

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

IN RE TEVA SECURITIES LITIGATION	:	No. 3:17-cv-00558 (SRU)
	:	
THIS DOCUMENT RELATES TO:	:	All Class Actions
	:	

**REPLY MEMORANDUM OF LAW IN SUPPORT OF (I) CLASS REPRESENTATIVES'
MOTION FOR FINAL APPROVAL OF CLASS SETTLEMENT AND APPROVAL
OF PLAN OF ALLOCATION, AND (II) LEAD COUNSEL'S MOTION
FOR AWARDS OF ATTORNEYS' FEES, LITIGATION EXPENSES, AND
REASONABLE COSTS AND EXPENSES TO CLASS REPRESENTATIVES**

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Class Representatives and Lead Counsel respectfully submit this combined reply in further support of (i) Class Representatives' Motion for Final Approval of Class Settlement and Approval of Plan of Allocation (ECF 950); and (ii) Lead Counsel's Motion for Awards of Attorneys' Fees, Litigation Expenses, and Reasonable Costs and Expenses to Class Representatives (ECF 951).¹

PRELIMINARY STATEMENT

On April 28, 2022, Class Representatives and Lead Counsel filed (and posted to the Settlement Website) memoranda of law and declarations detailing Class Counsel's five years of effort that culminated in the proposed \$420 million settlement and the factual and empirical basis for the requested fees and expenses, including exhaustive analyses by Judge Dronev and Professor Miller. (*See* ECF 950-1, 951-1, 952.) No objections have been filed in response to this substantial factual record, further confirming that the settlement provides meaningful relief and will be fairly allocated, and that the requested fee and expense awards are appropriate.

I. THE REACTION OF THE SETTLEMENT CLASS STRONGLY SUPPORTS BOTH MOTIONS

The reaction of the class to a settlement "is considered perhaps the most significant factor to be weighed in considering its adequacy." *In re Veeco Instruments Inc. Sec. Litig.*, No. 05 MDL 01695CM, 2007 WL 4115809, at *7 (S.D.N.Y. Nov. 7, 2007). Here, the "absence of objections by the class is extraordinarily positive and weighs in favor" of approval. *In re Virtus Inv. Partners, Inc. Sec. Litig.*, No. 15CV1249, 2018 WL 6333657, at *2 (S.D.N.Y. Dec. 4, 2018).

The Settlement Class was apprised of the proposed settlement through a robust notice program that has included the individual mailing of 1,009,104 Notices, publication in the U.S. and

¹ Capitalized terms not defined herein shall have the meanings specified in the Fonti Declaration (ECF 952) or the Stipulation of Settlement, dated January 18, 2022 (ECF 919-2). Emphasis is added, and citations and internal quotation marks are omitted, unless otherwise stated.

Israel, a Settlement Website, and dedicated telephone lines (*see* ECF 952-2 (McGuinness Decl.) ¶¶3-24). In response, numerous Settlement Class Members have submitted claims or inquired about the settlement, with 92,335 claims filed, 67,021 unique visits to the Settlement Website, and 8,223 calls to the Claims Administrator as of May 18, 2022. (Ex. A (Supplemental McGuinness Decl.) ¶¶8-9, 11, submitted herewith.) The deadlines for objections (May 2) and exclusion requests (May 12) have now passed, and as of May 18, 2022, no Settlement Class Member has objected to the settlement’s fairness, the adequacy of relief, the requested fee and expense awards, or any other matter.²

The absence of objections strongly supports final approval. Indeed, “in litigation involving a large class, such as that here, it [is] extremely unusual not to encounter objections.” *In re NASDAQ Market–Makers Antitrust Litig.*, 187 F.R.D. 465, 478 (S.D.N.Y. 1998). To that end, even where several class members object, the positive reaction from the remainder of the class favors final approval. *See, e.g., Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 118 (2d Cir. 2005) (“On the whole, the class appears to be overwhelmingly in favor of the Settlement. Only eighteen class members out of five million objected to the Settlement.”); *D’Amato v. Deutsche Bank*, 236 F.3d 78, 86-87 (2d Cir. 2001) (“The District Court properly concluded that [18 objections relative to 27,883 notices mailed] weighed in favor of the settlement.”).

Nine of the ten largest securities class settlements in the Second Circuit had objections, including the largest settlement in this District, *Xerox*, No. 3:00-cv-01621-AWT (D. Conn.), which faced 11 objections (with over one million notices mailed). In addition, the proposed settlement

² One individual recently reached out to Class Counsel to express concerns about the notice and claim process and to convey her disagreement with the law and procedure governing class actions and attorneys’ fees and expenses. This individual requested the Court’s contact information, which Class Counsel provided. We understand that this individual timely mailed a claim and has not submitted an objection.

ranks as the fourth-largest securities settlement in the Second Circuit that does not involve a financial restatement or arise from the 2008-09 financial crisis (ECF 952 (Fonti Decl.) ¶4). Each larger settlement in this category involved multiple objections, as shown below:

Case	Settlement	Objections
<i>In re Petrobras Sec. Litig.</i> , 317 F. Supp. 3d 858 (S.D.N.Y. 2018)	\$3 billion	6 (with over one million notices mailed)
<i>In re Initial Pub. Offering Sec. Litig.</i> , 671 F. Supp. 2d 467 (S.D.N.Y. 2009)	\$586 million	Approximately 140 (out of seven million class members)
<i>In re Pfizer Inc. Sec. Litig.</i> , No. 1:04-cv-09866-LTS-HBP (S.D.N.Y. Dec. 6, 2016), ECF 721 (Reply Brief)	\$486 million	20 (with 4.1 million notices mailed)
<i>In re Teva Sec. Litig.</i> , No. 17-cv-558-SRU (D. Conn.)	\$420 million	0 (with 1,009,104 Notices mailed)

It is also “significant that no institutional investors”—which “are often sophisticated and possess the incentive and ability to object”—have objected to the proposed settlement. *In re Signet Jewelers Ltd. Sec. Litig.*, No. 1:16-CV-06728-CM-SDA, 2020 WL 4196468, at *6 (S.D.N.Y. July 21, 2020).³ Here, over two-thirds of the Teva ADS were held by institutions. (See ECF 419-5 at 132 of 253.) Not only did no institutional investor object, but the institutional investors that previously filed the *Boeing* and *Fir Tree* Direct Actions have affirmatively chosen to participate in the settlement instead of pursuing individual litigation. (See ECF 953, 954.)

Further, large class settlements regularly attract so-called “professional objectors” who attack settlements and fee requests in the hope of promoting their own agendas and/or extracting attorneys’ fees for themselves. See *In re Elec. Books Antitrust Litig.*, 639 F. App’x 724, 728

³ 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.”); *Maley v. Del Glob. Techs. Corp.*, 186 F. Supp. 2d 358, 374 (S.D.N.Y. 2002) (“[n]ot one person, company, or institution” objected “to the fee request or the expense reimbursement sought, . . . attest[ing] to the [class’s] approval” of the settlement and fee and expense application).

(2d Cir. 2016). The fact that no such objectors emerged here further confirms the reasonableness of the \$420 million settlement and the requested fees and expenses.

The small number of requests for exclusion—49, or just 0.005% of the total Notices mailed (see Ex. A (Supplemental McGuinness Decl.) ¶16)—likewise supports final approval.⁴ See, e.g., *D’Amato*, 236 F.3d at 86-87 (“The District Court properly concluded that [72 requests for exclusion relative to 27,883 notices mailed] weighed in favor of the settlement.”); *In re Bear Stearns Companies, Inc. Sec., Derivative, & ERISA Litig.*, 909 F. Supp. 2d 259, 267 (S.D.N.Y. 2012) (“absence of significant exclusion or objection . . . weighs strongly in favor of approval,” with 115 requests for exclusion and two objections relative to 222,374 notices).

II. THE COURT SHOULD GRANT FINAL APPROVAL OF THE SETTLEMENT AND APPROVE THE PLAN OF ALLOCATION

Class Representatives’ April 28 opening papers demonstrate that the proposed settlement satisfies all factors under Rule 23(e)(2) and *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974), and that the Plan of Allocation should likewise be approved as fair, reasonable, and adequate. (See ECF 950-1 at 9-30 of 34.)

In particular, the proposed settlement was achieved at an advanced stage that few securities class actions reach. Class Counsel completed fact discovery; exchanged 23 expert reports; conducted 40 depositions; achieved class certification and defeated Defendants’ Rule 23(f) petition; and prepared an affirmative summary judgment motion and *Daubert* motions against Defendants’ four merits experts. (See ECF 952 (Fonti Decl.) ¶¶39-251.) This sustained effort to

⁴ This figure excludes one request for exclusion that was withdrawn, three that were submitted on behalf of Direct Action Plaintiffs that are not Settlement Class Members, and three that were duplicates. (See Ex. A (Supplemental McGuinness Decl.) ¶¶15-16.) To capture any further requests for exclusion that may be submitted, Class Representatives and Lead Counsel will provide final versions of Exhibits 1 and 2 to the proposed Final Judgment at or before the Settlement Hearing on June 2, 2022.

develop compelling proof and demonstrate the strength of the merits brought the action to the brink of summary judgment, where litigation risks are heightened and both sides face the real prospect of trial.

These efforts also positioned Class Counsel to achieve the best possible result in arduous negotiations under the auspices of former United States District Judge Layn R. Phillips, including three full-day mediation sessions and, after the last formal session in September 2021, the exchange of 11 further rounds of settlement demands and offers (ECF 951-1 (Phillips Decl.) ¶15). As Judge Phillips observed, this case was “among the most complex and challenging mediations” he has handled in nearly three decades, with “outstanding” advocacy. (*Id.* ¶¶17, 19.) These efforts led Judge Phillips to recommend a \$420 million settlement after the parties were unable to reach agreement of their own accord.

The proposed settlement—which includes both insurance proceeds and a cash contribution from Teva (ECF 952 (Fonti Decl.) ¶361)—maximizes the recovery for the Settlement Class. The settlement also provides important certainty for the Settlement Class given the unique external risks of Teva’s distressed financial situation (including over \$20 billion in outstanding debt and exposure to unresolved antitrust and opioids litigation), and the significant delay from further litigation. (*See* ECF 950-1 at 23-25 of 34; ECF 951-1 at 18-19 of 47; ECF 952 ¶¶303-312.)

Subsequent events confirm that Class Representatives and Class Counsel reached the proposed settlement at an optimal time. As to the external litigation risks facing Teva, the DOJ antitrust indictment against Teva’s U.S. subsidiary and the civil antitrust claims in the *Generics MDL* remain unresolved. Meanwhile, opioids trials against Teva are ongoing in West Virginia state court and a San Francisco federal MDL. (*See* ECF 952 (Fonti Decl.) ¶308.) And in the past three weeks, the financial risks that loomed throughout this litigation have further materialized.

For example, on May 3, 2022, Teva's current CEO, Defendant Schultz, spoke to Teva's financial constraints during an earnings call, explaining that "we don't really have any cash or significant debt capacity on our balance sheet" to finance any business-expanding M&A deals. Schultz reiterated: "[Y]ou will not see us doing any major M&A transactions. We simply do not have the balance sheet for that as we speak, and that's with or without an opioid settlement."

The absence of objections confirms that the \$420 million settlement is an excellent result. *Maley*, 186 F. Supp. 2d at 374; *Bear Stearns*, 909 F. Supp. 2d at 267. Likewise, the Settlement Class's reaction supports approval of the Plan of Allocation, which was developed by Class Counsel with Dr. Tabak's expert assistance to provide an appropriate mechanism for the fair and equitable distribution of the Net Settlement Fund. *See* ECF 950-1 at 29-30; *In re Am. Bank Note Holographics, Inc.*, 127 F. Supp. 2d 418, 430 (S.D.N.Y. 2001) ("the lack of any objections suggests that approval of the Plan of Allocation is warranted").

III. THE REQUESTED FEE AND EXPENSE AWARDS SHOULD BE APPROVED

On April 28, 2022, Lead Counsel submitted an extensive record supporting the requested fee of 23.70% of the Settlement Fund, which was also posted to the Settlement Website. (Ex. A (Supplemental McGuinness Decl.) ¶8.) As the Fonti Declaration describes in detail, Class Counsel devoted over 77,000 hours of skilled effort, and shouldered and surmounted numerous risks, to achieve the \$420 million settlement. (*See* ECF 952 ¶¶252-312, 363-391.) In turn, Class Representatives' declarations describe their diligent oversight of Class Counsel and arm's-length negotiation of the requested fee as fiduciaries for the Settlement Class (ECF 952-3 & 952-4).

In addition, Judge Droney and Professor Miller extensively reviewed Class Counsel's work, the risks and complexity of this case, fee awards in comparable cases, empirical data and studies, and other relevant considerations. Their analyses support the reasonableness of the requested fee percentage (23.70%), which is within the range approved in other comparably sized,

procedurally advanced securities class actions in this Circuit (ECF 952-5 ¶¶9, 11-12) and the range of multiple empirical studies (*id.* ¶¶15, 18; ECF 952-6 ¶¶67-70), even accounting for the “scaling” effect of fee percentages in large settlements (ECF 952-6 ¶70). Their analyses also support the reasonableness of Class Counsel’s hours, staffing, and rates (ECF 952-5 ¶¶56-67; ECF 952-6 ¶¶25-51), and the resulting lodestar multiplier (2.17), which is reasonable given the risks Class Counsel faced and below the average that Professor Miller’s research calculated. (ECF 952-5 ¶18; ECF 952-6 ¶¶53-63.)

As indicated above, no Settlement Class Members have objected to the requested fees and expenses. *See Maley*, 186 F. Supp. 2d at 374 (absence of objections to fee and expense request “entitled to great weight”). In particular, the “lack of objections by institutional investors is notable, and lends further support to approval of the fee request.” *Signet*, 2020 WL 4196468 at *21; *see also Fleisher v. Phoenix Life Ins. Co.*, No. 11-CV-8405 (CM), 2015 WL 10847814, at *23 (S.D.N.Y. Sept. 9, 2015) (“When a class is comprised of sophisticated business entities that can be expected to oppose any request for attorney fees they find unreasonable, the lack of objections indicates the appropriateness of the [fee] request.”).

In light of the extensive supporting record provided and the Settlement Class’s reaction, Lead Counsel respectfully submits that the requested attorneys’ fees, expenses, and awards to Class Representatives are reasonable in the circumstances of this case.

CONCLUSION

Class Representatives and Lead Counsel respectfully request that the Court (1) grant final approval of the settlement and approval of the Plan of Allocation, and (2) award attorneys’ fees of 23.70% of the Settlement Fund, litigation expenses in the amount of \$9,717,887.47, and Class Representatives’ reasonable costs and expenses in the amounts of \$49,213.02 for Ontario Teachers’ and \$7,080.00 for Anchorage.

Dated: New York, New York
May 19, 2022

Respectfully submitted,

/s/ Joseph A. Fonti

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CERTIFICATE OF SERVICE

I hereby certify that on May 19, 2022, a copy of the foregoing was filed electronically with the Clerk of Court via CM/ECF. Notice of this filing will be sent by email to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing. Parties may access this filing through the court's CM/ECF system.

/s/ Joseph A. Fonti
Joseph A. Fonti

Exhibit A

**Supplemental Declaration of
Michael McGuinness Regarding (I) Mailing of
Notice; (II) the Settlement Website and
Contact Center Services; (III) Claim Filing; and
(IV) Requests for Exclusion and Objections**

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

IN RE TEVA SECURITIES LITIGATION	:	No. 3:17-cv-00558 (SRU)
	:	
THIS DOCUMENT RELATES TO:	:	All Class Actions
	:	

**SUPPLEMENTAL DECLARATION OF MICHAEL McGUINNESS REGARDING
(I) MAILING OF NOTICE; (II) THE SETTLEMENT WEBSITE AND
CONTACT CENTER SERVICES; (III) CLAIM FILING; AND
(IV) REQUESTS FOR EXCLUSION AND OBJECTIONS**

I, Michael McGuinness, hereby declare:

1. I am a Project Manager for Epiq Class Action and Claims Solutions, Inc. (“Epiq”).

I am providing this supplemental declaration at the request of Lead Counsel Bleichmar Fonti & Auld LLP (“BFA”), in connection with Class Representatives’ Motion for Final Approval of Class Settlement and Approval of Plan of Allocation.¹ This declaration supplements my prior declarations in this action. (ECF 919-9, 952-2.) I make this declaration based on personal knowledge, and if called to testify, I could and would do so competently.

2. Pursuant to the January 27, 2022 Order Preliminarily Approving Settlement and Providing for Class Notice (the “Preliminary Approval Order”) (ECF 929 ¶11), Epiq is authorized to act as the Claims Administrator in connection with the settlement of the above-captioned action. This declaration provides additional information regarding: (i) the mailing of the Notice, (ii) the Settlement Website and contact center services; (iii) the status of claim filings; and (iv) requests for exclusion and objections received by Epiq.

¹ Capitalized terms not defined herein have the meanings specified in the Stipulation of Settlement, dated January 18, 2022 (the “Stipulation”) (ECF 919-2) and/or the McGuinness Declaration (ECF 952-2).

I. MAILING OF THE NOTICE

3. As stated in the McGuinness Declaration, as of April 27, 2022, Epiq had mailed a total of 942,255 Notices to potential Settlement Class Members, including Notices sent directly to nominees at their request for transmission to investors. (ECF 952-2 ¶11.)

4. The majority of these Notices (937,733) were mailed as a result of brokers and nominees providing names and addresses of potential Settlement Class Members (or in response to brokers' and nominees' requests for Notices to forward to their customers). (*Id.* ¶10.) At BFA's direction, Epiq has taken additional steps to follow up with brokers and nominees who had not responded to the Notice, including by phone and/or email. (*See* ECF 929 ¶9.)

5. Since April 27, 2022, Epiq has continued to receive further information and requests from nominees and intermediaries and promptly responded to these requests. For example, Epiq received names and addresses of potential Settlement Class Members from Broadridge (a third-party intermediary), and Goldman Sachs (a nominee) informed Epiq that it had recently mailed Notices. (ECF 955 ¶5.) As previously reported to the Court, these mailings included additional language advising that Epiq "will continue to process claims received or postmarked after May 17, 2022 until such time as the receipt and processing of new late claims will impact decisions on disbursements," and that any requests for exclusion or objections to the settlement should be submitted "as promptly as possible, even if it is after the May 2, 2022 exclusion deadline and May 12, 2022 objection deadline," so that such requests could be considered by the Court. (*Id.* ¶¶6-7.)

6. As of May 18, 2022, Epiq has mailed a total of 1,009,104 copies of the Notice.

7. A total of 7,745 Notices have been returned to Epiq by the U.S. Postal Service. Of those 7,745 Notices returned, Epiq obtained 1,486 new addresses from the Postal Service and 263 were successfully remailed. A total of 7,482 Notices have been deemed undeliverable, meaning

either valid replacement addresses were not provided by the U.S. Postal Service or identified by Epiq through its address research services, or if updated addresses were obtained, those updated addresses were ultimately not valid and the Notices were returned again as undeliverable. This represents approximately 0.74% of the total number of Notices mailed, which is below the typical 5% undeliverable rate Epiq typically observes in notice programs like this one.

II. THE SETTLEMENT WEBSITE AND CONTACT CENTER SERVICES

8. As of May 18, 2022, there have been 243,464 pageviews of the Settlement Website, 67,021 unique visitors, and 36,619 downloads of the Proof of Claim and Release Form. Class Representatives' and Lead Counsel's filings on April 28, 2022 (ECF 950, 951, 952) were loaded to the Settlement Website on April 28, 2022.

9. As of May 18, 2022, Epiq has received a total of 8,223 calls to the telephone numbers dedicated to the settlement, including 2,334 calls that were handled by a live operator. Epiq promptly responded to each telephone inquiry and mailing request received by telephone, including messages left by callers, and will continue to do so.

10. As of May 18, 2022, Epiq has received 14,255 emails and mailed correspondence from potential Settlement Class Members and nominees, and has responded as appropriate.

III. CLAIM FILING

11. As of May 18, 2022, Epiq has received 92,335 Proof of Claim and Release Forms from potential Settlement Class Members and brokerage firms, banks, institutions, and other nominees. The total number of Proof of Claim and Release Forms will continue to be refined as Epiq receives and processes claim forms.

12. As is typical in claims administration matters of this kind, Epiq will continue to process claims received or postmarked after May 17, 2022, until such time as the receipt and

processing of new claims will impact decisions on disbursements. Class Counsel will present all valid late-filed claims to the Court at the time the distribution motion is made and intends to recommend that such valid claims be paid.

13. Three Direct Action Plaintiffs timely submitted Proof of Claim and Release forms and dismissed their respective actions: The Boeing Company Employee Retirement Plans Master Trust; Fir Tree Value Master Fund, LP; and FT SOF V Holdings, LLC.

IV. REQUESTS FOR EXCLUSION AND OBJECTIONS

14. Potential Settlement Class Members who wished to seek exclusion were required to electronically submit or postmark requests for exclusion on or before May 2, 2022, and any objections were required to be received or filed (not simply postmarked) on or before May 12, 2022.

15. As of May 18, 2022, Epiq has received 56 potential requests for exclusion. Epiq has followed up to the extent that any of these potential requests for exclusion did not affirmatively request exclusion from the Settlement Class, which yielded the withdrawal of one request for exclusion. In addition, three of the requests for exclusion were submitted on behalf of Direct Action Plaintiffs that are not Settlement Class Members, as they did not submit claims and dismiss their actions by May 2, 2022. Finally, three requests for exclusion were duplicates.

16. The remaining 49 requests for exclusion were submitted on behalf of a total of 54 persons and entities. Epiq is continuing to follow up with certain of these persons and entities to request their transaction information, and I understand that Class Counsel will provide a final list of requests for exclusion for the Court's review on or before June 2, 2022.

17. As of May 18, 2022, Epiq has not received any objections to the settlement, the proposed Plan of Allocation, or the application for attorneys' fees and expenses, including requests for awards to Class Representatives pursuant to 15 U.S.C. § 78u-4(a)(4).

18. Epiq has monitored and will continue to monitor the Settlement Website and all mail delivered to the settlement-specific P.O. Box for further potential requests for exclusion and objections received after May 18, 2022, so that Lead Counsel BFA can address them at or before the Settlement Hearing on June 2, 2022.

I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge.

Dated: New York, New York
May 19, 2022

By: /s/ Michael M. Guinness
Michael McGuinness