

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE EVOQUA WATER TECHNOLOGIES
CORP. SECURITIES LITIGATION

Master File No. 1:18-cv-10320-JPC

**REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF
(A) PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION
SETTLEMENT AND PLAN OF ALLOCATION AND (B) LEAD COUNSEL'S
MOTION FOR ATTORNEYS' FEES AND LITIGATION EXPENSES**

BERNSTEIN LITOWITZ BERGER
& GROSSMANN LLP
John C. Browne
Jeremy P. Robinson
Jai Chandrasekar
Christopher M. Miles
1251 Avenue of the Americas, 44th Fl.
New York, NY 10020

SCOTT+SCOTT ATTORNEYS AT LAW
LLP
David R. Scott
William C. Fredericks
Randy Moonan
The Helmsley Building
230 Park Ave, 17th Fl.
New York, NY 10169

*Counsel for Plaintiffs and Lead Counsel for
the Settlement Class*

Dated: October 25, 2021

TABLE OF CONTENTS

	Page
I. PRELIMINARY STATEMENT	1
II. THE REACTION OF THE SETTLEMENT CLASS SUPPORTS APPROVAL OF THE SETTLEMENT, THE PLAN OF ALLOCATION, AND THE REQUESTED ATTORNEYS’ FEES AND LITIGATION EXPENSES	2
A. The Court-Approved Robust Notice Program	2
B. The Settlement Class’s Reaction Supports Approval of the Settlement and the Plan of Allocation	4
C. The Settlement Class’s Reaction Supports Approval of the Fee and Expense Request	5
III. CONCLUSION.....	6

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>In re Advanced Battery Techs., Inc. Sec. Litig.</i> , 298 F.R.D. 171 (S.D.N.Y. 2014)	4
<i>In re AOL Time Warner, Inc. Sec. & “ERISA” Litig.</i> , 2006 WL 903236 (S.D.N.Y. Apr. 6, 2006).....	5
<i>Asare v. Change Grp. of New York, Inc.</i> , 2013 WL 6144764 (S.D.N.Y. Nov. 18, 2013)	6
<i>In re AT&T Corp. Sec. Litig.</i> , 2005 WL 6716404 (D.N.J. Apr. 25, 2005)	5
<i>In re Bisy Sec. Litig.</i> , 2007 WL 2049726 (S.D.N.Y. July 16, 2007)	6
<i>In re Citigroup Inc. Bond Litig.</i> , 296 F.R.D. 147 (S.D.N.Y. 2013)	5
<i>Fleisher v. Phoenix Life Ins. Co.</i> , 2015 WL 10847814 (S.D.N.Y. Sept. 9, 2015).....	4
<i>In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.</i> , 986 F. Supp. 2d 207 (E.D.N.Y. 2013)	5
<i>In re Rite Aid Corp. Sec. Litig.</i> , 396 F.3d 294 (3d Cir. 2005).....	6
<i>Vaccaro v. New Source Energy Partners L.P.</i> , 2017 WL 6398636 (S.D.N.Y. Dec. 14, 2017)	6
<i>In re Veeco Instruments Inc. Sec. Litig.</i> , 2007 WL 4115808 (S.D.N.Y. Nov. 7, 2007).....	6
<i>In re Veeco Instruments Inc. Sec. Litig.</i> , 2007 WL 4115809 (S.D.N.Y. Nov. 7, 2007).....	5
<i>In re Virtus Inv. Partners, Inc. Sec. Litig.</i> , 2018 WL 6333657 (S.D.N.Y. Dec. 4, 2018)	4
<i>Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.</i> , 396 F.3d 96 (2d Cir. 2005).....	4

Lead Plaintiffs Louisiana Sheriffs’ Pension & Relief Fund (“Louisiana Sheriffs”) and City of Omaha Police & Fire Retirement System (“Omaha P&F”), together with additional proposed class representative City of Hallandale Beach Police Officers’ & Firefighters’ Personnel Retirement Trust (“Hallandale P&F” and, with Lead Plaintiffs, “Plaintiffs”), on behalf of themselves and the Settlement Class, and Lead Counsel, respectively, submit this single reply memorandum of law in further support of, respectively (a) Plaintiffs’ Motion for Final Approval of Class Action Settlement and Plan of Allocation (ECF Nos. 141-142); and (b) Lead Counsel’s Motion for Attorneys’ Fees and Litigation Expenses (ECF Nos. 143-144) (the “Motions”).¹

I. PRELIMINARY STATEMENT

The reaction of the Settlement Class confirms that all aspects of the proposed \$16,650,000 Settlement are fair and reasonable, and that the Motions should be granted. Following an extensive Court-approved notice program—including the mailing of Notice to over 24,000 potential Settlement Class members and nominees—*not a single member of the Settlement Class objected to any aspect of the Settlement, the Plan of Allocation, or to any aspect of the requested fees and expenses*. This lack of *any* objections represents a significant endorsement by the Settlement Class (the group most affected by the pending Motions) of the proposed Settlement and the requested fees and expenses. Indeed, the complete absence of objections is especially noteworthy here because institutional investors held the majority of Evoqua common stock during the Class Period—and even though such investors typically have the staff and resources to object if they believe there is cause to do so, none did so. Further, not a single institutional investor has requested

¹ Unless otherwise defined, all capitalized terms herein have the same meanings as set forth in the Stipulation and Agreement of Settlement dated May 28, 2021 (ECF No. 133-1) (the “Stipulation”) or in the Joint Declaration of Jeremy P. Robinson and William C. Fredericks in Support of (A) Plaintiffs’ Motion for Final Approval of Class Action Settlement and Plan of Allocation and (B) Lead Counsel’s Motion for Attorneys’ Fees and Litigation Expenses (ECF No. 145).

exclusion from the Settlement. Relatedly, all three Plaintiffs, who are each sophisticated institutional investors, have expressly endorsed the Settlement and the requested attorneys' fees and expenses. *See* ECF No. 145-1, at ¶¶ 6-8; ECF No. 145-2, at ¶¶ 8-9; ECF No. 145-3, at ¶¶ 6-8.

There were only *two* investors who did request exclusion from the Settlement Class. Both are individual investors, who together represent an extremely small percentage of the Settlement Class—approximately 0.00014% or significantly less than one thousandth of one percent of the Settlement Class's losses. Notably, in their letters requesting exclusion, neither individual criticizes or takes any issue with any aspect of the Settlement, the Plan of Allocation or the requested fees and expenses.

As explained below, the overwhelmingly positive reaction of the Settlement Class further supports a finding that the proposed Settlement, Plan of Allocation, and request for attorneys' fees and expenses are all fair and reasonable, and should be approved. The Motions should be granted.

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

Plaintiffs and Lead Counsel respectfully submit that their opening papers demonstrated why approval of the Motions is warranted. Now that the time for objecting or requesting exclusion from the Settlement Class has passed, the lack of a single objection and only two requests for exclusion establish that the "reaction of the class" factor also strongly supports approval of both Motions.

A. The Court-Approved Robust Notice Program

In accordance with the Court's Preliminary Approval Order, 24,650 copies of the Notice Packet have been mailed to potential Settlement Class Members and their nominees. *See* Supplemental Declaration of Eric J. Miller Regarding: (A) Mailing of the Notice and Claim Form

and (B) Report on Requests for Exclusion Received (the “Suppl. Miller Decl.”), filed herewith, at ¶ 2. The Notice informed Settlement Class Members of the terms of the proposed Settlement and Plan of Allocation, and 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 Litigation Expenses (including awards to the named Plaintiffs authorized under 15 U.S.C. §§ 77z-1(a)(4), 78u-4(a)(4)) in an amount not to exceed \$375,000. *See* Notice ¶¶ 5, 55. The Notice also apprised Settlement Class Members of (a) their right to object to the proposed Settlement, the Plan of Allocation, and/or the request for attorneys’ fees and expenses; (b) their right to exclude themselves from the Settlement Class; and (c) the October 12, 2021 deadline for filing objections and for receipt of requests for exclusion. *See* Notice at p. 3 and ¶¶ 56, 64.²

On September 27, 2021, 15 days before the objection and exclusion deadline, Plaintiffs and Lead Counsel filed their opening papers in support of the Settlement, Plan of Allocation, and fee and expense request. These papers are available on the public docket (ECF Nos. 141-145), and were promptly posted on the Settlement website. *See* Suppl. Miller Decl. ¶ 3.

As noted above, following implementation of this notice program, ***not a single Settlement Class Member has objected*** to any aspect of the Settlement, the Plan of Allocation, or Lead Counsel’s motion for attorneys’ fees and Litigation Expenses. Moreover, only two requests for exclusion from the Settlement Class have been received—both from individuals. Not a single objection or request for exclusion has been received from any institutional investor. *See* Supp.

² The Summary Notice, which informed readers of the proposed Settlement, how to obtain copies of the Notice and Claim Form, and the deadlines for the submission of Claim Forms, objections, and requests for exclusion, was published in *Investor’s Business Daily* and released over the *PR Newswire* on August 16, 2021. *See* Declaration of Eric J. Miller Regarding: (A) Mailing of the Notice and Claim Form; (B) Publication of the Summary Notice; and (C) Report on Requests for Exclusion Received to Date (ECF No. 145-5) at ¶ 9.

Miller Decl. ¶ 4 & Exs. 1-3. The two individual requests for exclusion represent, in total, only 113 eligible shares of Evoqua common stock purchased during the Class Period. As such, they reflect only 0.008% of the total number of potential Settlement Class Members who were sent Notices, and only 0.00014% of the total estimated damaged Evoqua shares—a plainly miniscule portion of the Settlement Class. Moreover, in their letters requesting exclusion, none of these two individuals criticized or took issue with any aspect of the proposed Settlement, Plan of Allocation, or requested fees and expenses.

B. The Settlement Class’s Reaction Supports Approval of the Settlement and the Plan of Allocation

The absence of any objections and the small number of requests for exclusion is yet another factor (beyond those already discussed in the opening briefs) that strongly supports a finding that the Settlement is fair, reasonable, and adequate. Indeed, “the favorable reaction of the overwhelming majority of class members to the Settlement is perhaps the most significant factor in [the] *Grinnell* inquiry” into the fairness and adequacy of the Settlement. *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 119 (2d Cir. 2005); *see also id.* at 118 (“If only a small number of objections are received, that fact can be viewed as indicative of the adequacy of the settlement.”) (quoting 4 NEWBERG ON CLASS ACTION § 13:58); *see also In re Virtus Inv. Partners, Inc. Sec. Litig.*, 2018 WL 6333657, at *2 (S.D.N.Y. Dec. 4, 2018) (“the absence of objections by the class is extraordinarily positive and weighs in favor of settlement”); *Fleisher v. Phoenix Life Ins. Co.*, 2015 WL 10847814, at *6 (S.D.N.Y. Sept. 9, 2015) (“the absence of objections may itself be taken as evidencing the fairness of a settlement”); *In re Advanced Battery Techs., Inc. Sec. Litig.*, 298 F.R.D. 171, 176 (S.D.N.Y. 2014) (“The absence of . . . objections and minimal investors electing to opt out of the Settlement provides evidence of Class members’ approval of the terms of the Settlement.”).

It is also particularly significant that no institutional investors—which held the majority of Evoqua common stock during the Class Period—have objected to the Settlement. Institutional investors are often sophisticated and possess the incentive and ability to object. The absence of objections by these sophisticated class members is thus further evidence of the fairness of the Settlement. *See In re Citigroup Inc. Bond Litig.*, 296 F.R.D. 147, 156 (S.D.N.Y. 2013) (the reaction of the class supported the settlement where “not one of the objections or requests for exclusion was submitted by an institutional investor”); *In re AOL Time Warner, Inc. Sec. & “ERISA” Litig.*, 2006 WL 903236, at *10 (S.D.N.Y. Apr. 6, 2006) (the lack of objections from institutional investors supported approval of settlement); *In re AT&T Corp. Sec. Litig.*, 2005 WL 6716404, at *4 (D.N.J. Apr. 25, 2005) (the reaction of the class “weigh[ed] heavily in favor of approval” where “no objections were filed by any institutional investors who had great financial incentive to object”).

The uniformly positive reaction of the Settlement Class also supports approval of the Plan of Allocation. *See, e.g., In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 986 F. Supp. 2d 207, 240 (E.D.N.Y. 2013) (the 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.”).

C. The Settlement Class’s Reaction Supports Approval of the Fee and Expense Application

The positive reaction of the Settlement Class should also be considered with respect to Lead Counsel’s motion for an award of attorneys’ fees and Litigation Expenses. Indeed, courts

uniformly hold that the complete absence of objections to the requested attorneys’ fees and Litigation Expenses supports a finding that the requests are fair and reasonable. *See, e.g., Vaccaro v. New Source Energy Partners L.P.*, 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.”); *Asare v. Change Grp. of New York, Inc.*, 2013 WL 6144764, at *16 (S.D.N.Y. Nov. 18, 2013) (“not one potential class member has made an objection, a factor held by courts as supporting approval of an attorneys’ fees award”); *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”).

As with approval of the Settlement, the lack of objections by institutional investors in particular supports approval of the fee request. *See 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); *In re Bisys Sec. Litig.*, 2007 WL 2049726, at *1 (S.D.N.Y. July 16, 2007) (noting that there was only one objection from an individual—and none from any institutions—“even though the class included numerous institutional investors who presumably had the means, the motive, and the sophistication to raise objections if they thought the [requested] fee was excessive”).

Accordingly, the uniformly favorable reaction of the Settlement Class strongly supports approval of the Settlement, Plan of Allocation, and the fee and expense request.

III. CONCLUSION

For the foregoing reasons, and those set forth in their opening papers, Plaintiffs and Lead Counsel respectfully request that the Court approve the Settlement, the Plan of Allocation, and the

request for attorneys' fees and Litigation Expenses. Copies of the (i) proposed Judgment, (ii) proposed Order Approving Plan of Allocation of Net Settlement Fund, and (iii) proposed Order Awarding Attorneys' Fees and Litigation Expenses are being filed herewith.

Dated: October 25, 2021

Respectfully submitted,

BERNSTEIN LITOWITZ BERGER
& GROSSMANN LLP

/s/ Jeremy P. Robinson

John C. Browne
Jeremy P. Robinson
Jai Chandrashekar
Christopher M. Miles
1251 Avenue of the Americas, 44th Fl.
New York, NY 10020
Telephone: (212) 554-1400
Facsimile: (212) 554-1444
johnb@blbglaw.com
jeremy@blbglaw.com
jai@blbglaw.com
Christopher.Miles@blbglaw.com

SCOTT+SCOTT ATTORNEYS AT LAW
LLP

/s/ William C. Fredericks

David R. Scott
William C. Fredericks
Randy Moonan
The Helmsley Building
230 Park Ave, 17th Floor
New York, NY 10169
Telephone: (212) 223-6444
Facsimile: (212) 223-6334
david.scott@scott-scott.com
wfredericks@scott-scott.com
rmoonan@scott-scott.com

*Counsel for Plaintiffs and Lead Counsel for
the Settlement Class*

KLAUSNER, KAUFMAN, JENSEN
& LEVINSON, P.A.

Robert D. Klausner

Stuart A. Kaufman

7080 Northwest 4th Street

Plantation, FL 33317

Telephone: (954) 916-1202

Facsimile: (954) 916-1232

bob@robertdklausner.com

stu@robertdklausner.com

*Additional Counsel for Lead Plaintiff
Louisiana Sheriffs and Additional Proposed
Class Representative Hallandale P&F*

#3059611