UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

#255

CIVIL MINUTES - GENERAL

Case No.	CV 11-2768 PSG (SSx)	Date	September 9, 2014
Title	In re China Intelligent Lighting & Electronics, Inc. Securities Litigation		

Present:	The Honorable Philip S. Gutierrez, United States District Judge

Wendy K. Hernandez	Not Present	n/a
Deputy Clerk	Court Reporter	Tape No.

Attorneys Present for Plaintiff(s):	Attorneys Present for Defendant(s):
Not Present	Not Present

Proceedings: (In Chambers) Order GRANTING Preliminary Approval of Class Settlement

Before the Court is Plaintiffs' unopposed motion for preliminary approval of a class settlement. Dkt. # 255. The Court held a hearing on the motion on September 8, 2014. After considering the moving papers and the arguments made at the September 8, 2014 hearing, the Court GRANTS the motion.

I. Background

A. Factual Background and Procedural History

China Intelligent Lighting and Electronics, Inc. ("CIL") manufactures LED lighting products in China, through a Chinese operating subsidiary. *See FAC* ¶ 16. In 2010, CIL conducted three stock offerings in the United States. *See id.* ¶¶ 60, 62. As part of those offerings, CIL filed several registration statements and prospectuses containing information about CIL's financial condition with the Securities and Exchange Commission ("SEC") (collectively, the "Offering Documents"). *See id.* ¶¶ 1-2. Some of those filings included audited financial statements. *See id.* ¶¶ 61-62. Plaintiffs allege that CIL's Offering Documents overstated CIL's revenues, gross profits, net income, total assets, and shareholder equity. *See id.* ¶¶ 66, 73.

Lead Plaintiffs Perritt Emerging Opportunities Fund, Acerco SA, and Antoine de Sejournet filed suit against: CIL; various officers and directors of CIL who signed the Offering

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Documents (the "Individual CIL Defendants"); WestPark Capital, Inc. ("WestPark") and Rodman & Renshaw, LLC ("Rodman & Renshaw"), who served as the underwriters for CIL's stock offerings; WestPark Chief Executive Officer and owner Richard Rappaport ("Rappaport"); Rodman & Renshaw President and Chief Executive Officer Edward Rubin ("Rubin"); Rodman & Renshaw Head of Investment Banking John Borer ("Borer"); and MaloneBailey LLP ("MaloneBailey") and Kempisty & Company, P.C. ("Kempisty"), CIL's auditors for the financial statements in the Offering Documents. *See id.* ¶¶ 16-44.

On September 5, 2012, the Court dismissed Plaintiffs' claims against Rubin and Borer, but otherwise allowed Plaintiffs to proceed with their suit. Dkt. # 161. The Court refers to the remaining defendants collectively as "Defendants."

On October 25, 2013, the Court certified a class (the "Class") of:

> All persons and entities who purchased or otherwise acquired the common stock of China Intelligent Lighting and Electronics, Inc. ("CIL" or the "Company") pursuant or traceable to two (2) separate Registration Statements and three (3) accompanying Prospectuses filed with the U.S. Securities and Exchange Commission ("SEC") by CIL.

Dkt. # 236. The Class was certified with respect to Plaintiffs' causes of action for: (1) violations of § 11 of the Securities Act of 1933 (the "Securities Act") (against all Defendants other than Rappaport and Rodman & Renshaw[1]); (2) violations of § 12(a)(2) of the Securities Act (against WestPark); and (3) violations of § 15 of the Securities Act (against Rappaport and Individual CIL Defendants Li Xuemei and Kui Jiang). *See id.*

CIL has defaulted, *see* Dkt. # 241, and Plaintiffs have moved separately for a default judgment. *See* Dkt. # 258. The Individual CIL Defendants have not been served.[2]

[1] All proceedings against Rodman & Renshaw have been stayed due to the company's bankruptcy. *See* Dkt. # 191.

[2] The Court denied Plaintiffs' motion for an entry of default against Li Xuemei, Wu Shiliang, and Zhang Hongfeng because they had not been served with the operative FAC. *See* Dkt. # 254. According to Plaintiffs, "[Kui] Jang and Hongfeng were never located," and "[Michael] Askew has evaded service[.]" *Mem.* 2 n.5. Given that Plaintiffs have previously indicated that Hongfeng was served (albeit with the incorrect pleading), the Court presumes that Plaintiffs' reference to Hongfeng should be a reference to Su Yang, the last remaining Individual CIL

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Plaintiffs have reached proposed settlements with the remaining Defendants: MaloneBailey, Kempisty, WestPark, and Rappaport (collectively, "Settling Defendants"). Plaintiffs now move for preliminary approval of those settlements. Dkt. # 256.

B. The Proposed Settlement Agreements

Under the proposed settlements, MaloneBailey will contribute one third of the amount remaining on its applicable insurance policy, which at this point is $527,450.13, towards a gross settlement fund. *See MaloneBailey Settlement* § A.26. The other two thirds of MaloneBailey's insurance policy is being used to fund settlements in other cases. *See id.* Kempisty will pay $7,500. *See Kempisty Settlement* § A.25. WestPark Capital Financial Services, LLC ("WPCFS")—WestPark's parent company—will pay $100,000, over the course of twelve months. *See WestPark Settlement* § A.25, C.2.

The gross settlement fund will be used to pay notice and administration expenses, any attorneys' fees and costs authorized by the Court, any incentive awards to the Lead Plaintiffs authorized by the Court, and any other expenses authorized by the Court. *See MaloneBailey Settlement* § C.2; *Kempisty Settlement* § C.3; *WestPark Settlement* § C.5. The remaining amount, after taxes, will be transferred to the net settlement fund and distributed among Class members. *See MaloneBailey Settlement* § C.2; *Kempisty Settlement* § C.3; *WestPark Settlement* § C.5.

Also as part of the settlement, Settling Defendants will offer some cooperation with respect to Plaintiffs' remaining claims. MaloneBailey will produce relevant documents without objection, and agree to reasonable depositions. *See MaloneBailey Settlement* § M.3. Kempisty, WestPark, and Rappaport will provide relevant documents, without objection. *See Kempisty Settlement* § M.2; WestPark *Settlement* § M.2.

The settlements provide that Class Counsel may seek attorneys' fees in the amount of up to one third of the gross settlement fund, and up to $100,000 in litigation costs and expenses. *See MaloneBailey Settlement* § H.1.; *Kempisty Settlement* § H.1; *WestPark Settlement* § H.1. Class Counsel may also seek additional fees related to the administration of the settlement, and incentive awards for the Lead Plaintiffs. *See MaloneBailey Settlement* § H.1.; *Kempisty Settlement* § H.1; *WestPark Settlement* § H.1. In the proposed notice to the Class, Class Counsel

Defendant.

have indicated that they will seek: (1) no more than 25% of the gross settlement fund in attorneys' fees; (2) no more than $100,000 in litigation costs; and (3) incentive awards of no more than $1,500 each for the Lead Plaintiffs. *See Proposed Notice* ¶¶ 5, 60. Class Counsel estimates that Plaintiffs will receive between $0.063 and $0.026 per share, depending on how the Court rules on Plaintiffs' applications for fees, expenses, and incentive awards. *See id.* ¶ 3.

Under the settlements, Plaintiffs will release their claims against MaloneBailey, Kempisty, and the WestPark Defendants (WestPark, Rappaport, WPCFS, and Anthony Pintsopoulos).[1] *See MaloneBailey Settlement* §§ A.22, B.1-4; *Kempisty Settlement* § A.21, B.1-4; *WestPark Settlement* §§ A.21, B.1-4.

II. Legal Standard

Approval of a class action settlement is a two-step process. The Court begins by determining whether the settlement warrants preliminary approval. Preliminary approval is appropriate when "the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval." *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007) (quoting Manual for Complex Litigation, Second § 30.44 (1985)); *see Ma v. Covidien Holding, Inc.*, No. SACV 12-2161 DOC (RNBx), 2014 WL 360196, at *4 (C.D. Cal. Jan. 31, 2014) (quoting *In re Tableware*, 484 F. Supp. 2d at 1079). If preliminary approval is granted, then notice is given to the class, a fairness hearing is held, and the Court determines whether the settlement is "fair, reasonable, and adequate." *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026-27 (9th Cir. 1998); Fed. R. Civ. P. 23(e).

In determining whether a settlement is fair, reasonable, and adequate, the district court must "balance a number of factors: the strength of the plaintiffs' case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status throughout the 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." *Hanlon*, 150 F.3d

[1] Anthony Pintsopoulos was named as a defendant in Plaintiffs' Consolidated Amended Complaint. *See CAC* ¶ 32. The Court dismissed the claims against him without prejudice, *see* Dkt. # 113, and Plaintiffs did not re-assert them in the operative FAC. *See FAC*. WPCFS has never been a party to this litigation. *See id.*

at 1026; *see Staton v. Boeing Co.*, 327 F.3d 938, 959 (9th Cir. 2003); *see also Officers for Justice v. Civil Serv. Comm'n of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982) (noting that the list of factors is "by no means an exhaustive list of relevant considerations").

The Court must approve or reject a settlement as a whole. *See Hanlon*, 150 F.3d at 1026 ("It is the settlement taken as a whole, rather than the individual component parts, that must be examined for overall fairness."). The Court may not delete, modify, or rewrite particular provisions of the settlement. *Id.* The Court must recognize that the settlement "is the offspring of compromise[,] [and] the question . . . is not whether the final product could be prettier, smarter or snazzier, but whether it is fair, adequate and free from collusion." *Id.* at 1027.

III. Discussion

A. Preliminary Approval

i. Informed, Non-Collusive Negotiations

Courts generally presume that a proposed settlement is fair if it is the result of good faith, arms-length negotiations. *See Ross v. Trex Co., Inc.*, No. 09-cv-00670-JSW, 2013 WL 6622919, at *3 (N.D. Cal. Dec. 16, 2013); *Fernandez v. Victoria Secret Stores, LLC*, No. CV 06-04149 MMM (SHx), 2008 WL 8150856, at *4 (C.D. Cal. July 21, 2008); *see also Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 965 (9th Cir. 2009) ("We put a good deal of stock in the product of an arms-length, non-collusive, negotiated resolution[.]").

That presumption is applicable here. The proposed settlements were reached through negotiations that took place over an eighteen-month period, and after the parties had engaged in significant motion practice. *See Mem.* 11:1-11:8. The settling parties had engaged in discovery and had prepared expert damages analyses. *See id.* 11:1-11:12. They were well-informed about their positions in this litigation, and the Court sees no reason to think that there was any collusion between the parties.

ii. No Obvious Deficiencies or Preferential Treatment

There are no obvious deficiencies in the proposed settlements, or indications that Lead Plaintiffs will receive preferential treatment (aside from any incentive awards approved by the Court). *See In re Tableware Antitrust Litig.*, 484 F. Supp. 2d at 1079. Lead Plaintiffs, like all

other Class members, will receive a share of the net settlement fund based on their purchases of CIL shares. *See Proposed Notice* ¶¶ 32-49.

iii. Substantive Fairness of the Proposed Settlements

At this point, the *Hanlon* fairness analysis is a close call, but weighs in favor of preliminary approval.

On one hand, the amount of the settlement is small. Before considering attorneys' fees and costs, incentive awards, and notice and administration costs, Plaintiffs will receive approximately $630,000—approximately 7% of their estimated $9.1 million in damages. *See Mem.* 12:8-12:11. If the Court grants the expected motions for attorneys' fees, costs, and incentive awards, it is possible that Plaintiffs' recovery will drop to approximately $320,000—approximately 3.5% of their claimed damages. *See id.*; *Proposed Notice* ¶¶ 5, 60. That reduced amount does not account for notice and administration costs, which Class Counsel have not estimated.

On the other hand, several factors suggest that even this small recovery may be fair, reasonable, and adequate. Plaintiffs have yet to prove that any of the Settling Defendants were liable. The Settling Defendants would likely argue at trial that they were defrauded by CIL despite their due diligence. *See Mem.* 12:15-13:1. Plaintiffs would likely face difficulties of proof due to the fact that many of the material witnesses in this case reside in China, and thus cannot be compelled to appear for trial or deposed for trial purposes. *See id.* 13:26-14:20. Plaintiffs would also have to prove damages. *See id.* 13:1-13:2.

In addition, it is unclear whether Plaintiffs could feasibly obtain anything more from the Settling Defendants even if they prevailed at trial. The WestPark Defendants and Kempisty have produced confidential financial statements that have convinced Class Counsel that they are incapable of paying more than the agreed-upon settlement amounts. *See id.* 13:16-13:18. MaloneBailey, the only Settling Defendant with applicable insurance coverage, is paying one third of its remaining coverage towards the settlement, and paying the other two thirds in other settlements. *See id.* 13:8-13:15. As a result, any further litigation might ultimately be fruitless, even if successful.

Under the circumstances, the Court is satisfied that the proposed settlements fall within the "range of possible approval." Accordingly, and for the reasons above, Plaintiffs' motion for preliminary approval is GRANTED.

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B. Form of Notice

Under Rule 23(c)(2)(B) "the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort."

The parties have drafted a proposed notice, and Plaintiffs propose to: (1) mail the notice to Class members who can reasonably be identified; (2) publish a summary of the notice in the national edition of *The Investors' Business Daily*; and (3) cause the notice to be published on the website of the Claims Administrator. *See Mem.* 15:6-15:26. Plaintiffs have asked the Court to appoint Gilardi & Co. LLC as the Claims Administrator. *See id.* 16:9-16:14.

Plaintiffs' proposal is acceptable. The Court finds that the proposed method of giving notice is the best notice practicable under the circumstances. *See In re Portal Software, Inc. Sec. Litig.*, No. C-03-5138 VRW, 2007 WL 1991529, at *7 (N.D. Cal. June 30, 2007) (finding that notice by mail and publication was acceptable under Rule 23(c)(2)(B)).

The Court APPOINTS Gilardi & Co. LLC as the Claims Administrator.

Only two substantive issues need to be addressed in the proposed notice.

First, the notice does not correctly represent the amount of MaloneBailey's contribution to the gross settlement fund. It indicates that MaloneBailey will contribute $526,450.13. *See Proposed Notice* ¶ 2. MaloneBailey has actually agreed to pay one third of its remaining insurance policy applicable to this case, which at this point is $527,450.13. *See MaloneBailey Settlement* § A.26. The typo in that amount should be corrected, and the proposed notice should indicate that the settlement amount may change if MaloneBailey incurs further defense costs. If MaloneBailey believes that it will incur additional costs, a good faith estimate of the amount that will be available for its settlement contribution should be included in the notice to the Class.

Second, the notice does not include any estimate of the notice costs, settlement administration costs, or other costs that may deducted from the gross settlement fund. Class Counsel should make a good faith estimate of those costs and revise the notice accordingly.

With those revisions, the proposed notice is APPROVED.

IV. Conclusion

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For the reasons above, Plaintiffs' motion is GRANTED. The fairness hearing is set for **March 9, 2015 (1:30pm).**

The Court ORDERS Plaintiffs and Settling Defendants to submit the following documents at least 30 days before the fairness hearing:

(1) Confidential memoranda from all parties detailing their determinations of the merits and value of this case, including the evidence relied on in reaching those determinations.

(2) Attestations from all parties indicating that there are no separate deals between the Lead Plaintiffs and Settling Defendants other than the settlement agreements. The parties are also to provide copies of any and all agreements reached between the parties related to the settlement agreements, including agreements involving the named Plaintiffs and agreements between opposing counsel.

(3) Memoranda from Lead Plaintiffs, supported by declarations, indicating their views regarding the proposed settlement agreements. If Lead Plaintiffs support the settlement agreements, they must attest that their support is not conditioned on or related to any incentive awards that may be granted.

(4) A memorandum justifying incentive awards for Lead Plaintiffs, including a detailed description of Lead Plaintiffs' efforts in pursuit of this case, and supporting declarations.

Plaintiffs are ORDERED to file their motion for attorneys' fees, costs, and incentive awards no later than 30 days before the fairness hearing. That motion must include:

(1) Declarations supporting the reasonableness of each attorney's requested hourly rate.

(2) Itemized billing statements showing hours worked, hourly rates, expenses incurred thus far, and expenses expected to be incurred in the future.

IT IS SO ORDERED.