

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

IN RE: SAKS INC. SHAREHOLDER LITIGATION

Index No. 652724/2013

Motion Seq. No. 011

Hon. Andrew Borrok, J.S.C.

**PLAINTIFFS' SUPPLEMENTAL MEMORANDUM OF LAW IN FURTHER SUPPORT
OF FINAL APPROVAL OF THE PROPOSED SETTLEMENT,
CERTIFICATION OF THE CLASS, AN AWARD OF ATTORNEYS' FEES
AND EXPENSES, AND SERVICE AWARDS TO NAMED PLAINTIFFS**

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Plaintiffs Samuel T. Cohen, Thomas H. Jennings, Robert Oliver, Joshua Teitelbaum, Jack and Wanda Oliver, and Sharon Golding (collectively, “**Plaintiffs**”) respectfully submit this supplemental memorandum of law in further support of their motion for an Order: (1) granting final approval of the Settlement; (2) certifying the Class; and (3) granting Plaintiffs’ counsel’s application for attorneys’ fees and expenses and service awards to the named Plaintiffs (the “**Motion**”).¹

PRELIMINARY STATEMENT

The proposed Settlement resolves this action for a cash payment of \$21 million. As detailed in Plaintiffs’ opening papers ([NYSCEF 246 – 261](#)), the Settlement is the product of hard-fought litigation over almost eight years including a year-long arm’s-length settlement negotiation. Plaintiffs believe the proposed Settlement is an excellent result for the Class in light of the significant challenges to proving liability and damages had this case proceeded to trial.

Plaintiffs are pleased to report that the deadline for objections and requests for exclusion has passed and there are *no objections* to the proposed Settlement, or the application by Plaintiffs’ counsel for an award of attorneys’ fees and expenses and service awards to the named Plaintiffs. See Supplemental Final Approval Aff. ¶ 4.

Additionally, while 20,225 Notices have been mailed to potential Class members and nominees and the Publication Notice was published in *Investor’s Business Daily* and over *PR*

¹ Capitalized terms which are not defined in this memorandum have the same meaning as in the Stipulation of Settlement ([NYSCEF 251](#)) and Plaintiffs’ Memorandum of law in Support of Final Approval of the Proposed Settlement, Certification of the Class, an Award of Attorneys’ Fees and Expenses, and Service Awards to Named Plaintiffs ([NYSCEF 261](#)). Reference is made to the accompanying Supplemental Affirmation of Daniel Tepper, Esq. and Benjamin Y. Kaufman, Esq. (the “**Supplemental Final Approval Aff.**”) and the accompanying Supplemental Mailing Affidavit of Luiggy Segura (the “**Supplemental Segura Aff.**”).

NewsWire, **only one** prospective Class member requested exclusion. Supplemental Final Approval Aff. ¶ 5; Supplemental Segura Aff. ¶¶ 3, 8; [NYSCEF 260](#) at ¶ 13.

Accordingly, Plaintiffs respectfully submit that this reaction by the Class further demonstrates the fairness, adequacy and reasonableness of the Settlement and the application by Plaintiffs' counsel for an award of attorneys' fees and expenses and service awards to the named Plaintiffs.

ARGUMENT

I. The Reaction of the Class Strongly Supports Approval of the Settlement

Pursuant to the Court's December 10, 2020 Decision and Order Preliminarily Approving Settlement, Providing for Notice of Settlement, and Scheduling Settlement hearing ([NYSCEF 247](#), the "**Preliminary Approval Order**"), the Settlement Administrator has mailed 20,225 copies of the Notice to all potential Class members identified to date. Supplemental Segura Aff. ¶ 3. The Notice informed Class members of the terms of the proposed Settlement and that Plaintiffs' counsel would apply for an award of attorneys' fees in the amount of one-third (33¹/₃%) of the Settlement Payment, reimbursement of litigation expenses, and service awards to the named Plaintiffs not to exceed \$5,000 each. The Notice also apprised Class members of their right to object to the proposed Settlement and/or request for attorneys' fees and payment of litigation expenses, and the April 5, 2021 deadline for filing such objections.

In addition, copies of the Stipulation, Notice, Claim Form, Preliminary Approval Order and other documents relevant to the contemplated settlement were posted at <https://www.sakssecuritiessettlement.com/> (the "**Settlement Website**") to assist Class members and the website address was set forth in the Notice, Claim Form and Publication Notice. [NYSCEF 260](#) at Ex. A and Ex. B. Further, on January 25, 2021 the Settlement Administrator published the

Publication Notice in *Investor's Business Daily* and over *PR Newswire*, *id.* ¶ 13, informing readers of the proposed Settlement, how to obtain copies of the Notice, and the deadlines for submission of Claim Forms, objections, and exclusion requests. Moreover, the Notice, Claim Form, and Publication Notice all bear a prominent legend advising readers that the Settlement Hearing may be attended via Internet or telephone, and to visit the Settlement Website for details and the most up-to-date information about the proposed Settlement.

On March 26, 2021, pursuant to the schedule approved by the Court in the Preliminary Approval Order, Plaintiffs filed their opening papers in support of the Motion. These papers – which are publicly available on the docket ([NYSCEF 249-261](#)) and the Settlement Website – described Plaintiffs' views of the Settlement, the work performed in this action, the application by Plaintiffs' counsel for an award of attorneys' fees and expenses and service awards to the named Plaintiffs.

Following this extensive notice program, *no Class member objected* to any aspect of the Settlement. *See* Supplemental Final Approval Aff. ¶ 4. This overwhelmingly favorable reaction strongly supports a finding that the proposed Settlement is fair, adequate and reasonable. *See [Pressner v. MortgageIT Holdings, Inc.](#), 16 Misc. 3d 1103(A), at *2 (Sup. Ct., N.Y. Cnty. May 29, 2007)* (approving settlement “since there has been no objection to the propose[d] settlement”); *[Lopez v. Dinex Group, LLC](#), 2015 NY Slip Op 31866(U) (Sup. Ct., N.Y. Cnty. Oct. 6, 2015)* (approving a settlement with no objections and 14 opt-outs); *[Hosue v. Calypso St. Barth, Inc.](#), Index No. 160400/2015, 2017 WL 4011213, at *3 (N.Y. Sup. Ct., Sept. 12, 2017)* (approving a settlement with no objections); *[Fernandez v. Hospitality](#), Index No. 152208/2014, 2015 N.Y. Misc. LEXIS 2193, at *2 (Sup. Ct., N.Y. Cnty. June 20, 2015)* (same); *[Clemons v. A.C.I. Found., Ltd.](#), Index No. 154573/2015, 2017 WL 1968654, at *2 (N.Y. Sup. Ct., May 12, 2017)* (same); *[Ryan v.](#)*

Volume Servs. Am., Index No. 652970/2012, 2013 WL 12147011, at *2 (N.Y. Sup. Ct., Mar. 7, 2013) (same). See also In re Facebook, Inc., IPO Sec. & Derivative Litig., MDL No. 12-2389, 343 F. Supp. 3d 394, 410 (S.D.N.Y. 2018), *aff'd sub nom. 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, 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); Maley v. Del Glob. Techs. Corp., 186 F. Supp. 2d 358, 374 (S.D.N.Y. 2002) (the “overwhelmingly positive response by the Class attests to the approval of the Class with respect to the Settlement and the fee and expense application”); In re Bear Stearns Cos., Inc. 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).

Similarly, the scarcity of requests for exclusion reflects the Class’s approval of the proposed 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, 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 20,225 Notices mailed to date, Plaintiffs’ Counsel and the Settlement Administrator have received just one request for exclusion (Mr. Edwin Echols). Supplemental Final Approval Aff. ¶ 5; Supplemental Segura Aff. ¶¶ 3, 8.

The Settlement Administrator also received a letter from a potential Class member (Ms. Sandra Kingdon) stating that she does “not wish to be involved with a lawsuit, settlement or anything that others are seeking” in this litigation but also stating that she “do[es] not know if I am a class member[.]” Supplemental Segura Aff. ¶ 8. In an abundance of caution, Plaintiffs’ counsel believes that Ms. Kingdon should be treated as having made a request for exclusion so that none of her rights are inadvertently prejudiced. The foregoing is reflected in the proposed Order attached as **Exhibit B** to the accompanying Supplemental Final Approval Aff.

II. The Reaction of the Class Strongly Supports Approval of the Requested Award of Attorneys’ Fees and Expenses and Service Awards to the Named Plaintiffs

The Notice reported that Plaintiffs’ counsel would request attorneys’ fees not to exceed one-third (33¹/₃%) of the Settlement Payment, *i.e.*, \$7 million, as well as payment of expenses and service awards to the named Plaintiffs not to exceed \$5,000 each. The *absence of any objections* to the foregoing weighs strongly in favor of approval. *See, e.g., Vaccaro v. New Source Energy Partners L.P.*, No. 15 CV 8954, 2017 WL 6398636, at *8 (S.D.N.Y. Dec. 14, 2017) (“The fact that no class members have explicitly objected to these attorneys’ fees supports their award.”) (citation omitted); *Veeco*, 2007 WL 4115809, at *10 (reaction of class members to fee and expense requests ““is entitled to great weight” by the Court and absence of any objections “suggests that [a] fee request is fair and reasonable”) (citation omitted); *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, No. 02-CV-3400 (CM), 2010 WL 4537550, at *29 (S.D.N.Y. Nov. 8, 2010) (absence of objections to counsel’s fee and expense request “attests to the approval of the Class” and supports approval); *Maley*, 186 F. Supp. 2d at 374 (finding the lack of any objection to the fee request supported its approval). *See also In re Everquote, Inc. Sec. Litig.*, Index No. 651177/2019 (Sup. Ct., N.Y. Cnty. June 11, 2020) (Borrok, J.) (Order, [NYSCEF 132](#)) (absent objections, approving attorneys’ fees of 1/3 of the settlement amount).

III. Interested Persons Have Been Notified that the Settlement Hearing will be Held via Microsoft Teams

Because the Settlement Hearing scheduled for April 26, 2021 at 10:00 AM must proceed via Microsoft Teams in light of the ongoing COVID-19 pandemic, the Court has ordered and Plaintiffs' counsel have ensured that the Notice, Claim Form, and Publication Notice all bear a prominent legend advising readers that the Settlement Hearing may be attended via Internet or telephone, and to visit the Settlement Website for details and the most up-to-date information. The Settlement Website prominently displays a link which interested persons may click to attend the Settlement Hearing via Microsoft Teams and which for convenience is set forth again [via this link](#). Interested persons may also call in (audio only) at 1-347-378-4143, conference ID: 752 750 152#.

CONCLUSION

For the reasons above and those in the opening papers in support of the Motion, Plaintiffs respectfully move the Court to enter an Order: (i) granting final approval to the Settlement; (ii) certifying the Class for settlement purposes and excluding Mr. Edwin Echols and Ms. Sandra Kingdon; (iii) approving the requested attorneys' fees in the amount of \$7 million and reimbursement of expenses in the amount of \$176,535.51; (iv) granting service awards of \$5,000 to each named Plaintiff; and (v) granting such other and further relief as the Court deems just and proper.

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Dated: New York, New York
April 19, 2021 .

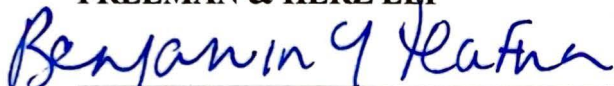
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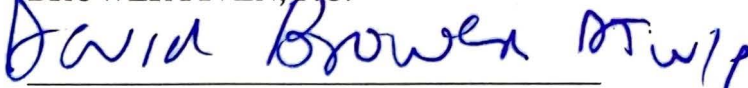
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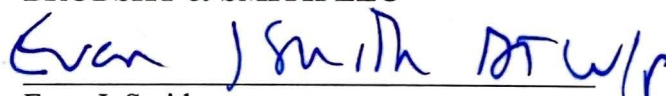
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CERTIFICATION UNDER COMMERCIAL DIVISION RULE 17

I am the counsel who e-filed the foregoing paper. I certify pursuant to Rule 17 of the Commercial Division that the foregoing paper was prepared on a computer using Microsoft Word, according to which the total number of words in the paper, excluding the caption and signature block, is 1,820.

Dated: New York, New York

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