UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

IN RE FRONTIER COMMUNICATIONS CORPORATION STOCKHOLDERS LITIGATION	No. 3:17-cv-01617-VAB

REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF LEAD PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

CASES

STATUTES

OTHER AUTHORITIES

I. INTRODUCTION

As detailed in the opening papers in support of the Final Approval Motion[1] (ECF Nos. 194, 195, 198), the proposed $15.5 million Settlement is an excellent result considering, among other things, the Court's dismissal of the Action, the uncertainty of Lead Plaintiffs' appeal, the risks of non-recovery even if the appeal were successful, and the size of the recovery relative to the reasonable estimate of investors' losses by Plaintiffs' expert.[2] As also detailed in the opening papers, under the proposed Plan of Allocation, the Settlement will be distributed fairly to eligible Class Members based on the damages they suffered on their investments in Frontier Securities.

The Settlement Class's reaction to the Final Approval Motion has been positive and further warrants final approval. In accordance with the Court's Preliminary Approval Order (ECF No. 193), the Claims Administrator has mailed 755,128 copies of the Notice, in connection with which only ***one*** formal objection, submitted by Ms. Catherine L. Scott (ECF No. 200) (the "Scott Objection"), was received.[3] As discussed below, the Scott Objection does not undermine the fairness, reasonableness, or adequacy of the Settlement. In addition, the requests for exclusion

---

[1] Unless otherwise defined, all capitalized terms herein have the same meanings as set forth in the Stipulation and Agreement of Settlement dated December 23, 2021 (ECF No. 192-2) (the "Stipulation") or in the Declaration of Katherine M. Sinderson in Support of: (A) Lead Plaintiffs' Motion for Final Approval of Settlement and Plan of Allocation; and (B) Lead Counsel's Motion for Attorneys' Fees and Litigation Expenses (ECF No. 198) (the "Sinderson Declaration" or "Sinderson Decl.").

[2] Lead Counsel is also filing with the Court today a reply memorandum of law in further support of Lead Counsel's Motion for Attorneys' Fees and Litigation Expenses (ECF No. 196) (the "Fee Motion").

[3] Lead Counsel is also in receipt of a belatedly filed Motion to Lift Discovery Stay (ECF No. 202), also filed by Ms. Scott, which Lead Counsel intends to respond to by May 5, 2022. Also, as already discussed in the opening papers, Lead Counsel previously received a one-page, anonymous letter that does not satisfy any of the requirements for the submission of valid objections set forth in the Notice, and it provides no reasoned basis why the Final Approval Motion should not be approved. This submission should be rejected by the Court. *See* ECF No. 198-8.

received collectively describe just 0.004% of the securities estimated to have been at issue—a miniscule amount that further indicates the support of the Settlement Class and supports approval.

II. THE REACTION OF THE SETTLEMENT CLASS FURTHER SUPPORTS APPROVAL OF THE SETTLEMENT AND THE PLAN OF ALLOCATION

A. The Extensive Court-Ordered Notice Program

In accordance with the Preliminary Approval Order, the Claims Administrator conducted an extensive notice program under Lead Counsel's supervision, including mailing of over 755,000 Notices to potential Class Members, publishing the Summary Notice in *Investor's Business Daily* and over the PR Newswire, and establishing a Settlement website that provides copies of the Notice, Claim Form, Stipulation, Complaint, and other key information.[4]

The Notice informed Class Members of the terms of the proposed Settlement and Plan of Allocation, and that Lead Counsel would apply for an award of attorneys' fees in an amount not to exceed 25% of the Settlement Fund and payment of Plaintiffs' Counsel's Litigation Expenses in an amount not to exceed $500,000. *See* Notice at ¶¶5, 56. The Notice also appropriately advised Class Members of their right to object or to request exclusion from the Settlement Class, and the April 19, 2022 deadline for doing so. *See id*. ¶¶57-71.

On April 5, 2022, 14 days before the objection deadline, Lead Plaintiffs and Lead Counsel filed their opening papers in support of the Final Approval Motion (ECF Nos. 194, 195, 198). These papers were immediately available on the public docket and were made available on the Settlement website. *See* Supp. Ewashko Decl. ¶8.

[4] The notice program is described in the previously filed Ewashko Declaration (ECF No. 198-3), at ¶¶ 2-11. *See also* Supplemental Declaration of Jack Ewashko Regarding (A) Mailing of the Notice and Claim Form and (B) Report on Requests for Exclusion and Claims Received, dated May 3, 2022 (the "Supp. Ewashko Decl."), filed with this brief.

B. The Reaction of the Settlement Class Supports Approval

Following the extensive notice program described above, just 72 requests for exclusion[5]—collectively representing only 5,447.82 shares of Frontier Securities purchased during the Class Period, or just 0.004% of the approximately ***140 million*** Frontier Securities estimated to have been affected—and only one formal objection to the Final Approval Motion were received.

Lead Plaintiffs respectfully submit that the small number of objections and requests for exclusion supports a finding that the Settlement and the Plan of Allocation are fair, reasonable, and adequate. "If only a small number of objections are received, that fact can be viewed as indicative of the adequacy of the settlement . . . . [T]he favorable reaction of the overwhelming majority of class members to the Settlement is perhaps the most significant factor in [the] *Grinnell* inquiry". *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.,* 396 F.3d 96, 118-119 (2d Cir. 2005); *see also, e.g.*, *In re Nat'l Football League Players Concussion Injury Litig.*, 821 F.3d 410, 438 (3d. Cir. 2016) (crediting reaction in favor of settlement where "only approximately 1% of class members objected and approximately 1% of class members opted out"). Indeed, courts have found a favorable reaction from the settlement class even where there were *fewer* notices sent but *more* objections. *See In re Facebook, Inc. IPO Sec. & Derivative Litig.,* 2015 WL 6971424, at *4 (S.D.N.Y. Nov. 9, 2015) (finding receipt of only three objections after mailing of over 645,000 notices supported approval of settlement), *aff'd*, 674 F. App'x 37 (2d Cir. 2016). Moreover, the absence of ***any*** objections or requests for exclusion from institutional investors—which held approximately two-thirds of the Frontier common stock outstanding during the Class Period—further establishes the Settlement's fairness. *See In re Citigroup Inc. Sec. Litig.,* 965 F. Supp. 2d 369, 382 (S.D.N.Y. 2013); *see also, e.g.*, *In re AT&T Corp. Sec. Litig.,* 2005 WL 6716404, at *4

[5] All requests for exclusion appear to be submitted on behalf of individuals or family trusts.

(D.N.J. Apr. 25, 2005) (reaction "weigh[ed] heavily in favor of approval" where "no objections were filed by any institutional investors who had great financial incentive to object").

III. THE LONE FORMAL OBJECTION LACKS MERIT

Lead Plaintiffs respectfully submit that the lone formal objection, the Scott Objection, does not defeat approval of the Settlement.[6]

A. The Scott Objection Criticisms of the Settlement Are Without Merit

First, the Scott Objection first takes issue with the timeliness of the mailed Notice, claiming, among other things, that her "Constitutional rights are being violated since [she] received very short notice of the existence of the class action and had little time to assess it." Scott Obj. at 1. The adequacy of a class action notice program is judged by whether the process was "reasonably calculated to reach the absent class members," *Reppert v. Marvin Lumber & Cedar Co.*, 359 F.3d 53, 56 (1st Cir. 2004), and "whether the class as a whole had notice adequate to flush out whatever objections might reasonably be raised to the settlement." *Fidel v. Farley,* 534 F.3d 508, 514 (6th Cir. 2008). The Settlement notice program adopted here parallels notice programs used in virtually every securities class action in the Nation for the past several decades, and indisputably complies with all due process and Rule 23 requirements.[7] On February 15, 2022, more than nine weeks before the exclusion/objection deadline, A.B. Data mailed Notice Packets to 190,323 potential Class Members identified in the shareholder records provided by Defendants' Counsel. *See* Supp. Ewashko Decl. ¶3. On the same day, A.B. Data also began the process of disseminating notice to shareholders who are not record holders, but instead owned Frontier Securities in "street name,"

[6] The Scott Objection to Lead Counsel's fee application is addressed in the Reply Memorandum of Law in Further Support of the Fee Motion, filed herewith.

[7] *See, e.g.*, *In re Signet Jewelers Ltd. Sec. Litig.*, 2020 WL 4196468, at *21 (S.D.N.Y. July 21, 2020) (finding that method of notice substantially similar to the notice program here satisfied the requirements of Rule 23(c)(2)(B), Rule 23(e)(1), and due process).

by mailing the Notice Packet to 4,146 brokers, banks, and other nominees. *Id*. Notice of the Settlement has also been available to Class Members and nominees: on a real-time basis through the Court's ECF system; since February 15, 2022, via a website dedicated to the Settlement; through the February 15, 2022 publication on DTCC's Legal Notice System (LENS); and through the February 28, 2022 publication of the Summary Notice in *Investor's Business Daily* and over *PR Newswire* pursuant to the terms of the Preliminary Approval Order, which informed readers how to obtain copies of the Notice and Claim Form.

By March 15, 2022—or ***5 weeks*** before the exclusion/objection deadline—734,179 Notice Packets had been mailed, or 97.2% of all Notice Packets mailed. By April 5, 2022 (2 weeks prior to the deadline), 755,095 Notices Packets had been mailed, or 99.9% of all Notice Packets mailed. *See* Supp. Ewashko Decl. ¶7. All 755,128 Notice Packets were mailed by April 8, 2022. *Id.* Thus, the overwhelming majority of Notice Packets were mailed well in advance of the exclusion/objection deadline, and the Settlement Class as a whole was given an appropriate opportunity to review and comment on the Settlement before the April 19, 2022 objection deadline and the May 10, 2022 Settlement Hearing.[8] Indeed, the Scott Objection is dated April 11, 2022—meaning there was sufficient time to prepare the nine-page objection more than a week ***before*** the objection deadline.

[8] Indeed, courts have found that a notice program which meets the foregoing standards is sufficient even if delivery of some notices was delayed from the use of brokers and nominees. *See, e.g., In re Facebook, Inc. IPO Sec. & Derivative Litig.*, 343 F. Supp. 3d 394, 411 (S.D.N.Y. 2018) (finding notice sufficient even though a significant number of names of potential class members were not provided until just before, or slightly after, the objection deadline due to delays by brokers). Courts have also recognized that the risk of delay in receipt of legal notices is a "risk a shareholder takes in registering his or her securities in street name." *In re Marsh & McLennan Cos., Inc. Sec. Litig.*, 2009 WL 5178546, at *24 (S.D.N.Y. Dec. 23, 2009).

Second, there is no merit to the Scott Objection assertion that the reaction of the Settlement Class indicates Class Member dissatisfaction with the Settlement. Scott Obj. at 2. As noted above, after 755,128 Notices were disseminated to potential Class Members, only 72 requests for exclusion were received—i.e., less than 0.01% of recipients of the Notices. Further, those requests for exclusion collectively discussed just 0.004% of the securities estimated to have been damaged. These facts indicate that the vast majority of Class Members have chosen to remain in the Settlement Class, further indicating a positive reaction. Also, as noted above, not a single institutional investor—who possess ample means and incentive to opt-out of a class action settlement and pursue a recovery against Defendants on an individual basis—requested exclusion, which courts find particularly significant in gauging reaction to settlements. *Supra* Section II.B.

Third, the Scott Objection speculates that it is Lead Plaintiffs' interests alone—rather than the interests of the Settlement Class as a whole—that are being advanced by the Settlement, on the basis that Lead Counsel has at times represented opt-out plaintiffs in certain other class actions. Scott Obj. at 2-3. This demonstrates a misunderstanding of the class action mechanism. In this action, Lead Counsel was appointed by the Court as Lead Counsel for the Class, and it represents the interests of the entire Class. There is no question that Lead Counsel is only representing the Class here, not any opt-out investors. Accordingly, any claim that Lead Counsel has not represented the interests of the Class in this Action is completely unfounded.

The Scott Objection also contends that the settlement is "unfair" because the Lead Plaintiffs are experienced investors and thus their "interests are antagonistic to other members of the class, and there is no genuine concern on the part of the leads to the average person who invested money in Frontier." Scott Obj. at 3. This contention is without basis: Lead Plaintiffs, like other Class Members, purchased Frontier Securities during the Class Period and were damaged by the same

alleged misstatements. Lead Plaintiffs faced the same risks in the litigation as the rest of the Settlement Class and shared the same goal as other Class Members—to achieve the greatest possible recovery in the face of significant risks. Lead Plaintiffs have already certified to the Court that they will not accept payment for serving as a representative party beyond their pro rata share of any recovery other than a potential PSLRA award—which Lead Plaintiffs are not seeking here. *See* ECF No. 50-3.[9] Lead Plaintiffs have no other arrangements with Lead Counsel.

Fourth, the Scott Objection wrongly claims that the Settlement Amount was negotiated without determining the relative losses of investors—"[t]he money came first without linking it to individuals' harm"—and "at no time ever did the class shareholders' claim loss have any bearing on the amount of the settlement fund, and the settlement fund was essentially decided in bankruptcy." Scott Obj. at 4-5. In fact, Lead Plaintiffs' expert performed a formal damages analysis, which informed Lead Plaintiffs and Lead Counsel of the total estimated damages in the case, ***before*** the Settlement Amount was agreed. *See* Sinderson Decl. ¶61. This damages analysis was ***then*** used as the basis to develop the proposed Plan of Allocation.

Furthermore, the Settlement Amount was ***not*** decided in the bankruptcy proceedings. Scott Obj. at 5. Lead Counsel engaged bankruptcy counsel only to (successfully) assist in preserving the Settlement Class's ability to recover insurance proceeds as part of Frontier's reorganization. But the Settlement Amount itself was the result of extensive, arms' length negotiations by experienced attorneys, in which—as the Scott Objection acknowledges—Frontier's ability to pay in light of its bankruptcy was just one of many "risk factor[s] that Lead Plaintiffs' [sic] considered." *Id.*

[9] The Scott Objection also argues that the Notice should state whether the other named plaintiffs that filed lawsuits "intend to pursue claims apart from the [Lead Plaintiffs] and why," and she asks whether these plaintiffs have sought exclusion from the Settlement Class. Scott Obj. at 4. While Lead Plaintiffs were under no obligation to obtain—much less disclose—any information about the intentions of the earlier named plaintiffs, none appear to have submitted a request for exclusion.

Fifth, the Scott Objection claims that the "Notice is unclear and fails FRCP 23(e)(1) tests." Scott Obj. at 5. However, as the Court found in the Preliminary Approval Order (ECF No. 193, ¶8), the Notice and Claim Form meet all the requirements of Rule 23 and the PSLRA. *See* Fed. R. Civ. P. 23(c)(2)(B); 15 U.S,C. § 78u-4(a)(7). Among other required disclosures, the Notice provides an estimate of the amount of per-share recovery under the Settlement (*see* Notice ¶3) and invites all Class Members to call the Claims Administrator or Lead Counsel if they have any questions or need any additional information. *See* Notice ¶73. Indeed, the Notice is consistent with nationally recognized "best practices" for notice programs and provide detailed yet understandable information about class members' rights.[10]

Sixth, the Scott Objection criticizes the Notice's explanation of how the July 10, 2017 reverse stock split "factors into the Settlement." Scott Obj. at 5. But the Notice explicitly addresses this issue, including specific instructions to perform all calculations in post-split terms.[11] Once

[10] *See Signet*, 2020 WL 4196468, at *21 (S.D.N.Y. July 21, 2020) (finding that form of notice substantially similar to the Notice here "includes all the information required by Federal Rule of Civil Procedure 23(c)(2)(B) and the PSLRA, 15 U.S.C. § 78u-4(a)(7)").

[11] With respect to July 10, 2017 reverse stock split, whenever a settlement includes a stock split during the class period, it is always necessary to express share counts and prices in either pre-split terms or post-split terms to have an "apples to apples" comparison between share values pre- and post-reverse split. In Lead Counsel's experience, plans are typically expressed in post-transaction terms. *See, e.g.,* Notice, *In re Tower Grp. Int'l, Ltd., Sec. Litig.*, No. 13-cv-5852 (S.D.N.Y. Oct. 14, 2015), Dkt. 163-5 at 8 n.2; Plan of Allocation Order (S.D.N.Y. Nov. 23, 2015), Dkt. 177; Notice, *In Re Banco Bradesco, S.A. Sec. Litig.*, No. 16-cv-04155 (S.D.N.Y. Oct. 8, 2019), Dkt. 205-3 at 14 n. 3 & 16; Plan of Allocation Order (S.D.N.Y. Nov. 21, 2019), Dkt. 215; Notice, *Isolde v. Trinity Indus., Inc.*, No. 3:15-cv-02093-K (N.D. Tex. Feb. 25, 2020), Dkt. 170-10 at VII.C n. 1; Plan of Allocation Order (N.D. Tex. Mar. 31, 2020), Dkt. 178. In most cases and certainly here, this is the more logical way to express share values, since any claimants holding shares over the final alleged corrective disclosure would have experienced the conversion, and claimants' most recent information regarding their investments (such as their account statements) will be in post-reverse stock split terms. In addition, claimants looking up prices on-line will find them in post-reverse stock split terms. Moreover, some of the information in the Plan of Allocation, such as the per-share closing prices during the PSLRA's 90-day look-back period, was only ever expressed in post-reverse stock split values. Accordingly, it is more convenient to Class Members for the Plan to utilize those prices rather than convert them to pre-reverse stock split values.

those instructions are followed, the calculation of Recognized Loss Amounts under the Plan of Allocation is straightforward. Even if Ms. Scott found this confusing, there is no indication that was shared widely. In any event, it is the Claims Administrator who will ultimately determine claimants' pro rata recovery based on the trading records submitted. *See* Stipulation ¶¶22, 26.

B. The Scott Objection Criticisms of the Plan of Allocation Are Without Merit

First, the Scott Objection criticizes the January 29, 2018 ending date for the 90-day look-back period. Scott Obj. at 6. However, the Scott Objection mistakenly relies on the putative class period set forth in the now inoperative Consolidated Class Action Complaint ("CAC") filed in April 2018. However, the class period at issue is as alleged in the proposed amended Complaint filed in May 2019 with Lead Plaintiffs' motion for leave to amend, which was the basis for the Second Circuit appeal after the Court ruled it sufficiently pleaded falsity and scienter but not loss causation. Based on that document, the class period for the Settlement Class approved by this Court in its Preliminary Approval Order ends on October 31, 2017. As such, January 29, 2018, is the correct ending date for the 90-day look back period when calculated from November 1, 2017.

Second, the Scott Objection criticizes the Plan of Allocation's provision that payments will limited to claimants whose distribution amount would be $10 or more. Scott Obj. at 6-7. Courts routinely rule that such a minimum payment threshold is fair and reasonable because it will ***benefit*** the class as a whole by "sav[ing] the settlement fund from being depleted by the administrative costs associated with claims unlikely to exceed those costs and courts have frequently approved such thresholds." *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 328 (3d Cir. 2011).[12]

[12] *See also, e.g.*, *In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 463 (S.D.N.Y. 2004) ("[c]lass counsel are entitled to use their discretion to conclude that, at some point, the need to avoid excessive expense to the class as a whole outweighs the minimal loss to the claimants who are not receiving their *de minimis* amounts of relief"); *In re Crocs, Inc. Sec. Litig.*, 306 F.R.D. 672, 692-93 (D. Colo. 2014) (finding that a "$10.00 threshold for payment from the Net Settlement Fund is proper in order to preserve the settlement fund from excessive and unnecessary expenses").

Third, the Scott Objection objects to the Plan's proposal for the disposal of uncashed settlement funds. Scott Obj. at 7. Any distribution to the cy pres recipient would be made only after 100% of Net Settlement Funds have been distributed to eligible claimants and only when the funds remaining because of uncashed or returned checks is sufficiently small that a further re-distribution to claimants would not be cost-effective. Plan of Allocation (Appendix A to Notice), ¶23. Thus, any distribution ultimately made to the cy pres recipient (if any) will be a tiny percentage of the Settlement. By contrast, the Scott Objection's alternative proposal to allow Authorized Claimants to vote for a cy pres recipient would impose massive administrative costs. The Court can make a more efficient determination of a suitable cy pres recipient.

Finally, the concern in the Scott Objection that "[n]one of this should be in the dark or behind the scenes" (Scott Obj. at 7) is misplaced. The distribution of the Settlement Fund is a transparent process that is part of the public record. The distribution motion presented to the court will include a detailed declaration from the claims administrator that describes the claims administration process and lists every claim, the determination of that claim (as either accepted or rejected), and the calculated recognized loss amounts for every valid claim. *See, e.g.*, Declaration of Robert Cormio Concerning the Results of the Claims Administration Process (ECF No. 165), *Perez v. Higher One Holdings, Inc.,* No.: 3:14-cv-00755-AWT (D. Conn. Feb. 8, 2019); Declaration of Josephine Bravata Concerning the Results of the Claims Administration Process (ECF No. 82-2), *In re Tangoe, Inc., Securities Litig*., No. 3:17-cv-00146 (D. Conn. Oct. 2, 2018).

IV. CONCLUSION

For the foregoing reasons, and those set forth in their opening papers, Lead Plaintiffs respectfully request that the Court overrule the Scott Objection and approve the Settlement and Plan of Allocation. Copies of the (i) proposed Judgment and (ii) proposed Order Approving Plan of Allocation of Net Settlement Fund are being filed herewith.

Dated: May 3, 2022

Respectfully submitted,

/s/ Katherine M. Sinderson

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP
Katherine M. Sinderson (phv09412)
Jesse L. Jensen (phv09430)
Kate W. Aufses (phv09437)
1251 Avenue of the Americas
New York, New York 10020
Tel.: (212) 554-1400
Fax: (212) 554-1444
katiem@blbglaw.com
jesse.jensen@blbglaw.com
kate.aufses@blbglaw.com

Counsel for Lead Plaintiffs Arkansas Teacher Retirement System and Carlos Lagomarsino, and Lead Counsel for the Settlement Class

MOTLEY RICE LLC
William H. Narwold (ct 00133)
Mathew P. Jasinski (ct 27520)
One Corporate Center, 17th Floor
20 Church Street
Hartford, Connecticut 06103
Tel.: (860) 882-1675
Fax: (860) 882-1682
bnarwold@motleyrice.com
mjasinski@motleyrice.com

Liaison Counsel for Lead Plaintiffs Arkansas Teacher Retirement System and Carlos Lagomarsino

CERTIFICATE OF SERVICE

I certify that on May 3, 2022 a copy of the foregoing Reply Memorandum of Law in Further Support of Lead Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by email to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System. I further certify that a copy of the foregoing will be sent by email and mail to:

Catherine L. Scott
3606 Druid Lane
Annandale, VA 22003
orba12@yahoo.com

/s/ Katherine M. Sinderson
Katherine M. Sinderson