

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
(Southern Division)

WILLIAM SPONN, Individually and on)	No. 8:16-cv-02625-RWT
Behalf of All Others Similarly Situated,)	
)	<u>CLASS ACTION</u>
Plaintiff,)	
)	
vs.)	
)	
EMERGENT BIOSOLUTIONS INC., et al.,)	
)	
Defendants.)	
)	

REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF PLAINTIFFS' MOTION FOR (1) FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND APPROVAL OF PLAN OF ALLOCATION; AND (2) AN AWARD OF ATTORNEYS' FEES AND EXPENSES TO LEAD COUNSEL AND AWARD TO PLAINTIFFS PURSUANT TO 15 U.S.C. §78u-4(a)(4)

I. PRELIMINARY STATEMENT

Lead Plaintiffs City of Cape Coral Municipal Firefighters' Retirement Plan and City of Sunrise Police Officers' Retirement Plan, and Certified Class Representative Geoffrey L. Flagstad ("Plaintiffs") and their undersigned counsel respectfully submit this reply memorandum in further support of Plaintiffs' Motion for (1) Final Approval of Class Action Settlement and Approval of Plan of Allocation; and (2) an Award of Attorneys' Fees and Expenses to Lead Counsel and Award to Plaintiffs Pursuant to 15 U.S.C. §78u-4(a)(4). ECF No. 107.

After an extensive Court-approved notice program, the Settlement Class' response to the Settlement, Plan of Allocation, and Lead Counsel's request for an award of attorneys' fees and expenses, including an award to Plaintiffs for their time and expenses, is overwhelmingly positive. Pursuant to the Court's Amended Order Preliminarily Approving Settlement and Providing for Notice (the "Notice Order") (ECF No. 106), more than 24,800 copies of the Amended Notice of Proposed Settlement of Class Action ("Notice") and Proof of Claim and Release form ("Proof of Claim") were sent to potential Settlement Class Members and nominees. *See* Supplemental Declaration of Carole K. Sylvester Regarding Notice Dissemination and Requests for Exclusion Received to Date, ¶¶3-4, filed herewith. In addition, the Summary Notice was transmitted over *Business Wire* and published in *The Wall Street Journal* on November 21, 2018. *See* Declaration of Carole K. Sylvester Regarding Class Action Fairness Act Notification, Notice Dissemination, Publication, and Requests for Exclusion Received to Date (ECF No. 107-7), ¶13. The Notice, Proof of Claim, Stipulation of Settlement, and Notice Order, among other relevant documents, were also posted to the website dedicated to the litigation. *Id.*, ¶15.

The December 26, 2018 deadline for objecting to any aspect of the Settlement, including the Plan of Allocation and Lead Counsel's request for an award of attorneys' fees and expenses, has now

passed and to Lead Counsel's knowledge as of the date of this memorandum, no objections and only one request for exclusion, representing only a few hundred shares, from the Settlement Class have been received.

II. ARGUMENT

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

The reaction of the class to a settlement is a significant factor to be weighed in considering its adequacy, and “[t]he attitude of the members of the class, as expressed directly or by failure to object, after notice, to the settlement, is a proper consideration for the trial court.” *Flinn v. FMC Corp.*, 528 F.2d 1169, 1173 (4th Cir. 1975). “Thus, an absence of objections and a small number of opt-outs weighs significantly in favor of the settlement’s adequacy.” *In re Mills Corp. Sec. Litig.*, 265 F.R.D. 246, 257 (E.D. Va. 2009); *see also In re Genworth Fin. Sec. Litig.*, 210 F. Supp. 3d 837, 842 (E.D. Va. 2016) (“A lack of objections to settlement by class members and opt-outs from the class demonstrates low opposition and weighs in favor of approving a settlement.”); *Archbold v. Wells Fargo Bank, N.A.*, No. 3:13-cv-24599, 2015 U.S. Dist. LEXIS 92855, at *6 (S.D. W. Va. July 14, 2015) (“The lack of objections and opt-out requests are important factors contributing to a conclusion that the settlement is fair and reasonable.”). As noted above, the period to submit an objection or request exclusion from the Settlement Class has passed, and only one opt-out request was received. Courts have repeatedly recognized that even a small number of class members choosing to opt out of a class “strongly compel[s] a finding of adequacy.” *In re Microstrategy, Inc. Sec. Litig.*, 150 F. Supp. 2d 896, 906 (E.D. Va. 2001); *see also Rowles v. Chase Home Fin., LLC*, No. 9:10-cv-01756-MBS, 2012 U.S. Dist. LEXIS 3264, at *9 (D.S.C. Jan. 10, 2012) (finding fact that 32 opt-outs, representing 0.2% of total class members, supports approval of settlement).

Notably, the total lack of objections by institutional investors, who typically have the greatest financial stake in these types of cases and are experienced fiduciaries, likewise weighs in favor of both the proposed Settlement and the fee and expense request. *See, e.g., In re Citigroup Inc. Sec. Litig.*, 965 F. Supp. 2d 369, 382 (S.D.N.Y. 2013) (“[N]ot a single objection was received from any of the institutional investors that hold the majority of Citigroup stock.”).

B. The Reaction of the Settlement Class Strongly Supports Approval of Lead Counsel’s Request for an Award of Attorneys’ Fees and Expenses and an Award to Plaintiffs Pursuant to 15 U.S.C. §78u-4(a)(4)

Minimal or no objections to a fee request also constitute significant evidence that the request is fair and reasonable. *See, e.g., Helmick v. Columbia Gas Transmission*, No. 2:07-cv-00743, 2010 U.S. Dist. LEXIS 65808, at *17 (S.D. W. Va. July 1, 2010) (finding award of one-third of common fund appropriate in large part because of lack of objections to the settlement); *Deem v. Ames True Temper, Inc.*, No. 6:10-cv-01339, 2013 U.S. Dist. LEXIS 72981, at *9-*10 (S.D. W. Va. May 23, 2013) (awarding one-third of the common fund finding “[i]t is noteworthy that no class member has objected to the fees and costs sought by counsel, or to any other aspect of the settlement”).

Here, no Settlement Class Members have objected to Lead Counsel’s motion for an award of attorneys’ fees and payment of expenses, or to awards to Plaintiffs. This total lack of objection provides strong evidence that the fee and expense request is fair and reasonable.

III. CONCLUSION

For the reasons set forth herein and in their previously submitted memoranda and declarations, Plaintiffs and their counsel respectfully submit that the Settlement is a very favorable result for the Settlement Class, and the Plan of Allocation is a fair and equitable method for distributing the Net Settlement Fund. Therefore, both should be approved as fair, reasonable, and adequate. Finally, the fees and expenses requested by Lead Counsel and Plaintiffs are reasonable

under the circumstances and should be awarded in the amounts sought. A proposed Judgment, a proposed order approving the Plan of Allocation, and a proposed order awarding attorneys' fees and expenses and award to Plaintiffs, are being filed herewith.

DATED: January 8, 2019

Respectfully submitted,

/s/ Ellen Gusikoff Stewart
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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on January 8, 2019, 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.

s/ Ellen Gusikoff Stewart

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Mailing Information for a Case 8:16-cv-02625-RWT City of Cape Coral Municipal Firefighters' Retirement Plan et al v Emergent Biosolutions, Inc., HQ et al

Electronic Mail Notice List

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Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

- (No manual recipients)