

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FADI DAHHAN, Individually and on Behalf of All Others Similarly Situated,	)	No. 1:17-cv-10511-IT
)	
Plaintiff,	)	<u>CLASS ACTION</u>
)	
vs.	)	REPLY MEMORANDUM OF LAW IN
	)	FURTHER SUPPORT OF: (A) LEAD
OVASCIENCE, INC., et al.,	)	PLAINTIFF'S MOTION FOR FINAL
	)	APPROVAL OF CLASS ACTION
Defendants.	)	SETTLEMENT AND APPROVAL OF PLAN
	)	OF ALLOCATION; AND (B) LEAD
	)	COUNSEL'S MOTION FOR AN AWARD
	)	OF ATTORNEYS' FEES AND PAYMENT
	)	OF LITIGATION EXPENSES, CHARGES
	)	AND COSTS

Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Lead Plaintiff Freedman Family Investments LLC, on behalf of the proposed Class, and Lead Counsel respectfully submit this reply memorandum of law in further support of: (i) Lead Plaintiff's Motion for Final Approval of Class Action Settlement and Approval of the Plan of Allocation; and (ii) Lead Counsel's Motion for an Award of Attorneys' Fees and Payment of Litigation Expenses, Charges and Costs.¹

I. PRELIMINARY STATEMENT

In accordance with the Court's Order Preliminarily Approving Settlement and Providing for Notice (ECF 178) (the "Preliminary Approval Order"), the Court-approved Claims Administrator for the Settlement, Gilardi & Co. LLC ("Gilardi"), conducted an extensive notice program, including mailing over 33,600 copies of the Notice Package (consisting of the Settlement Notice and Claim Form) to potential Class Members and their nominees.² The Settlement Notice informed recipients of, among other things, the essential terms of the \$15 million Settlement, the Plan of Allocation, and Lead Counsel's intention to apply to the Court for attorneys' fees in the amount of 33-1/3% of the Settlement Amount and payment of litigation expenses in an amount not to exceed \$875,000, plus interest on both amounts. In addition, the Notice Package, along with the papers in support of final approval of the Settlement, the Plan of Allocation, and Lead Counsel's fee and expense requests, were made available on the website established for the Action, www.OvaScienceSecuritiesLitigation.com. The Summary Settlement Notice was published in the national edition of *The Wall Street Journal* and transmitted over the *PR Newswire* on May 6, 2022.

¹ All capitalized terms not defined herein have the same meanings set forth in the Stipulation and Agreement of Settlement dated March 4, 2022. *See* ECF 174. Internal citations are omitted, and emphasis is added throughout, unless otherwise indicated.

² *See* Supplemental Declaration of Ross D. Murray Regarding Notice Dissemination and Requests for Exclusion Received to Date, dated July 18, 2022 ("Supp. Mailing Decl."), submitted herewith.

See ECF 187, ¶12. The deadline to file an objection to any aspect of the Settlement or for persons to request exclusion from the Class (July 5, 2022) has now passed.

Lead Plaintiff and Lead Counsel are pleased to advise the Court *that they have not received a single objection* to any aspect of the Settlement, the Plan of Allocation, or the requested attorneys' fees and expenses. Further, only two timely requests for exclusion were received. See Supp. Mailing Decl., ¶¶5-6.³ Additionally, the lead plaintiff appointed by the Court to prosecute, monitor, and oversee this securities fraud class action has expressly endorsed both the Settlement and Lead Counsel's requested attorneys' fees and expenses in a sworn declaration (see ECF 186, ¶¶11). The Lead Plaintiff's support and the total absence of objections are clear testaments to the fairness, adequacy, and reasonableness of the Settlement, the Plan of Allocation, and the fee and expense requests. Therefore, for all the reasons set forth in the briefs and declarations filed in support, the Court is requested to approve the Settlement, Plan of Allocation, and attorneys' fees, expenses and costs.

II. ARGUMENT

A. The Class' Reaction Strongly Supports Approval of the Settlement and the Plan of Allocation

Lead Plaintiff and Lead Counsel respectfully submit that the opening papers in support of the motion for final approval of the proposed \$15 million Settlement and Plan of Allocation amply demonstrate that the motion should be granted. Now that the time for objecting has passed, the Class' reaction also clearly supports approval.

Courts recognize that the “favorable reaction of [the] class to settlement, albeit not dispositive, constitutes strong evidence of fairness of proposed settlement and supports judicial

³ In addition, four timely requests for exclusion were received in response to the Notice of Pendency of Class Action provided in 2020. ECF 123.

approval.” *Hill v. State St. Corp.*, 2015 WL 127728, at *8 (D. Mass. Jan. 8, 2015); *see also Bussie v. Allmerica Fin. Corp.*, 50 F. Supp. 2d 59, 77 (D. Mass. 1999) (“The number of requests for exclusion from the settlement, as well as the number and substance of objections filed constitutes strong evidence of fairness of proposed settlement and supports judicial approval.”). Following the extensive notice program undertaken in accordance with the Court’s Preliminary Approval Order, the fact that there was *not a single* objection strongly supports approval of the Settlement.

In addition, there have been no objections to the Plan of Allocation. As discussed in Lead Plaintiff’s opening papers, just like the Settlement as a whole, the Plan of Allocation must be fair and reasonable. *See Hill*, 2015 WL 127728, at *11 (“A plan for allocating settlement proceeds, like the settlement itself, should be approved if it is fair, reasonable and adequate.”). Here, Lead Counsel believe that the Plan of Allocation, which was developed after careful consideration and analysis and in consultation with a consulting damages expert, is fair and reasonable. The Class’ reaction provides additional strong support for approving the Plan of Allocation.

B. The Class’ Reaction Also Strongly Supports Approval of Lead Counsel’s Fee and Expense Requests

As is true with the Settlement, not a single Class Member has objected to Lead Counsel’s motion for an award of attorneys’ fees of 33-1/3% of the Settlement Fund, payment of litigation expenses, charges and costs of \$813,208.13, and an award of \$10,000 to Lead Plaintiff for its representation of the Class. The fact that there are no objections is strong evidence that the requested amount of fees and expenses is reasonable. *See, e.g., Hill*, 2015 WL 127728, at *19 (“[T]he favorable reaction of the class . . . support[s] approval of the requested fees.”); *Bezdek v. Vibram USA Inc.*, 79 F. Supp. 3d 324, 351 (D. Mass. 2015), *aff’d*, 809 F.3d 78 (1st Cir. 2015)

(finding “overwhelmingly positive” reaction of class to settlement and “quite low number of opt-outs” weighed in favor of requested fee).

III. CONCLUSION

For the foregoing reasons and the reasons detailed in Lead Plaintiff’s and Lead Counsel’s opening papers, Lead Plaintiff and Lead Counsel respectfully request that the Court approve: (i) the Settlement; (ii) the Plan of Allocation; and (iii) Lead Counsel’s request for attorneys’ fees and litigation expenses, including an award to Lead Plaintiff pursuant to 15 U.S.C. §78u-4(a)(4). Proposed orders are submitted herewith.

DATED: July 18, 2022

Respectfully submitted,

ROBBINS GELLER RUDMAN
& DOWD LLP
JACK REISE (*pro hac vice*)
STEPHEN R. ASTLEY (*pro hac vice*)
ELIZABETH A. SHONSON (*pro hac vice*)
SABRINA E. TIRABASSI (*pro hac vice*)

s/ STEPHEN R. ASTLEY

STEPHEN R. ASTLEY

120 East Palmetto Park Road, Suite 500
Boca Raton, FL 33432
Telephone: 561/750-3000
561/750-3364 (fax)
jreise@rgrdlaw.com
sastley@rgrdlaw.com
eshonson@rgrdlaw.com
stirabassi@rgrdlaw.com

ROBBINS GELLER RUDMAN
& DOWD LLP
ELLEN GUSIKOFF STEWART (*pro hac vice*)
655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)
elleng@rgrdlaw.com

Lead Counsel for Plaintiff

LAW OFFICE OF ALAN L. KOVACS
ALAN L. KOVACS (BBO #278240)
257 Dedham Street
Newton, MA 02461
Telephone: 617/964-1177
617/332-1223 (fax)
alankovacs@yahoo.com

Local Counsel

CRIDEN & LOVE, P.A.
MICHAEL E. CRIDEN
7301 SW 57th Court, Suite 515
South Miami, FL 33143
Telephone: 305/357-9000
305/357-9050 (fax)

Additional Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that this document, filed through the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants, if any, on July 18, 2022.

s/ Stephen R. Astley

STEPHEN R. ASTLEY