UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

Bowers v. Kelly

No. 4:23-cv-05396-KAW (N.D. Cal. Aug. 21, 2025) · No. 4:23-cv-05396-KAW · Decided August 21, 2025

SUMMARY

The United States District Court for the Northern District of California grants preliminary approval of a settlement resolving related shareholder derivative actions concerning Ginkgo Bioworks Holdings, Inc. The settlement provides for a $4.125 million payment to Ginkgo, corporate governance reforms, termination of an operating-company incubation contract, and proposed attorneys' fees and service awards subject to further court review.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Kandis A. Westmore
JURISDICTION	United States District Court for the Northern District of California
DECIDED	August 21, 2025
DOCKET	4:23-cv-05396-KAW
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiffs in two shareholder derivative actions moved for preliminary approval of a proposed settlement. The court evaluated the settlement and notice plan under Federal Rules of Civil Procedure 23 and 23.1.
STANDARD OF REVIEW	Preliminary approval of a derivative settlement is committed to the trial court's sound discretion. At this stage, the court determines whether it will likely be able to approve the settlement under Rule 23(e)(2) and whether the proposal appears fair, reasonable, adequate, free of collusion, and within the range of possible approval.
PRECEDENTIAL VALUE	unknown
PARTIES	Eric Bowers, et al., Weining Hu v. Jason Kelly, et al., Eli Baker, et al.

TOPICS

shareholder derivative suits · corporate governance · corporate law · civil procedure · attorney fees

PRACTICE AREAS

shareholder derivative litigation · corporate governance · settlement approval · securities litigation · civil procedure

QUESTIONS PRESENTED

1. Whether the proposed settlement of the shareholder derivative actions should receive preliminary approval under Federal Rule of Civil Procedure 23.1(c) and the standards incorporated from Rule 23(e).
2. Whether the proposed notice plan adequately informed Ginkgo shareholders of the settlement and their rights to object.
3. Whether the proposed attorneys' fees, costs, and service awards raised concerns requiring denial of preliminary approval.

HOLDINGS

1. Preliminary approval was warranted because the settlement appeared to result from serious, informed, arm's-length, noncollusive negotiations, had no obvious deficiencies, and fell within the range of possible approval.
2. The notice plan was adequate subject to specified amendments, including revised objection instructions, removal of the requirement that objections be separately mailed to counsel, and filing of an SEC Form 8-K within 21 days.
3. The proposed $2.75 million in attorneys' fees and expenses and the proposed $2,000 service awards did not weigh against preliminary approval, although final approval would require additional justification and information.

KEY QUOTATIONS

> *“The proposed settlement need not be ideal, but it must be fair and free of collusion, consistent with counsel's fiduciary obligations to the class.”* (II)

> *“For the reasons set forth above, the Court finds that preliminary approval is warranted, and, therefore, GRANTS preliminary approval of the parties’ proposed Settlement Agreement and Notice Plan.”* (IV)

FACTUAL BACKGROUND

Ginkgo Bioworks Holdings, Inc. was formed when SPAC Soaring Eagle Acquisition Corp. merged with Legacy Ginkgo. Plaintiffs alleged that directors, officers, and controlling shareholders had conflicts arising from founder shares and approved a merger that allegedly relied on materially misleading revenue, valuation, and related-party disclosures. The proposed settlement required defendants to pay $4.125 million to Ginkgo, terminate a contract relating to incubated operating companies, and implement corporate-governance, audit, disclosure, training, and financial-oversight reforms.

PROCEDURAL HISTORY

Weining Hu filed a derivative action on April 28, 2023, and Eric Bowers filed a separate derivative action on October 20, 2023, concerning alleged misconduct surrounding Ginkgo Bioworks Holdings, Inc.'s merger with Legacy Ginkgo. The actions were stayed at various points, and Hu's motion to consolidate them was denied. Defendants moved to dismiss, but the parties suspended litigation deadlines while negotiating a settlement. On May 27, 2025, plaintiffs moved for preliminary approval of a settlement resolving the derivative claims in both actions.

DISPOSITION

other

CASES CITED

- In re Hewlett-Packard Co. S'holder Derivative Litig., No. 12-cv-06003-CRB, 2015 WL 1153864, at *3 (N.D. Cal. Mar. 13, 2015)
- In re Cadence Design Sys., Inc. Sec. Litig., No. 08-cv-4966 SC, 2011 WL 13156644, at *2 (N.D. Cal. Aug. 26, 2011)
- In re Pac. Enters. Sec. Litig., 47 F.3d 373, 377 (9th Cir. 1995)
- Lloyd v. Gupta, No. 15-cv-04183-MEJ, 2016 WL 3951652, at *4 (N.D. Cal. July 22, 2016)
- Class Plaintiffs v. City of Seattle, 955 F.2d 1268, 1276 (9th Cir. 1992)
- In re Tableware Antitrust Litig., 484 F. Supp. 2d 1078, 1079–80 (N.D. Cal. 2007)
- Hanlon v. Chrysler Corp., 150 F.3d 1011, 1026–27 (9th Cir. 1998)
- Cohen v. Beneficial Indus. Loan Corp., 337 U.S. 541, 549 (1949)
- In re Mego Fin. Corp. Sec. Litig., 213 F.3d 454, 459, 462 (9th Cir. 2000)
- Rodriguez v. W. Publ'g Co., 563 F.3d 948, 958–59, 965 (9th Cir. 2009)
- Officers for Just. v. Civ. Serv. Comm'n of City & Cnty. of San Francisco, 688 F.2d 615, 628 (9th Cir. 1982)
- Johnson v. Hui, 752 F. Supp. 909, 913 (N.D. Cal. 1990)
- In re Hewlett-Packard Co. S'holder Derivative Litig., 716 F. App'x 603, 608–09 (9th Cir. 2017)
- Bushansky v. Armacost, No. 12-CV-01597-JST, 2014 WL 2905143, at *6 (N.D. Cal. June 25, 2014)
- Churchill Vill., L.L.C. v. Gen. Elec., 361 F.3d 566, 575 (9th Cir. 2004)