UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

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| In Re: loanDepot, Inc. Stockholder Derivative Litigation | CASE NO. 2:21-cv-08173-JLS-JDE<br><br>**ORDER GRANTING PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF DERIVATIVE SETTLEMENT (Doc. 72)** |

Before the Court is an unopposed Motion for Preliminary Approval of a Derivative Settlement filed by Plaintiffs Aaron Taylor, Tanya Harry, Haydon Modglin, Troy Skinner, and Linda Johnson (collectively "Plaintiffs"). (Mot., Doc. 72.) Plaintiffs ask the Court to (1) preliminarily approve the terms of the derivative settlement; (2) approve the form and content of notice; and (3) set a final settlement hearing. (*Id*. at 18–29.) Having taken this matter under submission, and for the following reasons, the Court GRANTS Plaintiffs' Motion and sets a final settlement hearing date for **September 26, 2025, at 10:30 a.m**.

## I. BACKGROUND

This is a consolidated shareholder derivative action brought against current and former officers and members of the Board of Directors of Defendant loanDepot Inc.[1] loanDepot is a retail mortgage lender incorporated in Delaware and headquartered in California. (Mot. at 11.) After nearly four years of litigation, the Plaintiffs in this California Federal Court action—along with the plaintiffs in two similar derivative actions filed in the District of Delaware and in Delaware Chancery Court[2]—entered into a Stipulation and Agreement to Settle with loanDepot and the individual Defendants. (Stip. at 1.) Plaintiffs now request that this Court preliminarily approve the settlement agreement set forth in the Stipulation. (Mot. at 8.)

The complaints in these three derivative actions were filed beginning in October 2021. (Stip. at 8.) The complaints allege that the individual Defendants breached their fiduciary duties as directors and/or officers by causing loanDepot to issue false and misleading statements to investors and the government. (*Id.*) Plaintiffs allege, for example, that the Registration Statement and Prospectus issued in connection with

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[1] The names of these current and former officers and Board members are Anthony Hsieh, Patrick Flanagan, Nicole Carrillo, Andrew C. Dodson, John C. Dorman, Brian P. Golson, and Dawn Lepore. (Mot. at 9.) The Court refers to them collectively as the "individual Defendants."

[2] Tuyet Vu and Jocelyn Porter are the plaintiffs in the Delaware Federal Court action, *In re loanDepot, Inc. Deriv. Litig.*, Case No. 1:22-cv-00320 (D. Del.); Jonathan Armstrong and Hee Do Park are the plaintiffs in the Delaware Chancery Court action, *In re loanDepot, Inc. Deriv. Litig.*, No. 2023-0613 (Del. Ch.). (Stip. at 1–2, Doc. 72-3.)

loanDepot's initial public offering ("IPO") "failed to disclose that: (1) its refinance originations had already declined substantially at the time of the IPO due to industry over-capacity and increased competition; (2) its gain-on-sale margins had already declined substantially at the time of the IPO; (3) as a result, its revenue and growth would be negatively impacted; and (4) as a result of the foregoing, its positive statements about its business, operations, and prospects were materially misleading and/or lacked a reasonable basis." (Compl. ¶ 5, Doc. 1.) The complaints assert claims, *inter alia*, for breach of fiduciary duty, unjust enrichment, abuse of control, waste of corporate assets, and violations of section 10(b) of the Securities Exchange Act. (*Id.* ¶¶ 77–99; Mot. at 13–16.)

The Parties[3] engaged in extensive settlement negotiations before reaching the proposed settlement agreement. On May 4, 2023, the parties in this action and the Delaware Federal Court action participated in mediation before Jed Melnick of JAMS. (Mot. at 16.) Though no final resolution was reached at that mediation, the Parties continued to engage in settlement negotiations over the course of 2023 and 2024. (*Id.*) On October 7, 2024, the Parties participated in mediation before Robert Mediator of JAMS. (*Id.*) During that mediation, the Parties reached a final settlement agreement. (*Id.*)

The proposed settlement agreement provides that loanDepot's Board will adopt the corporate governance reforms set forth in Exhibit E to the Stipulation no later than 90 days from the effective date of the settlement, and will maintain those reforms for at least four years. (Stip. §§ 1.1, 1.2; Ex. E to Stip ("Reforms").) "loanDepot acknowledges that the filing, pendency, and settlement of the [three derivative actions] was a significant factor in [its] decision to adopt, implement, and maintain the measures" set forth in Exhibit E. (Stip. § 1.3.) The reforms call for various changes, modifications, and improvements to loanDepot's corporate governance and business ethics practices. (Reforms.) The Board

[3] As used throughout this Order, "Parties" refers to all of the parties involved in the three derivative actions subject to the Stipulation. And, as noted at the outset, "Plaintiffs" refers only to Aaron Taylor, Tanya Harry, Haydon Modglin, Troy Skinner, and Linda Johnson—*i.e.*, the plaintiffs in the California Federal Court action filed before this Court.

represents that these reforms "are in the best interest of [loanDepot] and its stockholders." (Stip. § 1.3.)

The settlement agreement provides for a release of all derivative claims against Defendants arising out of or related to any facts that were alleged, or that could have been alleged, by Plaintiffs or any current loanDepot shareholder on loanDepot's behalf in any of the complaints filed in the derivative actions subject to the Stipulation. (*Id.* § 5.1.) Defendants have agreed that "Plaintiffs' Counsel are entitled to awards of reasonable attorneys' fees and expenses for their roles in creating the substantial benefits provided for in the [s]ettlement." (*Id.* § 4.1.) Defendants have also agreed not to oppose an application for a service award of up to $2,500 per plaintiff, to be funded exclusively from the attorneys' fees and expenses amount. (*Id.* § 4.7.) However, the Parties have been unable to agree on an appropriate maximum amount for attorneys' fees and expenses. (*Id.* § 4.2.) Plaintiffs plan to file a motion for attorneys' fees and expenses absent an agreement on an appropriate amount in the future; Defendants reserve their right to oppose such a motion. (*Id.*; Mot. at 17.)

## II. LEGAL STANDARD

Federal Rule of Civil Procedure 23.1 requires court approval of a settlement of a derivative action. Fed. R. Civ. P. 23.1(c). In such cases, "courts in this Circuit have generally used the two-step approval process employed in class actions." *Basaraba v. Greenberg*, 2014 WL 12586738, at *2 (C.D. Cal. Sept. 16, 2014); *In re Cadence Design Sys., Inc. Sec. Litig.*, 2011 WL 13156644, at *2 (N.D. Cal. Aug. 26, 2011) ("Within the Ninth Circuit, Rule 23's requirements for approval of class action settlements apply to proposed settlements of derivative actions.") (citing *In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 377 (9th Cir. 1995)); *In re Hewlett-Packard Co. S'holder Derivative Litig.*, 2015 WL 1153864, at *3 (N.D. Cal. Mar. 13, 2015) ("Federal Rule of Civil Procedure 23 governs a district court's analysis of the fairness of a settlement of a shareholder derivative action."). Thus, the Court begins by determining whether the proposed settlement warrants

preliminary approval. *Moore v. Verb Tech. Co., Inc.*, 2021 WL 11732976, at *3 (C.D. Cal. Mar. 1, 2021). If preliminary approval is granted, then notice is given to shareholders, a final fairness hearing is held, and the Court determines whether final approval is warranted. *Id.*

At the preliminary approval stage, the settlement need only fall "within the range of possible approval." *In re OSI Systems, Inc. Derivative Litig.*, 2017 WL 5634607, at *2 (C.D. Cal. Jan. 24, 2017) (quoting *Spann v. J.C. Penney Corp.*, 314 F.R.D. 312, 319 (C.D. Cal. 2016)). The Court must evaluate whether the proposed settlement is "fundamentally fair, adequate, and reasonable." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) *overruled on other grounds by Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011). A number of factors may inform this inquiry, including:[4]

> (1) the strength of plaintiffs' case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed, and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the Class Members to the proposed settlement.

*Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004); *see also Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982). However, the "principal factor to be considered in determining the fairness of a settlement concluding a shareholders' derivative action is the extent of the benefit to be derived from the proposed settlement by the corporation, the real party in interest." *In re Ceradyne, Inc.*, 2009 WL 10671494, at *2 (C.D. Cal. June 9, 2009) (quoting *Shlensky v. Dorsey,* 574 F.2d 131, 147 (3d Cir. 1978)). In addition, the settlement should be "the product of serious, non-

[4] Certain factors pertaining only to class action settlements are not applicable to derivative action settlements, and thus the Court does not consider them below.

collusive negotiations" and "have no obvious deficiencies." *In re OSI Systems, Inc. Derivative Litig.*, 2017 WL 5634607, at *2.

## III. DISCUSSION

### A. Preliminary Approval

In evaluating all applicable factors below, the Court finds that preliminary approval of the proposed settlement is warranted.

#### 1. Benefits Conferred by Settlement

Plaintiffs argue that the corporate governance reforms set forth in the settlement agreement will provide substantial benefits to loanDepot and its shareholders. (Mot. at 19–21.) Although the settlement does not provide any monetary recovery to loanDepot, this does not preclude approval of the settlement. "Non-pecuniary benefits to the corporation have been deemed adequate consideration for the settlement of derivative suits." *In re Ceradyne, Inc.*, 2009 WL 10671494, at *2; *Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375, 395 (1970) (noting that "[a]n increasing number of lower courts have acknowledged that a corporation may receive a substantial benefit from a derivative suit, justifying an award of counsel fees, regardless of whether the benefit is pecuniary in nature."). Non-pecuniary benefits can be "particularly valuable when the relief is intended to prevent future harm." *In re Ceradyne, Inc.*, 2009 WL 10671494, at *2 (quotation omitted).

Here, the proposed settlement agreement sets forth numerous corporate governance reforms that loanDepot has agreed to implement and maintain for a period of at least four years. (Stip. § 1.2.) These reforms are designed to specifically address the wrongdoing alleged in the complaints. For instance, loanDepot has agreed to (1) improve the Disclosure Committee by adopting a formal Disclosure Committee Charter and implementing compliance procedures to ensure that the company's disclosures are accurate and complete; (2) appoint a Chief Risk Officer; (3) create an Enterprise Risk Management Committee; (4) appoint a Chief Compliance Officer; (5) appoint a Chief Legal Officer; (6)

amend the Compensation Committee Charter to ensure that incentive compensation considers an executive's legal and ethical compliance; (7) post its insider trading policy and corporate governance policies on the company website; and (8) require annual training for Board members on topics relevant to directors of publicly-traded companies such as disclosures to stockholders, fiduciary duties, and compliance with law and regulation. (Reforms.) In addition, loanDepot has agreed not to underwrite its loan products to prospective customers without "first reasonably determining that the prospective customer can repay the loan product." (*Id.*)

These reforms strengthen loanDepot's overall corporate governance and internal controls, thereby reducing the probability of future acts of corporate misconduct. Accordingly, the Court is satisfied that the settlement will provide substantial, long-lasting benefits to loanDepot and its shareholders, and this factor weighs in favor of granting preliminary approval. *See Moore v. Verb. Tech. Co., Inc.*, 2021 11732976, at *5 (C.D. Cal. Mar. 1, 2021) (concluding that derivative settlement requiring corporate governance measures "substantially benefit[ted]" where the reforms provided "rigorous monitoring mechanisms to ensure that the [corporation]'s disclosures about its business, risk factors, and finances are not misleading and adhere to applicable law"); *see also In re OSI Systems, Inc. Derivative Litig.*, 2017 WL 5642304 (C.D. Cal. May 2, 2017) (approving derivative settlement because "[t]he corporate governance measures called for in the settlement" will "confer[] a substantial benefit on the corporation and the shareholders").

**2. Costs and Risks of Further Litigation**

The Court must also "balance the continuing risks of litigation (including the strengths and weaknesses of the Plaintiffs' case) … and the immediacy and certainty of a substantial recovery." *Velazquez v. Int'l Marine & Indus. Applicators, LLC*, 2018 WL 828199, at *4 (S.D. Cal. Feb. 9, 2018). Derivative actions are notoriously complex and difficult to win under any circumstances. *See In re Pacific Enters. Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995) ("[D]erivative lawsuits are rarely successful"); *In re NVIDIA Corp.*

*Derivative Litig.*, 2008 WL 5382544, at *2 (N.D. Cal. Dec. 22, 2008) ("Because shareholder derivative actions are notoriously difficult and unpredictable, settlements are favored.") (cleaned up and citation omitted). Plaintiffs note that they would face several hurdles before ever reaching trial. (Mot. at 23–24.) For instance, Plaintiffs would have to adequately allege demand futility to survive the pleading stage, and at the motion stage, Plaintiffs would have to overcome the substantial protection that Delaware's business judgment rule affords Defendants. *See In re Fab Univ. Corp. Shareholder Derivative Litig.*, 148 F. Supp. 3d 277, 281–82 (S.D. N.Y. 2015) ("The doctrine of demand futility, the business judgment rule, and the generally uncertain prospect of establishing a breach of fiduciary duties combine to make shareholder derivative suits an infamously uphill battle for plaintiffs."). Even if Plaintiffs could establish Defendants' liability, Plaintiffs would also face difficulties in establishing damages. *See In re Lloyd's Am. Tr. Fund Litig.*, 2002 WL 31663577, at *21 (S.D. N.Y. Nov. 26, 2002) ("The determination of damages, like the determination of liability, is a complicated and uncertain process, typically involving conflicting expert opinions").

A number of risks are posed by continued litigation, while settlement provides immediate benefits to Plaintiffs and loanDepot by assuring long-lasting corporate reform. The settlement agreement eliminates these risks and ensures that Plaintiffs will not face the very real possibility of zero recovery after nearly four years of litigation. Accordingly, this factor, too, weighs in favor of preliminary approval of the settlement agreement.

**3. Arms-Length Negotiations**

The Court finds that the proposed settlement agreement is the product of informed, non-collusive negotiations. The Parties engaged in arms-length negotiations for more than a year, with both sides represented by experienced and competent counsel from multiple firms. (Mot. at 25.) *de Rommerswael v. Auerbach*, 2018 WL 6003560, at *3 (C.D. Cal. Nov. 5, 2018) (explaining that a "strong presumption of fairness" attaches to a settlement that "appears to be the product of arms-length negotiations between experienced and well-

informed counsel") (quotation omitted); *In re Apple Comp., Inc. Derivative Litig.*, 2008 WL 4820784, at *3 (N.D. Cal. Nov. 5, 2008) ("[T]he involvement of multiple counsel from different firms suggests a lack of collusion."). The Motion describes the extensive efforts of Plaintiffs' counsel prior to settling, which included reviewing confidential, Board-level documents produced by loanDepot in response to Plaintiffs' books and records request; reviewing public documents such as loanDepot's SEC filings, press releases, and investor conference call transcripts; drafting multiple complaints; participating in two rounds of mediation with Defendants before JAMS mediators; exchanging over a dozen drafts of the proposed settlement agreement with Defendants; and negotiating the final settlement agreement. (Mot. at 9, 25–26.) The Parties eventually reached the final settlement agreement with the assistance of Robert Meyer, a JAMS mediator with extensive experience in derivative actions and other complex business litigation. (Stip. at 9.) *See La Fleur v. Med. Mgmt. Int'l, Inc.*, 2014 WL 2967475, at *4 (N.D. Cal. June 25, 2014) ("Settlements reached with the help of a mediator are likely non-collusive."). Accordingly, this factor weighs in favor of granting preliminary approval.

**4. Shareholder Reactions to Proposed Settlement**

Plaintiffs have not yet provided evidence of shareholder reactions to the proposed settlement, as notice to shareholders has not yet been provided or approved by the Court. Before the final settlement hearing, Counsel shall submit a sufficient number of declarations from shareholders discussing their reactions to the proposed settlement for the Court to evaluate at the time of final approval.

**5. Conclusion with Respect to Preliminary Approval Factors**

Having considered the above factors, and finding no obvious deficiencies in the proposed settlement, the Court concludes that the proposed settlement is sufficiently fair, adequate, and reasonable to "fall within the range of possible approval." *In re OSI*

*Systems, Inc. Derivative Litig.*, 2017 WL 5634607, at *2. The Court therefore preliminarily approves the proposed settlement.

**B. Proposed Notice to Shareholders**

Rule 23.1(c) requires that the notice of a derivative settlement be given to shareholders "in the manner that the court orders." Fed. R. Civ. P. 23.1(c).

Plaintiffs have provided a proposed Notice, Summary Notice, and Postcard Notice of the settlement. (Notice, Ex. B to Stip.; Summary Notice, Ex. C to Stip.; Postcard Notice, Ex. D to Stip.) The Parties have agreed that, within thirty (30) days of entry of the Preliminary Approval Order, loanDepot "shall make a good faith effort to" (1) mail the Postcard Notice to all shareholders of record or nominees; (2) publish the Summary Notice in *Investor's Business Daily*; and (3) post the Notice and proposed settlement agreement on a settlement website. (Settlement § 2.2.) Plaintiffs' Counsel will also post the Notice on their firms' websites. (Mot. at 27.) The Court concludes that the proposed procedure for class notice is "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. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950); *see also Defrees v. Kirkland*, 2018 WL 11365542, at *4–5 (C.D. Cal. Apr. 10, 2018) (Staton, J.) (approving derivative settlement where notice was provided to shareholders by mail and published in *Investor's Business Daily*).

The proposed Notice describes the terms of the settlement, the facts and considerations leading to the settlement, the procedure for filing objections, how to contact counsel to obtain additional information, and will include the date of the final settlement hearing. (Notice.) While the Court finds that the proposed Notice includes all necessary information under Rule 23(c)(2)(B), the Court requires the Notice, Summary Notice, and Postcard Notice to be modified as follows:

- The deadline to object should be included in bold on the first page of the Notice.

- Paragraph 34 of the Notice should also state that all papers filed in this action, and the Court's docket, are available for review via the Public Access to Court Electronic Resources System (PACER), available online at http://www.pacer.gov.

- Paragraph 35 of the Notice must eliminate any reference to filing a written objection with the Court. Plaintiffs' Counsel are responsible for filing, in connection with a motion for final approval, any objections along with a brief responding to such objections. Accordingly, the Notice should instruct shareholders to object by mailing a written objection to Plaintiffs' Counsel and Counsel for Defendant at the indicated addresses. The same changes must be made to the Summary Notice and Postcard Notice.

Subject to the changes discussed above, the Court approves the form and method of shareholder notice. The Court ORDERS the parties to file revised versions of the Notice, Summary Notice, and Postcard Notice within **ten (10) days** of this Order.

**IV. SETTLEMENT DEADLINES**

The Court sets the following deadlines in association with its preliminary approval of the settlement.

| EVENT | DEADLINE |
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| Postcard Notice to be mailed to stockholders | June 1, 2025 |
| Summary Notice to be published in *Investor's Business Daily* | June 1, 2025 |
| Notice and Stipulation to be published on a settlement website | June 1, 2025 |
| Last day to file motion for final settlement approval and supporting memoranda | August 22, 2025 |
| Last day to file motion for attorneys' fees and expenses | August 22, 2025 |
| Last day for current loanDepot shareholders to file objections and/or a notice of intention to appear | September 5, 2025 |

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| Last day for Defendants to oppose Plaintiffs' motion for final settlement approval | September 5, 2025 |
| Deadline for parties to file responses to objections and reply papers in support of the settlement | September 19, 2025 |
| Deadline for Counsel for loanDepot to file an appropriate affidavit with respect to compliance with the notice to shareholders | September 19, 2025 |
| Final settlement hearing | September 26, 2025, at 10:30 a.m. |

## V. CONCLUSION

For the reasons discussed above, the Court (1) preliminarily approves the settlement agreement; (2) approves the form and method of class notice, subject to the changes discussed above; and (3) sets the above deadlines. The Court ORDERS the parties file a revised version of the Notice, Summary Notice, and Postcard Notice within **ten (10) days** of this Order. The final settlement hearing is set for **September 26, 2025, at 10:30 a.m**. The Court reserves the right to continue the date of the final settlement hearing without further notice to shareholders.

DATED: May 2, 2025

JOSEPHINE L. STATON

HON. JOSEPHINE L. STATON
UNITED STATES DISTRICT JUDGE