

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CITY OF BIRMINGHAM FIREMEN’S AND	:	Civil Action No. 1:18-cv-10330-JPO
POLICEMEN’S SUPPLEMENTAL PENSION:	:	
SYSTEM, Individually and on Behalf of All	:	<u>CLASS ACTION</u>
Others Similarly Situated,	:	
	:	REPLY MEMORANDUM OF LAW IN
	:	FURTHER SUPPORT OF: (1) PLAINTIFF’S
Plaintiff,	:	MOTION FOR FINAL APPROVAL OF
	:	CLASS ACTION SETTLEMENT, (2)
vs.	:	APPROVAL OF PLAN OF ALLOCATION,
	:	AND (3) LEAD COUNSEL’S
RYANAIR HOLDINGS PLC and MICHAEL	:	APPLICATION FOR AN AWARD OF
O’LEARY,	:	ATTORNEYS’ FEES AND EXPENSES AND
	:	AWARD TO PLAINTIFF PURSUANT TO
Defendants.	:	15 U.S.C. §78u-4(a)(4)
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Lead Plaintiffs City of Birmingham Firemen’s and Policemen’s Supplemental Pension System and City of Birmingham Retirement and Relief System (collectively, “Plaintiff”), on behalf of themselves and the Class, and Lead Counsel respectfully submit this memorandum of law in further support of: (i) Plaintiff’s motion for final approval of the Settlement; (ii) approval of the Plan of Allocation; and (iii) Lead Counsel’s application for an award of attorneys’ fees and expenses and award to Plaintiff pursuant to 15 U.S.C. §78u-4(a)(4).¹

I. INTRODUCTION

The proposed Settlement resolves this Litigation in its entirety in exchange for a cash payment of \$5,000,000. As detailed in Plaintiff’s and Lead Counsel’s opening final approval memorandum (ECF 139), the Settlement is the product of hard-fought litigation and extensive arm’s-length settlement negotiations, and represents a very favorable result for the Class in light of the substantial challenges that Plaintiff would have faced in proving liability and damages.

Pursuant to the Court’s Preliminary Approval Order, the Claims Administrator, under the supervision of Lead Counsel, conducted an extensive notice program, including mailing over 80,400 copies of the Notice and the Proof of Claim and Release form (“Claim Form”) (together, “Notice Package”) to potential Class Members and nominees. In response to this notice program, no Class Member has objected to any aspect of the Settlement, Plan of Allocation, or fee and expense application. In addition, there is only one request for exclusion from the Settlement from an individual investor. As explained further below, the reaction of the Class further demonstrates that

¹ All capitalized terms not otherwise defined herein shall have the meanings set forth in the Stipulation and Agreement of Settlement (ECF 130) and the Declaration of Robert R. Henssler Jr. in Support of Plaintiff’s Motion for (1) Final Approval of Class Action Settlement, (2) Approval of Plan of Allocation, and (3) Lead Counsel’s Application for an Award of Attorneys’ Fees and Expenses and Award to Plaintiff Pursuant to 15 U.S.C. §78u-4(a)(4). ECF 140. Citations are omitted and emphasis is added throughout unless otherwise noted.

the proposed Settlement, the Plan of Allocation, and the request for attorneys' fees and expenses and award to Plaintiff are fair and reasonable, and should be approved.

II. THE REACTION OF THE CLASS SUPPORTS APPROVAL OF THE MOTION

Plaintiff and Lead Counsel respectfully submit that their opening papers demonstrate why approval of the motion is warranted. Now that the time for objecting or requesting exclusion from the Class has passed, the lack of any objections from the Class and only one opt-out from an individual investor provides additional support for approval of the motion.

Pursuant to the Court's Preliminary Approval Order, more than 80,400 copies of the Notice Package have been mailed to potential Class Members and their nominees. *See* Supplemental Declaration of Ross D. Murray Regarding Notice Dissemination and Requests for Exclusion Received to Date ("Supp. Murray Decl."), ¶4, submitted herewith. The Notice informed Class Members of the terms of the proposed Settlement and Plan of Allocation, that Lead Counsel would apply for an award of attorneys' fees in an amount up to 18% of the Settlement Amount and payment of litigation expenses in an amount not to exceed \$600,000, plus interest on both amounts, and that Plaintiff may seek an award in an amount not to exceed \$5,000 in the aggregate pursuant to 15 U.S.C. §78u-4(a)(4) in connection with its representation of the Class. *See* Declaration of Ross D. Murray Regarding Notice Dissemination, Publication, and Requests for Exclusion Received to Date ("Murray Decl."), Ex. A (Notice at 2-3).

The Notice also apprised Class Members of their right to object to the proposed Settlement, the Plan of Allocation and/or the request for attorneys' fees and expenses, their right to exclude themselves from the Class, and the September 29, 2023 deadline for filing objections and for requests for exclusion. *See id.* at 3. The Summary Notice, which informed readers of the proposed Settlement, how to obtain copies of the Notice Package, and the deadlines for the submission of

Claim Forms, objections, and requests for exclusion, was published in *The Wall Street Journal* and released over the *Business Wire*. See Murray Decl., ¶12. In addition, the Claims Administrator established a case-specific website that provided, and continues to provide, information and links to relevant documents. *Id.*, ¶14.

As noted above, following this notice program, no Class Member objected to any aspect of the Settlement, the Plan of Allocation, or fee and expense application. In addition, only one request for exclusion from an individual investor was received. Supp. Murray Decl., ¶6 (attaching the request for exclusion).

The absence of objections and just one request for exclusion support a finding that the Settlement is fair, reasonable, and adequate. Indeed, “the favorable reaction of the overwhelming majority of class members to the Settlement is perhaps the most significant factor in [the] *Grinnell* inquiry.” *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 119 (2d Cir. 2005); see also *In re Advanced Battery Techs., Inc. Sec. Litig.*, 298 F.R.D. 171, 176 (S.D.N.Y. 2014) (“The absence of . . . objections and minimal investors electing to opt out of the Settlement provides evidence of Class members’ approval of the terms of the Settlement.”); *In re Sturm, Ruger, & Co., Inc. Sec. Litig.*, 2012 WL 3589610, at *5 (D. Conn. Aug. 20, 2012) (“[T]he absence of objectants may itself be taken as evidencing the fairness of a settlement.”); *In re FLAG Telecom Holdings, Ltd. Sec. Litig.*, 2010 WL 4537550, at *16 (S.D.N.Y. Nov. 8, 2010) (“The absence of objections to the Settlement supports the inference that it is fair, reasonable and adequate.”).

In addition, no institutional investors have objected to the Settlement or have requested exclusion. The absence of objections by these sophisticated Class Members is further evidence of the fairness of the Settlement. See *In re Citigroup Inc. Sec. Litig.*, 965 F. Supp. 2d 369, 382 (S.D.N.Y. 2013) (holding that the reaction of the class supported the settlement where “not a single

objection was received from any of the institutional investors that hold the majority of Citigroup stock”); *In re AOL Time Warner, Inc. Sec. & “ERISA” Litig.*, 2006 WL 903236, at *10 (S.D.N.Y. Apr. 6, 2006) (finding that the lack of objections from institutional investors supported final approval of the settlement).

The lack of objections from institutional or retail Class Members also supports approval of the Plan of Allocation. *See, e.g., In re Veeco Instruments Inc. Sec. Litig.*, 2007 WL 4115809, at *14 (S.D.N.Y. Nov. 7, 2007) (“[N]ot one class member has objected to the Plan of Allocation which was fully explained in the Notice of Settlement sent to all Class Members. This favorable reaction of the Class supports approval of the Plan of Allocation.”).

Finally, the positive reaction of the Class should also be considered with respect to Lead Counsel’s application for an award of attorneys’ fees and expenses and an award to Plaintiff. The absence of any objections to the requested fee and expenses and award to Plaintiff supports a finding that these requests are fair and reasonable. *See, e.g., In re Veeco Instruments Inc. Sec. Litig.*, 2007 WL 4115808, at *10 (S.D.N.Y. Nov. 7, 2007) (the reaction of class members to a fee and expense request “is entitled to great weight by the Court” and the absence of any objection “suggests that the fee request is fair and reasonable”); *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 374 (S.D.N.Y. 2002) (finding that the lack of any objection to the fee request supported its approval). In particular, the lack of any objections by institutional investors supports approval of the fee and expense request and award to Plaintiff. *See In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 305 (3d Cir. 2005) (the fact that “a significant number of investors in the class were ‘sophisticated’ institutional investors that had considerable financial incentive to object had they believed the requested fees were excessive” and did not do so, supported approval of the fee request); *In re Bisysec. Litig.*, 2007 WL 2049726, at *1 (S.D.N.Y. July 16, 2007) (lack of objections from institutional

investors supported the approval of the fee request because “the class included numerous institutional investors who presumably had the means, the motive, and the sophistication to raise objections if they thought the [requested] fee was excessive”).

III. CONCLUSION

For the foregoing reasons, and the reasons set forth in Plaintiff’s and Lead Counsel’s opening papers, Plaintiff respectfully requests that the Court approve the Settlement, the Plan of Allocation, and the request for fees and expenses and award to Plaintiff.

DATED: October 13, 2023

Respectfully submitted,

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Lead Counsel for Lead Plaintiff and the Class

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on October 13, 2023, 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 the email addresses on the attached Electronic Mail Notice List, and I hereby certify that I caused the mailing of the foregoing via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

s/ Robert R. Henssler Jr.

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Mailing Information for a Case 1:18-cv-10330-JPO City of Birmingham Firemen's and Policemen's Supplemental Pension System v. Ryanair Holdings plc et al

Electronic Mail Notice List

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Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

- (No manual recipients)