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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO

In re MICRO FOCUS INTERNATIONAL)
PLC SECURITIES LITIGATION)
_____))
This Document Relates To:)
ALL ACTIONS.)
_____)

Electronically
FILED
by Superior Court of California, County of San Mateo
ON 7/11/2023
By /s/ Ashlee Nelson
Deputy Clerk

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Lead Case No. 18CIV01549
CLASS ACTION
REPLY MEMORANDUM OF POINTS AND
AUTHORITIES IN FURTHER SUPPORT OF
MOTIONS FOR (1) FINAL APPROVAL OF
CLASS ACTION SETTLEMENT AND PLAN
OF ALLOCATION AND (2) AWARD OF
ATTORNEYS' FEES, PAYMENT OF
LITIGATION EXPENSES, AND SERVICE
AWARDS

Assigned for All Purposes to:
Hon. Marie S. Weiner, Dept. 2

DATE: July 25, 2023
TIME: 2:00 pm

Date Action Filed: 03/28/18

1 Plaintiffs and Class Representatives Ian Green and the Cardella Family Irrevoc Trust U/A
2 06/17/15, on behalf of themselves and the proposed Settlement Class, respectfully submit this reply
3 memorandum of points and authorities in further support of the Motions for (1) Final Approval of
4 Class Action Settlement and Plan of Allocation and (2) Award of Attorneys’ Fees, Payment of
5 Litigation Expenses, and Service Awards.

6 **I. INTRODUCTION**

7 As set forth in the Final Approval Motion, the proposed \$107,500,000 cash Settlement is an
8 excellent result for the Class. It was reached only after the Action had reached an advanced stage,
9 two full-day mediations had taken place, and the Parties had engaged in a robust dialogue with the
10 Mediator regarding the strengths and weaknesses of their respective claims and defenses. To date,
11 Class Counsel have received only two objections despite mailing almost 314,000 Settlement Notices.
12 As explained below, the objectors’ gripes are detached from the factual record and entirely disregard
13 the work performed – and risks assumed – in achieving the proposed Settlement. Additionally, only
14 100 potential Settlement Class Members have requested exclusion (all individual investors, except
15 for two trusts), which further supports the fairness, reasonableness, and adequacy of the proposed
16 Settlement. Accordingly, all relevant factors militate in favor of granting the Motions in full.¹

17 **II. ARGUMENT**

18 As set forth below, the reaction of the proposed Settlement Class supports approval of the
19 proposed Settlement and Plan of Allocation and the requested fee and expense awards and awards to
20 Plaintiffs.

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22
23 ¹ To be timely, Proofs of Claim had to be postmarked, if mailed, or electronically submitted, by
24 June 30, 2023. See Supplemental Declaration of Alexander P. Villanova Regarding Notice
25 Dissemination, Publication, and Requests for Exclusion and Objections Received to Date
26 (“Supplemental Villanova Declaration”), attached as Ex. 1 to the Supplemental Joint Declaration of
27 Amanda F. Lawrence, Mark C. Molumphy, and James I. Jaconette in Further Support of Motions for
28 (1) Final Approval of Class Action Settlement and Plan of Allocation and (2) Award of Attorneys’
Fees, Payment of Litigation Expenses, and Service Awards (“Supplemental Joint Declaration”), ¶6.
As of July 10, 2023, Epiq has received a total of 43,519 claims. *Id.* Because Epiq is still reviewing
and processing claims, the information provided herein is preliminary and subject to further analysis
and quality control. *Id.*, ¶6 n.2.

1 **A. The Reaction of the Proposed Settlement Class Strongly Supports Approval of**
2 **the Proposed Settlement and Plan of Allocation**

3 “[T]he absence of a large number of objections to a proposed class action settlement raises a
4 strong presumption that the terms of [the] proposed class settlement are favorable to the class.” *In re*
5 *Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1043 (N.D. Cal. 2008);² *see also Hanlon v. Chrysler*
6 *Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998) (“[T]he fact that the overwhelming majority of the class
7 willingly approved the offer and stayed in the class presents at least some objective positive
8 commentary as to its fairness.”); *Larsen v. Trader Joe’s Co.*, 2014 WL 3404531, at *5 (N.D. Cal. July
9 11, 2014) (“A court ‘may appropriately infer that a class action settlement is fair, adequate, and
10 reasonable when few class members object to it.’”); *see also Dunk v. Ford Motor Co.*, 48 Cal. App.
11 4th 1794, 1801 (1996) (noting the factor). Here, as discussed below, there are just *two* objections – a
12 fact that supports a presumption that the proposed Settlement is fair. *See 7-Eleven Owners for Fair*
13 *Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1153 (2000) (one factor that “lead[s] to a
14 presumption the settlement was fair” is that only “a small percentage of objectors” came forward);
15 *see also National Rural Telecommc’ns. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal.
16 2004) (absence of large number of objections raises a strong presumption that settlement is fair to the
17 class).

18 The absence of objections from sophisticated institutional investors underscores the fairness
19 and reasonableness of the proposed Settlement, since those investors undoubtedly have the means
20 and incentive to express their dissatisfaction with substandard resolutions. *See In re Facebook, Inc.,*
21 *IPO Secs. & Deriv. Litig.*, 343 F. Supp. 3d 394, 410 (S.D.N.Y. 2018), *aff’d sub nom. In re Facebook,*
22 *Inc.*, 822 F. App’x 40 (2d Cir. 2020) (“That not one sophisticated institutional investor objected to
23 the Proposed Settlement is indicia of its fairness.”); *see also In re Cathode Ray Tube (CRT) Antitrust*
24 *Litig.*, 2017 WL 2481782, at *4 (N.D. Cal. June 8, 2017) (absence of any entity objection supports
25 “the inference that the class approves of the settlement is even stronger”). In fact, there were just 100
26 requests for exclusion out of the almost 314,000 Claim Packages sent to potential Settlement Class
27

28 ² Unless otherwise noted, citations are omitted and emphasis is added.

1 Members and their nominees – and not a single sophisticated institutional investor opted out. *See*
2 *Destefano v. Zynga, Inc.*, 2016 WL 537946, at *14 (N.D. Cal. Feb. 11, 2016) (noting that “a low
3 number of exclusions . . . supports the reasonableness of a securities class action settlement”).³ These
4 facts also support the reasonableness of the Plan of Allocation. *See Atlas v. Accredited Home Lenders*
5 *Holding Co.*, 2009 WL 3698393, at *4 (S.D. Cal. Nov. 4, 2009) (noting “predominantly positive
6 response” to plan of allocation where only two objections were submitted).

7 The lack of objections and exclusion requests is understandable: as noted in the opening
8 papers, the \$107.5 million proposed Settlement amount is well above the range of court-approved
9 settlements in recent years in securities class actions.⁴ This litigation was hard-fought, the claims
10 were amply vetted, and Class Counsel achieved significant value for the proposed Settlement Class.
11 Moreover, the proposed Settlement is even more valuable to the proposed Settlement Class because
12 it eliminates the delay and cost of protracted litigation. The Court should therefore grant final
13 approval.

14 **B. The Reaction of the Proposed Settlement Class Strongly Supports Approval of**
15 **the Requested Attorneys’ Fees, Litigation Expenses, and Service Awards**

16 The absence of objections and a *de minimis* number of exclusion requests also strongly
17 supports the fairness, reasonableness, and adequacy of the proposed Settlement. *See In re Nuvelo,*
18 *Inc. Secs. Litig.*, 2011 WL 2650592, at *3 (N.D. Cal. July 6, 2011) (finding one objection to a fee
19 request to be “a strong, positive response from the class”); *see also In re Heritage Bond Litig.*, 2005

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21 _____
22 ³ The 100 requests for exclusion out of the 313,926 Claim Packages disseminated to potential
23 Settlement Class Members and their nominees equates to an opt-out rate of approximately 0.03%,
24 Supplemental Villanova Declaration, ¶¶4, 8, further highlighting the proposed Settlement’s fairness
25 and reasonableness. *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 53 (2008) (presumption of fairness
26 not overcome where “1,234 members (0.2 percent of the class) opted out” of settlement class of
27 “[n]early 700,000 class members”); *Knapp v. Art.com, Inc.*, 283 F. Supp. 3d 823, 828, 834 (N.D. Cal.
28 2017) (presumption of fairness not overcome where “[o]f the nearly 2 million member class, 452
opted out of the settlement,” which “amount[ed] to less than .03 percent of the class”).

⁴ *See* Laarni T. Bulan & Laura E. Simmons, *Securities Class Action Settlements 2022 Review*
and Analysis, CORNERSTONE RSCH., at 1, [https://www.cornerstone.com/wp-content/uploads/2023/03/](https://www.cornerstone.com/wp-content/uploads/2023/03/Securities-Class-Action-Settlements-2022-Review-and-Analysis.pdf)
[Securities-Class-Action-Settlements-2022-Review-and-Analysis.pdf](https://www.cornerstone.com/wp-content/uploads/2023/03/Securities-Class-Action-Settlements-2022-Review-and-Analysis.pdf) (listing \$13 million and \$36.2
million as the median and average securities settlement in 2022, respectively).

1 WL 1594403, at *21 (C.D. Cal. June 10, 2005) (“The absence of objections or disapproval by class
2 members to Class Counsel’s fee request further supports finding the fee request reasonable.”). And
3 once again, the lack of opposition from “‘sophisticated’ institutional investors” – who are incentivized
4 “to object had they believed the requested fees were excessive” – is a significant positive factor. *In*
5 *re Rite Aid Corp. Secs. Litig.*, 396 F.3d 294, 305 (3d Cir. 2005); *see also In re Schering-Plough Corp.*
6 *Enhance ERISA Litig.*, No. 08-1432, 2012 WL 1964451, at *6 (D.N.J. May 31, 2012) (“The lack of
7 objections to the requested attorneys’ fees supports the request, especially because the settlement
8 class includes large, sophisticated institutional investors.”); *In re Bisys Sec. Litig.*, 2007 WL 2049726,
9 at *1 (S.D.N.Y. July 16, 2007) (institutional investors “had the means, the motive, and the
10 sophistication to raise objections if they thought the . . . fee was excessive”).

11 The proposed Settlement Class’ reaction confirms that Class Counsel achieved an outstanding
12 result. Attorneys’ fees of one-third and reimbursement of litigation expenses (here, total expenses
13 are \$843,852.44), are also commonly awarded in such circumstances. In addition to a recent
14 California Supreme Court case affirming such a fee award to class counsel – *Laffitte v. Robert Half*
15 *Int’l, Inc.*, 1 Cal. 5th 480 (2016) – numerous California courts have awarded or upheld one-third fees
16 under similar circumstances. *See* Class Counsel’s Memorandum of Points and Authorities in Support
17 of Motion for an Award of Attorneys’ Fees and Expenses and Service Awards (“Fee and Expense
18 Memorandum”), at 6, 11-12. A one-third fee here represents a modest 2.2 multiplier of Class
19 Counsel’s lodestar. *See id.* at 9. And the expenses and charges incurred – such as case-related travel,
20 experts, discovery, and legal research – are typical and were necessary to successfully prosecute the
21 litigation. Accordingly, the fee and expense requests are reasonable and merit approval.

22 The proposed Settlement Class’ reaction also strongly supports the requested service awards.
23 The two Class Representatives and the Federal Plaintiff dedicated significant time to representing all
24 other investors without any promise of a successful resolution or recovery of their personal losses.
25 As noted in the Fee and Expense Memorandum, courts routinely grant such awards. *Id.* at 15.
26 Approval of the requested awards here is warranted as a matter of public policy and the requested
27 amount of \$15,000 for each of these three plaintiffs is appropriate under applicable precedent. *Id.*

28

1 **C. The Objections to the Requested Awards Should be Rejected**

2 Just two objections – both from individual investors – were submitted.⁵ One objection was
3 submitted by Larry D. Killion (“Killion”) to the request for an award of attorneys’ fees, payment of
4 litigation expenses, and service awards, not to the proposed Settlement itself. *See* Larry D. Killion’s
5 Objection to Proposed or Filed Motion for Award of Attorney Fee and Expense Application and
6 Request for Downward Adjustment, dated May 8, 2023, attached as Ex. 2 to the Supplemental Joint
7 Declaration. Based on Killion’s own submissions, however, he suffered no loss. *See* Supplemental
8 Villanova Declaration, ¶10. In fact, Killion reported an overall *gain* from his investment in Micro
9 Focus. *Id.* Therefore, Killion is not a member of the proposed Settlement Class and has no standing
10 to object. *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 321 n.6 (N.D. Cal. 2018)
11 (“[N]onclass members have no standing to object to the settlement of a class action.”).

12 Notwithstanding this threshold deficiency, Killion’s objection lacks merit. The arguably
13 “legal” grounds provided for Killion’s objection do not require denial of these requests, but rather
14 support their approval.⁶ Killion’s objection is not even tailored to this case.⁷ And as shown in the
15

16 ⁵ James J. Wacker’s Objection to the Micro Focus Securities Litigation Settlement, dated May
17 30, 2023, attached as Ex. 4 to the Supplemental Joint Declaration, was submitted to Epiq and not filed
18 with the Court and Class and Defendants’ Counsel, as this Court’s Preliminary Approval Order
19 required. Supplemental Villanova Declaration, ¶9. On this basis alone, this objection should be
20 overruled. Nevertheless, this memorandum addresses it.

21 ⁶ Killion’s objection references the following: Rule 1.5 of the American Bar Association Model
22 Rules of Professional Conduct (“A lawyer shall not make an agreement for, charge, or collect an
23 unreasonable fee or an unreasonable amount for expenses.”); FED. R. CIV. P. 23 (“the court may award
24 reasonable attorney’s fees”); the Report by the House of Representatives and Senate on the Class
25 Action Fairness Act of 2005 (class action settlements are “subject to court approval”); and *Stalnacker*
26 *v. DLC Ltd.*, 376 F.3d 819 (8th Cir. 2004) (bankruptcy action in which the court explains the lodestar
27 cross-check and approves the requested fee). Those sources do not conflict with the authority Class
28 Representatives and Class Counsel relied upon in the opening papers, all of which support approval
of the requested fees, expenses, and awards. The 42-page paper on class action lawsuits attached to
Killion’s objection adds nothing to the analysis.

⁷ For example, Section 8 of the objection complains of a situation where “the same high fee” is
awarded regardless of “whether a case settled in two hours or after preliminary discovery and pre-
trial settlement negotiations . . .” This proposed Settlement was not reached after “two hours” or
“preliminary discovery.” It is also unreasonable and improper for the objection to characterize the
work performed here merely as “[p]reparing legal documents,” and this Action did not involve “data
breach issues.”

1 Fee and Expense Memorandum, the requested awards are *reasonable*, given the excellent result
2 achieved, the high-level nature of the work performed, and the overwhelmingly favorable reaction of
3 the proposed Settlement Class.

4 Notably, this is not the first time that Killion has objected to a fee and expense request
5 seemingly without understanding the result achieved or the work performed to secure that result. *See*
6 *In re Nielsen Holdings plc Sec. Litig.*, No. 1:18-cv-07143-JMF (S.D.N.Y. June 15, 2022), ECF No.
7 146-9; *In re Nielsen Holdings plc Sec. Litig.*, No. 1:18-cv-07143-JMF (S.D.N.Y. June 27, 2022), ECF
8 No. 147. In *Nielsen*, Killion submitted a similar objection, advancing conceptual opposition to a fee
9 and expense award rather than legitimate criticism of deficiencies in the proposed settlement or
10 shortcomings in the work class counsel performed. In approving the settlement and requested awards,
11 the court ruled “that the one objection from Mr. Killion is flawed both as a matter of law and a matter
12 of fact . . .” *See In re Nielsen Holdings plc Sec. Litig.*, No. 1:18-cv-07143-JMF (S.D.N.Y. Sept. 9,
13 2022), ECF No. 159 (Final Approval Hearing Transcript in *Nielsen*) at 10, attached as Ex. 3 to the
14 Supplemental Joint Declaration. Killion’s objection fares no better here.

15 James J. Wacker’s (“Wacker”) objection is equally meritless. Wacker appears to object to the
16 proposed Settlement on conceptual grounds to class action settlements in general and entirely fails to
17 address the relief achieved and the work performed by Class Representatives and Class Counsel. To
18 the extent it qualifies as a valid objection, Wacker’s objection lacks merit for the same legal and
19 factual reasons as Killion’s objection.

20 In short, all relevant factors favor approval of the requested awards, and the objections provide
21 no reason to conclude otherwise.

22 **III. CONCLUSION**

23 For the reasons set forth herein and in the opening submissions, Class Representatives and
24 Class Counsel hereby request that the Court approve the proposed Settlement, Plan of Allocation,
25 request for attorneys’ fees and expenses, and requested service awards. Attached for the Court’s
26 consideration to the Supplemental Joint Declaration as Ex. 5 is a [Proposed] Judgment and Order
27
28

1 Granting Final Approval, Approving Plan of Allocation, and Awarding Attorneys' Fees,
2 Reimbursement of Expenses, and Approving Service Awards.

3 DATED: July 11, 2023

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