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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

**IN RE COOPER COMPANIES, INC.
SECURITIES LITIGATION**

Case No.: SACV 06-00169-CJC(RNBx)

**ORDER GRANTING PLAINTIFFS'
MOTION TO PRELIMINARILY
APPROVE SETTLEMENT**

INTRODUCTION AND BACKGROUND

This is a securities class action on behalf of all persons who purchased or otherwise acquired Cooper Companies (“Cooper”) common stock from July 28, 2004 through November 21, 2005. Cooper is a medical products company whose business unit, CooperVision, Inc. (“CVI”), markets a broad range of contact lenses. Lead Plaintiffs allege that Defendants made a series of false and misleading statements about

1 the effects of silicone hydrogel lenses, which Cooper did not produce, on Cooper's
2 business, and that Defendants also made false and misleading statements about Cooper's
3 inventory levels and sales force integration with a company that Cooper had acquired,
4 Ocular Sciences, Inc.

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6 On February 15, 2005, several securities class actions were filed in the Central
7 District of California. By order dated May 16, 2006, the Court consolidated the cases and
8 appointed UNITE HERE National Retirement Fund, Wayne County Employees'
9 Retirement System, and United Food and Commercial Workers Union Local 880-Retail
10 Food Employers Joint Pension Fund as lead plaintiffs and Robbins Geller Rudman &
11 Dowd LLP (formerly Lerach Coughlin Stoia Geller Rudman & Robbins LLP) as Lead
12 Counsel. Lead plaintiffs filed a Consolidated Complaint for Violations of the Securities
13 Exchange Act of 1934, in which they alleged that Cooper and several of the Individual
14 Defendants made materially false and misleading statements and omissions. The Court
15 dismissed this complaint with leave to amend by order dated July 13, 2007. Lead
16 plaintiffs then filed an Amended Consolidated Complaint for violations of the Securities
17 Exchange Act of 1934, which Defendants moved to dismiss. By order dated October 23,
18 2007, the Court granted in part and denied in part Defendants' motion, upholding Lead
19 Plaintiffs' claims concerning statements about silicone hydrogel lenses, Cooper's
20 inventory, and Cooper's sales force integration. The Court subsequently dismissed
21 claims against John D. Fruth on November 28, 2007. On April 8, 2008, the Court
22 granted Defendant Steven Neil's motion for judgment on the pleadings, dismissing
23 claims against him.

24
25 By order dated January 6, 2009, the Court certified a class of all persons who
26 purchased or otherwise acquired Cooper common stock from July 28, 2004 through
27 November 21, 2005, inclusive. Defendants moved for partial summary judgment in
28 March of 2009, which the Court denied by order dated May 26, 2009. The parties

1 commenced with fact discovery in the summer of 2009. This included voluminous
2 document production and review, 25 depositions, and discovery motion practice. The
3 parties exchanged expert reports on November 13, 2009 and served rebuttal expert
4 reports on December 4, 2009. On December 21, 2009, Defendants moved for summary
5 judgment. The parties subsequently filed several motions *in limine*. By order dated
6 March 4, 2010, the Court denied Defendants' motion for summary judgment in
7 substantial part. On March 10, 2010, the Court held a scheduling conference and set a
8 trial date for July 6, 2010. On March 29, 2010, Defendants moved for reconsideration of
9 the Court's order denying the motion for summary judgment in substantial part. On April
10 26, 2010, the parties participated in a mediation with Retired Judge Layn Phillips. On
11 May 4, 2010, Defendants announced that they had reached an agreement-in-principle
12 with Lead Plaintiffs to settle all claims. Lead Plaintiffs now move for preliminary
13 approval of settlement. For the following reasons, this motion is GRANTED.

14 15 ANALYSIS

16 17 1. Fairness of Settlement

18
19 Federal Rule of Civil Procedure 23 "requires the district court to determine
20 whether a proposed settlement is fundamentally fair, reasonable, and accurate." *Staton v.*
21 *Boeing Co.*, 327 F.3d 938, 959 (9th Cir. 2003) (quoting *Hanlon v. Chrysler Corp.*, 150
22 F.3d 1011, 1026 (9th Cir. 1998)). To determine whether this standard is met, a district
23 court must consider a number of factors, including "'the strength of the plaintiff's case;
24 the risk, expense, complexity, and likely duration of further litigation; the risk of
25 maintaining class action status throughout the trial; the amount offered in settlement; the
26 extent of discovery completed, and the stage of the proceedings; the experience and
27 views of counsel; . . . and the reaction of the class members to the proposed settlement."
28 *Id.* (citing *Molski v. Gleich*, 318 F.3d 937, 953 (9th Cir. 2003)).

1 The question on preliminary approval is “whether there is any reason to notify the
2 class members of the proposed settlement and to proceed with a fairness hearing.”
3 *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7th Cir. 1982). As some of the factors, such
4 as reaction of the class members, cannot be fully assessed until the fairness hearing, “a
5 full fairness analysis is unnecessary at this stage.” *West v. Circle K Stores, Inc.*, No. CIV.
6 S-04-0438 WBS GGH, 2006 WL 1652598, at *9 (E.D. Cal. June 13, 2006) (*quoting*
7 *Reade-Alvarez v. Eltman, Eltman & Cooper, P.C.*, No. 04-2195, 2006 WL 1367414, at *7
8 (E.D.N.Y. May 18, 2006)). Accordingly, the Court’s concern at the preliminary approval
9 stage is “whether the proposed statement discloses grounds to doubt its fairness or other
10 obvious deficiencies.” *Id.* Having considered the *Staton* factors, the Court finds no
11 obvious deficiencies or obvious grounds to doubt the settlement’s fairness.
12

13 Under the terms of the Stipulation of Settlement, Cooper will pay a total of
14 \$27,000,000. Lead Counsel shall be permitted to use up to \$300,000 from the Settlement
15 Fund to pay costs and expenses incurred by the Claims Administrator in connection with
16 providing notice to the Class, locating Class Members, soliciting claims, assisting with
17 the filing of claims, administering and distributing the Settlement Fund to Authorized
18 Claimants, and processing Proof of Claim and Release Forms. (Stipulation of Settlement
19 ¶ 2.7.) The Settlement Fund shall also be used to pay counsel and plaintiffs’ attorneys’
20 fees and expenses, subject to Court approval, expenses of Lead Plaintiffs, subject to
21 Court approval, and Taxes and Tax Expenses. (Stipulation of Settlement ¶ 5.2.) The
22 remainder of the Settlement Fund shall be disbursed to Class Members in accordance
23 with the Plan of Allocation. In return for these payments, class members release Cooper
24 from all additional liability.
25

26 The relative strength of Plaintiffs’ case and the risk, expense, and complexity of
27 litigation weigh heavily in favor of settlement. Lead Plaintiffs acknowledge that they
28 would face challenges proving key elements of their case, namely, scienter and loss

1 causation, and that establishing liability at trial was by no means guaranteed. Defendants
2 also deny any liability. Settling class claims at this stage appears advisable in light of the
3 expense the parties would incur trying the case and cycling through the potentially
4 lengthy appeal process. This compromise appears reasonable when compared to the
5 likely rewards of litigation.

6
7 The amount offered in settlement is also reasonable. Under the terms of the
8 agreement, Defendants will pay \$27,000,000. This is a large sum. Given the risks
9 inherent in continuing to litigate this case, and the benefit to Defendants of ending the
10 matter, this sum is fair and reasonable.

11
12 The parties assert that they are confident that settlement is the best outcome
13 because this case is already at a fairly advanced stage of the proceedings. Extensive
14 discovery has been conducted and the case is at an advanced stage of the proceedings.
15 Lead plaintiffs represent that they obtained, organized, and analyzed more than 6.5
16 million pages of documents produced by Defendants and third parties. Lead Counsel also
17 took or defended 25 depositions and responded to numerous discovery requests
18 propounded by Defendants. The parties were fully prepared to try this case on the merits
19 and had filed several motions *in limine*. In addition, this case has continued for four
20 years. The parties have litigated multiple motions to dismiss, Lead Plaintiffs' class
21 certification motion, and multiple motions for summary judgment. Having already
22 invested substantial resources in this case, the parties are in the best position to know if it
23 is in their interest to settle or to proceed to trial, and the Court finds that the procedural
24 history of this case weighs in favor of preliminary approval of the settlement.

25
26 Moreover, the Court is satisfied that this settlement is the product of good faith,
27 arms' length negotiations, observed by a respected, neutral mediator, and is not collusive.
28 As part of the evaluation of a proposed settlement, district courts must exercise "due

1 regard to the potential for tacit collusion between plaintiff's counsel and the defendant."
2 *In re California Micro Devices Securities Litigation*, 965 F. Supp. 1327, 1329 (N.D. Cal.
3 1997). Here, the Court has not been presented with any evidence indicating collusion, or
4 that the negotiations that produced this settlement were not at arms' length. To the
5 contrary, the parties vigorously negotiated, mediated, and conducted extensive discovery
6 to ascertain the amount of class members' damages. Class counsel was experienced and
7 competent. Ultimately, the parties' assessments of the strengths and weaknesses of the
8 class members' claims and their likelihood of prevailing at trial appear to be based on
9 reasonable legal judgments, free from ulterior motives.

10
11 On its face, the settlement is sufficiently fair and adequate to warrant distribution
12 of notice to the absent class members. The Court's final judgment on the fairness and
13 adequacy of the settlement amount will be reserved until the fairness hearing after class
14 members have had an opportunity to object.

15 16 **2. Notice to the Class**

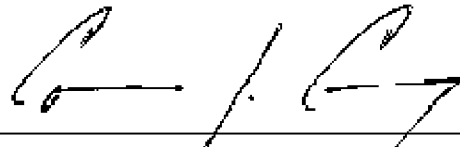
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18 Lead Plaintiffs also seeks approval of proposed notice forms to the absent class
19 members, and an order directing the sending of notice. Notice forms in class actions
20 need not state the exact amount of class members' potential recovery; it is sufficient if
21 they contain the aggregate amount of the proposed settlement and the formula for
22 computing recoveries. *Torrisi v. Tucson Elec. Power*, 8 F.3d 1370, 1374 (9th Cir. 1993).
23 Here, the proposed notice form informs class members of the legal and factual basis of
24 the lawsuit, defines the class, states the class claims and issues, and discusses the rights of
25 persons who fall within the definition of the Class. It also describes the Settlement and
26 its terms and identifies the parties' positions with respect to damages and liability. The
27 notice also sets out the amount of attorneys' fees and expenses that Lead Counsel intends
28 to seek in connection with final settlement approval. Finally, the notice describes the

1 Plan of Allocation. Class members who wish to participate in settlement are provided
2 with instructions on the process for completing and submitting the Proof of Claim and
3 Release. The Notice also provides the name, mailing address, and website for the Claims
4 Administrator. Finally, the Notice sets for the date, time, and place of the final approval
5 hearing, as well as procedures for commenting on the Settlement and contacting the
6 Court, Lead Counsel, and counsel for the Defendants.

7
8 **CONCLUSION**

9
10 For the foregoing reasons, Plaintiffs' motion for preliminary approval of the
11 settlement agreement is GRANTED. Lead Counsel is now authorized to distribute the
12 notices in accordance with the procedure explained in Lead Plaintiffs' proposed order,
13 which shall be signed and issued concurrently with this order.

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15 DATED: August 16, 2010



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17 CORMAC J. CARNEY

18 UNITED STATES DISTRICT JUDGE
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