

FILED

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**JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: J. Chen, Deputy**

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF MARIN

WILLIAM BAIN,
WILLIAM A. GLEASON,
DOREEN A. GLEASON,
HILLERY JAFFE-URELL, and
BARRY SHULMAN,
Plaintiffs,

v.

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

Defendants

and

SANOVAS, INC., a Delaware Corporation

Nominal Defendant.

Case No. CIV1802981
(Related to CIV1803695)

**REPLY IN SUPPORT OF PLAINTIFFS'
MOTION FOR AWARD OF
ATTORNEYS' FEES AND EXPENSES**

Date: July 30, 2021
Time: 1:30 p.m.
Courtroom: E
Judge: Hon. Andrew E. Sweet

Complaint Filed: August 21, 2018
Trial Date: June 7, 2021

1 **Plaintiffs Request for Reasonable Attorney’s Fees and Expenses Should be Approved**

2 It is well-established in California that plaintiffs in representative actions are entitled to
3 an award of attorneys’ fees if their efforts confer a significant benefit (whether pecuniary or not)
4 for the benefit of another. *See, e.g., Laffitte v. Robert Half Int’l, Inc.* (2016) 1 Cal. 5th 480;
5 *Consumer Cause, Inc. v. Mrs. Gooch’s Natural Food Mkts., Inc.* (2005) 127 Cal.App.4th 387, 397
6 *citing Serrano v. Unruh* (1982) 32 Cal.3d 621, 629; *Fletcher v. A. J. Indus., Inc.* (1968) 266
7 Cal.App.2d 313, 323-25 (“Under the ‘substantial benefit’ rule, a variant of the common-fund
8 doctrine as applied more recently in other jurisdictions, the successful plaintiff in a stockholder’s
9 derivative action may be awarded attorneys’ fees against the corporation if the latter received
10 ‘substantial benefits’ from the litigation, although the benefits were not ‘pecuniary’ and the action
11 had not produced a fund from which they might be paid.”).

12 Plaintiffs’ Motion sets forth the basis for why Plaintiffs’ request for fees is reasonable and
13 should be awarded. Given that no opposition was filed by any party, Plaintiffs’ counsel will not
14 repeat their arguments here. Plaintiffs do take this opportunity to respond to the DocuSign
15 objections which concern Plaintiffs’ request for attorney’s fees and expenses.

16 In total, there were 369 DocuSign forms that included “objections” to the fees request.
17 Danitz Reply Decl. ¶24, Ex. 25. However, 336 of those ***did not provide any reason for the***
18 ***objection***, stating something akin to “I object” without any basis, *e.g., “I disagree on whats going*
19 ***on here”*** (Liano); ***“They can pay their own damn fees”*** (Johnson); or ***“I object.”*** (Koehler). *See Id.*
20 Respectfully, these objections, which were obtained by Katzman as part of his self-interested
21 campaign against the Settlement, do not establish that Plaintiffs’ counsel failed to confer a
22 significant benefit, nor do they establish that the amount of fees requested is unreasonable. For
23 these reasons, the Court should give no weight to the 336 objections that provide no reasoning.

24 The remainder of the DocuSign objections, and the one non-DocuSign objection by
25 Director Richard Wyatt, do not contest that Plaintiffs’ Counsel devoted substantial time and effort
26 in prosecuting the Action. These objections, while in some instances irrelevant, also fail to address
27 the factors courts consider when awarding fees, and instead mostly complain about paying fees in
28 general: ***“I also object to the fees being proposed for this law firm that I did not choose or ask to***

1 *do anything on my behalf.”* (Barfield); *“I do not think Larry Gerrans should be reimbursed for*
2 *any legal fees arising from this law suit. It would financially impact the operations of Sanovas, Inc.*
3 *bottom line.”* (Sordelli); *“The best part of the settlement is the permanent injunction. It should not*
4 *have cost the company \$316,000+ to get that.”* (Wyatt). Additionally, the DocuSign objections are
5 the product of Katzman’s misinformation campaign which concealed and misrepresented the
6 benefits of the Settlement and the significant achievements of counsel in litigating this case.

7 None of the objections address the fact that Plaintiffs’ counsels’ spent hours investigating
8 the relevant claims, obtaining critical evidence and records, preparing a detailed complaint,
9 researching, briefing, and arguing motions. *See* Danitz Decl. ¶ 31. Plaintiffs obtained a
10 preliminary injunction protecting the Company from the loss of more than FIVE MILLION
11 DOLLARS that Katzman agreed to pay to Gerrans, and reviewed over 30,000 pages, prepared for
12 trial, including the review of eleven trial transcripts, one hearing transcript, and 170 exhibits from
13 Lawrence Gerrans’ criminal trial, and, ultimately, led the negotiation of the Settlement. *Id.* The
14 remarkable results achieved in this case were the product of years of hard-fought litigation and
15 creative lawyering by Plaintiffs’ Counsel.

16 The claims in this lawsuit were governed by complex and different theories of liability
17 based on fiduciary duties owed by directors and officers, the effect of Delaware law, and the
18 change in circumstances when Defendant Gerrans stepped down as CEO and Katzman took
19 Gerrans’ place. Further, derivative actions are uniquely complex and fraught with risk to a
20 shareholder plaintiff. Indeed, the Ninth Circuit, in affirming the district court’s approval of a
21 settlement in a derivative action, noted that “the odds of winning [a] derivative lawsuit [are]
22 extremely small” because “derivative lawsuits are rarely successful.” *In re Pac. Enters. Sec. Litig.*
23 (9th Cir. 1995) 47 F.3d 373, 378. This confluence of complicated obstacles illustrates the
24 considerable Settlement reached and justifies the award of attorneys’ fees and expenses.

25 Counsels’ lodestar demonstrates the significant amount of time Plaintiffs’ Counsel
26 expended litigating this case. Danitz Decl. ¶ 32. Specifically, the Cotchett firm worked more than
27 896 hours, while the Rains firm billed another 180 hours (which amount is reduced by 35-45% of
28 the time actually worked). Danitz Decl. ¶ 32, Ex. 6; de St. Phalle Decl. ¶¶ 3-4. In all, the actual

1 loadstar (including Rains' *discounted* hours) totals more than **1,077.2 hours or \$585,087.00** in
2 fees. Danitz Decl. ¶ 32. The request for \$300,000 in fees, reduces the actual lodestar by
3 approximately half. *Id.* In sum, the requested fee amount represents a significantly reduced and
4 very reasonable lodestar. *Id.* None of the objections address these facts in any way.

5 Plaintiffs' Counsel also incurred expenses of **\$15,201.16**. *See* Danitz Decl. ¶ 38. The
6 expenses requested are all reasonable, fall within the categories of expenses that courts have
7 repeatedly stated are compensable, and were directly incurred in the litigation of the
8 Action. *Id.* Again, none of the objections address this fact or take any specific issue with the
9 request for expenses.

10 Lastly, if the Settlement fails and Plaintiffs proceed to trial, fees and expenses will only
11 increase, and Plaintiffs' counsel will not be inclined to discount their fees as drastically as they
12 have here. Accordingly, Plaintiffs' request for \$300,000 in fees and \$15,201.16 in expenses are
13 reasonable and warranted and should be granted by the Court.

14 Dated: July 23, 2021

COTCHETT, PITRE & MCCARTHY, LLP

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16
17 By:  _____

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