

I. INTRODUCTION

The response by the Class to the Settlement, Plan of Distribution, and Fee and Expense motions has been extraordinary. No Class member objected, and only four opt-outs have been received, which represents less than one one-hundredth of a percent (< .01%) of the 46,000+ policies in the Class. The positive reaction by this large Class is powerful evidence that the relief requested for final approval, attorneys' fees, and expenses is fair, adequate, reasonable and should be granted. *See, e.g., Maley v. Del Glob. Techs. Corp.*, 186 F. Supp. 2d 358, 374 (S.D.N.Y. 2002) (“Not one person, company, or institution [out of 2,086 notices sent] has filed an objection to the fee request or the expense reimbursement sought. . . . [T]his overwhelmingly positive response by the Class attests to the approval of the Class with respect to the Settlement and the fee and expense application.”).

The challenges faced in meeting the burdens in this highly complex and risky case were formidable. Class Counsel litigated the case without pay for over five years at enormous expense with the real chance of recovering nothing, and achieved extraordinary results. As a result, Plaintiff and Class Counsel respectfully request that the motions for final approval, distribution, fees, expense reimbursements, and incentive award should be granted.

II. THE CLASS OVERWHELMINGLY SUPPORTS THE SETTLEMENT

Plaintiff and Class Counsel respectfully submit that their opening brief and declarations demonstrate why approval of the motion is warranted. Now that the time for objections has passed, the absence of any objections provides additional support for approval of the motions.

As explained in detail in the “Motion for Final Approval of Class Action Settlement,” Plaintiff’s notice program satisfied Federal Rule of Civil Procedure 23 and due process for the more than 46,000 policies owned by Settlement Class Members. *See* Dkt. 298 at 9. The approved short-form notice—which reached an outstanding 97.3% of potential Settlement Class Member

addresses, *see* Dkt. 300 (Ness Decl.) at ¶ 5–6—described the proposed Settlement, the plan of allocation, the requested fees and expenses, and the right to object or opt-out. *See* Dkt. 282-2. The approved short-form notice directed potential Settlement Class Members to the case-specific class website (www.voyacoiligation.com) for more information. *See id.* The class website contains the approved long-form notice (Dkt. 282-3), additional information about the Settlement, a description of “Key Dates,” and a section of “Important Documents,” which has been continuously updated. *See* Dkt. 299 (Ard Decl.) at ¶ 30. The Settlement Administrator also established a case-specific toll-free telephone helpline (1-833-759-2984) and was, and remains, available to answer class member questions with the assistance of Class Counsel. *Id.* ¶ 30; Dkt. 300 (Ness Decl.) at ¶¶ 7–9.

Following this fulsome, Court-approved notice program, no potential Settlement Class Member objected to any aspect of the Settlement, the Plan of Allocation, or the fee and expense application, either by the deadline or to date. *See* Dkt. 299 (Ard Decl.) at ¶ 34. For final approval, “the favorable reaction of the overwhelming majority of class members . . . is perhaps the most significant factor.” *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 119 (2d Cir. 2005). Although a “certain number of objections are to be expected in a class action with an extensive notice campaign and a potentially large number of class members,” *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 2019 WL 6875472, at *16 (E.D.N.Y. Dec. 16, 2019), “[i]f only a small number of objections are received, that fact can be viewed as indicative of the adequacy of the settlement.” *Id.* (quoting *Wal-Mart*, 396 F.3d at 118). Here, there were no objections whatsoever.

The positive reaction of the Settlement Class strongly supports that the requested fees, expenses, and incentive award are reasonable and should be approved. *See In re J.P. Morgan Stable Value Fund ERISA Litig.*, 2019 WL 4734396, at *4 (S.D.N.Y. Sept. 23, 2019) (approving

fee award of 33 1/3% of a common fund and stating “the Class’s lack of objection should be taken to mean that the Class consents to Class Counsel’s request and finds it reasonable”); *In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 594 (S.D.N.Y. 2008) (“That only one objection to the fee request was received is powerful evidence that the requested fee is fair and reasonable”).

In addition to the absence of any objections, only four of the 46,906 Class Policies (representing .0085% of the Class) opted out. At the time the Fee and Expense Request was filed, only three of those four opt-out requests had been received, resulting in a stated Final Settlement Fund of \$92,498,902.63. *See* Dkt. 292 at 6 n.5. The one additional opt-out slightly reduces the “final” Final Settlement Fund (by less than \$38,000) to \$92,461,152.45. *See* Dkt. 299 (Ard Decl.) at ¶¶ 33, 37 & n.1. The small number of opt-outs further confirms the reasonableness of the Settlement and the requested fees, expenses, and incentive awards. *See* Dkt. 298 at 23 (citing *In re Giant Interactive Group, Inc. Sec. Litig.*, 279 F.R.D. 151, 161 (S.D.N.Y. 2011)).

The notices advised the members of the Settlement Class that Class Counsel committed to limit its fee request such that the fees, after all opt-outs are accounted for, do not exceed 33% of the gross cash benefits viewed in isolation. *See* Dkt. 280 at 1. To that effect, Class Counsel hereby submits an amended proposed order with a fee request decreased to \$30,512,180.31 to account for the one additional opt-out received after April 4, 2022. *See* Dkt. 299 (Ard Decl.) at ¶ 43. This amount remains less than 26% of the gross settlement benefits that this litigation achieved.

III. CONCLUSION

For each of these reasons, Plaintiff and Class Counsel respectfully request that the Court grant the motions for Final Approval, Attorneys’ Fees, Reimbursement of Litigation Expenses, and Incentive Award.

Dated: June 22, 2022

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing instrument has been served on the following counsel, this June 22, 2022.

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