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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

BABAK HATAMIAN and LUSSA DENNJ SALVATORE, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

ADVANCED MICRO DEVICES, INC., RORY P. READ, THOMAS J. SEIFERT, RICHARD A. BERGMAN, AND LISA T. SU,

Defendants.

CASE NO. 4:14-cv-00226-YGR (JSC)

CLASS ACTION

REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN FURTHER SUPPORT OF CLASS REPRESENTATIVES' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION AND CLASS COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES

Date: February 27, 2018
Time: 2:00 p.m.
Place: Courtroom 1, 4th Floor
Judge: The Hon. Yvonne Gonzalez Rogers

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PRELIMINARY STATEMENT

Pursuant to Rules 23(e) and 54 of the Federal Rules of Civil Procedure, Class Representatives Arkansas Teacher Retirement System ("ATRS") and KBC Asset Management NV ("KBC"), on behalf of themselves and all members of the certified Class, and Labaton Sucharow LLP and Motley Rice LLC (collectively "Class Counsel"), respectfully submit this reply memorandum in further support of (i) Class Representatives' Motion for Final Approval of Class Action Settlement and Plan of Allocation (ECF No. 349); and (ii) Class Counsel's Motion for an Award of Attorneys' Fees and Expenses (ECF No. 350).[1]

Now that the February 6, 2018 deadline for objections and exclusions has passed, Class Representatives and Class Counsel respectfully submit that the reaction of the Class to the Settlement, Plan of Allocation, and Class Counsel's motion for attorneys' fees and litigation expenses has been overwhelmingly positive. A total of 223,760 notice packets have been mailed to potential Class Members or their nominees as of February 13, 2018. *See* Supplemental Declaration of Alexander Villanova Regarding: (A) Mailing of the Settlement Notice and Claim Form; and (B) Report on Requests for Exclusion Received and Other Matters, dated February 13, 2018, ¶ 3, filed herewith as Exhibit 1 to the Reply Declaration of Jonathan Gardner, dated February 13, 2018.[2] Additionally, Defendants mailed a notice pursuant to the Class Action Fairness Act.

There have been no new objections to the Settlement, thus ***only two*** objections to the Settlement have been received – one from John F. Lackey (ECF Nos. 347, 355) and one from Colin Hutcheson (ECF No. 351-3). ***No one*** has objected to the requested attorney's fees and expenses or the Plan of Allocation. In addition, the Claims Administrator has received only ten requests for exclusion in connection with the Settlement, all from individuals, ***only two*** of which

[1] All capitalized terms not otherwise defined herein have the meanings set forth in the Stipulation and Agreement of Settlement, dated as of October 9, 2017 (the "Stipulation," ECF No. 333-1).

[2] The "nutritional" tables requested by the Court are submitted as Exhibit 2 to the Reply Declaration of Jonathan Gardner.

are valid and representing just 350 shares.[3] *Id.* ¶ 6. No institutional investor, pension fund, or attorney general objected to any aspect of the Settlement or requested exclusion.

As a result, Class Representatives and Class Counsel respectfully submit that the reaction of the Class strongly supports approval of the Settlement, the Plan of Allocation, and the requested attorneys' fees and expenses.

ARGUMENT

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

The reaction of a class to a settlement is a significant factor in assessing its fairness and adequacy. Indeed, "the absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class settlement action are favorable to the class members." *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1043 (N.D. Cal. 2008); *Destefano v. Zynga Inc.*, No. 12-cv-04007-JSC, 2016 WL 537946, at *10 (N.D. Cal. Feb. 11, 2016) (same). "Put another way, a 'court may appropriately infer that a class action settlement is fair, adequate, and reasonable when few class members object to it.'" *Id.* (quoting *Larsen v. Trader Joe's Co.*, No. 11-cv-05188-WHO, 2014 WL 3404531, at *5 (N.D. Cal. July 11, 2014)).

Here, only two individuals have submitted objections to the Settlement – neither of which have merit. This level of objection "presents the most compelling argument favoring settlement." *Arnold v. Fitflop USA, LLC*, No. 11-CV-0973 W(KSC), 2014 WL 1670133, at *8 (S.D. Cal. Apr. 28, 2014) (small number of objections "indicat[ed] that the vast majority of Class Members and other concerned parties are likely satisfied with the resolution of this case"). Similarly, the fact that only two valid requests for exclusion, both from individuals, representing just 350 shares, have been received in response to the mailing of 223,760 Settlement Notices[4]

[3] Almost 700 million shares were outstanding as of March 12, 2012. *See* AMD Definitive Proxy Statement, dated March 15, 2012, https://www.sec.gov/Archives/edgar/data/2488/000119312512116943/0001193125-12-116943-index.htm.

[4] As set forth in the Declaration of Stephanie A. Thurin Re Notice of Pendency Dissemination and Publication, dated February 8, 2017, in connection with notice of the pendency of the Action and before the Settlement was reached, Epiq received 15 valid and timely requests for exclusion. ECF No. 239-3. Thus, the proposed Judgment lists 17 exclusions.

further supports approval of the Settlement. *See, e.g., Zynga, Inc.,* 2016 WL 537946, at *10 (noting that a low number of exclusions supports the reasonableness of a securities class action settlement). Finally, the fact that there are no objections to the Plan of Allocation supports its approval. *See Atlas v. Accredited Home Lenders Holding Co.,* No. 07-CV-00488-H (CAB), 2009 WL 3698393, at *4 (S.D. Cal. Nov. 4, 2009) (noting the "predominantly positive response" to the plan of allocation where only two objections to it were submitted).

With respect to the objections, submitted by Mr. Lackey and Mr. Hutcheson, each was addressed in Class Representatives' previously submitted Motion for Final Approval of Class Action Settlement and Plan of Allocation and Memorandum of Points and Authorities. (ECF No. 349 at 18-19.)[5] In response to this rebuttal, Mr. Lackey has filed a motion seeking permission to appear at the Settlement Hearing and a memorandum in partial opposition to approval of the Settlement and seeking expenses related to his objection. (ECF Nos. 354, 355.) While Class Representatives do not oppose his appearance at the hearing, there continues to be no credence to his objection and he is not entitled to receive expenses.

Mr. Lackey's objection is based on a continued misunderstanding of the recovery obtained for the Class. While he writes that "[m]uch of [his original] concern has been obviated by plaintiffs' later filings" he still objects to the Settlement because he believes that while he will receive .0091 of his loss, the Class Representatives will somehow receive 0.1091 and 0.1627 of their losses. (ECF No. 355 at 2.) This is simply untrue – ***Mr. Lackey (assuming he files an eligible claim) and the Class Representatives will receive the same pro rata share of their losses***. They will not receive the same payment ***amounts***, because their losses are not the same, but they will receive the same ***proportion***, as Labaton attorneys tried to explain to Mr. Lackey.

As explained in the Claims Administrator's original Mailing Declaration Epiq calculated the Class Representatives' losses under the Plan of Allocation using their submitted claims: "KBC's claims have a combined Recognized Loss of $89,888.67. ATRS's claims have a combined Recognized Loss of $101,056. Recognized Losses are not the same as payment

[5] Labaton Sucharow has corresponded with both Mr. Lackey and Mr. Hutcheson about their objections. Neither wish to withdraw them.

amounts. Like all other eligible claimants, if the Settlement is approved, the Class Representatives will receive their *pro rata* share of the Net Settlement Fund in proportion to their Recognized Losses. Payment amounts will not be known until the conclusion of the claims administration process."[6] (ECF No. 351-3, ¶18.) These figures are the Class Representatives' Recognized Losses, ***not their payment amounts*** as Mr. Lackey believes. Until the claims administration process is complete and all eligible claims are identified and quantified, it is not possible to know precisely what payment amounts either the Class Representatives or Mr. Lackey will actually receive. Thus, it is not the case that the Class Representatives will be receiving 10.9% and 16.2% of their trading losses, while he receives 0.9%. (ECF No. 355 at 2.)[7]

Mr. Lackey's objection has conferred no benefit on the Class, thus he is not entitled to payment of his expenses. *See, e.g., Rodriguez v. Disner*, 688 F.3d 645, 659 (9th Cir. 2012) ("[W]here objectors do not add any new legal argument or expertise, and do not participate constructively in the litigation or confer a benefit on the class, they are not entitled to an award premised on equitable principles"); *see also Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir. 2002) (denying compensation to objectors "[i]n the absence of a showing that [objector] substantially enhanced the benefits to the class under the settlement"); *Rose v. Bank of Am. Corp.*, No. 5:11-CV-02390-EJD, 2015 WL 2379562, at *1 (N.D. Cal. May 18, 2015) ("[I]f objectors 'do not increase the fund or otherwise substantially benefit the class members,' then

[6] "Recognized Losses" under the Plan of Allocation are also not the same as "trading losses," the figures mentioned in Exhibit II of Mr. Lackey's objection and the $26,296.65 figure cited by Lackey. ***Recognized Losses*** are the results of the formulas in the Plan of Allocation, which here factor in artificial inflation consistent with *Dura Pharms., Inc. v. Broudo*, 544 U.S. 336, 346 (2005), and are akin to damages. ***Trading losses*** are purchase amounts minus sales amounts. Here, Mr. Lackey appears to have a trading loss of $26,296.65 and the Class Representatives have trading losses of $823,849 and $621,014. Although Mr. Lackey's Recognized Loss is not currently known, the Class Representatives' Recognized Losses are $89,888.67 and $101,056. If the Settlement were to recover 100% of the Class's losses, the Class Representatives would receive approximately these amounts. However, the Settlement is a compromise that recovers less than 100% and eligible claimants will divide the recovery *pro rata* amongst themselves.

[7] Mr. Lackey also notes that the motion in support of approval of the Settlement did not report the "awards" to Barak Hatamian and Lissa Dennj Salvatore. These individuals were not appointed lead plaintiffs by the Court and they are not named plaintiffs in the operative Corrected Amended Class Action Complaint for Violations of the Federal Securities Laws. They are absent class members and their losses are not known to Class Counsel and are irrelevant to these proceedings.

they are not entitled to fees 'even if they bring about minor procedural changes in the settlement agreement.'") Indeed his objection is completely without merit and it should be overruled.

II. THE LACK OF OBJECTIONS SUPPORTS APPROVAL OF THE REQUESTED ATTORNEYS' FEES AND EXPENSES

Not one Class Member has objected to Class Counsel's motion for an award of attorneys' fees and payment of litigation expenses. The fact that there have been no objections is strong evidence that the requested fee is fair and reasonable. *See, e.g., Zynga, Inc.,* 2016 WL 537946, at *18 ("the lack of objection by any Class Members also supports the 25 percent fee"); *In re Immune Response Sec. Litig*., 497 F. Supp. 2d 1166, 1177 (S.D. Cal. 2007) ("the lack of objection from any Class Member supports the attorneys' fees award").

CONCLUSION

For the reasons set forth above and in Class Representatives' and Class Counsel's January 23, 2018 submissions, Class Representatives and Class Counsel respectfully request that the Court enter the proposed Final Order and Judgment, submitted herewith; enter the proposed Order Approving Plan of Allocation, submitted herewith; and enter the proposed Order Awarding Attorney's Fees and Expenses, submitted herewith.

Dated: February 13, 2018

Respectfully submitted,

s/ Jonathan Gardner

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CERTIFICATE OF SERVICE

I hereby certify that on February 13, 2018, 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 denoted on the attached Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Service List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on February 13, 2018

/s/ *Jonathan Gardner*
JONATHAN GARDNER

1 **Mailing Information for a Case 4:14-cv-00226-YGR**

2 ***Hatamian et al v. Advanced Micro Devices, Inc. et al***

3 **Electronic Mail Notice List**

4 The following are those who are currently on the list to receive e-mail notices for this case.

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