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OF THE
STATE OF DELAWARE

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January 7, 2000

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Re: *In re Golden State Bancorp Inc. Shareholders Litigation*
Civil Action No. 16175

Dear Counsel:

This is my decision on the pending motion to approve a proposed settlement of this shareholder class action lawsuit. Also pending is class counsel's application for fees and expenses. For the reasons that follow, I approve the proposed settlement, but I award reduced fees and expenses in the aggregate amount of *$500,000.*

On December 14, 1999, counsel appeared before this Court and requested approval of the proposed settlement including the payment of fees to plaintiffs' counsel in the amount of $1.325 million. Defendants did not object, and have

agreed to pay any fee awarded up to that amount. Mr. L. Cooper Rutland, Jr., filed an objection that focused primarily on the form of the notice to Golden State Bancorp, Inc. shareholders. After this objection was filed, plaintiffs' counsel spoke with Rutland and explained the settlement procedure. As a result, Rutland withdrew his objection.' Rutland did not attend the settlement hearing.

Golden State is a Delaware corporation with its principal executive offices in Glendale, California. Golden State was the holding company for Glendale Federal, a federally chartered savings bank and one of the largest savings institutions in the United States. California Federal Bank ("CalFed")[2] was a privately-owned federal stock savings bank and was one of the largest thrift institutions in the United States.

During the late 1990s, the banking and thrift industries experienced significant consolidation. As a moderately-sized institution, Golden State feared losing its ability to compete if it did not find a suitable merger partner. In hopes of

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I presume Rutland thought the notice was deficient because it did not explain the remuneration the shareholders were to receive from the settlement. Quite understandably, he questioned what plaintiffs' counsel did to support their claim for $1.325 million in fees. At the hearing, plaintiffs' counsel assured me that they adequately explained the therapeutic benefits of the settlement to Rutland, and that he then withdrew his objection.

[2] References made to CalFed also include its following affiliates: Defendant First Nationwide Holdings, Inc., a savings and loan holding company organized under Delaware law, and First Nationwide (Parent) Holdings, a savings and loan holding company that served as CalFed's parent, owning 80% of CalFed.

achieving that goal, Golden State began discussions with CalFed in January 1997. On February 5, 1998, after many months of negotiations,, Golden State announced that it and CalFed had entered into an Agreement and Plan of Merger.

According to this Agreement, the indirect owners of CalFed, Ron Perelman and Gerald Ford, were to receive Golden State common stock, to be determined by a formula, that would constitute between 42% and 45% of the combined company's outstanding common stock. Golden State shareholders would receive between 55% and 58% of the new company, which would retain the Golden State name but operate CalFed branches. CS First Boston provided an oral fairness opinion on the proposed merger.

One week after the merger's announcement, plaintiffs brought this action, claiming that defendants failed to explore alternative transactions that may have maximized shareholder value as required by *Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc.*[3] Plaintiffs also alleged that disclosure was incomplete. The Court consolidated other actions arising from this same transaction.[4]

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[3] Del. Supr., 506 A.2d 173 (1986).

[4] The following actions were consolidated by this Court's February 12, 1998 Order: *Appel v. Trafton,* C.A. *No.* 16175, *Singh v. Trafton,* CA. *No.* 16176, *Rudd v. Golden State Bancorp.,* C.A. No. 16177, and *Miller v. Trafton,* C.A. No. 16 182. *Levinson v. Trafton*, C.A. No. 16203 was added to the consolidated action by a Supplemental Order of Consolidation. In addition, similarly situated plaintiffs filed suits containing substantially similar claims against defendants in the Superior Court of California, County of Los Angeles. These "California Actions" have

As to the *Revlon* claim, plaintiffs soon realized there was little likelihood of success. Golden State's CEO testified in his deposition that outside interest in Golden State "was basically zero."[5] No other potential bidders for Golden State existed; Golden State was fortunate to close the deal with CalFed. It also was debatable whether a change of control triggering *Revlon* duties occurred, as Golden State shareholders still owned the majority of the combined entity's stock.

As for the disclosure claims, plaintiffs arguably occupied stronger ground. Before and after Golden State issued the proxy statement in connection with the CalFed merger, stock prices of many savings and loan institutions, including Golden State, plunged due to concerns over prevailing low interest rates. Between June 9, 1998 and August 17, 1998 (the date of the shareholder vote on the proposed merger) Golden State's stock price dropped from $35.5625 to $21.75.[6] Further, several insiders, including Golden State's Chairman and CEO, exercised a considerable number of options held on Golden State shares. Plaintiffs contended that Golden State should have disclosed these facts to its shareholders, and that

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been stayed pending the ultimate disposition of the present action. Importantly, the California Actions are incorporated in the proposed settlement, which is the subject of this decision.

[5] Stephen Trafton, dep. at 11.

[6] Luckily for Golden State's shareholders, the terms of the merger included a collar that served to make the proposed merger appear better for Golden State's shareholders as Golden State's stock dropped.

recent developments had rendered CS First Boston's oral fairness opinion outdated and insufficient.

Within three or four months, the parties had agreed in principle to settle this litigation, both here and in California. The September 2.5, 1998 Memorandum of Understanding required Golden State to provide its shareholders with its most current available unaudited financial information (an additional quarter of financials), together with an updated written fairness opinion by CS First Boston (taking into account the decline in stock price and other recent developments). During the settlement hearing, plaintiffs' counsel also represented that the settlement provided Golden State shareholders with financials from privately-held CalFed, information they would not have had access to otherwise. In August of 1998, Golden State shareholders overwhelmingly approved the merger, which became effective on September 11, 1998.

Plaintiffs' counsel claim to have settled because, after weighing the likelihood of success on the merits against the costs of further litigation, they considered the settlement the optimal resolution for Golden State's shareholders. Plaintiffs' counsel admits the *Revlon* claim became progressively weaker as discovery continued. As such, plaintiffs' attorneys easily justified compromising

their *Revlon* claim. As the disclosure claims had more merit, the plaintiffs presumably used these claims to leverage the settlement.[7]

The important question then is, was the alleged benefit in this matter worth anything to Golden State's shareholders? More specifically, was the initial exclusion of information, which Golden State later disclosed in accordance with the settlement terms, a material omission? And if the disclosure provided shareholders a benefit, did the benefit conferred warrant the compromise of all plaintiffs' claims?

Materiality turns on whether "there is a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the total mix of information made available."[8] For purposes of this motion, it is enough that a reasonable Golden State stockholder might have considered the additional financials, especially those of privately-held CalFed, of some interest in deciding how to vote. The same can be said of CS First

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[7] Of course, this is not to be read to exclude the possibility that defendants settled merely for "nuisance value," after weighing the costs associated with continued litigation against the costs of the proposed settlement.

[8] *Rosenblatt* v. *Getty Oil Co.*, Del. Supr., 493 A.2d *929, 944* (1985), *citing TSC Indus., Inc. v. Northway, Inc., 426* U.S. *438,449* (1976). See *also Arnold v. Societyfov Savings Bancorp, Inc.*, Del. Supr., 650 A.2d 1270, 1277 (1994).

Boston's updated fairness opinion, although the most recent written fairness opinion did not differ substantially from the earlier issued opinion. Both opinions found that the proposed merger was fair. The later opinion did evaluate the most recent developments, but those recent developments, most notably the declining Golden State stock price, only served to make the proposed merger more attractive-a fact that would not have escaped a reasonably intelligent Golden State shareholder. Despite its somewhat limited impact, the more current, written fairness opinion, coupled with the additional financials, may have made Golden State's shareholders feel more secure and informed when casting their votes. Recognizing that, I conclude plaintiffs' counsel obtained the disclosure of additional, arguably material information.

It is also true, however, that I cannot label this settlement as a magnificent shareholder victory. Plaintiffs' attorneys achieved a quite modest benefit for Golden State's shareholders. Even plaintiffs' counsel acknowledge that plaintiffs' claims had only a limited chance of success on the merits. This Court, nonetheless, has noted in similar circumstances that "even a meager settlement that affords

some benefit for stockholders is adequate to support its approval.“” Accordingly, I approve the proposed settlement.

Turning to the request for attorneys fees, I first note that Delaware has no set method or fixed formula to assess an application for attorneys fees.” As a result, Delaware courts examine the totality of circumstances when deciding whether a fee is appropriate. In cases like the present one involving therapeutic benefits, this Court typically examines the value of the benefit conferred, the complexities of the litigation, the skills applied by counsel, the contingent nature of the fee arrangement, time limitations, and the standing of counsel.” Of those factors, the Court has given the size of the benefit conferred the greatest weight.” Likewise, my analysis of the pending fee request will focus on the benefit conferred, as I find the remaining criteria to be typical in cases of this type and, therefore, not particularly helpful.

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[9] *In re Dr. Pepper/Seven Up Cos., Inc. Shareholders Litig.*, Del. Ch., C.A. No. 13109, 1996 WL 74214, at *4, Chandler, V.C. (Feb. 9, 1996, as corrected Feb. 27, 1996), *aff'd*, Del. Supr., 683 A.2d 58 (1996).

[10] *Goodrich v. E.F. Hutton Group, Inc.*, Del. Supr., 681 A.2d 1039, 1046 (1996).

[11] *Dr. Pepper, 1996* WL 74214, at *5.

[12] *See, e.g., In re Appraisal of Shell Oil,* Del. Ch., C.A. No. 8080 (consol.), Hartnett, V.C., 1992 LEXIS 228, *11-*12 (Oct. 30, 1992); *In re Anderson Clayton Shareholders Litig.*, Del. Ch., C.A. No. 8387, ltr. op. at 3, 7, Allen, *C.* (Sept. 19, 1988); *Dr. Pepper,* 1996 WL 74214, at *5.

In order to justify the award of fees, the benefit generally must be specific and substantial.[13] This Court has at times awarded fees even after concluding that the benefit created by the litigation was meager or speculative. In such cases, however, the Court often discounts the fees accordingly.'"

In the context of a therapeutic benefit case, fee awards are minimized where the benefit is intangible or limited in duration." Oftentimes, when this Court determines fee awards in a therapeutic benefit case, it uses a *quantum meruit* analysis. Under such an analysis, the Court adds a premium to the plaintiffs' attorneys typical noncontingency fee in proportion to the benefit the plaintiffs' attorneys achieved for their clients.[16] But Delaware courts do not focus on hours expended as the essential inquiry.[17]

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[13] *See Chrysler Corp. v. Dann*, Del. Ch., 223 A.2d 384 (1966).

[14] *See, e.g., Zlotnick* v. *Metex Inc.*, Del. Ch., C.A. No. 9781, 1989 Del. Ch. LEXIS 159, at *3-*4, Hartnett, V.C. (Nov. 14, 1989) (court awarded only $60,000 in fees despite fact that value conferred was approximately $2.5 million. Special committee played larger role in causing benefit and plaintiffs counsel's contribution was "meager." Court called the $60,000 awarded "generous").

[15] *Friedman v. Baxter Travenol Labs., Inc.*, Del. Ch., C.A. No. 8209, 1986 Del. Ch. LEXIS 367, at *14 -*15, Jacobs, V.C. (Feb. 18, 1986) (reduced fee to $200,000 plus out-of-pocket expenses despite request to award $385,000 because therapeutic value was questionable).

[16] *Dr. Pepper,* 1996 WL 74214, at *5; see also *Chrysler Corp. v. Dann*, Del. Ch., 223 A.2d 384, 389 (1966) (applying *quantum meruit* analysis); *Sugarland Indus., Inc. v. Thomas,* Del. Supr., 420 A.2d 142, 152 (1980) (applying *quantum meruit* analysis); *Gilmartin v. Adobe Resources Corp.,* Del. Ch., C.A. No. 12467, Jacobs, V.C. (Order at 4) (June 29, 1992).

[17] *Dr. Pepper,* 1996 WL 74214, at *5.

In cases generating nonquantifiable, nonmonetary benefits, this Court has juxtaposed the case before it with cases in which attorneys have achieved approximately the same benefits.[18] The plaintiffs' attorneys in this case have requested a vastly higher fee than the typical fee this Court has awarded for settlements providing only therapeutic benefits.'" Recognizing that fact, as well as acknowledging the limited benefit the additional disclosures provided to Golden State shareholders, I find the proposed fee amount to be greater than the amount warranted by the benefit conferred.

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[18] *Id.*

[19] *Id.* (awarding $300,000 despite request for $690,000 in case in which plaintiffs settled disclosure claims in return for marginally material disclosures); *In re Chicago and Northwestern Transportation Co. Shareholders Litig.,* Del. Ch., C.A. No. 14109 (consol.), Chandler, V.C. (June 26, 1995) (awarding $300,000 despite request for $525,000 in case in which plaintiffs settled claims in return for the "disclosure of three possibly material facts"); *Tandycrafts, Inc. v. Initio Partners,* Del. Supr., 562 A.2d 1162 (1989) (affirming award of $180,000 for therapeutic benefit); *Eisenberg v. Chicago Milwaukee Corp.,* Del. Ch., CA. No. 9374, Jacobs, V.C. (Oct. 25, 1988) (awarding $300,000 for therapeutic benefit); *In re Vitalink Communication Corp.,* Del. Ch., C.A. No. 12085, Chandler, V.C. (Nov. 8, 1991) (awarding $275,000 for therapeutic benefit).

In their brief in support of the settlement and proposed fee, plaintiffs cite four cases for the proposition that this Court has awarded attorneys fees for litigative efforts that lead to updated fairness opinions and enhanced disclosure to shareholders. Pls.' Br. at 26. They, however, fail to note the fees awarded in even those cases were substantially less than the fee proposed here. *See In re Transco Energy Company Shareholders Litig.,* Del. Ch., C.A. No. 13918, Jacobs, V.C. (July 24, 1995) (awarding $125,000 in fees); *Parnes v. Cook,* Del. Ch., C.A. No. 14357, Chandler, V.C. (March 19, 1996) (awarding *$325,000* in fees); *Kwalburn v. Carreker,* Del. Ch., CA. No. 15657, Balick, V.C. (June 17, 1998) (awarding $350,000 in fees); *In re Associated Natural Gas Corporation Shareholders Litig.,* Del. Ch., CA. No. 13791, Chandler, V.C. (Jan. 24, 1995) (awarding $400,000 plus actual expenses).

In my opinion, an award of $500,000 is generous in the circumstances of this case. This reflects a modest risk premium over the compensation that plaintiffs' attorneys command in a noncontingency undertaking. A risk premium accounts for the contingent nature of the case and the intense effort required over a short time period by skilled lawyers, even though that effort produced a modest benefit. Plaintiffs' counsel represented that they invested "over 1000" hours in litigating this case, which includes the California cases. Multiplying this amount of time by $500 (which incorporates at least a 25% risk prernium multiple) yields a reasonable fee (in my opinion) of $500,000. I have not awarded as large a risk premium as the plaintiffs' attorneys might have requested because plaintiffs' attorneys have not achieved as substantial a benefit for the shareholders as other attorneys have achieved in cases where I have granted the full attorneys fee request. In addition, the premium I have awarded in this case is commensurate with that awarded in similar, therapeutic benefit cases.

The proposed settlement is approved. Plaintiffs' counsel are awarded fees and reimbursement of expenses in the amount of $500,000. An Order and Final Judgment has been entered.

Very truly yours,

William B. Chandler III

WBCIII:mwa
Attachment

oc: Register in Chancery (NCC)
xc: Vice Chancellor Jacobs
Vice Chancellor Steele
Vice Chancellor Lamb
Vice Chancellor Strine
Master Glasscock
Law Libraries