

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ROEI AZAR, Individually and on Behalf of)	Case No. 1:19-cv-07665
All Others Similarly Situated,)	
)	<u>CLASS ACTION</u>
Plaintiff,)	
)	Judge Matthew F. Kennelly
vs.)	Magistrate Judge Jeffrey Cole
)	
GRUBHUB INC., et al.,)	
)	
Defendants.)	
_____)	

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

Lead Plaintiff City of Pontiac Reestablished General Employees' Retirement System and City of Pontiac Police & Fire Retirement System ("Lead Plaintiff"), on behalf of itself and all other Members of the Class, and Lead Counsel respectfully submit this reply memorandum of law in further support of (i) Lead Plaintiff's Motion for Final Approval of Class Action Settlement and Approval of Plan of Allocation (ECF 103) and (ii) Lead Counsel's Motion for an Award of Attorneys' Fees and Expenses and Awards to Lead Plaintiff Pursuant to 15 U.S.C. §78u-4(a)(4) (ECF 105) (the "Motions").¹

I. PRELIMINARY STATEMENT

In the Motions, the Court-appointed Lead Plaintiff moved for approval of the Settlement and fee and expense awards, asserting that they were fair and reasonable. ECF 103, 105. Even though objections have become common to either the settlement terms or fees requested in class actions, the period of time to object in this case has passed, and not a single Class Member has objected to or opted-out of the Settlement, confirming that the Settlement and fees are fair and reasonable. Thus, the notice period has confirmed that the Settlement, Plan of Allocation, and requested amount of attorneys' fees and expenses and awards to Lead Plaintiff have the support of, not only the Court-appointed Lead Plaintiff, but also the unnamed Class Members. The Motions should be granted.

Pursuant to the Court's Order Preliminarily Approving Settlement and Providing for Notice ("Notice Order") (ECF 99), a total of 77,507 notice packets have been mailed to potential Class Members or their nominees. *See* Supplemental Declaration of Ross D. Murray Regarding Notice Dissemination and Requests for Exclusion Received to Date, dated January 4, 2023, ¶¶3-4, filed herewith ("Supp. Mailing Decl."). The December 31, 2022 deadline for objections has passed. There have been no objections to any aspect of the \$42 million all-cash Settlement, the proposed

¹ All capitalized terms not otherwise defined herein have the same meaning as those in the Stipulation of Settlement, dated October 7, 2022, ECF 94 (the "Stipulation").

Plan of Allocation, Lead Counsel's fee and expense requests or the proposed awards to Lead Plaintiff. In addition, no requests for exclusion have been received. This positive reaction of the Class confirms that, as set forth in Lead Plaintiff's opening briefs (ECF 104, "Settlement Brief" and ECF 106, "Fee Brief"), the Settlement, the Plan of Allocation, the requested fee and expense awards and Lead Plaintiff awards are fair and reasonable and should be approved. *Cf. In re: Sears, Roebuck & Co. Front-Loading Washer Prods. Liab. Litig.*, 2016 WL 772785, at *11 (N.D. Ill. Feb. 29, 2016) (Rowland, M.J.) (holding that where three class members objected and 59 class members chose to opt out, "[t]he small number of class members who objected or opted out further supports the fairness and reasonableness of the settlement").

The 30% fee request is also fair and reasonable and consistent with fee awards in similar securities class actions. *See, e.g., City of Sterling Heights Gen. Emps. ' Ret. Sys. v. Hospira, Inc.*, 2014 WL 12767763, at *1 (N.D. Ill. Aug. 5, 2014) (St. Eve, J.) (awarding 30% on \$60 million settlement); *Macovski v. Groupon, Inc.*, 2022 WL 17256417, at *1 (N.D. Ill. Oct. 28, 2022) (Kennelly, J.) (awarding 33-1/3% on \$13.5 million settlement). Thus, as set forth in Lead Counsel's Fee Brief, Lead Counsel's fee request is well grounded in Seventh Circuit law, consistent with numerous prior fee awards, and supported by the particular facts of this case.

II. THE REACTION OF THE CLASS SUPPORTS FINAL APPROVAL

In the Settlement Brief and Fee Brief, Lead Plaintiff and Lead Counsel demonstrated that the Settlement, Plan of Allocation, Lead Counsel's fee and expense requests and the requested Lead Plaintiff awards should be approved pursuant to the factors set forth in Rule 23(e)(2), Seventh Circuit authority, and the PSLRA. This conclusion has been further confirmed by the positive reaction of the Class.

The absence of objections among such a large class is significant. As noted, the Claims Administrator has mailed 77,507 copies of the notice packet to potential Class Members or their

nominees. *See* Supp. Mailing Decl., ¶¶3-4. The Notice informed Class Members of the terms of the proposed Settlement and Plan of Allocation, and that Lead Counsel would apply for an award of attorneys' fees in an amount not to exceed 30% of the Settlement Amount, payment of litigation expenses in an amount not to exceed \$265,000 (larger than the amount actually being requested) and a Lead Plaintiff award not to exceed \$10,000 (also larger than the \$1,000 awards being sought). The Notice also apprised Class Members of their right to object, by December 22, 2022 (which date the Court later extended to December 31, 2022 by minute entry dated December 9, 2022),² to the proposed Settlement, the Plan of Allocation, and/or the request for attorneys' fees, payment of litigation expenses and Lead Plaintiff awards.

As ordered by the Court and consistent with common notice practice in these cases, copies of the Notice, Proof of Claim, Stipulation, Notice Order, and other case-related documents were posted on www.GrubhubSecuritiesLitigation.com. *See* ECF 110, ¶14. Further, on November 11, 2022, the Claims Administrator published the Summary Notice in *The Wall Street Journal* and released it over the internet via *Business Wire* (*id.*, ¶12), informing readers of the proposed Settlement, how to obtain copies of the notice packet, and the deadlines for the submission of claim forms, objections, and exclusion requests.

On December 8, 2022, pursuant to the schedule approved by the Court in the Notice Order, Lead Plaintiff and Lead Counsel filed their opening papers in support of the Motions. Those papers – which are available on the public docket (*see* ECF 103 through 111) and the Settlement website – describe Lead Plaintiff's and Lead Counsel's views of the Settlement, work performed in this Litigation, the strengths and weaknesses of the claims, and the fee and expense request.

² On December 9, 2022, Lead Counsel updated the Settlement website, www.GrubhubSecuritiesLitigation.com, with this extended objection deadline.

Following this extensive notice program, no Class Member objected to any aspect of the Settlement, Plan of Allocation, or Lead Counsel’s request for an award of attorneys’ fees, payment of litigation expenses and Lead Plaintiff awards. This positive reaction confirms that the Motions should be approved, particularly since the Class includes sophisticated institutional investors. *See, e.g., Wong v. Accretive Health, Inc.*, 773 F.3d 859, 863 (7th Cir. 2014) (instructing district courts to consider “the reaction of members of the class to the settlement” and affirming settlement approval over single objection); *Silverman v. Motorola Sols., Inc.*, 739 F.3d 956, 959 (7th Cir. 2013) (noting lack of objection by sophisticated, institutional investors in affirming requested fee); *Arango v. Landry’s, Inc.*, 2015 WL 5673878, at *2 (N.D. Ill. Aug. 27, 2015) (St. Eve, J.) (“No objections to the Settlement were made by the Class Members, and this fact likewise supports approval.”).

Similarly, no Member of the Class has requested exclusion, further reflecting the Class’s support for the Settlement, Plan of Allocation, and requested fee and expense awards. *See* Supp. Mailing Decl., ¶¶5-6; *see also Sears, Roebuck & Co.*, 2016 WL 772785, at *11 (fact that only 59 class members chose to opt out supported settlement approval); *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 586 (N.D. Ill. 2011) (Dow, J.) (approving settlement where “only 342 Class Members excluded themselves from the settlement and only 15 Class Members submitted documents that could be considered objections”).

III. CONCLUSION

For the reasons set forth above and in the December 8, 2022 submissions, Lead Plaintiff and Lead Counsel respectfully request that the Court enter the (i) proposed Final Judgment Approving Settlement; (ii) proposed Order Approving Plan of Allocation; and (iii) proposed Order Awarding Attorneys’ Fees and Expenses and Awards to Lead Plaintiff Pursuant to 15 U.S.C. §78u-4(a)(4).

DATED: January 5, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on January 5, 2023, 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 email 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/James E. Barz

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Mailing Information for a Case 1:19-cv-07665 Azar v. Grubhub Inc. 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)