

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

AH KIT TOO, Individually and on Behalf of All
Others Similarly Situated,

Plaintiff,

v.

ROCKWELL MEDICAL, INC., ROBERT L.
CHIOINI, AND THOMAS E. KLEMA,

Defendants.

Lead Case No. 1:18-CV-04253

Judge Allyne R. Ross
Judge Ramon E. Reyes, Jr.

CLASS ACTION

ROBERT SPOCK, Individually and on behalf of
all others similarly situated,

Plaintiff,

vs.

ROCKWELL MEDICAL, INC., ROBERT L.
CHIOINI, AND THOMAS E. KLEMA,

Defendants.

Consolidated Case No. 1:18-CV-04993

Judge Allyne R. Ross
Judge Ramon E. Reyes, Jr.

CLASS ACTION

**REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF
(I) LEAD PLAINTIFFS' MOTION FOR FINAL APPROVAL OF THE
PROPOSED SETTLEMENT AND THE PLAN OF ALLOCATION; AND
(II) LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES
AND REIMBURSEMENT OF LITIGATION EXPENSES**

Lead Plaintiffs Robert Spock and Duck Pond Partners, LP (collectively, “Lead Plaintiffs”), and Lead Counsel, Pomerantz LLP and Glancy Prongay & Murray LLP (collectively, “Lead Counsel”), respectfully submit this memorandum in further support of: (1) Lead Plaintiffs’ Motion for Final Approval of Class Action Settlement and Plan of Allocation (ECF Nos. 58, 59, the “Final Approval Motion”); and (2) Lead Counsel’s Motion for Award of Attorneys’ Fees and Reimbursement of Litigation Expenses (ECF Nos. 60, 61, the “Fee and Expense Motion”).¹ This memorandum updates the Court on the status of the notice program and the Settlement Class’s reaction thereto, including the fact that there has not been a single objection to the Settlement, Plan of Allocation, or request for attorneys’ fees and reimbursement of Litigation Expenses or a single request for exclusion.

I. PRELIMINARY STATEMENT

After a year and a half of litigation, as well as a successful mediation facilitated by a well-respected mediator, Lead Plaintiffs submitted a \$3,700,000 all cash, non-reversionary settlement for approval by the Court. The reaction of the Settlement Class confirms that the Settlement is an excellent result. Following an extensive notice program, including the mailing of 7,650 copies of the Postcard Notice to potential Settlement Class Members and nominees, and the informing of an additional 2,416 potential Settlement Class Members by electronic mail, not a single objection has been filed, nor a single request for exclusion received.² The Settlement Class’s positive reaction strongly supports approval of the Settlement and the Plan of Allocation,

¹ Unless otherwise noted, capitalized terms have the meanings set forth in the Stipulation and Agreement of Settlement dated August 6, 2019 (ECF No. 55-8, “Stipulation”) or the Declaration of Austin P. Van and Casey E. Sadler (ECF No. 62) (“Joint Declaration”). Unless otherwise indicated, all emphasis is added and quotations and citations are omitted.

² See Supplemental Declaration of Josephine Bravata Concerning: (A) Mailing of the Postcard Notice; (B) Report on Requests for Exclusion and Objections; and (C) Report on Volume of Claims Received to Date (“Suppl. Bravata Decl.”) at ¶¶8, 9.

as well as the request for attorneys' fees and reimbursement of Litigation Expenses.

Accordingly, for all the reasons set forth herein, and in the opening papers filed with the Court on January 22, 2020, the Final Approval Motion and the Fee and Expense Motion should be granted.

II. THE SETTLEMENT CLASS'S REACTION SUPPORTS APPROVAL OF THE SETTLEMENT, PLAN OF ALLOCATION, AND THE REQUESTED ATTORNEYS' FEES AND LITIGATION EXPENSES

A. The Court-Approved Notice Program

In accordance with the Court's Order Preliminarily Approving Settlement and Providing for Notice (ECF No. 56), on September 12, 2019, the Claims Administrator, Strategic Claims Services ("SCS"), under the supervision of Lead Counsel, mailed 7,650 copies of the Postcard Notice to potential Settlement Class Members and nominees.³ See Suppl. Bravata Decl. at ¶3. Moreover, the Summary Notice was published in *Investor's Business Daily* and transmitted over *PR Newswire* on October 21, 2019 (Bravata Decl. at ¶10), and the Notice, Claim Form, Stipulation, Preliminary Approval Order, Final Approval Motion, Fee and Expense Motion, and Joint Declaration, among other documents, were posted on the dedicated settlement website (www.RockwellSecuritiesSettlement.com) (Bravata Suppl. Decl. at ¶¶5, 6). The Postcard Notice, Notice, and Summary Notice informed Settlement Class Members of the February 5, 2020 deadline to submit an objection to the Settlement, Plan of Allocation or fee and expense application, or request exclusion from the Settlement Class.

On January 22, 2020, fourteen (14) days prior to the objection deadline, Lead Plaintiffs and Lead Counsel filed their opening papers in support of the Settlement, Plan of Allocation, and fee and expense application. The motions were supported by the declarations of Lead Plaintiffs,

³ An additional 2,416 potential Settlement Class Members received notice via electronic mail. See Bravata Decl. (ECF No. 62-3), at ¶7.

Lead Counsel, and the Claims Administrator. These papers are available on the public docket and on the settlement website. *See* ECF Nos. 58-62; Suppl. Bravata Decl. at ¶6.

Following this extensive notice program, not a single Settlement Class Member has requested exclusion from the Settlement Class, and there has not been a single objection to the Settlement, the Plan of Allocation, the request for attorneys' fees, the request for reimbursement of expenses, or the request that the Lead Plaintiffs be reimbursed for their work litigating this action. *See* Suppl. Bravata Decl. at ¶¶8, 9.

B. The Settlement Class's Reaction Supports Approval of the Settlement, Plan of Allocation, and Fee and Expense Request

Lead Plaintiffs and Lead Counsel respectfully submit that the exceptionally positive response from the Settlement Class confirms the fairness, adequacy, and reasonableness of the Settlement. *See, e.g., In re FLAG Telecom Holdings, Ltd. Sec. Litig.*, No. 02-CV-3400 (CM)(PED), 2010 WL 4537550, at *16 (S.D.N.Y. Nov. 8, 2010) (“The absence of objections to the Settlement supports the inference that it is fair, reasonable and adequate.”); *In re Sturm, Ruger, & Co. Sec. Litig.*, No. 3:09cv1293 (VLB), 2012 WL 3589610, at *5 (D. Conn. Aug. 20, 2012) (“[T]he absence of objectants may itself be taken as evidencing the fairness of a settlement.”); *In re Merrill Lynch & Co. Research Reports Sec. Litig.*, No. 02 MDL 1484(JFK), 2007 WL 313474, at *10 (S.D.N.Y. Feb. 1, 2007) (“minimal number of objections and requests for exclusion militates in favor of approving the settlement as be[ing] fair, adequate, and reasonable”).

The favorable reaction of the Settlement Class also supports approval of the Plan of Allocation. *See In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 986 F. Supp. 2d 207, 240 (E.D.N.Y. 2013) (conclusion that the proposed plan of allocation was fair and reasonable was “buttressed by the relatively small number of opt-outs and absence of objections

from class members”); *In re Veeco Instruments Inc. Sec. Litig.*, No. 05 MDL 01695(CM), 2007 WL 4115809, at *14 (S.D.N.Y. Nov. 7, 2007) (“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. This favorable reaction of the Class supports approval of the Plan of Allocation.”).

Finally, the absence of any objections from Settlement Class Members to the Fee and Expense Motion, including Lead Plaintiffs’ request for reimbursement of their costs and expenses incurred as a direct result of their representation of the Settlement Class pursuant to the PSLRA (15 U.S.C. § 78u-4(a)(4)), strongly supports a finding that the fee and expense request is fair and reasonable. *See, e.g., In re Veeco Instruments Inc. Sec. Litig.*, No. 05 MDL 01695(CM), 2007 WL 4115808, at *10 (S.D.N.Y. Nov. 7, 2007) (the reaction of class members to a fee and expense request “is entitled to great weight by the Court” and the absence of any objection “suggests that the fee request is fair and reasonable”); *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 374 (S.D.N.Y. 2002) (“Not one person, company, or institution has filed an objection to the fee request or the expense reimbursement sought. As was true with the underlying settlement, this overwhelmingly positive response by the Class attests to the approval of the Class with respect to the Settlement and the fee and expense application.”); *see also In re FLAG Telecom Sec. Litig.*, 2010 WL 4537550, at *31 (granting lead plaintiffs’ PSLRA requests for reimbursement of costs and expenses in the amounts of \$100,000 and \$5,000, respectively, where class members were provided notice and “[n]o objections to these requests have been filed.”).

In sum, the universally favorable reaction of the Settlement Class is strong evidence that the Settlement is fair, reasonable and adequate and in the best interests of the Settlement Class, that the proposed Plan of Allocation of the Settlement proceeds is fair and equitable, and that

Lead Counsel's fee and expense request is reasonable.

III. CONCLUSION

For all the foregoing reasons, and those set forth in their opening papers, Lead Plaintiffs and Lead Counsel respectfully request that the Court approve the Settlement, the Plan of Allocation, and the request for attorneys' fees and reimbursement of Litigation Expenses.⁴

Dated: February 19, 2020

Respectfully submitted,

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⁴ The Settlement is conditioned on the entry of the Judgment Approving Class Action Settlement in substantially the form submitted to the Court. See Stipulation, ¶¶ 31, 32(e), 35. The proposed Judgment Approving Class Action Settlement and the [Proposed] Order Approving Plan of Allocation of Net Settlement Fund are submitted concurrently herewith.

PROOF OF SERVICE

I, the undersigned say:

I am not a party to the above case and am over eighteen years old.

On February 19, 2020, I served true and correct copies of the foregoing document, by posting the document electronically to the ECF website of the United States District Court for the Eastern District of New York, for receipt electronically by the parties listed on the Court's Service List.

I affirm under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on February 19, 2020.

s/ Casey E. Sadler
Casey E. Sadler