

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS

KIN-YIP CHUN, Individually and on Behalf
of All Others Similarly Situated,

Plaintiff,

vs.

FLUOR CORPORATION, et al.,

Defendants.

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Civil Action No. 3:18-cv-01338-X

CLASS ACTION

**LEAD PLAINTIFFS' NOTICE OF NON-OPPOSITION IN FURTHER SUPPORT OF
MOTIONS FOR (1) FINAL APPROVAL OF SETTLEMENT AND APPROVAL OF
PLAN OF ALLOCATION AND (2) AWARD OF ATTORNEYS' FEES AND EXPENSES
AND AWARDS TO LEAD PLAINTIFFS PURSUANT TO 15 U.S.C. §78u-4(a)(4)**

Lead Plaintiffs Wayne County Employees' Retirement System, the Town of Fairfield Employees' Retirement Plan, and the Town of Fairfield Police and Firemen's Retirement Plan ("Lead Plaintiffs"), by and through Lead Counsel Robbins Geller Rudman & Dowd LLP and Pomerantz LLP ("Lead Counsel"), respectfully submit this notice of non-opposition in further support of the motions for (1) Final Approval of Settlement and Approval of Plan of Allocation and (2) Award of Attorneys' Fees and Expenses and Awards to Lead Plaintiffs Pursuant to 15 U.S.C. §78u-4(a)(4) (ECF 165 & 166, the "Motions").¹

I. PRELIMINARY STATEMENT

Pursuant to the Court's May 26, 2022 Order Preliminarily Approving Settlement and Providing for Notice (ECF 162, the "Preliminary Approval Order"), 405,813 copies of the Notice of Proposed Settlement of Class Action, Motion for Attorneys' Fees and Expenses, and Settlement Fairness Hearing (the "Postcard Notice") were mailed to potential Settlement Class Members and nominees.² A long-form Notice of Proposed Settlement of Class Action, Motion for Attorneys' Fees and Expenses, and Settlement Fairness Hearing (the "Long-Form Notice") was posted to a website dedicated to the Settlement.³ In addition, the Summary Notice was published over *PR Newswire* on June 23, 2022. *Id.*, App. at 020, ¶9. Lead Plaintiffs and Lead Counsel are pleased to report that the deadline for objections and exclusions has passed and there are ***no objections*** to the proposed Settlement, Plan of Allocation, the requested award of attorneys' fees and expenses, or the Lead

¹ All capitalized terms not otherwise defined herein shall have the meanings set forth in the Stipulation of Settlement, dated March 25, 2022 (ECF 159-1). All citations are omitted and emphasis added throughout unless otherwise noted.

² See Supplemental Declaration of Luiggy Segura Regarding: (A) Mailing of the Postcard Notice; (B) Report on Exclusion Requests and Objections; and (C) Claims Received to Date ("Supp. Segura Decl."), ¶2, submitted herewith.

³ See Declaration of Luiggy Segura Regarding: (A) Mailing of the Postcard Notice; (B) Publication of the Summary Notice; (C) Report on Exclusion Requests and Objections; and (D) Claims Received to Date (ECF 167-2, App. at 018, the "Segura Decl."), ¶3.

Plaintiff awards requested pursuant to 15 U.S.C. §78u-4(a)(4). Since the filing of the Motions, only one invalid exclusion request from a retail investor was received on October 25, 2022, well after the deadline for receipt of exclusion requests.⁴ These results are a testament to the fairness, adequacy, and reasonableness of the proposed Settlement, the proposed Plan of Allocation, Lead Counsel’s fee and expense application, and the requested reimbursement awards for Lead Plaintiffs.

II. THE REACTION OF THE SETTLEMENT CLASS STRONGLY SUPPORTS APPROVAL OF THE SETTLEMENT AND PLAN OF ALLOCATION

As detailed in the Motions, the Settlement of this complex securities class action comes after more than four years of contentious litigation, including multiple pleadings, substantial motion practice, and protracted arm’s-length settlement negotiations. Due to the complex nature of this case, Lead Counsel was required to expend a significant amount of time and effort to best represent the interests of the Settlement Class. Through those extensive efforts, Lead Counsel secured a \$33,000,000 all cash settlement, which represents a very favorable result for the Settlement Class.

The reaction of the Settlement Class to the Settlement is a key factor in weighing its adequacy. “[T]he reaction of the class to the proffered settlement . . . is perhaps the most significant factor to be weighed in considering its adequacy.” *In re Rambus Inc. Derivative Litig.*, 2009 WL 166689, at *3 (N.D. Cal. Jan. 20, 2009); *see also In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig.*, 851 F. Supp. 2d 1040, 1068 (S.D. Tex. 2012) (quoting *In re Enron Corp. Sec., Derivative & ERISA Litig.*, 228 F.R.D. 541, 567 (S.D. Tex. 2005)) (“Receipt of few or no objections ‘can be viewed as indicative of the adequacy of the settlement.’”); *In re OCA, Inc. Sec. & Derivative Litig.*, 2009 WL 512081, at *15 (E.D. La. Mar. 2, 2009) (“a small number of . . . objections can be viewed as indicative of the adequacy of the settlement”); *Turner v. Murphy Oil USA, Inc.*, 472 F. Supp. 2d 830, 853 (E.D. La. 2007) (same); *DeHoyos v. Allstate Corp.*, 240 F.R.D.

⁴ Supp. Segura Decl., ¶¶5-6.

269, 293 (W.D. Tex. 2007) (“[a] minimal level of opposition from absent class members weighs in favor of approving the settlement”).

After an extensive Court-approved notice program, the Settlement Class’s response to the Settlement and Plan of Allocation was overwhelmingly positive. Pursuant to the Preliminary Approval Order, a total of 405,813 copies of the Postcard Notice were mailed to potential Settlement Class Members and nominees. Supp. Segura Decl., ¶2. In addition, the Summary Notice was published over *PR Newswire* on June 23, 2022. Segura Decl., ¶9. The Preliminary Approval Order, Proof of Claim, Stipulation of Settlement, Postcard Notice, Long-Form Notice, and all papers filed in support of the Settlement were also posted on a dedicated website for the Settlement. *Id.*, ¶11.

The October 17, 2022 deadline for objecting to any aspect of the Settlement and the Plan of Allocation has passed and to counsel’s knowledge, as of the date of this statement, ***not a single objection has been received to any aspect of the Settlement or Plan of Allocation***. Accordingly, the reaction of the Settlement Class is significant evidence it supports the Settlement and Plan of Allocation.

Moreover, only ***five*** requests for exclusion were received – only two of which were deemed valid. Supp. Segura Decl., ¶5. This small number of requests for exclusion supports the finding that the proposed Settlement is fair, reasonable, and adequate. *See In re Oil Spill by Oil Rig Deepwater Horizon*, 295 F.R.D. 112, 150 (E.D. La. 2013) (“relatively few number of . . . opt outs supported fairness and adequacy of the settlement”); *Billitteri v. Sec. Am., Inc.*, 2011 WL 3586217, at *14 (N.D. Tex. Aug. 4, 2011) (finding class members’ opinions favored approval of the settlement where “[t]he extremely small number of opt-outs suggests a favorable opinion by the absent class members”); *OCA*, 2009 WL 512081, at *15 (“a small number of opt-outs . . . can be viewed as indicative of the adequacy of the settlement”).

III. THE REACTION OF THE SETTLEMENT CLASS STRONGLY SUPPORTS APPROVAL OF LEAD COUNSEL’S REQUEST FOR AN AWARD OF ATTORNEYS’ FEES AND EXPENSES AND THE REQUEST FOR LEAD PLAINTIFF AWARDS PURSUANT TO 15 U.S.C. §78u-4(a)(4)

For their efforts, Lead Counsel request an award of attorneys’ fees equal to 30% of the Settlement Amount and expenses of \$115,915.09, which were reasonably incurred in the prosecution of the litigation, plus interest on both amounts at the same rate and for the same periods as earned by the Settlement Fund. Lead Counsel’s fee request is within the range of awards made in contingent fee matters of this type in this Circuit and in this Court, as well as in numerous decisions throughout the country, and is the appropriate method of compensating counsel for the favorable result they have achieved. Moreover, this fee request falls squarely within the mandate of the Private Securities Litigation Reform Act of 1995 (“PSLRA”) that “a reasonable percentage of the amount” of damages and interest paid to the class be awarded to counsel. *See* 15 U.S.C. §78u-4(a)(6). Further, Lead Plaintiffs have each approved the amount of the attorneys’ fees requested, giving further validity to the reasonableness of the request. *See* ECF 167-7, App. at 333, ¶6; ECF 167-8, App. at 340, ¶10.

The Postcard Notice and Long-Form Notice informed Settlement Class Members that Lead Counsel would request a fee award of 30% plus expenses not to exceed \$200,000, plus interest on both amounts. ECF 167-2, Postcard Notice (App. at 025); Long-Form Notice (App. at 027). The motion for attorneys’ fees, expenses, and plaintiff awards (ECF 166) (“Fee and Expenses Motion”) then confirmed that Lead Counsel were requesting a fee award of 30%, plus expenses of \$115,915.09 (substantially below the \$200,000 amount included in the notice). The absence of *any objections* to the requested fee or expense award weighs strongly in favor of approval. *See, e.g., Bethea v. Sprint Commc’ns Co. L.P.*, 2013 WL 228094, at *5 (S.D. Miss. Jan. 18, 2013) (citing *In re Remeron Direct Purchaser Antitrust Litig.*, 2005 WL 3008808, at *13 (D.N.J. Nov. 9, 2005)) (“finding that lack of objections from the class supported the reasonableness of the fee request”); *Cook v. Howard Indus., Inc.*, 2013 WL 943664, at *4 (S.D. Miss. Mar. 11, 2013) (“The absence of

any objection from . . . any Class Member to Class Counsel being awarded [its requested] fee further supports the award.”); *In re Enron Corp. Sec., Derivative & ERISA Litig.*, 586 F. Supp. 2d 732, 804 (S.D. Tex. 2008) (finding “that general acceptance of the requested fee amount by all the pension funds and all but one institutional investor strongly supports the reasonableness” of the requested fee); *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, 2010 WL 4537550, at *29 (S.D.N.Y. Nov. 8, 2010) (absence of objections to counsel’s fee and expense request “attests to the approval of the Class” and supports approval); *In re Veeco Instruments Inc. Sec. Litig.*, 2007 WL 4115808, at *10 (S.D.N.Y. Nov. 7, 2007) (reaction of class members to fee and expense requests ““is entitled to great weight by the Court”” and absence of any objections “suggests that [a] fee request is fair and reasonable”); *Maley v. Del Glob. Techs. Corp.*, 186 F. Supp. 2d 358, 374 (S.D.N.Y. 2002) (same).

Similarly, the lack of any objection to Lead Plaintiffs’ requests for awards totaling \$51,919.25 pursuant to 15 U.S.C. §78u-4(a)(4), which was confirmed in the Fee and Expenses Motion and was substantially below the \$75,000.00 maximum disclosed in the Postcard Notice and Long-Form Notice, supports approval of those requests. *See, e.g., Flag Telecom*, 2010 WL 4537550, at *31.

IV. CONCLUSION

Lead Plaintiffs and Lead Counsel respectfully submit that the Settlement is an excellent result for the Settlement Class, and the proposed Plan of Allocation is both fair and reasonable. Therefore, both should be approved as fair, reasonable, and adequate. In addition, Lead Counsel’s fee and expense request is reasonable under the circumstances and should be awarded in the amounts requested. Lastly, Lead Plaintiffs’ requests for awards pursuant to 15 U.S.C. §78u-4(a)(4) are also reasonable under the circumstances and should be awarded in the amounts requested. The [Proposed] Order and Final Judgment is being submitted herewith.

DATED: October 31, 2022

Respectfully submitted,

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Firemen's Retirement Plan

CERTIFICATE OF SERVICE

This is to certify that on October 31, 2022, I have filed the above and foregoing on the Court's CM/ECF electronic filing system, and that by virtue of this filing, all attorneys of record will be served electronically with true and exact copies of this filing.

/s/ Joe Kendall

JOE KENDALL