

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DAVID N. ZIMMERMAN,	)	Civ. No. 2:16-cv-14005-AC-SDD
Individually and on Behalf of All Others)	
Similarly Situated,	)	Hon. Avern Cohn
)	
Plaintiff,	)	<u>CLASS ACTION</u>
)	
vs.	)	NOTICE OF NON-OPPOSITION AND
	)	REPLY IN FURTHER SUPPORT OF
DIPLOMAT PHARMACY, INC., et al.,	)	(1) LEAD PLAINTIFFS' MOTION
	)	FOR FINAL APPROVAL OF CLASS
Defendants.	)	ACTION SETTLEMENT, CLASS
_____	)	CERTIFICATION AND APPROVAL
	)	OF PLAN OF ALLOCATION; AND
	)	(2) LEAD COUNSEL'S MOTION
	)	FOR AN AWARD OF ATTORNEYS'
	)	FEEES, LITIGATION COSTS AND
	)	EXPENSES AND AWARDS TO
	)	LEAD PLAINTIFFS PURSUANT TO
	)	15 U.S.C. §78u-4(a)(4)

Lead Plaintiffs David N. Zimmerman, William Kitsonas and the Government Employees' Retirement System of the Virgin Islands ("GERS") (together, "Lead Plaintiffs") and Lead Counsel respectfully submit this notice of non-opposition and reply in further support of: (1) Lead Plaintiffs' motion for final approval of the proposed class action settlement (the "Settlement") and approval of the Plan of Allocation; and (2) Lead Counsel's motion for an award of attorneys' fees and expenses and awards to Lead Plaintiffs pursuant to 15 U.S.C. §78u-4(a)(4). ECF Nos. 63-64.¹

I. PRELIMINARY STATEMENT

Lead Plaintiffs are pleased to advise the Court that there has been a unanimously positive reaction from the Class to the proposed \$14,100,000 Settlement, Plan of Allocation, and the fee and expense application. As described in the accompanying Supplemental Declaration of Carole K. Sylvester Regarding Notice Dissemination and Requests for Exclusion Received to Date ("Suppl. Sylvester Decl.") and prior Sylvester Declaration (ECF No. 69),² notice of the Settlement was sent to more than 28,300 potential Class Members and their nominees. Notice was also published in *The Wall*

¹ Unless otherwise noted, all capitalized terms not defined herein have the same meanings set forth in the Stipulation of Settlement. ECF No. 60.

² See Declaration of Carole K. Sylvester Regarding Notice Dissemination, Publication, and Requests for Exclusion Received to Date.

Street Journal, transmitted over *Business Wire* and posted on the Claims Administrator's dedicated website, www.DiplomatSecuritiesSettlement.com. The deadline for objections was July 30, 2019, and ***no Class Members objected to any aspect of the Settlement, Plan of Allocation or the fee and expense application. Further, not a single Class Member asked to be excluded from the Class.*** The Class' reaction is indicative of the fairness, adequacy and reasonableness of the Settlement, Plan of Allocation and the fee and expense application.

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

The reaction of a class to a settlement is an important factor in assessing the fairness and adequacy of the settlement. “[A] relatively small number of class members who object is an indication of a settlement’s fairness.” *Brotherton v. Cleveland*, 141 F. Supp. 2d 894, 906 (S.D. Ohio 2001). Indeed, “[t]he lack of objections by class members in relation to the size of the class highlights the fairness of the settlements to unnamed class members and supports approval of the settlements.” *In re Southeastern Milk Antitrust Litig.*, No. 2:08-MD-1000, 2013 WL 2155379, at *6 (E.D. Tenn. May 17, 2013). Here, not a single Class Member objected to the Settlement or Plan of Allocation, and no Class Member has requested exclusion from the Class.

This uniformly positive reaction from the Class to the Settlement, together with the relevant factors discussed in Lead Plaintiffs' opening brief in support of the Settlement, strongly support the Court's final approval of the Settlement and Plan of Allocation. *See* ECF No. 63 at 7-22; *see also In re Packaged Ice Antitrust Litig.*, No. 08-MDL-01952, 2011 WL 6209188, at *13 (E.D. Mich. Dec. 13, 2011) (“[U]nanimous approval of the proposed settlement [] by the class members is entitled to nearly dispositive weight in the court's evaluation of the proposed settlement.”) (citation omitted).

III. THE REACTION OF THE CLASS SUPPORTS APPROVAL OF THE FEE AND EXPENSE APPLICATION

As with the Settlement and Plan of Allocation, no Class Member has objected to Lead Counsel's request for attorneys' fees and expenses, and no Class Member has objected to Lead Plaintiffs' requested awards. The fact that there have been no objections demonstrates the fairness and reasonableness of the requested fee and expense awards. *See Packaged Ice*, 2011 WL 6209188, at *19 (noting that “[t]here were no objections to the fee request of 30% that was disclosed in the Notice to settlement class members” in approving fee request and that an “award of close to 30% appears to be a fairly well-accepted ratio in” complex class actions).

As set forth in greater detail in Lead Counsel's opening brief in support of an award of their fees and expenses, Lead Counsel's fee request of 30% of the Settlement Amount is well within the normal range of awards for similar class action litigations and is both fair and reasonable under the *Ramey* factors. ECF No. 64 at 9-22. The reaction of the Class following the Court-approved notice program reinforces that conclusion and further supports the requested \$225,717.22 in expenses incurred by Plaintiffs' Counsel in prosecuting this action and the requested awards of \$2,157.51 to GERS, \$9,000 to Zimmerman and \$2,500 to Kitsonas for the time they spent representing the Class.

IV. CONCLUSION

The \$14.1 million Settlement, which was achieved after nearly three years of hard-fought litigation, represents a significant recovery for Class Members. For the reasons set forth herein and in their prior submissions, Lead Plaintiffs and Lead Counsel respectfully request that the Court approve the Settlement and the Plan of Allocation as fair, reasonable and adequate, and approve Lead Counsel's request for

an award of attorneys' fees and expenses and the awards sought by Lead Plaintiffs pursuant to 15 U.S.C. §78u-4(a)(4).

DATED: August 12, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on August 12, 2019, 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 the e-mail addresses on the attached Electronic Mail Notice List, and I hereby certify that I caused the mailing of the foregoing via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

s/ELLEN GUSIKOFF STEWART
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Mailing Information for a Case 2:16-cv-14005-AC-SDD Zimmerman v. Diplomat Pharmacy, Inc. et al

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Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

- (No manual recipients)