

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE UNILIFE CORPORATION
SECURITIES LITIGATION

Master File No. 16-cv-03976-RA

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

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Lead Plaintiffs, Richard Carrazza and Richard Farino (collectively, “Lead Plaintiffs”) and plaintiffs Bill Bulcock and Manuel A. Quintero Gomez (together with Lead Plaintiffs, the “Plaintiffs”), on behalf of themselves and the Settlement Class, respectfully submit this memorandum of law in further support of (i) Plaintiffs’ Motion for Final Approval of Class Action Settlement and Plan of Allocation (ECF No. 59); and (ii) Lead Counsel’s Motion for an Award of Attorneys’ Fees and Reimbursement of Litigation Expenses.¹ ECF No. 61.

I. PRELIMINARY STATEMENT

Plaintiffs submit this reply memorandum to report on the results of the extensive Court-approved settlement notice program, and additionally to inform the Court that there have been only two exclusion requests from individuals and *not a single objection* has been filed with respect to the proposed Settlement, Plan of Allocation, Lead Counsel’s application for an award of attorneys’ fees and reimbursement of costs and expenses, or to Plaintiffs’ request for reimbursement of their reasonable costs and expenses after 38,457 notices were sent out to potential Settlement Class Members. As set forth below, the reaction of the Settlement Class strongly supports the proposed Settlement, Plan of Allocation, award of attorneys’ fees, and reimbursement of expenses to both Plaintiffs and Lead Counsel.

The time for exclusion requests and objections has passed, and the favorable reaction of the Settlement Class to the Settlement further supports the fairness and reasonableness of the proposed Settlement, Plan of Allocation, and the fee and expense request. Based on the

¹ Unless otherwise defined, capitalized terms used herein have the meanings set out in the Stipulation and Agreement of Settlement dated March 22, 2017 (*see* ECF No. 53-1) or in the Joint Declaration of Jeremy A. Lieberman and Lionel Z. Glancy in Support of (I) Plaintiffs’ Motion for Final Approval of Class Action Settlement and Plan of Allocation, and (II) Lead Counsel’s Motion for an Award of Attorneys’ Fees and Reimbursement of Litigation Expenses dated December 21, 2017. ECF No. 63.

foregoing and the record in this Litigation, Plaintiffs respectfully request that the Court grant final approval of the Settlement and the Plan of Allocation as fair, reasonable, and adequate and in the best interest of the Settlement Class, and grant the request for attorneys' fees and reimbursement of litigation expenses.

II. THE REACTION OF THE SETTLEMENT CLASS SUPPORTS APPROVAL OF THE SETTLEMENT, THE PLAN OF ALLOCATION AND THE REQUESTED ATTORNEYS' FEES AND LITIGATION EXPENSES

In accordance with the Preliminary Approval Order (*see* ECF No. 58), on October 20, 2017, the Court-appointed Claims Administrator, JND Legal Administration ("JND"), began mailing copies of the Notice and Claim Form (together, the "Notice Packet") to potential Settlement Class Members and their nominees. *See* Declaration of Robert Cormio Regarding: (A) Mailing of the Notice and Proof of Claim Form; (B) Publication of the Summary Notice; and (C) Report on Requests for Exclusion Received to Date (ECF No. 63-5) (the "Cormio Decl."), ¶¶ 3-11. As of January 16, 2018, JND has disseminated a total of 38,457 Notice Packets to potential members of the Settlement Class and nominees. *See* Supplemental Declaration of Robert Cormio Regarding: (A) Mailing of the Notice and Proof of Claim Form; and (B) Report on Requests for Exclusion and Objections Received to Date (the "Suppl. Cormio Decl."), attached as Exhibit 1 to the Supplemental Declaration of Jeremy A. Lieberman (the "Suppl. Lieberman Decl.") filed herewith, ¶ 2. In addition, the Summary Notice was transmitted over *PR Newswire* on October 20, 2017 and published in *Investor's Business Daily* on October 30, 2017, and the Notice, Claim Form, Stipulation, and Preliminary Approval Order, among other documents, were posted on the website specifically created for the Settlement. *See* Cormio Decl. ¶¶ 12, 14.

Both the Notice and Summary Notice (collectively, the "Notices") informed Settlement Class Members of the January 4, 2018 deadline to submit an objection to the Settlement, Plan of

Allocation or fee and expense application, or request exclusion from the Settlement Class. Specifically, the Notices informed Settlement Class Members who did not wish to participate in the Settlement, but wished to retain any causes of action against Defendants, that they could exclude themselves from the Settlement by following the procedures set forth in the Notice. *See* Cormio Decl., Ex. A at pp. 3, 17, Ex. B. The Notices also provided that Settlement Class Members could remain in the Settlement Class, and object to the Settlement, the Plan of Allocation, and/or Lead Counsel's motion for an award of attorneys' fees and reimbursement of litigation expenses. The Notices stated that Settlement Class Members were required to send written notice of their objection to both the Court and to specified counsel for Plaintiffs and Defendants such that any objections were served and received no later than January 4, 2018 in order to be able to appear and object to the Settlement. *See* Cormio Decl., Ex. A at pp. 3, 18-19.

On December 21, 2017, Plaintiffs and Lead Counsel filed their opening papers in support of the Settlement, Plan of Allocation, and fee and expense request. The motions are supported by declarations of Plaintiffs, Lead Counsel, and the Claims Administrator. These papers are available on the public docket. *See* ECF Nos. 59-63.

Following this extensive notice process, no objections and only two requests for exclusion have been received. *See* Suppl. Cormio Decl. ¶¶ 5, 6. The requests for exclusion include total purchases of only 525 Unilife common shares,² or approximately 0.004% of the approximately 13.2 million shares estimated to have been affected by the alleged fraud – a miniscule percentage.

² Only one of the two requests for exclusion provided the information required by the Preliminary Approval Order and the Notice. *See* Suppl. Cormio Decl. at Ex. A. The second exclusion request failed to provide the number of Unilife common shares purchased/acquired and/or sold during the Settlement Class Period, thus making it unascertainable as to whether the individual requesting exclusion would have otherwise been part of the Settlement Class. *Id.*

Plaintiffs and Lead Counsel respectfully submit that the lack of any objections and the small number of requests for exclusion support a finding that the Settlement is fair, reasonable, and adequate. Indeed, “the 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); *see also In re Sturm, Ruger, & Co., Inc. Sec. Litig.*, No. 3:09cv1293 (VLB), 2012 WL 3589610, at *5 (D. Conn. Aug. 20, 2012) (“[T]he absence of objectants may itself be taken as evidencing the fairness of a settlement.”) (citation omitted); *In re FLAG Telecom Holdings, Ltd. Sec. Litig.*, No. 02-CV-3400 (CM) (PED), 2010 WL 4537550, at *16 (S.D.N.Y. Nov. 8, 2010) (“The absence of objections to the Settlement supports the inference that it is fair, reasonable and adequate.”); *In re Merrill Lynch & Co., Inc. Research Reports Sec. Litig.*, No. 02 MDL 1484(JFK), 2007 WL 313474, at *10 (S.D.N.Y. Feb. 1, 2007) (“minimal number of objections and requests for exclusion militates in favor of approving the settlement as be[ing] fair, adequate, and reasonable”).

The uniformly favorable reaction of the Settlement Class also supports approval of the Plan of Allocation. *See 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.”) (citation omitted); *Maley v. Del Glob. Techs. Corp.*, 186 F. Supp. 2d 358, 367 (S.D.N.Y. 2002) (“the favorable reaction of the Class supports approval of the proposed Plan of Allocation”).

Similarly, the reaction of the Settlement Class should also be considered with respect to Lead Counsel’s motion for an award of attorneys’ fees and reimbursement of litigation expenses. The absence of any objections to the request for an award of attorneys’ fees and expenses

evinces strong support for the effort and results achieved by counsel and supports a finding that the requested fees and expenses are reasonable under the circumstances of this litigation. *See, e.g., In re Veeco Instruments Inc. Sec. Litig.*, No. 05 MDL 01695(CM), 2007 WL 4115808, at *10 (S.D.N.Y. Nov. 7, 2007) (the reaction of class members to a fee and expense request “is entitled to great weight by the Court” and the absence of any objection “suggests that the fee request is fair and reasonable”) (citation omitted); *Maley*, 186 F. Supp. 2d at 374 (the lack of any objection to the fee request supported its approval); *In re Prudential Sec. Inc. Ltd. P’ship Litig.*, 985 F. Supp. 410, 416 (S.D.N.Y. 1997) (in “determining the reasonableness of a requested fee, numerous courts have recognized that ‘the lack of objection[s] from members of the class is one of the most important reasons,’” considered in approving a fee request). Consequently, this factor further supports the conclusion that Lead Counsel’s requested fees and expenses are fair and reasonable and should be approved.

Finally, the lack of any objections to Plaintiffs’ requests for reimbursement of their reasonable time and expenses incurred in prosecuting this action also demonstrates that these requests are reasonable. *See In re Advanced Battery Techs., Inc. Sec. Litig.*, 298 F.R.D. 171, 184 (S.D.N.Y. 2014) (awarding lead plaintiffs’ request for reimbursement of their costs and expenses, including lost wages, where class members were provided notice and did not object); *Patel v. Axesstel, Inc.*, No. 3:14-CV-1037-CAB-BGS, 2015 WL 6458073, at *9 (S.D. Cal. Oct. 23, 2015) (finding a \$3,000 award reasonable and noting lack of any class member objections).

Accordingly, the Settlement Class Members’ universally positive reaction to the Settlement strongly favors final approval of the Settlement and the Plan of Allocation, approval of Lead Counsel’s request for an award of attorneys’ fees and expenses, and approval of Plaintiffs’ requests for reimbursement of their costs and expenses.

III. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully submit that: (1) the Settlement and the Plan of Allocation are fair, reasonable, and adequate; (2) the Final Approval Motion should be granted in full; (3) the Court should approve Lead Counsel's application for an award of attorneys' fees of 30% of the Settlement Fund (or \$1,320,000) and reimbursement of \$72,821.29 in expenses; (4) the Court should approve Plaintiffs' requests for reimbursement of their costs and expenses in the aggregate amount of \$8,065.30; and (5) enter the [Proposed] Final Judgment Approving Class Action Settlement and Order of Dismissal with Prejudice.³

Dated: January 18, 2018

POMERANTZ LLP

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³ The Settlement is conditioned on the occurrence of the entry of the [Proposed] Final Judgment Approving Class Action Settlement and Order of Dismissal with Prejudice. See Settlement Agreement at ¶¶ 1(v), 30, 31(e), 34. The [Proposed] Final Judgment Approving Class Action Settlement and Order of Dismissal with Prejudice is attached as Exhibit 2 to the Suppl. Lieberman Decl.

PROOF OF SERVICE

I, the undersigned say:

I am not a party to the above case and am over eighteen years old.

On January 18, 2018, I served true and correct copies of the foregoing document, by posting the document electronically to the ECF website of the United States District Court for the Southern District of New York, for receipt electronically by the parties listed on the Court's Service List.

I affirm under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on January 18, 2018.

s/ Jeremy A. Lieberman
Jeremy A. Lieberman

Mailing Information for a Case 1:16-cv-03976-RA Bulcock v. Unilife Corporation 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)