UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF TEXAS

AUSTIN DIVISION

CITY OF PONTIAC GENERAL EMPLOYEES' RETIREMENT SYSTEM, Individually and on Behalf of All Others Similarly Situated,	§	Case No. 1:15-cv-00374-LY
Plaintiff,	§	CLASS ACTION
vs.	§	The Honorable Lee Yeakel
DELL INC., et al.,	§	
Defendants.	§	

LEAD PLAINTIFF'S REPLY IN FURTHER SUPPORT OF FINAL APPROVAL OF SETTLEMENT, APPROVAL OF PLAN OF ALLOCATION, AWARD OF ATTORNEYS' FEES AND EXPENSES, AND AWARD TO LEAD PLAINTIFF PURSUANT TO 15 U.S.C. §78u-4(a)(4)

Lead Plaintiff City of Pontiac General Employees' Retirement System ("Lead Plaintiff" or "Plaintiff"), by and through its counsel Robbins Geller Rudman & Dowd LLP ("Lead Counsel"), respectfully submits this reply in further support of final approval of the $21 million Settlement, approval of the proposed Plan of Allocation, and an award of attorneys' fees and payment of expenses, including an award to Lead Plaintiff for its time incurred in representing the Class.[1]

I. PRELIMINARY STATEMENT

Pursuant to the Court's September 26, 2019 Order Preliminarily Approving Settlement and Providing for Notice (ECF No. 222) ("Notice Order"), over 112,500 copies of the Notice of Proposed Settlement of Class Action ("Notice") and Proof of Claim and Release ("Proof of Claim") (together, "Notice Package") were mailed to potential Class Members and nominees[2] and the Summary Notice was published in *The Wall Street Journal* and transmitted over the *Business Wire*.[3] The deadline for objections and exclusions has passed and only one objection to the proposed Settlement was received. No objections to the proposed Plan of Allocation, or fee and expense application was filed. Additionally, only three requests for exclusion have been received.[4] These results are a testament to the fairness, adequacy, and reasonableness of the proposed Settlement, the proposed Plan of Allocation and Lead Counsel's fee and expense application, and support approval of Lead Plaintiff's motion.

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[1] Unless otherwise noted, all capitalized terms used herein are defined in the September 13, 2019 Stipulation of Settlement. ECF No. 217.

[2] *See* Declaration of Mishka Ferguson Regarding Notice Dissemination and Requests for Exclusion Received to Date ("Ferguson Decl."), ¶¶3-4, submitted herewith.

[3] *See* Declaration of Carole K. Sylvester Regarding Notice Dissemination, Publication, and Requests for Exclusion Received to Date, ¶12 (ECF No. 229) ("Mailing Decl.").

[4] Ferguson Decl., ¶¶5-6.

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

This is a complex securities class action that was heavily litigated for more than five years, involving thousands of hours of motion practice, fact and expert discovery, and trial preparation. Due to the complex nature of this case, Lead Counsel was required to expend a significant amount of time and effort to best represent the interests of the Class. Through these extensive efforts, and following arm's-length negotiation with an experienced mediator, Lead Counsel was able to secure a $21,000,000 all cash settlement for the Class. This Settlement was achieved after discovery was complete and represents a recovery of approximately 7% of the Class' maximum Class Period recoverable damages. As set forth in Lead Plaintiff's Motion for (1) Final Approval of Class Action Settlement; (2) Approval of Plan of Allocation; (3) Award of Attorneys' Fees and Expenses; and (4) Award to Lead Plaintiff Pursuant to 15 U.S.C. §78u-4(a)(4) (ECF No. 226 at 11), this Settlement exceeds the median recoveries achieved in similar securities class action settlements in 2018. *See, e.g.*, Stefan Boettrich & Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2018 Full-Year Review* at 34-36, Figure 28 (NERA Jan. 29, 2019) (research showing that the median recovery of NERA-defined investor losses in cases settled in 2018 was 2.6%).

The reaction of the Class to the Settlement is a key factor in weighing its adequacy. "'[T]he reaction of the class to the proffered settlement . . . is perhaps the most significant factor to be weighed in considering its adequacy.'" *In re Rambus Inc. Derivative Litig.*, No. C 06-3513 JF (HRL), 2009 U.S. Dist. LEXIS 131845, at *10 (N.D. Cal. Jan. 20, 2009) (citation omitted). *See, e.g.*, *In re Heartland Payment Sys.*, 851 F. Supp. 2d 1040, 1068 (S.D. Tex. 2012) (quoting *In re Enron Corp. Sec.*, 228 F.R.D. 541, 567 (S.D. Tex. 2005) (internal citation omitted)) ("'Receipt of few or no objections can be viewed as indicative of the adequacy of the settlement.'"); *In re OCA, Inc. Sec. & Derivative Litig.*, No. 05-2165, 2009 U.S. Dist. LEXIS 19210, at *51 (E.D. La. Mar. 2, 2009) ("a small number of . . . objections can be viewed as indicative of the adequacy of the

settlement"); *Turner v. Murphy Oil USA, Inc.*, 472 F. Supp. 2d 830, 853 (E.D. La. 2007) (same); *DeHoyos v. Allstate Corp.*, 240 F.R.D. 269, 293 (W.D. Tex. 2007) ("[a] minimal level of opposition from absent class members weighs in favor of approving the settlement").

After an extensive Court-approved notice program, the Class' response to the Settlement and Plan of Allocation appears to be overwhelmingly positive. Pursuant to the Notice Order, a total of 112,543 copies of the Notice Package were mailed to potential Class Members and nominees. Ferguson Decl., ¶¶3-4. In addition, the Summary Notice was transmitted over the *Business Wire* and published in *The Wall Street Journal* on October 22, 2019. Mailing Decl., ¶12. The Notice Package, Stipulation, Notice Order, and other relevant documents were also posted on a dedicated website for the Settlement, www.DellSecuritiesSettlement.com. *Id.*, ¶14. The December 20, 2019 deadline for objecting to any aspect of the Settlement and the Plan of Allocation has now passed and to counsel's knowledge, as of the date of this statement, only one objection has been received to the Settlement. *See* ECF No. 231. That objection should be overruled, as it fails to acknowledge the risks faced by Lead Plaintiff of further litigation and trial, which were detailed in the Declaration of X. Jay Alvarez in Support of Lead Plaintiff's Motion for (1) Final Approval of Class Action Settlement; (2) Approval of Plan of Allocation; (3) Award of Attorneys' Fees and Expenses; and (4) Award to Lead Plaintiff Pursuant to 15 U.S.C. §78u-4(a)(4), ¶¶96-110 (ECF No. 228), and its prime complaint is the objector's displeasure with Dell's 2013 "take-private transaction," which is not a part of this Litigation.

Additionally, only three requests for exclusion were received. Ferguson Decl., ¶¶5-6. A small number of requests for exclusion supports the finding that the proposed Settlement is fair, reasonable, and adequate. *See In re Oil Spill*, 295 F.R.D. 112, 150 (E.D. La. 2013) ("relatively few number of . . . opt outs supported fairness and adequacy of the settlement"); *Billitteri v. Sec. Am., Inc.*, No. 3:09-cv-01568-F, 2011 WL 3586217, at *14 (N.D. Tex. Aug. 4, 2011) (finding class

members' opinions favored approval of the settlement where "'[t]he extremely small number of opt-outs suggests a favorable opinion by the absent class members'") (citation omitted); *OCA*, 2009 U.S. Dist. LEXIS 19210, at *51 ("a small number of opt-outs . . . can be viewed as indicative of the adequacy of the settlement").

III. THE REACTION OF THE CLASS STRONGLY SUPPORTS APPROVAL OF LEAD COUNSEL'S REQUEST FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES AND AN AWARD TO LEAD PLAINTIFF PURSUANT TO 15 U.S.C. §78u-4(a)(4)

For its exhaustive efforts, Lead Counsel requests an award of attorneys' fees of 30% of the Settlement Amount and expenses of $1,382,548.67, which were reasonably incurred in the prosecution of the Litigation, plus interest on both amounts at the same rate and for the same periods as earned by the Settlement Fund. *See* ECF No. 226 at 16-25. Lead Counsel's fee request is well within the normal range of awards made in contingent fee matters of this type in this Circuit, as well as in numerous decisions throughout the country, and is the appropriate method of compensating counsel for the result achieved. Moreover, this fee request falls squarely within the mandate of the Private Securities Litigation Reform Act of 1995 ("PSLRA") that "a reasonable percentage of the amount" of damages and interest paid to the class be awarded to counsel. *See* 15 U.S.C. §78u-4(a)(6). *See Erica P. John Fund, Inc. v. Halliburton Co.*, No. 3:02-cv-1152-M, 2018 WL 1942227, at *8 (N.D. Tex. Apr. 25, 2018) ("The PSLRA expressly contemplates the percentage method . . . ."). Further, Lead Plaintiff has approved the amount of the attorneys' fees requested (*see* Declaration of Walter Moore, ¶6, ECF No. 227), giving further validity to the reasonableness of the request.

The Notice informed potential Class Members that Lead Counsel would request a fee award of up to 30% of the Settlement Amount and payment of expenses not to exceed $1,500,000, plus interest on both amounts. The absence of ***any objections*** to the requested fee and expense award weighs strongly in favor of approval. *See, e.g.*, *Bethea v. Sprint Commc'ns Co. L.P.*, No. 3:12-cv-322-CWR-FKB, 2013 WL 228094, at *5 (S.D. Miss. Jan. 18, 2013) (citing *In re Remeron Direct*

Purchaser Antitrust Litig., No. 03-0085 FSH, 2005 WL 3008808, at *13 (D.N.J. Nov. 9, 2005)) ("finding that lack of objections from the class supported the reasonableness of the fee request"); *Cook v. Howard Indus., Inc.*, No. 2:11CV41-KS-MTP, 2013 WL 943664, at *4 (S.D. Miss. Mar. 11, 2013) ("The absence of any objection from . . . any Class Member to Class Counsel being awarded [its requested] fee further supports the award."); *In re Enron Corp. Sec.*, 586 F. Supp. 2d 732, 804 (S.D. Tex. 2008) (finding "that general acceptance of the requested fee amount by all the pension funds and all but one institutional investor strongly supports the reasonableness" of the requested fees).

Similarly, the lack of any objection to Lead Plaintiff's modest request pursuant to 15 U.S.C. §78u-4(a)(4), which was also disclosed in the Notice, supports approval of that request. *See, e.g.*, *Halliburton*, 2018 WL 1942227, at *47.

IV. CONCLUSION

For the reasons set forth herein and in Lead Plaintiff's and Lead Counsel's previously submitted briefs and declarations, Lead Plaintiff respectfully submits that the Settlement is a very good result for the Class under the circumstances, and considering the risk of proceeding to trial. Likewise, the proposed Plan of Allocation is both fair and reasonable. Therefore, both should be approved as fair, reasonable, and adequate. In addition, Lead Counsel's fee and expense request is reasonable under the circumstances and should be awarded in the amounts requested, as should Lead Plaintiff's request for reimbursement of its expenses pursuant to 15 U.S.C. §78u-4(a)(4). Finally, the Court should overrule the objection of Oleg Ariyevich. Proposed orders are submitted herewith.

DATED: January 3, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on January 3, 2020, 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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