

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS

STRATHCLYDE PENSION FUND,	)	No. 4:18-cv-00793-DPM
Individually and on Behalf of All Others))	
Similarly Situated,	)	<u>CLASS ACTION</u>
)	
Plaintiff,	)	REPLY MEMORANDUM IN
	)	FURTHER SUPPORT OF: (1) LEAD
vs.	)	PLAINTIFF'S MOTION FOR FINAL
	)	APPROVAL OF SETTLEMENT AND
BANK OZK, et al.,	)	APPROVAL OF PLAN OF
	)	ALLOCATION, AND (2) CLASS
Defendants.	)	COUNSEL'S MOTION FOR AN
_____	)	AWARD OF ATTORNEYS' FEES
	)	AND EXPENSES AND AWARD TO
	)	LEAD PLAINTIFF PURSUANT TO
	)	15 U.S.C. §78U-4(A)(4)

I. INTRODUCTION

Over 147,500 individuals and entities received notice of this Settlement.¹ *The Wall Street Journal* published notice of the Settlement in its national edition on three separate occasions, and a summary notice was placed on an internet business newswire. Not a single objection was filed in response. The complete absence of objection to this nationally publicized settlement resoundingly confirms that this is a fair and reasonable settlement. Accordingly, Lead Plaintiff Strathclyde Pension Fund (“Strathclyde”) respectfully requests that the Court enter orders approving the Settlement and Plan of Allocation and Class Counsel’s application for attorneys’ fees and expenses, as well as Strathclyde’s application for an award under 15 U.S.C. §78u-4(a)(4).

II. ARGUMENT

A. The Notice Provided to the Class Met All Due Process Requirements

Class Counsel and the Claims Administrator, Gilardi & Co. LLC, conducted an extensive Court-approved notice program. In all, over 147,500 Notices were mailed to potential Class Members, and a summary version of the Notice was published three times in *The Wall Street Journal* and posted on an internet business website where it was picked up by additional news organizations. See Declaration of Ross D. Murray of Gilardi & Co. LLC, ¶¶4-12 (ECF 211) and the Supplemental Declaration of Ross

¹ Unless otherwise defined, all capitalized terms have the meanings ascribed to them in the Stipulation of Settlement (ECF 195).

D. Murray of Gilardi & Co. LLC, ¶4, submitted herewith. A case-specific website dedicated to this Litigation containing all pertinent information and a toll-free number for Class Members to call to ask questions were established and have been operational since July 8, 2022, and will remain so until the Net Settlement Fund is completely distributed. The Notice, Proof of Claim, and Stipulation of Settlement, among other relevant documents, were also posted to the website dedicated to the Litigation. Based on this evidence of execution of a fulsome notice program, there can be no question that the notice provided to the Class met all due process, Rule 23 and PSLRA requirements. *See Petrovic v. AMOCO Oil Co.*, 200 F.3d 1140 (8th Cir. 1999).²

B. The Reaction of the Class Strongly Supports Final Approval

The August 29, 2022 deadline for objecting to all aspects of the Settlement, the Plan of Allocation, Class Counsel's motion for attorneys' fees and expenses and/or Lead Plaintiff's reimbursement of costs and expenses has passed and no objections have been received, and only one Class Member (*i.e.*, non-defendants who purchased or acquired Bank OZK shares during the Class Period and suffered damages) requested exclusion from the Settlement.

Accordingly, the reaction of the Class to this comprehensive notice program overwhelmingly demonstrates widespread support of the Settlement, Plan of Allocation, Class Counsel's attorneys' fee and expense request, and an award to

² Citations are omitted and emphasis is added throughout, unless otherwise indicated.

Strathclyde, and thus weighs strongly in favor of approval. “A certain number of . . . objections are to be expected in a class action.” *Thacker v. Chesapeake Appalachia, L.L.C.*, 695 F. Supp. 2d 521, 533 (E.D. Ky. 2010), *aff’d sub nom. Poplar Creek Dev. Co. v. Chesapeake Appalachia, L.L.C.*, 636 F.3d 235 (6th Cir. 2011). *See also In re Uponor, Inc.*, 2012 U.S. Dist. LEXIS 90294, at *10 (D. Minn. June 29, 2012), *aff’d*, 716 F.3d 1057 (8th Cir. 2013) (the court approved the settlement, and held that “[c]lass member reaction has been positive” where three sets of objections and two exclusion requests were received out of 30,000 potential class members).

C. No Objections Were Filed

On June 27, 2022, the Court issued its Order preliminarily approving the Settlement. ECF 202. Paragraphs 23 through 25 of the Order set forth in plain terms the procedure for any objections to the Settlement and the deadline for doing so (August 29, 2022). The Order provides that:

Unless the Court orders otherwise for good cause, any Member of the Class who does not make his, her, or its objection in the manner provided shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness, reasonableness, or adequacy of the proposed settlement as incorporated in the stipulation, to the plan of allocation, or to the award of fees, costs, charges, and expenses to lead plaintiff’s counsel or lead plaintiff.

Id. at ¶23.

Likewise, the Order warns that:

Any class member who does not object to the settlement, the plan of allocation, or class counsel’s application for an award of attorneys’ fees, costs, charges, and expenses in the manner prescribed in this Order and in the settlement notice shall be deemed to have waived such objection,

and shall forever be foreclosed from making any objection to the fairness, adequacy, or reasonableness of the proposed settlement, this Order, and the Judgment to be entered approving the settlement, the plan of allocation, or the application by class counsel for an award of attorneys' fees together with costs, charges, and expenses.

Id. at ¶25.

Not a single individual or entity filed an objection to any aspect of the Settlement, including Class Counsel's application for attorneys' fees and expenses, as well as Strathclyde's application for an award under 15 U.S.C. §78u-4(a)(4).

III. CONCLUSION

For the reasons set forth herein and in their previously submitted briefing, and following an extensive notice program in response to which no objections to any aspect of the Settlement were filed, Strathclyde and Class Counsel respectfully submit that the Settlement is an excellent result for the Class and the proposed Plan of Allocation is a fair and equitable method for distributing the Net Settlement Fund. Therefore, both should be approved as fair, reasonable, and adequate. In addition, the fees and expenses requested by Class Counsel and Strathclyde are reasonable under the circumstances and should be approved. Proposed orders are submitted herewith.

DATED: September 12, 2022

Respectfully submitted,

MARK SOLOMON
California Bar No. 151949
Attorney for Class Representative
Strathclyde Pension Fund
ROBBINS GELLER RUDMAN
& DOWD LLP
ELLEN GUSIKOFF STEWART
JONAH H. GOLDSTEIN
ASHLEY M. PRICE
ANDREW W. HUTTON
CAROLINE M. ROBERT
HEATHER G. GEIGER
655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)
E-mail: marks@rgrdlaw.com
elleng@rgrdlaw.com
jonahg@rgrdlaw.com
aprice@rgrdlaw.com
dhutton@rgrdlaw.com
crobert@rgrdlaw.com
hgeiger@rgrdlaw.com

Class Counsel for Class Representative
Strathclyde Pension Fund

ALLEN CARNEY
Arkansas Bar No. 94122
Attorney for Lead Plaintiff Strathclyde
Pension Fund
CARNEY BATES & PULLIAM, PLLC
519 West 7th Street
Little Rock, AR 72201
Telephone: 501/312-8500
501/312-8505 (fax)
E-mail: acarney@cbplaw.com

Liaison Counsel