

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

**IN RE THALOMID AND REVLIMID
ANTITRUST LITIGATION**

Civ. No. 14-6997 (MCA) (MAH)

**REPLY BRIEF IN FURTHER SUPPORT OF PLAINTIFFS' MOTIONS
FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND FOR
AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF
EXPENSES, AND PAYMENT OF SERVICE AWARDS
TO THE CLASS REPRESENTATIVES**

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I. INTRODUCTION

Following extensive settlement negotiations and nearly six years of contentious litigation against Defendant Celgene Corporation (“Celgene”), Co-Lead Counsel¹ achieved a \$34 million settlement (the “Settlement”) on behalf of Plaintiffs² and the Settlement Class. The Settlement is an excellent result for the remaining members of the proposed Settlement Class.

Now having been fully informed of the specifics of the Settlement, including the notice plan, the Plan of Allocation, and Plaintiffs’ fee and expense request, the reaction of the Settlement Class has been overwhelmingly positive. Plaintiffs and Co-Lead Counsel are pleased to inform the Court that there have been no objections to the Settlement or to Plaintiffs’ motion for attorneys’ fees, reimbursement of expenses, and issuance of service awards.

There have been just four requests for exclusion from the Settlement, representing less than .008% of the third party payor (“TPP”) entities that received the long form notice via mail.³ In turn, the percentage of opt-outs represents a tiny

¹ On April 4, 2016, the Court appointed Hausfeld LLP, Block & Leviton LLP, and Hach Rose Schirripa & Cheverie LLP as Interim Co-Lead Counsel (“Co-Lead Counsel”). ECF No. 92.

² Plaintiffs are International Union of Bricklayers and Allied Craft Workers Local 1 Health Fund, the City of Providence, International Union of Operating Engineers Local 39 Health and Welfare Trust Fund, The Detectives’ Endowment Association, New England Carpenters Health Benefits Fund, and David Mitchell.

³ KCC mailed the long form notice to 47,489 TPPs. ECF No. 320-2 (“Peak Decl.”) at ¶ 9.

fraction of all potential Settlement Class members.⁴

The number of requests for exclusion is also small in comparison to the thousands of claims that have been filed in the case. Specifically, as of September 22, 2020, KCC has received a total of 3,411 new claims and 1,793 supplemental claims, in addition to the 8,252 claims received in 2019. Peak Decl. at ¶ 27. The positive reaction by the Settlement Class provides significant additional evidence that the Settlement and request for attorneys' fees, expenses, and service awards are fair and reasonable.

II. ARGUMENT

The positive reaction of the Settlement Class provides meaningful additional support in favor of approving the proposed class settlement and the request for attorneys' fees, expenses, and service awards for the named plaintiffs.

A. The Reaction of the Settlement Class Strongly Supports Approval of the Settlement

As discussed in Plaintiffs' opening Motion,⁵ the second *Girsh* factor concerns "the reaction of the class to the settlement." *Girsh v. Jepsen*, 521 F.2d 153, 157 (3d Cir. 1975). This factor evaluates whether "the number of objectors, in proportion to the total class, indicates that the reaction of the class to the settlement

⁴ In contrast to the first settlement, Celgene does not have the right to rescind this Settlement based on opt-outs.

⁵ Memorandum of Law in Support of Plaintiffs' Motion for Final Approval of Class Action Settlement, ECF No. 320-1, at p. 27.

is favorable.” *In re Merck & Co., Inc. Vytorin ERISA Litig.*, No. 08-cv-285, 2010 WL 547613, at *7 (D.N.J. Feb. 9, 2010); *Dartell v. Tibet Pharm., Inc.*, No. 14-cv-3620, 2017 WL 2815073, at *5 (D.N.J. June 29, 2017) (“the lack of objectors weighs in favor of approving the settlement”). As noted *supra*, there have been no objections to the Settlement. In addition, only a tiny fraction of all Settlement Class members have requested exclusion.

The lack of any objections provides strong evidence that the Settlement is fair, reasonable, and adequate, and warrants final approval. *See, e.g., In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d 631, 640 (E.D. Pa. 2003) (“[t]his unanimous approval of the proposed settlement[] by the class members is entitled to nearly dispositive weight in this court’s evaluation of the proposed settlement”) (internal quotations omitted); *In re Cendant Corp. Litig.*, 264 F.3d 201, 235 (3d Cir. 2001) (“[t]he vast disparity between the number of potential class members who received notice of the Settlement and the number of objectors creates a strong presumption that this factor weighs in favor of the Settlement . . .”); *see also In re Nat’l Football League Players Concussion Injury Litig.*, 821 F.3d 410, 438 (3d Cir. 2016) (objections by approximately 1% of class members and opt-outs of 1% of class members “weigh[ed] in favor of settlement approval”).

B. The Lack of Objections Strongly Supports Approval of Plaintiffs’ Counsel’s Fee Request

The uniformly positive reaction of the Settlement Class further supports

Plaintiffs' Counsel's fee request. The lack of any objections provides strong evidence that the fee request is reasonable and appropriate. *See, e.g., In re Ins. Brokerage Antitrust Litig.*, 282 F.R.D. 92, 121 (D.N.J. 2012) (“[t]he absence of substantial objections by Settlement Class members to the fees requested by Class Counsel strongly supports approval”); *In re Fasteners Antitrust Litig.*, No. 08-md-1912, 2014 WL 296954, at *4 (E.D. Pa. Jan. 27, 2014) (“[w]e find it significant that, despite the large class size, there have been no objections . . . [t]his factor weighs heavily in favor of approving the fee award”) (internal citation omitted); *Desantis v. Snap-On Tools Co.*, No. 06-cv-2231, 2006 WL 3068584, at *10 (D.N.J. Oct. 27, 2006) (“[t]he fact that there were so few objectors to the amount of attorneys' fees indicates that there is a positive reaction amongst the class to the requested fees”); *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 305 (3d Cir. 2005) (finding “only two” class members objecting to a fee request to be a “rare phenomenon”).

Indeed, the positive reaction of the Settlement Class serves as strong evidence of the reasonableness of Plaintiffs' Motion for attorneys' fees, reimbursement of expenses, and service awards of \$10,000 to each of the Class Representatives.

III. CONCLUSION

For the reasons set forth herein and in their opening memoranda of law in

support of their Motion for Final Approval of Class Action Settlement (ECF No. 320) and Motion for Attorneys' Fees, Reimbursement of Expenses, and Payment of Service Awards to the Class Representatives (ECF No. 319), Plaintiffs respectfully request that the Court approve the Settlement and the request for attorneys' fees, expenses, and service awards to the Class Representatives.

Respectfully submitted,

Dated: September 23, 2020

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CERTIFICATE OF SERVICE

I, Katie R. Beran, counsel for Plaintiffs, do hereby certify that Plaintiffs' Reply Brief in Further Support of Plaintiffs' Motions For Final Approval of Class Action Settlement and For An Award of Attorneys' Fees, Reimbursement of Expenses, and Payment of Service Awards to the Class Representatives was filed and served on all counsel electronically via the Court's CM/ECF system.

Date: September 23, 2020

/s/ Katie R. Beran
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