

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

SONNY ST. JOHN, Individually and on Behalf of All
Others Similarly Situated,

Plaintiff,

v.

CLOOPEN GROUP HOLDING LIMITED,
CHANGXUN SUN, YIPENG LI, KUI ZHOU,
QINGSHENG ZHENG, XIAODONG LIANG, ZI
YANG, MING LIAO, FENG ZHU, LOK YAN HUI,
JIANHONG ZHOU, CHING CHIU, COGENCY
GLOBAL INC., COLLEEN A. DEVRIES, GOLDMAN
SACHS (ASIA) L.L.C., CITIGROUP GLOBAL
MARKETS INC., CHINA INTERNATIONAL
CAPITAL CORPORATION HONG KONG
SECURITIES LIMITED, TIGER BROKERS (NZ)
LIMITED, and FUTU, INC.,

Defendants.

Index No. 652617/2021

Part 53: Hon. Andrew Borrok

ORAL ARGUMENT REQUESTED

**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
APPLICATIONS FOR ATTORNEYS' FEES AND EXPENSES;
AND (3) NAMED PLAINTIFFS' REQUESTS FOR SERVICE AWARDS**

Plaintiffs (consisting of State Class Representative Sonny St. John, together with Federal Plaintiff Guozhang Wang), together with their counsel, respectfully submit this reply brief in further support of (i) Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation (NYSCEF No. 118), and (ii) Plaintiffs' Counsel's Applications for Attorneys' Fees and

Expenses (NYSCEF Nos. 120 and 121), including service awards for Plaintiffs (the “Fee and Expense Application”).¹

I. INTRODUCTION

The reaction of the Settlement Class confirms that all aspects of the proposed \$12,000,000 Settlement are fair and reasonable and should be approved. Following an extensive Court-approved notice program – including the mailing of Notice to over 23,115 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 Plaintiffs’ request for service awards.* This absence 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. 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 Applications 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, Plan of Allocation, and Fee and Expense Applications are warranted. Now that the time for objecting or requesting exclusion from the

¹ Unless otherwise indicated herein, (1) all capitalized terms have the meanings set forth in the Stipulation of Settlement (the “Stipulation”) filed with the Court on August 16, 2023 (NYSCEF No. 107); and (2) all citations and internal quotation marks are omitted, and all emphasis is added.

Settlement Class has passed, the absence of a single objection (and absence of even a single request for exclusion) establishes that the “reaction of the class” factor strongly supports approval.

A. The Court-Approved Robust Notice Program

In accordance with the Court’s Preliminary Approval Order, 23,115 copies of the Notice of Proposed Settlement of Class Action (the “Notice”) and Proof of Claim and Release (“Proof of Claim”) have been mailed to potential Settlement Class Members and their nominees. *See* accompanying Supplemental Affidavit of Adam D. Walter (of A.B. Data, Ltd. (“A.B. Data”), the Court-appointed claims administration firm in this matter) Regarding: (A) Mailing of Notice and Claim Form; and (B) Report on Requests for Exclusion Received (“Supp. Walter Aff.”), ¶6. The Notice informed Settlement Class Members of the terms of the proposed Settlement and Plan of Allocation, the course of the litigation and the reasons for the proposed Settlement. It also informed them that Lead Counsel would apply for an award of attorneys’ fees in an amount not to exceed one-third of the Settlement Fund,² as well as payment of litigation expenses not to exceed \$275,000 (plus interest on such fee and expenses at the same rate as may be earned by the Settlement Fund), and that Plaintiffs would request service awards not to exceed \$15,000 in total. *See* Notice at 7, §18. Further, the Notice 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 service awards to Plaintiffs; (b) their right to exclude themselves from the Settlement Class; and (c) the January 2, 2024 deadline for exclusions, and the December 26,

² Counsel in the Federal Action requested an attorneys’ fee award equal to 10% of the Settlement Fund and counsel in the State Action requested an attorneys’ fee award equal to 23.3% of the Settlement Fund. Collectively, the attorneys’ fees requested total 33-1/3% of the Settlement Fund.

2023 deadline for filing objections. *See* Notice at 6-8, §§14-15, 19. A Summary Notice was published as well.³

As noted above, following implementation of this notice program, *not a single Settlement Class Member has objected* to the Settlement, the Plan of Allocation, Plaintiffs' Counsel's application for attorneys' fees and litigation expenses, or Plaintiffs' request for service awards. Moreover, no requests for exclusion from the Settlement Class have been received. *See* Supp. Walter Aff., ¶10; Supplemental Joint Affirmation of Max R. Schwartz and Michael Dell'Angelo 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 Service Awards ("Supp. Joint Aff."), ¶¶3-4.

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

The absence of any 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 ACTIONS §11.41); *see also In re Virtus Inv.*

³ The Summary Notice, which informed readers of the proposed Settlement, how to obtain copies of the Notice and Proof of Claim form, and the deadlines for the submission of Proof of Claim forms, objections, and requests for exclusion, was published in *Investor's Business Daily* and released over the *PR Newswire* on October 23, 2023. *See* Affidavit of Eric Schachter Regarding: (A) Mailing of Notice and Claim Form; (B) Publication of Summary Notice; and (C) Report on Requests for Exclusion Received to Date (NYSCEF No. 126, ¶10).

Partners, Inc. Sec. Litig., No. 15cv1249, 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”).

Further, the fact that no institutional investors objected to the Settlement underscores the approval of the Settlement Class. Sophisticated institutional investors possess the financial 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.*, No. 00-5364(GEB), 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, 240-41 (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.*, No. 05-MDL-01695(CM), 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 Service Awards

The positive reaction of the Settlement Class should also be considered with respect to Plaintiffs’ Counsel’s applications for an award of attorneys’ fees and litigation expenses, as well as the proposed service awards of \$7,500 for each of the two named 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.*, No. 15-cv-8954-KMW, 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.*, No. 05-MDL-01695(CM), 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”).

III. CONCLUSION

For the foregoing reasons, and those set forth in their opening papers, Plaintiffs and Plaintiffs’ Counsel respectfully request that the Court approve the Settlement, the Plan of Allocation, the Fee and Expense Application, and the request for service awards. A copy of the proposed Order and Final Judgment is submitted herewith as Exhibit A to the accompanying Supplemental Joint Affirmation. Proposed orders approving the Plan of Allocation and also the Fee and Expense Application (including service awards to Plaintiffs) and are attached, respectively, as Exhibits B and C to the Supplemental Joint Affirmation.

Dated: January 16, 2024
New York, NY

Respectfully submitted,

SCOTT+SCOTT ATTORNEYS AT LAW LLP

/s/Max R. Schwartz

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CERTIFICATE OF COMPLIANCE WITH WORD LIMIT

The preceding 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 Applications for Attorneys' Fees and Expenses; and (3) Named Plaintiffs' Requests for Service Awards complies with the 4,200-word limit set by Commercial Division Rule 17. Excluding the caption, table of contents, table of authorities, and signature block, the document contains 1,532 words as measured by Microsoft Word, the word-processing system used to prepare the memorandum.

DATED: January 16, 2024

/s/Max R. Schwartz

Max R. Schwartz