

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

WASHTENAW COUNTY EMPLOYEES'
RETIREMENT SYSTEM, Individually and
on Behalf of All Others Similarly Situated,

Plaintiff,

v.

WALGREEN CO. et al.,

Defendants.

Civil Action No. 1:15-cv-3187

Honorable Sharon Johnson Coleman

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

Court-appointed Class Representative Industriens Pensionsforsikring A/S (“Class Representative”),¹ on behalf of itself and the Class, and Class Counsel respectfully submit this reply memorandum in further support of: (i) Class Representative’s Motion for Final Approval of Settlement and Plan of Allocation (Doc. 515); and (ii) Class Counsel’s Motion for an Award of Attorneys’ Fees and Litigation Expenses (Doc. 516) (together, the “Motions”).

I. PRELIMINARY STATEMENT

As detailed in Class Representative’s and Class Counsel’s opening papers in support of the Motions filed on September 2, 2022 (Docs. 515-518) (“Opening Papers”), the proposed Settlement—providing for a \$105,000,000 cash payment in exchange for the resolution of all claims asserted in the Action against Defendants—is an excellent result for the Class. The Settlement takes into account the risks and complexities of continued litigation as well as the delay and substantial expense of litigating the Action through *Daubert* motions, trial, and post-trial appeals. Moreover, the Settlement is the result of two rounds of arm’s-length negotiations between experienced counsel, including formal mediation under the guidance of well-respected mediators, and ultimately the issuance of a mediator’s proposal that the Action be resolved for the Settlement Amount. Likewise, Class Counsel’s request for a 27.5% fee² and Litigation Expenses is also fair and reasonable, especially considering the result achieved for the Class, the caliber of work

¹ All capitalized terms used and not otherwise defined in this reply memorandum have the meanings ascribed to them in the Stipulation and Agreement of Settlement dated June 23, 2022 (Doc. 505), or in the Joint Declaration of David Kessler and Andrew L. Zivitz in Support of (I) Class Representative’s Motion for Final Approval of Settlement and Plan of Allocation; and (II) Class Counsel’s Motion for an Award of Attorneys’ Fees and Litigation Expenses dated September 2, 2022 (Doc. 517).

² Notably, if approved, a 27.5% fee would result in a *negative* multiplier of approximately 0.976 on Plaintiff’s Counsel’s lodestar. As set forth in the previously-filed Fee and Expense Memorandum, through August 26, 2022, Plaintiff’s Counsel devoted more than 56,000 hours to the Action, resulting in a lodestar of \$29,591,935.75. Doc. 516-1 at 8. Since that date, Class Counsel has continued to expend time on the Action and, if the Settlement is approved, will continue to expend time on the Action through the completion of the administration of the Settlement and distribution of the Net Settlement Fund.

performed by Plaintiff’s Counsel over the course of more than seven years, the risks of litigation (including the risk of non-payment), and comparable fee and expense awards.

Given the quality of the Settlement, we are pleased to report that the Class’s response to the Settlement, the Plan of Allocation, and Class Counsel’s request for attorneys’ fees and Litigation Expenses has been overwhelmingly positive. In accordance with the Court’s June 29, 2022 Order Preliminarily Approving Settlement and Providing for Notice (Doc. 510), the Court-authorized Claims Administrator, A.B. Data, Ltd., conducted an extensive notice campaign, including mailing 278,052 Postcard Notices and 4,990 Notice Packets to potential Class Members and Nominees, publishing a summary notice in *Investor’s Business Daily* and transmitting the same over *PR Newswire*, and posting relevant information and documents—including the Opening Papers—on the case website, www.WalgreensSecuritiesLitigation.³ In addition, Defendants issued notice pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1715 *et seq.* Doc. 522. The foregoing notice efforts have informed Class Members of the Settlement, the Plan of Allocation, and the requested fees and Litigation Expenses, as well as, *inter alia*, Class Members’ options in connection with the Settlement. *See, e.g.*, Doc. 515-2, Initial Schachter Decl., Exs. A-C.

Following this notice campaign, ***not a single member of the Class has objected to any aspect of the Settlement, the Plan of Allocation, or the requested fees and Litigation Expenses.*** Class Representative—a sophisticated institutional investor—also supports the Settlement and the fee and expense request. In sum, the Class’s reaction is a further indication that the Settlement, the Plan of Allocation, and Class Counsel’s request for attorneys’ fees and Litigation Expenses are fair and reasonable and should be approved.

³ *See* Supplemental Declaration of Eric Schachter Regarding: (A) Update on Mailing of Postcard Notice and Notice Packet; and (B) Update on Toll-Free Telephone Helpline and Case Website (“Supp. Schachter Decl.”) submitted herewith, ¶¶ 3-4, as well as the previously-filed Declaration of Eric Schachter dated September 1, 2022 (Doc. 515-2) (“Initial Schachter Decl.”).

II. THE CLASS'S REACTION PROVIDES ADDITIONAL SUPPORT FOR APPROVAL OF THE MOTIONS

In their Opening Papers, Class Representative and Class Counsel demonstrated that the Settlement, the Plan of Allocation, and the request for attorneys' fees and Litigation Expenses are fair and reasonable and warrant the Court's approval. Now that the time for objecting has passed, the lack of any objections clearly supports approval of the Motions.

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

The reaction of class members to a proposed settlement is a significant factor to be considered in judging the fairness and adequacy of a proposed settlement. "The Seventh Circuit has instructed district courts to evaluate the amount of opposition to a settlement among affected parties in deciding whether to approve a class-action settlement." *In re AT & T Mobility Wireless Data Servs. Sales Tax Litig.*, 789 F. Supp. 2d 935, 964 (N.D. Ill. 2011).

Here, the absence of *any* objections from Class Members supports a finding that the Settlement is fair, reasonable, and adequate. *See, e.g., Garcia v. J.C. Penney Corp., Inc.*, 2017 WL 3449077, at *1 (N.D. Ill. Aug. 9, 2017) ("The absence of any objections to the Settlement by the Class Members [] supports approval of the Settlement."), *Sanchez v. Roka Akor Chi. LLC*, 2017 WL 1425837, at *2 (N.D. Ill. Apr. 20, 2017) (same); *Goldsmith v. Tech. Sols. Co.*, 1995 WL 17009594, at *5 (N.D. Ill. Oct. 10, 1995) ("Not a single objection to the proposed Settlement has been received from any class member. Such a positive response to the Settlement by the Class is strong evidence that the settlement is fair, reasonable, and adequate and should be approved.") (internal citation omitted). In particular, the absence of any objections from institutional investors, who possessed ample means and incentive to object to the Settlement if they deemed it unsatisfactory, is further evidence of the Settlement's fairness. *See, e.g., Kleen Prods. LLC v. Int'l Paper Co.*, 2017 WL 5247928, at *3 (N.D. Ill. Oct. 17, 2017) ("Out of 158,500 Class Members

notified of the Settlement, only one Class Member responded by sending a letter regarding allocation of the Settlement Funds. This demonstrates that Class Members support the Settlement and attests to its fairness, particularly since the majority of Class Members are sophisticated businesses with the necessary resources and counsel to analyze the Settlement and make their own determination of its merits.”); *Hedberg v. Schanck*, 1985 WL 5825, at *1 (N.D. Ill. Feb. 21, 1985) (“The plaintiff class includes several large and sophisticated institutional investors. It is not without moment that none of them has objected to either the settlement or the fees and expenses requested.”); *see also In re Facebook, Inc., IPO Sec. & Derivative Litig.*, 343 F. Supp. 3d 394, 410 (S.D.N.Y. 2018) (“That not one sophisticated institutional investor objected to the Proposed Settlement is indicia of its fairness.”), *aff’d*, 822 F. App’x 40 (2d Cir. 2020).

The lack of any objections from Class Members also supports approval of the Plan of Allocation. *See, e.g., In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 986 F. Supp. 2d 207, 241 (E.D.N.Y. 2013) (conclusion that the proposed plan of allocation was fair and reasonable was “buttressed by the . . . absence of objections from class members”), *rev’d and vacated on other grounds*, 827 F.3d 223 (2d Cir. 2016); *In re Veeco Instruments Inc. Sec. Litig.*, 2007 WL 4115809, at *14 (S.D.N.Y. Nov. 7, 2007) (“[N]ot 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.”).

B. The Class’s Reaction Also Supports Approval of Class Counsel’s Request for Attorneys’ Fees and Litigation Expenses

The positive reaction of the Class should also be considered with respect to Class Counsel’s request for attorneys’ fees and Litigation Expenses, including Class Representative’s request for reimbursement of the costs it incurred in connection with representing the Class. The lack of *any* objections to Class Counsel’s fee and expense request provides further support for finding that the

requested fee award and expenses sought are fair and reasonable. *See Standard Iron Works v. ArcelorMittal*, 2014 WL 7781572, at *2 (N.D. Ill. Oct. 22, 2014) (absence of objections to fee request from a class that included sophisticated business entities “indicates that the fee is fair and reasonable and consistent with prevailing market rates”); *In re Lithotripsy Antitrust Litig.*, 2000 WL 765086, at *2 (N.D. Ill. June 12, 2000) (considering lack of objection to request for attorneys’ fees in approving request); *Vaccaro v. New Source Energy Partners L.P.*, 2017 WL 6398636, at *8 (S.D.N.Y. Dec. 14, 2017) (“The fact that no class members have explicitly objected to these attorneys’ fees supports their award.”).

And, as with the Settlement and Plan of Allocation, the lack of any objections by institutional investors particularly supports approval of the fee request. *See Silverman v. Motorola Sols., Inc.*, 739 F.3d 956, 959 (7th Cir. 2013) (affirming fee award and noting that none of the “[i]nstitutional investors such as pension funds and university endowments hold[ing] claims to more than 70% of the settlement fund . . . [and] hav[ing] in-house counsel with fiduciary duties to protect the beneficiaries” objected to the fee request); *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 305 (3d Cir. 2005) (the fact that “a significant number of investors in the class were ‘sophisticated’ institutional investors that had considerable financial incentive to object had they believed the requested fees were excessive” and did not do so, supported approval of the fee request).

III. CONCLUSION

For the foregoing reasons, and those set forth in their Opening Papers, Class Representative and Class Counsel respectfully request that the Court approve the Settlement, the Plan of Allocation, and the request for attorneys’ fees and Litigation Expenses. Copies of: (i) the [Proposed] Judgment Approving Class Action Settlement; (ii) the [Proposed] Order Approving

Plan of Allocation of Net Settlement Fund; and (iii) the [Proposed] Order Awarding Attorneys' Fees and Litigation Expenses are being submitted to the Court in accordance with its procedures.

Dated: September 30, 2022

Respectfully submitted,

**KESSLER TOPAZ
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/s/ Andrew L. Zivitz

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