IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Robert E. Blackburn

Civil Action No. 16-cv-00175-REB-SKC

DEBORAH TROUDT, et al.,

Plaintiffs,

v.

ORACLE CORPORATION, et al.,

Defendants.

ORDER GRANTING JOINT MOTION FOR CERTIFICATION OF SETTLEMENT ONLY CLASS

Blackburn, J.

The matter before me is the parties' **Joint Motion for Certification of Settlement Only Class** [#220],[1] filed February 26, 2020. I have jurisdiction over this matter under 28 U.S.C. §1331(federal question) and 29 U.S.C. § 1132(e)(1) (ERISA). I grant the motion.

Plaintiffs is this case – participants and/or beneficiaries of the Oracle Corporation 401(k) Savings and Investment Plan (the "Plan") – alleged claims for breach of fiduciary duty under the Employee Retirement Income Security Act of 1974 ("ERISA") 29 U.S.C. § 1001 *et seq.*, against Oracle Corporation, the Plan, and various individual members of the Plan Committee. I initially certified three subclasses in this case under Rule 23(b)(1): an "Excessive Fee Class," an "Imprudent Investment Class A (Artisan Fund),"

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[1] "[#220]" is an example of the convention I use to identify the docket number assigned to a specific paper by the court's case management and electronic case filing system (CM/ECF). I use this convention throughout this order.

and an "Imprudent Investment Class B (TCM Fund)." (***See* Order Re: Plaintiff's Motion for Class Certification** at 17-18 [#119], filed January 30, 2018.) As a result of my resolution of defendants' motion for summary judgment, the Excessive Fee Class was vacated and the class period was modified as to the two Imprudent Investment classes. (***See* Order Re: Defendants' Motion for Summary Judgment** at 31 [#179], filed March 1, 2019.)

The parties subsequently agreed to settle the class claims and now seek to certify a single settlement only class defined as follows:

> All persons who are or were participants or beneficiaries in the Oracle Corporation 401(k) Savings and Investment Plan at any time during the Class Period, including any Beneficiary of a deceased person who participated in the Plan at any time during the Class Period, and/or Alternate Payee, in the case of a person subject to a Qualified Domestic Relations Order who participated in the Plan at any time during the Class Period. Excluded from the Settlement Class are Gayle Fitzpatrick, John Gawkowski, Dan Sharpley, Peter Shott, Mark Sunday and Amit Zavery.

The "Class Period" is defined as January 1, 2009, through December 31, 2019.

"Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems, for the proposal is that there be no trial." ***Amchem Products, Inc. v. Windsor***, 521 U.S. 591, 620, 117 S.Ct. 2231, 2248, 138 L.Ed 2d 689 (1997) (internal citation omitted). Nevertheless,

> other specifications of the Rule – those designed to protect absentees by blocking unwarranted or overbroad class definitions – demand undiluted, even heightened, attention in the settlement context. Such attention is of vital importance, for a court asked to certify a settlement class will lack the

> opportunity, present when a case is litigated, to adjust the class, informed by the proceedings as they unfold.

Id.

Pursuant to Fed. R. Civ. P. 23, a class may be certified if the following requirements are met: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of those of the class, and; (4) the representative parties will protect the interests of the class adequately. In addition, one of the three alternative requirements outlined in Rule 23(b) also must be satisfied. ***Sibley v. Sprint Nextel Corp.***, 254 F.R.D. 662, 670 (D. Kan. 2008).

Rule 23(a)(1) requires the proposed class be so numerous that joinder of all members of the class is impracticable. Although there is no minimum numerical threshold which satisfies this requirement, ***see Rex v. Owens ex rel. State of Oklahoma***, 585 F.2d 432, 436 (10th Cir. 1978), the requirement of numerosity is easily satisfied in this case. The proposed settlement class comprises more than 70,000 current and former participants in the Plan. Plainly, joinder of all these individuals is impracticable.

Rule 23(a)(2) requires the claims of members of the proposed class present "common questions of law or fact." Complete identity of legal claims among class members is not required. Rather, this provision requires there be two or more issues the resolution of which will affect all or a significant number of the members of the proposed class. ***See Stewart v. Winter***, 669 F.2d 328, 335 (5th Cir. 1982). In addition, Rule 23(a)(3) requires that the claims of a proposed class representative be typical of

the claims of the class. The typicality requirement is satisfied if there are common questions of law or fact. ***Milonas v. Williams***, 691 F.2d 931, 938 (10th Cir. 1982), ***cert. denied***, 103 S.Ct. 1524 (1983); ***Adamson v. Bowen***, 855 F.2d 668, 676 (10th Cir. 1988). Thus, "[t]he commonality and typicality requirements tend to merge," although both "serve as guideposts for determining whether . . . maintenance of a class action is economical and whether the named plaintiff's claim and the class claims are [sufficiently] interrelated." ***General Telephone Company of Southwest v. Falcon***, 457 U.S. 147, 157 n.13, 102 S.Ct. 2364, 2370 n.13, 72 L.Ed.2d 740 (1982).

The proposed settlement class here encompasses every past and present beneficiary of the plan over a period of ten years. In considering plaintiffs' initial proposal for certification of a class action – which is similar in all material respects to the definition of the proposed settlement class here – I rejected this broad definition as to plaintiffs' imprudent investment claims dye to concerns as to the adequacy of the named representatives and the typicality of their claims to those of the proposed class. (***See* Order Re: Plaintiffs' Motion for Class Certification** at 7-14 [#119], filed January 30, 2018 (noting that plaintiffs' proposed definition failed on adequacy and typicality grounds and redefining the class to include only those investments in which at least one named plaintiff had invested).) Nevertheless, several factors convince me that the proposed settlement class definition does not suffer from these deficiencies.

First, the Plan of Allocation contained in the parties' Class Action Settlement Agreement (***see* Schlichter Decl.**, Exh. A, art. 6), shows that the parties have agreed among themselves that the settlement will include the excessive recordkeeping fee

claims the court dismissed on summary judgment. As to that species of claims, I found the global definition proposed by the parties to be appropriate. Moreover, it appears the settlement will enure to the benefit of those participants and beneficiaries who were impacted by the allegedly imprudent investments at issue, as well as with respect to the Plan as a whole. There is no obvious way in which participants in other investment funds might be harmed by the settlement, but because the Settlement Agreement contemplates review and approval by an Independent Administrator, I expect any such conflicts will become manifest during that review, in which case, the court may adjust the class definition. ***See* FED. R. CIV. P.** 23(c)(1)(C); ***In re Integra Realty Resources, Inc.***, 354 F.3d 1246, 1261 (10th Cir. 2004) ("[A] trial court overseeing a class action retains the ability to monitor the appropriateness of class certification throughout the proceedings and to modify or decertify a class at any time before final judgment.").

I therefore conclude that the interrelated requirements of commonality and typicality are preliminarily satisfied. There plainly exist "common questions of law or fact" the resolution of which will affect a significant number of the proposed class. **FED. R. CIV. P.** 23(a)(2). ***See also Maez v. Springs Automotive Group, LLC***, 268 F.R.D. 391, 395 (D. Colo. 2010). In addition, the claims of the proposed class representatives are typical of the claims of the class. **FED. R. CIV. P.** 23(a)(3); ***Adamson v. Bowen***, 855 F.2d 668, 676 (10th Cir. 1988); ***Milonas v. Williams***, 691 F.2d 931, 938 (10th Cir. 1982), ***cert. denied***, 103 S.Ct. 1524 (1983). It thus appears clear that "the named plaintiff[s'] claim and the class claims are [sufficiently] interrelated" so "that maintenance of a class action is economical." ***General Telephone Company of Southwest v.***

Falcon, 457 U.S. 147, 157 n.13, 102 S.Ct. 2364, 2370 n.13, 72 L.Ed.2d 740 (1982).

For similar reasons, the final requirement of Rule 23(a) – adequacy – likewise is met with respect to this claim. **FED. R. CIV. P.** 23(a)(4). This requirement is intended to ensure the class representative has sufficient interests in common with the class that she adequately will assert and protect the interests of the class. ***Maez***, 268 F.R.D. at 396-97. There is a presumption in favor of a finding of adequacy, ***see id.*** at 39, and the declarations of the class representatives underscore that they will adequately represent the interests of the class as a whole. Moreover, as I have previously found, class counsel is experienced and competent to represent the class. **FED. R. CIV. P.** 23(c)(1)(B) & 23(g). (***See* Order Re: Plaintiffs' Motion for Class Certification** at 16-17 [#119], filed January 30, 2018.)

The proposed settlement class also meets the requirements of Rule 23(b)(1)(A), under which class certification is appropriate if "prosecuting separate actions by or against individual class members would create a risk of inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class." **FED. R. CIV. P.** 23(b)(1)(A). "Rule 23(b)(1)(A) takes in cases where the party is obliged by law to treat the members of the class alike[.]" ***Amchem Products, Inc. v. Windsor***, 521 U.S. 591, 614, 117 S. Ct. 2231, 2245, 138 L. Ed. 2d 689 (1997) (citation and internal quotation marks omitted). The fiduciary duties implicated by plaintiffs' claims are owed to all members of the class. In addition, and as I noted previously, "[n]umerous other courts in this circuit likewise have found certification of ERISA class breach of fiduciary actions

appropriate under this rule." (***See* Order Re: Plaintiffs' Motion for Class Certification** at 16 [#119], filed January 30, 2018 (citing cases).)

I therefore find and conclude that a settlement class should approved, defined as provided herein. I will direct the provision of notice to the class by separate order

THEREFORE, IT IS ORDERED as follows:

1. That the parties' **Joint Motion for Certification of Settlement Only Class** [#220], filed February 26, 2020, is granted; and

2. That the following settlement class is certified and defined as follows:

> All persons who are or were participants or beneficiaries in the Oracle Corporation 401(k) Savings and Investment Plan at any time during the Class Period, including any Beneficiary of a deceased person who participated in the Plan at any time during the Class Period, and/or Alternate Payee, in the case of a person subject to a Qualified Domestic Relations Order who participated in the Plan at any time during the Class Period. Excluded from the Settlement Class are Gayle Fitzpatrick, John Gawkowski, Dan Sharpley, Peter Shott, Mark Sunday and Amit Zavery.

The Class Period is defined as January 1, 2009, through December 31, 2019.

Dated March 13, 2020, at Denver, Colorado.

BY THE COURT:

Robert E. Blackburn
United States District Judge