

**TENTATIVE ORDER GRANTING MOTION FOR PRELIMINARY
APPROVAL OF CLASS SETTLEMENT**

Lead Plaintiffs Iron Workers Mid-America Pension Plan and Oklahoma Firefighters Pension and Retirement System on behalf of themselves and other similarly situated (collectively “Plaintiffs”) moved for preliminary approval of a proposed class action settlement with Defendants Avago Technologies Ltd. (“Avago”), Pavonia Ltd., Safari Cayman L.P., Avago Technologies Cayman Holdings Ltd., Avago Technologies Cayman Finance Ltd., Buffalo CS Merger Sub, Inc., Buffalo UT Merger Sub, Inc, Henry Nicholas, Scott McGregor, Henry Samueli, Robert Switz, John Major, Eddy Hartenstein, Maria Klawe, Nancy Handel, William Morrow, Robert Finocchio, and Eric Brandt (collectively “Defendants”). Docket No. 96. Defendants filed a notice of non-opposition. Docket No. 98.

For the following reasons, the Court **grants** the motion.

BACKGROUND

I. Procedural History.

On May 28, 2015, Broadcom Corporation (“Broadcom”) announced a proposed merger with Avago Technologies Limited (“Avago”). See Yassian v. McGregor, No. 15-1303, Yassian Compl. ¶ 3, Docket No. 1. Under the merger agreement, Broadcom shareholders could receive (subject to proration): (1) \$54.50 in cash; (2) 0.4378 ordinary shares in the newly-formed holding company, Holdco; (3) a restricted equity security that is the economic equivalent of 0.4378 ordinary shares of Holdco that will not be non-transferable or saleable for one to two years after closing; or (4) some combination thereof. Id.

On June 18, 2015, Robert Wytas and Dean Crombie filed a complaint in this Court on behalf of all Broadcom public stockholders against certain current and former officers and directors of Broadcom for breach of fiduciary duties related to the proposed merger. See Compl. ¶ 3, Docket No. 1. Several plaintiffs also filed similar lawsuits in state court. Ex. A, Docket No. 35. On September 25, 2015, the

Orange County Superior Court stayed the state actions while the federal actions were pending. Id.

On August 14, 2015, Farshid Yassian, as custodian for his sons Remy Yassian and Ryan Yassian, filed a separate complaint on behalf of all Broadcom public stockholders against Broadcom for disseminating false and misleading registration statements in violation of the Securities Exchange Act, 15 U.S.C. § 78a et seq. See Stip. to Consolidate Actions at 3, Docket No. 27.

On September 18, 2015, this Court consolidated both actions and appointed Yassian as Interim Lead Plaintiff and Weisslaw LLP, Yassian's counsel, as Interim Lead Counsel. See Order Granting Stip. to Consolidate Cases at 4-5, Docket No. 31. On November 16, 2015, the Court appointed Iron Workers' and Oklahoma Firefighters' as Lead Plaintiffs. Docket No. 69. It also appointed Cohen Milstein Sellers & Toll PLLC and Westerman Law Corp. as Lead and Liason counsel, respectively. Id.

On September 28, 2015, Broadcom filed a Definitive Proxy Statement/Prospectus on Schedule 14A. Prospectus, Docket No. 76-3. It provided disclosures and sought shareholder approval for the merger. Id. On October 27, 2015, the parties agreed that certain supplemental disclosures would cure any alleged disclosure defects. Id. Hence, on October 28, 2015, Broadcom filed supplemental disclosures with the SEC. Supplemental Disclosures, Ex. C, Docket No. 95-7. These disclosures provided additional background on the merger, a summary of the financial analysis and opinion of Broadcom's financial advisor, a summary of the financial analysis and opinion of Broadcom's Special Committee's financial advisor, certain financial forecasts used by Broadcom in connection with the merger, and questions and answers about the transaction. Id. On November 10, 2015, Broadcom and Avago shareholders overwhelmingly approved the proposed transaction. Shareholders of Avago Technologies Overwhelmingly Approve Merger with Broadcom, Broadcom Investor Center (November 17, 2015 5:02 PM), <http://investors.broadcom.com/phoenix.zhtml?c=203541&p=irol-newsArticle&ID=2111278>.

On January 15, 2016, Plaintiffs filed a second amended complaint ("SAC"). Docket No. 74. On February 16, 2016, Defendants moved to dismiss. Docket No. 76. While the motion was pending, the parties negotiated. On June 23, 2016, the

parties submitted a joint stipulation that informed the Court that they had reached a provisional settlement; they requested that the Court adjourn the motion to dismiss briefing, subject to the submission of formal settlement documents. Docket No. 93. On September 23, 2016, they filed a Stipulation and Agreement of Compromise and Settlement (“Settlement”). Docket No. 95.

This motion for preliminary settlement approval followed.

II. Settlement Agreement

A. Plaintiff’s Proposed Class

Plaintiffs have requested that the Court certify the following class:

All record and beneficial owners of Broadcom Corporation Class A common stock who owned or held Broadcom Class A common stock from May 27, 2015 through and including February 1, 2016 (the ‘Class Period’), including any and all of their respective successors in interest, predecessors, representatives, trustees, executors, administrators, heirs, assigns, or transferees, immediate and remote, and any person or entity acting for or on behalf of, or claiming under, any of them, and each of them (the ‘Settlement Class,’ to be composed of ‘Class Members’). Excluded from the Settlement Class are Defendants, members of the immediate family of any Defendant, any entity in which a Defendant has or had a controlling interest, and the legal representatives, heirs, successors, or assigns of any such excluded person.

Mot. at 14, Docket No. 96.

B. Settlement Terms

The proposed Settlement consists of Broadcom’s supplemental disclosures and also its representations in the Settlement Agreement. Broadcom made the

following representations, which it will file with the SEC:

(a) There currently is no agreement in place binding Broadcom Limited or any subsidiary of Broadcom Limited to pay any fees, expenses or other consideration to the holders of limited partnership units (“LP Units”) of Broadcom Cayman L.P. in connection with any Holdings Offer (as defined in the Amended and Restated Exempted Limited Partnership Agreement of Broadcom Cayman L.P., dated as of February 1, 2016 (the “LPA”)) beyond the consideration offered to the holders of ordinary shares of Broadcom Limited in connection with any such transaction, except to the extent, if any, set forth in the LPA. Broadcom Limited, Henry Nicholas and Henry Samueli each agree that in connection with any Holdings Offer, they will not enter into any agreement for the payment by Broadcom or any of its subsidiaries, of any of Dr. Nicholas’s or Dr. Samueli’s fees or expenses incurred by either of them in their capacity as holders of LP Units (it being understood that, for the avoidance of doubt, the foregoing restriction shall not apply to any obligations in the Support Agreements, dated May 28, 2015, indemnification and advancement of expense obligations due to directors or officers generally, or otherwise in their capacity as a director or officer of Broadcom Limited or any of its subsidiaries).

(b) The holders of LP Units do not have any separate voting or veto rights in connection with any Holdings Offer, except to the extent, if any, set forth in the LPA and the Voting Trust Agreement, dated as of February 1, 2016, among Broadcom Limited, Broadcom Cayman L.P. and the Computershare Trust Company, N.A. (as trustee thereunder), nor is any change to such provisions of the LPA and the Voting Trust Agreement relating to separate voting or veto rights being discussed between Broadcom Cayman L.P. and Broadcom Limited on one

hand, and anyone else on the other hand, as of the date of this Stipulation.

Settlement Agreement at 17-18, Docket No. 95. These disclosures and representations are the full and final consideration for the settlement. Broadcom is responsible for reasonable attorneys' fees and expenses awarded by the Court. Id. at 21. Defendants reserve the right to oppose Plaintiffs' fee applications. Id. Finally, Broadcom is responsible for providing reasonable notice of the Settlement and paying any associated costs.

C. Proposed Notice

Kurtzman Carson Consultants, LLC ("Kurtzman") will serve as the Settlement Administrator. Kurtzman will provide notice through a First-Class mailing to all class members. The mailing will direct class members to a website on the proposed Settlement. Id. Furthermore, Kurtzman will publish a notice in Investor Business Daily and issue a press release. Id. Finally, information will also be available via a toll-free telephone number and through Lead Counsel's website.

LEGAL STANDARD

Rule 23(e) requires court approval for class-action settlements. Fed. R. Civ. P. 23(e). When a class action reaches a settlement agreement before class certification, a court uses a two-step process to approve a class-action settlement. *Staton v. Boeing Co.*, 327 F.3d 938, 952 (9th Cir. 2003). First, the court must certify the proposed settlement class. Id. Second, the court must determine whether the proposed settlement is fundamentally fair, adequate, and reasonable. Id.

ANALYSIS

I. The Court preliminarily certifies the proposed class.

For the reasons discussed below, the Court certifies the proposed settlement class.

A court needs to conduct a two-step process to certify a proposed settlement class. First, a court determines whether a class satisfies the four prerequisites under Federal Rule of Civil Procedure 23(a). Second, a court examines whether a proposed class meets at least one of the requirements under Federal Rule of Civil Procedure 23(b). Here, the Court finds that the class at issue (1) satisfies the four prerequisites under Rule 23(a) and (2) meets at least one of the requirements under Rule 23(b).

A. Rule 23(a)(1) Prerequisites.

The Court finds that the proposed settlement class meets the prerequisites of Rule 23(a).

Rule 23(a) imposes four prerequisites for a class action: (1) the class is so numerous that a joinder of all members is impracticable (numerosity); (2) there are questions of law or fact common to the class (commonality); (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class (typicality); and (4) the representative parties will fairly and adequately protect the interests of the class (adequacy). Fed. R. Civ. P. 23(a); *United Steel, Paper & Forestry, Rubber, Mfg. Energy, Allied Indus. & Serv. Workers Int'l Union, AFL-CIO v. ConocoPhillips Co.*, 593 F.3d 802, 806 (9th Cir. 2010).

Here, the Court finds that all four requirements are met.

1) Numerosity

Under Rule 23(a)(1), a class must be so numerous that joinder of all members is impracticable. Fed. R. Civ. P. 23(a)(1). Because this requirement is not tied to a fixed numerical threshold, a court needs to examine the specific facts of each case. *Rannis v. Recchia*, 380 Fed. App'x 646, 651 (9th Cir. 2010). Typically, courts have found that the numerosity requirement is satisfied when the proposed class includes at least forty members. *Id.*

Here, the proposed class is sufficiently numerous. Plaintiffs argue that the class likely numbers in the thousands because there were more than 500 million outstanding Broadcom shares when the company announced the merger. Prospectus at 13, Docket No. 76-3. This large number of outstanding shares shows

that the class is sufficiently numerous.

2) *Commonality*

Rule 23(a)(2) requires that there are questions of law or fact common to the class. Fed. R. Civ. P. 23(a)(2). However, to satisfy this rule, all questions of fact and law do not need to be common. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998). For instance, a class meets the commonality requirement if members share the same legal issues but have different factual foundations. *Id.* In addition, commonality is satisfied if members of the class share a common core of facts but have different legal remedies. *Id.*

Here, the SAC identifies several common issues. First, whether the individual defendants (except Defendant Nicholas) breached their fiduciary duties with respect to the transaction. SAC ¶ 175, Docket No. 74. Second, whether the individual defendants (except Defendant Nicholas) breached their fiduciary duties to obtain the best price reasonably available under the circumstances. *Id.* Third, whether the defendants issued a materially false and misleading proxy statement. *Id.* Fourth, whether the transaction is entirely fair. *Id.* All of these questions require determining common sets of facts and answering legal questions that apply to all or almost all defendants. Therefore, the class meets the commonality requirement.

3) *Typicality*

Rule 23(a)(3) requires that the claims or defenses of the representative parties are typical of the class claims or defenses. Fed. R. Civ. P. 23(a)(3). Rule 23(a)(3) has a permissive standard: the representative claims are typical if they are reasonably comparable to the claims of the absent class members; substantial identicalness between the claims is not required. *Hanlon*, 150 F.3d at 1020. The test for typicality is (1) whether other members have a similar injury, (2) whether the action is based on conduct that is not unique to the named plaintiffs, and (3) whether the same course of conduct has injured other class members. *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992).

Here, the Plaintiffs' claims are typical of the proposed class. Plaintiffs, like

the proposed class, challenge the Avago-Broadcom merger. They have also incurred the same alleged injury. Therefore, the typicality requirement is met.

4) *Adequacy*

Rule 23(a)(4) requires that a representative party fairly and adequately protects the interest of the class. Fed. R. Civ. P. 23(a)(4). Representation is fair and adequate when (1) the representative plaintiffs and counsel have no conflicts of interest with other class members and (2) representative plaintiffs and counsel will prosecute the action vigorously on behalf of the class. Staton, 327 F.3d at 957.

Here, Lead Counsel has experience in other securities class actions, suggesting that it has provided aggressive representation. See Cohen Milstein Firm Resume, Investors Mot. for App't of Lead Pl., Ex. D at 24-27, 40-41, 81-82, 8-86, Docket No. 38-4. Furthermore, as the Court previously found, Plaintiffs' filings also do not suggest any conflict of interest with the proposed class. Order Granting App't of Class Counsel at 7, Docket No. 69. The Court agrees and finds that the adequacy requirement is also met.

B. Rule 23(b)

Because Plaintiffs satisfy the prerequisites under Rule 23(a), the Court must now consider whether the proposed class also satisfies Rule 23(b). Based on the following analysis, the Court finds that it does.

1) *Rule 23(b)(1)*

Under Rule 23(b)(1)(A), a class is proper where separate lawsuits would create a risk of imposing incompatible standards of conduct on the defendant. Under Rule 23(b)(1)(B) certification is proper if individual adjudications “would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests.”¹ “Rule 23(b)(1)(A) considers possible prejudice to a defendant, while 23(b)(1)(B) looks to prejudice to the putative class members.” Barnes v. AT & T

¹ It is common for suits brought under 23(b)(1) to meet both subsections' tests, therefore, the Court addresses both together. 7AA Fed. Prac. & Proc. Civ. § 1772 (3d ed.).

Pension Benefit Plan-Nonbargained Program, 270 F.R.D. 488, 496 (N.D. Cal. 2010), modified sub nom, Barnes v. AT & T Pension Ben. Plan-NonBargained Program, 273 F.R.D. 562 (N.D. Cal. 2011) (internal quotations omitted).

Here, certification is proper under Rule 23(b)(1) because separate adjudications would impact common claims. All claims concern the adequacy of disclosures, Defendants' fiduciary duties, and the merger's fairness. If class members litigated their claims separately, different courts might reach different conclusions on the level of disclosure that class members deserved. See id. Separate adjudications might also reach different conclusions on the transaction's fairness or Defendants' fiduciary duties. Furthermore, Defendant's challenged conduct impacts all Class members equally. Therefore, separate adjudications might create inconsistent rulings that would impede other plaintiffs interests or cause Defendants to suffer inconsistent obligations.

2) *Rule 23(b)(2)*

Under Rule 23(b)(2), a class action is proper where “the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.” To fall within Rule 23(b)(2), the defendant's conduct must be generally applicable to the class, meaning the defendant has adopted a pattern or policy that is likely to be the same as to all class members. Baby Neal v. Casey Co., 43 F.3d 48, 52, 63-64 (3d Cir. 1994). Additionally, class certification under Rule 23(b)(2) is not appropriate where the relief relates “exclusively or predominantly to money damages.” Nelsen v. King Cnty., 895 F.2d 1248, 1255 (9th Cir. 1990).

Here, certification under Rule 23(b)(2) is proper because Defendants' alleged conduct affected the class as a whole: any breach of fiduciary duties or inadequate disclosures harmed all stockholders. Furthermore, Plaintiffs do not exclusively seek money damages. Finally, the relief sought — supplemental disclosures — will apply to the class as a whole.

In sum, the Court finds that preliminary class certification is proper.

II. The Court preliminarily approves the proposed Settlement.

For the reasons discussed below, preliminary approval is appropriate.

After certifying a class, a court must determine whether the proposed settlement is fundamentally fair, adequate, and reasonable. *Staton*, 327 F.3d at 952. For this analysis, a court typically considers the following factors: (1) strength of the plaintiff's case; (2) risk, expense, complexity, and likely duration of further litigation; (3) risk of maintaining class action status throughout the trial; (4) amount offered in settlement; (5) extent of discovery completed and the stage of the proceedings; (6) experience and views of counsel; (7) presence of a governmental participant; and (8) reaction of the class members to the proposed settlement. *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011).

A court cannot fully assess all of these fairness factors until after the final approval hearing, so a full fairness analysis is unnecessary at this stage. *Alberto v. GMRI, Inc.*, 252 F.R.D. 652, 665 (E.D. Cal. 2008). Instead, a court simply needs to ensure that the settlement is potentially fair; a court will make a final determination regarding its adequacy at a hearing on final approval, which occurs after any party has had an opportunity to object. *Acosta v. Trans Union, LLC*, 243 F.R.D. 377, 386 (C.D. Cal. 2007). At this time, preliminary approval of a settlement is appropriate if it (1) appears to be the product of serious, informed, noncollusive negotiations, (2) has no obvious deficiencies, (3) does not improperly grant preferential treatment to class representatives or segments of the class, and (4) falls within the range of possible approval. *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007)).

The Court finds that all four Tableware factors are present here.

First, the Settlement appears to be the product of serious, arms-length negotiations. The parties litigated this case for over a year before reaching a settlement. Compare Docket No.1 with Docket No. 95. This shows that the settlement emerged out of serious, noncollusive negotiations. Tableware, 484 F. Supp. 2d at 1080.

Second, the Settlement does not have any obvious deficiencies. To

determine whether a settlement agreement has obvious deficiencies, courts consider whether (1) class counsel receives a disproportionate distribution of the settlement; (2) the parties negotiate a “clear sailing” arrangement providing for the payment of attorney’s fees separate from class funds without objection by the defendant; and (3) the parties arrange for fees to revert to defendants rather than to the class fund. *Bluetooth*, 654 F.3d at 946.

Here none of these factors are present. The Settlement does not specify applicable attorneys’ fees. And the Defendants’ reserve their right to object to any fee application. Finally, attorneys’ fees remain within the Court’s discretion.

Third, the Settlement does not grant any members preferential treatment. Instead all members of the class benefit equally from the Supplemental Disclosures. Therefore, this supports approval.

Fourth, the Settlement falls within the range of possible approval. To determine whether a settlement falls within the range of possible approval, courts consider (1) substantive fairness and adequacy and (2) plaintiffs’ expected recovery balanced against the value of the settlement offer. *Tableware*, 484 F. Supp. 2d at 1080. Here, the Settlement obtains the relief necessary to cure the alleged disclosure deficiencies. Furthermore, as asserted by Plaintiffs, further litigation would be complex, costly and uncertain. Therefore, this factor also favors approval.

In sum, the Court finds that Plaintiffs have adequately shown that the proposed Settlement is the product of non-collusive negotiations and within the range of possible approval.

III. The Court approves the proposed notice plan.

After the Court preliminarily approves the settlement, “it must direct the preparation of notice of the certification of the settlement class, the proposed settlement and the date of the final fairness hearing.” *In re Initial Pub. Offering Sec. Litig.*, 226 F.R.D. 186, 191 (S.D.N.Y. 2005) (citing *Manual for Complex Litigation* (4th) § 21.632). Although individual notice is not mandatory for class actions brought under Rule 23(b)(1) or 23(b)(2), the Court may direct appropriate notice to class members. Fed. R. Civ. P. 23(c)(2)(A).

Here, the Settlement’s proposed notice plan is adequate. As discussed, the proposed notice include a postcard summary notice. Ex. A-3, Docket No. 95. The proposed mailings and website advise recipients of their rights, including the right to object to the Settlement. Ex. A-1, A-2. A-3, Docket No. 95. And the Settlement administrator will maintain a website and toll-free number for Class members to receive more information on the Settlement.

In sum, the Court finds the proposed notice plan to be reasonable and practicable under the circumstances.

IV. Scheduling

The Court approves the following modified schedule:

Event	Date/Deadline
Publish notice of Settlement and begin mailing postcard notice to class members	21 days after Preliminary Approval Order is entered
Deadline to file Plaintiff’s Motion for Final Approval of Settlement and Lead Counsel’s Request for Fees and Expenses	35 days before Final Approval Hearing
Objection to the Motion for Final Approval of Settlement and Lead Counsel’s Request for Fees and Expense	21 days before Final Approval Hearing
Reply to objections, if any	14 calendar days before Final Approval Hearing

Mot. at 23, Docket No. 96.

CONCLUSION

For the foregoing reasons, the Court **grants** Plaintiffs’ un-opposed motion for preliminary settlement approval. The Court preliminarily certifies the proposed

class and finds the Settlement terms to be reasonable and adequate. It also approves the proposed form and manner of notice. Finally, it approves a modified version of Lead Plaintiff's proposed schedule for Settlement-related events.