

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE VIRTUS INVESTMENT
PARTNERS, INC. SECURITIES LITIGATION

Case No. 15-cv-1249 (WHP)

**REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF
(I) CLASS REPRESENTATIVE'S MOTION FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT AND PLAN OF ALLOCATION; AND (II) CLASS
COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND
PAYMENT OF LITIGATION EXPENSES**

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Dated: October 17, 2018

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Class Representative Arkansas Teacher Retirement System, on behalf of itself and the certified Class, and Class Counsel respectfully submit this reply memorandum of law in further support of (i) Class Representative's motion for final approval of the proposed Settlement and approval of the proposed Plan of Allocation (ECF No. 149); and (ii) Class Counsel's motion for an award of attorneys' fees and payment of Litigation Expenses (ECF No. 151) (the "Motions").¹

PRELIMINARY STATEMENT

In the opening papers filed in support of the Motions (*see* ECF No. 149-153), Class Representative and Class Counsel explained that the proposed Settlement—which resolves this litigation in its entirety in exchange for a cash payment of \$22 million—satisfies the standards for final approval under Rule 23 of the Federal Rules of Civil Procedure. Now, the deadline for objections has passed, and *not a single Class Member* has objected to any aspect of the proposed Settlement, the proposed Plan of Allocation, or Class Counsel's fee and expense application. Accordingly, Class Representative and Class Counsel respectfully submit that this reaction by the Class further demonstrates the fairness, adequacy, and reasonableness of the Settlement, Plan of Allocation, and Class Counsel's fee and expense application.

ARGUMENT

Pursuant to the Court's Preliminary Approval Order, the Claims Administrator has mailed copies of the Settlement Notice Packet to all potential Class Members identified by Defendants and nominees. *See* Declaration of Tara Donohue dated September 19, 2018 ("Donohue Decl."), at ¶¶ 2-6 (ECF No. 153-3). The Settlement Notice informed Class Members of the terms of the proposed Settlement and Plan of Allocation, and also that Class Counsel would apply for an award

¹ Unless otherwise defined herein, all capitalized terms have the meanings set forth in the Stipulation and Agreement of Settlement (ECF No. 143-1) (the "Stipulation") or the Joint Declaration of Michael H. Rogers and John C. Browne in Support of the Motions (ECF No. 153) ("Joint Decl.").

of attorneys' fees in an amount not to exceed 25% of the Settlement Fund and payment of Litigation Expenses (including the reasonable costs and expenses of Class Representative) in an amount not to exceed \$1,200,000.² The Settlement 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 payment of Litigation Expenses, and the October 3, 2018 deadline for filing such objections.

In addition, copies of the Settlement Notice, Claim Form, Stipulation, Preliminary Approval Order, and Complaint were posted on the website specifically created for this Action (www.VirtusSecuritiesLitigation.com). See Donohue Declaration at ¶ 9. Further, on August 8, 2018, the Claims Administrator published the Summary Settlement Notice in the *Wall Street Journal* and *Financial Times* and released it via *PR Newswire*, informing readers of the proposed Settlement, how to obtain copies of the Settlement Notice Packet, and the deadline for the submission of objections. *Id.* at ¶ 7.

On September 19, 2018, pursuant to the schedule approved by the Court in the Preliminary Approval Order, Class Representative and Class Counsel filed their opening papers in support of the Motions. Those papers—which are available on the public docket (*see* ECF Nos. 149-153), the case website, and Class Counsel's respective firm websites—exhaustively described Class Representative's and Class Counsel's views of the Settlement, work performed in this litigation, and the fee and expense award requested.

Following this extensive notice program, no Settlement Class Member objected to any aspect of the Settlement. This “favorable reaction of the overwhelming majority of class members to the Settlement is perhaps the most significant factor in [the] *Grinnell* inquiry,” and accordingly

² Ultimately, Class Counsel are seeking less than \$1,000,000 in expenses. See Joint Decl. ¶ 178.

strongly supports a finding that the Settlement is fair, reasonable, and adequate. *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 119 (2d Cir. 2005); *see also In re Veeco Instruments Inc. Sec. Litig.*, No. 05 MDL 01695 (CM), 2007 WL 4115809, at *7 (S.D.N.Y. Nov. 7, 2007) (“The lack of objections provides effective evidence of the fairness of the Settlement.”); *Maley v. Del Glob. Techs. Corp.*, 186 F. Supp. 2d 358, 374 (S.D.N.Y. 2002) (the “overwhelmingly positive response by the Class attests to the approval of the Class with respect to the Settlement and the fee and expense application”). As the Second Circuit reasoned in *Wal-Mart*, “[i]f only a small number of objections are received, that fact can be viewed as indicative of the adequacy of the settlement.” 396 F.3d at 118 (citation omitted); *see also In re Bear Stearns Cos., Inc. Sec., Deriv. & ERISA Litig.*, 909 F. Supp. 2d 259, 266-67 (S.D.N.Y. 2012) (even “just two objections” to the settlement weighs strongly in favor of approval).

The absence of objections is even more noteworthy because of the absence of objections from institutional investors or pension funds—particularly here, where Class Counsel believe that significantly more than half of the Company’s outstanding shares during the Class Period were in the hands of large institutional investors. The absence of objections by these sophisticated Class Members—who have the resources to carefully evaluate the Settlement and object if it were appropriate to do so—provides further evidence of the fairness of the Settlement. *See, e.g., In re Citigroup Inc. Sec. Litig.*, 965 F. Supp. 2d 369, 382 (S.D.N.Y. 2013) (that “not a single objection was received from any of the institutional investors” supported settlement); *In re AOL Time Warner, Inc. Sec. & “ERISA” Litig.*, No. MDL 1500, 2006 WL 903236, at *10 (S.D.N.Y. Apr. 6, 2006) (the lack of objections from institutional investors supported approval of settlement); *In re AT&T Corp. Sec. Litig.*, MDL No. 1399, 2005 WL 6716404, at *4 (D.N.J. Apr. 25, 2005)

(approving settlement where “no objections were filed by any institutional investors who had great financial incentive to object”).

The lack of objections from Class Members also supports approval of the Plan of Allocation. *See In re EVCI Career Colls. Holdings Corp. Sec. Litig.*, No. 05 Civ. 10240 (CM), 2007 WL 2230177, at *11 (S.D.N.Y. July 27, 2007) (noting that “[c]ourts... [should] consider the reaction of a class to a plan of allocation” and, where there are no objections, “the Plan of Allocation should be approved”); *Veeco*, 2007 WL 4115809, at *14 (that “not one class member has objected to the Plan of Allocation which was fully explained in the Notice of Settlement sent to all Class Members . . . supports approval of the Plan of Allocation”).

Finally, the absence of any objections to the requested fee or expense award weighs strongly in favor of approval. *See, e.g., Vaccaro v. New Source Energy Partners L.P.*, No. 15 CV 8954 (KMW), 2017 WL 6398636, at *8 (S.D.N.Y. Dec. 14, 2017) (lack of objections by class members to attorneys’ fees supported the award); *In re Veeco Instruments Inc. Sec. Litig.*, No. 05 MDL 01695 (CM), 2007 WL 4115808, at *10 (S.D.N.Y. Nov. 7, 2007) (reaction of class members to fee and expense requests “is entitled to great weight by the Court” and absence of any objections “suggests that [a] fee request is fair and reasonable”) (citation omitted); *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, No. 02-CV-3400 (CM), 2010 WL 4537550, at *29 (S.D.N.Y. Nov. 8, 2010) (absence of objections to counsel’s fee and expense request “attests to the approval of the Class” and supports approval). Similarly, the lack of any objection to the Class Representative’s request for reimbursement of its costs pursuant to the PSLRA, which was also disclosed in the Settlement Notice and Class Counsel’s motion, supports approval of that request. *See, e.g., Flag Telecom*, 2010 WL 4537550, at *31.

CONCLUSION

For the reasons set forth herein and in the opening papers filed in support of the Motions, Class Representative and Class Counsel respectfully request that the Court approve the proposed Settlement, the proposed Plan of Allocation, and the request for attorneys' fees and payment of expenses, including the costs incurred by the Class Representative. Copies of the (i) proposed Judgment Approving Class Action Settlement; (ii) proposed Order Approving Plan of Allocation of Net Settlement Fund; and (iii) proposed Order Awarding Attorneys' Fees and Litigation Expenses are being filed via ECF.

Dated: October 17, 2018

Respectfully submitted,

/s/ John C. Browne

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*Class Counsel and Co-Lead Counsel for
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CERTIFICATE OF SERVICE

I, JOHN C. BROWNE, hereby certify that on October 17, 2018, 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/ John C. Browne

John C. Browne