UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	SACV 15-0865 AG (JCGx)	Date	December 8, 2017
Title	HSINGCHING HSU ET AL. v. PUMA BIOTECHNOLOGY, INC. ET AL.		

Present: The Honorable	ANDREW J. GUILFORD	
Lisa Bredahl	Not Present	
Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorneys Present for Plaintiffs: Attorneys Present for Defendants:

Proceedings: **[IN CHAMBERS] ORDER GRANTING CLASS ACTION CERTIFICATION**

The parties agree that this matter can be resolved without oral argument under Local Rule 7-15. (Stip. Waiving Oral Argument, Dkt. No. 216.) After an independent review, the Court concludes that class certification should be granted and that this matter is appropriate for resolution without oral argument, so the Court VACATES the December 11, 2017 hearing. *See* Fed. R. Civ. P. 78(b).

Lead Plaintiff Norfolk County Council filed a motion to certify a class of plaintiffs in this lawsuit against Defendants Puma Biotechnology, Alan H. Auerbach, and Charles R. Eyler for alleged violations of federal securities law. The Council also asks that it be appointed class representative and that its counsel, Robbins Geller Rudman & Dowd LLP, be appointed class counsel. Defendants filed a notice of nonopposition stating that, while they deny the allegations in the complaint, they do not oppose the Council's current requests.

The Court GRANTS the motion for class certification and appointment of class counsel. (Dkt. No. 103.)

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1. LEGAL STANDARD

Even where parties agree to litigating a case as a class action, the party seeking class certification must affirmatively demonstrate that certification is appropriate. Indeed, the proposed class action must survive a "rigorous analysis" by the Court. *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350–51 (2011). The class action is an exception to the way litigation usually goes: typically, lawsuits are litigated just by the individual named parties. *Id.* at 348. This exception is only justified if certain requirements are met.

First, a plaintiff seeking class certification must show that a proposed class satisfies the four elements of Federal Rule of Civil Procedure 23(a): (1) numerosity; (2) commonality; (3) typicality; and (4) adequacy of representation by the class representatives and class counsel. Fed. R. Civ. P. 23(a). All of these elements must be satisfied for a class to be certified.

Second, a plaintiff seeking class certification must show that a proposed class satisfies the requirements of at least one of three subsections of Rule 23(b). Those three subsections provide: (1) that prosecuting separate actions would create a risk of inconsistent or varying adjudications; (2) that the party opposing class certification has acted or failed to act on grounds that apply generally to the class; or (3) questions of law or fact common to class members predominate over any questions affecting only individual members and a class action is superior to other available methods for adjudicating the dispute. Fed. R. Civ. P. 23(b)(1)–(3). Only one of these factors needs to be satisfied for a class to be certified.

1. BRIEF BACKGROUND

The following facts are taken from Plaintiffs' complaint.

Defendant Puma is a biopharmaceutical company that develops cancer-fighting drugs. This case involves alleged material misrepresentations and ommissions concerning the use, testing, and effectiveness of one of Puma's drugs, PB272 (neratinib). Plaintiffs allege that Defendants' misinformation concerning the drug's effectiveness drastically inflated Puma's

stock prices. Plaintiffs say Defendants sold Puma's stock at the inflated prices and reaped significant benefits from the sale, including compensation and bonuses tied to the stock's price. But after information about the true results of the drug trials hit the market, Puma's stock price plummeted, Plaintiffs allege.

The Norfolk Pension Fund allegedly purchased almost 18,000 Puma shares at inflated prices during the relevant period. Lead plaintiff Norfolk County Council administers the Fund. The Council asks the Court to certify the following class under Federal Rule of Civil Procedure 23:

> All persons and entities who purchased or otherwise acquired the securities of Puma Biotechnology, Inc. ("Puma" or the "Company") during the period from July 22, 2014 (after 6:00 p.m. EDT) through May 29, 2015, inclusive (the "Class Period"), and were damaged thereby. Excluded from the Class are Defendants, present or former executive officers of Puma and their immediate family members (as defined in 17 C.F. R. § 229.404, Instructions (1)(a)(iii) and (1)(b)(ii)).

(Mot., Dkt. No. 104 at 1.)

3. ANALYSIS

Based on the following analysis, the Council has sufficiently demonstrated that this case should proceed as a class action.

3.1 Numerosity

Rule 23(a) permits class actions where the proposed class "is so numerous that joinder of all members is impracticable." Here, the proposed class is sufficiently numerous under that standard. Puma has over 30 million shares of stock outstanding. It's not clear exactly how many holders of these shares were damaged during the proposed class period. But the Court may infer that a sufficient number of people bought Puma's stock during the period since

Puma is "a corporation [that] has millions of shares trading on a national exchange." *See In re Cooper Cos. Inc. Sec. Litig.*, 254 F.R.D. 628, 634 (C.D. Cal. 2009). Joinder of each individual who bought the stock would be impractical, particularly since "'impracticability' does not mean 'impossibility,' but only the difficulty or inconvenience of joining all members of the class." *See Harris v. Palm Springs Alpine Estates, Inc.*, 329 F.2d 909, 913 (9th Cir. 1964) (citations omitted).

3.2 Commonality

Rule 23(a)(2) requires that "there are questions of law and fact common to the class." "Confronted with a class of purchasers allegedly defrauded over a period of time by similar misrepresentations, courts have taken the common sense approach that the class is united by a common interest . . . which is not defeated by slight differences in class members' positions." *Blackie v. Barrack*, 524 F.2d 891, 902 (9th Cir. 1975). Here, the putative class members' alleged damages universally stem from Defendants' misrepresentations and omissions concerning PB272, causing inflated stock prices. Put simply, the questions of law and fact confronting the class are sufficiently common for class certification.

3.3 Typicality

The "claims or defenses of the representative parties" must be "typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). "The test of typicality is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct." *Parsons v. Ryan*, 754 F.3d 657, 685 (9th Cir. 2014) (internal quotation marks omitted). "[R]epresentative claims are 'typical' if they are reasonably co-extensive with those of absent class members; they need not be substantially identical." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998). Again, the putative class members all allegedly suffered similar injuries flowing from the same conduct: Defendants' alleged inflation of Puma's stock prices through misrepresentations and omissions about PB272. The Council's claims do not vary from these allegations in any important way, so it's satisfied the typicality requirement.

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3.4 Adequacy

The Council must also be able to "fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). There are two questions to consider for this requirement: "(1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" *Hanlon*, 150 F.3d at 1020.

The Council, administrator of an investment fund, has sufficiently shown adequacy as class representative and class counsel, and Defendants do not oppose this. Adequacy is satisfied.

3.5 Predominance and Superior Method of Adjudication

Beyond the Rule 23(a) elements previously discussed, the proposed class action must also fit into one of the three types of class actions listed in Rule 23(b). The Council argues that the proposed class claims satisfy the standard in Rule 23(b)(3). Rule 23(b)(3) requires that questions of law or fact common to class members predominate over any questions affecting only individual members and a class action is superior to other available methods for adjudicating the dispute. *See* Fed. R. Civ. P. 23(b)(3). The Court considers at least four factors in this analysis: (1) the class members' interests in individually controlling the prosecution or defense of separate actions; (2) the extent and nature of any litigation concerning the controversy already begun by or against class members; (3) the desirability or undesirability of concentrating the litigation of the claims in this particular forum; and (4) the likely difficulties in managing a class action. Fed. R. Civ. P. 23(b)(3). "The Rule 23(b)(3) predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Hanlon*, 150 F.3d at 1022 (internal quotation marks omitted). The "presence of commonality alone is not sufficient." *Id.*

Here, the proposed class action meets the requirements in Rule 23(b)(3). A "common nucleus of facts and potential legal remedies dominates this litigation," while individual concerns do not. *Id.* Further, adjudicating this case as a class action makes sense, particularly

because of the consistency and efficiency of litigating alleged securities fraud-on-the-market cases all at once.

3.6 Class Counsel

The Council asks that its attorneys, from the law firm Robbins Geller and Dowd LLP, be appointed class counsel. In appointing class counsel, the Court considers (1) the work done in identify or investigating potential claims in the action; (2) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (3) counsel's knowledge of the applicable law; and (4) the resources that counsel will commit to representing the class. Fed. R. Civ. P. 23(g)(1).

Considering these factors, the Court concludes that the Council's attorneys will "fairly and adequately represent the interests of the class." Fed. R. Civ. P. 23(g)(4).

4. DISPOSITION

Finding the requirements of Rule 23 satisfied and noting the lack of objection from Defendants, the Court GRANTS the motion for class certification and appointment of class counsel. (Dkt. No. 103.) Hearing set for December 11, 2017 is VACATED.

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