UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DANIELLE GAMINO, individually and on behalf of all others similarly situated, Plaintiff, v. KPC HEALTHCARE HOLDINGS, INC. et al., Defendants.	Case No. 5:20-cv-01126-SB-SHK ORDER GRANTING PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL [DKT. NO. 441]

I.

On August 28, 2015, Defendant Alerus Financial, N.A., acting as the appointed trustee of the KPC Healthcare Holdings, Inc. (KPC) employee stock ownership plan (ESOP), caused the ESOP to purchase 100% of the shares of KPC common stock from Defendant Dr. Kali Pradip Chaudhuri. Plaintiff Danielle Gamino, a former KPC employee and ESOP participant, sued Dr. Chaudhuri and Alerus (as well as other KPC executives and board members), bringing breach of fiduciary duty and prohibited transaction claims under the Employee Retirement Income Security Act of 1974 (ERISA) based on allegations that Alerus had caused the ESOP to overpay for KPC stock. Plaintiff also sued a lender and investor in KPC, SPCP Group, LLC (SPCP). On August 15, 2022, the Court granted SPCP's motion for summary judgment, Dkt. No. 338. On March 11, 2023, the Court granted in part final approval of settlements between the Class, the KPC Defendants,[1] and Alerus, leaving SPCP as the only remaining Defendant in the case. Dkt. No. 418.

[1] The KPC Defendants are defined in the KPC settlement agreement as KPC Healthcare Holdings, Inc., The Administrative Committee of the KPC Healthcare, Inc. Employee Stock Ownership Plan, Kali Pradip Chaudhuri, William E. Thomas,

In moving for approval of the KPC and Alerus settlements, Class Counsel requested that a reserve of the settlement fund be set aside because they "anticipate[d] [] SPCP [would] seek its costs and may file a motion for attorneys' fees" as the prevailing party on summary judgment. Dkt. Nos. 405 at 30. In its Order approving the settlements, the Court declined to authorize the reserve fund because the request was not included in the class notice or contemplated by the relevant settlement agreements. Dkt. No. 418 at 12. SPCP then filed its motion for fees and costs, which was fully briefed by the parties before they filed a notice of settlement between the Class and SPCP. Dkt. Nos. 421, 422, 426, 428, 431, 433, 436. Plaintiff also filed a notice of appeal of the Court's order granting summary judgment to SPCP. Dkt. No. 427. Plaintiff now moves for preliminary approval of the settlement reached between the Class and SPCP. Dkt. No. 441.

The terms of the proposed settlement are set forth in the parties' Class Action Settlement Agreement, Dkt. No. 441-3. SPCP agrees, in exchange for class members' release of claims and the Class withdrawing its pending appeal of this Court's order granting summary judgment to SPCP, to make a payment of $100,000, inclusive of class payments, administration costs, and expenses. Payments will be made to the class through the ESOP or KPC 401(k) Plan. Under the Plan of Allocation, which is materially identical to the plan approved in the settlements with KPC and Alerus, each claimant will be allocated a pro rata share of the fund based on the number of vested and unvested shares of KPC stock in her ESOP account as of August 31, 2021, or if she terminated employment prior to that date, the number of vested shares in her account at the time of her termination and any unvested shares she held that vested on plan termination. Dkt. No. 441-4.

II.

A proposed settlement class must meet the requirements of Federal Rule of Civil Procedure 23(a)—numerosity, commonality, typicality, and adequacy of representation—and satisfy at least one of the requirements of Rule 23(b). On August 6, 2021, the Court certified this action as a class action under Rule 23(b)(1). Dkt. No. 174. As with the previous settlements, the Court will not revisit its analysis because the parties' proposed settlement class is materially identical to the class certified, except for an end date for class membership to

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Kali Priyo Chaudhuri, Amelia Hippert, and Lori Van Arsdale. Dkt. No. 322-3 ¶ I.B.

facilitate effective settlement. Dkt. No. 441-1 at 24–25. Because this change "does not alter the reasoning underlying the Court's prior Order granting class certification," the modification to the class definition is appropriate. *Foster v. Adams & Assocs., Inc.*, No. 18-CV-02723-JSC, 2021 WL 4924849, at *3 (N.D. Cal. Oct. 21, 2021).

III.

Class actions may only be settled with court approval. Fed. R. Civ. P. 23(e). There is a "strong judicial policy" favoring settlement of class actions. *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992). As such, the court's role is limited to determining whether the settlement is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e). At the preliminary stage, there is an "initial presumption of fairness," and a court may grant preliminary approval if the settlement: (1) appears to be the product of serious, informed, non-collusive negotiations; (2) has no obvious deficiencies; (3) does not improperly grant preferential treatment to class representatives or segments of the class; and (4) falls within the range of possible approval. *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007).

The first factor is satisfied. Plaintiff has conducted substantial discovery in this case to date. Dkt. No. 441-2 ¶ 2. Counsel's review of the discovery was aided by two outside experts: an expert on business valuation and a forensic accountant. *Id*. The timing of the settlement also supports the conclusion it was carefully negotiated. The settlement was reached after SPCP filed its request for fees and costs, after that request was fully briefed, and the week before the hearing on that motion. The Court has no reason to doubt that the settlement was the product of informed, arm's-length negotiations, which weighs "in favor of a finding of non-collusiveness." *In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 948 (9th Cir. 2011).

As to the second and third factors, the settlement has no "obvious" deficiencies, nor does it appear to display any preferential treatment to class representatives or portions of the class. Counsel will not seek attorneys' fees from the settlement fund, and the requested deductions from the settlement for expenses and administrative fees appear to be reasonable upon preliminary consideration, although they will be reviewed further at the final approval stage.

The agreement, however, includes a clear sailing provision stating that SPCP "will take no position regarding the application for or an award of the Expense

Award." Dkt. No. 411-3 at 20. Though the clear sailing provision applies only to Counsel's contemplated request for expenses, the inclusion of the provision requires a district court to "scrutinize closely the relationship between attorneys' fees and benefit to the class." *In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 948 (9th Cir. 2011). While the provision is not a barrier to preliminary approval, the Court will determine whether the expenses sought are reasonable on final approval.

Fourth, the settlement amount falls within the range of possible approval. To determine whether the settlement amount is adequate, "courts primarily consider plaintiffs' expected recovery balanced against the value of the settlement offer." *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1080 (N.D. Cal. 2007). Because Plaintiff brought claims against SPCP under ERISA § 502(a)(3), she is limited to recovering equitable relief from specific funds to which she is entitled. *See* 29 U.S.C. § 1132(a)(3); *Gamino v. SPCP Grp., LLC*, No. 5:21-CV-01466-SB-SHK, 2022 WL 336469, at *4 (C.D. Cal. Feb. 2, 2022).

Class counsel identify four sources of SPCP assets from which Plaintiff could recover: (1) $18.8 million in cash, (2) a promissory note, (3) a warrant to purchase shares, (4) 10.2% of net payments received by KPC under California's hospital quality assurance fees. Counsel assert that because of the difficulty of tracing funds obtained by SPCP from the transaction at issue, only $1,015,898.63 is available for the Class to recover from SPCP. Dkt. No. 441-1 at 20. Plaintiff's expert identified that sum of traceable funds over a year ago, and Class counsel represents that "there is even significant uncertainty regarding whether the funds identified by Plaintiff's expert may by this point have been dissipated." *Id*. Therefore, the settlement represents approximately 9.8% of the amount that could be recovered from SPCP. *Id*. at 21. Adding to the uncertainty of recovery, Plaintiff recently appealed this Court's order granting summary judgment to SPCP, and the appeal would likely take significant time to be resolved. Furthermore, any recovery could be reduced if SPCP's request for fees and costs—in excess of $600,000—is granted. The Court finds that, given all the risks, the proposed settlement amount is fair and adequate. *See In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (a settlement amounting to "only a fraction of the potential recovery" was fair "given the difficulties in proving the case"); *Foster v. Adams & Assocs., Inc.*, No. 18-CV-02723-JSC, 2021 WL 4924849 at *6 (N.D. Cal. Oct. 21, 2021) (preference for settlement "especially true [] given that ERISA actions are notoriously complex cases, and ESOP cases are often cited as the most complex of ERISA cases" (internal citation omitted)).

Accordingly, the Court finds that the settlement is fair and reasonable for purposes of preliminary approval.

IV.

Finally, Rule 23(e) requires notice of the settlement to the class to comport with due process. As the class was certified under Rule 23(b)(1), Dkt. No. 174 at 12, "the court may direct appropriate notice to the class." Rule 23(c)(2)(A).

Notice "is satisfactory if it 'generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard.'" *Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004) (quoting *Mendoza v. Tucson Sch. Dist. No. 1*, 623 F.2d 1338, 1352 (9th Cir. 1980)). The class is made up of the same members as the class that previously settled with the KPC Defendants and Alerus. *See* Dkt. No. 441-3 at 11 ("The Class Data used to send Notice to the Class will be the Class Data previously provided by KPC Defendants pursuant to Section II.7 of Plaintiff's settlement agreement with the KPC Defendants."). The proposed notice provided by the parties, Dkt. No. 441-5, contains information on the claims against SPCP, its motion for fees and expenses, the previous settlements, the class, and class members' rights to object and attend the Fairness Hearing. The notice states that payments will be distributed in the same manner as in the previous settlements with the KPC Defendants and Alerus. Notice will be sent via email, if available, or first class US mail, and copies of the notice, complaint, relevant motions and orders, the settlement agreement, Plan of Allocation, and other information will be posted to the existing website created for the previous settlements, Dkt. No. 441-3 at 10–12.

The Court finds that the proposed notice and plan of notice comport with due process requirements and Rule 23.

V.

For the foregoing reasons, the Court **GRANTS** Plaintiffs' motion for preliminary approval of the class action settlement as follows:

1. The class definition is hereby modified, and the class definition for purposes of this settlement is: "All participants in the KPC Healthcare, Inc. Employee Stock Ownership Plan from August 28, 2015, through August 31, 2021 (unless they terminated employment without vesting in the ESOP) and those

participants' beneficiaries. Excluded from the class are (a) Defendants in the Action; (b) any fiduciary of the Plan; (c) the officers and directors of KPC Healthcare Holdings, Inc. or of any entity in which one of the individual Defendants has a controlling interest; (d) the immediate family members of any of the foregoing excluded persons; and (e) the legal representatives, successors, and assigns of any such excluded persons."

2. The Settlement Agreement, Dkt. No. 441-3, is preliminarily approved.
3. The form and content of and plan to disseminate the proposed Class Notice by email, where available, or first class U.S. mail, Dkt. No. 441-5, is approved.
4. CPT Group is appointed as the Settlement Administrator.
5. The Plan of Allocation, Dkt. No. 441-4, is preliminarily approved.
6. The Court sets the following schedule for notice, motions, and a hearing on this settlement:

Event	Deadline
Provide Notice to Class	July 21, 2023
Class Counsel to File Motion for Expenses	August 21, 2023
Class Members to File Objections	September 5, 2023
Class Counsel to File Motion for Final Approval	September 22, 2023
Fairness Hearing	October 20, 2023

IT IS SO ORDERED.

Date: July 10, 2023

Stanley Blumenfeld, Jr.
United States District Judge