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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

RICHARD GOODMAN, *Individually
And As Trustee of the Richard M.
Goodman Revocable Living Trust, And
On Behalf Of All Others Similarly
Situated,*

Plaintiff,

vs.

UBS FINANCIAL SERVICES INC.,

Defendant.

Case No.: 2:21-cv-18123-SDW-
MAH

**REPLY MEMORANDUM OF
LAW IN FURTHER SUPPORT
OF: (1) PLAINTIFF'S
UNOPPOSED MOTION FOR
FINAL APPROVAL OF CLASS
ACTION SETTLEMENT AND
PLAN OF ALLOCATION; AND (2)
PLAINTIFF'S COUNSEL'S
MOTION FOR AN AWARD OF
ATTORNEYS' FEES AND
REIMBURSEMENT OF
LITIGATION EXPENSES**

Hon. Michael A. Hammer

Class Action

Motion Day: December 7, 2023

TABLE OF CONTENTS

I. THE COURT-APPROVED NOTICE PROGRAM HAS BEEN IMPLEMENTED.....2

II. UPDATE REGARDING NUMBER OF SETTLEMENT CLASS MEMBERS.....3

III. ANTICIPATED DISTRIBUTION MOTION.....5

IV. ARGUMENT.....5

 A. The Settlement Class’s Reaction Strongly Supports Approval Of The Settlement And Plan Of Allocation.....5

 B. The Settlement Class’s Positive Reaction Supports The Fee And Expense Request.....7

V. CONCLUSION.....9

TABLE OF AUTHORITIES

CASES

Dartell v. Tibet Pharm., Inc.,
2017 WL 2815073 (D.N.J. June 29, 2017)7

Girsh v. Jepson,
521 F.2d 153 (3d Cir. 1975)6

In re Datatec Systems, Inc. Sec. Litig.,
2007 WL 4225828 (D.N.J. Nov. 28, 2007).....7

In re Innocoll Holdings Pub. Ltd. Co. Sec. Litig.,
2022 WL 16533571 (E.D. Pa. Oct. 28, 2022).....7

In re Linerboard Antitrust Litig.,
321 F. Supp. 2d 619 (E.D. Penn. 2004).....6

In re Mercedes-Benz Emissions Litig.,
2021 WL 7833193 (D.N.J. Aug. 2, 2021).....6

In re Par Pharm. Sec. Litig.,
2013 WL 3930091 (D.N.J. July 29, 2013)6, 7

In re Remeron Direct Purchaser Antitrust Litig.,
2005 WL 3008808 (D.N.J. Nov. 9, 2005).....8

In re Rite Aid Corp. Sec. Litig.,
396 F.3d 294 (3d Cir. 2005)7

In re Schering-Plough Corp. Enhance Sec. Litig.,
2013 WL 5505744 (D.N.J. Oct. 1, 2013).....5

Singleton v. First Student Mgmt. LLC,
2014 WL 3865853 (D.N.J. Aug. 6, 2014).....5

Stoetzner v. U.S. Steel Corp.,
897 F.2d 115 (3d Cir. 1990)6

Plaintiff Richard Goodman (“Plaintiff”), on behalf of himself and all other members of the proposed Settlement Class, and his counsel, Glancy Prongay & Murray LLP (“Lead Plaintiff’s Counsel”),¹ respectfully submit this memorandum in further support of: (i) Plaintiff’s Unopposed Motion for Final Approval of Class Action Settlement and Plan of Allocation (ECF Nos. 64-65, the “Final Approval Motion”); and (ii) Plaintiff’s Counsel’s Motion for an Award of Attorneys’ Fees and Reimbursement of Litigation Expenses (ECF Nos. 66-67, the “Fee and Expense Application”).² This memorandum updates the Court on the status of the notice program and the Settlement Class’s reaction thereto, including the fact that there have been no objections to the Settlement, Plan of Allocation, or request for attorneys’ fees and reimbursement of Litigation Expenses, and or any requests for exclusion from the Settlement Class.

¹ Glancy Prongay & Murray LLP (“GPM”), together with Goodman Hurwitz & James, P.C. (“GHJ”) together serve as Plaintiff’s Counsel. William H. Goodman was the partner who oversaw or conducted the day-to-day activities in the action for GHJ. *See* ECF No. 68-4 at ¶5. On November 17, 2023, William H. Goodman passed away. GPM will continue to coordinate with GHJ concerning the resolution of this action.

² Unless otherwise defined, all capitalized terms herein have the same meanings as set forth in the Stipulation and Agreement of Settlement dated June 8, 2023 (“Stipulation”) (ECF No. 55-1), or in the Declaration of Garth Spencer in Support of: (I) Plaintiff’s Unopposed Motion for Final Approval of Class Action Settlement and Plan of Allocation; and (II) Lead Counsel’s Motion for an Award of Attorneys’ Fees and Reimbursement of Litigation Expenses (“Spencer Declaration”) (ECF No. 68).

I. THE COURT-APPROVED NOTICE PROGRAM HAS BEEN IMPLEMENTED

Pursuant to the Court’s July 12, 2023, Order Preliminarily Approving Settlement and Providing for Notice (ECF No. 60, the “Preliminary Approval Order”), approximately 2,481 copies of the Court-approved Postcard Notice were timely mailed, and/or a link to the notice package (consisting of the Notice and Claim Form) were timely emailed, by the Court-appointed Settlement Administrator, Strategic Claims Services (“SCS”), to potential Settlement Class Members identified by UBS.³ In addition, the Notice, Claim Form, Stipulation, and Preliminary Approval Order, among other important case-related documents, were posted on the Settlement Website (www.UBSTaxSettlement.com). *See* Initial Mailing Decl., ¶8. The Postcard Notice and Notice informed Settlement Class Members of the November 16, 2023, deadline to submit an objection to the Settlement, Plan of Allocation, or request for attorneys’ fees and reimbursement of Litigation Expenses, or request exclusion from the Settlement Class.

On November 2, 2023, fourteen (14) days prior to the objection deadline, Plaintiff and Plaintiff’s Counsel filed their opening papers in support of the Settlement, Plan of Allocation, and request for attorneys’ fees and reimbursement of Litigation Expenses. The motions are supported by the declarations of Plaintiff,

³ *See* Declaration of Josephine Bravata Concerning: (A) Mailing of Notice; (B) Report on Exclusions and Objections; and (C) Distribution Plan (the “Initial Mailing Decl.”)), at ¶¶4-6 (ECF No. 68-1).

Plaintiff's Counsel, and the Settlement Administrator. *See* ECF No. 68 and exhibits thereto. These papers are available on the public docket and were posted on the Settlement Website. *See* ECF Nos. 64-68; Supplemental Declaration of Josephine Bravata Concerning: (1) Mailing of Notice; (2) Report on Exclusions and Objections; and (3) Distribution Plan ("Suppl. Mailing Decl."), at ¶8.

Following this extensive notice process, ***no*** Settlement Class Member has objected to the Settlement, the Plan of Allocation, or Plaintiff's Counsel's application for attorneys' fees and reimbursement of Litigation Expenses. *See id.* at ¶10. Moreover, SCS has not received a single request for exclusion. *See id.* at ¶9.

For all the reasons set forth herein, and in the opening papers filed with the Court on November 2, 2023, the Court should approve the Settlement, Plan of Allocation and request for attorneys' fees, reimbursement of Litigation Expenses, and service award.

II. UPDATE REGARDING NUMBER OF SETTLEMENT CLASS MEMBERS

When filing the opening papers on November 2, 2023, Plaintiff notified the Court that the data provided by UBS reflecting 2,481 potential Settlement Class Members may be slightly over inclusive. *See* ECF No. 68-1 at ¶4 n.2. Plaintiff further advised that Lead Plaintiff's Counsel, the Settlement Administrator and UBS were working to obtain and analyze additional data concerning potential

Settlement Class Members, and would update the Court in this reply brief. *See* ECF No. 65 at 18 n.5; ECF No. 67 at 15 n.9; ECF No. 68 at 20 n.3.

Since then, the Parties have continued to analyze UBS's data concerning potential Settlement Class Members, and UBS has confirmed to Plaintiff that a minority of the 2,481 potential Settlement Class Members reflected in the data previously produced are not in fact Settlement Class Members, because their relevant transactions were made in a non-taxable account, or because they are not located in the United States. *See* Supplemental Declaration of Garth Spencer ("Suppl. Spencer Decl.") at ¶¶4-5; Suppl. Mailing Decl., at ¶5. Based on the data provided by UBS and Lead Plaintiff's Counsel, the Settlement Administrator has identified 2,288 accounts which qualify for inclusion in the Settlement Class. *See* Suppl. Mailing Decl., at ¶6. Using the information provided by UBS and Lead Plaintiff's Counsel, the Settlement Administrator has matched each of these 2,288 accounts to a Settlement Class Member contained on the list of 2,481 potential Settlement Class Members who received notice of the Settlement. *See id.*

Lead Plaintiff's Counsel is informed that for 31 of the accounts that are contained in UBS's data identifying 2,481 potential Settlement Class Members, but that are not contained in the group of 2,288 accounts determined to belong to Settlement Class Members, UBS no longer has data sufficient to determine whether those 31 accounts are taxable in the United States, and therefore

potentially eligible for inclusion in the Settlement Class. *See* Suppl. Spencer Decl. at ¶5. Therefore, Plaintiff intends to coordinate with the Settlement Administrator to reach out to the owners of those 31 accounts in order to obtain additional information to confirm whether they are or are not Settlement Class Members.

III. ANTICIPATED DISTRIBUTION MOTION

The Stipulation provides that the Net Settlement Fund may be distributed to Settlement Class Members upon the occurrence of the Effective Date. *See* Stipulation ¶¶10, 26. Among the conditions for the Effective Date to occur are the Court's entering the Judgment, and the Judgment becoming Final. *See* Stipulation ¶31. Plaintiff anticipates filing a motion for distribution of the Net Settlement Fund within 60 days of the Effective Date. At that time, Plaintiff intends to further update the Court concerning the number of Settlement Class Members.

IV. ARGUMENT

A. The Settlement Class's Reaction Strongly Supports Approval Of The Settlement And Plan Of Allocation

The second *Girsh* "factor requires the Court to evaluate whether the number of objectors, in proportion to the total class, indicates that the reaction of the class to the settlement is favorable." *In re Schering-Plough Corp. Enhance Sec. Litig.*, 2013 WL 5505744, at *2 (D.N.J. Oct. 1, 2013), appeal dismissed (Apr. 17, 2014); *see also Singleton v. First Student Mgmt. LLC*, 2014 WL 3865853, at *5 (D.N.J.

Aug. 6, 2014) (listing factors for evaluation of class action settlement and citing *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975)).

Given that there has not been a single objection to the Settlement or request for exclusion, Plaintiff respectfully submits that this factor confirms the fairness, adequacy, and reasonableness of the Settlement. *See Stoetzner v. U.S. Steel Corp.*, 897 F.2d 115, 118-19 (3d Cir. 1990) (concluding that, when “only” 29 members of a class of 281 objected, the response of the class as a whole “strongly favors settlement”); *In re Linerboard Antitrust Litig.*, 321 F. Supp. 2d 619, 629 (E.D. Penn. 2004) (“No class members objected to either settlement. This fact strongly militates a finding that the settlement is fair and reasonable. “[T]his unanimous approval of the proposed settlement[] by the class members is entitled to nearly dispositive weight in this court’s evaluation of the proposed settlement.”) (internal citations omitted); *see also In re Mercedes-Benz Emissions Litig.*, 2021 WL 7833193, at *11 (D.N.J. Aug. 2, 2021) (finding “the reaction of the Class ... overwhelmingly positive” where, *inter alia*, “opt out requests have been minimal, totaling less than one percent of those to whom notice packets were sent[,]” and there were “only 18 objections to settlement.”).

The favorable reaction of the Settlement Class also supports approval of the Plan of Allocation. *In re Par Pharm. Sec. Litig.*, 2013 WL 3930091, at *8 (D.N.J. July 29, 2013) (“Lead Plaintiff’s Plan of Allocation is fair, adequate, and

reasonable. It is fully recommended by Plaintiff’s Counsel, and, although notice was sent to over 84,572 potential class members, no member has objected to it. Therefore, the Court finds that the balance of factors weighs in favor of approving the Plan of Allocation.”) (citations omitted); *In re Datatec Systems, Inc. Sec. Litig.*, 2007 WL 4225828, at *5 (D.N.J. Nov. 28, 2007) (“no class members have objected to the Plan of Allocation or the Settlement,” supporting approval).

B. The Settlement Class’s Positive Reaction Supports The Fee And Expense Request

Courts also consider “the presence or absence of substantial objections by members of the class to the ... fees requested by counsel.” *Par Pharm.*, 2013 WL 3930091, at *9. Here, the absence of any objections to the request for an award of attorneys’ fees and expenses supports a finding that the request is reasonable under the circumstances of this litigation. *See, e.g., In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 305 (3d Cir. 2005) (“[T]he absence of substantial objections by class members to the fee requests weigh[s] in favor of approving the fee request.”); *In re Innocoll Holdings Pub. Ltd. Co. Sec. Litig.*, 2022 WL 16533571, at *10 (E.D. Pa. Oct. 28, 2022) (“No [s]ettlement class member objected to the attorneys’ fees or any out-of-pocket reimbursements sought, and, indeed, no person sought exclusion from the Settlement class. This weighs in favor of approving the attorneys’ fees in the amount requested.”); *Dartell v. Tibet Pharm., Inc.*, 2017 WL 2815073, at *9 (D.N.J. June 29, 2017) (“To date, no class member has objected to the requested

fees. Accordingly, the reaction from the class supports the fee request.”).

Finally, the absence of any objections from Settlement Class Members to Class Counsel’s request for a service award to Plaintiff in the amount of \$25,000 to compensate him for the time and effort he expended on behalf of the Settlement Class, supports a finding that the award is fair and reasonable. *See In re Remeron Direct Purchaser Antitrust Litig.*, 2005 WL 3008808, at *18 (D.N.J. Nov. 9, 2005) (awarding \$30,000 to each of the two plaintiffs where “[t]he Settlement Notice advised Class members that Class Counsel would apply for such an incentive award” and “[n]o Class member objected.”); *Zacharia v. Straight Path Communications, Inc.*, No. 2:15-cv-08051-JMV-MF, ECF No. 90 at ¶6 (D.N.J. Sept. 7, 2018) (awarding plaintiff \$30,000, where class members were provided notice and there were no objections) (ECF No. 68-8); *In re Virgin Mobile USA IPO Litig.*, No. 07-cv-5619 (SDW), ECF No. 146 at ¶19 (D.N.J. Dec. 8, 2010) (awarding co-lead plaintiffs \$29,370, \$29,205, \$30,000, and \$25,245 respectively, for a combined total of \$113,820 where “[a] full and fair opportunity was given to Class Members to be heard with respect to Lead Plaintiffs’ application for reimbursement of time, costs and expenses.”) (ECF No. 68-7).

In sum, the extremely favorable reaction of the Settlement Class is strong evidence that: (i) the Settlement is fair, reasonable, and adequate and in the best interests of the Settlement Class; (ii) the proposed Plan of Allocation of the

Settlement proceeds is fair and equitable; and (iii) Plaintiff's Counsel's fee and expense request is reasonable.

V. CONCLUSION

For the reasons set forth herein and in the previously-filed Final Approval Memorandum (ECF No. 65), Fee Memorandum (ECF No. 67), and Spencer Declaration (ECF No. 68), Plaintiff and Lead Plaintiff's Counsel respectfully request that the Court: (i) approve the Settlement and Plan of Allocation as fair, reasonable, adequate, and in the best interest of the Settlement Class; (ii) award attorneys' fees to Plaintiff's Counsel in the amount of 33⅓% of the Settlement Fund, plus expenses in the amount of \$118,343.85; and (iii) award \$25,000 to Plaintiff for the time and effort he expended on behalf of the Settlement Class.⁴

DATED: November 30, 2023

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⁴ The Settlement is conditioned on the entry of the [Proposed] Judgment. *See* Stipulation, ¶¶30, 31(e), 32; Ex. B. The [Proposed] Judgment, along with a [Proposed] Order Approving the Plan of Allocation and a [Proposed] Order Awarding Attorneys' Fees and Reimbursement of Litigation Expenses, are submitted concurrently herewith.

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CERTIFICATE OF SERVICE

I hereby certify that on November 30, 2023, I caused the foregoing to be filed electronically with the Clerk of the Court using the ECF system, which will send notification of such filing to all parties.

November 30, 2023

Respectfully submitted,

/s/ Lee Albert

Lee Albert