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UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

CITY OF STERLING HEIGHTS GENERAL EMPLOYEES' RETIREMENT SYSTEM, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. PRUDENTIAL FINANCIAL, INC., et al., Defendants.	No. 2:12-cv-05275-MCA-LDW CLASS ACTION REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION OF SETTLEMENT PROCEEDS AND AN AWARD OF ATTORNEYS' FEES AND EXPENSES AND PLAINTIFFS' EXPENSES

Plaintiff and Class Representative National Shopmen Pension Fund ("National Shopmen"), and Plaintiffs Heavy & General Laborers' Locals 472 & 172 Pension and Annuity Funds ("Heavy & General") and Roofers Local 149 Pension Fund ("Roofers Local") (collectively, "Plaintiffs") respectfully submit this reply memorandum of law in further support of their motion for final approval of the proposed Settlement, approval of the Plan of Allocation of Settlement proceeds, and an award of attorneys' fees and payment of litigation expenses and Plaintiffs' expenses (Dkt. No. 433).

I. PRELIMINARY STATEMENT

Plaintiffs and Plaintiffs' counsel are very pleased to advise the Court of the overwhelmingly positive reaction of the Class to the proposed Settlement and the motion for fees and expenses. More than 363,000 notice packets have been mailed to potential Class Members and nominees and summary notice was published in *The Wall Street Journal* and over the *PR Newswire* in accordance with the notice program directed by the Court in its Order Preliminarily Approving Settlement and Providing for Notice ("Preliminary Approval Order") (Dkt. No. 431). *See* Supplemental Declaration of Carole K. Sylvester Regarding Further Notice Dissemination, Requests for Exclusion Received to Date, and Notice Procedures in Connection with Settlement, ¶¶7, 10 ("Supp. Mailing Declaration" or "Supp. Mailing Decl."), submitted herewith; and the previously submitted Declaration of Carole K. Sylvester Regarding Notice Dissemination, Publication and Requests for Exclusion Received to Date ("Mailing Declaration" or "Mailing Decl."), ¶14 (Dkt.

No. 433-8).[1] The September 8, 2016 deadline for objections and exclusions has passed and we have received no objections to the Settlement and the related relief and only 11 requests for exclusion from the Class.[2] Additionally, it is noteworthy that no public pension fund or other large institutional investor has objected to the Settlement, the Plan of Allocation, or the request for attorneys' fees and expenses, or requested exclusion from the Class.

Plaintiffs and Plaintiffs' counsel respectfully submit that the virtual lack of objections and exclusions is compelling evidence that the Settlement, the Plan of Allocation, and the fee and expense request are fair and reasonable and should be approved by the Court.

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[1] While many of the banks, brokerages and other nominees responded in a timely manner, unfortunately, but not uncommonly, a handful did not. The delayed response from certain nominees, despite repeated requests to respond made by Gilardi, resulted in a number of notices being mailed close to or slightly after the objection and exclusion deadline of September 8, 2016. Nevertheless, Plaintiffs' counsel believe that the extensive Court-approved notice program of mail and publication performed by Gilardi met the requirements of due process. *See In re DVI, Inc. Sec. Litig.*, No. 03-5336, 2016 U.S. Dist. LEXIS 40473, at *24 (E.D. Pa. Mar. 28, 2016) ("Courts have recognized that due process does not require actual notice to each and every party that would be bound by the adjudication of a representative action."); *Hill v. State Street Corp.*, No. 09-12146-GAO, 2015 U.S. Dist. LEXIS 2166, at *8 (D. Mass. Jan. 8, 2015) ("[T]he inquiry in class proceedings is not whether each member of the class has actually received notice, but whether notice 'is reasonably calculated to reach the absent class members.'") (citation omitted); *Fidel v. Farley*, 534 F.3d 508, 514 (6th Cir. 2008) ("notice provided to the class members' nominees – *i.e.*, the brokerage houses – has been deemed sufficient even if brokerage houses failed to timely forward the notice to the beneficial owners").

[2] The sole objection filed addresses not the substance of the Settlement or fee and expense request, but rather challenges the requirement that Class Members provide evidence of Class Period transactions in order to share in the Net Settlement Fund. This objection should be overruled. *See* §II. below.

ARGUMENT

II. THE REACTION OF THE CLASS FULLY SUPPORTS APPROVAL OF THE SETTLEMENT, THE PLAN OF ALLOCATION, AND THE REQUESTED ATTORNEYS' FEES AND EXPENSES

The Third Circuit considers the reaction of the class an important factor in connection with the approval of a proposed class action settlement and a request for attorneys' fees and expenses. *See Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975); *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 195 n.1 (3d Cir. 2000).

The fact that the Class' reaction here is resoundingly positive is strong evidence that the Settlement is fair, adequate, and in the best interests of the Class. "The Third Circuit Court of Appeals has recognized the practical conclusion that it is generally appropriate to assume that 'silence constitutes tacit consent to the agreement' in the class settlement context." *Harlan v. Transworld Sys., Inc.*, No. 13-5882, 2015 WL 505400, at *8 (E.D. Pa. Feb. 6, 2015) (citing *Bell Atl. Corp. v. Bolger*, 2 F.3d 1304, 1313 n.15 (3d Cir. 1993)). "The vast disparity between the number of potential class members who received notice of the Settlement and the number of objectors creates a strong presumption . . . in favor of the Settlement." *In re Cendant Corp. Litig.*, 264 F.3d 201, 235 (3d Cir. 2001); *see also Stoetzner v. United States Steel Corp.*, 897 F.2d 115, 119 (3d Cir. 1990) (objections by 29 members of a class comprised of 281 "strongly favors settlement"). As noted, not a single pension fund or other similar institution has objected to any aspect of the Settlement, the Plan of Allocation, or Plaintiffs' counsel's fee and expense request.

Similarly, the fact that there are no objections to the proposed Plan of Allocation provides strong support for the plan. *See Maley v. Del Global Techs.*

Corp., 186 F. Supp. 2d 358, 367 (S.D.N.Y. 2002) (finding that "the favorable reaction of the Class supports approval of the proposed Plan of Allocation").

Counsel received one letter from putative Class Member Mark Lilien. The letter does not object to the substance of the Settlement or Plan of Allocation, but rather objects to the nature of the Proof of Claim form. Mr. Lilien is under the misimpression that counsel has access to his (and all Class Member's) trading records and requests that Defendants pay for the computer search to provide Class Members' trading information. This is simply impossible in large open-market securities cases.

Counsel and claims administrators receive names and addresses of Class Members for the purposes of providing notice from various sources – transfer records, brokers, custodian banks and other nominees, and from Class Members themselves after seeing notification of the Settlement. Banks, brokers and other nominee holders of securities are instructed to either provide client and customer names and addresses to the Claims Administrator, or to mail the Notice and Proof of Claim form directly to those putative Class Members. *See* Preliminary Approval Order, ¶2. At no time is private financial data provided to the Claims Administrator by these third parties. And most Class Members want it that way.

Moreover, even if it could be reasonably accomplished, it would be prohibitively expensive for Lead Counsel or the Claims Administrator to pre-populate the Proof of Claim form with data which may or may not be complete, may come from more than one account, or may be otherwise unavailable or incomplete.

Because it is impossible, in virtually all circumstances, to provide the information Mr. Lilien requests, the Court should overrule the objection. If Mr. Lilien (or any Class Member) needs assistance obtaining trade information to fill out his claim form, his broker will have all of the relevant information he needs, and should readily provide it.

Finally, it is also well recognized that no or minimal objections to a fee request represent powerful evidence that the request is fair. *See, e.g.*, *In re Schering-Plough Corp. ENHANCE ERISA Litig.*, No. 08-1432, 2012 WL 1964451, at *6 (D.N.J. May 31, 2012) ("'The lack of objections to the requested attorneys' fees supports the request, especially because the settlement class includes large, sophisticated institutional investors.'") (quoting *Smith v. Dominion Bridge Corp.*, No. 96-7580, 2007 WL 1101272, at *8 (E.D. Pa. Apr. 11, 2007) (same); *In re Aetna Inc. Sec. Litig.*, No. Civ. A. MDL 1219, 2001 WL 20928, at *15 (E.D. Pa. Jan. 4, 2001) ("[T]he Class members' view of the attorneys' performance, inferred from the lack of objections to the fee petition, supports the fee award.").

Accordingly, the overwhelmingly positive response of the Class here fully supports both the approval of the Settlement and Plan of Allocation and the award of attorneys' fees and expenses, including Plaintiffs' expenses.

III. CONCLUSION

For the reasons set forth herein and in Plaintiffs' and Plaintiffs' counsel's initial memoranda of law and declarations in support of the motion, Plaintiffs and Plaintiffs' counsel respectfully request that the Court approve the proposed Settlement as fair, reasonable, and adequate; approve the proposed Plan of

Allocation; approve Plaintiffs' counsel's request for attorneys' fees and payment of litigation expenses; approve Plaintiffs' expenses; and overrule the objection of Mark Lilien. Proposed orders, including the Judgment negotiated by the parties as an exhibit to the Stipulation of Settlement, are submitted herewith.

DATED: September 23, 2016

Respectfully submitted,

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