

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ASHLEY PIERRELOUIS, Individually and
on Behalf of All Others Similarly Situated,

Plaintiff,

v.

GOGO INC., MICHAEL J. SMALL,
NORMAN SMAGLEY, BARRY ROWAN,
and JOHN WADE,

Defendants.

Civil Action No. 1:18-cv-04473

Honorable Jorge L. Alonso

**REPLY MEMORANDUM IN FURTHER SUPPORT OF: (I) LEAD PLAINTIFF'S
MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN
OF ALLOCATION; AND (II) LEAD COUNSEL'S MOTION FOR AN AWARD OF
ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES**

Court-appointed lead plaintiff, Daniel Rogers (“Lead Plaintiff”), and lead counsel, Glancy Prongay & Murray LLP and Levi & Korsinsky, LLP (collectively, “Lead Counsel”), respectfully submit this memorandum in further support of: (i) Lead Plaintiff’s Motion for Final Approval of Class Action Settlement and Plan of Allocation (ECF Nos. 155-56, 159); and (ii) Lead Counsel’s Motion for an Award of Attorneys’ Fees and Reimbursement of Litigation Expenses. ECF Nos. 157-59.¹ This memorandum updates the Court on the status of the notice program and the Settlement Class’s reaction thereto, including the fact that there has not been a single objection to the Settlement, Plan of Allocation, or request for attorneys’ fees and reimbursement of Litigation Expenses, and no requests for exclusion from the Settlement Class.

I. PRELIMINARY STATEMENT

After approximately four years of hard fought litigation, including a successful mediation facilitated by a well-respected neutral, Lead Plaintiff submitted a \$17,300,000 all cash, non-reversionary settlement for Court approval. The reaction of the Settlement Class confirms that the Settlement is an excellent result. Following an extensive notice program, including mailing the Notice Packet to 21,851 potential Settlement Class Members by first-class mail and publication of the Summary Notice in *Investor’s Business Daily* and on the *PR Newswire*, not a single objection has been filed or request for exclusion received.² The Settlement Class’s overwhelmingly positive reaction strongly supports approval of the Settlement and the Plan of Allocation, as well as the request for attorneys’ fees and reimbursement of Litigation Expenses.

¹ Unless otherwise defined herein, all capitalized terms have the meanings set forth in the Stipulation and Agreement of Settlement dated April 12, 2022 (the “Stipulation”). ECF No. 150-1.

² See Supplemental Declaration of Adam D. Walter Regarding: (A) Mailing of Notice and Claim Form; and (B) Report on Requests for Exclusion Received to Date (“Suppl. Walter Decl.”) at ¶¶3, 6-7; see also ECF No. 159-1, ¶10 and Exs. B and C (confirming publication of Summary Notice).

II. THE SETTLEMENT CLASS’S UNIVERSALLY POSITIVE REACTION SUPPORTS APPROVAL OF THE SETTLEMENT, PLAN OF ALLOCATION, AND THE REQUESTED ATTORNEYS’ FEES AND LITIGATION EXPENSES

A. The Court-Approved Notice Program Has Been Implemented

Pursuant to the Court’s May 3, 2022 Order Preliminarily Approving Settlement and Providing for Notice (the “Preliminary Approval Order”), A.B. Data, Ltd. (“A.B. Data”) was authorized to act as the Claims Administrator in connection with the Settlement. ECF No. 154, ¶7. In that capacity, A.B. Data disseminated a total of 21,851 copies of the Notice and Claim Form to potential Settlement Class Members and their nominees. *See* Suppl. Walter Decl., ¶3. The Notice advised Settlement Class Members of the Settlement and the request for an award of attorneys’ fees and reimbursement of Litigation Expenses. *See* ECF No. 159-1, Ex. A at ¶¶2, 5, 76. The Notice further advised Settlement Class Members that the last day for requesting exclusion from the Settlement or filing an objection to the Settlement, the Plan of Allocation, and/or the request for an award of attorneys’ fees and reimbursement of Litigation Expenses was August 9, 2022. *See* ECF No. 159-1, Ex. A at pp. 2-3 and ¶¶77, 83.

On July 26, 2022, fourteen (14) days prior to the objection deadline, Lead Plaintiff and Lead Counsel filed their opening papers in support of the Settlement, Plan of Allocation, and the fee and expense application. The motions were supported by the declarations of Lead Plaintiff, Lead Counsel, and the Claims Administrator. These papers are available on the public docket and on the settlement website (www.GogoSecuritiesLitigation.com). *See* ECF Nos. 155-59; Suppl. Walter Decl. at ¶5.

The exclusion and objection deadlines have now passed. Importantly, not a single Settlement Class Member requested exclusion from the Settlement Class, and there has not been a single objection to the Settlement, the Plan of Allocation, the request for attorneys’ fees, the request for reimbursement of litigation expenses, or the PSLRA award to Lead Plaintiff. *See*

Suppl. Walter Decl. at ¶¶6-7. The lack of objections and requests for exclusion weighs heavily in favor of the Court granting the requested relief.

B. The Settlement Class’s Reaction Supports Approval Of The Settlement, Plan Of Allocation, And Fee And Expense Request

In this Circuit, “the reaction of members of the class to the settlement” is one of the factors to consider in analyzing whether a settlement is fair, reasonable, and adequate. *See, e.g., Wong v. Accretive Health, Inc.*, 773 F.3d 859, 863 (7th Cir. 2014); *Gautreaux v. Pierce*, 690 F.2d 616, 631 (7th Cir. 1982).³ “The absence of objection to a proposed class settlement is evidence that the settlement is fair, reasonable and adequate.” *Retsky Family Ltd. Partnership v. Price Waterhouse LLP*, 2001 WL 1568856, at *3 (N.D. Ill. Dec. 10, 2001).

Here, the lack of objections and requests for exclusion demonstrate that the proposed Settlement is fundamentally fair, reasonable, and adequate. *See, e.g., Id.; Ewald v. West Asset Mgmt., Inc.*, 2007 WL 3171397, at *2 (E.D. Wis. 2007) (“the complete lack of any objections or exclusions of class members is further evidence of the fairness, reasonableness, and adequacy of the settlement.”); *Daluge v. Cont’l Cas. Co.*, 2018 WL 6040091, at *3 (W.D. Wis. Oct. 25, 2018) (“The lack of opposition to the settlement, coupled with the positive reaction by class members . . . further supports a finding that the settlement is fair and reasonable.”); *Mangone v. First USA Bank*, 206 F.R.D. 222, 226-27 (S.D. Ill. 2001) (finding “the Settlement was strongly supported by the Class as evidenced by the extremely low percentage of opt outs and objections.”).

The favorable reaction of the Settlement Class also supports approval of the Plan of Allocation. *See, e.g., Beezley v. Fenix Parts, Inc.*, 2020 WL 13528159, *1 (N.D. Ill. Aug. 18, 2020) (approving plan of allocation in securities class action where “[t]he Notice, which included the Plan of Allocation, was available to potential Settlement Class Members and nominees on the

³ Unless otherwise noted, all internal quotations and citations are omitted.

Settlement Website and no objections to the proposed plan were submitted.”); *Mauss v. NuVasive, Inc.*, 2018 WL 6421623, at *4 (S.D. Cal. Dec. 6, 2018) (concluding that the proposed plan of allocation was fair and reasonable after noting “[t]he Plan of Allocation was described in detail in the notice and no class member objected.”); *In re Veeco Instruments Inc. Sec. Litig.*, 2007 WL 4115809, at *14 (S.D.N.Y. Nov. 7, 2007) (“not one class member has objected to the Plan of Allocation which was fully explained in the Notice sent to all Class Members. This favorable reaction of the Class supports approval of the Plan of Allocation.”); *Gupta v. Power Sols. Int’l, Inc.*, 2019 WL 13209568, *1 (N.D. Ill. May 13, 2019) (approving plan of allocation in securities class action where there were “no objections”).

Finally, the reaction of the Settlement Class should also be considered with respect to Lead Counsel’s motion for an award of attorneys’ fees and reimbursement of Litigation Expenses. *See Silverman v. Motorola Sols., Inc.*, 739 F.3d 956, 959 (7th Cir. 2013) (lack of objections from institutional investors supports class counsel’s fee award in securities class action settlement); *McDaniel v. Qwest Communications Corp.*, 2011 WL 13257336, at *4 (N.D. Ill. Aug. 29, 2011) (“The number and quality of objections are often deemed indicative of the class’s reaction to a request for attorneys’ fees.”); *Spano v. Boeing Co.*, 2016 WL 3791123, at *1 (S.D. Ill. Mar. 31, 2016) (“This Court finds the lack of any significant number of objections to be a sign of the Class’s overwhelming support for Class Counsel’s request.”).

Here, the Notice, which was mailed to 21,851 Settlement Class Members and nominees, explained that: (i) Lead Counsel would apply to the Court for an award of attorneys’ fees in an amount not to exceed 33 $\frac{1}{3}$ % of the Settlement Fund; and (ii) seek reimbursement for Litigation Expenses incurred by Lead Counsel in an amount not to exceed \$350,000, which may include an application for reimbursement of the reasonable costs (including lost wages) incurred by Lead

Plaintiff directly related to his representation of the Settlement Class in an amount not to exceed \$20,000. *See* ECF No. 159-1, Ex. A at ¶5. There were no objections to the requested attorneys' fee award or the Litigation Expenses. "An absence of objection is a 'rare phenomenon,' *In re Rite-Aid Corp. Sec. Litig.*, 396 F.3d 294, 305 (3d Cir. 2005), and indicates the appropriateness of the fee request." *McDaniel*, 2011 WL 13257336, at *4 (cleaned up); *see also Standard Iron Works v. ArcelorMittal*, 2014 WL 7781572, at *2 (N.D. Ill. Oct. 22, 2014) ("The Settlement Class in this case includes approximately 5,300 direct purchasers, many of which are sophisticated business entities. The absence of objections indicates that the fee is fair and reasonable and consistent with prevailing market rates.); *Retsky*, 2001 WL 1568856, at *4 ("Furthermore, no member of the plaintiff class has objected to the request for attorney's fees. This also suggests that the requested attorney's fees are reasonable.").

IV. CONCLUSION

Based on the foregoing and the entire record herein, Lead Plaintiff and his counsel respectfully request that the Court: (i) approve the Settlement and Plan of Allocation as fair, reasonable, adequate, and in the best interest of the Settlement Class; (ii) award attorneys' fees to Lead Counsel in the amount of 33⅓% of the Settlement Fund, together with expenses in the amount of \$139,347.45; and (iii) award \$20,000 to Lead Plaintiff for reimbursement of the costs he incurred as a direct result of his representation of the Settlement Class.⁴

⁴ The Settlement is conditioned on the entry of the Judgment Approving Class Action Settlement in substantially the form submitted to the Court. *See* Stipulation, ¶¶30, 31(e), 34. The proposed Judgment Approving Class Action Settlement, the [Proposed] Order Approving Plan of Allocation of Net Settlement Fund, and the [Proposed] Order Awarding Attorneys' Fees and Reimbursement of Litigation Expenses, are submitted concurrently herewith.

Dated: August 23, 2022

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 23, 2022, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all registered ECF participants.

s/ Casey E. Sadler _____

Casey E. Sadler