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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE ALLERGAN GENERIC DRUG PRICING SECURITIES LITIGATION	Case No. 2:16-cv-09449 (KSH) (CLW)

REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF (A) LEAD PLAINTIFFS' MOTION FOR FINAL APPROVAL OF SETTLEMENT AND PLAN OF ALLOCATION; AND (B) LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND LITIGATION EXPENSES

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

Court-appointed Lead Plaintiffs Sjunde AP-Fonden and Union Asset Management Holding AG ("Lead Plaintiffs"), on behalf of themselves and the Settlement Class, and Lead Counsel respectfully submit this reply memorandum of law in further support of (i) Lead Plaintiffs' Motion for Final Approval of Settlement and Plan of Allocation (ECF No. 231), and (ii) Lead Counsel's Motion for an Award of Attorneys' Fees and Litigation Expenses (ECF No. 232) (together, the "Motions").[1]

I. INTRODUCTION

As detailed in Lead Plaintiffs' and Lead Counsel's opening papers in support of the Motions (ECF Nos. 231-32) ("Opening Papers"), the proposed Settlement—providing for a $130,000,000 cash payment in exchange for the resolution of all claims asserted in the Action against Defendants—is an excellent result for the Settlement Class. The Settlement takes into account the risks and complexities of continued litigation and is the result of extensive arm's-length negotiations between experienced counsel under the guidance of a well-respected mediator and former federal judge. Likewise, Lead Counsel's request for attorneys' fees and Litigation Expenses is fair and reasonable, especially considering the result achieved for the Settlement Class, the caliber of work performed, the risks of litigation, and comparable fee and expense awards.

Given the quality of the Settlement, it is no surprise that the Settlement Class's response to the Settlement has been overwhelmingly positive. In accordance with the Court's July 30, 2021 Preliminary Approval Order (ECF No. 228), the Court-authorized Claims Administrator, A.B. Data, Ltd. ("A.B. Data"), conducted an extensive notice campaign, including mailing over one

[1] Capitalized terms have the meanings contained in the Stipulation and Agreement of Settlement dated as of July 8, 2021 (ECF No. 223-1) ("Stipulation"), or in the Joint Declaration of Matthew L. Mustokoff and John C. Browne in Support of (A) Lead Plaintiffs' Motion for Final Approval of Settlement and Plan of Allocation; and (B) Lead Counsel's Motion for an Award of Attorneys' Fees and Litigation Expenses (ECF No. 231-1).

million Notices, publishing a summary notice in *The Wall Street Journal* and over *PR Newswire*, and posting relevant information and documents—including the Opening Papers—on the dedicated Settlement website, www.AllerganDrugPricingSecuritiesLitigation.com.[2] In addition, pursuant to the Stipulation, Defendants issued notice pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715 et seq. ECF No. 230. The foregoing notice efforts have informed Settlement Class Members of the Settlement, the Plan of Allocation, and the requested fees and Litigation Expenses, as well as, *inter alia*, Settlement Class Members' options in connection with the Settlement. *See, e.g.*, Initial Walter Decl., Ex. A.

Following this robust notice campaign, *only a single* objection was received. It was lodged by an individual, Dr. Stephen Francis Schoeman ("Schoeman Objection"), who has filed similar ideologically-driven objections to other class action settlements over the years, each of which has been summarily rejected by the federal courts. Not only is the objection premised on material misunderstandings and devoid of merit, it is also procedurally defective because Dr. Schoeman fails to provide any documentation or supporting evidence to establish his membership in the Settlement Class—a threshold standing requirement to object.[3] In addition, *only twelve* requests for exclusion from the Settlement Class have been received to date, representing a minuscule fraction of the over one million Notices mailed and further underscoring the positive reaction of

[2] *See* Supplemental Declaration of Adam D. Walter Regarding: (A) Mailing of the Notice and Claim Form; and (B) Report on Requests for Exclusion Received ("Supp. Walter Decl.") attached as Exhibit A to the accompanying Declaration of John C. Browne ("Browne Declaration"), as well as the previously filed Declaration of Adam D. Walter dated October 13, 2021 (ECF No. 231-5) ("Initial Walter Decl.").

[3] Attached as Exhibits B and C to the accompanying Browne Declaration are letters received from Dr. Schoeman dated October 18, 2021 and October 19, 2021, respectively. The initial letter received from Dr. Schoeman dated October 5, 2021 was previously submitted to the Court with the Opening Papers (ECF No. 231-16).

the Settlement Class. *See* Supp. Walter Decl., ¶ 10. Notably, the two largest requests by far were submitted by entities that have ongoing litigation against Allergan and were never intended to be part of the Settlement, and the remaining ten requests were submitted by individuals.

In summary, the Settlement, Plan of Allocation, and Lead Counsel's request for attorneys' fees and Litigation Expenses have the support of the overwhelming majority of the Settlement Class, as well as the two sophisticated institutional investor Lead Plaintiffs who closely supervised the prosecution and resolution of the Action. Lead Plaintiffs and Lead Counsel respectfully request that the Court grant the Motions and enter the proposed orders submitted herewith.

II. THE SETTLEMENT, PLAN OF ALLOCATION, AND REQUEST FOR FEES AND EXPENSES WARRANT APPROVAL

In their Opening Papers, Lead Plaintiffs and Lead Counsel amply demonstrate why the Settlement, the Plan of Allocation, and the request for attorneys' fees and Litigation Expenses are fair and reasonable. Now that the time for objecting or requesting exclusion has passed, the Settlement Class's reaction also clearly supports approval.

A. The Settlement Class's Reaction Supports Approval of the Settlement and Plan of Allocation

The Third Circuit instructs district courts to consider the reaction of the class in determining whether to approve a class action settlement. *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975).[4] Thus, under *Girsh*, courts 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 Schering-Plough Corp. Enhance Sec. Litig.*, 2013 WL 5505744, at *2 (D.N.J. Oct. 1, 2013); *see also In re Nat'l Football League Players Concussion Injury Litig.*, 821 F.3d 410, 438 (3d. Cir. 2016) (finding

[4] Unless otherwise noted, all internal quotation marks, citations, and other punctuation are omitted, and all emphasis is added.

factor favored settlement where "only approximately 1% of class members objected and approximately 1% of class members opted out").

The reaction of the Settlement Class plainly supports approval of the Settlement and Plan of Allocation where, as here, the single objection received—*by an individual who may not even be a member of the Settlement Class*—is vanishingly small in comparison to the large size of the Settlement Class. When the number of objections is this low, the "vast disparity between the number of potential class members who received notice of the Settlement and the number of objectors creates a strong presumption . . . in favor of the Settlement." *In re Cendant Corp. Litig*., 264 F.3d 201, 235 (3d Cir. 2001); *see also 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 particular, the absence of any objections from institutional investors, who possessed ample means and incentive to object to the Settlement if they deemed it unsatisfactory, is further evidence of the Settlement's fairness. *See, e.g.*, *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.").

Likewise, the fact that only twelve requests for exclusion were received following extensive notice efforts (including the mailing of over one million Notices) further supports approval of the Settlement. *See, e.g.*, *Varacallo v. Mass. Mut. Life Ins. Co.*, 226 F.R.D. 207, 221, 251 (D.N.J. 2005) (where only .06% of class members opted out of the settlement favored approval of the settlement); *Destefano v. Zynga, Inc.*, 2016 WL 537946, at *14 (N.D. Cal. Feb. 11, 2016) (noting low number of exclusions supports reasonableness of a securities class action settlement).

B. The Settlement Class's Reaction Also Supports Approval of Lead Counsel's Request for Attorneys' Fees and Litigation Expenses

The reaction of the Settlement Class similarly supports Lead Counsel's motion for attorneys' fees and Litigation Expenses. Here, the lack of meaningful objections is strong evidence that the attorneys' fees and expenses 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., LLC*, 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"). And, as with the Settlement, the lack of any objections by institutional investors particularly supports approval of the fee request. *See Rite Aid*, 396 F.3d at 305 (that "a significant number of investors in the class were 'sophisticated' institutional investors that had considerable financial incentive to object had they believed the requested fees were excessive" and did not do so, supported approval of request); *In re Schering-Plough Corp. Enhance ERISA Litig.*, 2012 WL 1964451, at *6 (D.N.J. May 31, 2012) (same).

Accordingly, the favorable reaction of the Settlement Class provides strong support for the Settlement, the Plan of Allocation, and Lead Counsel's request for attorneys' fees and Litigation Expenses and warrants the Court's approval of the Motions.

III. THE LONE OBJECTION IS PROCEDURALLY DEFICIENT, LACKS MERIT, AND SHOULD BE OVERRULED

As noted, Dr. Schoeman fails to provide any documentation or trading information to establish his membership in the Settlement Class and, thus, his standing to object. *See In re Royal Dutch/Shell Transp. Sec. Litig.*, 2008 WL 9447623, at *29 (D.N.J. Dec. 9, 2008) ("Because he is

not a member of the Class, he has no standing to object."); *Feder v. Elec. Data Sys. Corp.*, 248 F. App'x 579, 581 (5th Cir. 2007) ("[a]llowing someone to object to settlement in a class action based on this sort of weak, unsubstantiated evidence would inject a great deal of unjustified uncertainty into the settlement process"); *In re Am. Int'l Grp., Inc. Sec. Litig.*, 916 F. Supp. 2d 454, 459 (S.D.N.Y. 2013) (objector who is not a class member "does not have standing under Rule 23 to object to the Settlement"). For this reason alone, Dr. Schoeman's objection should be rejected.

Even if Dr. Schoeman could establish standing, his objection would be baseless. In his initial October 5, 2021 letter, his primary complaint was that the Notice does not detail Lead Counsel's Litigation Expenses or request for attorneys' fees. *See, e.g.*, Schoeman Obj. (ECF No. 231-16) at 2 ("But there is NO DETAILED LISTING at all of the alleged 'Litigation Expenses'"). Dr. Schoeman is incorrect. As the Preliminary Approval Order clearly stated, this level of detail was to be provided in Lead Plaintiffs' Opening Papers filed on October 13, 2021, which set forth detailed information for both the Settlement and Lead Counsel's fee and expense request. This information was also made available to Settlement Class Members on the public docket and Settlement website, www.AllerganDrugPricingSecuritiesLitigation.com. Indeed, Dr. Schoeman has filed similar objections, with no success. *See e.g.*, *In re Weatherford Int'l Sec. Litig.*, No. 11 Civ. 1646(LAK), 2015 WL 127847, at *1 (S.D.N.Y. Jan. 5, 2015) (substantially similar objection by Dr. Schoeman (at ECF No. 264) lacked merit); *N.Y. State Tchrs.' Ret. Sys. v. Gen. Motors Co.*, 315 F.R.D. 226, 239 (E.D. Mich. 2016) (Dr. Schoeman lacked standing to object).

In any event, Lead Counsel personally served the Opening Papers on Dr. Schoeman on October 15, 2021. The Opening Papers set forth ample support for the Settlement, as well as for the requested attorneys' fees and Litigation Expenses. They include extensive detail regarding the work performed by Plaintiffs' Counsel on behalf of the Settlement Class as well as the types and

amounts of expenses incurred by Plaintiffs' Counsel. The Opening Papers also demonstrate that the requested attorneys' fees and Litigation Expenses are appropriate given the quality and amount of work performed, the favorable result obtained, and the applicable jurisprudence.

After his receipt of the Opening Papers, Dr. Schoeman submitted two additional letters continuing to complain about the same lack of detail that had now been provided directly to him. *See generally* Schoeman Obj. (Browne Decl., Exs. B & C). Dr. Schoeman's complaints are meritless and should be rejected. *See, e.g.*, *Nwabueze v. AT & T Inc.*, 2013 WL 6199596, at *8 (N.D. Cal. Nov. 27, 2013) (rejecting objections that were "largely conclusory and fail to provide legal support or evidence").

Dr. Schoeman's vague criticisms of the notice process are similarly without merit. In his October 5, 2021 letter, Dr. Schoeman states that "[t]his is the very first time that I as member of the class in this litigation has been informed about this litigation!" *See* Schoeman Obj. (ECF No. 231-16) at 3. This case followed standard class action practice, with a PSLRA notice required by statute being published at the outset. Moreover, pursuant to Rule 23, notice is mailed only after a class is actually certified either during litigation or for settlement. Here, the Settlement was reached before a class was certified and, accordingly, Settlement Class Members were mailed a notice informing them of both the pendency of the Action as a class action (including their right to request exclusion) and of the Settlement. This is standard procedure that courts have long held comports with due process in class cases that are settled before class certification.

Finally, in his October 19, 2021 letter, Dr. Schoeman complains that "what little information is provided is couched in the most dense, the most legalistic, the most indecipherable verbiage imaginable! Something that would take an Albert Einstein or a Sir Isaac Newton to try may be some sense out it!" Schoeman Obj. (Browne Decl., Ex. C) at 3. To the contrary, the Notice

approved by the Preliminary Approval Order provides detailed yet understandable information about Settlement Class Members' rights and options, follows nationally-recognized "best practices" for notice programs, and meets all the requirements of Rule 23 and the PSLRA. *See* Fed. R. Civ. P 23(c)(2)(B); 15 U.S.C. § 78u-4(a)(7).[5]

Dr. Schoeman's objection should be denied for a lack of standing and merit.

IV. THE NOTICE PROGRAM MET ALL THE REQUIREMENTS OF RULE 23 AND DUE PROCESS

On November 9, 2021, the Court docketed an anonymous letter from an individual who claims to have received the mailed Notice a few days after the October 27, 2021 exclusion deadline. *See* ECF No. 234. Courts, however, have long recognized that although notice programs must be the best "practicable," it is simply not possible to ensure with 100% certainty that every single one of millions of potential class members will timely receive mailed individual notice.

Notice disseminated to potential class members must satisfy Rule 23(c)(2)(B), which requires "the best notice that is practicable under the circumstances," Rule 23(e)(1)(B), which requires that notice of a settlement be disseminated in a "reasonable manner;" and due process, which requires that notice be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950); *Nat'l Football League*, 821 F.3d at 435 (same); *Varacallo*, 226 F.R.D. at 225 (same).

Courts have universally held that these standards do not require that *actual* mailed notice be received by all class members. *See Fidel v. Farley*, 534 F.3d 508, 514 (6th Cir. 2008); *DeJulius*

[5] It appears that Dr. Schoeman's overall objection lies not with the Settlement, but with class actions generally. Schoeman Obj. (Ex. B) at 4 ("THIS is now a matter for Congress to investigate and to consider for legislative reform."). These abstract objections are insufficient to undermine the fairness and reasonableness of the specific Settlement and fee request here.

v. New England Health Care Emps. Pension Fund, 429 F.3d 935, 944 (10th Cir. 2005); *In re DVI, Inc. Sec. Litig.*, 2016 WL 1182062, at *7 (E.D. Pa. Mar. 28, 2016). Instead, these standards require that the method of providing notice be "reasonably calculated to reach interested parties." *Fidel*, 534 F.3d at 514; *see also Reppert v. Marvin Lumber & Cedar Co.*, 359 F.3d 53, 56 (1st Cir. 2004) ("Individual notice of class proceedings is not meant to guarantee that every member entitled to individual notice receives such notice, but . . . the notice ordered [must be] reasonably calculated to reach the absent class members.").

The notice program adopted in this Action parallels notice programs used in virtually every securities class action in the Nation for the past several decades, and indisputably complies with all due process and Rule 23 requirements. On August 27, 2021, more than eight weeks before the exclusion/objection deadline, A.B. Data mailed Notice Packets to *all* record holders of Allergan common and preferred stock identified by Allergan. *See* Supp. Walter Decl., ¶ 3. On the same day, A.B. Data also began the process of disseminating notice to shareholders who are not record holders, but instead owned Allergan securities in "street name," by mailing the Notice Packet to 4,990 brokers, banks, and other nominees. *Id*. Notice of the Settlement has also been available to Settlement Class Members:

- on a real-time basis through the Court's ECF system;
- since August 27, 2021, via a website dedicated to the Settlement;
- through the September 13, 2021 publication of the Summary Notice in *The Wall Street Journal* and over *PR Newswire* pursuant to the terms of the Preliminary Approval Order, which informed readers how to obtain copies of the Notice and Claim Form; and
- on the websites of Lead Counsel.

It is black-letter law that the adequacy of a class action notice program is not judged by whether all class members actually receive a mailed notice by a set date, but by whether the process

was "reasonably calculated to reach the absent class members," *Reppert*, 359 F.3d at 56, and "***whether the class as a whole had notice adequate to flush out whatever objections might reasonably be raised to the settlement***." *Fidel*, 534 F.3d at 514. Courts have repeatedly held that procedures identical to those adopted here—including mailing to all record holders approximately sixty days before the relevant deadlines, establishing a system for nominees to forward notices or provide names of potential class members, and publishing a summary notice in a prominent publication and over the internet to supplement the mailed notices—satisfied these standards.

Indeed, courts have found that a notice program which meets the foregoing standards is sufficient even if delivery of notices to some of the class members was delayed by the process of disseminating notice through the use of brokers and nominees. *See, e.g., Facebook*, 343 F. Supp. 3d at 411 (finding notice sufficient even though a significant number of names of potential class members were not provided until just before, or slightly after, the objection deadline due to delays by brokers); *Fidel*, 534 F. 3d at 513-15 (approving similar notice program as satisfying Rule 23 and due process, even though delays in forwarding by brokers caused 20% of class to receive notice after exclusion/objection deadline).[6] Courts have also recognized that the risk of delay in receipt of legal notices is a "risk a shareholder takes in registering his or her securities in street name." *Marsh*, 2009 WL 5178546, at *24; *see also Fidel*, 534 F.3d at 514 (citing case law "noting that the 'attendant risks' of owning stock registered in street name, including the risk that the

[6] *See also, e.g., Silber v. Mabon*, 18 F.3d 1449, 1452-54 (9th Cir. 1994) (notice adequate where, due to broker's late response, notices to *14% of potential class members* were mailed after exclusion/objection deadline); *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1374-75 (9th Cir. 1993) (notice sufficient even though as many as *one-third* of shareholders may have received it after exclusion/objection deadline due to nominee delays); *Hill v. State Street Corp.*, 2015 WL 127728, at *15 (D. Mass. Jan. 8, 2015) (notice adequate even though some potential class members received notice at or after objection and exclusion deadline due to delays by brokers); *In re Marsh & McLennan Cos., Inc. Sec. Litig.*, 2009 WL 5178546, at *24 (S.D.N.Y. Dec. 23, 2009) (same).

shareholder may not receive notice of corporate proceedings, are borne by the stockholder"); *In re MCA, Inc. S'holders Litig.*, 1993 WL 43024, at *5 (Del. Ch. Feb. 16, 1993) (holding, in shareholder class action, that a "shareholder who holds her shares in a 'street name' assumes responsibility for any delays in notice that are attributable to the delay attendant in forwarding notice through the 'street name'"); *aff'd*, 633 A.2d 370 (Del. Supr. 1993).

Moreover, despite certain brokers' delay in identifying potential Settlement Class Members or forwarding the Notice Packet on to potential Settlement Class Members, the overwhelming majority of Notice Packets were mailed well in advance of the exclusion/objection deadline here. By October 8, 2021 (no later than nineteen days before the exclusion/objection deadline), 967,583 Notice Packets had been mailed, or approximately 91% of all Notice Packets mailed. *See* Supp. Walter Decl., ¶ 7. By October 13, 2021 (no later than fourteen days before the exclusion/objection deadline), 1,033,602 Notice Packets had been mailed, or approximately 97% of all Notice Packets mailed. *Id*. And, by October 15, 2021 (no later than twelve days before the exclusion/objection deadline), all 1,068,208 Notice Packets had been mailed. Thus, the delays in mailing some Notice Packets caused by certain brokers did not fundamentally impact the overall effectiveness and adequacy of the notice program, and the Settlement Class as a whole has been given an appropriate opportunity to review and comment on the Settlement before the Settlement Hearing.

V. CONCLUSION

For the foregoing reasons, and those set forth in their Opening Papers, Lead Plaintiffs and Lead Counsel respectfully request that the Court overrule the Schoeman Objection and approve the Settlement, the Plan of Allocation, and Lead Counsel's request for attorneys' fees and Litigation Expenses. Proposed orders are submitted herewith.

Dated: November 10, 2021

Respectfully submitted,

s/ *James E. Cecchi*

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CERTIFICATION OF SERVICE

I hereby certify that on November 10, 2021, I caused a true and correct copy of the foregoing Reply Memorandum of Law in Further Support of (A) Lead Plaintiffs' Motion for Final Approval of Settlement and Plan of Allocation; and (B) Lead Counsel's Motion for an Award of Attorneys' Fees and Litigation Expenses and supporting documents to be electronically filed with the Clerk of the Court using the ECF system. Notice of this filing will be sent to counsel of record by operation of the Court's electronic filing system.

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

Dated: November 10, 2021

s/ *James E. Cecchi*

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