

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

Ashley Novak,

Plaintiff,

vs.

Pacific Bioscience Laboratories, Inc. and
Pacific Bioscience Laboratories, Products,
Inc.,

Defendants.

Case No. BC582188

**[PROPOSED] FINAL APPROVAL
ORDER AND JUDGMENT**

Judge: Ann I. Jones

Dept.: 11

Action Filed: May 18, 2015

WHEREAS, plaintiff Ashley Novak, individually and in her representative capacity (“Plaintiff” or “Class Representative”), and defendants Pacific Bioscience Laboratories, Inc., and Pacific Bioscience Laboratories Products, Inc. (“Defendants” and collectively with the Plaintiff, the “Parties”), have reached a proposed class action settlement of the above-captioned Action (the “Settlement”);

WHEREAS, Plaintiff previously filed a notice of motion and motion for preliminary approval of the proposed Settlement on the terms and conditions set forth in the Stipulation and Settlement Agreement and the attached exhibits (“Settlement Agreement”);

WHEREAS, on [DATE], the Hon. Ann I. Jones signed an Order on [DATE], granting Preliminary Approval of the Proposed Settlement (“Preliminary Approval Order”), *inter alia*: (i) certifying the Settlement Class for settlement purposes only; (ii) preliminarily approving the Settlement Agreement as fair, reasonable and adequate to the Settlement Class; (iii) approving the Notice Plan; (iv) authorizing dissemination of notice to the Settlement Class pursuant to the Notice Plan; (v) scheduling the Final Approval Hearing; (vi) providing that, with the exception of such proceedings as are necessary to implement, effectuate, and grant final approval to the proposed Settlement Agreement, all proceedings in the Action are stayed until further order of the Court; and (vii) providing that, pending entry of the Final Order and Judgment, no Settlement

Class Member (either directly, in a representative capacity, or in any other capacity) shall commence or prosecute any of the Released Claims against any of the Released Persons.

WHEREAS, on [DATE], the Notice Administrator filed a declaration with this Court confirming that notice of the Settlement was provided to the Settlement Class in accordance with the Notice Plan set forth in the Settlement Agreement;

WHEREAS, a Final Approval Hearing was held on [DATE], to, *inter alia*: (i) determine whether to grant final approval to the Settlement Agreement as fair, reasonable, and adequate and in the best interests of the Settlement Class; (ii) consider any timely objections to this Settlement and the Parties' responses to such objections; and (iii) rule on Class Counsel's application for an award of attorneys' fees and expenses and an incentive award.

NOW, THEREFORE, the Court, having considered the proposed Settlement and all submissions filed in connection therewith, having considered the presentations of the Parties, any objections filed or presented to the Court, the Parties' responses to such objections, and having considered Class Counsel's application for an award of attorneys' fees, costs, and expenses and Class Counsel's request for approval of an incentive award for the Class Representative, and materials in support thereof, it is hereby ORDERED, ADJUDGED and DECREED THAT:

1. The Settlement Agreement, including all exhibits thereto, is hereby incorporated by reference into this Final Order and Judgment as if explicitly set forth herein and shall have the full force of an Order of this Court. The capitalized terms used in this Final Order and Judgment shall have the same meaning as defined in the Settlement Agreement.

2. The Court has jurisdiction over the subject matter of this Action, the Parties, all Persons within the Settlement Class, and all Releasing Persons and Released Persons.

A. The Court has reviewed the declarations filed by the Notice Administrator regarding notice that was given in this case and finds that the notice provided to the Settlement Class pursuant to the Notice Plan as set forth in the Settlement Agreement is the best notice practicable under the circumstances, taking into consideration (i) the interests of the class; (ii) the type of relief requested; (iii) the stake of the individual class members; (iv) the cost of notifying class members; (v) the resources of the parties; (vi) the possible prejudice to class members who

do not receive notice; and (vii) the res judicata effect on class members. The Court further finds that the Notice Plan constitutes due and sufficient notice to all Persons within the Settlement Class of, *inter alia*: (i) the proposed Settlement Agreement, and procedures for Settlement Class Members to follow in filing written objections to it, and in arranging to appear at the Final Approval Hearing and state any objections to the proposed Settlement; (ii) the nature of the case and the basic contentions and denials of the Parties; (iii) the right of Persons within the Settlement Class to exclude themselves from the Settlement Class before a specified date; (iv) the procedure for Persons within the Settlement Class to follow in requesting to be excluded from the Settlement Class; (v) the binding effect of any judgment, whether favorable or not, on Persons within the Settlement Class who do not request to be excluded; and (vi) the right of Persons within the Settlement Class who do not request exclusion to enter an appearance through counsel at the Final Approval Hearing, and satisfies the requirements of California law, including California Rules of Court Rules 3.766(e) and 3.769(f), and any other applicable law.

3. The Final Approval Motion is hereby granted. The Settlement and final certification of the Settlement Class is approved and found to be, in all respects, fair, reasonable, adequate, and in the best interests of the Settlement Class, and complies with applicable California law, including Rule 3.769 of the California Rules of Court. Specifically, the Court finds that final approval of the Settlement is warranted in light of the following factors:

- (i) The strength of Plaintiff's case;
- (ii) The risk, expense, complexity, and likely duration of further litigation;
- (iii) The risk of maintaining class action status throughout trial;
- (iv) The amount offered in settlement;
- (v) The extent of discovery completed and the stage of the proceedings;
- (vi) The experience and views of counsel; and
- (vii) The reaction of the class members to the proposed Settlement.

(*See Nordstrom Comm'n Cases* (2010) 186 Cal. App. 4th 576, 581.) The Court further finds that the Settlement is the product of good faith negotiations at arm's length, including via mediation before a respected neutral, after thorough investigation, and is not the product of fraud or

collusion. (*Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1800-01.) The Parties are directed to consummate the Settlement Agreement in accordance with its terms.

4. The Court finds and determines that the payment to Class Counsel in the amount of \$_____ in attorneys' fees and litigation costs and expenses, is fair and reasonable and orders that payment of that amount be made to Class Counsel in accordance with the terms of the Settlement Agreement.

5. The Court finds that Plaintiff, Ashley Novak, has fairly and adequately represented the interests of the Settlement Class. The Court finds that an incentive award of \$_____ to Ashley Novak, for her services as the Class Representative, is fair and reasonable and orders that payment of such amount be made to Ashley Novak in accordance with the terms of the Settlement Agreement.

6. Due and adequate notice having been given to Persons within the Settlement Class, it is hereby determined that the Class Representative and each and every Person within the Settlement Class, except those who filed timely and valid Requests for Exclusion as set forth in Appendix 1 hereto, and identified in the reports filed with this Court by the Notice Administrator, are bound by the Settlement Agreement and this Final Order and Judgment and are hereby permanently barred and enjoined from commencing or prosecuting any action or proceeding in any court or tribunal asserting any of the Released Claims, either directly, representatively, derivatively or in any other capacity, against any of the Released Persons. Annexed hereto as Appendix 1 is a schedule of all Persons who have been excluded from the Settlement Class.

7. The Notice Administrator and the Parties shall take all steps required to implement the Settlement in accordance with the Settlement Agreement. Evaluation and fulfillment of valid claims shall take place in accordance with the terms of the Settlement Agreement. It shall be the continuing responsibility of Class Counsel to respond to all inquiries from Settlement Class Members with respect to the Settlement.

8. Without further order of the Court, the Parties may agree to reasonable extensions of time to carry out any of the provisions of the Settlement Agreement.

9. On the Effective Date, the Releasing Persons will be deemed to have, and by operation of the Final Order and Judgment shall have, fully, finally, and forever released and discharged all Released Persons from all Released Claims, whether or not such Releasing Party has made a claim. In entering into this Release, the Releasing Persons acknowledge that they assume the risk of any mistake of fact or law. If they, or any of them, should later discover that any fact which they relied upon in entering into this Settlement Agreement is not true, or that their understanding of the facts or law was incorrect, they shall not be entitled to modify, reform, or set aside the Settlement Agreement, in whole or in part, by reason thereof.

10. If the Effective Date does not occur, or if the Settlement Agreement is terminated for any reason, then:

(i) the Settlement Agreement shall become null and void and shall have no further force or effect;

(ii) the certification of the Settlement Class shall become null and void, and no Party shall be affected in any way by such prior certification;

(iii) all orders of the Court entered after execution of this Settlement Agreement will be deemed to be, and by operation of the Final Order and Judgment shall be, null and void and vacated, *nunc pro tunc* and *ab initio*, and the Action shall proceed as if the Settlement Agreement had neither been entered into nor filed with the Court; and

(iv) the Settlement Agreement, the Parties' acceptance of its terms, and all related negotiations, statements, documents and court proceedings shall be without prejudice to the rights of the Parties, which shall be restored to their status immediately prior to the execution of the Settlement Agreement, and the Parties expressly reserve all arguments, defenses and motions as to all claims that have been asserted or may be asserted in the future, including, without limitation, arguments opposing maintenance of this Action as a class action.

11. Neither this Final Order and Judgment, the Settlement Agreement, Defendants' acceptance of its terms, nor any of the negotiations, statements, documents, or court proceedings related thereto shall be construed as or deemed to be evidence of any presumption, concession, or admission by Defendants or any of the Released Persons with respect to the truth of any fact

alleged in this Action, the validity of any claim that had been or could have been asserted in the Action, the deficiency of any defense that had been or could have been asserted in the Action, or of any liability or wrongdoing of Defendants or any of the Released Persons with respect to the Action. Neither this Final Order and Judgment, the Settlement Agreement, nor any of the negotiations, statements, documents, or court proceedings related thereto shall be offered or received into evidence or used for any purpose whatsoever, in this or any other action or proceedings, other than to obtain approval of the Settlement, or to construe, enforce or implement the terms of the Settlement Agreement.

12. Without affecting the finality of this Final Order and Judgment, this Court retains exclusive and continuing jurisdiction as to all matters relating to the implementation, administration, consummation, enforcement and interpretation of the Settlement and/or the Settlement Agreement, including the Releases contained therein, and any other matters related or ancillary to the foregoing; and over all Parties hereto, including Settlement Class Members and Released Persons, for the purpose of enforcing and administering the Settlement Agreement and the Action until each and every act agreed to be performed by the Parties has been performed pursuant to the Settlement Agreement.

IT IS SO ORDERED.

Dated: _____

Hon. Ann I. Jones
Judge of the Superior Court