

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

IN RE COBALT INTERNATIONAL
ENERGY, INC. SECURITIES LITIGATION

Lead Case No. 4:14-cv-3428 (NFA)

**REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT
OF (I) LEAD PLAINTIFFS' MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENTS AND PLAN OF ALLOCATION AND
(II) LEAD COUNSEL'S MOTION FOR AWARD OF ATTORNEYS' FEES
AND REIMBURSEMENT OF LITIGATION EXPENSES**

TABLE OF CONTENTS

	<u>Page</u>
I. PRELIMINARY STATEMENT	1
II. THE REACTION OF THE CLASS SUPPORTS APPROVAL OF THE SETTLEMENTS, THE PLAN OF ALLOCATION AND THE REQUESTED ATTORNEYS' FEES AND LITIGATION EXPENSES.....	2
III. CONCLUSION.....	4

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>Bethea v. Sprint Commc’ns Co.</i> , No. 3:12-cv-322 (CWR), 2013 WL 228094 (S.D. Miss. Jan. 18, 2013)	3
<i>In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig.</i> , 851 F. Supp. 2d 1040 (S.D. Tex. 2012)	3
<i>In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.</i> , 986 F. Supp. 2d 207 (E.D.N.Y. 2013)	3
<i>Quintanilla v. A & R Demolition Inc.</i> , No. H-04-1965, 2008 WL 9410399 (S.D. Tex. May 7, 2008)	3
<i>Schwartz v. TXU Corp.</i> , No. 3:02-CV-2243-K, 2005 WL 3148350 (N.D. Tex. Nov. 8, 2005)	3
<i>Turner v. Murphy Oil USA, Inc.</i> , 472 F. Supp. 2d 830 (E.D. La. 2007)	3
<i>In re Veeco Instruments Inc. Sec. Litig.</i> , No. 05 MDL 01695(CM), 2007 WL 4115808 (S.D.N.Y. Nov. 7, 2007)	4
<i>In re Veeco Instruments Inc. Sec. Litig.</i> , No. 05 MDL 01695(CM), 2007 WL 4115809 (S.D.N.Y. Nov. 7, 2007)	3

Lead Plaintiffs GAMCO Global Gold, Natural Resources & Income Trust, and GAMCO Natural Resources, Gold & Income Trust (the “GAMCO Funds”), and plaintiffs St. Lucie County Fire District Firefighters’ Pension Trust Fund, Fire and Police Retiree Health Care Fund, San Antonio, Sjunde AP-Fonden, and Universal Investment Gesellschaft m.b.H. (collectively, “Plaintiffs”) on behalf of themselves and the Class, and Lead Counsel respectfully submit this reply memorandum of law in further support of (I) Lead Plaintiffs’ Motion For Final Approval of Class Action Settlements and Plan of Allocation (ECF Nos. 355-56); and (II) Lead Counsel’s Motion for an Award of Attorneys’ Fees and Reimbursement of Litigation Expenses (ECF Nos. 357-58) (the “Motions”).

I. PRELIMINARY STATEMENT

As detailed in Lead Plaintiffs’ and Lead Counsel’s opening papers in support of the Motions (ECF Nos. 355-59), the Settlements represent a very favorable outcome to this litigation for the Class. The Settlements are the product of hard-fought litigation and arm’s-length settlement negotiations conducted under the auspices of a respected and experienced mediator, former United States District Judge Layn R. Phillips. *See* Declaration of Andrew J. Entwistle in Further Support of the Motions (“Entwistle Decl.”) ¶¶ 31-34. The requested fees and expenses are also reasonable. If approved, the proposed Settlements would result in a total recovery of at least \$173.8 million for the Class and up to \$161.5 million in potential additional recovery from ongoing litigation between the Cobalt Defendants and their insurance carriers. *Id.* ¶¶ 13, 38.

Following an extensive Court-approved notice program – which included mailing the Notice to over 110,539 potential Class Members and their nominees and publication of

a Summary Notice in national publications – no Class Member has objected to the proposed Settlements, the Plan of Allocation, or Lead Counsel’s motion for an award of attorneys’ fees and reimbursement of litigation expenses. *Id.* ¶¶ 17-21, 25. In addition, no valid requests for exclusion have been received. *Id.* ¶ 27. As explained below, the reaction of the Class further demonstrates that the proposed Settlements, the Plan of Allocation, and the request for attorneys’ fees and expenses are fair and reasonable, and should be approved.

II. THE REACTION OF THE CLASS SUPPORTS APPROVAL OF THE SETTLEMENTS, THE PLAN OF ALLOCATION AND THE REQUESTED ATTORNEYS’ FEES AND LITIGATION EXPENSES

The deadline for Class Members to object or opt-out of the Class was January 23, 2019. Entwistle Decl. ¶¶ 24, 26. No Class Member objected to any of the Settlements, the Plan of Allocation or Lead Counsel’s application for attorneys’ fees and expenses. *Id.* ¶ 25. Nor did any Class Member timely opt-out of the Settlement.¹ *Id.* ¶¶ 26-27. The overwhelmingly positive response of the Class to the Motions provides additional strong support for their approval.

As courts in this District and elsewhere have concluded, the absence of any objections to a settlement strongly supports a finding that the Settlements are fair, reasonable, and adequate. *See, e.g., In re Heartland Payment Sys., Inc. Customer Data*

¹ The Claims Administrator received one untimely and invalid request for exclusion. Among other things, the exclusion request did not provide any of the information concerning holdings or transactions in Cobalt Securities as required for a valid request for exclusion. *See* Supplemental Villanova Decl. ¶ 4; Notice ¶ 46. Accordingly, it is not possible to determine whether the persons requesting exclusion even fall within the definition of the Class. In addition, the request was untimely. The request was received by Epiq on January 28, 2019, after the January 23, 2019 deadline for receipt of requests for exclusion. *See* Supplemental Villanova Decl. ¶ 4.

Sec. Breach Litig., 851 F. Supp. 2d 1040, 1068 (S.D. Tex. 2012) (“Receipt of few or no objections ‘can be viewed as indicative of the adequacy of the settlement.’”) (internal quotation marks omitted); *Quintanilla v. A & R Demolition Inc.*, 2008 WL 9410399, at *5 (S.D. Tex. May 7, 2008) (same); *Turner v. Murphy Oil USA, Inc.*, 472 F. Supp. 2d 830, 853 (E.D. La. 2007) (“The absence or small number of objections may provide a helpful indication that the settlement is fair, reasonable, and adequate.”); *Schwartz v. TXU Corp.*, 2005 WL 3148350, at *22-23 (N.D. Tex. Nov. 8, 2005) (finding, where there were eight objections, that “the overwhelming response of absent Class Members overall . . . strongly supports approval of the settlement”).

The uniformly positive reaction of the Class also supports approval of the Plan of Allocation. *See, e.g., Schwartz*, 2005 WL 3148350, at *24 (finding the plan of allocation fair, reasonable and adequate where, “[m]ost importantly, there has only been one objection to the Plan of Allocation”); *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 986 F. Supp. 2d 207, 240 (E.D.N.Y. 2013) (conclusion that the proposed plan of allocation was fair and reasonable was “buttressed by the . . . absence of objections from class members”); *In re Veeco Instruments Inc. Sec. Litig.*, 2007 WL 4115809, at *14 (S.D.N.Y. Nov. 7, 2007) (“[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 absence of any objections to the fee and expense application supports a finding that the request is fair and reasonable. *See, e.g., Bethea v. Sprint Commc’ns Co.*, 2013 WL 228094, at *5 (S.D. Miss. Jan. 18, 2013) (“The absence of objection by class

members to Settlement Class Counsel’s fee-and-expense request further supports finding it reasonable.”); *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”).

III. CONCLUSION

For all of the foregoing reasons, and those set forth in their opening papers, Lead Plaintiffs and Lead Counsel respectfully request that the Court approve the Settlement, the Plan of Allocation, and the request for attorneys’ fees and reimbursement of litigation expenses.

Dated: February 6, 2019

Respectfully submitted,

ENTWISTLE & CAPPUCCI LLP

By: /s/ Andrew J. Entwistle
Andrew J. Entwistle
(Texas Bar No. 24038131)
Vincent R. Cappucci (admitted *pro hac vice*)
Jonathan H. Beemer (admitted *pro hac vice*)
299 Park Avenue, 20th Floor
New York, NY 10171
Telephone: (212) 894-7200
Facsimile: (212) 894-7272
E-mail: aentwistle@entwistle-law.com
E-mail: vcappucci@entwistle-law.com
E-mail: jbeemer@entwistle-law.com

*Counsel for Lead Plaintiffs GAMCO Funds and
Co-Lead Counsel for the Class*

**BERNSTEIN LITOWITZ BERGER
& GROSSMANN LLP**

By: /s/ David R. Stickney

David R. Stickney (admitted *pro hac vice*)
Jonathan D. Uslaner (admitted *pro hac vice*)
Brandon Marsh (admitted *pro hac vice*)
12481 High Bluff Drive, Suite 300
San Diego, CA 92130-3582
Telephone: (858) 793-0070
Facsimile: (858) 793-0323
E-mail: davids@blbglaw.com
E-mail: jonathanu@blbglaw.com
E-mail: brandon.marsh@blbglaw.com

*Counsel for Plaintiffs St. Lucie County Fire
District Firefighters' Pension Trust Fund and
Fire and Police Retiree Health Care Fund, San
Antonio and Co-Lead Counsel for the Class*

AJAMIE LLP

Thomas R. Ajamie
(Texas Bar No. 00952400)
Pennzoil Place - South Tower
711 Louisiana, Suite 2150
Houston, TX 77002
Telephone: (713) 860-1600
Facsimile: (713) 860-1699
E-mail: tajamie@ajamie.com

Liaison Counsel for the Class

**KESSLER TOPAZ MELTZER
& CHECK, LLP**

Johnston de Forest Whitman, Jr.
(admitted *pro hac vice*)
Naumon A. Amjed
(admitted *pro hac vice*)
280 King of Prussia Road
Radnor, PA 19087
Telephone: (610) 667-7706
Facsimile: (610) 667-7056

E-Mail: jwhitman@ktmc.com

E-Mail: namjed@ktmc.com

Counsel for Plaintiff Sjunde AP-Fonden

MOTLEY RICE LLC

Christopher Moriarty (admitted *pro hac vice*)

28 Bridgeside Blvd.

Mt. Pleasant, SC 29464

Telephone: (843) 216-9245

Facsimile: (843) 216-9450

E-Mail: cmoriarty@motleyrice.com

*Counsel for Plaintiff Universal Investment
Gesellschaft m.b.H.*

CERTIFICATE OF SERVICE

I certify that on this 6th day of February 2019, I caused the foregoing to be electronically filed with Clerk of the Court using the CM/ECF system, which will send notification of such filing to the email addresses denoted on the Electronic Mail Notice List.

By: /s/ Andrew J. Entwistle