UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

IN RE PINTEREST DERIVATIVE LITIGATION

No. C 20-08331-WHA
No. C 20-08438-WHA
No. C 20-09390-WHA
No. C 21-05385-WHA

(Consolidated)

This Document Relates to:

ALL ACTIONS.

ORDER RE MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT IN SHAREHOLDER DERIVATIVE SUIT

INTRODUCTION

Plaintiffs in this shareholder derivative suit move, unopposed, for preliminary approval of a settlement. For the reasons that follow, preliminary approval of the settlement is **GRANTED**.

STATEMENT

This order describes the facts as alleged in the consolidated amended complaint in some detail as no prior order has done so. The lawsuit, brought by shareholders of Pinterest stock, arises out of allegations of widespread race and sex discrimination at defendant Pinterest, Inc. The catalyst for the suit came in large part from nonparties Ifeoma Ozoma and Aerica Shimizu Banks. They were hired as the second and third members, respectively, of Pinterest's public-policy team. The complaint identifies both Ozoma and Banks as Black women (and Ozoma

also as Japanese). As alleged, both complained internally about the discrimination they experienced as Black women while working for Pinterest. One such instance occurred just after Pinterest rolled out a policy against a particular extremist organization. Afterward, Pinterest employees' identities and internal Slack conversations were leaked to a reactionary website. Ozoma and Banks warned the company about the risk that political extremists might dox employees. The company allegedly ignored Banks and Ozoma's well-founded concerns. Ultimately, the reactionary website, it's alleged, released a video with Ozoma's photo, address, and phone number. The video also incorrectly blamed Ozoma for Pinterest's stance on the extremist group. The video's comments section allegedly featured numerous racist comments directed at her. The company allegedly ignored both Banks and Ozoma's concerns. Rape and death threats also followed. Other female employees were doxxed. When Ozoma asked Pinterest about options for her protection, she allegedly received no response and was forced to hire her own security. Ozoma filed her own lawsuit regarding discrimination and retaliation in July 2019; Banks filed a similar suit regarding poor treatment and inequitable pay in January 2020. Both suits settled for unknown amounts (Consol. Amd. Compl. ¶¶ 95, 103, 113–118, 124–126, 130, 135, 152, 171, 225, 294).

Then, in June 2020, both Banks and Ozoma publicly criticized Pinterest for issuing a public statement in support of the Black Lives Matter movement shortly after the murder of George Floyd. Specifically, both then-employees publicly called the statement hypocritical given their experiences and efforts to achieve equal pay and leveling (internal company scores reflecting employees' baseline experience, which determines one's salary) (*id.* ¶¶ 8, 93, 154–62).

Allegations also include claims that Pinterest underpaid Francoise Brougher, the company's first COO, and a Black woman. That is, it's alleged that she was underpaid and received less favorable backloaded equity grants as compared to her white male peer even though Brougher allegedly grew revenues from $500 million to $1.1 billion in about two years, among other accomplishments. After she complained, the complaint alleges, Pinterest's co-

by. Brougher sued in state court in August 2020 and the case quickly settled for $22.5 million. Various other female employees, Black employees, and employees of color are named in the consolidated amended complaint as confidential witnesses and describe allegations of discrimination small and large (*id*. ¶¶ 1, 173–79, 184–89, 232, 242, 332).

Central to all allegations lies the contention that Silbermann permitted a toxic culture of "yes-men" around him, while sidelining female employees and employees of color. Pinterest's board of directors allegedly knew of this reality but failed to act (*id*. ¶ 13).

In response to Banks and Ozoma's public statements, on June 28, 2020, members of the board formed a special committee to investigate and address claims of systemic racial and gender discrimination at the company. Between June and December 2020, it conducted 350 interviews with then-current and past employees, among other steps (Br. 7).

Shareholder Stephen Bushansky filed the first of four actions ultimately consolidated here, on November 25, 2020 (*Bushansky v. Silbermann*, No. 3:20-cv-08331-WHA). Next, on November 30, 2020, Employees' Retirement System of Rhode Island (ERSRI) filed suit (*ERSRI v. Silbermann*, No. C 20-8438-WHA) (Dkt. No. 1, *see* 28).

Then, "in December 2020," the Special Committee proposed corporate governance changes, to which "Plaintiffs' efforts contributed," according to the stipulation of settlement (Renne Decl. Exh. 1 §1.4).

As for the remaining consolidated suits, Sal Toronto, Trustee of the Elliemaria Toronto ESA, filed on December 29, 2020 (*Toronto v. Silberman*, No. C 20-9390-WHA). Those three cases were related and then consolidated. Plaintiffs filed the consolidated amended complaint in February 2021. Defendants moved to dismiss, and plaintiffs opposed. Then, by stipulation, a prior order herein stayed the suit on June 1, 2021, and referred the parties to Judge Joseph C. Spero for settlement discussions. On July 14, 2021, Howard Petretta filed a separate shareholder derivative suit (*Petretta v. Silbermann*, No. C 21-5385-WHA). A prior order consolidated it with our previously-consolidated derivative suit in October 2021 (Dkt. Nos. 28, 39, 49, 54, 69, 73, 76, 82, 83, 85, 86; Consol. Amd. Compl. ¶¶ 135, 152).

The suit names as individual defendants Pinterest's top executives and board members: Silbermann, Evan Sharp, Jeffrey Jordan, Jeremy Levine, Gokul Rajaram, Fredric Reynolds, Michelle Wilson, Leslie Kilgore, and Todd Morgenfeld. The complaint alleges that these individual officers breached their fiduciary duties to the Company by deliberately ignoring or approving actions that discriminated against employees of color and female employees.

Plaintiffs sue on behalf of themselves and derivatively on behalf of Pinterest and all "current Pinterest Stockholders," which the stipulation of settlement defines as anyone owning Pinterest common stock as of the "date of the execution of this Stipulation," *i.e.*, November 23, 2021, "excluding the Individual Defendants, the current officers and directors of Pinterest, members of their immediate families, and their legal representatives, heirs, successors, or assigns, and any entity in which the Individual Defendants have or had a controlling interest" (Renne Decl. Exh. § I(c)).

In sum, the complaint centers on the theory that the board, which itself lacked diversity, knew about the discrimination and retaliation practices in part because a majority of the directors approved Brougher's compensation package, witnessed that she was not invited to board meetings, and knew about her termination; plus, they failed to intervene to prevent such conduct. Finally, the complaint alleges that the failure to accurately describe the board's governance procedures and Brougher's termination in the company's 2020 Proxy Statement violated Section 14(a) of the Securities Exchange Act of 1934 (Consol. Amd. Compl ¶¶ 15, 86, 197–206, 239).

This order follows briefing, a supplemental filing, and oral argument.

ANALYSIS

Federal Rule of Civil Procedure 23.1 provides that a shareholder derivative action "shall not be dismissed or compromised without the approval of the court." Under Federal Rule of Civil Procedure 23(e), a district court must decide if a proposed settlement is "fundamentally fair, adequate, and reasonable." *In re Pacific Enters Sec. Litig.*, 47 F.3d 373, 377 (9th Cir.1995) (cleaned up) (applying Rule 23(e) to shareholder-derivative settlements). Above all,

shareholders' derivative action is the extent of the benefit to be derived from the proposed settlement by the corporation, the real party in interest." *In re Apple Computer, Inc. Derivative Litig.*, 2008 WL 4820784, at *2 (N.D. Cal. Nov. 5, 2008) (Judge Jeremy Fogel) (quoting *Shlensky v. Dorsey*, 574 F.2d 131, 147 (3d Cir. 1978)). A district court may weigh a variety of factors as the particular facts of a case demand. Some factors include: the amount offered in settlement; the strength of plaintiff's case; the stage of the proceedings; and the expense and complexity of further litigation. *See Linney v. Cellular Ak. P'ship*, 151 F.3d 1234, 1242 (9th Cir. 1998). Furthermore, our court of appeals favors arms-length negotiations. *Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009) (noting lack of "fraud, overreach, or collusion"). The scope of releases factor into the fairness of a settlement, as do discussions of attorney's costs and fees. *See In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 948 (9th Cir. 2011).

This proposed settlement measures up.

First, the settlement's proposed "corporate therapeutics" would afford nonnegligible benefits to the corporation. *Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375, 395–96 (1970). "Settlements involving nonmonetary provisions merit careful scrutiny to ensure that these provisions have actual value to the class." *In re Hewlett-Packard Co. S'holder Derivative Litig.*, 716 F. App'x 603, 607 (9th Cir. 2017) (quoting Rule 23 Advisory Committee) (applying notes on class action settlements to shareholder derivative settlements) (cleaned up). Furthermore,

> The vast majority of shareholder litigation settles for no monetary recovery to the shareholder class. Why? Because non-pecuniary relief nevertheless entitles plaintiffs' counsel to recover their fees from the corporate defendant under the "corporate benefit" doctrine . . . Having struck this Faustian bargain, attorneys now churn a mass of filings and settlements, the ultimate result of which is overcompensation of attorneys (on both sides) and systematic under-compensation of the plaintiff class.

Sean J. Griffith, *Correcting Corporate Benefit: How to Fix Shareholder Litigation by Shifting the Doctrine on Fees*, 56 B.C. L. Rev. 1, 2 (2015), https://lawdigitalcommons.bc.edu/bclr/vol56/iss1/2.

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