

FILED

SEP 28 2021

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9
10 **COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF MARIN**

12 WILLIAM BAIN, WILLIAM A. GLEASON,
13 DOREEN A. GLEASON, HILLERY JAFFE-
14 URELL, and BARRY SHULMAN,

15 Plaintiffs,

16 v.

17 LAWRENCE J. GERRANS a/k/a LARRY
18 GERRANS, HALO MANAGEMENT GROUP,
19 LLC, and HARTFORD LEGEND CAPITAL
20 ENTERPRISES,

21 Defendants,

22 And

23 SANOVAS, INC., a Delaware Corporation,

24 Nominal Defendant.

Case No.: CIV1803695
(Related to CIV180981)

**ORDER DENYING PLAINTIFF'S
MOTION FOR AWARD OF ATTORNEY'S
FEES AND EXPENSES AND MOTION
FOR FINAL APPROVAL OF
SETTLEMENT AND ENTRY OF FINAL
JUDGMENT; GRANTING IN PART AND
DENYING IN PART NOMINAL
DEFENDANT SANOVAS, INC.'S MOTION
TO SEAL.**

Hearing Date: September 3, 2021
Time: 1:30
Dept.: E
Hon. Judge Andrew Sweet presiding

25 Plaintiffs William Bain, Doreen Gleason, Hillery Jaffe-Urell and Barry Shulman ("Plaintiffs"),
26 on behalf of Sanovas, Inc. ("Sonovas"), move for final approval of a Stipulation and Agreement of
27 Compromise, Settlement and Release ("Settlement") of the claims brought against Defendants Lawrence
28 Gerrans ("Gerrans"), Halo Management Group, LLC ("Halo") and Hartford Legend Capital Enterprises

1 ("Hartford") (collectively, the "Settling Parties"). Plaintiffs also seek an order compelling Sanovas to
2 pay Plaintiffs' counsel \$300,000 in attorneys' fees and \$15,201.16 in costs. Nominal defendant Sanovas
3 has filed a motion to file the shareholder objections to the Settlement under seal.

4 For the reasons set forth below, the motions for approval of settlement and attorneys' fees are
5 **DENIED**. The motion to seal is **GRANTED** in part and **DENIED** in part.

6
7 **Factual and Procedural Background**

8 **I. Plaintiffs' Derivative Complaint**

9 On August 21, 2018, Plaintiffs, who are shareholders of Sanovas, commenced this derivative
10 action on behalf of Sanovas against Defendants Gerrans, Halo and Hartford. The Complaint alleges,
11 among other things, that Gerrans, the founder and former CEO of Sanovas, siphoned funds out from
12 Sanovas, crimes for which Gerrans was indicted on July 12, 2018 on three counts of wire fraud and
13 money laundering. (Complaint, ¶¶2, 38.) Gerrans withdrew \$500,000 from his IRA for his personal use
14 and falsely claimed to the Board of Directors that he used the funds for Sanovas business and should
15 therefore be reimbursed, and also siphoned money through his shell companies and alter egos, Halo and
16 Hartford, to use for the purchase of his 2.5 million dollar personal residence. (*Id.*, ¶¶40-64.) Plaintiffs
17 allege that Gerrans was able to engage in his fraudulent conduct by failing to follow corporate formalities
18 and appointing directors without formal Board action. (*Id.*, ¶¶66-70.) Gerrans withheld information from
19 the directors about the company's finances and the investigation, prompting the other directors to resign
20 in February 2018. (*Id.*, ¶¶71-77.) At the time the Complaint was filed, Gerrans was still acting as the sole
21 remaining director on the Board but did not inform shareholders or update the company's website to
22 reflect this fact. (*Id.*, ¶3.)

23 Plaintiffs assert claims for breach of fiduciary duty, aiding and abetting breach of fiduciary duty,
24 fraudulent misrepresentation, constructive fraud, unjust enrichment, declaratory judgment and injunctive
25 relief. Plaintiffs' first five causes of action are generally based on the same facts as the criminal
26 indictment. In their claim for declaratory judgment, Plaintiffs allege that Sanovas failed to hold annual
27 shareholder meetings and Gerrans failed to hold an annual meeting for the election of directors, allowing
28 Gerrans to mismanage Sanovas. (*Id.*, ¶120.) Plaintiffs seek a judicial determination so that they can

1 exercise their right to vote on the election of directors and other business. (*Id.*, ¶122.) In their injunctive
2 relief claim, Plaintiffs allege that Gerrans' election as director was invalid because there was no annual
3 meeting held by Sanovas for the election of directors and/or no valid notice given to shareholders
4 regarding an annual meeting at which directors would be elected. (*Id.*, ¶126.) Plaintiffs further allege
5 that unless Gerrans is removed as CEO and sole director of Sanovas and his wrongful conduct enjoined,
6 Sanovas and its shareholders will continue to suffer harm. (*Id.*, ¶127.)

7 In their Prayer for Relief, Plaintiffs seek among other things an order enjoining Gerrans from
8 acting as director pending final resolution of the litigation (Prayer, ¶(b)), an order directing Sanovas to
9 hold an annual shareholder meeting (Prayer, ¶(c)), an order declaring that the election of directors be in
10 accordance with corporate documents and state law (Prayer, ¶(d)), an order appointing one or more
11 custodians with limited power to sit as director to oversee the nomination process and the election of
12 directors at the annual meeting (Prayer, ¶(e)), an award of damages, restitution and imposition of a
13 constructive trust over any profits obtained by Defendants (Prayer, ¶(h)), and an award of fees and costs
14 (Prayer, ¶(i)).

15 On January 21, 2020, the court granted a preliminary injunction barring Gerrans, pending
16 resolution of this case, from receiving any payment, transfer of funds or stock from Sanovas and from
17 holding any office with the company. The order also required Gerrans to return all company property,
18 including patent information, biological assets and physical assets to the company. In the order, the court
19 found among other things that "Plaintiffs have presented persuasive evidence showing they are highly
20 likely to prevail on their claims for breach of fiduciary duty, actual and constructive fraud, and unjust
21 enrichment" The order stated that it was based on evidence that persuasively showed, among other
22 things, that Gerrans misappropriated millions of dollars and engaged in self-dealing by causing Sanovas
23 to enter into an unfair Separation Agreement and consulting agreements. The order required Plaintiffs to
24 post a bond in the amount of \$5,000.

25 **II. The Tribble Action**

26 On October 15, 2018, Michael Kent Tribble, Kevin McCarthy, Harold Sherley and Joan Blum
27 filed an action titled *Tribble et al v. Gerrans et al*, Marin County Superior Court, Case No. CIV 1803695
28 ("*Tribble*"), naming Gerrans, his brothers Art Gerrans and Chris Gerrans, and current Sanovas CEO

1 Jerry Katzman as defendants. Plaintiffs asserted claims for breach of fiduciary duty, aiding and abetting
2 breach of fiduciary duty, fraudulent misrepresentation, constructive fraud, unjust enrichment,
3 declaratory judgment and injunctive relief. The Complaint in *Tribble* contained many of the same factual
4 allegations about Gerrans' misconduct as the Complaint in this case, but also included allegations that
5 Katzman also breached fiduciary duties and made fraudulent representations, and that Katzman and
6 Gerrans' brothers aided and abetted Gerrans' breach of fiduciary duties. Among other things, the *Tribble*
7 plaintiffs alleged that Gerrans, in an attempt to avoid removal from his positions as Sanovas' CEO and
8 as a director, unilaterally appointed Katzman to the Board without notice to, or a vote by, Sanovas'
9 shareholders. (Complaint, ¶¶2, 10). This unilateral appointment was intended to further entrench Gerrans
10 in his position as a director, which also helped him keep his position as CEO, and to ensure there would
11 be no investigation into his wrongdoing. (*Id.*, ¶89.) In their Prayer for Relief, the *Tribble* plaintiffs sought
12 the same remedies as the plaintiffs in this case, but also sought injunctive relief against Katzman.

13 On February 18, 2020, the court entered judgment approving a partial settlement of this action
14 and the *Tribble* action. In the settlement, the plaintiffs dismissed and released claims against Katzman
15 and Art Gerrans, and the Sanovas Board agreed to adopt a number of corporate governance reforms.
16 These reforms included (1) holding a special shareholder's meeting at which Katzman and four other
17 individuals would be elected to the Board; (2) granting Board Observer rights to Harold Sherley to ensure
18 compliance with the agreement; (3) holding a properly noticed annual stockholder meeting to give all
19 stockholders an opportunity to vote on the election of directors and to hear from management; (4) holding
20 regular Board meetings; (5) sharing information with the independent directors; and (5) creating an audit
21 committee consisting of three independent directors. The settlement further provided that the plaintiffs
22 could continue to prosecute the current action on behalf of the company against the remaining
23 defendants.

24 III. Gerrans' Criminal Proceedings

25 On July 12, 2018, the U.S. Attorney General's Office for the Northern District of California filed
26 an indictment against Gerrans for crimes allegedly committed while serving as CEO and

27 Director of Sanovas. On November 8, 2018, a Superseding Indictment was filed which included
28 claims against Gerrans for making false statements to the FBI. On January 29, 2020, Gerrans was

1 convicted on twelve counts including wire fraud, money laundering, making false statements, contempt,
2 attempted witness tampering and obstruction of justice. Gerrans was sentenced to prison for 135 months
3 and ordered to pay \$3,347,668 in restitution to Sanovas. Gerrans filed an appeal on November 11, 2020.
4 The appeal is currently pending.

5 **IV. The Settlement in this Action**

6 The parties attended a judicial settlement conference with Judge Kelly Simmons in early 2021.
7 On March 24, 2021, they agreed to the Settlement. (Declaration of Brian Danitz ("Danitz Decl."), ¶¶2,
8 12 and Exh. 1.)

9 The Settlement includes the following provisions:

10 1. Plaintiffs and all Sanovas shareholders release all known and unknown claims against
11 Gerrans, Halo and Hartford which have been or could have been asserted in this case or in the *Tribble*
12 matter. (*Id.*, Exh.1, pp. 6-8, 12-13)

13 2. Defendants provide an Irrevocable Proxy ("Proxy") to the voting rights of all stock they
14 currently own or control in Sanovas, separate companies and subsidiaries of Sanovas, to a Minority
15 Shareholders Voting Trust (the "Voting Trust"). The Voting Trust is to be established to represent the
16 voting will of the minority shareholders of Sanovas, who are defined as including all shareholders except
17 Erhan Gunday, ES Medical LLC, Jerry Katzman, Steve Bayern, Art Gerrans Jr., Chris Gerrans, Steve
18 Goldsmith and any of their respective affiliates. (*Id.*, at pp. 9-10.) Defendants proxy only their voting
19 rights and not their economic interests and value in their shares, which they retain.

20 3. The settling parties will seek an Order and Judgment requiring Sanovas to provide both
21 Gerrans and Plaintiffs an opportunity and method to effectively communicate with Sanovas shareholders
22 on issues that concern the company "including, but not limited to, communications regarding the
23 nomination of individuals for the Board, and communications regarding shareholder meetings and any
24 issue to be discussed or voted on by shareholders" (*Id.* at pp. 10-11.)

25 4. Gerrans agrees he will not hold any office at Sanovas or its separate companies or
26 subsidiaries unless he is acquitted of the criminal charges. (*Id.* at p. 11.)

27 5. The preliminary injunction will become a permanent injunction, provided that Sanovas
28 may choose to compensate Gerrans for services he may render if he is acquitted of the criminal charges.

1 (Id.)

2 6. Gerrans does not waive his right to seek satisfaction of any portion or all amounts ordered
3 in restitution against him in the criminal matter by tendering shares of stock in Sanovas or any of its
4 separate companies and subsidiaries. (Id.)

5 7. Plaintiffs' counsel may submit an application for an award of attorneys' fees and expenses.
6 (Id. at p. 14.)

7 Under the Voting Trust Agreement, Plaintiff William Bain and another individual, Harold
8 Sherley, are co-trustees of the Voting Trust. (Supplemental Declaration of Brian Danitz ("Supp. Danitz
9 Decl."), Exh. 9.) The agreement provides that the Voting Trust is established to represent the voting will
10 of Sanovas shareholders other than the "Excluded Persons", defined as Ebran Gunday, ES Medical LLC,
11 Jerry Katzman, Steve Bayern, Art Gerrans Jr., Chris Gerrans, Steve Goldsmith, and any of their
12 respective affiliates or associates. One or more of the "Excluded Persons" are Sonovas shareholders.
13 Upon execution of the agreement, the voting rights for Gerrans' shares vest in the Trustees and are to be
14 held in trust by the Trustees, and the Trustees have the exclusive right to vote the Shares. The agreement
15 further provides in part:

16 (a) . . . with respect to any vote: (1) the Trustees shall act in good faith to ascertain the will
17 of the majority of the Minority Shareholders; and (2) the Trustees shall vote all of the Shares in
18 accordance with the will of the majority of Minority Shareholders, to the extent that the will of the
19 Minority has been ascertained.

20 (b) The Trustees shall seek the advice of the Minority Shareholder in advance of voting the
21 Shares or signing a proxy with respect to the Shares. Based upon contact information received from the
22 Company, the Trustees may send or establish an online voting preference to the Minority Shareholders
23 for any vote or proxy listed above, e.g., through SurveyMonkey or a similar platform to ascertain the
24 advice and preferences of the Minority Shareholders.

25 (c) In the event of any disagreement on an upcoming vote or proxy among the Trustees, the
26 Trustees shall seek and abide by the majority vote of the Trust Founders who shall act in good faith to
27 vote all of the Shares in accordance with the will of the majority of the Minority Shareholders.

28 (Supp. Danitz Decl., Exh. 9 at ¶3.)

1 The Sanovas Board of Directors has not approved the Settlement. CEO Katzman has been
2 outspoken in his opposition to the Settlement.

3 **V. Preliminary Approval and Notice to Shareholders**

4 On July 1, 2021, the court issued its tentative order preliminarily approving the Settlement,
5 finding the settlement to be fair and reasonable in light of the submissions before it at that time. The
6 court approved the forms and method for providing notice to current shareholders regarding the
7 pendency of the proposed settlement and directed that the notice be published and posted and transmitted
8 as provided in the parties' stipulation.

9 The notice to the shareholders stated that a proposed settlement had been reached and that a
10 hearing on the Settlement was set for July 30, 2021. The notice advised shareholders that if they wished
11 to object, they had to do so in writing or appear at the hearing. The notice also stated that copies of the
12 notice and the Settlement were published on the company's website at www.sanovas.com. It does not
13 appear that the notice included a copy of, or link to, the Voting Trust Agreement.

14 **VI. Katzman's Communications with Shareholders**

15 On July 5, 2021, the current CEO of the company, Jerry Katzman, issued a statement to Sanovas
16 shareholders regarding the court's preliminary approval of the Settlement. (Danitz Decl., ¶17 and Exh.
17 4.) The statement was in an email which included a link to a podcast in which Katzman discussed the
18 Settlement. Katzman made several negative comments about the Settlement in the podcast as well as in
19 subsequent podcasts. Plaintiffs contend that many of these statements were inaccurate and point out that
20 Katzman and the other current directors have a conflict of interest because the Settlement impacts their
21 self-interest in entrenchment by granting more power to the minority shareholders.

22 **VII. Gerrans' Opposition Brief**

23 On July 19, 2021, Gerrans submitted a brief stating that he agrees that the Settlement should be
24 finally approved by the court but that the forms of the proposed Order and Judgment submitted by
25 Plaintiffs were inconsistent with the terms of the underlying settlement. Specifically, Gerrans argues that
26 the proposed Order imposes two limitations on language in the Settlement he did not agree to,
27 specifically: "Pursuant to the Settlement Lawrence Gerrans shall be provide [sic] a means to
28 communicate with the shareholders, *subject to reasonable limits established by Sanovas and limited to*

1 *within thirty (30) days of any shareholder vote."* Gerrans states that he would not have agreed to settle
2 the case with these limitations. Gerrans also argues that the proposed Order does not include his
3 reservation of rights to satisfy any order of restitution against him in the criminal matter by tendering
4 shares of stock.

5 Gerrans objects to the proposed Judgment on the same grounds he objects to the proposed Order.

6 **VIII. Written Objections from the Shareholders**

7 The court received, through counsel for Plaintiffs, 369 written objections from Sanovas
8 shareholders to the Settlement. The objections raised several grounds for objecting to the Settlement.

9 **IX. Plaintiffs' Reply**

10 On July 23, 2021, Plaintiffs submitted a Reply to respond to the objections, specifically the
11 objections submitted by DocuSign which Katzman set up to make it easier for shareholders to object.
12 Plaintiffs argue these objections were the result of Katzman's misinformation campaign about the
13 Settlement. Plaintiffs submit declarations or correspondence from two shareholders (Tribble and
14 Bosnich) who state that they retract their objections because they were based on Katzman's statements,
15 and correspondence from two shareholders (Albanese and Clark) stating their support for the Settlement.
16 Plaintiffs also argue that the company failed to properly display the notice to shareholders on the Sanovas
17 website for an undefined period of time.

18 **X. The July 30, 2021 Hearing**

19 On July 30, 2021, the court held a hearing on Plaintiffs' motion for final approval of the
20 Settlement. A small number of shareholders appeared in person and by telephone, some of whom
21 objected to the Settlement. The court continued the hearing to September 6, 2021.

22 **XI. Post-Hearing Submissions**

23 On August 13, 2021, the Board of Directors filed a supplemental submission with the court
24 complaining about an email blast sent to shareholders during the July 30th hearing, which the Board
25 contends can be traced to Gerrans and/or his wife. The Board also complai about an email Plaintiff Bain
26 sent to shareholders about the July 30th hearing, arguing that this email is an attempted end-run around
27 the notice and objection procedures established by the court. Gerrans filed a response to Sanovas'
28 supplemental submission on August 19th challenging Sanovas' assertion that the email blast was sent by

1 Gerrans or his wife. The court has also received several communications from shareholders since the
2 July 30th hearing.

3 **Motion for Final Approval of Settlement**

4 **I. Standard of Review**

5 In a derivative action, a plaintiff shareholder sues on behalf of the corporation and, in that
6 capacity, owes a fiduciary duty to the corporation and its shareholders. (*Heckmann v. Ahmanson* (1985)
7 168 Cal.App.3d 119, 128-129.)

8 The settlement of shareholder derivative claims requires court approval in a process similar to
9 that for class actions. (*Robbins v. Alibrandi* (2005) 127 Cal.App.4th 438, 444, 449, n. 2); *Gaillard v.*
10 *Natomas Co.* (1985) 173 Cal.App.3d 410, 419, disapproved on other grounds, *Grosset v. Wenaas* (2008)
11 42 Cal.4th 1100.) "The duty of a court reviewing a settlement of a class action provides a useful analogy
12 because the court in such cases seeks to protect the members of the class who, like the corporation and
13 non-named shareholders in a derivative suit, may have no independent representation and little control
14 over the action. California Rules of Court, rule 1859, requires court approval of settlements reached in
15 class actions, and rule 1859(g) of that rule requires the court to 'conduct an inquiry into the fairness of
16 the proposed settlement.' (*Robbins*, 127 Cal.App.4th at n.2.)

17 The court possesses broad discretion to determine the fairness of a settlement, a discretion
18 exercised through the application of a handful of identified criteria. (*7-Eleven Owners for Fair*
19 *Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1146.) The courts have adopted a mix of
20 relevant considerations, including (1) the strength of the plaintiffs' case; (2) the risk, expense, complexity
21 and likely duration of further litigation; (3) the risk of maintaining class action status through trial; (4)
22 the amount offered in settlement; (5) the extent of discovery completed and stage of the proceedings; (6)
23 the experience and views of counsel; and (7) the reaction of the class members to the proposed
24 settlement. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) This list "is not exhaustive and
25 should be tailored to each case." (*Id.*) "[A] presumption of fairness exists where: (1) the settlement is
26 reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel
27 and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage
28 of objectors is small." (*Id.* at 1802.)

1 **II. Discussion**

2 Based on the record before it, the court finds that Plaintiffs have failed to show the Settlement is
3 fair to the company or its shareholders. The court did make a preliminary finding that the Settlement was
4 fair based on the evidence before it at the time. However, subsequent events have shown the divisiveness
5 of the shareholders, and the terms of the Settlement favors one group of shareholders (including
6 Plaintiffs) over another. Plaintiffs have not submitted evidence justifying the exclusion of the other
7 shareholders from certain benefits of the Settlement or establishing why this distribution is beneficial to
8 the company. Plaintiffs have also not clearly articulated to the court what additional relief they could
9 have obtained at trial that the company and shareholders would give up as a result of the Settlement.
10 Without this information, the court cannot conclude that the Settlement is in the best interests of the
11 company.

12 **A. The *Dunk* Factors**

13 Strength of Plaintiffs' case

14 It appears to the court from the prior briefing on the preliminary injunction motion in this case,
15 as well as the outcomes in the criminal action and in *Tribble*, that Plaintiffs have a strong case against
16 Defendants. However, it is unclear to the court what specific remedies Plaintiffs seek against Defendants
17 at this point in the case. Plaintiffs have indicated in other pleadings they are unlikely to obtain monetary
18 relief against Gerrans himself in light of the restitution order in the criminal case. (Reply in Support of
19 Motion for Preliminary Approval, 8:22-23 ("With this forfeiture and restitution order in place, a civil
20 trial seeking further monetary damages would likely result in an uncollectible judgment"); Supplemental
21 Case Management Conference Statement, 12/4/2020 ("Plaintiffs are prepared to proceed to trial
22 exclusively on their claims in equity, seeking only equitable relief, including a permanent injunction and
23 restitution".)) Plaintiffs state in their moving papers that they will proceed at trial seeking only equitable
24 relief (MPA, 16:5-6). However, they do not identify what, specifically, they intend to seek in the form
25 of restitution if this case were to proceed to trial. Plaintiffs also do not identify any corporate reforms
26 they seek that were not already agreed to in the *Tribble* settlement.

27 Risk, Expense, Complexity and Likely Duration of Further Litigation

28 As noted above, the issues in this case have been narrowed in light of the restitution order in the

1 criminal matter and the *Tribble* settlement. In their papers, Plaintiffs do not offer any estimated expense
2 or duration of further litigation in this case. The court notes, however, that Plaintiffs proposed three days
3 for trial in their Supplemental Case Management Conference Statement filed on December 4, 2020. They
4 also proposed a trial date in March 2021, suggesting a short duration of further litigation.

5 Risk of Maintaining Class Action Status through Trial

6 This factor is not applicable to the court's analysis in this shareholder derivative action.

7 The Amount Offered in Settlement

8 Plaintiffs identify the benefits of the Settlement as: (1) a permanent injunction requiring Gerrans
9 to return all company property, prohibiting Gerrans from holding any office at Sanovas unless he is
10 acquitted, and prohibiting Gerrans from receiving any payment or stock unless he is acquitted and
11 Sanovas agrees to compensate him; and (2) the voting rights of tens of millions of shares will be
12 transferred to the Voting Trust and will be taken out of Gerrans' control and voted according to the will
13 of the majority of the minority shareholders.

14 Plaintiffs' papers only highlight what they contend are the benefits to the company or
15 shareholders as a result of the Settlement; there is no discussion as to the totality of relief the Plaintiffs
16 sought by way of their Complaint and could potentially obtain at trial to allow the court to evaluate the
17 strength of the Settlement. A discussion of what the company and shareholders gain in the Settlement,
18 as well as what they are potentially giving up by not pursuing this case at trial, would have been helpful
19 to the court. (*See Krasner v. Dreyfus Corporation*, 500 F. Supp. 36, 44 (S.D.N.Y. 1980) (noting difficulty
20 of analysis where proponents fail to offer "estimates of the best possible recovery and of the probability
21 of recovery upon continuation of the litigation") (citation and internal quotations omitted).)

22 For example, it is unclear to the court whether Plaintiffs are giving up a potential recovery of at
23 least some of monetary relief they seek from one or both of the two entity defendants, who were sued on
24 an aiding and abetting theory. These two defendants are released under the Settlement terms. It is also
25 unclear if Plaintiffs are giving up their right to potentially recover Gerrans' equity in the company, the
26 validity and/or amount of which appears to be at issue in the Delaware litigation. Gerrans retains his
27 equity in Sanovas, whatever that may be, under the Settlement. It is also unclear if Plaintiffs seek, and
28 are foregoing by way of the Settlement, any additional corporate reforms at Sanovas that they did not

1 acquire in the *Tribble* settlement.

2 The court agrees that the company is receiving significant benefits through entry of a permanent
3 injunction which allows it to keep money Gerrans would have received through various agreements.
4 However, the court already granted a preliminary injunction for the same relief based on substantial
5 evidence already submitted to the court, so there is a likelihood that Plaintiffs could obtain this same
6 relief at trial.

7 The court also agrees the company is likely benefit from the fact that Gerrans, who has been
8 convicted of unlawfully siphoning corporate funds for his own personal use, would no longer be able to
9 formally vote on company business. This benefit is tempered to some extent by the Settlement terms
10 which allow Gerrans access to shareholders to communicate with them on company business "including,
11 but not limited to, communications regarding the nomination of individuals for the Board, and
12 communications regarding shareholder meetings and any issue to be discussed or voted on by
13 shareholders" Approximately 71 shareholders objected to the Settlement on this ground, and 21
14 objected that Gerrans may control the company. (Reply, 9:89.)

15 It is important to note that the company itself is not acquiring Gerrans' voting rights. Rather,
16 under the Settlement, those rights are proxied to a group of shareholders by way of a Voting Trust. Other
17 shareholders are excluded. While it is true that taking away the voting rights of Gerrans may in theory
18 be beneficial to the company, the actual effect is speculative and assumes without evidentiary basis that
19 the shareholder group that is getting those rights will exercise them in a manner most beneficial to the
20 company, more so than the excluded shareholders.

21 Extent of Discovery Completed and the Stage of the Proceedings

22 Plaintiffs argue that they conducted written discovery and deposed the current CEO Katzman. In
23 a Supplemental Case Management Conference statement filed in December 2020, Plaintiffs' counsel
24 indicated the case would be ready for trial three months later in March 2021.

25 Experience and Views of Counsel

26 Plaintiffs state that their highly experienced counsel reviewed data from many sources, including
27 company books and records, the evidence presented in the criminal matter and documents obtained in
28 discovery, and concluded that the Settlement is fair, reasonable and in the best interests of Sanovas and

1 its shareholders.

2 Reaction of the Class Members to the Settlement

3 As noted above, well over three hundred shareholders objected to the Settlement. It is unclear
4 how many of these shareholders, if any, were swayed by alleged misstatements made by Katzman about
5 the Settlement. Also as noted above, the link to the Settlement on the company website was disabled for
6 an unknown period of time; it is possible this affected the ability of shareholders to submit objections.

7 The court finds it problematic that the Voting Trust Agreement was not included in the notice to
8 shareholders. As a result, even the shareholders included in the group acquiring the voting rights were
9 given only limited information to decide whether to object to the structure of the trust and the selection
10 of its trustees. Plaintiffs acknowledge that there were 88 objections based on uncertainties regarding the
11 Voting Trust. (Reply, 9:11-12.)

12 **B. Overall Fairness/Risk of Fraud or Collusion**

13 While the *Dunk* factors are relevant to the court's consideration, underlying issues of fairness to
14 the company and its shareholders are the most significant factors in the court's determination here given
15 the facts of this case and the terms of the Settlement.

16 The court must scrutinize any proposed settlement agreement to reach a reasoned judgment that
17 the settlement is not the product of fraud or overreaching by, or collusion between, the negotiating parties
18 and that the settlement is fair, reasonable, and adequate to all concerned parties. (*Robbins*, 127
19 Cal.App.4th at 449.) The purpose of this requirement is to protect class members whose rights may not
20 have been given due regard by the negotiating parties. (*Dunk*, 48 Cal.App.4th at 1800-1801.) The court
21 cannot presume that the plaintiffs' attorneys reached a fair settlement if settlement negotiations are biased
22 or skewed by a conflict of interest. (*In re Pacific Enterprises Securities Litigation*, 47 F.3d 373, 378 (9th
23 Cir. 1995).)

24 The distribution of Gerrans' voting rights in the Settlement is not fair to the shareholders, as it
25 benefits only one group of shareholders to the detriment of others. Plaintiffs freely acknowledge that the
26 Settlement will result in a shift of control among the shareholders. (*See e.g.*, MPA, 5:15-16, 5:18, 8:24).
27 Plaintiffs further acknowledge that with a redistribution of voting rights may come a shift of control of
28 the Board of Directors. (*Id.*, 8:21-23.) Thus, the distribution of Gerrans' voting rights to only some of the