UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE NIELSEN HOLDINGS PLC SECURITIES LITIGATION	Civil Action No. 1:18-cv-07143-JMF

REPLY 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 PAYMENT OF EXPENSES

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Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, Court-appointed Lead Plaintiff Public Employees' Retirement System of Mississippi and additionally named plaintiff Monroe County Employees' Retirement System (collectively, "Plaintiffs"), on behalf of themselves and the proposed Settlement Class, and Lead Counsel respectfully submit this reply memorandum of law in further support of (i) Plaintiffs' motion for final approval of the proposed Settlement and approval of the proposed Plan of Allocation (ECF No. 143); and (ii) Lead Counsel's motion for an award of attorneys' fees and payment of expenses (ECF No. 144) (the "Motions").[1]

PRELIMINARY STATEMENT

Now that the June 29, 2022 deadline for objections and exclusions from the Settlement Class has passed, Plaintiffs and Lead Counsel respectfully submit that the reaction of the Settlement Class to the Settlement, Plan of Allocation, and Lead Counsel's motion for attorneys' fees and expenses has been very positive. A total of 273,687 notice packets have been mailed to potential Settlement Class Members or their nominees through July 5, 2022. *See* Supplemental Declaration of Stephanie Amin-Giwner Regarding: (A) Mailing of the Notice and Claim Form and (B) Report on Requests for Exclusion, dated July 6, 2022, at ¶2, filed herewith ("Supp. Mailing Decl."). Additionally, the Summary Notice was published in *The Wall Street Journal* and transmitted over *PR Newswire* on April 29, 2022. *See* Declaration of Melissa M. Mejia Regarding: (A) Mailing of the Notice and Claim Form; (B) Publication of the Summary Notice; and (C) Report on Requests for Exclusion, dated June 14, 2022, at ¶8 (ECF No. 146-4).

There have been ***no objections*** to the proposed Settlement or Plan of Allocation, and ***only one*** objection to the Fee and Expense Application. In addition, ***only seven*** requests for exclusion

[1] All capitalized terms used herein that are not defined have the same meanings given to them in the Stipulation and Agreement of Settlement, dated as of March 15, 2022 (the "Stipulation"), previously filed with the Court (ECF No. 133-1).

have been received, all but one of which are invalid for not providing any information about the requester's trading in Nielsen common stock during the Class Period. *See* Supp. Mailing Decl. at ¶4. The only valid request represents just 16 shares. *See* ECF No. 146-4 at Ex. C. Accordingly, Plaintiffs and Lead Counsel respectfully submit that this reaction by the Settlement Class further demonstrates the fairness, adequacy, and reasonableness of the Settlement, Plan of Allocation, and Lead Counsel's request for attorneys' fees and payment of expenses.

ARGUMENT

I. THE REACTION OF THE SETTLEMENT CLASS STRONGLY SUPPORTS APPROVAL OF THE SETTLEMENT AND PLAN OF ALLOCATION

Pursuant to the Court's Preliminary Approval Order, the Claims Administrator has mailed 273,687 copies of the notice packet to all potential Settlement Class Members and/or their nominees identified to date. *See* Supp. Mailing Decl. at ¶2. The Notice provided 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 25% of the Settlement Fund and payment of expenses in an amount not to exceed $1,100,000. The Notice also apprised Settlement Class Members of their right to object to the proposed Settlement, the Plan of Allocation, and/or the request for attorneys' fees and payment of expenses, and the June 29, 2022 deadline for filing such objections.

In addition, copies of the Notice, Claim Form, Stipulation, and Complaint were posted on www.NielsenSecuritiesSettlement.com, as well as the website of Lead Counsel. Further, on April 29, 2022, the Claims Administrator published the Summary Notice in *The Wall Street Journal* and released it over the internet via *PR Newswire* (ECF No. 146-4 at ¶8), 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 June 15, 2022, pursuant to the schedule approved by the Court in the Preliminary

Approval Order, Plaintiffs and Lead Counsel filed their opening papers in support of the Motions. Those papers—which are available on the public docket (*see* ECF Nos. 143-146), the Settlement website (www.NielsenSecuritiesSettlement.com), and Lead Counsel's firm website—described Plaintiffs' and Lead Counsel's views of the Settlement, work performed in this litigation, and the fee and expense award requested.

Following this extensive notice program, ***no Settlement Class Member*** objected to any aspect of the Settlement or the Plan of Allocation. This "favorable reaction of the overwhelming majority of class members to the Settlement is perhaps the most significant factor in [the] *Grinnell* inquiry," and accordingly strongly supports a finding that the Settlement is fair, reasonable, and adequate. *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 119 (2d Cir. 2005); *see also In re Facebook, Inc., IPO Sec. & Derivative Litig.*, 343 F. Supp. 3d 394, 410 (S.D.N.Y. 2018), *aff'd, In re Facebook Inc.* 822 F. App'x. 40 (2d Cir. 2020) ("The overwhelmingly positive reaction–or absence of a negative reaction–weighs strongly in favor of confirming the Proposed Settlement."); *In re Veeco Instruments Inc. Sec. Litig.*, No. 05 MDL 01695 (CM), 2007 WL 4115809, at *7 (S.D.N.Y. Nov. 7, 2007) ("The lack of objections provides effective evidence of the fairness of the Settlement.") (citation omitted). As the Second Circuit reasoned in *Wal-Mart*, "[i]f only a small number of objections are received, that fact can be viewed as indicative of the adequacy of the settlement." 396 F.3d at 118 (citation omitted); *see also In re Bear Stearns Cos., Sec., Derivative & ERISA Litig.*, 909 F. Supp. 2d 259, 266-67 (S.D.N.Y. 2012) (the fact that "just two objections" to the settlement were made weighs strongly in favor of approval).

The absence of objections from institutional investors or pension funds is also noteworthy. That these sophisticated Settlement Class Members—who have the resources to carefully evaluate the Settlement and object if it were appropriate to do so—have not objected to the Settlement (or

the Plan of Allocation) provides further evidence of the fairness of the Settlement. *See, e.g.*, *In re Citigroup Inc. Sec. Litig.*, 965 F. Supp. 2d 369, 382 (S.D.N.Y. 2013) (that "not a single objection was received from any of the institutional investors" supported settlement); *In re AOL Time Warner, Inc. Sec. & "ERISA" Litig.*, No. MDL 1500, 2006 WL 903236, at *10 (S.D.N.Y. Apr. 6, 2006) (the lack of objections from institutional investors supported approval of settlement).

The lack of objections from Settlement Class Members also supports approval of the Plan of Allocation. *See In re EVCI Career Colls. Holdings Corp. Sec. Litig.*, No. 05 Civ. 10240 (CM), 2007 WL 2230177, at *11 (S.D.N.Y. July 27, 2007) (noting that "[c]ourts… [should] consider the reaction of a class to a plan of allocation" and, where there are no objections, "the Plan of Allocation should be approved") (citation omitted); *Veeco*, 2007 WL 4115809, at *14 (that "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 . . . supports approval of the Plan of Allocation") (citation omitted).

Similarly, the paucity of requests for exclusion reflects the Settlement Class's approval of the Settlement and offers clear support for the Court's final approval thereof. *See, e.g.*, *Bear Stearns*, 909 F. Supp. 2d at 266-67 (noting the absence of significant exclusion requests weighs "strongly in favor of approval" where 115 requests for exclusion were received); *In re Am Int'l Grp. Inc. Sec. Litig.*, No. 04 Civ. 8141(DAB), 2010 WL 5060697, at *2 (S.D.N.Y. Dec. 2, 2010), *aff'd*, 452 F. App'x. 75 (2d Cir. 2012) (noting the "extremely positive" reaction to the settlement where there were "only 105 requests for exclusion received, out of which 61 were timely and valid"). Here, in response to the 273,687 notice packets mailed to date, the Claims Administrator has received ***only seven*** requests for exclusion from the Settlement Class, six of which were invalid and one representing just 16 shares. *See* Supp. Mailing Decl. at ¶¶3-4.

II. THE REACTION OF THE SETTLEMENT CLASS STRONGLY SUPPORTS APPROVAL OF THE ATTORNEYS' FEE AND EXPENSE APPLICATION

As to Lead Counsel's request for an award of attorneys' fees and for payment of expenses, the Notice reported that Lead Counsel would request a fee award not to exceed 25% of the Settlement Fund, which will include accrued interest, if any, and payment of expenses not to exceed $1,100,000, plus accrued interest, if any. Lead Counsel has received ***only one*** objection to Lead Counsel's fee request, which is discussed below and casts no doubt on the reasonableness of the fee request.[2] "That only one objection to the fee request was received is powerful evidence that the requested fee is fair and reasonable." *In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 594 (S.D.N.Y. 2008); *see also In re Prudential Sec. Inc. Ltd. P'Ships Litig.*, 912 F. Supp. 97, 103 (S.D.N.Y. 1996) (reasoning that an "isolated expression of opinion" should be considered "in the context of thousands of class members who have not expressed themselves similarly").

As discussed in Lead Counsel's opening motion papers, prior to the objection deadline, Mr. Larry Killion submitted an objection to Lead Counsel's request for a 25% fee, arguing that the request should be lower according to a fee schedule created by Mr. Killion. *See* ECF No. 146-9. As also discussed in Lead Counsel's opening papers, Mr. Killion's argument rested largely on his misguided view that the litigation and claims were not complex or risky, counsel's efforts should be heavily discounted because a settlement was reached through mediation before trial, counsel had all the evidence they needed from public information (like stock price declines) rather than "novel legal effort," and that Plaintiffs' Counsel was so sufficiently experienced that achieving the settlement should not have required much compensable work or effort. Mr. Killion's views are wildly off-base, as substantiated by the Declaration of Christine M. Fox in Support of (I) Final

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[2] Mr. Killion only objects to the fee request, not the requests for litigation expenses or PSLRA awards to Plaintiffs.

Approval of Class Action Settlement and Plan of Allocation and (II) an Award of Attorneys' Fees and Payment of Expenses, ECF No. 146 ("Fox Decl.").

After the filing of the Motions, copies of which were provided to Mr. Killion, he filed a Supplemental Objection to Proposed [Contingency Attorney] Fee and Expense Application and Request for Downward Adjustment ("Killion Supplement"). *See* ECF No. 147. In the Killion Supplement, he reiterates his prior arguments and focuses on the following. He argues that there was no real contingency risk because of Lead Counsel's experience and because the risk was known and assumed at the start. This view is belied by the claims at issue here and the case law within the Second Circuit: "[c]ourts in the Second Circuit have recognized that the risk associated with a case undertaken on a contingent fee basis is an important factor in determining an appropriate fee award." *In re FLAG Telecom Holdings, Ltd. Sec. Litig.*, No. 02-cv-3400, 2010 WL 4537550, at *27 (S.D.N.Y. Nov. 8, 2010). We are not aware of case law advocating that experienced counsel should receive ***less*** than lesser experienced counsel. To the contrary, the law encourages experienced counsel to step forward. Courts have recognized that, in addition to providing just compensation, "awards of fair attorneys' fees from a common fund should also serve to encourage skilled counsel to represent those who seek redress for damages inflicted on entire classes of persons, and to discourage future alleged misconduct of a similar nature." *City of Providence v. Aeropostale, Inc.*, No. 11-cv-7132 (CM), 2014 WL 1883494, at *11 (S.D.N.Y. May 9, 2014), *aff'd sub nom. Arbuthnot v. Pierson*, 607 F. App'x. 73 (2d Cir. 2015).

Mr. Killion also misleadingly reports an average hourly rate for Plaintiffs' Counsel of $1,049. The actual average hourly rate here is a reasonable $603 (counsel's $10,382,315 lodestar divided by 17,205 hours), which is supported by Lead Counsel's annual review of fee applications in bankruptcy proceedings showing rates for defense counsel far in excess of $603 per hour. *See*

Fox Decl. Ex. 8. Lead Counsel is requesting a reasonable multiplier on counsel's lodestar of 1.7. Most multipliers like that sought here are fully supported by the caselaw cited in Lead Counsel's opening papers. *See* ECF No. 145 at 34.

It is respectfully submitted that Mr. Killion's objection should be overruled in its entirety.

CONCLUSION

For the reasons set forth herein and the opening papers filed in support of the Motions, Plaintiffs and Lead Counsel respectfully request that the Court approve the proposed Settlement and Plan of Allocation as fair, reasonable, and adequate, and approve the request for attorneys' fees and payment of expenses. Three proposed orders are being submitted herewith: a proposed Final Order and Judgment, negotiated by the Parties; a proposed Order Approving Plan of Allocation; and a proposed Order Awarding Attorneys' Fees and Expenses.

Dated: July 6, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 6, 2022, 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 all registered ECF participants.

/s/ *Christine M. Fox*
CHRISTINE M. FOX