

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION

	X	
In re LUCKIN COFFEE INC. SECURITIES LITIGATION	:	Index No. 651939/2020
	:	
	:	<u>CLASS ACTION</u>
This Document Relates To:	:	
	:	Motion Sequence No. 012
THE CONSOLIDATED ACTION.	:	
	X	REPLY MEMORANDUM OF LAW IN SUPPORT OF: (1) PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION; (2) PLAINTIFFS' COUNSEL'S APPLICATION FOR ATTORNEYS' FEES AND EXPENSES; AND (3) PLAINTIFFS' REQUESTS FOR AWARDS

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Pursuant to CPLR Article 9, Plaintiffs Kimson Chemical, Inc., Teamsters Local 710 Pension Fund, Michael Bergenholtz, and City of Fort Myers Police Officers' Retirement System, and Plaintiffs' Counsel respectfully submit this single reply brief in further support of Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation, and Plaintiffs' Counsel's Application for Attorneys' Fees and Expenses, including awards for the four named Plaintiffs in connection with their representation of the Settlement Class (the "Fee and Expense Application").¹

I. INTRODUCTION

The reaction of the Settlement Class confirms that all aspects of the proposed \$7,000,000 Settlement are fair and reasonable, and should be approved. Following an extensive Court-approved notice program – including the mailing of Notices to over 5,900 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, the application for attorneys' fees and expenses, or the Plaintiffs' request for awards.*² This absence of 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 because institutional investors purchased a large percentage of the Luckin 0.75% Convertible Senior Notes due 2025 offered in January 2020 (the "Convertible Notes") – and even though such investors typically have the staff and resources to object if they believe there is cause to

¹ Unless otherwise indicated herein, all capitalized terms have the meanings set forth in the Stipulation of Settlement (the "Stipulation") filed with the Court on September 22, 2022 ([NYSCEF 190](#)); all citations and internal quotation marks are omitted; and all emphasis is added.

² One "objection" was submitted to the Claims Administrator. *See* Exhibit B to the accompanying Supplemental Affirmation of Brian E. Cochran in Further Support of: (1) Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation; (2) Plaintiffs' Counsel's Application for Attorneys' Fees and Expenses; and (3) Plaintiffs' Requests for Awards ("Supplemental Cochran Affirmation") submitted herewith. It is clear from the submission, however, that the sender, Chen Ge, is not a member of the Settlement Class. Rather, this individual purchased Luckin call options and not Convertible Notes.

do so, *none* did so here. Similarly, not a single investor has requested exclusion from the Settlement Class.

As explained below, this unanimously positive reaction of Settlement Class Members further supports a finding that the proposed Settlement, Plan of Allocation, and Fee and Expense Application are all fair and reasonable, and should be approved.

II. THE REACTION OF THE SETTLEMENT CLASS FURTHER SUPPORTS APPROVAL OF THE SETTLEMENT, THE PLAN OF ALLOCATION, AND THE FEE AND EXPENSE APPLICATION

Plaintiffs and Plaintiffs' Counsel respectfully submit that their opening papers demonstrated why approval of the Settlement and the Fee and Expense Application are both warranted. Now that the time for objecting or requesting exclusion from the Settlement Class has passed, the absence of a single, valid objection (and absence of even a single request for exclusion), establishes that the "reaction of the class" factor also strongly supports approval of both.

A. The Court-Approved Robust Notice Program

In accordance with the Court's Preliminary Approval Order, 5,938 copies of the Notice of Proposed Settlement of Class Action (the "Notice") and Proof of Claim and Release form ("Proof of Claim") have been mailed to potential Settlement Class Members and their nominees. *See* accompanying Supplemental Affidavit of Ross D. Murray [of Gilardi & Co. LLC ("Gilardi"), the Court-appointed claims administration firm in this matter] Regarding Notice Dissemination and Requests for Exclusion Received to Date (the "Suppl. Murray Aff."), ¶4. 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 33-1/3% of the Settlement Fund, as well as payment of litigation expenses (plus awards to the four Plaintiffs in a total amount not to exceed \$20,000). *See* Notice at 7. The Notice also apprised Settlement Class Members of: (a) their right to object to the proposed Settlement, the Plan of Allocation, the request

for attorneys' fees and expenses, and the proposed awards to Plaintiffs; (b) their right to exclude themselves from the Settlement Class; and (c) the December 27, 2022 deadline for exclusions and for filing objections. *See id.* at 7-8.

On December 13, 2022, fourteen days before the exclusion and objection 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, and were also posted on the dedicated Settlement website. *See* www.LuckinConvertibleNotesSettlement.com.

As noted above, following implementation of this notice program, ***not a single Settlement Class Member has objected*** to the Settlement, the Plan of Allocation, Lead Counsel's application for attorneys' fees and litigation expenses, or Plaintiffs' request for awards. Moreover, no requests for exclusion from the Settlement Class have been received. *See* Supp. Murray Aff., ¶¶5-8.

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

The absence of any valid objections or 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, federal courts in analogous circumstances have held that “the favorable reaction of the overwhelming majority of class members to the Settlement is perhaps the most significant factor” when inquiring 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 §11.41); [*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”).

It is also particularly significant that no institutional investors – which held a large percentage of the Convertible Notes – 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 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), *rev'd and vacated on other grounds*, 827 F.3d 223 (2d Cir. 2016) (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 Requested Attorneys’ Fees and Expenses, and the Requested Awards to Plaintiffs

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 (including the proposed awards to the four Plaintiffs). 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.”); *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”).

Accordingly, the uniformly favorable reaction of the Settlement Class strongly supports approval of the Settlement, Plan of Allocation, application for attorneys' fees and expenses, and request for awards to Plaintiffs in connection with their representation of the Settlement Class.

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, the application for attorneys' fees and litigation expenses, and the request for awards. A copy of the proposed Final Judgment is submitted herewith as Exhibit A to the accompanying Supplemental Cochran Affirmation.

DATED: January 24, 2023

Respectfully submitted,

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PRINTING SPECIFICATIONS STATEMENT

1. Pursuant to 22 N.Y.C.R.R. §202.70(g), Rule 17, the undersigned counsel certifies that the foregoing memorandum of law was prepared on a computer using Microsoft Word. A proportionally spaced typeface was used as follows:

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Point Size: 12
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2. The total number of words in the memorandum of law, inclusive of point headings and footnotes and exclusive of the caption, signature block, and this Certification, is 1,499 words.

DATED: January 24, 2023

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