

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS**

LOUISIANA FIREFIGHTERS' RETIREMENT SYSTEM, THE BOARD OF TRUSTEES OF THE PUBLIC SCHOOL TEACHERS' PENSION AND RETIREMENT FUND OF CHICAGO, THE BOARD OF TRUSTEES OF THE CITY OF PONTIAC POLICE & FIRE RETIREMENT SYSTEM, and THE BOARD OF TRUSTEES OF THE CITY OF PONTIAC GENERAL EMPLOYEES RETIREMENT SYSTEM, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

NORTHERN TRUST INVESTMENTS, N.A., and THE NORTHERN TRUST COMPANY,

Defendants.

Case No. 09-7203

Hon. Jorge L. Alonso

**REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT  
OF (I) SETTLING PLAINTIFFS' MOTION FOR FINAL APPROVAL  
OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION, AND  
(II) CO-LEAD COUNSEL'S MOTION FOR AN AWARD OF  
ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES**

**TABLE OF CONTENTS**

	<b><u>Page</u></b>
I. PRELIMINARY STATEMENT .....	1
II. BACKGROUND .....	2
1. Mailing of Settlement Notice, Publication of Summary Notice, and Filing of Final Approval Papers .....	2
2. No Class Members Have Objected to the Settlement.....	3
3. No Class Members Have Excluded Themselves from the Class.....	4
4. No Investment or Status Challenges Have Been Received .....	4
III. THE REACTION OF THE CLASS STRONGLY SUPPORTS APPROVAL OF THE SETTLEMENT, THE PLAN OF ALLOCATION AND THE REQUESTED ATTORNEYS' FEES AND LITIGATION EXPENSES.....	5
IV. CONCLUSION.....	8

**TABLE OF AUTHORITIES**

	<b>Page(s)</b>
<b>Cases</b>	
<i>Am. Civil Liberties Union of Illinois v. U.S. Gen. Servs. Admin.</i> , 235 F. Supp. 2d 816 (N.D. Ill. 2002) .....	6
<i>GE Capital Corp. v. Lease Resolution Corp.</i> , 128 F.3d 1074 (7th Cir. 1997) .....	5
<i>Goldsmith v. Tech. Solutions Co.</i> , No. 92-C-4374, 1995 WL 17009594 (N.D. Ill. Oct. 10, 1995) .....	6, 7
<i>Isby v. Bayh</i> , 75 F.3d 1191 (7th Cir. 1996) .....	5
<i>Myszka v. Nat’l Collegiate Scouting Ass’n, Inc.</i> , No. 13-CV-01259, 2014 WL 1364468 (N.D. Ill. Mar. 19, 2014).....	5, 6
<i>Retsky Family Ltd. P’ship v. Price Waterhouse LLP</i> , No. 97- C-7694, 2001 WL 1568856 (N.D. Ill. Dec. 10, 2001).....	6
<i>Serv. Spring, Inc. v. Cambria Spring Co.</i> , No. 81-C-1835, 1984 WL 2872 (N.D. Ill. Nov. 30, 1984) .....	8
<i>Silverman v. Motorola Solutions, Inc.</i> , 739 F.3d 956 (7th Cir. 2013) .....	7
<i>Standard Iron Works v. ArcelorMittal</i> , No. 08-C-5214, 2014 WL 7781572 (N.D. Ill. Oct. 22, 2014) .....	7
<i>Young v. City of Chicago</i> , No. 10-C-989, 2013 WL 9947387 (N.D. Ill. Dec. 16, 2013).....	6

Plaintiffs The Board of Trustees of the City of Pontiac Police & Fire Retirement System and The Board of Trustees of the City of Pontiac General Employees Retirement System (collectively, the “Settling Plaintiffs”), on behalf of themselves and the Class, and Co-Lead Counsel respectfully submit this reply memorandum of law in further support of (i) Settling Plaintiffs’ motion for final approval of the proposed Settlement and approval of the proposed Plan of Allocation, and (ii) Co-Lead Counsel’s motion for an award of attorneys’ fees and reimbursement of Litigation Expenses.<sup>1</sup>

## I. PRELIMINARY STATEMENT

The proposed Settlement provides for a cash payment of \$4,250,000 in resolution of all remaining claims asserted in the Action, *i.e.*, the Direct Lending claims brought on behalf of the Class. As detailed in Settling Plaintiffs’ opening papers (Docs. 595-601), the Settlement is the product of hard-fought litigation and extensive, arm’s-length negotiations, and represents a very favorable result for the Class in light of the considerable risks of the continued litigation of the settled claims. Pursuant to the Court’s Preliminary Approval Order (Doc. 585), direct notice of the Settlement has been provided to the Class Members identified by Defendants, supplemented by publication notice. In response to the notice program, ***not a single Settlement Class Member has objected*** to the proposed Settlement, Plan of Allocation, or Co-Lead Counsel’s motion for an award of attorneys’ fees and expenses, and there have been ***no requests for exclusion*** from the Class. It is well established that the absence of any objections and requests for exclusion is

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<sup>1</sup> Unless otherwise defined herein, any capitalized terms shall have the meanings ascribed to them in the Stipulation and Agreement of Settlement of Class Action dated July 25, 2016 (the “Stipulation”) (Doc. 573-1) or in the Joint Declaration of Avi Josefson and Matthew I. Henzi in Support of (I) Settling Plaintiffs’ Motion for Final Approval of Class Action Settlement and Plan of Allocation, and (II) Co-Lead Counsel’s Motion for an Award of Attorneys’ Fees and Reimbursement of Litigation Expenses dated December 7, 2016 (Doc. 601).

strong evidence that the proposed Settlement warrants final approval, particularly when the Class is comprised entirely of sophisticated institutional investors, as is the situation here. For the reasons set forth below and in the prior papers, the proposed Settlement, Plan of Allocation, and request for attorneys' fees and reimbursement of Litigation Expenses are fair and reasonable, and should be approved.

## **II. BACKGROUND**

### **1. Mailing of Settlement Notice, Publication of Summary Notice, and Filing of Final Approval Papers**

Pursuant to the Stipulation and the Preliminary Approval Order, the Settlement Notice was mailed to Class Members identified by Defendants on November 7, 2016. *See* Declaration of Jose Fraga Regarding (A) Mailing of the Settlement Notice Packet; (B) Publication of the Summary Notice; and (C) Report on Challenges and Requests for Exclusion Received to Date, submitted by the Court-approved Settlement Administrator, GCG (the "GCG Decl.") (Doc. 601-2), at ¶ 4. Additionally, the Summary Notice was published in *The Wall Street Journal* and transmitted over the *PR Newswire* on November 22, 2016. *Id.* at ¶ 6 and Exhibits B and C. Also, the notices and other information pertaining to the Settlement was made available on the Settlement website. *Id.* at ¶ 7.

As required by the Preliminary Approval Order, Settling Plaintiffs and Co-Lead Counsel filed detailed papers in support of the Settlement, the Plan Allocation, and the fee and expense application on December 7, 2016. These papers were posted on the public docket (Docs. 595-601), and placed on the website established for the Settlement. *See* Supplemental Declaration of Jose Fraga Regarding Report on Challenges and Requests for Exclusion (the "Supplemental GCG Declaration" or "Suppl. GCG Decl."), submitted herewith, at ¶ 5.

**2. No Class Members Have Objected to the Settlement**

The Settlement Notice informed Class Members of the terms of the proposed Settlement and Plan of Allocation, and that Co-Lead Counsel would apply to the Court for an award of attorneys' fees in an amount not to exceed 18% of the Settlement Fund and reimbursement of Litigation Expenses in an amount not to exceed \$400,000. *See* Settlement Notice ¶ 30.

Paragraphs 18 and 19 of the Preliminary Approval Order provide that any Class Member that wishes to enter an appearance at the Settlement Hearing and/or to object to the Settlement, the proposed Plan of Allocation, or the motion for an award of attorneys' fees and reimbursement of Litigation Expenses, is required to file with the Court and deliver to the specified Co-Lead Counsel and Defendants' Counsel, a notice of appearance and/or written objections, as applicable. Such documents were required to be submitted so that they were received no later than twenty-one (21) calendar days before the Settlement Hearing Date, *i.e.* December 21, 2016. The Settlement Notice informed members of the Class of this deadline and the manner in which notices of appearance and objections were to be submitted.

The representative Co-Lead Counsel designated in the Settlement Notice for receiving notices of appearance or written objections is Avi Josefson of Bernstein Litowitz Berger & Grossmann LLP. *See* Settlement Notice ¶ 39. As of the December 21, 2016 deadline, neither Mr. Josefson nor any other person from his firm had received any notices of appearance or written objections to the Settlement, and none have been received since that date. *See* Declaration of Avi Josefson Regarding Objections to the Settlement, the Proposed Plan of Allocation, and Co-Lead Counsel's Motion for an Award of Attorney's Fees and Reimbursement of Litigation Expenses (the "Josefson Decl."), submitted herewith, at ¶ 5. Representative Co-Lead Counsel has also checked with Defendants' Counsel, and has been informed that they have

not received a notice of appearance or a written objection from any Class Member. *Id.* ¶ 6. In addition, representative Co-Lead Counsel has checked the public docket via PACER and no such notices of appearance or objections have been filed to date. *Id.* ¶ 7.

**3. No Class Members Have Excluded Themselves from the Class**

Pursuant to paragraph 13 of the Preliminary Approval Order, and as set forth in the Settlement Notice and Summary Notice provided to Class Members, any member of the Class desiring to exclude itself from the Class was required to do so by submitting a written request for exclusion in the manner specified in the Settlement Notice. Requests for Exclusion, to be valid, were required to be mailed or delivered to the Settlement Administrator so that they would be received by no later than twenty-one (21) calendar days prior to the Settlement Hearing Date, *i.e.* December 21, 2016. Preliminary Approval Order ¶ 13.

As stated in the Supplemental GCG Declaration, no Requests for Exclusion were received by the Settlement Administrator by the December 21, 2016 deadline, and none have been received since that date. *See* Suppl. GCG Decl. ¶ 4.

**4. No Investment or Status Challenges Have Been Received**

As approved by the Preliminary Approval Order, the Settlement Notice also provides that Class Members could contest the investment data set forth in the cover letter they received with their Settlement Notice. The deadline for submitting an “Investment Challenge” was December 9, 2016. Preliminary Approval Order ¶ 11. Also, the Summary Notice informed entities that were not identified as Class Members based on Northern Trust’s records that they could file a “Status Challenge” to establish their membership in the Class. The deadline for submitting a Status Challenge was December 23, 2016. *Id.* ¶ 12.

As stated in the Supplemental GCG Declaration, no Investment Challenges were received by the Settlement Administrator by the December 9, 2016 deadline for such challenges, and none have been received since that date. *See* Suppl. GCG Decl. ¶ 2. Similarly, no Status Challenges were received by the Settlement Administrator by the December 23, 2016 deadline for those challenges, and none have been received since that date. *Id.* ¶ 3.

### **III. THE REACTION OF THE CLASS STRONGLY SUPPORTS APPROVAL OF THE SETTLEMENT, THE PLAN OF ALLOCATION AND THE REQUESTED ATTORNEYS' FEES AND LITIGATION EXPENSES**

Among the factors that may be considered by a district court in evaluating the fairness of a class action settlement are the following:

- 1) the strength of the plaintiffs' case on the merits measured against the terms of the settlement;
- 2) the complexity, length, and expense of continued litigation;
- 3) the amount of opposition to the settlement among affected parties;
- 4) the presence of collusion in gaining a settlement;
- 5) the stage of the proceedings; and
- 6) the amount of discovery completed.

*GE Capital Corp. v. Lease Resolution Corp.*, 128 F.3d 1074, 1082 (7th Cir. 1997); *see also Isby v. Bayh*, 75 F.3d 1191, 1199 (7th Cir. 1996). All of these the factors but one – the amount of opposition from Class Members – were fully addressed in Settling Plaintiffs' opening papers. At the time of Settling Plaintiffs' prior submission, no objections had been received, but the deadline of December 21, 2016 for submitting such objections had not yet passed. As of this filing two weeks after the deadline, however, it remains the case that not a single Class Member has submitted an objection. *See* Josefson Decl. ¶¶ 5-8. Nor has any Class Member requested exclusion from the Class. *See* Suppl. GCG Decl. ¶ 4.

Courts in this Circuit have consistently viewed the absence of objections and/or opt-outs from class members as strong support for approval of a class action settlement. *See, e.g. Myszka v. Nat'l Collegiate Scouting Ass'n, Inc.*, No. 13-CV-01259, 2014 WL 1364468, at \*1 (N.D. Ill.



Mar. 19, 2014) (“No objections to the Settlement were made by the Class Members, and this fact likewise supports approval”); *Young v. City of Chicago*, No. 10-C-989, 2013 WL 9947387, at \*2 (N.D. Ill. Dec. 16, 2013); *Am. Civil Liberties Union of Illinois v. U.S. Gen. Servs. Admin.*, 235 F. Supp. 2d 816, 819 (N.D. Ill. 2002); *Retsky Family Ltd. P’ship v. Price Waterhouse LLP*, No. 97-C-7694, 2001 WL 1568856, at \*3 (N.D. Ill. Dec. 10, 2001) (“The absence of objection to a proposed class settlement is evidence that the settlement is fair, reasonable and adequate”); *Goldsmith v. Tech. Solutions Co.*, No. 92-C-4374, 1995 WL 17009594, at \*1 (N.D. Ill. Oct. 10, 1995). Here, the fact that no Class Member objected to the Settlement or sought to be excluded from the Class is particularly significant given the nature of the notice provided to Class Members and the composition of the Class.

The Class is comprised entirely of sophisticated institutional investors that were direct participants in Defendant Northern Trust’s securities lending program during the Class Period. In this case, direct mail notice was able to be effected to Class Members. Each Class Member invested in one or more of the Core Pools and received periodic statements and other mailings from Northern Trust regarding their investments. As a result, Northern Trust had contact information for each member of the Class, which were Northern Trust’s current or former customers. Pursuant to the terms of the Stipulation and the Preliminary Approval Order, Defendants provided the Settlement Administrator with the names and addresses of all identified Class Members. Using that information, and as discussed above, the Settlement Administrator mailed the Settlement Notice Packet to identified Class Members on November 7, 2016. *See* GCG Decl. ¶ 4. In addition, the Summary Notice approved by the Court was published in *The Wall Street Journal* and transmitted over the *PR Newswire* on November 22, 2016. *Id.* ¶ 6.

Of further significance is the fact that members of the Class are typically government retirement plans or other institutions which invested in the Core Pools on behalf of participants in their plan. As such, they are sophisticated institutional investors that, in most cases, have their own fiduciary obligations to plan participants with respect to the investment of plan assets. In that capacity, they are extremely likely to have responsible employees, officials and/or in-house counsel who reviewed the Settlement Notice and made an informed decision as to whether to object to or request exclusion from the Class. The absence of any objections or opt-out requests, therefore, should be seen as an affirmative statement from Class Members that the Settlement is fair and reasonable and should be approved.

The same analysis applies to approval of Co-Lead Counsel's request for attorneys' fees equal to 18% of the Settlement Fund and reimbursement of Litigation Expenses in the amount of \$330,611.92, and to approval of the Plan of Allocation. Where class members have asserted no objections to a fee request or a plan for distributing the proceeds of a settlement, courts take that fact as support for the proposed fee or distribution plan. In *Silverman v. Motorola Solutions, Inc.*, 739 F.3d 956, 959 (7th Cir. 2013), for example, the Court noted that, as here, the class was comprised largely of institutional investors with in-house counsel and fiduciary duties to protect beneficiaries. The fact that none of these institutional investors protested the requested fee award was cited by the Court as a basis for approving the award, even though it was otherwise considered to be a generous award. *Id.*; *see also, Standard Iron Works v. ArcelorMittal*, No. 08-C-5214, 2014 WL 7781572, at \*2 (N.D. Ill. Oct. 22, 2014) (finding that the absence of objections to a fee request from a class that included sophisticated business entities "indicates that the fee is fair and reasonable and consistent with prevailing market rates"); *Goldsmith*, 1995 WL 17009594, at \*1 (identifying the total lack of objections to the proposed settlement and the

plan of distribution as a basis for approving both); *Serv. Spring, Inc. v. Cambria Spring Co.*, No. 81-C-1835, 1984 WL 2872, at \*3 (N.D. Ill. Nov. 30, 1984) (approving the award of a 2.6 multiplier above class counsel's lodestar based, in part, on the fact that "there have been no objections made by any class members to any of the settlements or the petitioners' Application for Fees"). Here, the requested percentage fee, 18% of the Settlement Fund, or \$765,000, plus interest, is only approximately 46% of counsel's lodestar. This fact, coupled with the absence of objections strongly supports approval of Co-Lead Counsel's request for fees and reimbursement of Litigation Expenses.

#### **IV. CONCLUSION**

As established in the opening papers, the Settlement here is an excellent result given the substantial recovery, the presence of skilled opposing counsel, the extensive settlement negotiations, the considerable risk, expense, and delay if the litigation of the Direct Lending claims were to continue, and the certain and immediate benefit of the Settlement to the Class. All of these factors remain unchanged and support approval of the Settlement. In addition, the Court now has the benefit of knowing that there is no opposition from Class Members to the Settlement, the Plan of Allocation, or the requested award of attorneys' fees and Litigation Expenses, and that Class Members have unanimously elected to participate in the Settlement rather than exclude themselves. Accordingly, Settling Plaintiffs and Co-Lead Counsel respectfully request that the Court: (i) approve the proposed Settlement as fair, reasonable and adequate and enter the proposed Judgment; (ii) approve the proposed Plan of Allocation; and (iii) award attorneys' and reimbursement of Litigation Expenses in the full amount requested.

Dated: January 4, 2017

Respectfully submitted,

BERNSTEIN LITOWITZ BERGER  
& GROSSMANN LLP

By: /s/ Avi Josefson

Avi Josefson

875 North Michigan Avenue, Suite 3100

Chicago, IL 60611

Telephone: (312) 373-3880

Illinois Bar No. 6272453

avi@blbglaw.com

– and –

Rebecca E. Boon

1251 Avenue of the Americas

New York, NY 10020

Telephone: (212) 554-1400

rebecca.boon@blbglaw.com

SULLIVAN, WARD, ASHER  
& PATTON, P.C.

Michael J. Asher

Matthew I. Henzi

1000 Maccabees Center

25800 Northwestern Highway

Southfield, MI 48075

Telephone: 248-746-0700

masher@swappc.com

mhenzi@swappc.com

*Counsel for Plaintiffs The Board of Trustees of  
the City of Pontiac Police & Fire Retirement  
System and The Board of Trustees of the City  
of Pontiac General Employees Retirement  
System and Co-Lead Counsel for the Class*

#1048656

**CERTIFICATE OF SERVICE**

I, Avi Josefson, an attorney, hereby certify that a copy of the foregoing “Reply Memorandum of Law in Further Support of (I) Settling Plaintiffs’ Motion for Final Approval of Class Action Settlement and Plan of Allocation, and (II) Co-Lead Counsel’s Motion for an Award of Attorneys’ Fees and Reimbursement of Litigation Expenses” was served on counsel for all parties electronically via the CM/ECF system on January 4, 2017.

Dated: January 4, 2017

By: /s/ Avi Josefson  
Avi Josefson