

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

In Re: LIQUID ALUMINUM SULFATE  
ANTITRUST LITIGATION

Civil Action No. 16-md-2687 (JLL) (JAD)

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**REPLY BRIEF IN FURTHER SUPPORT OF DIRECT PURCHASER CLASS  
PLAINTIFFS' MOTION FOR FINAL APPROVAL OF GEO SETTLEMENT,  
MOTION FOR ATTORNEYS' FEES AND EXPENSES, AND PAYMENT OF CASE  
CONTRIBUTION AWARDS**  
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## PRELIMINARY STATEMENT

Following more than two years of hard-fought litigation efforts and extensive settlement negotiations, Direct Purchaser Class Plaintiffs, through their counsel, successfully negotiated a proposed, partial Settlement<sup>1</sup> of the Action with defendants GEO Specialty Chemicals, Inc., Kenneth A. Ghazey and Brian C. Steppig (collectively, the “GEO Settling Parties”), providing a \$10,796,800 cash benefit for the Direct Purchaser Settlement Class – with the potential for additional proceeds, up to a total amount of \$24,324,200.<sup>2</sup> Interim DPP Lead Counsel was also able to successfully negotiate for the GEO Settling Parties’ cooperation in the ongoing litigation against the Non-Settling Defendants, furthering underscoring the Settlement’s value. As detailed in the opening papers in support of the pending motions (the “Opening Papers”), the Settlement is an excellent result for the Direct Purchaser Settlement Class given the risks of further litigation and, in particular, GEO’s poor financial condition and the real possibility that Direct Purchaser Class Plaintiffs would receive a much smaller recovery from the GEO Settling Parties – *or no recovery at all* – had the Settlement not been reached. In addition, Interim DPP Lead Counsel’s related request for attorneys’ fees and expenses is fair and reasonable for all of the reasons set forth in the Opening Papers, including the enormous amount of time and effort devoted to the litigation and the challenges overcome in obtaining the Settlement.

Having been fully informed of the specifics of the Settlement, Plan of Distribution and Interim DPP Lead Counsel’s request for attorneys’ fees and expenses, the reaction of the Direct

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<sup>1</sup> Unless otherwise noted, capitalized terms used herein have the meanings ascribed to them in the Settlement Agreement Between Direct Purchaser Class Plaintiffs and Defendants GEO Specialty Chemicals, Inc., Kenneth A. Ghazey and Brian C. Steppig (DE No. 911-3) (“Settlement Agreement”) or the Declaration of James E. Cecchi, Esq. (DE No. 1077-3).

<sup>2</sup> Specifically, in addition to the \$10,796,800, the GEO Settling Parties have agreed to pay up to an additional \$13,527,400 from a sale of all or substantially all of GEO’s equity interests, a merger of GEO and another entity, or a sale of all or substantially all of GEO’s assets (collectively, a “Sale”), EBITDA-based payments, and/or shareholder dividends.

Purchaser Settlement Class has been overwhelmingly positive. Following the Court-approved notice program – including the mailing of more than 10,000 copies of the Notice – Direct Purchaser Class Plaintiffs and Interim DPP Lead Counsel are pleased to advise the Court that *only one* objection to the Settlement was received. That objection – filed by Lawrence McShane (DE No. 1092) – does not concern the adequacy or amount of the Settlement itself, but rather the release language contained in the Settlement Agreement, and for the reasons set forth in Direct Purchaser Class Plaintiffs’ Brief filed with the Court on October 22, 2018 (DE No. 1111), should, along with the accompanying motion for intervention, be rejected. Notably, there have been *no objections* to the Plan of Distribution or Interim DPP Lead Counsel’s request for attorneys’ fees and expenses.

Furthermore, only 30 requests for exclusion from the Direct Purchaser Settlement Class have been received. This number includes the 18 entities who have already been deemed by the Court, pursuant to Order dated August 3, 2018 (DE No. 1022), to have opted out of the Settlement. *See also* Declaration of Charles E. Ferrara (DE No. 1105) (reporting on additional 12 exclusion requests received). This reaction by the Direct Purchaser Settlement Class further demonstrates that the Settlement, Plan of Distribution, and Interim DPP Lead Counsel’s request for attorneys’ fees and expenses are fair and reasonable, and should be approved.

**LEGAL ARGUMENT**

**THE SETTLEMENT WITH THE GEO SETTLING PARTIES  
SHOULD BE APPROVED**

Direct Purchaser Class Plaintiffs and Interim DPP Lead Counsel respectfully submit that their Opening Papers amply demonstrate that the pending motions for final approval of the Settlement, the Plan of Distribution and Interim DPP Lead Counsel's request for attorneys' fees and expenses should be granted. Now that the time for submitting objections and requesting exclusion has passed, the response of the Direct Purchaser Settlement Class provides significant additional support for approval of the motions.

Pursuant to the Court's Order Granting Preliminary Approval of Proposed Settlement Between Direct Purchaser Class Plaintiffs and the GEO Settling Parties, Authorizing Dissemination of Notice of the Settlement, and Scheduling a Hearing for Final Approval of the Proposed Settlement (DE No. 985) ("Preliminary Approval Order"), the Court-approved Claims Administrator, Angeion Group, LLP ("Angeion"), has disseminated the Notice to more than 10,000 potential Direct Purchaser Settlement Class Members. *See* Supplemental Declaration of Charles E. Ferrara dated November 7, 2018 (the "Supp. Ferrara Decl.") submitted herewith. The Notice informed recipients of the terms of the Settlement, Plan of Distribution, and Interim DPP Lead Counsel's intention to apply to the Court for attorneys' fees in an amount up to 33.3% of the total consideration made available to the Direct Purchaser Settlement Class, reimbursement of the costs and expenses advanced on behalf of the Direct Purchaser Settlement Class and Case Contribution Awards of no more than \$40,000 to each Direct Purchaser Class Plaintiff. The Notice also apprised Direct Purchaser Settlement Class Members of their right to object to the Settlement, Plan of Distribution, and/or request for attorneys' fees and expenses, their right to

exclude themselves from the Direct Purchaser Settlement Class, and the October 2, 2018 deadline for filing objections and for receipt of requests for exclusion.<sup>3</sup>

On September 17, 2018, pursuant to the schedule approved by the Court in the Preliminary Approval Order, Direct Purchaser Class Plaintiffs and Interim DPP Lead Counsel filed their Opening Papers in support of the Settlement, Plan of Distribution, and motion for fees and expenses. The motions are supported by, among other things, declarations of Interim DPP Lead Counsel, additional plaintiffs' counsel, and the Claims Administrator. These papers are available on the public docket (DE No. 1077) and on the settlement website. *See* Supp. Ferrara Decl. ¶ 7.

**A. The Reaction of the Direct Purchaser Settlement Class Strongly Supports Approval of the Settlement and Plan of Distribution**

As discussed in the Opening Papers, one of the factors to be considered in approving a settlement under *Girsh v. Jepson* is “the reaction of the class to the settlement.” 521 F.2d 153, 157 (3d Cir. 1975) (quoting *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974)). Under that factor, the Court should consider whether “the number of objectors, in proportion to the total class, indicates that the reaction of the class to the settlement is favorable.” *In re Merck & Co., Inc. Vytorin ERISA Litig.*, 2010 WL 547613, \*7 (D.N.J. Feb. 9, 2010). As noted above, in response to the Court-approved Notice program and the motions, *only one* objection to the Settlement was received. That objection – filed by Lawrence McShane (DE No. 1092) was previously addressed in Direct Purchaser Class Plaintiffs' Brief filed with the Court on October

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<sup>3</sup> Angeion also caused the Summary Notice, which informed readers of the proposed Settlement, how to obtain copies of the Notice and Claim Form, and the deadlines for the submission of Claim Forms, objections, and requests for exclusion, to be published in the September edition of *The Municipal*, which had a hard copy distribution date of August 23, 2018. *See* Declaration of Charles E. Ferrara dated September 14, 2018, at ¶ 9 (DE No. 1077-2). In addition, copies of the Notice and Claim Form, as well as other important documents, were posted on the website specifically created for the Settlement. *Id.* at ¶ 10.

22, 2018 (DE No. 1111) and will not be addressed again herein. Additionally, out of the over 10,000 Notices mailed, only 30 requests for exclusion (representing less than 0.05% of the Direct Purchaser Settlement Class) were received.

Direct Purchaser Class Plaintiffs and Interim DPP Lead Counsel respectfully submit that the receipt of only one objection to the Settlement, as well as the small percentage of opt outs, provides further evidence that the Settlement is fair, reasonable and adequate and warrants final approval by the Court. *See In re Cendant Corp. Litig.*, 264 F.3d 201, 235 (3d Cir. 2001) (“[t]he vast disparity between the number of potential class members who received notice of the Settlement and the number of objectors creates a strong presumption that this factor weighs in favor of the Settlement . . .”); *see also, e.g., In re Nat’l Football League Players Concussion Injury Litig.*, 821 F.3d 410, 438 (3d Cir. 2016) (objections by approximately 1% of class members and opt outs of 1% of class members “weigh[ed] in favor of settlement approval”); *Stoetzner v. U.S. Steel Corp.*, 897 F.2d 115, 119 (3d Cir. 1990) (objections by 29 members of a class comprised of 281 “strongly favors settlement”); *Varacallo v. Mass. Mut. Life Ins. Co.*, 226 F.R.D. 207, 251 (D.N.J. 2005) (where only .06% of the class members opted out of the settlement favored approval of the settlement).

In addition, the absence of objections by Direct Purchaser Settlement Class Members to the Plan of Distribution supports its approval as well. *See, e.g., In re Lucent Techs., Inc., Sec. Litig.*, 307 F. Supp. 2d 633, 649 (D.N.J. 2004) (“The favorable reaction of the Class supports approval of the proposed Plan of Allocation.”); *In re Automotive Refinishing Paint Antitrust Litig.*, 617 F. Supp. 2d 336, 345 (E.D. Pa. 2007) (noting lack of objections to distribution plan).



**B. The Reaction of the Direct Purchaser Settlement Class Also Strongly Supports Approval of Interim DPP Lead Counsel’s Request for Attorneys’ Fees and Expenses**

The reaction of the Direct Purchaser Settlement Class also supports Interim DPP Lead Counsel’s motion for an award of attorneys’ fees and reimbursement of expenses, including the request for Case Contribution Awards to Direct Purchaser Class Plaintiffs. Here, the lack of any objections is strong evidence that the requested amount of fees – 33.3% of the settlement proceeds made available to the Direct Purchaser Settlement Class, as well as the requests for reimbursement of certain of counsels’ out-of-pocket expenses and Case Contribution Awards to the Direct Purchaser Class Plaintiffs are reasonable. *See, e.g., In re Ins. Brokerage Antitrust Litig.*, 282 F.R.D. 92, 121 (D.N.J. 2012) (“The absence of substantial objections by Settlement Class members to the fees requested by Class Counsel strongly supports approval.”); *Desantis v. Snap-On Tools Co.*, 2006 WL 3068584, at \*10 (D.N.J. Oct. 27, 2006) (“The fact that there were so few objectors to the amount of attorneys’ fees indicates that there is a positive reaction amongst the class to the requested fees.”); *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 305 (3d Cir. 2005) (finding where only two class members objected to fee request to be a “rare phenomenon”).

In sum, the positive reaction of the Direct Purchaser Settlement Class is strong evidence that the Settlement achieved is fair, reasonable, and adequate and in the best interests of the Direct Purchaser Settlement Class, that the proposed Plan of Distribution is fair and equitable, and that Interim DPP Lead Counsel’s motion for attorneys’ fees and expenses (including Case Contribution Awards) is reasonable.

**CONCLUSION**

For the foregoing reasons and the reasons set forth in their Opening Papers in support of the pending motions, Direct Purchaser Class Plaintiffs respectfully request that the Court approve the proposed Settlement, the proposed Plan of Distribution, and the request for attorneys' fees and expenses (including Case Contribution Awards to Direct Purchaser Class Plaintiffs). Copies of the (i) proposed Judgment Approving Class Action Settlement between Direct Purchaser Class Plaintiffs and GEO Settling Parties; (ii) proposed Order Approving Plan of Distribution of the Net Settlement Fund for the GEO Direct Purchaser Settlement; and (iii) proposed Order Awarding Attorneys' Fees, Reimbursement of Litigation Expenses and Payment of Case Contribution Awards are included herewith.

Dated: November 7, 2018

*/s/ James E. Cecchi*

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