

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PLYMOUTH COUNTY RETIREMENT)	Civil No. 1:17-CV-01940-RC
ASSOCIATION, Individually and on Behalf of)	
All Others Similarly Situated,)	<u>CLASS ACTION</u>
)	
Plaintiff,)	
)	
vs.)	
)	
ADVISORY BOARD COMPANY, ROBERT)	
W. MUSSLEWHITE, and MICHAEL T.)	
KIRSHBAUM,)	
)	
Defendants.)	
)	
_____)	

REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF LEAD PLAINTIFFS'
UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT
AND LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND
PAYMENT OF LITIGATION EXPENSES

Pursuant to Rules 23(e) and 54 of the Federal Rules of Civil Procedure, Lead Plaintiffs City of Atlanta Police Officers' Pension Fund and City of Atlanta Firefighters' Pension Fund (collectively, "Lead Plaintiffs"), on behalf of themselves and all Members of the Class, through their counsel, respectfully submit this reply memorandum of law in further support of: (1) Lead Plaintiffs' unopposed motion for final approval of class action settlement (ECF No. 42); and (2) Lead Counsel's motion for an award of attorneys' fees and payment of litigation expenses (ECF No. 43).¹

PRELIMINARY STATEMENT

Now that the April 15, 2020 deadline for objections has passed, Lead Plaintiffs and Lead Counsel are pleased to report to the Court that the reaction of the Class to the Settlement, Plan of Allocation, and Lead Counsel's motion for attorneys' fees and litigation expenses has been overwhelmingly positive. To date, over 23,500 Claim Packages have been mailed to potential Class Members or their nominees. *See* Declaration of Ross D. Murray Regarding Notice Dissemination, Publication, and Requests for Exclusion Received to Date (ECF No. 42-4), ¶ 11. *No one* has objected to the Settlement, the Plan of Allocation, or the requested attorneys' fees and expenses.² As a result, Lead Plaintiffs and Lead Counsel respectfully submit that the reaction of the Class strongly supports approval of the Settlement, the Plan of Allocation, and the award of attorneys' fees and litigation expenses.

¹ All capitalized terms not otherwise defined herein have the same meanings as set forth in the Stipulation of Settlement, dated December 6, 2019 (the "Stipulation") (ECF No. 37).

² One request for exclusion from the Class was received, but it does not provide the information required by the Order Preliminarily Approving Settlement and Providing for Notice (ECF No. 39) at ¶15; therefore it is invalid.

ARGUMENT

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

“One of the factors generally considered in determining the reasonableness of a settlement is the reaction of the class.” *In re Vitamins Antitrust Litig.*, No. MDL 1285, 2001 WL 856290, at *3 (D.D.C. July 19, 2001). “The attitude of the members of the class, as expressed directly or by failure to object, after notice, to the settlement, is a proper consideration for the trial court[.]” *Ceccone v. Equifax Info. Servs. LLC.*, No. 13-CV-1314 KBJ, 2016 WL 5107202, at *10 (D.D.C. Aug. 29, 2016) (citation omitted).

Here, *no* Class Member has objected to the Settlement. Thus, this factor “unambiguously weighs in favor of approval.” *Alvarez v. Keystone Plus Constr. Corp.*, 303 F.R.D. 152, 164 (D.D.C. 2014) (citation omitted); *see also Osher v. SCA Realty I, Inc.*, 945 F. Supp. 298, 305 (D.D.C. 1996) (finding that “the reaction of the Class members is overwhelmingly in favor of the proposed settlement” where only one class member objected to the settlement); *In re Fed. Nat’l Mortg. Ass’n Sec., Derivative, and “ERISA” Litig.*, 4 F. Supp. 3d 94, 103 (D.D.C. 2013) (finding the reaction of the class positive and supports approval where only four objections were submitted); *In re Baan Co. Sec. Litig.*, 284 F. Supp. 2d 62, 66 (D.D.C. 2003) (“The absence of objections to the Settlement and negligible requests for exclusion also support its approval.”).

Likewise, there has not been a single objection to the proposed Plan of Allocation, providing firm support for its approval. The Plan of Allocation, developed in consultation with Lead Plaintiffs’ damages consultant, is designed to fairly and rationally allocate the Net Settlement Fund among Authorized Claimants. The reaction of the Class to the Plan of Allocation provides additional support for the approval of the Plan of Allocation and for the Settlement itself. *See Fed. Nat’l Mortg. Ass’n*, 4 F. Supp. 3d at 103 (approving plan of allocation that had a reasonable and rational basis where there was one objection).

II. THE REACTION OF THE CLASS STRONGLY SUPPORTS APPROVAL OF LEAD COUNSEL’S REQUEST FOR ATTORNEYS’ FEES AND PAYMENT OF LITIGATION EXPENSES

Not one Class Member has objected to Lead Counsel’s motion for an award of attorneys’ fees and payment of litigation expenses. As courts regularly recognize, the fact that there have been no objections is strong evidence that the requested fee is fair and reasonable. *Fed. Nat’l Mortg. Ass’n*, 4 F. Supp. 3d at 113 (awarding lead counsel’s fee request and noting that “there were no class member objections to the fee request”); *see also In re Baan Co. Sec. Litig.*, 288 F. Supp. 2d 14, 17 (D.D.C. 2003) (“Also noteworthy is the fact that only one objection to counsel’s application for attorneys’ fees has been filed.”).

Ultimately, the fact that there have been no objections to the request for attorneys’ fees and litigation expenses, or to Lead Plaintiffs’ request for payment of their expenses overwhelmingly supports the fairness and reasonableness of the fee and expense request.

CONCLUSION

For the reasons set forth herein and in the initial memoranda of law and declarations in support of the motions, Lead Plaintiffs and Lead Counsel respectfully request that this Court approve the proposed Settlement as fair, reasonable, and adequate, approve the Plan of Allocation of the Net Settlement Fund, and approve Lead Counsel’s request for attorneys’ fees and payment of litigation expenses (including those incurred by Lead Plaintiffs). Three proposed orders are being filed herewith.

DATED: April 29, 2020

Respectfully submitted,

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Lead Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I, Nancy M. Juda, hereby certify that on April 29, 2020, I authorized a true and correct copy of the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such public filing to all counsel registered to receive such notice.

s/ Nancy M. Juda
NANCY M. JUDA