UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re SSA BONDS ANTITRUST LITIGATION	Civil Action No. 1:16-cv-03711-ER
	CLASS ACTION
This Document Relates To: ALL ACTIONS.	REPLY MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTIONS (1) FOR FINAL APPROVAL OF THREE SETTLEMENTS, FINAL APPROVAL OF THE PLAN OF ALLOCATION, AND FOR CERTIFICATION OF THE SETTLEMENT CLASSES; AND (2) FOR ATTORNEYS' FEES, LITIGATION EXPENSES, AND SERVICE AWARDS

PRELIMINARY STATEMENT

Plaintiffs' opening memoranda and earlier motion providing for notice to the class demonstrated how the proposed Settlements, notice plan, and Plan of Allocation all met the applicable standards for approval. *See* ECF Nos. 646 ("Notice Motion"), 664 ("Final Approval Motion"). Plaintiffs also demonstrated how their requests for a 25% attorney-fee award, award of expenses, and modest Plaintiff service awards are all well in-line with the norms in this Circuit. *See* ECF No. 666 ("Fee Request Motion").[1]

The deadline for members of the Settlement Classes to request exclusion or object to any part of Plaintiffs' motions was February 1, 2021. To date, ***not one single*** member of the Settlement Classes has objected to the monetary component of the Stipulations and Agreements of Settlement ("Stipulations"), the Plan of Allocation, the scope of the releases, the proposed notice plan, or any other provision relating to the final approval of the Settlements. Also of significance is the fact that, despite the considerable size and sophistication of the Settlement Classes, ***not one single*** member of the Settlement Classes has timely filed an opt-out request. Similarly, ***not one single*** member of the Settlement Classes has objected to Plaintiffs' requests for awards of attorneys' fees, litigation expenses, or Plaintiff service awards.

While atypical, the absence of dissenting voices may not be as surprising as at first glance given the procedural posture of this case: Co-Lead Counsel is not aware of any case in which nearly $100 million and cooperation materials were realized for a class where a ***with-prejudice*** dismissal of the rest of the case came thereafter.

[1] All capitalized terms not otherwise defined herein have the meanings set forth in the Stipulations. Unless otherwise noted, emphasis is added and citations are omitted throughout.

Accordingly, and for the reasons set forth below and in Plaintiffs' prior memoranda, Plaintiffs respectfully request that their motions be granted.

I. PLAINTIFFS' MOTION FOR FINAL APPROVAL OF THE SETTLEMENTS SHOULD BE GRANTED

A. The Settlements Should Be Given Final Approval as Being Fair, Reasonable, and Adequate

Final approval of class-action settlement agreements is appropriate where the court determines the settlement is "fair, reasonable, and adequate." Fed. Rule Civ. P. 23(e)(2). For the reasons outlined in Plaintiffs' Final Approval Motion (at 5-20), the three Settlements amply satisfy this standard, as confirmed by each of the elements to be considered under Rule 23(e)(2) and *City of Detroit v. Grinnell Corp.*, 495 F.2d 448 (2d Cir. 1974). The only factor that requires updating in this reply memorandum is the reaction of members of the Settlement Classes.

"[T]he favorable reaction of the overwhelming majority of class members to the Settlement is perhaps the most significant factor in [the] *Grinnell* inquiry." *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 119 (2d Cir. 2005). Where a very small proportion of a class seeks exclusion or objects, the relevant *Grinnell* factor weighs in favor of approving a settlement. *See id*. at 118 ("'If only a small number of objections are received, that fact can be viewed as indicative of the adequacy of the settlement.'"); *D'Amato v. Deutsche Bank*, 236 F.3d 78, 86-87 (2d Cir. 2001) (where 27,883 notices were sent, and 18 objections and 72 requests for exclusion resulted, "[t]he District Court properly concluded that this small number of objections weighed in favor of the settlement").[2]

[2] *See also Precision Assoc., Inc. v. Panalpina World Trans. (Holding) Ltd.*, No. 08-cv-42(JG)(VVP), 2013 WL 4525323, at *7 (E.D.N.Y. Aug. 27, 2013) (granting final settlement approval where 183 members of a class estimated to number in the "hundreds of thousands" opted out, and only two objected); *In re Bear Stearns Cos., Inc. Sec., Derivative, & ERISA Litig.*, 909 F. Supp. 2d 259, 266-67 (S.D.N.Y. 2012) (favorably commenting on exclusion rate of 5.1%).

Here, despite the mailing of around 25,000 notices and an extensive publication campaign, ***no*** objections to the final approval of the settlements were filed and ***no*** purported members of the Settlement Classes sought to opt out. *See* February 15, 2021 Supplemental Declaration of Markham Sherwood, filed concurrently herewith ("Supplemental Sherwood Declaration"). The lack of objections and opt-outs is especially significant where, as here, sophisticated institutions constitute a significant portion of the Settlement Classes, given that savvy class members have greater resources and ability to critically evaluate the terms of the Settlements. *See In re Credit Default Swaps Antitrust Litig.*, No. 13-md-2476(DLC), 2016 WL 2731524, at *8-*9 (S.D.N.Y. Apr. 26, 2016) ("Out of almost 14,000 Class members, only twenty-one requests for exclusion were timely submitted. Only four objections have been pursued. This very low number of objections and requests for exclusion supports a finding that the Settlement is fair. . . . This sophisticated Class is in an excellent position to swiftly and competently assess whether the Plan [of Allocation], and the model upon which it is based, achieves a fair distribution of this very sizeable Settlement Fund. It has spoken. No Class member has objected that the Settlement Fund is inadequate."); *Woburn Ret. Sys. v. Salix Pharms., Ltd.*, No. 14-CV-8925(KMW), 2017 WL 3579892, at *2-*3 (S.D.N.Y. Aug. 18, 2017) (noting small number of objections and absence of institutional investor objections as factor supporting approval); *In re AOL Time Warner, Inc. Sec. & ERISA Litig.*, No. 02 Civ. 5575(SWK), 2006 WL 903236, at *10 (S.D.N.Y. Apr. 6, 2006) (lack of objections from institutional investors supported approval of the settlement).

B. The Extensive Notice Program Satisfies Rule 23 and Due Process

As set forth in the declarations submitted in connection with their Final Approval Motion, ECF Nos. 671-72, and the Supplemental Sherwood Declaration, around 25,000 notice packets were mailed to reasonably identifiable members of the Settlement Classes, and an extensive publication

campaign was undertaken using global print and online outlets. For instance, as set forth in the Supplemental Sherwood Declaration (¶¶ 4-6), the online publication program resulted in almost 5 million online impressions, and the settlement website has been accessed over 11,000 times. Similar robust notice programs, combining direct mail and publication notice are routinely approved. *See* Notice Motion at 4-12; Final Approval Motion at 20-23; *In re Vitamin C Antitrust Litig.*, No. 06-MD-1738(BMC)(JO), 2012 WL 5289514, at *8 (E.D.N.Y. Oct. 23, 2012) (approving notice program "distributed widely, through the internet, print publications, and targeted mailings"); *Credit Default Swaps*, 2016 WL 2731524, at *5 (same).

The Claims Administrator, with the assistance of Co-Lead Counsel, has fielded many inquiries regarding the Settlements via both telephone and e-mail.[3] *See* Supplemental Sherwood Declaration ¶¶6-7. All such inquiries were, to our knowledge, satisfactorily resolved. *Id.* The Claims Administrator and Co-Lead Counsel will, of course, continue to diligently respond to class member inquiries and assist in their filing and processing of claims.

C. The Plan of Allocation Should Be Given Final Approval

The Plan of Allocation proposed to be employed in connection with the Settlements should also be granted final approval as fair and adequate. As described in Plaintiffs' Notice Motion (at 12-18) and Plaintiffs' Final Approval Motion (at 23-35), it reflects the considerable efforts of Co-Lead Counsel and experts to reasonably account for different relationships of various types of transactions to the likelihood of recovery at trial. As noted above, no member of the Settlement Classes has taken any issue with the Plan of Allocation.

[3] On December 30, 2020, the Court forwarded Co-Lead Counsel an inquiry it received from an individual investor about how to know if she was a class member. We promptly contacted the individual, who provided us her list of investments. We informed her that, based on the provided list, she was not actually a member of the Settlement Classes. *See generally Bynum v. D.C.*, 412 F. Supp. 2d 73, 76-77 (D.D.C. 2006) (refusing to treat as "objections" informal letters of complaint).

D. The Proposed Settlement Classes Should Be Finally Certified

The Court has preliminarily certified the Settlement Classes. *See* ECF Nos. 428, 431, 580. As was the case at the time of Plaintiffs' Final Approval Motion (at 24-25), there have been no changes that would undermine the Court's initial determination that certification of the Settlement Classes is appropriate under Rules 23(a) and 23(b).

II. PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, LITIGATION EXPENSES, AND SERVICE AWARDS SHOULD BE GRANTED

As set forth in the Fee Request Motion, Co-Lead Counsel's request for an award of 25% of the common fund is reasonable whether viewed from the perspective of the factors considered by *Golberger v. Integrated Res., Inc.*, 209 F.3d 43 (2d Cir. 2000) (*see* Fee Request Motion at 10-17); from the perspective of Co-Lead Counsel's arm's-length engagement-letter negotiations with their client here, Plaintiff Alaska Department of Revenue, Treasury Division, and Alaska Permanent Fund Corporation (*see id.* at 18-19); and from the perspective of the Lodestar "cross-check" (*see id.* at 19-21). Indeed, Co-Lead Counsel here secured recoveries that compare favorably to the recovery rates in other cartel cases – even though ***this*** case was dismissed at the pleading stage. *Id.* at 14-15. And because of the complexity of this case even at the pleading stage, the requested award would only amount to 1.3 times more than what our firms would have been paid on an hourly engagement – noticeably *lower* than what courts regularly find appropriate. *See id.* at 20. As with the Settlements themselves, the lack of objections from class members only confirms the reasonableness of the requested fees, expenses, and service awards.[4]

[4] The Notice made clear that Co-Lead Counsel's application for an award of up to 33% in fees would be filed publicly on December 28, 2020. The Notice also indicated the fee request would be made available on the settlement website. In connection with preparing this memorandum, it was discovered that the December 28, 2020, public filings – including the request for a reduced 25% fee award – were inadvertently not uploaded. The oversight was promptly corrected.

CONCLUSION

Based on the foregoing, Plaintiffs respectfully request that their Final Approval Motion be granted. Submitted concurrently herewith are three proposed final judgments based on the forms agreed to during negotiations with each Settling Defendant. Each proposed final judgment, among other things, finds that each Settlement is fair, reasonable, and adequate; confirms the adequacy of notice; and finds that the requirements for certification under Rules 23(a) and 23(b)(3) have been met. Also submitted concurrently is a proposed order approving the Plan of Allocation, to be used to jointly administer the three Settlements.

Based on the foregoing, Plaintiffs also respectfully request that their Fee Motion be granted. Filed concurrently herewith is a proposed order doing so.

DATED: February 15, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on February 15, 2021, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses on the attached Electronic Mail Notice List, and I hereby certify that I caused the mailing of the foregoing via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

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