

Plaintiff Erie County Employees' Retirement System ("Erie County" or "Plaintiff"), on behalf of itself and the Settlement Class, respectfully submits this reply memorandum of law in further support of its motion for: (1) final approval of the proposed \$9,500,000 settlement ("Settlement") of this securities class action (the "Action"); (2) approval of the proposed Plan of Allocation; and (3) an award of attorneys' fees and expenses to Plaintiff's Counsel and a service award to Plaintiff for representing the Settlement Class.¹

I. INTRODUCTION

As explained in Plaintiff's opening papers in support of final approval, the proposed \$9,500,000 cash Settlement is an excellent result for the Settlement Class in light of the likely maximum recoverable damages and the risks, costs, and delay of continued litigation. If approved, the Net Settlement Fund will be distributed fairly to Settlement Class Members pursuant to the proposed Plan of Allocation. In addition, the requested attorneys' fees of 33 and 1/3% of the Settlement Fund, which represents a modest 1.1 multiple of Plaintiff's Counsel's lodestar in a case litigated through full merits discovery, is consistent with fee awards in comparable cases.

The deadline for either requesting exclusion from or objecting to the Settlement has now passed, and the reaction of the Settlement Class has been overwhelmingly positive. There have been *no objections* filed with the Court to the Settlement, Plan of Allocation, Plaintiff's Counsel's request for attorneys' fees and payment of litigation expenses, or Plaintiff's request for a modest service award for its representation of the Settlement Class, and no Settlement Class Member has requested exclusion from the Settlement. Supplemental Affirmation of Justin R. Hughes

¹ Unless otherwise noted, capitalized terms have the meanings ascribed to them in the Stipulation of Settlement, filed with this Court on July 25, 2022 (NYSCEF No. 116), or in the Affirmation of Deborah Clark-Weintraub in Support of Motion for Final Approval of the Settlement and Plan of Allocation, and Award of Attorneys' Fees and Expenses to Plaintiff's Counsel and Service Award to Plaintiff, filed with this Court on November 1, 2022 (NYSCEF No. 124).

Regarding Notice Dissemination, Publication, and Requests for Exclusion and Objections Received to Date, ¶¶6-7. This positive response follows the mailing to a total of 7,871 Claim Packages to potential Settlement Class Members and Nominees. *Id.*, ¶5.

Accordingly, for the reasons set forth herein and previously detailed in Plaintiff's opening papers, and because the reaction of the Settlement Class strongly supports the relief requested, the Settlement and Plan of Allocation should be finally approved, Plaintiff's Counsel's requested attorneys' fees and litigation expenses should be awarded, and Plaintiff's service award should be granted.

II. THE SETTLEMENT CLASS' REACTION STRONGLY SUPPORTS APPROVAL OF THE SETTLEMENT AND PLAN OF ALLOCATION

Now that the deadline for exclusion requests and objections has passed, it is possible to fully assess the Settlement in light of the second *Colt* factor, the extent of support from the parties. *In re Colt Indus. S'holder Litig.*, 155 A.D.2d 154, 160 (N.Y. App. Div. 1st Dep't 1990). Here, there have been no objections or requests for exclusion, compelling evidence that the Settlement is fair, reasonable, and adequate and that the Plan of Allocation is fair and reasonable. *See Wright v. Stern*, 553 F. Supp. 2d 337, 345 (S.D.N.Y. 2008) ("The fact that the vast majority of class members neither objected nor opted out is a strong indication that the proposed settlement is fair, reasonable, and adequate."); *see also In re Facebook, Inc. IPO Secs. & Deriv. Litig.*, 343 F. Supp. 3d. 394, 410 (S.D.N.Y. 2018) ("That not one sophisticated institutional investor objected to the Proposed Settlement is indicia of its fairness.").

III. THE CLASS' REACTION ALSO PROVIDES SUPPORT FOR APPROVAL OF PLAINTIFF'S COUNSEL'S REQUESTED FEES AND EXPENSES

Not one Settlement Class Member has objected to Plaintiff's Counsel's request for attorneys' fees and expenses or Plaintiff's request for the service award. Once again, the absence of objections is strong evidence that those requests are fair and reasonable. *See In re Signet*

Jewelers Ltd. Secs. Litig., No. 1:16-cv-06728, 2020 WL 4196468, at * 21 (S.D.N.Y. July 21, 2020) (“The absence of any objections to the requested attorneys’ fees and Litigation Expenses supports a finding that the request is fair and reasonable.”). And, “[a]s with approval of the Settlement, the lack of objections by institutional investors is notable, and lends further support to approval of the fee request.” *Id.*

IV. CONCLUSION

For the foregoing reasons, and those stated in Plaintiff’s opening papers, it is respectfully requested that the Court grant final approval of the Settlement, the Plan of Allocation, and Plaintiff’s Counsel’s request for fees and expenses and service award to Plaintiff. A copy of the proposed Judgment and Order Granting Final Approval of Class Action Settlement, Awarding Attorneys’ Fees and Expenses, and Granting Service Award to Plaintiff is submitted herewith as Exhibit A to the Supplemental Weintraub Affirmation.

DATED: November 23, 2022

Respectfully submitted,

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PRINTING SPECIFICATIONS STATEMENT

1. Pursuant to 22 N.Y.C.R.R. §202.70(g), Rule 17, the undersigned counsel certifies that the foregoing memorandum of law was prepared on a computer using Microsoft Word. A proportionally spaced typeface was used as follows:

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2. The total number of words in the memorandum, inclusive of point headings and footnotes and exclusive of the caption, signature block, and this Certification, is 806 words.

DATED: November 23, 2022

Respectfully submitted,

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