

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

**Case No. CV 16-1947-MWF (JEMx)**

**Date: January 9, 2019**

**Title: Sunil Sudunagunta v. Nantkwest, Inc., et al.**

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**Present: The Honorable MICHAEL W. FITZGERALD, U.S. District Judge**

Deputy Clerk:

Rita Sanchez

Court Reporter:

Not Reported

Attorneys Present for Plaintiff:

None Present

Attorneys Present for Defendant:

None Present

**Proceedings (In Chambers):** ORDER RE: UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND NOTICE TO THE SETTLEMENT CLASS [171]

Before the Court is Class Plaintiffs Donald Hu and Brayton Li's ("Lead Plaintiffs" or "Class Plaintiffs") Unopposed Motion for Preliminary Approval of Class Action Settlement and Notice to the Settlement Class (the "Motion"), filed on November 9, 2018. (Docket No. 171).

The Motion was noticed to be heard on December 10, 2018. The Court read and considered the papers on the Motion and deemed the matter appropriate for decision without oral argument. *See* Fed. R. Civ. P. 78(b); Local Rule 7-15. The hearing was therefore **VACATED** and removed from the Court's calendar.

For the reasons discussed below, the Motion is **GRANTED**. The proposed settlement is procedurally and substantively fair. The proposed notices and dissemination procedure appear effective, and meet the requirements of Federal Rule of Civil Procedure 23(c).

**I. BACKGROUND**

**A. Factual and Procedural Background**

This security class action was initiated on March 22, 2016. (*See* Complaint

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

**Case No. CV 16-1947-MWF (JEMx)**

**Date: January 9, 2019**

**Title: Sunil Sudunagunta v. Nantkwest, Inc., et al.**

---

(Docket No. 1)). In June 2016, the action was consolidated with several related actions, Donald Hu and Brayton Li were appointed to serve as Lead Plaintiffs, and Lead Plaintiffs’ selection of counsel was approved. (Docket Nos. 33, 34). The Consolidated Fourth Amended Complaint (“CFAC”) was filed on August 24, 2018. (Docket No. 162). Defendants’ Answers were filed on September 7, 2018. (Docket Nos. 163, 166).

The Court’s Order on August 13, 2018, granting Lead Plaintiffs’ Motion to Certify Class, contained a detailed explanation of the relevant facts as laid out in the Consolidated Third Amended Complaint. (*See* “August 13 Order” (Docket No. 160)). The following section is substantially similar but has been updated to reflect relevant citations to the CFAC as the operative complaint.

Based on the allegations in the CFAC:

NantKwest (the “Company”) is a development-stage immunotherapy company that attempts to harness “natural killer” cells generated by the human immune system to treat cancer, infectious diseases, and inflammatory disease. (CFAC ¶ 2). In December 2014, an investment vehicle owned by Defendant Dr. Patrick Soon-Shiong bought a majority stake in NantKwest, and another pharmaceutical company controlled by Dr. Soon-Shiong bought additional shares. (*Id.* ¶¶ 44, 46). Dr. Soon-Shiong was then appointed Director, Co-Chairman, and Chief Medical Officer, and his business partner, Defendant Henry Ji, was made a Director. (*Id.* ¶¶ 45-47).

In March 2015, NantKwest’s Board appointed Dr. Soon-Shiong CEO, and passed a resolution authorizing the Company to issue warrants to Dr. Soon-Shiong to purchase 17,589,250 shares for \$2 per share (split-adjusted). (*Id.* ¶¶ 47, 49). The warrant terms were modified on May 8, 2015. (*Id.* ¶ 51). Under the modified terms, warrants for 8,331,750 shares would vest when a large pharmaceutical or biotech company (a “Strategic Partner”) invested at least \$20 million in NantKwest at a minimum valuation of \$1.5 billion. (*Id.* ¶¶ 49, 51). At the time they agreed to this condition, Dr. Soon-Shiong and other NantKwest Defendants allegedly already knew that the biotech company Celgene, in which Dr. Soon-Shiong was the largest

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

**Case No. CV 16-1947-MWF (JEMx)**

**Date: January 9, 2019**

**Title: Sunil Sudunagunta v. Nantkwest, Inc., et al.**

---

individual investor, was likely to make a Strategic Partner investment in NantKwest such that the warrants would vest. (*Id.* ¶¶ 37-42).

On July 28, 2015, NantKwest conducted its IPO, offering 9,531,200 shares of its common stock at \$25.00 per share. (*Id.* ¶ 7). In connection with the IPO, NantKwest filed a Registration Statement, including a Prospectus, with the Securities Exchange Commission. (*Id.*). The IPO raised over \$225 million. (*Id.* ¶ 89).

Because the Strategic Partner warrant condition was probable as of the grant date of May 8, 2015, NantKwest should have recorded \$114,561,562 in executive compensation expense in the second quarter of 2015. However, the Registration Statement did not mention it. (*Id.* ¶¶ 74-89).

Lead Plaintiffs likewise allege that the Registration Statement omitted any mention of a related-party lease agreement between NantKwest and NantWorks, another Soon-Shiong entity, for which NantKwest assumed millions of dollars of liability prior to the IPO. (*Id.* ¶ 56). The Registration Statement also misrepresented the extent of material weaknesses in NantKwest’s internal controls. (*Id.* ¶¶ 86-88).

On April 2, 2018, Lead Plaintiffs filed a Motion to Certify Class. (Docket No. 140). On August 13, 2018, the Court granted the motion and certified the following class:

All persons who purchased or otherwise acquired NantKwest, Inc. (“NantKwest” or the “Company”) common stock in or traceable to NantKwest’s July 27, 2015 initial public offering (“IPO”). Excluded from the Class are anyone named as a defendant in this litigation, the present and former officers and directors of NantKwest and any subsidiary thereof, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which any defendant (or combination of defendants) have or had a controlling interest.

(August 13 Order).

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

**Case No. CV 16-1947-MWF (JEMx)**

**Date: January 9, 2019**

**Title: Sunil Sudunagunta v. Nantkwest, Inc., et al.**

---

Between March and September 2018, the parties engaged in settlement negotiations and a mediation session before mediator Robert Meyer. (Mot. at 8). The parties accepted the mediator’s proposal recommending a settlement amount of \$12 million on September 14, 2018. (*Id.*). The parties executed a binding Memorandum of Understanding on September 25, 2018. (*Id.*). Finalization of the settlement terms were embodied in a stipulation executed on October 31, 2018. (*Id.*).

On November 9, 2018, Class Plaintiffs filed the present Motion, seeking preliminary approval of the parties’ settlement and the form and manner of dissemination of the notice of settlement to the class.

**B. The Settlement**

The proposed settlement agreement (the “Agreement” or “Settlement”) is attached to the Declaration of David J. Stone (“Stone Decl.”) as Exhibit 1. (Docket No. 173-1). The Agreement contains the following key class definition, monetary relief, notice, and release provisions:

- “Class” or “Class Member” is defined as: “All persons who purchased or otherwise acquired NantKwest, Inc. (‘NantKwest’ or the ‘Company’) common stock in or traceable to NantKwest’s July 28, 2015 initial public offering (‘IPO’). Excluded from the Class are anyone named as a defendant in this litigation, the present and former officers and directors of NantKwest and any subsidiary thereof, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which any defendant (or combination of defendants) have or had (during the period July 28, 2015 to the present) a controlling interest.” (Agreement ¶ I.C);
- NantKwest’s insurer will pay \$12 million into an escrow account maintained by Class Counsel, which will be used to pay (i) taxes and tax expenses; (ii) notice and administration expenses; (iii) \$7,500.00 in incentive awards to each Class Plaintiff; and (iv) \$3,000,000.00 in attorneys’ fees (25% of the settlement fund) and up to \$250,000.00 in litigation expenses. The remaining balance will be

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

**Case No. CV 16-1947-MWF (JEMx)**

**Date: January 9, 2019**

**Title: Sunil Sudunagunta v. Nantkwest, Inc., et al.**

---

paid to Authorized Claimants on a pro rata basis. (*Id.* ¶¶ I.FF, II.A, III.A, IV, Ex. A-1 at 2, 4, 7);

- Within 20 days of preliminary approval by the Court, Class Counsel shall cause the Mailed Notice (Agreement, Ex. A-1) to be mailed by the settlement administrator, JND Legal Administration (“JND”), to all Class Members who can be identified with reasonable effort. (Stone Decl. ¶ 21). The Mailed Notice contains “all of the information required by Rule 23(c)(3) and the [Private Securities Litigation Reform Act], such as the Class definition, that a Class Member may appear through counsel, the time and manner for requesting an exclusion, a statement of recovery, . . . the reasons for the Settlement[,]” and a Proof of Claim and Release Form. (*Id.* ¶ 20; Agreement ¶ V.A). In addition, a Summary Notice (Agreement, Ex. A-3) will be published twice on a national business newswire at approximately 10 days and again at approximately 20 days after Mailed Notice is distributed. (Stone Decl. ¶ 21; Mot. at 20);
- Each Class Member wishing to participate in the Settlement is required to submit to the settlement administrator a “Proof of Claim and Release” form. (Agreement ¶¶ VIII.A, VIII.D). Any Class Member who fails to submit the form “shall be forever barred from receiving any payments . . . from the Net Settlement Fund, but will in all other respects be subject to the provisions of this [Agreement] and the Final Judgment, including, without limitation, the release of the Released Claims and dismissal of the Action with prejudice.” (*Id.* ¶ VIII.B);
- By no later than 14 days prior to the Final Approval Hearing, any Class Member may submit to the Settlement a request for exclusion from the Settlement, or will “be bound by its terms[.]” (*Id.*, Ex. A-1 at 6; Mot. at 20). Furthermore, “[a]ny Class Member who does not . . . request exclusion from the Class and who objects to the Settlement may appear . . . at the Final Approval Hearing . . . and present any evidence or argument that may be proper and relevant.” (Agreement, Ex. A-1 at 7);

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

**Case No. CV 16-1947-MWF (JEMx)**

**Date: January 9, 2019**

**Title: Sunil Sudunagunta v. Nantkwest, Inc., et al.**

---

- All Class Members who do not timely and validly exclude themselves shall be “deemed to have, and by operation of the Judgment shall have, fully, finally, and forever, released, relinquished, settled and discharged the Released Parties from the Released Claims and shall be permanently barred and enjoined from instituting, commencing, or prosecuting any of the Released Claims against any of the Released Parties directly, indirectly, or otherwise, whether or not such Class Plaintiffs or Class Members execute and deliver a Proof of Claim and Release to the Settlement Administrator.” (*Id.* at 4);
- Defendants will also “release and shall be permanently barred and enjoined from instituting, commencing, or prosecuting any claim against Class Plaintiffs, Class Members or Class Counsel related to this Action or the prosecution thereof.” (*Id.*).

**II. PRELIMINARY APPROVAL OF SETTLEMENT**

“Approval of a class action settlement requires a two-step process — a preliminary approval followed by a later final approval.” *Spann v. J.C. Penney Corp.*, 314 F.R.D. 312, 319 (C.D. Cal. 2016). The standard of review differs at each stage. At the preliminary approval stage, the Court need only “evaluate the terms of the settlement to determine whether they are within a range of possible judicial approval.” *Wright v. Linkus Enters., Inc.*, 259 F.R.D. 468, 472 (E.D. Cal. 2009).

“[P]reliminary approval of a settlement has both a procedural and a substantive component.” *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1080 (N.D. Cal. 2007). Procedurally, the Ninth Circuit emphasizes that the parties should have engaged in an adversarial process to arrive at the settlement. *See Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009) (“We put a good deal of stock in the product of an arms-length, non-collusive, negotiated resolution, and have never prescribed a particular formula by which that outcome must be tested.”) (citations omitted). “A presumption of correctness is said to attach to a class settlement reached in arm’s-length negotiations between experienced capable counsel after meaningful

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIACIVIL MINUTES—GENERAL**Case No. CV 16-1947-MWF (JEMx)****Date: January 9, 2019**

Title: Sunil Sudunagunta v. Nantkwest, Inc., et al.

---

discovery.” *Spann*, 314 F.R.D. at 324 (quoting *In re Heritage Bond Litig.*, 2005 WL 1594403, \*9 (C.D. Cal. June 10, 2005)).

Substantively, the Court should look to “whether the proposed settlement discloses grounds to doubt its fairness or other obvious deficiencies such as unduly preferential treatment of class representatives or segments of the class, or excessive compensation of attorneys.” *Alberto v. GMRI, Inc.*, 252 F.R.D. 652, 666 (E.D. Cal. 2008) (quoting *West v. Circle K Stores, Inc.*, No. 04-cv-0438-WBS, 2006 WL 1652598, at \*11 (E.D. Cal. June 13, 2006)).

**A. Procedural Component**

The proposed settlement appears to be procedurally fair to Class Members.

Class Counsel have extensive experience in securities fraud litigation and class actions. (See Stone Decl. ¶ 12, Exs. 1-4). For instance, Bragar Eigel & Squire, P.C. has served as lead and co-lead counsel in numerous class actions in state and federal courts. (See *id.*, Ex. 3).

The Court is familiar with this action and is confident that it was vigorously litigated on both sides. The parties conducted substantial discovery over the course of this action. (*Id.* ¶ 3). The parties also filed and opposed dispositive and class-related motions. Given the parties’ vigorous litigation of this case, the Court has no doubts that the settlement is “the product of an arms-length, non-collusive, negotiated resolution[.]” *Rodriguez*, 563 F.3d at 965.

Additionally, the parties attended a mediation session in March 2018 with Robert Meyer, an experienced mediator. (See Stone Decl. ¶ 12). The parties ultimately reached their settlement after the same mediator made a mediator’s proposal to the parties recommending that they settle the action for \$12 million. (*Id.* ¶ 6). The fact that the parties utilized an experienced mediator to reach the settlement agreement supports the notion that it was the product of arms-length negotiation. See *Alberto*, 252 F.R.D. at 666-67 (noting the parties’ enlistment of “a prominent mediator with a specialty in [the subject of the litigation] to assist the negotiation of their settlement

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

**Case No. CV 16-1947-MWF (JEMx)**

**Date: January 9, 2019**

**Title: Sunil Sudunagunta v. Nantkwest, Inc., et al.**

---

agreement” as an indicator of non-collusiveness) (citing *Parker v. Foster*, No. 05-cv-0748-AWI, 2006 WL 2085152, at \*1 (E.D. Cal. July 26, 2006)); *Glass v. UBS Fin. Servs., Inc.*, No. 06-cv-4068-MMC, 2007 WL 221862, at \*5 (N.D. Cal. Jan. 26, 2007)).

The Court concludes that Class is represented by experienced counsel who engaged in meaningful discovery and motion practice while pursuing arms-length settlement negotiations. The procedural component of the inquiry is met.

**B. Substantive Component**

The proposed settlement also appears to be generally reasonable and fair to Class Members.

**1. Recovery per share**

As discussed above, pursuant to the Agreement, Defendants have agreed to pay \$12 million to Class Members. (Mot. at 8). Plaintiffs estimate that all 9,531,200 shares issued in NantKwest’s IPO may have been damaged. (Agreement, Ex. A-1 at 1). If so, the estimated recovery before deduction of fees and expenses, costs of notice and claims administration, and compensatory awards would be \$1.259 per share. (*Id.* at 1). If the Court were to ultimately approve Class Counsel’s 25% fee request, and after deduction of fees (\$3,000,000.00), costs and administrative expenses (\$250,000.00), and enhancement payments (\$15,000.00), there would be \$8,735,000.00 left in the settlement fund to be distributed to Class Members, resulting in an estimated recovery of \$0.916 per share.

As Plaintiffs contend, there is “no certainty that Class Plaintiffs would prevail at trial” given that “Class Plaintiffs will face significant challenges, in particular, with negative causation defenses Defendants are expected to raise at trial.” (Mot. at 15). Furthermore, “even if Class Plaintiffs prevailed at trial, Defendants could appeal, further delaying and potentially undermining any recovery.” (*Id.* at 15-16). Therefore, with a settlement amount of \$12 million constituting approximately between 10.5% and 30.5% of the most likely recoverable damages (*id.* at 17), the settlement amount is a reasonable level of compensation. *See, e.g., In re Biolase, Inc. Sec. Litig.*, No. SACV

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIACIVIL MINUTES—GENERAL**Case No. CV 16-1947-MWF (JEMx)****Date: January 9, 2019**Title: Sunil Sudunagunta v. Nantkwest, Inc., et al.

---

13-1300-JLS (FFMx), 2015 U.S. Dist. LEXIS 189232, at \*22-23 (C.D. Cal. June 5, 2015) (finding recovery of 8% of maximum recoverable damages a “substantial benefit to the class” noting it “equals or surpasses the recovery in many other securities class actions” and collecting cases); *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004) (emphasizing the requirement that courts “consider the vagaries of litigation and compare the significance of immediate recovery by way of the compromise to the mere possibility of relief in the future, after protracted and expensive litigation”) (citation omitted).

**2. Attorneys’ fees**

In the Ninth Circuit, there are two primary methods to calculate attorneys’ fees: the lodestar method and the percentage-of-recovery method. *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 949 (9th Cir. 2015) (citation omitted).

“The lodestar method requires ‘multiplying the number of hours the prevailing party reasonably expended on the litigation (as supported by adequate documentation) by a reasonable hourly rate for the region and for the experience of the lawyer.’” *Id.* (citation omitted). “Under the percentage-of-recovery method, the attorneys’ fees equal some percentage of the common settlement fund; in this circuit, the benchmark percentage is 25%.” *Id.* (citation omitted). However, the “benchmark percentage should be adjusted, or replaced by a lodestar calculation, when special circumstances indicate that the percentage recovery would be either too small or too large in light of the hours devoted to the case or other relevant factors.” *Six Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990).

“The Ninth Circuit has identified a number of factors that may be relevant in determining if the award is reasonable: (1) the results achieved; (2) the risks of litigation; (3) the skill required and the quality of work; (4) the contingent nature of the fee; (5) the burdens carried by class counsel; and (6) the awards made in similar cases.” *Martin v. Ameripride Services, Inc.*, No. 08-cv-440–MMA, 2011 WL 2313604, at \*8 (S.D. Cal. June 9, 2011) (citing *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-50 (9th Cir. 2002)). The choice of “the benchmark or any other rate must

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

**Case No. CV 16-1947-MWF (JEMx)**

**Date: January 9, 2019**

**Title: Sunil Sudunagunta v. Nantkwest, Inc., et al.**

---

be supported by findings that take into account all of the circumstances of the case.” *Vizcaino*, 290 F.3d at 1048.

As noted above, Class Counsel indicate that they intend to apply for a fee award of \$3,000,000.00, which represents 25% of the \$12 million total settlement fund. (Mot. at 10). Class Counsel also seeks costs not to exceed \$250,000.00. (*Id.*). The Agreement also provides that “[a]ny order or proceedings relating to the Fee and Expense Application . . . shall not operate to modify, terminate, or cancel this Stipulation, or affect or delay the finality of the Judgment approving this Stipulation and the Settlement of the Action.” (Agreement ¶ VII.C). Given that Class Counsel seeks no more than 25% of the settlement amount, the Court preliminarily finds the requested fee award reasonable.

### **3. Service award**

The Agreement contemplates a compensatory award of \$7,500.00 to each Class Plaintiff “in connection with their time and efforts expended in this litigation.” (Mot. at 10). The Court notes that the “[the] \$5,000 figure . . . is the typical enhancement award in this Circuit.” *Gaudin v. Saxon Mortg. Servs., Inc.*, No. 11-CV-01663-JST, 2015 WL 4463650, at \*6 (N.D. Cal. July 21, 2015) (citing cases). While the Court may entertain some upward departure from the presumptively reasonable compensatory award, it will require further justification as to *why* a **\$7,500.00** award is appropriate under the particular facts and circumstances of this case. The Court, however, need not resolve that issue now to determine that the proposed settlement is substantively fair and reasonable.

The Court finds the Agreement to be both procedurally and substantively fair. The Motion is therefore **GRANTED** insofar as the Agreement is preliminarily **APPROVED**.

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

**Case No. CV 16-1947-MWF (JEMx)**

**Date: January 9, 2019**

**Title: Sunil Sudunagunta v. Nantkwest, Inc., et al.**

---

**III. NOTICE AND SETTLEMENT ADMINISTRATION**

After the Court certifies a class under Rule 23(b)(3), it must direct to class members the best notice practicable under the circumstances. Fed. R. Civ. P. 23(c)(2)(B).

The notice must clearly and concisely state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3).

*Id.* Class notice must be “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Central Hanover Trust*, 339 U.S. 306, 314 (1950).

The Agreement sets forth a fairly detailed notice and opt-out regime involving, in short, the claims administrator, JND, mailing the Mailed Notice to Class Members, which contains “all of the information required by Rule 23(c)(3) and the [Private Securities Litigation Reform Act], such as the Class definition, that a Class Member may appear through counsel, the time and manner for requesting an exclusion, a statement of recovery, . . . the reasons for the Settlement[,]” and a Proof of Claim and Release Form. (Stone Decl. ¶ 20; Agreement ¶ V.A). In addition, a Summary Notice will be published twice on a national business newswire at approximately 10 days and again at approximately 20 days after Mailed Notice is distributed. (Stone Decl. ¶ 21; Mot. at 20). The Court has reviewed the contemplated notice regime and the form and substance of the proposed Mail Notice and Summary Notice, and concludes that the proposed class notice satisfies the requirements set forth in Rule 23(c)(2)(B).

Accordingly, the proposed notice and plan of dissemination are **APPROVED**.

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

**Case No. CV 16-1947-MWF (JEMx)**

**Date: January 9, 2019**

**Title: Sunil Sudunagunta v. Nantkwest, Inc., et al.**

---

**IV. CONCLUSION**

For the reasons discussed above, the Motion is **GRANTED** insofar as the proposed settlement agreement is preliminarily **APPROVED** and the notice and plan of dissemination are **APPROVED**.

The Proposed Order Granting Plaintiffs' Motion for Preliminary Approval of Class Action Settlement and Notice to the Settlement Class (Docket No. 173-1) is adopted and incorporated into this Order, as Exhibit A.

The Final Approval Hearing is scheduled for **April 29, 2019 at 10:00 a.m.**

**IT IS SO ORDERED.**

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

**Case No. CV 16-1947-MWF (JEMx)**

**Date: January 9, 2019**

**Title: Sunil Sudunagunta v. Nantkwest, Inc., et al.**

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EXHIBIT A

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

**Case No. CV 16-1947-MWF (JEMx)**

**Date: January 9, 2019**

**Title: Sunil Sudunagunta v. Nantkwest, Inc., et al.**

---

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

SUNIL SUDUNAGUNTA

v.

NANTKWEST, INC., PATRICK  
SOON-SHIONG, RICHARD  
GOMBERG, BARRY J. SIMON,  
STEVE GORLIN, MICHAEL D.  
BLASZYK, HENRY JI, RICHARD  
KUSSEROW, JOHN T. POTTS, JR.,  
ROBERT ROSEN, JOHN C.  
THOMAS JR., MERRILL LYNCH,  
PIERCE, FENNER & SMITH, INC.,  
CITIGROUP GLOBAL MARKETS  
INC., JEFFERIES LLC, PIPER  
JAFFRAY & CO., and MLV & CO.,  
LLC.,

Case No. 16-cv-01947-MWF-JEM

Consolidated with  
2:16-cv-3438-MWF-JEM

CLASS ACTION

**[PROPOSED] ORDER  
PRELIMINARILY APPROVING  
SETTLEMENT AND PROVIDING  
FOR NOTICE**

Hon. Michael W. Fitzgerald

The Court having reviewed and considered Class Plaintiffs Donald Hu and Brayton Li's Unopposed Motion for Preliminary Approval of Class Action Settlement and Notice to the Settlement Class (the "Motion"), as well as all papers submitted in support thereof, and having reviewed and considered the terms and conditions of the proposed Settlement as set forth in the Stipulation of Settlement (the "Stipulation"), a copy of which has been submitted with the Motion and the terms of which are incorporated herein, and all other prior proceedings in this Action, good cause for this Order having been shown:

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

**Case No. CV 16-1947-MWF (JEMx)**

**Date: January 9, 2019**

**Title: Sunil Sudunagunta v. Nantkwest, Inc., et al.**

---

**IT IS HEREBY ORDERED:**

1. The terms of the Stipulation are hereby preliminarily approved, subject to further consideration at the Final Approval Hearing provided for below.

2. Capitalized terms used in this Order that are not otherwise defined herein have the meanings assigned to them in the Stipulation. The Court concludes that the Settlement is sufficiently within the range of reasonableness to warrant the dissemination of Mailed Notice to Class Members, as provided for in this Order.

3. The Court hereby stays the litigation pending in this Court and enjoins the initiation of any new litigation by any Class Member in any court, arbitration or other tribunal that includes any Released Claims (as defined in the Stipulation) against any of the Released Parties.

**Form and Timing of Notice**

4. The Court approves the form, substance and requirements of (a) the Mailed Notice; (b) the Proof of Claim and Release; and (c) the Summary Notice, substantially in the forms attached to the Stipulation as Exhibits A-1, A-2 and A-3, respectively. The Court finds that the mailing and distribution of the Mailed Notice and the publication of the Summary Notice in the manner and form set forth in this Order: (i) are the best notice practicable under the circumstances; (ii) constitute notice that is reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Action, the effect of the proposed Settlement (including the releases to be provided thereunder), of their right to object to the Settlement, of their right to exclude themselves from the Class and of their right to appear at the Final Approval Hearing; (iv) satisfy the requirements

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

**Case No. CV 16-1947-MWF (JEMx)**

**Date: January 9, 2019**

**Title: Sunil Sudunagunta v. Nantkwest, Inc., et al.**

---

of Rule 23 of the Federal Rules of Civil Procedure, the Private Litigation Securities Reform Act of 1995, and all other applicable laws and rules. The date and time of the Final Approval Hearing shall be included in the Mailed Notice and Summary Notice before they are mailed and published, respectively.

5. Class Counsel is hereby authorized to retain the firm of JND Legal Administration as Settlement Administrator to supervise and administer the notice and claims procedures.

6. The Court approves the use and disbursement of up to \$250,000 from the Settlement Fund to pay the reasonable fees and expenses incurred by, and the reasonable fees charged by, the Settlement Administrator in connection with the administration and notice of the Settlement, including the costs of providing notice as specified in this Order. The Court authorizes payment out of the Settlement Fund of all taxes and tax expenses described in paragraph IX.C of the Stipulation.

7. As soon as practicable after entry of this Order of Preliminary Approval, but in no event later than twenty (20) days after such entry, the designated Settlement Administrator shall cause a copy of the Mailed Notice and Proof of Claim substantially in the forms of Exhibits A-1 and A-2 to the Stipulation, to be mailed by first-class United States mail, postage pre-paid, to each Class Member who has been or that may be identified by reasonable efforts, including by using the nominee procedures set forth herein.

8. The Settlement Administrator shall use reasonable efforts to give notice to nominee purchasers such as brokerage firms and other persons or entities that purchased

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

**Case No. CV 16-1947-MWF (JEMx)**

**Date: January 9, 2019**

**Title: Sunil Sudunagunta v. Nantkwest, Inc., et al.**

---

NantKwest common stock during the Class Period as record owners but not beneficial owners. Within five (5) business days of this Order, NantKwest, at its expense, shall make, or cause to be made, available to the Settlement Administrator a list of the names and last known addresses of the Company's registered stockholders from the date of the Company's IPO, and for the 180-day period thereafter, as set forth in the records of its transfer agent. The Settlement Administrator shall make all reasonable efforts to give notice to nominees or custodians who purchased NantKwest common stock between the July 28, 2015 IPO and January 25, 2016 as record owners but not as beneficial owners. Such nominees or custodians shall, within ten (10) calendar days of receipt of the Mailed Notice and Proof of Claim and Release form, either (i) request additional copies of the Mailed Notice and Proof of Claim and Release form sufficient to send the Mailed Notice and Proof of Claim and Release form to all beneficial owners for whom they are nominee or custodian, and within ten (10) calendar days after receipt thereof send copies to such beneficial owners; or (ii) provide the Settlement Administrator with lists of the names, last known addresses and email addresses (to the extent known) of such beneficial owners, in which event the Settlement Administrator shall promptly deliver the Mailed Notice and Proof of Claim and Release form to such beneficial owners. Nominees or custodians who elect to send the Mailed Notice and Proof of Claim and Release form to their beneficial owners shall send a written certification to the Settlement Administrator confirming that the mailing has been made as directed. Additional copies of the Mailed Notice and Proof of Claim shall be made available to any nominee or custodian requesting the same for the purpose of distribution to beneficial owners. The Settlement

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

**Case No. CV 16-1947-MWF (JEMx)**

**Date: January 9, 2019**

**Title: Sunil Sudunagunta v. Nantkwest, Inc., et al.**

---

Administrator shall, if requested, reimburse nominees or custodians solely for their reasonable out-of-pocket expenses, up to \$0.70 per notice mailed or \$.10 per name and address provided to the Settlement Administrator, incurred in providing notice to beneficial owners, which expenses would not have been incurred except for the sending of such notice, and subject to further order of this Court with respect to any dispute concerning such reimbursement.

9. At approximately ten (10) days and again at approximately twenty (20) days after Mailed Notice is sent, Class Counsel shall also cause a Summary Notice of Pendency and Proposed Settlement of Class Action, substantially in the form of Exhibit A-3 to the Stipulation, to be published on a national business newswire. Class Counsel shall file with the Court no later than seven (7) days prior to the Final Approval Hearing an affidavit or declaration confirming that Mailed Notice has been provided as set forth in this Order and that the Summary Notice has been published as set forth in this Order.

10. Defendants shall file the notices described by the Class Action Fairness Act, 28 U.S.C. § 1715, within the time periods set forth in that statute.

11. Any Class Member who wishes to participate in the Settlement Fund must complete and submit a valid Proof of Claim to the address indicated in the Mailed Notice, postmarked on or before the date specified in the Mailed Notice. To be valid, a Proof of Claim must: (a) be complete in a manner that permits the Settlement Administrator to determine the eligibility of the claim and comply with the instructions of the Proof of Claim and Mailed Notice; (b) include the release by the claimant of all Released Parties as set forth in the Stipulation; (c) be signed with an affirmation (notarization not

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

**Case No. CV 16-1947-MWF (JEMx)**

**Date: January 9, 2019**

**Title: Sunil Sudunagunta v. Nantkwest, Inc., et al.**

---

required) that the information is true and correct; and (d) be sent to the Settlement Administrator postmarked on or before the date specific on the Proof of Claim. All Class Members that do not submit valid and timely Proofs of Claim or that do not submit valid and timely Requests for Exclusion as provided in paragraph 12 of this Order will be forever barred from receiving payment from the Net Settlement Fund, but will in all other respects be subject to and bound by the provisions of the Stipulation, the Settlement, and all proceedings, determinations, orders and judgments in the Action relating to the Settlement, including the releases and Judgment provided for therein.

**Request For Exclusion**

12. Any Class Member may request exclusion (“Request for Exclusion”) from the Class and this Action in the manner and with the consequences described herein, provided that all such Requests for Exclusion must be postmarked or received by the Settlement Administrator no later than fourteen (14) days prior to the Final Approval Hearing (the “Opt-Out/Objection Deadline”). Such request for exclusion shall be in a form that sufficiently identifies (1) the name, address, and phone number of the person(s) or entity seeking exclusion, and (2) a list of all transaction(s) involving NantKwest common stock between July 28, 2015 and the present, and shall include the number of shares, principal amount and trade date of each purchase and sale. The request for exclusion must also be signed to verify the accuracy of the information submitted.

13. Class Counsel, in conjunction with the Settlement Administrator, shall file with the Court no later than seven (7) days prior to the Final Approval Hearing a list of

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

**Case No. CV 16-1947-MWF (JEMx)**

**Date: January 9, 2019**

**Title: Sunil Sudunagunta v. Nantkwest, Inc., et al.**

---

all elections to opt out received by the Settlement Administrator by the Opt-Out/Objection Deadline.

14. Any Class Member that does not file a timely and complete Request for Exclusion from the Settlement by the Opt-Out/Objection Deadline will be bound by the Stipulation.

15. Any Class Member that files a timely and complete Request for Exclusion from this Settlement by the Opt-Out/Objection Deadline may proceed with his/her own action.

**Final Approval Hearing; Right to Appear and Object**

16. A Final Approval Hearing shall take place before the undersigned, United States District Judge Michael W. Fitzgerald, in Courtroom 5A of the United States District Court for the Central District of California, First Street Courthouse, 350 West First Street, Los Angeles, California 90012, on \_\_\_\_\_, 201\_\_, at \_\_\_\_:\_\_.m., [approximately 105 days after preliminary approval] to determine:

- a. Whether the Settlement, on the terms and conditions provided for in the Stipulation, should be finally approved by the Court as fair, reasonable, and adequate;
- b. Whether the proposed Plan of Allocation is fair, just, reasonable, and adequate;
- c. Whether the Court should permanently enjoin the assertion of any claims that arise from or relate to the subject matter of the Action;

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

**Case No. CV 16-1947-MWF (JEMx)**

**Date: January 9, 2019**

**Title: Sunil Sudunagunta v. Nantkwest, Inc., et al.**

---

d. Whether the Action should be dismissed on the merits and with prejudice against the Defendants as set forth in the Stipulation;

e. Whether the Fee and Expense Application to be submitted by Class Counsel should be approved;

f. Whether the application for a reimbursement award to be submitted by Class Plaintiffs should be approved; and

g. Such other matters as the Court may deem necessary or appropriate.

17. The Court may finally approve the Stipulation at or after the Final Approval Hearing with any modifications agreed to by the Parties and without further notice to the Class Members. The Court may approve the Settlement and enter the Judgment regardless of whether it has approved the Fee and Expense Application, any request for a reimbursement award, and/or the Plan of Allocation.

18. The Court reserves the right to adjourn the Final Approval Hearing, including the consideration of all matters referenced in paragraph 16 above, without further notice to Class Members except public notice via the court docket on Public Access to Court Electronic Records (PACER).

19. Class Counsel shall file opening papers in support of final approval of the Stipulation and Settlement, and any motion for an award of attorneys' fees and reimbursement of expenses, or a reimbursement award to Class Plaintiffs, no later than twenty-one (21) days prior to the Final Approval Hearing.

20. Any Class Member and any other interested person may appear at the Final Approval Hearing in person or by counsel and be heard, to the extent allowed by the

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

**Case No. CV 16-1947-MWF (JEMx)**

**Date: January 9, 2019**

**Title: Sunil Sudunagunta v. Nantkwest, Inc., et al.**

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Court, either in support of or in opposition to the matters to be considered at the hearing, provided, however, that no person shall be heard, and no papers, briefs, or other submissions shall be considered by the Court in connection with its consideration of those matters, unless on or before the Opt-Out/Objection Deadline, such person:

- a. Files with the Court a notice of such person's intention to appear, together with a statement setting forth such person's objections, if any, to the matter to be considered and the grounds therefor, together with any documentation that such person intends to rely upon at the Final Approval Hearing, a list of all transaction(s) involving NantKwest common stock between July 28, 2015 and the present, including the number of shares, principal amount and trade date of each purchase and sale, and brokerage statements and/or confirmation slips sufficient to establish that such person is a member of the Class; and
- b. Serves copies of all such materials either by hand delivery or by first-class mail, postage prepaid, upon the following counsel:

Joshua B. Silverman  
POMERANTZ LLP  
Ten South La Salle St., Ste. 3505  
Chicago, IL 60603

Boris Feldman  
WILSON SONSINI GOODRICH &  
ROSATI P.C.  
650 Page Mill Road  
Palo Alto, CA 94304

David J. Stone  
BRAGAR EAGEL & SQUIRE P.C.  
885 Third Avenue, Suite 3040  
New York, NY 10022

James C. Rutten  
MUNGER TOLLES & OLSON LLP  
350 South Grand Avenue, 50th Floor  
Los Angeles, CA 90071-3426

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

**Case No. CV 16-1947-MWF (JEMx)**

**Date: January 9, 2019**

**Title: Sunil Sudunagunta v. Nantkwest, Inc., et al.**

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21. Class Counsel shall file any reply papers in further support of the Stipulation and Settlement, or any motion for an award of attorneys' fees and reimbursement of expenses no later than seven (7) days prior to the Final Approval Hearing.

**Other Provisions**

22. All funds held by the Escrow Agent shall be deemed and considered to be *in custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to the Stipulation and/or further order(s) of the Court.

23. Neither the Stipulation nor any provision therein, nor any negotiations, statements, or proceedings in connection therewith shall be construed as, or be deemed to be evidence of, an admission or concession on the part of any of the Plaintiffs, Class Counsel, Defendants, the Released Parties (as defined in the Stipulation), or any other person, of liability or wrongdoing by them, or that the claims and defenses that have been, or could have been, asserted in the Action are or are not meritorious, and neither the Stipulation nor any such communications shall be offered or received in evidence in any action or proceeding, or be used in any way as an admission or concession or evidence of any liability or wrongdoing of any nature or that any Plaintiffs or any person has or has not suffered any damage.

24. In the event that the Settlement is terminated or is not consummated for any reason, the Stipulation and all proceedings had in connection therewith shall be null and

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

**Case No. CV 16-1947-MWF (JEMx)**

**Date: January 9, 2019**

**Title: Sunil Sudunagunta v. Nantkwest, Inc., et al.**

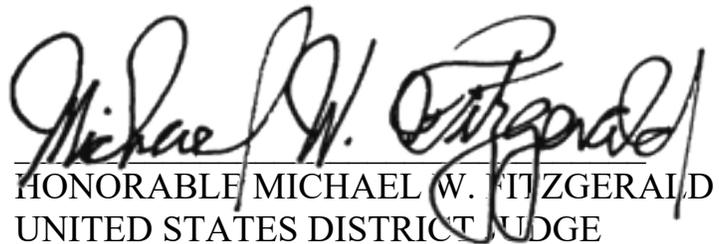
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void, and without prejudice to the rights of the parties to the Stipulation before it was executed.

25. The Court retains exclusive jurisdiction over this Action to consider all further matters arising out of or connected with the Settlement. The Court may approve the Settlement, with such modifications as may be agreed by the Settling Parties, if appropriate, without further notice to the Class.

IT IS SO ORDERED.

Dated: January 9, 2019

  
HONORABLE MICHAEL W. FITZGERALD  
UNITED STATES DISTRICT JUDGE