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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)

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This Document Relates to:

**ALL ACTIONS.**

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**ORDER RE MOTIONS FOR FINAL  
SETTLEMENT APPROVAL AND  
ATTORNEY’S FEES**

**INTRODUCTION**

In this shareholder derivative suit, plaintiffs move for final approval of a settlement and for attorney’s fees and costs. Defendants do not oppose, but one shareholder has objected. For the reasons stated below, the objection is **OVERRULED**. To the extent stated below, the motions are **GRANTED**.

**STATEMENT**

A prior order detailed our facts (Dkt. No. 115). In brief, this lawsuit, brought by Pinterest shareholders, arises out of allegations of widespread race and sex discrimination at defendant Pinterest, Inc. Two former Pinterest employees, for example, complained internally, and later publicly, about discrimination they experienced as Black women while working for Pinterest. The company allegedly ignored the internal complaints. Numerous other female employees and employees of color are referenced in the complaint as confidential witnesses who similarly describe allegations of discrimination. The complaint further alleges pay inequity. For example, Pinterest’s former COO, a Black woman, was allegedly paid less than her white male

1 peer despite her significant accomplishments at the company. When she raised the issue, the  
2 complaint alleges, Pinterest’s co-founder and CEO Benjamin Silbermann retaliated by firing  
3 her. These events, among others, were alleged to be emblematic of a toxic culture at Pinterest  
4 (Dkt. No. 54).

5 In response to public statements made by Pinterest employees, its board formed a special  
6 committee to investigate. Between June and December 2020, the committee conducted 350  
7 interviews with current and former employees, among other steps. In December 2020, the  
8 committee proposed a series of reforms to address the problem. All of this reform work was  
9 independent of this derivative action.

10 Pinterest began to implement the special committee’s reforms in early 2021 (Dkt. No.  
11 107). These lawsuits were consolidated in a series of orders issued between December 2020  
12 and July 2021 (Dkt. Nos. 28, 39, 49, 86). The parties reached a settlement in November 2021  
13 (Dkt. No. 99). The settlement provided additional and incremental reforms beyond those  
14 provided by the special committee. Preliminary approval was given in February 2022 (Dkt. No.  
15 115). Plaintiffs now move for final approval and for attorney’s fees and costs. Defendants do  
16 not oppose either motion (Dkt. No. 120). Shareholders have received notice of the proposal and  
17 the requested fees, and one shareholder has objected. This order follows briefing and a fairness  
18 hearing.

### 19 ANALYSIS

20 Federal Rule of Civil Procedure 23.1 provides that a shareholder derivative action “shall  
21 not be dismissed or compromised without the approval of the court.” Above all, “[t]he principal  
22 factor to be considered in determining the fairness of a settlement concluding a shareholders’  
23 derivative action is the extent of the benefit to be derived from the proposed settlement by the  
24 corporation, the real party in interest.” *In re Apple Computer, Inc. Derivative Litig.*, 2008 WL  
25 4820784, at \*2 (N.D. Cal. Nov. 5, 2008) (Judge Jeremy Fogel) (quoting *Shlensky v. Dorsey*, 574  
26 F.2d 131, 147 (3d Cir. 1978)). A district court may weigh a variety of factors as the particular  
27 facts of a case demand. Some factors include: the amount offered in settlement; the strength of  
28 plaintiff’s case; the stage of the proceedings; and the expense and complexity of further

1 litigation. *See Linney v. Cellular Ak. P'ship*, 151 F.3d 1234, 1242 (9th Cir. 1998). The reaction  
2 of shareholders also factors into assessing the fairness of a settlement. *See In re Wells Fargo &*  
3 *Co. S'holder Derivative Lit.*, 445 F. Supp. 3d 508, 518 (N.D. Cal. 2020) (Judge Jon Tigar),  
4 *aff'd*, 845 F. App'x 563 (9th Cir. 2021).

5 Here, over 264,000 shareholder notices were mailed (Dkt. No. 123). A single Pinterest  
6 shareholder, Matthew Sweeney, objected to the proposed settlement (Dkt. No. 123). His  
7 objection is that the settlement is unduly focused on social welfare as opposed to prioritizing  
8 shareholder value. Specifically, Mr. Sweeney objects that the \$50 million budget contemplated  
9 by the settlement is excessive and that this is lawsuit is frivolous. This is not convincing. An  
10 independent special committee investigation concluded that there were serious cultural  
11 problems at the company that warranted reform. Plaintiffs, moreover, cite numerous studies  
12 suggesting that improving corporate governance through reforms like those provided in the  
13 proposed settlement are attractive to investors and accordingly have the potential to increase  
14 shareholder value (*see* Br. at 9, n.2; 12–13). Treating employees equitably and increasing  
15 opportunities for women and people of color will benefit Pinterest and its shareholders. In  
16 short, it is good business.

17 Mr. Sweeney further contends that notice to shareholders was inadequate because he did  
18 not receive notice of the settlement until May 23, 2022, just one day before the deadline for  
19 objections. This is troubling. Plaintiffs have, however, submitted a declaration from the  
20 settlement administrator that notices were delivered directly to shareholders on March 2, 2022,  
21 and that notice of the settlement was also published on Pinterest's website and in other  
22 publications (Dkt. Nos. 122–123). The settlement administrator subsequently sent *additional*  
23 notices to brokers in late March, and plaintiffs speculate that Mr. Sweeney may have received  
24 his late notice from his broker. In light of these declarations, Mr. Sweeney's late notice does  
25 not suggest a larger, structural failure in the approved notice to shareholders. Moreover, though  
26 delayed, Mr. Sweeney received actual notice of the proposed settlement, voiced his objections,  
27 and has been heard. Having been heard, Mr. Sweeney's objections are **OVERRULED**.

1           In short, the settlement will, among other improvements, help promote pay transparency at  
2 the company, help encourage equitable hiring practices, and require a commitment to not  
3 enforce non-disclosure agreements. The settlement will further establish mechanisms,  
4 including regular internal audits and accompanying reports to the board, to assess the progress  
5 of the reforms, which will be supported by a \$50 million budget to be spent over ten years. As  
6 described in detail in the prior order granting preliminary approval, these reforms appear  
7 potentially meaningful (*see* Dkt. No. 115). Plaintiffs’ motion for final approval is accordingly  
8 **GRANTED.**

9           Plaintiffs’ counsel also seek attorney’s fees in the amount of \$5,373,079, which represents  
10 a 2.0 multiplier of their claimed collective lodestar. Pinterest stated at the motion hearing that it  
11 does not oppose the request, that its view is that the requested amount is reasonable, and that it  
12 prefers to leave the amount to the Court to decide. For the reasons that follow, this order will  
13 grant an adjusted lodestar of \$2.5 million now and delay awarding a multiplier, if any, for two  
14 years, as detailed below.

15           “Under both Delaware and federal law, a court may grant fees and expenses to derivative  
16 counsel when the derivative suit . . . confers a substantial corporate benefit.” *In re Oracle Sec.*  
17 *Litig.*, 852 F. Supp. 1437, 1445 (N.D. Cal. 1994) (Judge Vaughn Walker); *see also Lewis v.*  
18 *Anderson*, 692 F.2d 1267, 1270 (9th Cir. 1982). The benefit need not be pecuniary to give rise  
19 to attorney’s fees. *See Klein v. Gordon*, No. C 17-00123, 2019 WL 1751839, at \*1 (C.D. Cal.  
20 Feb. 12, 2019) (Judge André Birotte Jr.). Rather, to conclude that the benefits realized by the  
21 corporation are substantial, a district court may find that “the results of the derivative action  
22 maintained the health of the corporation and raised the standards of the fiduciary relationships  
23 and of other economic behavior. . . .” *Ibid.* As in the class action context, courts in this circuit  
24 use either the lodestar or percentage method to assess the reasonableness of attorney’s fees.  
25 *See, e.g., In re Wells Fargo & Co. S’holder Derivative Litig.*, 445 F. Supp. 3d at 519. Courts  
26 that employ the lodestar method have the discretion to approve a multiplier. *See, e.g., Klein*,  
27 2019 WL 1751839, at \*4 (granting multiplier of 1.4).

1           As previously stated, the Court is concerned that this settlement could prove to be mainly  
2 cosmetic. No defendant will pay money to the corporation. Instead, certain corporate reforms  
3 are to be undertaken but a fair number of the reforms were already in place as a result of the  
4 corporation’s own actions addressing the problem.

5           This settlement’s incremental reforms may prove to be the most beneficial. They might,  
6 however, serve as weak therapeutics. The settlement includes a commitment, for example, to  
7 not enforce NDAs, but does not require directly informing employees who signed NDAs that  
8 they may speak freely about their experiences. Counsel also repeatedly tout that Pinterest has  
9 allocated a “budget” of fifty million over ten years to carry out the reforms. But a budget is not  
10 a fund. The money is not already appropriated or in a bank account.

11           These reforms are only as good as future implementation. Who will be there to enforce  
12 the settlement terms and police the corporation to make sure the reforms are realized?

13           Counsel want all of their fees now and to walk away, saying that they’ve achieved a  
14 benefit merely by reaching an agreement for future non-pecuniary reforms spread out over ten  
15 years. This is a recurring problem in derivative shareholder actions. *See, e.g.,* Sean J. Griffith,  
16 *Correcting Corporate Benefit: How to Fix Shareholder Litigation by Shifting the Doctrine on*  
17 *Fees*, 56 B.C. L. Rev. 1, 25 (2015) (describing a “proliferation” of non-pecuniary derivative  
18 action “settlements that nevertheless entitle the plaintiffs’ attorneys to recover fees from the  
19 corporation”).

20           After the Court raised this problem at a prior hearing, plaintiffs’ counsel conferred and  
21 stated they would stay on an additional two years to monitor compliance (Br. 3–4). This would  
22 be helpful, but leaves the other eight years unpoliced. The settlement, if it has any true value  
23 beyond the reforms by the special committee, depends on compliance over the next ten years.  
24 The Court has encouraged the parties to agree on a longer monitoring period, but the parties  
25 were unable to reach an agreement on any length of time beyond two years (Dkt. No. 133).

26           Nonetheless, this order accepts the parties’ proposal to have plaintiffs’ counsel monitor  
27 compliance for two years. Therefore, a portion of the attorney’s fee award will be postponed  
28 and paid out after we see how much benefit really flows from the settlement over that time.

1           Accordingly, an adjusted lodestar of **\$2,500,000.00** will be awarded and paid now as  
2 attorney’s fees. Counsel’s claimed lodestar of \$2,686,539.50 is too high for the amount of work  
3 done. While counsel negotiated the settlement, much of the difficult work of gaining Pinterest’s  
4 acknowledgment of the problem and establishing a plausible framework for achievable reforms  
5 was already accomplished through the special committee’s efforts. The special committee, for  
6 example, interviewed 350 Pinterest employees. Derivative counsel interviewed only sixteen.  
7 Moreover, they seek an award for work done by twenty-one attorneys from four different law  
8 firms. This was too many timekeepers. More effort should have been made to streamline the  
9 representation. The lodestar is accordingly reduced to \$2.5 million. If counsel prefer, the Court  
10 will instead appoint a special master to scrutinize the lodestar. Please advise by **JUNE 17**.

11           A further amount may be awarded in two years based upon future compliance and a  
12 showing of the actual benefit that has flowed from the agreement. Plaintiffs’ counsel must  
13 select no more than two partners and two associates to perform the monitoring and policing  
14 work. Over the next two years, counsel shall file a public report with the Court each  
15 **DECEMBER 31 AND JUNE 30**. The report shall set forth each goal of the settlement (over and  
16 above what was already required by the special committee) and state how much progress has  
17 actually been made (or not made) toward it. The report shall further attach the company’s  
18 reports required under the terms of the settlement, including: “the audit reports presented to the  
19 Audit Committee on a periodic basis as the audits progress” and the accompanying “summary”  
20 provided “to the full board on an annual basis” (Dkt. No. 99-1, Exh. A § II, ¶ 6); the Annual  
21 Diversity Report (*id.* § IV, ¶ 2); the Inclusion & Diversity Team’s quarterly reports (*id.* § VIII, ¶  
22 1); the “bi-annual audits for pay equity” (*id.* § XIII, ¶ 1); and the annual report tracking “the  
23 spending of funds used for implementation and maintenance of the reforms” (*id.* § XIV, ¶ 1).

24           As for costs, counsel request \$47,047.58 in litigation expenses. The costs primarily  
25 involve legal research and expert fees. The costs seem reasonable. The request for  
26 reimbursement is **GRANTED** and shall be paid now.

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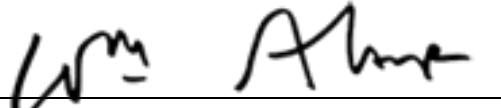
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**CONCLUSION**

The motion for final approval of the settlement is **GRANTED**. The settlement shall be consummated in accordance with its terms. The Court shall retain jurisdiction as described. Counsel's further request for attorney's fees and costs is **GRANTED** to the extent stated above.

**IT IS SO ORDERED.**

Dated: June 9, 2022.

  
\_\_\_\_\_  
WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE