

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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In re GRAÑA Y MONTERO S.A.A.	:	Civil Action No. 2:17-cv-01105-LDH-ST
SECURITIES LITIGATION	:	
_____	:	<u>CLASS ACTION</u>
	:	
This Document Relates To:	:	REPLY MEMORANDUM OF LAW IN
	:	FURTHER SUPPORT OF MOTIONS FOR
ALL ACTIONS.	:	FINAL APPROVAL OF CLASS ACTION
_____	:	SETTLEMENT AND APPROVAL OF PLAN
	X	OF ALLOCATION AND AN AWARD OF
		ATTORNEYS' FEES AND EXPENSES AND
		AWARD TO PLAINTIFF PURSUANT TO
		15 U.S.C. §78u-4(a)(4)

Lead Plaintiff Treasure Finance Holding Corp. and plaintiff Marcia Goldberg (collectively, “Plaintiffs”), on behalf of themselves and the Settlement Class, and Lead Counsel respectfully submit this reply memorandum of law in further support of Plaintiffs’ motion for final approval of the Settlement and Plan of Allocation and Lead Counsel’s motion for an award of attorneys’ fees and expenses and an award to plaintiff Marcia Goldberg.¹ Plaintiffs also request that the Court issue an Order providing for the hearing on those motions via teleconference or videoconference, pursuant to the provisions of Administrative Order No. 2020-24.

I. PRELIMINARY STATEMENT

The Settlement resolves this Litigation in its entirety and establishes a common fund of \$20,000,000 for the benefit of Settlement Class Members. As detailed in Plaintiffs’ and Lead Counsel’s opening papers (ECF Nos. 118-118-8), the Settlement is the product of hard-fought litigation and extensive arm’s-length negotiations achieved with the assistance of mediator Gregory P. Lindstrom, Esq. It represents a very favorable result for the Settlement Class in light of the substantial risks and challenges that Plaintiffs and the Settlement Class faced in proving liability and defeating Defendants’ many arguments in response, as well as the costs and delays of continued litigation against South American-based Defendants during a worldwide pandemic.

In response to the extensive Court-approved notice program, which involved mailing 14,109 copies of the Notice of Pendency and Proposed Settlement of Class Action (the “Notice”) and Proof of Claim and Release form (the “Proof of Claim”) (collectively, the “Claim Package”) to potential

¹ Unless otherwise noted, all capitalized terms are defined in the July 2, 2020 Stipulation and Agreement of Settlement (“Stipulation”) (ECF No. 112-2) or in Plaintiffs’ and Lead Counsel’s opening memoranda of law in support of these motions, dated October 27, 2020. ECF Nos. 118-1, 118-2. The Supplemental Declaration of Ross D. Murray Regarding Notice Dissemination and Requests for Exclusion Received to Date (“Supplemental Murray Decl.”), dated November 23, 2020, is submitted herewith. All citations are omitted and emphasis is added, unless otherwise indicated.

Settlement Class Members and nominees and publishing the Summary Notice in *The Wall Street Journal* and over *Business Wire*, not a single objection was filed, and no requests for exclusion from the Settlement Class have been received. This reaction of the Settlement Class further demonstrates that the proposed Settlement, the Plan of Allocation, and the request for fees and expenses are fair and reasonable and should be approved.

II. THE SETTLEMENT CLASS OVERWHELMINGLY SUPPORTS THE SETTLEMENT

Plaintiffs and Lead Counsel respectfully submit that their opening briefs and declarations demonstrate why approval of the motions is warranted. Now that the time for objecting or requesting exclusion from the Settlement Class has passed, the lack of objections and total absence of opt outs from the Settlement Class provides additional support for approval of the motions.

Pursuant to the Court's Preliminary Approval Order, more than 14,100 copies of the Claim Package have been mailed to potential Settlement Class Members and their nominees. *See* Supplemental Murray Decl., ¶4. The Notice informed Settlement Class Members of the terms of the proposed Settlement and Plan of Allocation, that Lead Counsel would apply for an award of attorneys' fees in an amount not to exceed 25% of the Settlement Amount and payment of litigation expenses in an amount not to exceed \$100,000, and that Plaintiffs may seek an award for their time and expenses incurred in representing the Settlement Class in an amount not to exceed \$10,000 in the aggregate. *See* Notice (ECF No. 118-5), at 2. The Notice also apprised Settlement Class Members of: (1) their right to object to the proposed Settlement, the Plan of Allocation and/or the request for attorneys' fees and expenses; (2) their right to exclude themselves from the Settlement Class; (3) the November 10, 2020 deadline for filing objections and requests for exclusion; and (4) the January 13, 2021 deadline for submitting Proofs of Claim. *See id.* at 1. The Summary Notice, which informed readers of the proposed Settlement, how to obtain copies of the Claim Package, and

the deadlines for the submission of Proofs of Claim, objections, and requests for exclusion, was published in *The Wall Street Journal* and released over *Business Wire*. See ECF No. 118-5, Declaration of Ross D. Murray Regarding Notice Dissemination, Publication, and Requests for Exclusion Received to Date, ¶12. In addition, the Claims Administrator established a case-specific website which provided information and links to relevant documents (*id.*, ¶14), and a case-specific toll-free telephone helpline. *Id.*, ¶13.

As noted above, following this notice program, no Settlement Class Members objected to any aspect of the Settlement, the Plan of Allocation, or fee and expense application, or requested exclusion from the Settlement Class.

The absence of objections and requests for exclusion strongly supports a finding that the Settlement, Plan of Allocation, and fee and expense requests are fair, reasonable, and adequate. See, e.g., *In re Citigroup Inc. Sec. Litig.*, 965 F. Supp. 2d 369, 382 (S.D.N.Y. 2013); *In re Bisys Sec. Litig.*, No. 04 Civ. 3840(JSR), 2007 WL 2049726, at *1 (S.D.N.Y. July 16, 2007); *In re Veeco Instruments Inc. Sec. Litig.*, No. 05 MDL 01695 (CM), 2007 U.S. Dist. LEXIS 85629, at *40 (S.D.N.Y. Nov. 7, 2007). “[T]he favorable reaction of the overwhelming majority of class members . . . is perhaps the most significant factor.” *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 119 (2d Cir. 2005). Although a “‘certain number of objections are to be expected in a class action with an extensive notice campaign and a potentially large number of class members,’” *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, No. 05-MD-1720(MKB)(JO), 2019 WL 6875472, at *16 (E.D.N.Y. Dec. 16, 2019), “[i]f only a small number of objections are received, that fact can be viewed as indicative of the adequacy of the settlement.” *Id.* (quoting *Wal-Mart*, 396 F.3d at 118). As Judge Sweet recently recognized, “The overwhelmingly positive reaction – or absence of a negative reaction – weighs strongly in favor of confirming the Proposed

Settlement.” *In re Facebook, Inc., IPO Sec. & Derivative Litig.*, 343 F. Supp. 3d 394, 410 (S.D.N.Y. 2018), *aff’d*, 822 F. App’x 40 (2d Cir. 2020).

Importantly, the absence of any objection or requests for exclusion by sophisticated institutional investors (or any investors) is further evidence of the fairness of the Settlement. *See In re Citigroup*, 965 F. Supp. 2d at 382 (the reaction of the class supported the settlement where “not a single objection was received from any of the institutional investors that hold the majority of Citigroup stock”); *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).

The lack of objections from institutional or retail Settlement Class Members also supports approval of the Plan of Allocation. *See, e.g., Maley v. Del Glob. Techs. Corp.*, 186 F. Supp. 2d 358, 367 (S.D.N.Y. 2002); *Veeco*, 2007 U.S. Dist. LEXIS 85629, at *40 (“[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.”).

Finally, the positive reaction of the Settlement Class should also be considered with respect to Lead Counsel’s request for an award of attorneys’ fees and expenses. The absence of any objections to the requested fee and expenses supports a finding that the request is fair and reasonable. *See, e.g., In re Veeco Instruments Inc. Sec Litig.*, 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*, 186 F. Supp. 2d at 374 (the lack of any objection to the fee request supported its approval). In particular, the lack of any objections by institutional investors supports approval of the fee and expense request. *See In re Bisys*, 2007 WL 2049726, at *1 (lack of objections from

institutional investors supported the approval of fee request because “the class included numerous institutional investors who presumably had the means, the motive, and the sophistication to raise objections if they thought the [requested] fee was excessive”).

III. CONCLUSION

For each of these reasons, and the reasons set forth in Plaintiffs’ and Lead Counsel’s opening papers, it is respectfully requested that the Court approve the Settlement and Plan of Allocation and award the requested attorneys’ fees and expenses and award to plaintiff Marcia Goldberg pursuant to 15 U.S.C. §78u-4(a)(4).²

DATED: November 24, 2020

Respectfully submitted,

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² The proposed: (i) Final Judgment; (ii) Order Approving Plan of Allocation; and (iii) Order Awarding Attorneys’ Fees and Expenses and Award to Plaintiff Pursuant to 15 U.S.C. §78u-4(a)(4), are submitted herewith.

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on November 24, 2020, 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 the all counsel registered to received such notice.

s/ David A. Rosenfeld

DAVID A. ROSENFELD