

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CAROL GLOCK, Individually and on Behalf of All Others Similarly Situated,	§	Civil Action No. 4:20-cv-03928
	§	
	§	<u>CLASS ACTION</u>
Plaintiff,	§	
	§	Judge Lee H. Rosenthal
vs.	§	
	§	
FTS INTERNATIONAL, INC., et al.,	§	
	§	
Defendants.	§	
	§	
_____	§	

**LEAD PLAINTIFF’S REPLY IN FURTHER SUPPORT OF FINAL APPROVAL OF
CLASS ACTION SETTLEMENT, APPROVAL OF PLAN OF ALLOCATION, AWARD
OF ATTORNEYS’ FEES AND EXPENSES, AND AWARD TO LEAD PLAINTIFF
PURSUANT TO 15 U.S.C. §77z-1(a)(4)**

Lead Plaintiff Carol Glock (“Lead Plaintiff” or “Plaintiff”), by and through her counsel Robbins Geller Rudman & Dowd LLP (“Lead Counsel”), respectfully submits this reply in further support of final approval of the \$9,875,000 Settlement, approval of the proposed Plan of Allocation, and an award of attorneys’ fees and expenses, including an award to Lead Plaintiff pursuant to 15 U.S.C. §77z-1(a)(4) in connection with her representation of the Settlement Class.¹

I. PRELIMINARY STATEMENT

This is a complex securities class action that was heavily litigated for almost two years, involving extensive motion practice, certain fact discovery, and protracted, arm’s-length settlement negotiations. Due to the complex nature of this case, Lead Counsel were required to expend a significant amount of time and effort to best represent the interests of the Settlement Class. Through these extensive efforts, and following arm’s-length negotiations, Lead Counsel were able to secure a \$9,875,000 all cash settlement for the Settlement Class.

Pursuant to the Court’s December 8, 2020 Order Preliminarily Approving Settlement and Providing for Notice (ECF No. 15) (“Notice Order”), over 15,900 copies of the Notice of Pendency and Proposed Settlement of Class Action (“Notice”) and Proof of Claim and Release (“Proof of Claim”) (together, “Notice Package”) were mailed to potential Settlement Class Members and nominees² and the Summary Notice was published in *The Wall Street Journal* and transmitted over the *Business Wire*.³ The Notice Package, Stipulation, Notice Order, and other relevant documents were also posted on a dedicated website for the Settlement, www.FTSISecuritiesSettlement.com.

¹ Unless otherwise noted, all capitalized terms used herein are defined in the November 19, 2020 Stipulation of Settlement (“Stipulation”). ECF No. 9.

² See Supplemental Declaration of Ross D. Murray Regarding Notice Dissemination and Requests for Exclusion Received to Date (“Murray Supplemental Decl.”), ¶¶3-4, submitted herewith.

³ See Declaration of Ross D. Murray Regarding Notice Dissemination, Publication, and Requests for Exclusion Received to Date, ¶12 (ECF No. 22).

Id., ¶14. The March 1, 2021 deadline for objections and the March 22, 2021 deadline for exclusions has passed and no objection to the proposed Settlement, proposed Plan of Allocation, or fee and expense application was filed. Additionally, only one request for exclusion has been received.⁴ These results are a testament to the fairness, adequacy, and reasonableness of the proposed Settlement, the proposed Plan of Allocation and Lead Counsel’s fee and expense application, and support approval of Lead Plaintiff’s motion.

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

The reaction of the Settlement Class to the Settlement is a key factor in weighing its adequacy. “[T]he reaction of the class to the proffered settlement . . . is perhaps the most significant factor to be weighed in considering its adequacy.” *In re Rambus Inc. Derivative Litig.*, No. C 06-3513 JF (HRL), 2009 U.S. Dist. LEXIS 131845, at *10 (N.D. Cal. Jan. 20, 2009) (citation omitted). *See, e.g., In re Heartland Payment Sys.*, 851 F. Supp. 2d 1040, 1068 (S.D. Tex. 2012) (quoting *In re Enron Corp. Sec.*, 228 F.R.D. 541, 567 (S.D. Tex. 2005) (internal citation omitted)) (“Receipt of few or no objections can be viewed as indicative of the adequacy of the settlement.”); *In re OCA, Inc. Sec. & Derivative Litig.*, No. 05-2165, 2009 U.S. Dist. LEXIS 19210, at *51 (E.D. La. Mar. 2, 2009) (“a small number of . . . objections can be viewed as indicative of the adequacy of the settlement”); *Turner v. Murphy Oil USA, Inc.*, 472 F. Supp. 2d 830, 853 (E.D. La. 2007) (same); *DeHoyos v. Allstate Corp.*, 240 F.R.D. 269, 293 (W.D. Tex. 2007) (“[a] minimal level of opposition from absent class members weighs in favor of approving the settlement”).

After an extensive Court-approved notice program, the Settlement Class’ response to the Settlement and Plan of Allocation appears to be overwhelmingly positive. To counsel’s knowledge,

⁴ Murray Supplemental Decl., Ex. A.

as of the date of this statement, no objection has been received to the Settlement and only one request for exclusion was received late. Murray Supplemental Decl., Ex. A.

A small number of requests for exclusion supports the finding that the proposed Settlement is fair, reasonable, and adequate. *See In re Oil Spill*, 295 F.R.D. 112, 150 (E.D. La. 2013) (“relatively few number of . . . opt outs supported fairness and adequacy of the settlement”); *Billitteri v. Sec. Am., Inc.*, No. 3:09-cv-01568-F, 2011 WL 3586217, at *14 (N.D. Tex. Aug. 4, 2011) (finding class members’ opinions favored approval of the settlement where “[t]he extremely small number of opt-outs suggests a favorable opinion by the absent class members”) (citation omitted); *OCA*, 2009 U.S. Dist. LEXIS 19210, at *51 (“a small number of opt-outs . . . can be viewed as indicative of the adequacy of the settlement”).

III. THE REACTION OF THE SETTLEMENT CLASS STRONGLY SUPPORTS APPROVAL OF LEAD COUNSEL’S REQUEST FOR AN AWARD OF ATTORNEYS’ FEES AND EXPENSES AND AN AWARD TO LEAD PLAINTIFF PURSUANT TO 15 U.S.C. §77z-1(a)(4)

For their exhaustive efforts, Lead Counsel request an award of attorneys’ fees of 33% of the Settlement Amount and expenses of \$205,170.61, which were reasonably incurred in the prosecution of the Litigation, plus interest on both amounts at the same rate and for the same periods as earned by the Settlement Fund. *See* ECF No. 19 at 15-24. Lead Counsel’s fee request is well within the normal range of awards made in contingent fee matters of this type in this Circuit, as well as in numerous decisions throughout the country, and is the appropriate method of compensating counsel for the result achieved. Moreover, this fee request falls squarely within the mandate of the Private Securities Litigation Reform Act of 1995 (“PSLRA”) that “a reasonable percentage of the amount” of damages and interest paid to the class be awarded to counsel. *See* 15 U.S.C. §77z-1(a)(6). *See also Erica P. John Fund, Inc. v. Halliburton Co.*, No. 3:02-cv-1152-M, 2018 WL 1942227, at *8 (N.D. Tex. Apr. 25, 2018) (“The PSLRA expressly contemplates the percentage method . . .”).

Further, Lead Plaintiff has approved the amount of the requested attorneys' fees (*see* Declaration of Carol Glock, ¶6, ECF No. 21), giving further validity to the reasonableness of the request.

The Notice informed potential Settlement Class Members that Lead Counsel would request a fee award of up to 33% of the Settlement Amount and payment of expenses not to exceed \$400,000, plus interest on both amounts. The absence of any objections to the requested fee and expense award weighs strongly in favor of approval. *See, e.g., Bethea v. Sprint Commc'ns Co. L.P.*, No. 3:12-cv-322-CWR-FKB, 2013 WL 228094, at *5 (S.D. Miss. Jan. 18, 2013) (citing *In re Remeron Direct Purchaser Antitrust Litig.*, No. 03-0085 FSH, 2005 WL 3008808, at *13 (D.N.J. Nov. 9, 2005)) ("finding that lack of objections from the class supported the reasonableness of the fee request"); *Cook v. Howard Indus., Inc.*, No. 2:11CV41-KS-MTP, 2013 WL 943664, at *4 (S.D. Miss. Mar. 11, 2013) ("The absence of any objection from . . . any Class Member to Class Counsel being awarded [its requested] fee further supports the award."); *In re Enron Corp. Sec.*, 586 F. Supp. 2d 732, 804 (S.D. Tex. 2008) (finding "that general acceptance of the requested fee amount by all the pension funds and all but one institutional investor strongly supports the reasonableness" of the requested fees).

Similarly, the lack of any objection to Lead Plaintiff's modest request pursuant to 15 U.S.C. §77z-1(a)(4), which was also disclosed in the Notice, supports approval of that request. *See, e.g., Halliburton*, 2018 WL 1942227, at *47.

IV. CONCLUSION

For the reasons set forth herein and in Lead Plaintiff's and Lead Counsel's previously submitted briefs and declarations, Lead Plaintiff respectfully submits that the Settlement is a very good result for the Settlement Class under the circumstances, and considering the risk of proceeding to trial. Likewise, the proposed Plan of Allocation is both fair and reasonable. Therefore, both should be approved as fair, reasonable, and adequate. In addition, Lead Counsel's fee and expense

request is reasonable under the circumstances and should be awarded in the amounts requested, as should Lead Plaintiff's request pursuant to 15 U.S.C. §77z-1(a)(4). Proposed orders are submitted herewith.

DATED: April 5, 2021

Respectfully submitted,

ROBBINS GELLER RUDMAN
& DOWD LLP
SCOTT H. SAHAM (*pro hac vice*)
BRIAN O. O'MARA (*pro hac vice*)
KEVIN S. SCIARANI (*pro hac vice*)

s/ Scott H. Saham

SCOTT H. SAHAM

655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)
scotts@rgrdlaw.com
bomara@rgrdlaw.com
ksciarani@rgrdlaw.com

ROBBINS GELLER RUDMAN
& DOWD LLP
SAMUEL H. RUDMAN
58 South Service Road, Suite 200
Melville, NY 11747
Telephone: 631/367-7100
631/367-1173 (fax)
srudman@rgrdlaw.com

KENDALL LAW GROUP, PLLC
JOE KENDALL (Texas Bar No. 11260700)
3811 Turtle Creek Blvd., Suite 1450
Dallas, TX 75219
Telephone: 214/744-3000
214/744-3015 (fax)
jkendall@kendalllawgroup.com

JOHNSON FISTEL, LLP
MICHAEL I. FISTEL, JR.
WILLIAM W. STONE
40 Powder Springs Street
Marietta, GA 30064
Telephone: 470/632-6000
770/200-3101 (fax)
michaelf@johnsonfistel.com
williams@johnsonfistel.com

LOWENSTEIN SANDLER LLP
MICHAEL S. ETKIN (*pro hac vice*)
ANDREW BEHLMANN
One Lowenstein Drive
Roseland, NJ 07068
Telephone: 973/597-2500
973/597-2400 (fax)
metkin@lowenstein.com
abehlmann@lowenstein.com

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on April 5, 2021, 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 e-mail addresses on the Electronic Mail Notice List.

s/ Scott H. Saham

SCOTT H. SAHAM

ROBBINS GELLER RUDMAN
& DOWD LLP
655 West Broadway, Suite 1900
San Diego, CA 92101-8498
Telephone: 619/231-1058
619/231-7423 (fax)

E-mail: scotts@rgrdlaw.com