

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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WATERFORD TOWNSHIP POLICE & FIRE :	Civil Action No. 1:10-cv-00864-SLT-RER	
RETIREMENT SYSTEM, Individually and On :	(Consolidated)	
Behalf Of All Others Similarly Situated,	:	
	:	<u>CLASS ACTION</u>
Plaintiff,	:	
	:	NOTICE OF NON-OPPOSITION AND
vs.	:	REPLY IN FURTHER SUPPORT OF LEAD
	:	PLAINTIFFS' MOTION FOR FINAL
SMITHTOWN BANCORP, INC., et al.,	:	APPROVAL OF SETTLEMENT AND PLAN
	:	OF DISTRIBUTION, AND AN AWARD OF
Defendants.	:	ATTORNEYS' FEES AND EXPENSES
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Pursuant to paragraph 20 of the Court's Order Preliminarily Approving Settlement and Providing for Notice so ordered on June 16, 2015 ("Preliminary Approval Order," Dkt. No. 90), Lead Plaintiffs, Waterford Township Police & Fire Retirement System and Michael L. Cox, on behalf of themselves and the Class, respectfully submit this notice of non-opposition and reply in further support of their motion for final approval of the Settlement and Plan of Distribution and an award of attorneys' fees and expenses.¹

Pursuant to the Court's Preliminary Approval Order, beginning on July 7, 2015, the Claims Administrator, Gilardi & Co. LLC ("Gilardi"), commenced mailing of the Court-approved Notice of Pendency of Class Action and Proposed Settlement, Motion for Attorneys' Fees and Settlement Fairness Hearing (the "Notice") and the Proof of Claim and Release form (the "Proof of Claim") (collectively, the "Claim Package") to over 9,100 potential Class Members and their nominees. *See* Declaration of Carole K. Sylvester Re (A) Mailing of the Notice of Pendency of Class Action and Proposed Settlement, Motion for Attorneys' Fees and Settlement Fairness Hearing and the Proof of Claim and Release Form, (B) Publication of the Summary Notice, (C) Internet Posting, and (D) Requests for Exclusion Received to Date, dated August 24, 2015 ("Sylvester Decl."), ¶10. In addition to the mailed Notice, the Summary Notice was transmitted over the *PR Newswire* and published in *Investor's Business Daily* on July 17, 2015. *Id.*, ¶13. The Notice, Proof of Claim, Settlement Agreement, and Preliminary Approval Order were also posted on the website dedicated to the Settlement. *Id.*, ¶12.

The Notice advised Class Members of the \$1,950,000 cash Settlement, the preliminary certification of the Class, the proposed Plan of Distribution, and Lead Counsel's request for

¹ All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Stipulation and Agreement of Settlement dated January 9, 2015 (the "Settlement Agreement") (Dkt. No. 80).

attorneys' fees and expenses. The Notice further advised Class Members of the September 8, 2015 deadline for requesting exclusion from the Class, or submitting objections.

On August 24, 2015, pursuant to the Court's Preliminary Approval Order, Lead Plaintiffs served and posted on the Settlement website all papers in support of final approval of the Settlement and Plan of Distribution and award of attorneys' fees and expenses. Lead Plaintiffs' Memorandum of Law in Support of Motion for Final Approval of Settlement and Plan of Distribution explains why the Settlement and Plan of Distribution are fair, reasonable and adequate. Likewise, Lead Counsel's Memorandum of Law in Support of Motion for an Award of Attorneys' Fees and Expenses explains why the request for an award of attorneys' fees equal to 30% of the Settlement Fund and \$30,401.27 in litigation expenses is fair and reasonable, and supported by, among other factors, the result achieved in the face of significant risks and the contingent nature of the litigation. Moreover, the fee request is supported by a lodestar crosscheck: the fee represents only 52% of counsel's aggregate lodestar. As a result, Class Members are now fully aware of the terms of the Settlement, the Plan of Distribution, and the request for an award of attorneys' fees and expenses.

In response to this robust notice program and the posting of Lead Plaintiffs' opening briefs, not a single Class Member has filed an objection to any aspect of Lead Plaintiffs' motion and no requests for exclusion were received. The absence of any objections, and the fact that no requests for exclusion were received, evinces the Class' overwhelming support for the Settlement, the Plan of Distribution and the fee and expense request. "[T]he favorable reaction of the overwhelming majority of class members to the Settlement is perhaps the most significant factor in our *Grinnell* inquiry." *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 119 (2d Cir. 2005). "The lack of objections provides effective evidence of the fairness of the Settlement." *In re Veeco Instruments Inc. Sec. Litig.*, No. 05 MDL 01695 (CM), 2007 U.S. Dist. LEXIS 85629, at *22 (S.D.N.Y. Nov. 7,

2007); *see also In re PaineWebber Ltd. P'ships Litig.*, 171 F.R.D. 104, 126 (S.D.N.Y.) (“the absence of objectants may itself be taken as evidencing the fairness of a settlement”) (citation omitted), *aff'd*, 117 F.3d 721 (2d Cir. 1997).

Based on the foregoing and the entire record herein, Lead Plaintiffs respectfully request that the Court approve the Settlement and Plan of Distribution as fair, reasonable, and adequate and in the best interests of the Class; and grant Lead Counsel’s request for attorneys’ fees and expenses.

For the Court’s convenience, Lead Plaintiffs submit herewith the agreed-upon proposed Final Judgment and Order of Dismissal with Prejudice, a proposed order approving the Plan of Distribution, and a proposed order awarding attorneys’ fees and expenses.

DATED: September 14, 2015

Respectfully submitted,

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