

San Antonio Fire and Police Pension Fund v. Dole Food Company, Inc.

COURT: United States District Court for the District of Delaware
CASE NUMBER: 1:15-cv-1140-SLR
CASE LEADERS: Gerald H. Silk, Katherine M. Sinderson

This is a securities class action brought on behalf of a class of persons and entities who sold the common stock of Dole Food Company, Inc. ("Dole") (i) during the period from January 2, 2013 through October 31, 2013 or (ii) on November 1, 2013 where those shares were sold on the open market and were not held as of the closing of the Take-Private Transaction on that date.

Lead Plaintiffs Reach a Settlement for \$74 Million

Lead Plaintiffs, Proxima Capital Master Fund Ltd. ("Proxima"), San Antonio Fire and Police Pension Fund ("San Antonio F&P"), Fire and Police Health Care Fund, San Antonio ("San Antonio Health") and The Arbitrage Fund (collectively, "Lead Plaintiffs"), on behalf of themselves and the Settlement Class, have reached a settlement of the Action for \$74,000,000 in cash that resolves all claims in the Action (the "Settlement"). The Court held a hearing to consider approval of the Settlement and related matters on July 18, 2017. Following the hearing, on July 18, 2017, the Court approved the Settlement as fair, reasonable and adequate, approved the Plan of Allocation for the proceeds of the Settlement, and approved Lead Counsel's motion for attorneys' fees and reimbursement of expenses.

The Settlement Class consists of:

all persons and entities who sold Dole common stock (i) during the period from January 2, 2013 through October 31, 2013, inclusive, or (ii) on November 1, 2013 where those shares were sold on the open market and were not held as of the closing of the Take-Private Transaction on that date, and who were damaged thereby, except for certain persons and entities who are excluded from the Settlement Class by definition (see paragraph 26 of the **Notice**) or who requested exclusion pursuant to the instructions set forth in the **Notice**.

Please read the **Notice** to fully understand your rights and options.

Background

In this securities class action, Lead Plaintiffs alleged that that Defendant Dole and Defendants David H. Murdock and C. Michael Carter (the "Individual Defendants" and, together with Dole, the "Defendants") made false and misleading statements during the Class Period about Dole's operations and financial condition, which had the effect of deflating the price of Dole common stock, in order to permit Defendant Murdock to acquire the outstanding publicly traded shares of Dole for a reduced price, harming Settlement Class Members who sold shares of Dole common stock during the Class Period

On June 10, 2013, Defendant Murdock, who served as Chairman and Chief Executive Officer of Dole and owned approximately 39.5% of Dole's common stock, announced an offer to acquire the remaining shares of Dole common stock, which were then publicly traded on the New York Stock Exchange, for \$12.00 per share. On August 12, 2013, Dole's board of directors announced that Dole and Murdock had entered into a definitive agreement pursuant to

which Murdock would acquire all of the outstanding shares of Dole common stock not then beneficially held by Murdock for \$13.50 in cash per share (the “Take-Private Transaction”). On October 31, 2013, Dole held a special meeting of stockholders at which shareholders approved the Take-Private Transaction, with a majority of unaffiliated shares voting in favor of the transaction. The Take-Private Transaction closed on November 1, 2013, and at that time, Dole’s shares of common stock ceased to be publicly traded.

Certain holders of Dole common stock filed a class action in Delaware Chancery Court, Civil Action No. 8703-VCL (Del. Ch.), alleging that Murdock, Carter and other defendants had violated their fiduciary duties to Dole shareholders in connection with the Take-Private Transaction, as well as an appraisal action arising from the same transaction, Civil Action No. 9079-VL (Del. Ch.) (collectively, the “Chancery Court Action”). Following a trial, the Chancery Court opined that Murdock and Carter were liable for breaches of fiduciary duty. Thereafter, the parties to the Chancery Court Action announced a settlement of that action to compensate investors who held Dole common stock as of the close of the Take-Private Transaction on November 1, 2013.

On December 9, 2015, San Antonio F&P and San Antonio Health filed a class action complaint in the United States District Court for the District of Delaware (the “Court”), styled *San Antonio Fire and Police Pension Fund v. Dole Food Company, Inc.*, Civil Action No. 15-cv-1140-SLR (the “Action”), alleging federal securities fraud claims against Defendants on behalf of investors that sold Dole common stock between January 2, 2013 and October 31, 2013.

On January 27, 2016, San Antonio F&P, San Antonio Health and Proxima, in coordination with The Arbitrage Fund, objected to the scope of the proposed release of the settlement of the Chancery Court Action as overbroad to the extent that it purported to extinguish securities fraud claims belonging to sellers of Dole common stock prior to consummation of the Take-Private Transaction. On February 5, 2016, the parties to the settlement of the Chancery Court Action filed an amended order revising the terms of the release of claims in that settlement to state that the release did not apply to federal securities claims.

On February 8, 2016, San Antonio F&P, San Antonio Health, Proxima and The Arbitrage Fund moved to be appointed as lead plaintiffs in this Action. By Memorandum and Order dated April 14, 2016, the Court appointed Proxima, San Antonio F&P, San Antonio Health and The Arbitrage Fund as lead plaintiffs for the Action pursuant to the Private Securities Litigation Reform Act of 1995 (“PSLRA”); and approved their selection of Bernstein Litowitz Berger & Grossmann LLP and Entwistle & Cappucci LLP as Lead Counsel.

On June 23, 2016, Lead Plaintiffs filed and served the Amended Consolidated Class Action Complaint (the “Complaint”). The Complaint asserts claims against Dole and the Individual Defendants under Section 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 10b-5 promulgated thereunder, and against the Individual Defendants under Section 20(a) of the Exchange Act. Among other things, the Complaint alleges that Defendants engaged in a fraudulent scheme to artificially depress the price of Dole’s common stock during the Class Period so that Defendant Murdock could acquire the outstanding publicly held shares of Dole’s common stock at a price significantly below its fair value. The Complaint alleges that, to implement this scheme, Defendants made a series of materially false and misleading statements and omissions of material facts about Dole’s operations and financial condition during the Class Period. The Complaint further alleges that Settlement Class Members were damaged because they were induced to sell shares of Dole common stock during the Class Period at artificially depressed prices.

On August 22, 2016, Defendants filed and served their Answer to the Complaint. Among other things, the Answer denied that any of the statements or omissions at issue were materially false or misleading, or made with scienter, or that they caused any losses Lead Plaintiffs allegedly suffered (including because Dole's stock price rose following the announcement of Mr. Murdock's offer to acquire the outstanding publicly held shares of Dole's common stock). The Answer further denied that the issues in the Chancery Court Action were the same as the ones under the federal securities laws. The Answer also asserted a statute of limitations defense, i.e., that Lead Plaintiffs should reasonably have discovered their allegations more than two years before they filed their initial complaint, including because the claims were substantially similar to prior allegations in the Chancery Court Action and related cases.

Discovery in the Action commenced in October 2016. Defendants and third parties produced more than 770,000 pages of documents to Lead Plaintiffs, including all documents produced in the Chancery Court Action and the full trial record and all trial evidence in that action, and Lead Plaintiffs produced more than 25,000 pages of documents to Defendants. Defendants' Counsel and Lead Counsel exchanged initial disclosures under the Federal Rules as well as a separate set of initial disclosures under the Court's Local Rules. Defendants' Counsel and Lead Counsel also exchanged requests for production of documents and participated in numerous meet and confer sessions regarding discovery and document production.

Lead Counsel also consulted extensively with experts and performed extensive work with respect to fact and expert discovery, including with respect to alleged damages suffered by plaintiffs. Lead Counsel also fully prepared for Lead Plaintiffs' class certification motion, including by working with their expert on a report regarding the efficiency of the market for Dole common stock.

In early November 2016, the Parties discussed conducting a mediation to see if they could achieve a settlement of the Action. The Parties selected the Honorable Layn R. Phillips, a former federal district court judge in the United States District Court for the Western District of Oklahoma, as a mediator and scheduled a mediation session for early January 2017. In advance of that session, Lead Plaintiffs and Defendants exchanged opening mediation statements on December 16, 2016 and reply mediation statements on December 30, 2016. The detailed mediation statements, which discussed liability, class certification issues and damages, were also submitted to Judge Phillips.

On January 9, 2017, Lead Counsel and Defendants' Counsel participated in a full-day mediation session before Judge Phillips at which the Parties discussed the strengths and weaknesses of the case. At the conclusion of the mediation session, the Parties reached an agreement in principle to settle the Action for \$74,000,000 in cash to be paid by or on behalf of Defendants.

On July 18, 2017, the Court approved the Settlement. The claims administration process has concluded and the net settlement fund has been fully disbursed. This matter is considered closed.

Case Documents

- Notice of (I) Pendency of Class Action and Proposed Settlement; (II) Settlement Fairness Hearing; and (III) Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses
- November 15, 2021 - Order Granting Lead Plaintiffs' Motion to Complete Administration of the Net Settlement Fund
- August 24, 2018 - Order Approving Distribution Plan

- July 18, 2017 – Judgment Approving Class Action Settlement
- July 18, 2017 – Order Approving Plan of Allocation of Net Settlement Fund
- July 18, 2017 – Order Awarding Attorneys’ Fees and Reimbursement of Litigation Expenses
- June 13, 2017 – Lead Plaintiffs’ Motion for Final Approval of Class Action Settlement and Plan of Allocation
- June 13, 2017 – Memorandum of Law in Support of Lead Plaintiffs’ Motion for Final Approval of Class Action Settlement and Plan of Allocation
- June 13, 2017 – Lead Counsel’s Motion for an Award of Attorneys’ Fees and Reimbursement of Litigation Expenses
- June 13, 2017 – Memorandum of Law in Support of Lead Counsel’s Motion for an Award of Attorneys’ Fees and Reimbursement of Litigation
- June 13, 2017 – Joint Declaration of Katherine M. Sinderson and Vincent R. Cappucci in Support of: (I) Lead Plaintiffs’ Motion for Final Approval of Class Action Settlement and Plan of Allocation, and (II) Lead Counsel’s Motion for an Award of Attorneys’ Fees and Reimbursement of Litigation Expenses
- March 30, 2017 – Amended Order Preliminarily Approving Settlement and Providing for Notice
- March 29, 2017 – Amended Stipulation and Agreement of Settlement
- June 23, 2016 – Amended Consolidated Class Action Complaint