

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

IN RE FORTERRA, INC. SECURITIES  
LITIGATION

Case No.: 3:18-cv-01957-X

CLASS ACTION

**REPLY MEMORANDUM 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**

Lead Plaintiff Wladislaw Maciuga and additional named Plaintiff Supanin Disayawathana (collectively, “Plaintiffs”), on behalf of themselves and the Settlement Class, respectfully submit this reply memorandum in further support of: (i) Plaintiffs’ Motion for Final Approval of Class Action Settlement and Plan of Allocation (ECF No. 131); and (ii) Lead Counsel’s Motion for an Award of Attorneys’ Fees and Reimbursement of Litigation Expenses (ECF No. 132).<sup>1</sup> This memorandum updates the Court on the status of the notice program and the Settlement Class’s reaction thereto, including the fact that there has not been a single objection to the Settlement, Plan of Allocation, or request for attorneys’ fees and reimbursement of Litigation Expenses.

## **I. PRELIMINARY STATEMENT**

Following more than two years of hard-fought litigation and a successful mediation facilitated by a preeminent mediator, Plaintiffs proposed a \$5,500,000 all cash, non-reversionary Settlement for approval by the Court. The reaction of the Settlement Class confirms that the Settlement is an excellent result. Following an extensive notice program, including Postcard Notices mailed to over 19,600 potential Settlement Class Members, not a single objection has been filed, and only one (1) request for exclusion has been received.<sup>2</sup> The Settlement Class’s positive reaction provides strong support for approval of the Settlement and is particularly meaningful because no institutional investor objected to the Settlement, Plan of Allocation, or the requested

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<sup>1</sup> Unless otherwise noted, capitalized terms have the meanings set forth in the Stipulation and Agreement of Settlement, dated November 4, 2019 (ECF No. 123-1) (“Stipulation”) or in the Declaration of Ex Kano S. Sams II 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 (ECF No. 133). Unless otherwise indicated, all emphasis is added and quotations and citations are omitted.

<sup>2</sup> See Supplemental Declaration of Stephanie Amin-Giwner Regarding (A) The Notice Program; (B) Report on Requests for Exclusion; and (C) Report on Claims Received (the “Suppl. Mailing Decl.”), at ¶5 & Ex. A thereto.

attorneys' fees and expenses. The absence of any objection by these sophisticated Settlement Class Members—and only one (1) request for exclusion from other Settlement Class Members—is strong evidence of the fairness and reasonableness of the proposed Settlement, Plan of Allocation, and request for attorneys' fees and expenses.

Accordingly, for all the reasons set forth herein, and in the opening papers filed with the Court on June 16, 2020, the Court should approve the Settlement, Plan of Allocation and request for attorneys' fees and reimbursement of Litigation Expenses.

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

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

In accordance with the Court's January 8, 2020 Order Preliminarily Approving Settlement and Providing for Notice (ECF No. 124, the "Preliminary Approval Order"), the Court's Order Resetting Date for Final Approval Hearing and Modifying Deadlines Set by the Court's Preliminary Approval Order (ECF No. 128), and the Court's April 3, 2020 Order granting Agreed Motion to Set Hearing Date (ECF No. 130), Epiq Class Action & Claims Solutions, Inc. ("Epiq"), under the supervision of Lead Counsel, began mailing the Postcard Notice to potential Settlement Class Members and nominees. Copies of the Court-approved Postcard Notice were timely mailed by the Court-appointed Claims Administrator, Epiq, to an aggregate of 19,661 potential Settlement Class Members and the largest brokerage firms, banks, institutions, and other nominees.<sup>3</sup> See Suppl. Mailing Decl., ¶3. In addition, the Summary

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<sup>3</sup> As a result of a cyber incident experienced by Epiq, the Court extended several settlement related deadlines, including the exclusion and objection deadline to June 30, 2020, the claim filing deadline to July 10, 2020, and the Settlement Hearing to July 21, 2020. ECF Nos. 128 & 130. In order to make potential Settlement Class Members aware of the updated deadlines, Epiq, at its own expense, sent a reminder postcard to all potential Settlement Class Members to whom a Postcard Notice had previously been sent (the "Reminder Postcard"). The

Notice was published in *Investor's Business Daily* and transmitted over *PR Newswire* on February 10, 2020 (*see* Initial Mailing Decl., ¶12), and the Notice, Claim Form, Stipulation, and Preliminary Approval Order, among other important case-related documents, were posted on the Settlement Website. *See* Initial Mailing Decl., ¶15. The Postcard Notice, Notice, and Summary Notice informed Settlement Class Members of the June 30, 2020 deadline to submit an objection to the Settlement, Plan of Allocation, or request for attorneys' fees and reimbursement of Litigation Expenses, or request exclusion from the Settlement Class.

On June 16, 2020, fourteen (14) days prior to the objection deadline, Plaintiffs and Lead Counsel filed their opening papers in support of the Settlement, Plan of Allocation, and request for attorneys' fees and reimbursement of Litigation Expenses. The motions are supported by the declarations of Plaintiffs, Lead Counsel, Plaintiffs' Counsel, the Claims Administrator, the mediator, and Professors Charles Silver and Brian Fitzpatrick. These papers are available on the public docket and on the Settlement Website. *See* ECF Nos. 131-33; Supp. Mailing Decl., at ¶4.

Following this extensive notice process, no Settlement Class Member has objected to the Settlement, the Plan of Allocation, or Lead Counsel's application for attorneys' fees and reimbursement of Litigation Expenses. Moreover, Epiq has received only one (1) request for exclusion. *See* Suppl. Mailing Decl., ¶5.

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Reminder Postcard provided the new claims filing deadline and directed potential Settlement Class Members to the Settlement Website for any updated Settlement related dates. Declaration of Matthew Mulvihill Regarding (A) the Notice Program; (B) Publication of the Summary Notice; (C) Report on Requests for Exclusion Received to Date; and (D) Report on Claims Received to Date (the "Initial Mailing Decl.") (ECF No. 133-1, Ex. 6), ¶9 & Ex. 6-C. Additionally, Epiq updated the downloadable Notice and Claim Form on the case-specific website created for this Settlement ([www.ForterraSecuritiesLitigation.com](http://www.ForterraSecuritiesLitigation.com), the "Settlement Website") to reflect the extended deadlines set by the Court. *Id.*, ¶9.

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

Plaintiffs and Lead Counsel respectfully submit that the exceptionally positive response from the Settlement Class confirms the fairness, adequacy, and reasonableness of the Settlement. *See In re Pool Prod. Distribution Mkt. Antitrust Litig.*, No. 2328, 2016 WL 235781, at \*10 (E.D. La. Jan. 20, 2016) (“the lack of objectors and low number of opt-outs suggest class-wide support for the proposed settlement”); *Claudet v. Cytotec Ret. Plan*, No. CV 17-10027, 2020 WL 3128611, at \*7 (E.D. La. June 12, 2020) (“no other class members have objected to the Settlement, indicating that the Settlement is broadly agreeable”); *Buettgen v. Harless*, No. 3:09-CV-00791-K, 2013 WL 12303143, at \*9 (N.D. Tex. Nov. 13, 2013) (“[t]he reaction of the Class to the settlement has been supportive” where “only two Class Members have objected to the settlement”); *Schwartz v. TXU Corp.*, No. 3:02-CV-2243-K, 2005 WL 3148350, at \*22-23 (N.D. Tex. Nov. 8, 2005) (finding, where there were eight objections, that “the overwhelming response of absent Class Members overall . . . strongly supports approval of the settlement”); *Billitteri v. Sec. Am., Inc.*, No. 3:09-cv-01568-F, 2011 WL 3586217, at \*14 (N.D. Tex. Aug. 4, 2011) (where 30 out of 2,000 class members opted out of a settlement, the court found that “[t]he extremely small number of opt-outs suggests a favorable opinion by the absent class members”).<sup>4</sup>

The lack of objections from Settlement Class Members also supports approval of the Plan of Allocation. *See Schwartz*, 2005 WL 3148350, at \*24 (finding the plan of allocation fair,

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<sup>4</sup> *See also, In re Oil Spill by Oil Rig Deepwater Horizon in Gulf of Mexico, on April 20, 2010*, 910 F. Supp. 2d 891, 938 (E.D. La. 2012) (“The low objections and opt-out rates are evidence of the Settlement’s fairness.”), *aff’d sub nom. In re Deepwater Horizon*, 739 F.3d 790 (5th Cir. 2014); *Quintanilla v. A & R Demolition Inc.*, No. H-04-1965, 2008 WL 9410399, at \*5 (S.D. Tex. May 7, 2008) (“The court should . . . consider the reaction of the class to the settlement,” and “[i]f only a small number of objections are received, that fact can be viewed as indicative of the adequacy of the settlement”); *Turner v. Murphy Oil USA, Inc.*, 472 F. Supp. 2d 830, 853 (E.D. La. 2007) (“The absence or small number of objections may provide a helpful indication that the settlement is fair, reasonable, and adequate.”).

reasonable and adequate where, “[m]ost importantly, there has only been one objection to the Plan of Allocation”); *see also Buettgen*, 2013 WL 12303143, at \*9 (collecting cases and noting that the “reaction of the Class to the Settlement has been supportive” and approving plan of allocation as fair, adequate and reasonable).

Finally, the absence of *any* objections to Lead Counsel’s application for an award of attorneys’ fees and reimbursement of Litigation Expenses, including the request that Plaintiffs be reimbursed for the costs incurred as a direct result of their representation of the Settlement Class, supports a finding that the request is fair and reasonable. *See In re Enron Corp. Sec.*, 586 F. Supp. 2d 732, 804 (S.D. Tex. 2008) (finding “that general acceptance of the requested fee amount by all the pension funds and all but one institutional investor strongly supports the reasonableness” of the requested fees); *Bethea v. Sprint Commc’ns Co.*, 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.”); *City of Omaha Police & Fire Ret. Sys. v. LHC Grp.*, No. CIV. 6:12-1609, 2015 WL 965693, at \*10 (W.D. La. Mar. 3, 2015) (noting that “[t]he attitude of absent class members, expressed either directly or indirectly by their failure to object after notice or high level of participation in the proposed settlement program, is an additional factor on which district courts generally place heavy emphasis[;]” and recognizing that the lack of Class Members’ objections to the Settlement, the Plan of Allocation, or to the application for attorneys’ fees and expenses weighed in favor of the Settlement’s approval).

### III. CONCLUSION

Based on the foregoing, and for the additional reasons set forth in the opening papers, Plaintiffs and their counsel respectfully request that the Court: (1) approve the Settlement and

Plan of Allocation as fair, reasonable, adequate, and in the best interest of the Settlement Class;  
(2) award attorneys' fees to Lead Counsel in the amount of 33⅓% of the Settlement Fund, together with expenses in the amount of \$60,504.95; and (3) grant Lead Plaintiff Wladislaw Maciuga's request for \$10,000 and named Plaintiff Supanin Disayawathan's request for \$5,000 in costs incurred as a direct result of their representation of the Settlement Class.

DATED: July 21, 2020

KENDALL LAW GROUP, PLLC

By:           /s/ Joe Kendall          

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Motion was served on all counsel of record on July 21, 2020 via CM/ECF, in accordance with the Federal Rules of Civil Procedure.

/s/ Joe Kendall  
Joe Kendall