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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

PAUL HAYDEN, et al.,

Plaintiffs,

v.

PORTOLA PHARMACEUTICALS
INC., et al.,

Defendants.

No. 3:20-cv-00367-VC

CLASS ACTION

**REPLY MEMORANDUM OF LAW IN
SUPPORT OF (I) LEAD PLAINTIFF’S
MOTION FOR FINAL APPROVAL OF
PROPOSED CLASS ACTION
SETTLEMENT, FINAL
CERTIFICATION OF THE
SETTLEMENT CLASS, AND FINAL
APPROVAL OF PROPOSED PLAN OF
ALLOCATION; AND (II) LEAD
COUNSEL’S MOTION FOR
ATTORNEYS’ FEES,
REIMBURSEMENT OF EXPENSES,
AND AWARD OF COSTS AND
EXPENSES TO PLAINTIFFS**

Date: March 2, 2023

Time: 10:00 a.m.

Dept.: 4 – 17th Floor

Judge: Hon. Vince Chhabria

Court-appointed Lead Plaintiff Alameda County Employees' Retirement Association ("Lead Plaintiff" or "ACERA"), on behalf of itself, Additional Named Plaintiff Oklahoma Firefighters Pension and Retirement System ("OFPRS"), and the Settlement Class, respectfully submits this reply memorandum of law in further support of Lead Plaintiff's Motion for: (i) Final Approval of Proposed Class Action Settlement, (ii) Final Certification of the Settlement Class, and (iii) Final Approval of Proposed Plan of Allocation (ECF No. 246) ("Final Approval Motion"). Lead Counsel also submits this reply brief in further support of Lead Counsel's Motion for: (i) Attorneys' Fees, (ii) Reimbursement of Expenses, and (iii) Award of Costs and Expenses to Plaintiffs (ECF No. 247) ("Fee and Expense Motion," and together with the Final Approval Motion, the "Motions").¹

Lead Plaintiff and Lead Counsel are pleased to advise the Court that there has been a unanimously positive reaction from the Settlement Class to the proposed \$17.5 million Settlement; the Plan of Allocation; and the request for attorneys' fees, reimbursement of litigation expenses, and reimbursement of expenses to Plaintiffs pursuant to the Private Securities Litigation Reform Act of 1995 ("PSLRA"), 15 U.S.C. § 78u-4(a)(4). There are **no objections** to any aspect of the Settlement and no oppositions to either Motion. There have also been **no requests for exclusion** received. Accordingly, for the reasons set forth herein, as well as in the opening papers filed in support of the Motions on January 26, 2023 (see ECF Nos. 246-48), (i) the Settlement and the corresponding Plan of Allocation should be approved as "fair, reasonable, and adequate" under Rule 23(e) of the Federal Rules of Civil Procedure; and (ii) Lead Counsel's request for attorneys' fees, litigation expenses, and reimbursement of Plaintiffs' expenses should be approved.

¹ All capitalized terms herein have the same meaning as defined in the Motions. To the extent the terms are not defined in the Motions, they have the same meaning as set forth in the September 19, 2022 Stipulation of Settlement. ECF No. 231-2. Unless otherwise stated, all emphasis is added and all alterations, internal quotation marks, and citations (if any) are omitted.

I. SETTLEMENT CLASS REACTION

The Notice Program ordered by the Court (Preliminary Approval Order at 5-6) has been fully executed, as detailed in the Supplemental Blow Declaration. See Supplemental Declaration of Eric Blow Regarding: (a) Continued Dissemination of Settlement Notice, and (b) Report on Claims, Requests for Exclusion, and Objections (“Blow Supp. Decl.”) ¶¶ 3-12.

A total of 44,005 copies of the Notice and Claim Form (“Notice Packet”) were disseminated to potential Settlement Class Members or their nominees, pursuant to the Court’s Preliminary Approval Order (ECF No. 242). See Blow Supp. Decl. ¶¶ 4-6.² The Notice informed recipients of, among other things, the essential terms of the Settlement, the Plan of Allocation, and the requested fees and litigation expenses, as well as Settlement Class Members’ options in connection with the Settlement. In addition, the Notice Packet and related pleadings were made available on the website established for the Settlement (www.PortolaSecuritiesLitigation.com), and the Summary Notice was published in Investor’s Business Daily/Weekly and transmitted over the PR Newswire. See Declaration of Eric Blow Regarding Dissemination and Publication of Settlement Notice (“Blow Notice Decl.”) (ECF 248-9) ¶¶ 12-14. Further, Defendants have issued notice pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715. See Final Approval Motion at 16; Declaration of Daniel E. Barenbaum in Support of the Motions (ECF 248) ¶ 78.

The Claims Administrator is aware of no objections having been filed with the Court or otherwise received, nor of any request for exclusion from the Settlement submitted by a potential Settlement Class Member. Blow Supp. Decl. ¶¶ 13-16. To object to the Settlement, potential Settlement Class Members were required to submit written objections to the Court so

² Of those 44,005 Notice Packets disseminated, 61 were returned by the United States Postal Service to Epiq as undeliverable. Blow Supp. Decl. ¶ 7. Some of those were returned with forwarding addresses; for others, Epiq conducted advanced searches using tools at its disposal, and certain updated addresses were identified. Id. Of those Notice Packets returned, Epiq re-mailed eight (8) Notice Packets to those for whom updated addresses were obtained. Id.

that such papers were received, and not simply postmarked, on or before February 9, 2023.³ Notice at 10 (Question No. 16); Preliminary Approval Order ¶¶ 16-17; Blow Supp. Decl. ¶ 14. And to request exclusion from the Settlement, potential Settlement Class Members were required to mail requests for exclusion to the Claims Administrator at a stated address, postmarked no later than February 9, 2023. Notice at 9 (Question No. 13); Preliminary Approval Order ¶ 14; Blow Supp. Decl. ¶ 13.

As of February 23, 2023, the Claims Administrator has received and initially processed 12,683 Claims. Blow Supp. Decl. ¶ 8. To have been timely, Claims had to be postmarked (if mailed) or electronically submitted by February 13, 2023. Notice at 8 (Question No. 10); Preliminary Approval Order ¶ 12; Blow Supp. Decl. ¶ 8.⁴ Epiq is still processing additional nominee submissions. Blow Supp. Decl. ¶ 8.

The reaction of the Settlement Class—**where not a single member has requested exclusion or objected (and where most shares are owned by institutional investors)**—is powerful evidence that confirms the fairness, reasonableness, and adequacy of the Settlement, Plan of Allocation, and fee and expense request. The Motions should therefore be approved.

³ Pursuant to the Court’s Standing Order for Civil Cases (“Standing Order”) (at 15), only substantial compliance with the requirements for submitting an objection was required. Notice at 15 (Question No. 16).

⁴ These Claims numbers are preliminary as Epiq’s review and claims processing is ongoing. Some of the claims received to date may contain deficiencies or be ineligible, which will be addressed during the normal course of the Settlement administration. Blow Supp. Decl. ¶¶ 9-10. Pursuant to the Stipulation, claimants with deficient claims will be given a chance to cure their deficiencies. ECF No. 231-2 ¶ 6.7. Given this, and the fact that additional claims may still be received and processed, Lead Plaintiff and Lead Counsel cannot report the total number of valid claims at this time. Pursuant to the Court’s Standing Order and the Northern District’s “Procedural Guidance for Class Action Settlements,” after the claims administration process is complete, and payments have been issued to eligible claimants, Class Counsel will file a post-distribution accounting, as set forth in the proposed Order Approving Class Action Settlement.

II. ARGUMENT

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

In the briefs and supporting documents in support of the Final Approval Motion, Lead Plaintiff demonstrated that the Settlement and Plan of Allocation are fair, reasonable, and adequate, and warrant the Court’s approval. Now that the time for objecting or requesting exclusion has passed—with no objections having been filed nor requests for exclusion having been submitted—the Settlement Class’s reaction also clearly (and further) supports approval. This “unanimous, positive reaction to the Proposed Settlement is compelling evidence that the [p]roposed [s]ettlement is fair, just, reasonable and adequate.” Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc., 221 F.R.D. 523, 529 (C.D. Cal. 2004).

To determine whether to approve a class action settlement, the Ninth Circuit instructs district courts to consider, among various factors, “the reaction of the class members to the proposed settlement.” Hanlon v. Chrysler Corp., 150 F.3d 1011, 1026 (9th Cir. 1998), overruled on other grounds by Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338 (2011);⁵ see also Final Approval Motion at 16-17; see generally id. at 5-17. “The absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class . . . action [settlement] are favorable to the class members.” In re Wells Fargo & Co. S’holder Derivative Litig., 445 F. Supp. 3d 508, 518 (N.D. Cal. 2020), aff’d, 845 F. App’x 563 (9th Cir. 2021); see also Hanlon, 150 F.3d at 1027 (“[T]he fact that the overwhelming majority of the class willingly approved the offer and stayed in the class presents at least some objective positive commentary as to its fairness.”).

⁵ See also Churchill Vill., L.L.C. v. Gen. Elec., 361 F.3d 566, 577 (9th Cir. 2004). The Ninth Circuit refers to this factor together with the other factors discussed in Lead Plaintiff’s Final Approval Motion (at 5-17) as both “Hanlon factors” and “Churchill factors.” Compare Campbell v. Facebook, Inc., 951 F.3d 1106, 1121 (9th Cir. 2020) (citing “Hanlon” factors), with Kim v. Allison, 8 F.4th 1170, 1178 (9th Cir. 2021) (citing “Churchill factors”). This brief references the Hanlon factors consistent with this Court’s opinion in Cotter v. Lyft, Inc., 193 F. Supp. 3d 1030, 1035 (N.D. Cal. 2016) (Chhabria, J.).

Here, the fact that there are **no objections** from Settlement Class Members strongly supports approval of the Settlement and Plan of Allocation. See Fleming v. Impax Labs. Inc., No. 16-CV-06557-HSG, 2022 WL 2789496, at *7 (N.D. Cal. July 15, 2022) (“The Court finds that the absence of objections indicates strong support among the [c]lass [m]embers and weighs in favor of approval.”); Destefano v. Zynga, Inc., No. 12-cv-04007-JSC, 2016 WL 537946, at *13 (N.D. Cal. Feb. 11, 2016) (“By any standard, the lack of objection of the [c]lass [m]embers favors approval of the [s]ettlement.”); see also Atlas v. Accredited Home Lenders Holding Co., No. 07-CV-00488-H (CAB), 2009 WL 3698393, at *4 (S.D. Cal. Nov. 4, 2009) (noting the “predominantly positive response” to the plan of allocation where only two objections were submitted).

Further, the absence of any objections from institutional investors—who possessed not only the vast majority of outstanding shares, but also 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 Extreme Networks, Inc. Sec. Litig., No. 15-cv-04883-BLF, 2019 WL 3290770, at *9 (N.D. Cal. July 22, 2019) (“Many potential class members are sophisticated institutional investors; the lack of objections from such institutions indicates that the settlement is fair and reasonable.”); In re Cathode Ray Tube (CRT) Antitrust Litig., MDL No. 1917, 2017 WL 2481782, at *4 (N.D. Cal. June 8, 2017) (the absence of any objections from institutional investors supports “the inference that the class approves of the settlement is even stronger”).

Likewise, the fact that, following robust notice, **no requests for exclusion** from the Settlement were submitted by potential Settlement Class Members further supports approval of the Settlement. See, e.g., Bautista-Perez v. Juul Labs, Inc., No. 20-CV-01613-HSG, 2022 WL 2239838, at *6 (N.D. Cal. June 22, 2022) (“The Court finds that the absence of objections and opt-outs in comparison to the size of the class indicates support among the [c]lass [m]embers and weighs in favor of approval.”); Destefano, 2016 WL 537946, at *14 (noting that a low number of exclusions supports the reasonableness of a securities class action settlement).

B. The Settlement Class’s Reaction Also Strongly Supports Approval of Lead Counsel’s Fee and Expense Requests

The reaction of the Settlement Class similarly supports Lead Counsel’s motion for an award of attorneys’ fees, litigation expenses, and reimbursement of Plaintiffs’ expenses. Here, the lack of any objections is strong evidence that the requested fees and expenses are reasonable. See Baird v. BlackRock Institutional Tr. Co., N.A., No. 17-CV-01892-HSG, 2021 WL 5113030, at *7 (N.D. Cal. Nov. 3, 2021) (finding that an upward adjustment of the benchmark fee award was justified where “no [c]lass [m]ember objected to the settlement and none have requested exclusion, suggesting support for the settlement’s outcome”); Destefano, 2016 WL 537946, at *18 (finding that “the lack of objection by any [c]lass [m]embers” supported the 25% fee award). As with the Settlement and Plan of Allocation, the lack of any objections by institutional investors weighs in favor of approving the fee and expense request. See, e.g., Heffler v. Wells Fargo & Co., No. 16-CV-05479-JST, 2018 WL 6619983, at *15 (N.D. Cal. Dec. 18, 2018) (“[T]he lack of objections from institutional investors who presumably had the means, the motive, and the sophistication to raise objections weighs in favor of approval [of plaintiffs’ counsel’s fees request].”), aff’d sub nom. Heffler v. Pecos, 802 F. App’x 285 (9th Cir. 2020).

Accordingly, the favorable reaction of the Settlement Class provides strong support for Lead Counsel’s request for attorneys’ fees, litigation expenses, and reimbursement of certain expenses to Plaintiffs.

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III. CONCLUSION

For the foregoing reasons, and those set forth in the opening briefs and supporting documents filed in support of the Motions, Lead Plaintiff and Lead Counsel respectfully request that the Court approve the Settlement; the Plan of Allocation; and the request for attorneys' fees, litigation expenses, and reimbursement of the Plaintiffs' expenses.

DATED: February 23, 2023

Respectfully submitted,

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

PAUL HAYDEN, et al.,

Plaintiffs,

v.

PORTOLA PHARMACEUTICALS
INC., et al.,

Defendants.

No. 3:20-cv-00367-VC

CLASS ACTION

**SUPPLEMENTAL DECLARATION OF
ERIC BLOW REGARDING:
(A) CONTINUED DISSEMINATION OF
SETTLEMENT NOTICE, AND
(B) REPORT ON CLAIMS, REQUESTS
FOR EXCLUSION, AND OBJECTIONS**

Date: March 2, 2023

Time: 10:00 a.m.

Dept.: 4 – 17th Floor

Judge: Hon. Vince Chhabria

I, Eric Blow, declare as follows:

1. I am a Project Manager for Epiq Class Action and Claims Solutions, Inc. (“Epiq”). I am over 21 years of age and am not a party to the above-captioned action (the “Action”).¹ Pursuant to the Order Preliminarily Approving Settlement and Providing for Notice entered by the Court on October 31, 2022 (ECF No. 242) (the “Preliminary Approval Order”), Epiq was authorized to act as the Claims Administrator in connection with the Settlement of the Action. Unless otherwise specifically stated, I have personal knowledge of the facts set forth herein and, if called as a witness, could and would testify competently thereto.

2. I submit this Declaration to supplement my earlier declaration—the Declaration of Eric Blow Regarding Dissemination and Publication of Settlement Notice, dated January 26, 2023 (ECF No. 248-9) (the “Initial Notice Declaration”)—which provided the Court with information regarding implementation of the notice plan.

CONTINUED DISSEMINATION OF THE NOTICE AND PROOFS OF CLAIM

3. Since submission of my Initial Notice Declaration, Epiq has been prepared to disseminate copies of the Notice and Claim Form (“Notice Packet”) in response to additional requests from potential Settlement Class Members and nominees.

4. As more fully stated in my Initial Notice Declaration, as of January 26, 2023, Epiq had mailed a total of 44,005 Notice Packets to potential Settlement Class Members and nominees.

5. Since the submission of my Initial Notice Declaration, and as of the date of this declaration, Epiq has not received any additional requests for Notice Packets from potential Settlement Class Members and/or nominees.

6. Therefore, as of the date of this declaration, Epiq has mailed a total of 44,005 Notice Packets to potential Settlement Class Members and nominees.

¹ All capitalized terms not otherwise defined herein have the same meaning as set forth in the September 19, 2022 Stipulation and Agreement of Settlement (ECF No. 231-2) (the “Stipulation” or “Stip.”).

7. As of the date of this declaration, Epiq has received back 61 Notice Packets that were returned by the U.S. Postal Service as undeliverable as addressed. Some of those were returned with forwarding addresses. For others, Epiq conducted an advanced search through TransUnion of the addresses returned as undeliverable, and certain updated addresses were identified. In total, Epiq re-mailed 8 Notice Packets to those for whom updated addresses were subsequently obtained.

8. The deadline to submit or postmark Claims was February 13, 2023. To date, Epiq has received and initially processed 12,683 Claims. Of those, 650 were submitted by U.S. Mail, 430 were submitted via electronic (web) portal, and 11,603 were submitted by nominees on behalf of Settlement Class Members. Epiq is still in the process of processing additional nominee submissions.

9. Note that additional claims that may have been postmarked prior to the February 13, 2023 Claims submission deadline may not have been received yet. Further, in Epiq's experience, in cases similar to this one, it is typical to receive claims after the claims filing deadline, including from large nominees submitted on behalf of many potential Settlement Class Members.

10. All Claims are still subject to a comprehensive review under Epiq's standard claims-processing procedures. Any deficiencies and conditions of ineligibility in Claims will be addressed during the normal course of administration. Specifically, Epiq will identify any deficiencies and conditions of ineligibility in Claims; claimants will then be given an opportunity to correct their Claims. Accordingly, it is not possible to report the total number of valid and invalid Claims at this time.

UPDATE ON TELEPHONE HELPLINE AND WEBSITE

11. On November 14, 2022, Epiq established a case-specific toll-free telephone helpline—(844) 808-4889—with an interactive voice response system and live operators to accommodate potential Settlement Class Members who call with questions about the Action and the Settlement. The automated attendant answers the calls and presents callers with a series of

choices to respond to basic questions. Callers requiring further assistance have the option to be transferred to a live operator during business hours. As of the date of this declaration, 314 callers have called the toll-free number. Of those, 209 used the automated attendant for a total of 2,191 minutes, and 105 spoke with a live operator for a total of 1,618 minutes. Epiq has promptly responded to, and will continue to promptly respond to, all inquiries made to the toll-free number until the conclusion of the administration.

12. In addition, on November 14, 2022, Epiq established and continues to maintain a website dedicated to the Settlement—www.PortolaSecuritiesLitigation.com—as a resource to assist potential Settlement Class Members who access it. The website includes information regarding the Action and the proposed Settlement, including the exclusion, objection, and claim filing deadlines, as well as the date, time, and location of the Court’s Final Approval Hearing. Copies of the Notice, Claim Form, and Stipulation, and other critical and related pleadings are posted on the website and available for download. The website is accessible 24 hours a day, 7 days a week. Epiq will update the website as necessary through the administration of the Settlement.

REPORT ON REQUESTS FOR EXCLUSION RECEIVED

13. Pursuant to page 9 (Question No. 13) of the Notice, potential Settlement Class Members were informed that requests for exclusion from the Settlement Class must be mailed to *Portola Pharmaceuticals, Inc. Securities Litigation* c/o Epiq Class Action & Claims Solutions, Inc., P.O. Box 6800, Portland, OR 97228-6800, and postmarked no later than February 9, 2023. Epiq has been monitoring all mail delivered to the post office box on a daily basis. As of the date of this Declaration, Epiq has received no requests for exclusion.

REPORT ON OBJECTIONS

14. Pursuant to ¶¶16-17 of the Preliminary Approval Order and page 10 (Question No. 16) of the Notice, those members of the Settlement Class who wished to object to either the Settlement, the Plan of Allocation, or Lead Counsel’s application for attorneys’ fees, reimbursement of litigation expenses, and/or request for reimbursement of costs and expenses to

Plaintiffs were to submit such written objection(s) to the Court so that such papers were received, and not simply postmarked, on or before February 9, 2023.

15. Epiq receives automated docket alerts via Lexis Nexis and has also recently reviewed docket entries posted since October 31, 2022 (the date the Preliminary Approval Order (ECF No. 242) was entered appointing Epiq as Claims Administrator and ordering that the Settlement Notice be provided). Epiq is unaware of any objections having been filed. I am informed and believe that Lead Counsel is also unaware of any objections having been filed.

16. While the Settlement Notice directs potential Settlement Class Members to submit their objections to the Court and not to Epiq as Claims Administrator, Epiq nonetheless has checked its post office box and files for receipt of any objections and is unaware of any having been received.

I declare under penalty of perjury pursuant to the laws of the United States of America that the foregoing is true and correct.

Executed at Louisville, Kentucky, on February 23, 2023.


Eric Blow