

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

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CHESTER COUNTY EMPLOYEES	:	Index No. 655272/2019
RETIREMENT FUND, Individually and on	:	
Behalf of All Others Similarly Situated,	:	<u>CLASS ACTION</u>
	:	
Plaintiff,	:	The Honorable Robert R. Reed
	:	
vs.	:	Part 43
	:	
ALNYLAM PHARMACEUTICALS, INC.,	:	Motion Sequence No. 005
JOHN M. MARAGANORE, MICHAEL P.	:	
MASON, DENNIS A. AUSIELLO,	:	REPLY MEMORANDUM OF LAW IN
MICHAEL W. BONNEY, JOHN K.	:	FURTHER SUPPORT OF: (1) PLAINTIFF'S
CLARKE, MARSHA H. FANUCCI, STEVEN	:	MOTION FOR FINAL APPROVAL OF THE
M. PAUL, DAVID E.I. PYOTT, PAUL R.	:	SETTLEMENT AND APPROVAL OF THE
SCHIMMEL, AMY W. SCHULMAN,	:	PLAN OF ALLOCATION; AND (2)
PHILLIP A. SHARP, KEVIN P. STARR,	:	PLAINTIFF'S COUNSEL'S MOTION FOR
GOLDMAN SACHS & CO. LLC, J.P.	:	AN AWARD OF ATTORNEYS' FEES AND
MORGAN SECURITIES LLC, BARCLAYS	:	EXPENSES AND AWARD TO PLAINTIFF
CAPITAL INC., CREDIT SUISSE	:	
SECURITIES (USA) LLC, PIPER JAFFRAY	:	
& CO., JMP SECURITIES LLC, NEEDHAM	:	
& COMPANY, LLC, CHARDAN CAPITAL	:	
MARKETS, LLC and B. RILEY FBR, INC.	:	
n/k/a B. RILEY SECURITIES, INC.,	:	
	:	
Defendants.	:	
	:	
	X	

Plaintiff Chester County Employees Retirement Fund (“Plaintiff”), on behalf of itself and the Settlement Class, and Plaintiff’s Counsel respectfully submit this memorandum of law in further support of: (i) Plaintiff’s motion for final approval of the Settlement and approval of the Plan of Allocation; and (ii) Plaintiff’s Counsel’s motion for an award of attorneys’ fees and expenses and an award to Plaintiff.¹

I. INTRODUCTION

The proposed Settlement resolves this litigation in its entirety in exchange for a cash payment of \$7 million. As detailed in Plaintiff’s and Plaintiff’s Counsel’s opening memorandum ([NYSCEF No. 133](#)), the Settlement is the product of hard-fought litigation and arm’s-length settlement negotiations, and represents a favorable result for the Settlement Class in light of the substantial challenges that Plaintiff would have faced in proving liability and damages.

Pursuant to the Court’s Order Preliminarily Approving Settlement and Providing for Notice (the “Preliminary Approval Order”) dated December 3, 2021 ([NYSCEF No. 120](#)), the Claims Administrator, under the supervision of Plaintiff’s Counsel, mailed over 36,600 copies of the Notice of Pendency and Proposed Settlement of Class Action (the “Notice”) and the Proof of Claim and Release (the “Proof of Claim”) to potential Settlement Class Members and nominees. Additionally, the Summary Notice of Proposed Settlement of Class Action (the “Summary Notice”) was published in *The Wall Street Journal* and over the *PR Newswire* on December 17, 2021. In response to this notice program, no Settlement Class Member has objected

¹ Unless otherwise noted, capitalized terms have the meanings ascribed to them in the Stipulation of Settlement ([NYSCEF No. 115](#)) or in the Affirmation of Michael G. Capeci in Support of: (1) Plaintiff’s Motion for Final Approval of the Settlement and Approval of the Plan of Allocation; and (2) Plaintiff’s Counsel’s Motion for an Award of Attorneys’ Fees and Expenses and Award to Plaintiff ([NYSCEF No. 134](#)).

to any aspect of the Settlement, Plan of Allocation, or fee and expense and award application and only two requests for exclusion have been received.

As explained further below, the reaction of the Settlement Class further demonstrates that the proposed Settlement, the Plan of Allocation, and the request for attorneys' fees and expenses and award to Plaintiff are fair and reasonable, and should be approved.

II. THE REACTION OF THE SETTLEMENT CLASS SUPPORTS APPROVAL OF THE REQUESTED RELIEF

Plaintiff and Plaintiff's Counsel respectfully submit that their opening papers demonstrate why approval of the Settlement and the application for an award of attorneys' fees and expenses and award to Plaintiff is warranted. Now that the time for objecting or requesting exclusion from the Settlement Class has passed, the lack of any objections from the Settlement Class provides additional support for approval of the requested relief.

Pursuant to the Court's Preliminary Approval Order, more than 36,600 copies of the Notice and Proof of Claim have been mailed to potential Settlement Class Members and nominees. *See* Supplemental Affidavit of Kari L. Schmidt Regarding Dissemination of Class Notice, Report on Requests for Exclusion Received, and Notification of Video Hearing, dated April 5, 2022 ("Supplemental Schmidt Affidavit"), submitted herewith. The Notice informed potential Settlement Class Members of the terms of the Settlement and Plan of Allocation, that Plaintiff's Counsel would apply for an award of attorneys' fees in an amount not to exceed one-third of the Settlement Amount and payment of litigation expenses in an amount not to exceed \$45,000, and that Plaintiff may seek an award of no greater than \$15,000. *See* Affidavit of Kari L. Schmidt Regarding Dissemination of Class Notice and Report on Requests for Exclusion Received, Ex. A ("Notice") ([NYSCEF No. 142](#)), at 7. The Notice also apprised potential Settlement Class Members of their right to object to the Settlement, the Plan of Allocation and/or the request for attorneys'

fees and expenses, their right to exclude themselves from the Settlement Class, and the March 22, 2022 deadline for filing objections and for requests for exclusion. [Id. at 7-8.](#)

As noted above, following this vigorous, Court-approved notice program, no Settlement Class Member has objected to any aspect of the Settlement, the Plan of Allocation, or fee and expense application.

The absence of objections is generally indicative of the class's approval of a proposed settlement. See [Pressner v. MortgageIT Holdings, Inc., 2007 N.Y. Misc. LEXIS 4420, at *6 \(N.Y. Sup. Ct. May 29, 2007\)](#) (approving settlement "since there has been no objection to the proposed settlement"); see also [Lopez v Dinex Group, LLC, 2015 N.Y. Misc. LEXIS 3657, at *2 \(N.Y. Sup. Ct. Oct. 6, 2015\)](#) (approving a settlement with no objections and 14 opt-outs); [Hosue v. Calypso St. Barth, Inc., 2017 N.Y. Misc. LEXIS 3440, at *2 \(N.Y. Sup. Ct. Sept. 11, 2017\)](#) (approving a settlement with no objections and one opt-out); [Fernandez v. Hospitality, 2015 N.Y. Misc. LEXIS 2193, at *2 \(N.Y. Sup. Ct. June 20, 2015\)](#) (approving settlement with no objections and no opt-outs); [Clemons v. A.C.I. Found., Ltd., 2017 N.Y. Misc. LEXIS 1788, at *2 \(N.Y. Sup. Ct. May 11, 2017\)](#) (approving settlement with no objections and one opt-out); [Ryan v. Volume Servs. Am., 2013 N.Y. Misc. LEXIS 932, at *2 \(N.Y. Sup. Ct. Mar. 7, 2013\)](#) (approving settlement with no objections and no opt-outs).²

In addition, the positive reaction of the Settlement Class should also be considered with respect to Plaintiff's Counsel's motion for an award of attorneys' fees and expenses and award to Plaintiff. The absence of any objections to the requested fee and expenses and award to Plaintiff support a finding that these requests are fair and reasonable. See, e.g., [In re Veeco Instruments](#)

² Additionally, there have been no objections to the Plan of Allocation of Settlement proceeds, which further supports approval. See, e.g., [Maley v. Del Glob. Techs. Corp., 186 F. Supp. 2d 358, 367 \(S.D.N.Y. 2002\)](#).

[Inc. Sec. Litig., 2007 U.S. Dist. LEXIS 85554, at *32 \(S.D.N.Y. Nov. 7, 2007\)](#) (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”); [Maley, 186 F. Supp. 2d at 374](#) (finding that the lack of any objection to the fee request supported its approval).

Finally, because the settlement hearing scheduled for April 12, 2022 at 2:30 p.m. is proceeding by video and/or telephone conference due to the ongoing COVID-19 pandemic, Plaintiff’s Counsel has taken the following steps to ensure that potential Settlement Class Members can participate in the settlement hearing if they so choose: (i) stating in the Notice that the settlement hearing will take place by virtual means ([NYSCEF No. 142 at 9-10](#)); (ii) adding the Microsoft Teams video and telephonic access information to the settlement website, [www.AlnylamSecuritiesLitigation.com](#);³ and (iii) reproducing the Microsoft Teams video and telephonic access information for the settlement hearing below, which will be posted on NYSCEF:

Any Settlement Class Member who wishes to appear at the Settlement Hearing may access the hearing *via* Microsoft Teams using the following information: Stream link: <http://wowza.nycourts.gov/VirtualCourt/new/st-nysupcv/st-nysupcv1>
Stream Password: 7456

III. CONCLUSION

For the foregoing reasons, and the reasons set forth in Plaintiff’s and Plaintiff’s Counsel’s opening papers, Plaintiff and Plaintiff’s Counsel respectfully request that the Court approve the Settlement, the Plan of Allocation, and the request for fees and expenses and award to Plaintiff.⁴

³ See Supplemental Schmidt Affidavit, ¶6.

⁴ An updated copy of the proposed Judgment and Order Granting Final Approval of Class Action Settlement previously submitted by Plaintiff with the Stipulation ([NYSCEF No. 115](#)) is submitted herewith as Exhibit A to the Supplemental Affirmation of Michael G. Capeci in Further Support of: (1) Plaintiff’s Motion for Final Approval of the Settlement and Approval of the Plan of Allocation; and (2) Plaintiff’s Counsel’s Motion for an Award of Attorneys’ Fees and Expenses and Award to Plaintiff, dated April 5, 2022, and submitted herewith.

DATED: April 5, 2022

Respectfully submitted,

ROBBINS GELLER RUDMAN
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/s/ Michael G. Capeci

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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 brief was prepared on a computer using Microsoft Word. A proportionally spaced typeface was used as follows:

Name of Typeface: Times New Roman

Point Size: 12

Line Spacing: Double

2. The total number of words in the brief, inclusive of point headings and footnotes and exclusive of the caption, signature block, and this Certification, is 1,296 words.

DATED: April 5, 2022

/s/ Michael G. Capeci

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