

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

VANCOUVER ALUMNI ASSET
HOLDINGS INC., Individually and on
Behalf of All Others Similarly Situated,

Plaintiffs,

v.

DAIMLER AG, DIETER ZETSCHE,
BODO UEBBER, and THOMAS
WEBER,

Defendants.

Master File No. 16-cv-02942-DSF-KS

MARIA MUNRO, Individually and on
Behalf of All Others Similarly Situated,

Plaintiffs,

v.

DAIMLER AG, DIETER ZETSCHE,
BODO UEBBER, and THOMAS
WEBER,

Defendants.

Case No. 16-cv-03412-DSF-KS

**ORDER AWARDING ATTORNEYS'
FEES AND PAYMENT OF
EXPENSES**

1 On December 14, 2020, this Court held a hearing to determine, among other
2 things, whether and in what amount to award Lead Counsel in the above-captioned
3 consolidated securities class action (the “Action”) fees and litigation expenses
4 directly relating to the representation of the Settlement Class. The Court having
5 considered all matters submitted to it at the hearing and otherwise; and it
6 appearing that a notice of the hearing substantially in the form approved by the
7 Court (the “Notice”) was mailed to all reasonably identified Settlement Class
8 Members; and that a summary notice of the hearing (the “Summary Notice”),
9 substantially in the form approved by the Court, was published in *The Wall Street*
10 *Journal* and transmitted over *PR Newswire*; and the Court having considered and
11 determined the fairness and reasonableness of the award of attorneys’ fees and
12 expenses requested;

13 NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED
14 that:

15 1. The Court has jurisdiction over the subject matter of this Action and
16 over all Parties to the Action, including all Settlement Class Members who have
17 not timely and validly requested exclusion, Plaintiffs’ Counsel, and the Claims
18 Administrator.

19 2. All capitalized terms used in this Order have the meanings set forth
20 and defined in the Stipulation and Agreement of Settlement, dated April 20, 2020
21 (the “Stipulation”), as amended by the Parties’ Agreement Regarding
22 Amendments to the Stipulation and Agreement of Settlement, dated September 14,
23 2020.

24 3. Notice of Lead Counsel’s application for attorneys’ fees and payment
25 of expenses was given to all Settlement Class Members who could be identified
26 with reasonable effort. The form and method of notifying the Settlement Class of
27 the application for attorneys’ fees and expenses met the requirements of Rules 23
28 and 54 of the Federal Rules of Civil Procedure, Section 21D(a)(7) of the Securities

1 Exchange Act of 1934, 15 U.S.C. § 78u-4(a)(7), as amended by the Private
2 Securities Litigation Reform Act of 1995 (“PSLRA”), and due process, and
3 constituted the best notice practicable under the circumstances, and due and
4 sufficient notice to all persons and entities entitled to notice.

5 4. Lead Counsel is awarded, on behalf of all Plaintiffs’ Counsel,
6 attorneys’ fees in the amount of \$4,712,328.41¹, plus accrued interest, and
7 payment of litigation expenses in the amount of \$150,686.35, plus accrued
8 interest, which sums the Court finds to be fair and reasonable.

9 5. The award of attorneys’ fees and litigation expenses may be paid to
10 Lead Counsel from the Settlement Fund immediately on entry of this Order,
11 subject to the terms, conditions, and obligations of the Stipulation, which terms,
12 conditions, and obligations are incorporated herein.

13 6. In making this award of attorneys’ fees and payment of expenses to
14 be paid from the Settlement Fund, the Court has analyzed the factors considered
15 within the Ninth Circuit and found that:

16 (a) The Settlement has created a common fund of \$19 million in
17 cash and that numerous Settlement Class Members who submit acceptable Claim
18 Forms will benefit from the Settlement created by the efforts of counsel;

19 (b) The requested attorneys’ fees and payment of expenses have
20 been reviewed and approved as fair and reasonable by Lead Plaintiff, a
21 sophisticated institutional investor that was directly involved in the prosecution
22 and resolution of the Action and which has a substantial interest in ensuring that
23 any fees paid to counsel are duly earned and not excessive;

24 (c) Plaintiffs’ Counsel undertook the Action on a contingent
25 basis, and have received no compensation during the Action, and any fee and
26 expense award has been contingent on the result achieved;

27 _____
28 ¹ This amount is 25% of the Settlement Fund after deduction of the litigation
expenses

1 (d) The Action involves complex factual and legal issues and, in
2 the absence of settlement, would involve lengthy proceedings whose resolution
3 would be uncertain;

4 (e) Plaintiffs' Counsel conducted the Action and achieved the
5 Settlement with skillful and diligent advocacy;

6 (f) Plaintiffs' Counsel have established that a lodestar cross-
7 check supports the requested fee award, which includes a reasonable multiplier,
8 especially considering that further services must be provided to effectuate the
9 Settlement;

10 (g) The amount of attorneys' fees awarded is fair and reasonable
11 and consistent with the 25% benchmark established by the Ninth Circuit Court of
12 Appeals and fee awards approved by courts within the Ninth Circuit with similar
13 recoveries;

14 (h) Notice was disseminated to putative Settlement Class
15 Members stating that Lead Counsel would be submitting an application for
16 attorneys' fees in an amount not to exceed 30% of the Settlement Fund, which
17 includes accrued interest, and payment of litigation expenses incurred in
18 connection with the prosecution of this Action not to exceed \$300,000, plus
19 accrued interest; and

20 (i) There were no objections to the application for attorneys' fees
21 or expenses.

22 7. Lead Plaintiff's request for reimbursement in the amount of \$4,000 as
23 "lost wages" for the time its Executive Director Christine Gierer spent on
24 "litigation related activities" is denied. The Court finds that the time and effort of
25 a salaried employee of an institutional plaintiff do not qualify as "reasonable costs
26
27
28

1 and expenses (including lost wages)”² within the meaning of 15 U.S.C.A. § 78u-
2 4(a)(4).

3 (a) Neither Lead Plaintiff nor Gierer herself identifies any “lost
4 sales commissions, lost earning opportunities, out-of-pocket expenses, . . .
5 employer-granted vacation time,” or any other lost “work or other earning
6 opportunity” that it or she sustained in order to participate in this litigation. See
7 In re Yahoo! Inc. Sec. Litig., No. 17-CV-00373-LHK, 2018 WL 4283377, at *2
8 (N.D. Cal. Sept. 7, 2018). Even if “costs and expenses (including lost wages)”
9 did cover Gierer’s time and effort, the reimbursement would not go to Gierer,
10 who spent time on the case, because she is not the Lead Plaintiff. See
11 Schueneman v. Arena Pharm., Inc., No. 310CV01959CABB LM, 2019 WL
12 6700880, at *1 (S.D. Cal. Dec. 9, 2019) (“Schwartz’s generalized statement that
13 he would have spent the time he spent on this case “on other work” fails to
14 provide any basis for determining whether *Schwartz*, as opposed to his company,
15 lost any wages or income as a result of the time spent on this case.”).

16 (b) Cases involving individual lead plaintiffs are inapplicable
17 here. In addition, as the Court stated at the hearing, orders in cases awarding a
18 dollar amount for costs and expenses without identifying the basis for those costs
19 and expenses are not helpful in the absence of the underlying requests. Lead
20 Plaintiff did not supply the underlying documentation for the requests in those
21 other cases.

22 (c) Lead Plaintiff fails to submit any time records or proof of
23 expenses. And Gierer’s request, based on a “conservative estimate” of hours
24 spent on the case and an effective rate based on her salary, is not tied to any
25 specific “regular business” Gierer would have attended to or to any specific
26 monetary loss to the Lead Plaintiff as an institution.

27
28 ² Lead Plaintiff submitted no other request for expenses

8. Any appeal or challenge affecting this Court's approval of any attorneys' fee or expense application shall in no way disturb or affect the finality of the Judgment entered with respect to the Settlement.

IT IS SO ORDERED.


Honorable Dale S. Fischer
UNITED STATES DISTRICT JUDGE