

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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In re BRF S.A. SECURITIES LITIGATION	:	Civil Action No. 1:18-cv-02213-PKC
_____	:	
	:	<u>CLASS ACTION</u>
This Document Relates To:	:	
	:	REPLY MEMORANDUM OF LAW IN
ALL ACTIONS.	:	FURTHER SUPPORT OF LEAD
_____	X	PLAINTIFF'S MOTION FOR FINAL
		APPROVAL OF CLASS ACTION
		SETTLEMENT AND APPROVAL OF PLAN
		OF ALLOCATION AND 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)

Lead Plaintiff City of Birmingham Retirement and Relief System, on behalf of itself and the Class, and Lead Counsel respectfully submit this reply memorandum of law in further support of Lead Plaintiff's motion for final approval of the Settlement and Plan of Allocation and Lead Counsel's motion for an award of attorneys' fees and expenses and an award to Lead Plaintiff.¹

I. PRELIMINARY STATEMENT

The Settlement resolves this Litigation in its entirety and establishes a common fund of \$40,000,000 for the benefit of Class Members. As detailed in Lead Plaintiff's and Lead Counsel's opening papers (ECF Nos. 163-170), the Settlement is the product of hard-fought litigation and extensive arm's-length negotiations achieved with the assistance of mediator Judge Layn R. Phillips (Ret.). It represents a very favorable result for the Class in light of the substantial risks and challenges that Lead Plaintiff and the Class faced in proving liability and defeating Defendants' many arguments in response, as well as the costs and delays of continued litigation.

In response to the extensive Court-approved notice program, which involved mailing 66,509 copies of the Notice of Pendency and Proposed Settlement of Class Action (the "Notice") and the Proof of Claim and Release form (the "Proof of Claim") (collectively, the "Notice Package") to potential Class Members and nominees and publishing the Summary Notice in *The Wall Street Journal* and over *Business Wire*, not a single objection was filed, and no requests for exclusion from the Class have been received. This reaction of the Class further demonstrates that the proposed

¹ Unless otherwise noted, all capitalized terms are defined in the May 5, 2020 Stipulation of Settlement ("Stipulation") (ECF No. 157) or in Lead Plaintiff's and Lead Counsel's opening memoranda of law in support of these motions, dated September 18, 2020. ECF Nos. 164, 166. The Supplemental Declaration of Ross D. Murray Regarding Notice Dissemination and Requests for Exclusion Received to Date ("Suppl. Murray Decl."), dated October 15, 2020, is submitted herewith. All citations are omitted and emphasis is added, unless otherwise indicated.

Settlement, the Plan of Allocation, and the request for fees and expenses are fair and reasonable and should be approved.

II. THE CLASS OVERWHELMINGLY SUPPORTS THE SETTLEMENT

Lead Plaintiff and Lead Counsel respectfully submit that their opening briefs and declarations demonstrate why approval of the motions is warranted. Now that the time for objecting or requesting exclusion from the Class has passed, the lack of objections and total absence of opt outs from the Class provides additional support for approval of the motions.

Pursuant to the Court's Preliminary Approval Order, more than 66,500 copies of the Notice Package have been mailed to potential Class Members and their nominees. *See* Supplemental Murray Decl., ¶4. The Notice informed Class Members of the terms of the proposed Settlement and Plan of Allocation, that Lead Counsel would apply for an award of attorneys' fees in an amount not to exceed 27.5% of the Settlement Amount and payment of litigation expenses in an amount not to exceed \$150,000, and that Lead Plaintiff may seek an award for its time and expenses incurred in representing the Class in an amount not to exceed \$10,000. *See* Notice (ECF No. 169-1), at 6. The Notice also apprised Class Members of their right to object to the proposed Settlement, the Plan of Allocation and/or the request for attorneys' fees and expenses, their right to exclude themselves from the Class, the October 2, 2020 deadline for filing objections and requests for exclusion, and the October 3, 2020 deadline for submitting Proofs of Claim. *See id.* at 1. The Summary Notice, which informed readers of the proposed Settlement, how to obtain copies of the Notice Package, and the deadlines for the submission of Proofs of Claim, objections, and requests for exclusion, was published in *The Wall Street Journal* and released over the *Business Wire*. *See* ECF No. 169, Declaration of Ross D. Murray Regarding Notice Dissemination, Publication, and Requests for Exclusion Received to Date, ¶12. In addition, the Claims Administrator established a case-specific

website which provided information and links to relevant documents (*id.*, ¶14), and a case-specific toll-free telephone helpline. *Id.*, ¶13.

As noted above, following this notice program, no Class Members objected to any aspect of the Settlement, the Plan of Allocation, or fee and expense application, or requested exclusion from the Class.

The absence of objections and requests for exclusion strongly supports a finding that the Settlement, Plan of Allocation, and fee and expense requests are fair, reasonable, and adequate. *See, e.g., In re Citigroup Inc. Sec. Litig.*, 965 F. Supp. 2d 369, 382 (S.D.N.Y. 2013); *In re Bisys Sec. Litig.*, No. 04 Civ. 3840(JSR), 2007 WL 2049726, at *1 (S.D.N.Y. July 16, 2007); *In re Veeco Instruments Inc. Sec. Litig.*, No. 05 MDL 01695 (CM), 2007 U.S. Dist. LEXIS 85629, at *40 (S.D.N.Y. Nov. 7, 2007). “[T]he favorable reaction of the overwhelming majority of class members . . . is perhaps the most significant factor.” *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 119 (2d Cir. 2005). Although a “certain number of objections are to be expected in a class action with an extensive notice campaign and a potentially large number of class members,” *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 2019 WL 6875472, at *16 (E.D.N.Y. Dec. 16, 2019), “[i]f only a small number of objections are received, that fact can be viewed as indicative of the adequacy of the Settlement.” *Id.* (quoting *Wal-Mart*, 396 F.3d at 118). As Judge Sweet recently recognized, “The overwhelmingly positive reaction – or absence of a negative reaction – weighs strongly in favor of confirming the Proposed Settlement.” *In re Facebook, Inc., IPO Sec. & Derivative Litig.*, 343 F. Supp. 3d 394, 410 (S.D.N.Y. Nov. 26, 2018), *aff’d*, 822 F. App’x 40 (2d Cir. 2020).

Importantly, the absence of any objection or requests for exclusion by sophisticated institutional investors (or any investors) is further evidence of the fairness of the Settlement. *See In*

re Citigroup, 965 F. Supp. 2d at 382 (the reaction of the class supported the settlement where “not a single objection was received from any of the institutional investors that hold the majority of Citigroup stock”); *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 institutional or retail Class Members also supports approval of the Plan of Allocation. *See, e.g., Maley v. Del Glob. Techs. Corp.*, 186 F. Supp. 2d 358, 367 (S.D.N.Y. 2002); *In re Veeco*, 2007 U.S. Dist. LEXIS 85629, at *40 (“[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.”).

Finally, the positive reaction of the Class should also be considered with respect to Lead Counsel’s request for an award of attorneys’ fees and expenses. The absence of any objections to the requested fee and expenses supports a finding that the request is fair and reasonable. *See, e.g., In re Veeco Instruments Inc. Sec Litig.*, 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”); *Maley*, 186 F. Supp. 2d at 374 (the lack of any objection to the fee request supported its approval). In particular, the lack of any objections by institutional investors supports approval of the fee and expense request. *See In re Bisys*, 2007 WL 2049726, at *1 (lack of objections from institutional investors supported the approval of fee request because “the class included numerous institutional investors who presumably had the means, the motive, and the sophistication to raise objections if they thought the [requested] fee was excessive”).

III. CONCLUSION

For each of these reasons, and the reasons set forth in Lead Plaintiff's and Lead Counsel's opening papers, it is respectfully requested that the Court approve the Settlement and Plan of Allocation and award the requested attorneys' fees and expenses and award to Lead Plaintiff pursuant to 15 U.S.C. §78u-4(a)(4).²

DATED: October 16, 2020

Respectfully submitted,

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² The proposed: (i) Final Judgment; (ii) Order Approving Plan of Allocation; and (iii) Order Awarding Attorneys' Fees and Expenses and Award to Lead Plaintiff Pursuant to 15 U.S.C. §78u-4(a)(4), are submitted herewith.

CERTIFICATE OF SERVICE

I, David A. Rosenfeld, hereby certify that on October 16, 2020, I authorized a true and correct copy of the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such public filing to all counsel registered to receive such notice.

s/ David A. Rosenfeld

DAVID A. ROSENFELD