

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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In re JERNIGAN CAPITAL, INC.	:	Master File No. 1:20-cv-09575-JLR-KHP
SECURITIES LITIGATION	:	
	:	<u>CLASS ACTION</u>
	:	
This Document Relates To:	:	LEAD PLAINTIFF’S REPLY
	:	MEMORANDUM OF LAW IN FURTHER
ALL ACTIONS.	:	SUPPORT OF MOTIONS FOR: (I) FINAL
	:	APPROVAL OF CLASS ACTION
	:	SETTLEMENT AND APPROVAL OF PLAN
	:	OF ALLOCATION; AND (II) AN AWARD
	:	OF ATTORNEYS’ FEES AND EXPENSES
	:	AND AN AWARD TO LEAD PLAINTIFF
	:	PURSUANT TO 15 U.S.C. §78u-4(a)(4)
	X	

Lead Plaintiff John R. Erickson 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; and (ii) Lead Counsel's Motion for an Award of Attorneys' Fees and Expenses and an Award to Lead Plaintiff Pursuant to 15 U.S.C. § 78u-4(a)(4). ECF 140, 142.¹

I. PRELIMINARY STATEMENT

The May 8, 2025 deadline for objections and requests for exclusion has passed and Lead Plaintiff is pleased to inform the Court that the Class' reaction to the Settlement, Plan of Allocation, and Lead Counsel's fee and expense application, including an award to Lead Plaintiff, has been overwhelmingly positive. As detailed in the opening declaration of Ross D. Murray (ECF 146) and the accompanying Supplemental Declaration of Ross D. Murray Regarding: (A) Continued Notice Dissemination; (B) Update on Call Center Services and Website; and (C) Requests for Exclusion Received to Date ("Suppl. Murray Decl."), the Claims Administrator disseminated notice of the Settlement to over 9,900 potential Class Members and nominees. *See* ECF 146 at ¶11; Suppl. Murray Decl., ¶¶3-4. Notice was also published in *The Wall Street Journal*, transmitted over *Business Wire*, and posted on the settlement website established by the Claims Administrator, www.JerniganSecuritiesSettlement.com. ECF 146 at ¶¶12, 14; *see also* Suppl. Murray Decl., ¶6. There have been no objections to the Settlement or Plan of Allocation. Moreover, no Class Member has sought exclusion from the Class. Suppl. Murray Decl., ¶8.

¹ Unless otherwise noted, capitalized terms have the meanings ascribed to them in the Stipulation of Settlement dated February 7, 2025 (ECF 132-1) (the "Stipulation") or in the Declaration of Noam Mandel in Support of: (1) Lead Plaintiff's Motion for Final Approval of Class Action Settlement and Approval of Plan of Allocation; and (2) Lead Counsel's Motion for an Award of Attorneys' Fees and Expenses and an Award to Lead Plaintiff Pursuant to 15 U.S.C. § 78u-4(a)(4) (ECF 144). Unless otherwise noted, citations are omitted and emphasis is added.

The Class' favorable response supports a finding that the Settlement, Plan of Allocation, and fee and expense application, including Lead Plaintiff's request for an award of \$10,000 for the time he spent representing the Class, are fair, reasonable, and adequate.

II. ARGUMENT

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

Not a single Class Member has objected to the Settlement or Plan of Allocation. Likewise, no Class Member has sought to be excluded from the Settlement. *See* Suppl. Murray Decl., ¶8. This favorable reaction "is perhaps the most significant factor" in determining the fairness and adequacy of the proposed Settlement, and strongly supports approval here. *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 119 (2d Cir. 2005); *see also In re Signet Jewelers Ltd. Sec. Litig.*, 2020 WL 4196468, at *6 (S.D.N.Y. July 21, 2020) (alteration in original) ("[T]he favorable reaction of the overwhelming majority of class members to the Settlement is perhaps the most significant factor in [the] *Grinnell* inquiry' into the fairness and adequacy of the Settlement."); *In re Hi-Crush Partners L.P. Sec. Litig.*, 2014 WL 7323417, at *6 (S.D.N.Y. Dec. 19, 2014) ("The reaction of the . . . Class to the Settlement is a significant factor in assessing its fairness and adequacy."); *Maley v. Del Glob. Techs. Corp.*, 186 F. Supp. 2d 358, 362 (S.D.N.Y. 2002) ("[T]he reaction of the class to the settlement is perhaps the most significant factor to be weighed in considering its adequacy.").

The Class' positive reaction to the Settlement weighs in favor of final approval of the Settlement. *See* ECF 141, *see also In re Signet*, 2020 WL 4196468, at *6 ("The absence of any objections and the small number of requests for exclusion support a finding that the Settlement is fair, reasonable, and adequate."); *Guevoura Fund Ltd. v. Sillerman*, 2019 WL 6889901, at *7 (S.D.N.Y. Dec. 18, 2019) ("To date, not a single Class Member has objected or sought exclusion. The absence of negative feedback from Class Members evidences an overall favorable response of

the Class Members to the Settlement. Thus, this factor strongly supports approval of the Settlement.”); *In re Facebook, Inc., IPO Sec. & Deriv. Litig.*, 343 F. Supp. 3d 394, 410 (S.D.N.Y. 2018) (“The overwhelmingly positive reaction—or absence of a negative reaction—weighs strongly in favor of confirming the Proposed Settlement.”); *Yuzary v. HSBC Bank USA, N.A.*, 2013 WL 5492998, at *6 (S.D.N.Y. Oct. 2, 2013) (“No Class Member objected to the settlement[.] This favorable response demonstrates that the class approves of the settlement and supports final approval.”); *In re FLAG Telecom Holdings, Ltd. Sec. Litig.*, 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.”). Moreover, the absence of objections from institutional investors provides further support for final approval of the proposed Settlement. *See, e.g., In re Citigroup Inc. Bond Litig.*, 296 F.R.D. 147, 156 (S.D.N.Y. 2013) (“[N]ot one of the objections or requests for exclusion was submitted by an institutional investor. Therefore . . . ‘the class’s reaction weighs heavily in favor of approval.’”).

The Class’ favorable response to the Plan of Allocation likewise supports approval of the Plan of Allocation. *See, e.g., In re Signet*, 2020 WL 4196468, at *6 (“The reaction of the Class also supports approval of the Plan of Allocation.”); *In re Veeco Instruments Inc. Sec. Litig.*, 2007 WL 4115809, at *14 (S.D.N.Y. Nov. 7, 2007) (“[N]ot 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.”); *In re XL Fleet Corp. Sec. Litig.*, No. 1:21-cv-02002-JLR, ECF 200 (S.D.N.Y. Apr. 30, 2024) (approving plan of allocation and noting that there were no objections to the proposed plan); *In re Wells Fargo & Co. Sec. Litig.*, No. 1:20-cv-04494-JLR-SN, ECF 205 (S.D.N.Y. Sept. 8, 2023) (approving plan of allocation and noting that there were no objections to the proposed plan).

B. The Reaction of the Class Strongly Supports Approval of Lead Counsel’s Fee and Expense Application

As set forth more fully in Lead Counsel’s opening brief in support of an award of attorneys’ fees and expenses, Lead Counsel’s fee request of 33⅓% of the Settlement Amount is supported by Lead Plaintiff, well within the range of fees awarded by courts in the Second Circuit in similar class actions, and fair and reasonable under the relevant factors. ECF 143 at 13-23; *see also In re Grab Holdings Ltd. Sec. Litig.*, 2025 WL 1413515 (S.D.N.Y. May 15, 2025). Since the Claims Administrator disseminated the Court-approved Notice, no objections have been raised regarding Lead Counsel’s application for an award of attorneys’ fees and expenses and an award to Lead Plaintiff.

“The absence of any objections to [Lead Counsel’s] requested attorneys’ fees and Litigation Expenses supports a finding that the request is fair and reasonable.” *In re Signet*, 2020 WL 4196468, at *21; *see also Guevoura Fund*, 2019 WL 6889901, at *22 (“To date, no object[ion] to the fee request has been received. The lack of objections, in this day and age, is not only remarkable, but militates in favor of approval of the Fees as requested.”); *In re Veeco*, 2007 WL 4115808, at *10 (S.D.N.Y. Nov. 7, 2007) (“No member of the Class has objected to either the Settlement or to Plaintiffs’ Counsel’s request for an award of attorneys’ fees. This response suggests that the fee request is fair and reasonable.”).

III. CONCLUSION

The \$12 million Settlement – the result of extensive litigation and arm’s length negotiations by experienced counsel overseen by a skilled mediator – represents an outstanding recovery for the Class. For these reasons and those set forth in their opening papers, ECF 141, 143-147, Lead Plaintiff and Lead Counsel respectfully request that the Court: (i) approve the proposed Settlement and Plan of Allocation as fair, reasonable, adequate, and in the best interest of the Class; (ii) award

attorneys' fees to Lead Counsel in the amount of 33⅓% of the Settlement Amount, plus litigation expenses in the amount of \$197,475.91; and (iii) award \$10,000 to Lead Plaintiff John R. Erickson pursuant to 15 U.S.C. §78u-4(a)(4) in connection with his representation of the Class. Proposed orders are submitted herewith.

DATED: May 22, 2025

Respectfully submitted,

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WORD COUNT CERTIFICATION

Pursuant to Rule 3.C of the Honorable Jennifer L. Rochon's Individual Rules of Practice in Civil Cases, the undersigned counsel certifies that the total number of words in the foregoing brief, inclusive of point headings and footnotes and exclusive of the caption, table of contents, table of authorities, signature block, and this Certification, is 1,390 words. This figure is based on Microsoft Word's word count function, which includes legal citations, numerical information, and certain forms of punctuation in the word count.