

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

BEEZLEY v. FENIX PARTS, INC., *et al.*

Case No. 1:17-cv-07896

Honorable Charles R. Norgle

**March 6, 2020 Hearing Date**

**REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF:  
(I) LEAD PLAINTIFFS' MOTION FOR FINAL APPROVAL OF THE  
PROPOSED SETTLEMENT AND THE PLAN OF ALLOCATION; AND  
(II) LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES  
AND REIMBURSEMENT OF LITIGATION EXPENSES**

## I. PRELIMINARY STATEMENT

Court-appointed Lead Plaintiffs, Thomas Weeks, Douglas Barnard and Keith B. White (collectively, “Lead Plaintiffs”),<sup>1</sup> and their counsel, respectfully submit this memorandum in further support of: (1) Lead Plaintiffs’ Motion for Final Approval of Class Action Settlement and Plan of Allocation (ECF Nos. 138, 139, the “Final Approval Motion”); and (2) Lead Counsel’s Motion for Award of Attorneys’ Fees and Reimbursement of Litigation Expenses (ECF Nos. 140, 141, the “Fee and Expense Motion”).<sup>2</sup>

The Court-ordered deadline for Settlement Class Members to: (1) object to the fairness, reasonableness or adequacy of the Settlement, the Plan of Allocation, and/or to the Fee and Expense Application; or (2) to submit a request for exclusion from the Settlement Class, was February 14, 2020. *See* Preliminary Approval Order (ECF No. 137), ¶¶13, 16. As explained below, there have been no objections or requests for exclusion. It is respectfully submitted that the Settlement Class’s positive reaction strongly supports approval of the Settlement and the Plan of Allocation, as well as the request for attorneys’ fees and reimbursement of Litigation Expenses.

Accordingly, for all the reasons set forth herein, and in the opening papers filed with the Court on January 31, 2020, the Court should grant the Final Approval Motion and the Fee and Expense Motion.

---

<sup>1</sup> Unless otherwise noted, capitalized terms have the meanings set forth in the Stipulation and Agreement of Settlement dated November 6, 2019 (ECF No. 131-1, “Stipulation”) or the Declaration of Ex Kano S. Sams II and Adam M. Apton (ECF No. 142) (“Joint Declaration”). Unless otherwise indicated, all emphasis is added and quotations and citations are omitted.

<sup>2</sup> As explained in detailed below, filed simultaneously with this memorandum, is Lead Plaintiffs’ Unopposed Motion for Continuance of Settlement Hearing and Extension of Deadlines for Certain Settlement Class Members. If the Court grants the motion, Lead Plaintiffs will file a supplemental submission to the Court seven (7) days prior to the new Settlement Hearing date updating the Court on the Settlement Class’s reaction.

**II. THE POSITIVE REACTION OF THE SETTLEMENT CLASS SUPPORTS APPROVAL OF THE SETTLEMENT, PLAN OF ALLOCATION, AND THE REQUEST FOR ATTORNEYS' FEES AND LITIGATION EXPENSES**

**A. The Court-Approved Notice Program**

In accordance with the Court's Preliminary Approval Order, on December 26, 2019, the Claims Administrator, JND Legal Administration ("JND"), under the supervision of Lead Counsel, mailed 10,012 copies of the Postcard Notice to potential Settlement Class Members and nominees. *See* Declaration of Jack Ewashko (ECF No. 142-1) (the "Mailing Declaration"). Since the execution of the Mailing Declaration, JND has, as of February 26, 2020, disseminated an additional 518 Postcard Notices to potential Settlement Class Members. *See* Supplemental Declaration of Jack Ewashko ("Ewashko Suppl. Decl."), ¶2. Moreover, the Summary Notice was published in *Investor's Business Daily* on January 6, 2020, and transmitted over *PR Newswire* on January 10, 2020 (Mailing Decl. at ¶15). The Notice, Claim Form, Stipulation, Preliminary Approval Order, among other documents, were posted on the dedicated settlement website ([www.FenixSecuritiesLitigation.com](http://www.FenixSecuritiesLitigation.com)). *See* Ewashko Suppl. Decl. at ¶5. The Postcard Notice, Notice, and Summary Notice informed Settlement Class Members of the February 14, 2020 deadline to submit an objection to the Settlement, Plan of Allocation and/or fee and expense application, or to request exclusion from the Settlement Class.

On January 31, 2020, fourteen (14) days prior to the objection deadline, Lead Plaintiffs and Lead Counsel filed their opening papers in support of the Settlement, Plan of Allocation, and fee and expense application. The motions were supported by the declarations of Lead Plaintiffs, Lead Counsel, and the Claims Administrator. These papers are available on the public docket and on the settlement website. *See* ECF Nos. 138-141; Ewashko Suppl. Decl. at ¶6.

Following this extensive notice program, not a single Settlement Class Member has requested exclusion from the Settlement Class, and there has not been a single objection to the Settlement, the Plan of Allocation, the request for attorneys' fees, the request for reimbursement

of expenses, or the request that Lead Plaintiffs be reimbursed for their work litigating this action. *See* Ewashko Suppl. Decl. at ¶¶8-11.

**B. Late Requests for Notice Mailing**

On February 24, 2020, JND notified Lead Counsel that on that same day – after the date for Settlement Class Members to object or request exclusion – despite its request on December 26, 2019 that brokers provide the names and addresses of beneficial owners to JND within seven (7) calendar days, it had belatedly received the names of approximately 917 potential Settlement Class Members from Pershing LLC. Additionally, that same evening, Stifel Nicolaus & Company (“Stifel”) emailed JND with a list of 561 names and addresses for purposes of mailing the Postcard Notice. Pursuant to these requests, JND caused all 1,478 requested Postcard Notices to be mailed directly to potential Settlement Class Members on February 28, 2020. (The approximately 1,478 Postcard Notice recipients are referred to collectively herein as the “Late Notice Recipients”). *See* Ewashko Suppl. Decl., ¶¶3-4.

In addition, Lead Counsel caused JND to include a letter that, among other things, explained that the deadline to object or request exclusion had since passed. The letter also informed the Late Notice Recipients that Lead Plaintiffs requested the Court to continue the Settlement Hearing to a later date, and extend the objection and request for exclusion deadline for the Late Notice Recipients only. The letter also explained that all potential Settlement Class Members have until April 24, 2020 to submit a Claim Form if they wish to participate in the Settlement. *See* Ewashko Suppl. Decl., ¶¶4-5.

**C. The Reaction of the Settlement Class Supports Approval of the Settlement, Plan of Allocation, and Fee and Expense Request**

Lead Plaintiffs and Lead Counsel respectfully submit that the universally positive response from the Settlement Class confirms the fairness, adequacy, and reasonableness of the Settlement. *See, e.g., Daluge v. Cont’l Cas. Co.*, No. 15-CV-297-WMC, 2018 WL 6040091, at

\*3 (W.D. Wis. Oct. 25, 2018) (“The lack of opposition to the settlement, coupled with the positive reaction by class members . . . further supports a finding that the settlement is fair and reasonable”); *Swift v. Direct Buy, Inc.*, No. 2:11-CV-401-TLS, 2013 WL 5770633, at \*6 (N.D. Ind. Oct. 24, 2013) (noting that “limited opposition to the Settlement Agreement among affected parties, . . . also favors settlement”); *In re Groupon, Inc. Sec. Litig.*, No. 12 CV 2450, 2016 WL 3896839, at \*2 (N.D. Ill. July 13, 2016) (granting final approval of a settlement where this court found “that a full opportunity has been afforded to Class Members to object to the Settlement and/or to participate in the Final Approval Hearing”); *In re Sears, Roebuck & Co. Front-Loading Washer Prods. Liab. Litig.*, No. 06 C 7023, 2016 WL 772785, at \*11 (N.D. Ill. Feb. 29, 2016) (characterizing three objections as a “small number”); *Mangone v. First USA Bank*, 206 F.R.D. 222, 227 (S.D. Ill. 2001) (97 objections and approximately 19,637 opt-outs from notice mailing of 18.5 million supported approval). Indeed, not a single Settlement Class Member objected or requested exclusion. *See* Ewashko Suppl. Decl., ¶¶9-12.

The Settlement Class’s favorable reaction also supports approval of the Plan of Allocation. *See, e.g., Downes v. Wisc. Energy Corp. Ret. Account Plan*, No. 09-C-0637, 2012 WL 1410023, at \*4 (E.D. Wis. Apr. 20, 2012) (approving plan of allocation because of its reasonable formula, despite receipt of 31 objections); *In re Veeco Instruments Inc. Sec. Litig.*, No. 05 MDL 01695(CM), 2007 WL 4115809, at \*14 (S.D.N.Y. Nov. 7, 2007) (“not 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 absence of any objections from Settlement Class Members to the Fee and Expense Motion, including Lead Plaintiffs’ request for reimbursement of their costs and expenses incurred as a direct result of their representation of the Settlement Class pursuant to the

PSLRA (15 U.S.C. §§ 77z-1(a)(4), 78u-4(a)(4)), strongly supports a finding that the fee and expense request is fair and reasonable. *See, e.g., King v. Trek Travel, LLC*, No. 18-CV-345-WMC, 2019 WL 6790398, at \*3 (W.D. Wis. Dec. 12, 2019) (granting an attorneys’ fee award of one-third of the settlement fund and holding that “the court finds the resolution of the entire case is in the best interest of the class members, including the fee award, noting that no class member objected to the fee request”); *Standard Iron Works v. ArcelorMittal*, No. 08 C 5214, 2014 WL 7781572, at \*2 (N.D. Ill. Oct. 22, 2014) (“The absence of objections indicates that the fee is fair and reasonable and consistent with prevailing market rates”); *City of Sterling Heights Gen. Employees’ Ret. Sys. v. Hospira, Inc.*, No. 1:11-CV-08332-AJS, 2014 WL 12767763, at \*1 (N.D. Ill. Aug. 5, 2014) (“the reaction of the Class to the fee request supports the fee awarded”); *Bethea v. Sprint Commc’ns Co. L.P.*, No. 3:12-CV-322-CWR-FKB, 2013 WL 228094, at \*5 (S.D. Miss. Jan. 18, 2013) (“The absence of objection by class members to Settlement Class Counsel’s fee-and-expense request further supports finding it reasonable.”).

In sum, the universally favorable reaction of the Settlement Class is strong evidence that the Settlement is fair, reasonable, and adequate and in the best interests of the Settlement Class, that the proposed Plan of Allocation of the Settlement proceeds is fair and equitable, and that Lead Counsel’s request for attorneys’ fees and reimbursement of Litigation Expenses is reasonable.

### **III. CONCLUSION**

For all the foregoing reasons, and those set forth in their opening papers, Lead Plaintiffs and Lead Counsel respectfully request that the Court approve the Settlement, the Plan of Allocation, and the request for attorneys’ fees and reimbursement of Litigation Expenses.<sup>3</sup>

---

<sup>3</sup> Lead Plaintiffs submit The [Proposed] Judgment Approving Class Action Settlement, [Proposed] Order Approving Plan of Allocation of Net Settlement Fund and [Proposed] Order Awarding Attorneys’ Fees and Reimbursement of Litigation Expenses concurrently herewith in accordance with the Court’s procedures for electronic entry.

Dated: February 28, 2020

Respectfully submitted,

**GLANCY PRONGAY & MURRAY LLP**

By: *s/ Ex Kano S. Sams II*

Robert V. Prongay  
Ex Kano S. Sams II  
1925 Century Park East, Suite 2100  
Los Angeles, California 90067  
Tel.: (310) 201-9150  
Fax: (310) 201-9160  
Email: rprongay@glancylaw.com  
Email: esams@glancylaw.com

**LEVI & KORSINSKY, LLP**

Nicholas I. Porritt (admitted pro hac vice)  
Adam M. Apton (admitted pro hac vice)  
Adam C. McCall (admitted pro hac vice)  
1101 30th Street NW, Suite 115  
Washington, DC 20007  
Tel.: (202) 524-4290  
Email: nporritt@zlk.com  
Email: aapton@zlk.com  
Email: amccall@zlk.com

**LUBIN AUSTERMUEHLE, P.C.**

Peter S. Lubin  
360 W Butterfield Rd #325  
Elmhurst, IL 60126  
(630) 333- 0333 Telephone  
(630) 445-1848 Facsimile

*Lead Counsel for Plaintiffs*

**CERTIFICATE OF SERVICE**

I hereby certify that I caused a copy of the forgoing document to be filed on February 28, 2020, with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to all attorneys appearing in this matter.

*s/ Ex Kano S. Sams II*  
\_\_\_\_\_  
Ex Kano S. Sams II