

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

IN RE FRONTIER COMMUNICATIONS
CORPORATION STOCKHOLDERS
LITIGATION

No. 3:17-cv-01617-VAB

**REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF LEAD COUNSEL'S
MOTION FOR ATTORNEYS' FEES AND LITIGATION EXPENSES**

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I. INTRODUCTION

As detailed in the opening papers in support of the Fee Motion¹ (ECF Nos. 196-198), Lead Counsel's requested attorneys' fee award of 25% of the Settlement Fund is reasonable considering the substantial risks that counsel faced, and because it is within the range of fee percentages awarded in comparable settlements and represents a very slight multiplier of just 1.05 of Plaintiffs' Counsel's lodestar.²

The reaction of the Settlement Class to the Fee Motion has been positive and further warrants granting of the fee and expense application. In accordance with the Court's Preliminary Approval Order (ECF No. 193), the Claims Administrator has mailed 755,128 copies of the Notice to potential Class Members and nominees. Following this extensive notice program, only *one* formal objection, submitted by Ms. Catherine L. Scott (ECF No. 200) (the "Scott Objection"), has been received.³ As discussed below, the objection should be rejected by the Court. Moreover, the

¹ Unless otherwise defined, all capitalized terms herein have the same meanings as set forth in the Stipulation and Agreement of Settlement dated December 23, 2021 (ECF No. 192-2) (the "Stipulation") or in the Declaration of Katherine M. Sinderson in Support of: (A) Lead Plaintiffs' Motion for Final Approval of Settlement and Plan of Allocation; and (B) Lead Counsel's Motion for Attorneys' Fees and Litigation Expenses (ECF No. 198) (the "Sinderson Declaration" or "Sinderson Decl.>").

² Lead Plaintiffs are also filing with the Court today a reply memorandum of law in further support of Lead Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation (ECF No. 194).

³ Lead Counsel are also in receipt of a belatedly filed Motion to Lift Discovery Stay (ECF No. 202), also filed by Ms. Scott, which Lead Counsel intends to respond to by May 5, 2022—well in advance of the scheduled May 10 final approval hearing. Also, as already discussed in the opening papers, Lead Counsel previously received a one-page, anonymous letter that is not a valid objection as it does not satisfy any of the requirements for the submission of objections set forth in the Notice, and it provides no reasoned basis why the Fee Motion should not be approved. This submission should be rejected by the Court. *See* ECF No. 198-8.

securities described in the requests for exclusion collectively concern just 0.004% of the securities estimated to be at issue—a truly miniscule amount that further demonstrate positive reaction.

II. THE REACTION OF THE SETTLEMENT CLASS FURTHER SUPPORTS THE REQUESTED ATTORNEYS' FEES AND LITIGATION EXPENSES

A. The Extensive Court-Ordered Notice Program

In accordance with the Preliminary Approval Order, the Claims Administrator conducted an extensive notice program under Lead Counsel's supervision. This included mailing over 755,000 Notices to potential Class Members, publishing the Summary Notice in *Investor's Business Daily* and over the PR Newswire, and establishing a website that provides copies of the Notice, Claim Form, Stipulation, Complaint, and other key information.⁴ The Notice expressly informed Class Members that Lead Counsel would apply for an award of attorneys' fees in an amount not to exceed 25% of the Settlement Fund and payment of Plaintiffs' Counsel's Litigation Expenses in an amount not to exceed \$500,000. *See* Notice at ¶¶5, 56. The Notice also advised Class Members of their right to object to the request for attorneys' fees and expenses or to request exclusion, and the April 19, 2022 deadline for doing so. *See id.* at ¶¶57-71.

On April 5, 2022, 14 days before the objection deadline, Lead Plaintiffs and Lead Counsel filed their opening papers in support of the Fee Motion (ECF Nos. 196-198). These papers were immediately available on the public docket and were made available on the Settlement website. *See* Supp. Ewashko Decl. ¶8.

⁴ The notice program is described in the previously filed Ewashko Declaration (ECF No. 198-3), at ¶¶ 2-11. *See also* Supplemental Declaration of Jack Ewashko Regarding (A) Mailing of the Notice and Claim Form and (B) Report on Requests for Exclusion and Claims Received, dated May 3, 2022 (the "Supp. Ewashko Decl."), filed with this brief.

B. The Reaction of the Settlement Class Supports Approval of the Fee and Expense Request

Following the extensive notice program described above, just 72 requests for exclusion⁵—describing just 5,447.82 shares of Frontier Securities purchased during the Class Period, or just 0.004% of the approximately *140 million* Frontier Securities estimated to have been affected—and only one formal objection to the Fee Motion were received. Lead Counsel respectfully submits that this positive reaction from the Settlement Class provides strong support for approval of Lead Counsel’s fee and expense request. *See, e.g., In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 593-594 (S.D.N.Y. 2008) (after transmission of tens of thousands of notices informing class that counsel would seek up to 30% of the gross settlement fund as attorneys’ fees, “[t]hat only one objection to the fee request was received is powerful evidence that the requested fee is fair and reasonable”); *Sykes v. Harris*, 2016 WL 3030156, at *19 (S.D.N.Y. May 24, 2016) (approving settlement and awarding attorneys’ fees over sole timely objection). Furthermore, the lack of objections by institutional investors in particular supports approval of the fee request. *See In re Signet Jewelers Ltd. Sec. Litig.*, 2020 WL 4196468, at *21 (S.D.N.Y. July 21, 2020) (finding that a “lack of objections by institutional investors . . . lends further support to approval of the fee request.”); *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 305 (3d Cir. 2005) (fact that “a significant number of investors in the class were ‘sophisticated’ institutional investors that had considerable financial incentive to object had they believed the requested fees were excessive”, but did not do so, supported approval of the fee request).

⁵ All requests for exclusion appear to be submitted on behalf of individuals or family trusts.

III. THE LONE FORMAL OBJECTION SHOULD BE OVERRULED

The lone formal objection, the Scott Objection, should be rejected by the Court.⁶ The principal basis for the objection to the requested award of attorneys' fees is an incorrect belief that "[n]ot much work was done in this case." Scott Obj. at 7. But the Scott Objection does not take any specific issue with the detailed descriptions of Lead Counsel's work performed on behalf of the Settlement Class in the opening brief in support of the Fee Motion and the accompanying Sinderson Declaration (¶¶7-61, 107) and even specifically states that Ms. Scott "believe[s] the work was done [by Plaintiffs' Counsel] as described." Scott Obj. at 8. Instead, the Scott Objection simply notes the absence of steps that would be typical of late-stage litigation but that were not reached due to this case's procedural history and Frontier's bankruptcy, while ignoring work done by Lead Counsel that was necessitated by Frontier's bankruptcy. In addition to conducting extensive investigations and drafting two complaints (Sinderson Decl. ¶¶13-17, 24-26), fully briefing motions to dismiss and to amend (*id.* ¶¶18-23, 27-33), and fully briefing the appeal to the Second Circuit for review of the order denying the motion for leave to amend the Consolidated Amended Complaint (*id.* ¶¶34, 45-50), Lead Counsel engaged experienced bankruptcy counsel (*id.* ¶¶81, 124) and fully briefed the appeal to the Second Circuit to partially lift Frontier's automatic bankruptcy stay (*id.* ¶¶35-44). Plaintiffs' Counsel dedicated a total of more than 6,200 hours of attorney and other professional staff time over the past four years to bring the Action to this conclusion and have not yet received any compensation for these efforts. *Id.* ¶¶110, 114-15.

Moreover, the lodestar cross-check indicates that the requested fee award represents a very slight multiplier of just 1.05 of Plaintiffs' Counsel's lodestar, meaning that the requested fee is

⁶ The assertions in the Scott Objection concerning approval of the Settlement and Plan of Allocation are addressed in the Reply Memorandum of Law in Further Support of Lead Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation, filed herewith.

largely consistent with market rates for the work that Ms. Scott “believe[s] . . . was done [by Plaintiffs’ Counsel] as described.” Scott Obj. at 8. Ignored by the Scott Objection is that this lodestar multiplier sought by Lead Counsel is significantly *below* the range of multipliers commonly awarded in securities class actions and other comparable litigations where positive lodestar multipliers between two and five are often awarded.

Further, the criticism in the Scott Objection of Lead Counsel’s fee request ignores that, from the outset of this litigation, Plaintiffs’ Counsel faced numerous challenges to proving liability and damages that posed a serious risk of no recovery for the Settlement Class (*see* Sinderson Decl. ¶¶70-78), as was largely realized when the Court rejected all of Lead Plaintiffs’ allegations except for a handful of alleged false and misleading statements made by Defendants. Moreover, throughout the entire litigation, Lead Plaintiffs faced substantial risk in establishing loss causation, as evidenced by the fact that the Court had already rejected Lead Plaintiffs’ loss causation allegations on two occasions. Because Lead Counsel brought this Action on a fully contingent basis, these litigation risks meant a substantial possibility that Plaintiffs’ Counsel might receive no compensation for the time they spent.

There is also no merit to the attack in the Scott Objection that “[t]he quality of the representation is questionable,” with “loss after loss.” Scott Obj. at 7. Among other things, the Scott Objection ignores that, in their motion for leave to amend to file the proposed amended Complaint, Lead Plaintiffs and Lead Counsel were able to sufficiently plead falsity and scienter after the Court had previously rejected both. Then, despite Frontier’s unforeseeable bankruptcy reorganization, which compounded the substantial litigation risks already present in the case and significantly imperiled the chances of Lead Plaintiffs collecting on any judgment in the Action, Lead Counsel successfully obtained a favorable result for the benefit of Settlement Class Members.

Finally, there is no merit to the assertion in the Scott Objection that “[t]he hourly rates of each class of worker are not described with respect to comparisons to the defendant’s law firm or other similar firms of the same type of work” and that the hourly rates are not “shown to be reasonable in and of themselves.” Scott Obj. at 8. The hourly rates for Lead Counsel’s attorneys and professional support staff employees are the same as, or comparable to, the rates submitted by Lead Counsel in other securities class action litigation fee applications and which have been accepted by other courts for purposes of a lodestar cross-check in securities class actions. *See In re Evoqua Water Tech. Corp. Sec. Litig.*, No. 1:18-cv-10320-JPC (S.D.N.Y. Nov. 1, 2021), ECF No. 152 (awarding fee based on lodestar analysis using Lead Counsel’s current hourly rates); *In re Merit Med. Sys., Inc. Sec. Litig.*, No. 8:19-cv-02326-DOC-ADS (C.D. Cal. Apr. 15, 2022), ECF No. 118 (same); *In re Allergan Generic Drug Pricing Sec. Litig.*, Case No. 2:16-cv-09449 (CLW) (D.N.J. Nov. 22, 2021), ECF No. 237 (same); *In re CenturyLink Sales Practices & Sec. Litig.*, No. 18-cv-296- MJD (D. Minn. July 21, 2021), ECF No. 380 (same). Consistent with those applications, different timekeepers within the same employment category (e.g., partners, associates, paralegals, etc.) may have different rates based on a variety of factors, including years of practice, years at the firm, year in the current position (e.g., years as a partner), relevant experience, relative expertise, and the rates of similarly experienced peers at the firm or other firms. Lead Counsel’s rates are set based on its annual analysis of rates that are charged by firms performing comparable work and that have been approved by courts and by a selection of defense firms that the firm frequently litigates against. Lead Counsel believes, based on this analysis and review of other public data, that its hourly rates are comparable to other firms engaged in comparable securities class action work in New York and are comparable to or less than rates for comparably experienced attorneys at the large defense firms Lead Counsel typically litigates

against—including specifically in this Action. *See U.S.A. ex rel. v. Vanderwater Int’l Inc.*, Island Industries, Inc.’s Notice of Motion and Motion for an Award of Attorneys’ Fees, Costs, and Expenses Under 31 U.S.C. § 3730(d)(2), Case No. 2:17-cv-04393-RGK-KS (C.D. Cal. Mar. 8, 2022) (in 2022 application for an award of attorneys’ fees and costs, Mayer Brown’s 2022 partners’ rates ranged from \$1,095 to \$1,480 per hour and associates’ 2022 rates ranged from \$795 to \$990 per hour); *see also In re Tonopah Solar Energy, LLC*, Application for Retention of Counsel, Case No. 20-11884 (KBO) (Bankr. D. Del. July 30, 2020), ECF No. 43 (in 2020 application for retention in a bankruptcy action, Wilson Sonsini noted that its partners’ rates ranged from \$925 to \$1,750 and its associates’ rates ranged from \$510 to \$920).

IV. CONCLUSION

For the foregoing reasons, and those set forth in their opening papers, Lead Counsel respectfully requests that the Court overrule the Scott Objection and approve Lead Counsel’s request for attorneys’ fees and Litigation Expenses. A copy of the proposed Order Awarding Attorneys’ Fees and Litigation Expenses is being filed herewith.

Dated: May 3, 2022

Respectfully submitted,

/s/ Katherine M. Sinderson

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CERTIFICATE OF SERVICE

I certify that on May 3, 2022 a copy of the foregoing Reply Memorandum of Law in Further Support of Lead Plaintiffs' Motion for Attorneys' Fees and Litigation Expenses was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by email to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System. I further certify that a copy of the foregoing will be sent by email and mail to:

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