.00, determined by each claimant's approved claim as a percentage of all approved claims;
- Require claimants to promptly deposit their payment within 90 days or forfeit their benefit;
- Redistribute, if financially feasible, the uncashed payments to claimants who would receive at least \$10.00, now determined by each claimant's approved claim as a percentage of the remaining approved claims (*i.e.*, excluding those claimants who did not promptly deposit their payment within 90 days);
- Donate, if not financially feasible, the uncashed payments to non-sectarian, not-for-profit 501(c)(3) organization(s) recommended by Lead Plaintiff and approved by the Court; and
- Permit A.B. Data to decline payment to any claim submitted after July 1, 2018.

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(Mot. at 7-9; Walter Decl. ¶ 38). The Court is satisfied with A.B. Data's recommendations to distribute the Net Settlement Fund in accordance with the above proposed plan.

Accordingly, the Motion is **GRANTED** with respect to the Distribution Plan.

B. Claim Administration Fees

Lead Plaintiff also requests distribution of fees to A.B. Data in accordance with its agreement to act as the Claims Administrator. (Mot. at 6).

A.B. Data's fees and out-of-pocket expenses for its work performed and estimated to be performed on behalf of the Settlement Class in connection with the Settlement Agreement is \$196,629.93. (*Id.* at 6; Walter Decl. ¶ 37). A.B. Data has submitted reports and invoices for all the work performed. (Walter Decl. ¶ 37).

To date, A.B. Data has been paid a total of \$118,551.42. (Mot. at 6; Walter Decl. ¶ 37). Accordingly, there is an outstanding balance of \$78,078.51 payable to A.B. Data, amounting to the estimated fees and expenses to be incurred in connection with the Distribution Plan. Lead Plaintiff's counsel notes in the Motion – and affirmed at the hearing – that the invoices submitted by A.B. Data have been thoroughly reviewed. (Mot. at 6; Walter Decl. ¶ 37). The Court is therefore persuaded by Lead Plaintiff's request to distribute fees to A.B. Data.

Accordingly, the Motion is **GRANTED** with respect to claim administration fees, and a sum in the amount of **\$78,078.51** shall be paid to A.B. Data.

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III. CONCLUSION

For the foregoing reasons, the Motion is **GRANTED**. The Net Settlement Proceed shall be distributed in accordance with the Distribution Plan and a sum in the amount of **\$78,078.51** shall be paid to A.B. Data.

A separate order will issue.

IT IS SO ORDERED.