

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

IN RE ADVANCE AUTO PARTS, INC.
SECURITIES LITIGATION

Case No. 18-cv-00212-RTD-SRF

CLASS ACTION

**REPLY BRIEF IN FURTHER SUPPORT OF (I) CLASS REPRESENTATIVE'S
MOTION FOR FINAL APPROVAL OF SETTLEMENT AND PLAN OF
ALLOCATION AND (II) CLASS COUNSEL'S MOTION FOR AN AWARD OF
ATTORNEYS' FEES AND LITIGATION EXPENSES**

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Date: June 6, 2022

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Court-appointed Class Representative the Public Employees' Retirement System of Mississippi ("Class Representative"),¹ on behalf of itself and the Court-certified Class, and Class Counsel respectfully submit this Reply Brief in further support of (i) Class Representative's Motion for Final Approval of Settlement and Plan of Allocation (D.I. 358); and (ii) Class Counsel's Motion for an Award of Attorneys' Fees and Litigation Expenses (D.I. 360) (together, the "Motions").

I. PRELIMINARY STATEMENT

As detailed in Class Representative's and Class Counsel's opening papers in support of the Motions filed on May 9, 2022 (D.I. 358-62) ("Opening Papers"), the proposed Settlement—providing for a \$49,250,000 cash payment in exchange for the resolution of all claims asserted in the Action against Defendants—is an excellent result for the Class. The Settlement takes into account the risks and complexities of continued litigation as well as the delay and substantial expense of litigating the Action through Defendants' pending motion for summary judgment, trial, and post-trial appeals. Moreover, the Settlement is the result of extensive arm's-length negotiations between experienced counsel, including formal mediation, under the guidance of a well-respected mediator who ultimately issued a recommendation that the Action be resolved for the Settlement Amount. Likewise, Class Counsel's request for a 25% fee² and Litigation Expenses is also fair and

¹ All capitalized terms used and not otherwise defined in this Reply Brief have the meanings ascribed to them in the Stipulation and Agreement of Settlement, dated December 23, 2021 (D.I. 355-1), or in the Declaration of Sharan Nirmul in Support of (A) Class Representative's Motion for Final Approval of Settlement and Plan of Allocation; and (B) Class Counsel's Motion for an Award of Attorneys' Fees and Litigation Expenses, dated May 9, 2022 (D.I. 362) ("Nirmul Declaration" or "Nirmul Decl.>").

² Notably, if approved, a 25% fee would result in a *negative* multiplier of approximately 0.73 on Plaintiff's Counsel's lodestar. As set forth in the Fee Brief (D.I. 361), through April 30, 2022, Plaintiff's Counsel devoted more than 36,416 hours to this Action, resulting in a lodestar of \$16,982,276.00, and have continued to expend time on this Action since that date.

reasonable, especially considering the result achieved for the Class, the caliber of work performed, the risks of litigation, and comparable fee and expense awards.

Given the quality of the Settlement, it is no surprise that the Class's response to the Settlement, the Plan of Allocation, and Class Counsel's request for attorneys' fees and Litigation Expenses has been overwhelmingly positive. In accordance with the Court's January 11, 2022 Order Preliminarily Approving Settlement and Providing for Notice (D.I. 356), the Court-authorized Claims Administrator, Kurtzman Carson Consultants LLC ("KCC"), conducted an extensive notice campaign, including mailing 94,462 Postcard Notices and 329 Notices to potential Class Members and nominees, publishing a summary notice in *The Wall Street Journal* and transmitting the same over *PR Newswire*, and posting relevant information and documents—including the Opening Papers—on the webpage www.AAPSecuritiesLitigation.com.³ In addition, Defendants have issued notice pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1715 *et seq.* D.I. 357. The foregoing notice efforts have informed Class Members of the Settlement, the Plan of Allocation, and the requested fees and Litigation Expenses, as well as, *inter alia*, Class Members' options in connection with the Settlement. *See, e.g.*, Initial Cavallo Decl., Exs. A-C.

Following this notice campaign, ***not a single member of the Class objected to any aspect of the Settlement, the Plan of Allocation, or the requested fees and Litigation Expenses.*** Class Representative—a sophisticated institutional investor—also supports the Settlement and the fee and expense request. Further, out of the tens of thousands of potential Class Members that received

³ *See* Supplemental Declaration of Lance Cavallo Regarding (A) Update on Mailing of Postcard Notice and Notice Packet; (B) Update on Telephone Hotline and Settlement Website; and (C) Report on Requests for Exclusion Received ("Supplemental Cavallo Declaration" or "Supp. Cavallo Decl.") submitted herewith as Exhibit 1, at ¶ 2, as well as the previously filed Declaration of Lance Cavallo, dated May 9, 2022 (D.I. 362-2) ("Initial Cavallo Decl.").

notice of the Settlement, *just one* individual requested exclusion from the Class, further underscoring the positive reaction of the Class. *See* Supp. Cavallo Decl., ¶ 5.⁴ In sum, the Class's reaction is a further indication that the Settlement, the Plan of Allocation, and Class Counsel's request for attorneys' fees and Litigation Expenses are fair and reasonable and should be approved.

II. THE CLASS'S REACTION PROVIDES ADDITIONAL SUPPORT FOR APPROVAL OF THE MOTIONS

In their Opening Papers, Class Representative and Class Counsel demonstrated that the Settlement, the Plan of Allocation, and the request for attorneys' fees and Litigation Expenses are fair and reasonable and warrant the Court's approval. Now that the time for objecting or requesting exclusion has passed, the lack of any objections and the single exclusion request clearly support approval.

A. The Class's Reaction Supports Approval of the Settlement and Plan of Allocation

The Third Circuit instructs district courts to consider the reaction of the class in determining whether to approve a class action settlement. *Girsh v. Jepsen*, 521 F.2d 153, 157 (3d Cir. 1975).⁵ Thus, under *Girsh*, courts consider whether "the number of objectors, in proportion to the total class, indicates that the reaction of the class to the settlement is favorable." *In re Schering-Plough Corp. Enhance Sec. Litig.*, 2013 WL 5505744, at *2 (D.N.J. Oct. 1, 2013); *see also In re Nat'l Football League Players Concussion Injury Litig.*, 821 F.3d 410, 438 (3d Cir. 2016) (finding

⁴ Although Class Representative and Class Counsel have honored their request for exclusion from the Class, the individual requesting exclusion may not be a Class Member, as they did not demonstrate Class membership by providing information regarding their AAP common stock transactions with their exclusion request. *See* Initial Cavallo Decl., Ex. C.

⁵ Unless otherwise noted, all internal quotation marks, citations, and other punctuation are omitted, and all emphasis is added.

factor favored settlement where “only approximately 1% of class members objected and approximately 1% of class members opted out”).

Here, the absence of *any* objections from Class Members strongly supports approval of the Settlement and Plan of Allocation. *Whiteley v. Zynerba Pharms., Inc.*, 2021 WL 4206696, at *3 (E.D. Pa. Sept. 16, 2021) (finding lack of objections to be “persuasive evidence of the fairness and adequacy of the proposed settlement,” which “weighs in favor of a final approval”); *In re Cendant Corp. Litig.*, 264 F.3d 201, 235 (3d Cir. 2001) (the “vast disparity between the number of potential class members who received notice of the Settlement and the number of objectors creates a strong presumption . . . in favor of the Settlement”); *see also In re Lucent Techs. Inc., Sec. Litig.*, 307 F. Supp. 2d 633, 649 (D.N.J. 2004) (“The favorable reaction of the Class supports approval of the proposed Plan of Allocation.”). In particular, the absence of any objections from institutional investors, who possessed ample means and incentive to object to the Settlement if they deemed it unsatisfactory, is further evidence of the Settlement’s fairness. *See, e.g., In re Facebook, Inc. IPO Sec. & Derivative Litig.*, 343 F. Supp. 3d 394, 410 (S.D.N.Y. 2018) (“That not one sophisticated institutional investor objected to the Proposed Settlement is indicia of its fairness.”), *aff’d*, 822 F. App’x 40 (2d Cir. 2020).

Likewise, the fact that only one individual has requested exclusion from the Class following extensive notice efforts—representing a miniscule percentage (0.001%) of the 94,791 notices mailed—further supports approval of the Settlement. *See, e.g., Varacallo v. Mass. Mut. Life Ins. Co.*, 226 F.R.D. 207, 221, 251 (D.N.J. 2005) (where only 0.06% of class members opted out of the settlement favored approval of the settlement); *Destefano v. Zynga, Inc.*, 2016 WL 537946, at *14 (N.D. Cal. Feb. 11, 2016) (noting low number of exclusions supports reasonableness of a securities class action settlement).

B. The Class’s Reaction Also Supports Approval of Class Counsel’s Request for Attorneys’ Fees and Litigation Expenses

The reaction of the Class similarly supports Class Counsel’s motion for an award of attorneys’ fees and Litigation Expenses. Here, the lack of *any* objections is strong evidence that the requested fees and expenses are reasonable. *See e.g., In re Wilmington Tr. Sec. Litig.*, 2018 WL 6046452, at * 8 (D. Del. Nov. 19, 2018) (finding no objections to settlement or attorneys’ fees weighed in favor of the fee request); *see also In re Ins. Brokerage Antitrust Litig.*, 282 F.R.D. 92, 121 (D.N.J. 2012) (“The absence of substantial objections by Settlement Class members to the fees requested by Class Counsel strongly supports approval.”); *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 305 (3d Cir. 2005) (describing settlement where only two objections to fee request as a “rare phenomenon”). And, as with the Settlement and Plan of Allocation, the lack of any objections by institutional investors particularly supports approval of the fee request. *See, e.g., Rite Aid*, 396 F.3d at 305 (that “a significant number of investors in the class were sophisticated institutional investors that had considerable financial incentive to object had they believed the requested fees were excessive” and did not do so, supported approval of request).

Accordingly, the favorable reaction of the Class provides strong support for the Settlement, the Plan of Allocation, and Class Counsel’s request for attorneys’ fees and Litigation Expenses.

III. CONCLUSION

For the foregoing reasons, and those set forth in their Opening Papers, Class Representative and Class Counsel respectfully request that the Court approve the Settlement, the Plan of Allocation, and the request for attorneys’ fees and Litigation Expenses. Copies of: (i) the [Proposed] Judgment Approving Class Action Settlement; (ii) the [Proposed] Order Approving Plan of Allocation of Net Settlement Fund; and (iii) the [Proposed] Order Awarding Attorneys’ Fees and Litigation Expenses are submitted herewith.

Date: June 6, 2022

Respectfully submitted,

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EXHIBIT 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

IN RE ADVANCE AUTO PARTS, INC.
SECURITIES LITIGATION

Case No. 18-cv-00212-RTD-SRF

CLASS ACTION

**SUPPLEMENTAL DECLARATION OF LANCE CAVALLO
REGARDING (A) UPDATE ON MAILING OF POSTCARD NOTICE AND NOTICE
PACKET; (B) UPDATE ON TELEPHONE HOTLINE AND SETTLEMENT WEBSITE;
AND (C) REPORT ON REQUESTS FOR EXCLUSION RECEIVED**

I, Lance Cavallo, declare and state as follows:

1. I am a Vice President of Class Actions at Kurtzman Carson Consultants LLC (“KCC”). Pursuant to the Court’s January 11, 2022 Order Preliminarily Approving Settlement and Providing for Notice (D.I. 356) (“Preliminary Approval Order”), the Court approved the retention of KCC as Claims Administrator in connection with the proposed Settlement of the above-captioned Action.¹ I have personal knowledge of the matters stated herein and, if called upon, could and would testify thereto.

UPDATE ON MAILING OF POSTCARD NOTICE AND NOTICE PACKET

2. As set forth in the Initial Mailing Declaration, KCC had mailed 92,267 Postcard Notices and 323 Notice Packets to potential Class Members and nominees as of May 6, 2022. Since the execution of the Initial Mailing Declaration, KCC has continued to receive requests from potential Class Members and nominees for copies of the Postcard Notice and Notice Packet. As a result, an additional 2,195 Postcard Notices and 6 Notice Packets have been mailed such that as of

¹ All terms with initial capitalization not otherwise defined herein shall have the meanings ascribed to them in the Stipulation and Agreement of Settlement, dated December 23, 2021 (D.I. 355-1) and/or in the Declaration of Lance Cavallo Regarding (A) Mailing of Postcard Notice and Notice Packet; (B) Publication of Summary Notice; (C) Establishment of the Telephone Hotline; (D) Establishment of the Settlement Website; and (E) Report on Requests for Exclusion Received to Date, dated May 9, 2022 (D.I. 362-2) (“Initial Mailing Declaration”).

June 3, 2022, KCC has mailed a total of 94,462 Postcard Notices and 329 Notice Packets to potential Class Members or their nominees.

UPDATE ON TELEPHONE HOTLINE AND SETTLEMENT WEBSITE

3. The Initial Mailing Declaration noted that KCC maintains a toll-free telephone number (1-866-819-0430) for Class Members to call and obtain information about the Settlement as well as request a Notice Packet. KCC has promptly responded to each telephone inquiry and will continue to respond to Class Member inquiries via the toll-free telephone number.

4. The Initial Mailing Declaration also noted that KCC maintains a website dedicated to the Settlement (www.AAPSecuritiesLitigation.com). On May 10, 2022, KCC posted to the Settlement Website copies of the papers filed in support of Class Representative's motion for final approval of the Settlement and Plan of Allocation and Class Counsel's motion for an award of attorneys' fees and Litigation Expenses (D.I. 358-62). On June 3, 2022, KCC updated the Settlement Website to inform potential Class Members that the Settlement Hearing on June 13, 2022 would be held via Zoom webinar and provide instructions on how to access the webinar. KCC will continue to maintain and, as appropriate, update the Settlement Website until the conclusion of the administration.

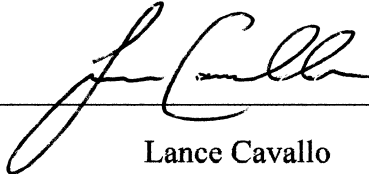
REPORT ON REQUESTS FOR EXCLUSION RECEIVED

5. The Postcard Notice, Notice, Summary Notice, and Settlement Website informed potential Class Members that requests for exclusion from the Class were to be addressed to *AAP Securities Litigation Settlement*, c/o KCC Class Action Services, EXCLUSIONS, 150 Royall Street, Suite 101, Canton, MA 02021, such that they were received no later than May 23, 2022. As of June 3, 2022, KCC has received one (1) request for exclusion, which was included as Exhibit C to the Initial Mailing Declaration.

6. Class Members seeking to object to the Settlement, the Plan of Allocation, and/or Class Counsel's request for attorneys' fees and Litigation Expenses were required to file their objection with the Court, as well as submit their objection in writing to Class Counsel and Defendants' Counsel, by no later than May 23, 2022. As of the date of this Declaration, KCC has not received any objections.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed in Wantagh, New York on June 6, 2022.


Lance Cavallo