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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

IN RE QUALCOMM INCORPORATED SECURITIES LITIGATION

Case No. 3:17-cv-00121-JO-MSB

REPLY MEMORANDUM IN FURTHER SUPPORT OF (I) LEAD PLAINTIFFS' MOTION FOR FINAL APPROVAL OF SETTLEMENT AND PLAN OF ALLOCATION; AND (II) LEAD COUNSEL'S MOTION FOR ATTORNEYS' FEES AND LITIGATION EXPENSES

Judge: Hon. Jinsook Ohta
Date: September 27, 2024
Time: 9:00 a.m.
Courtroom: 4C

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

OTHER AUTHORITIES

I. INTRODUCTION

The proposed Settlement resolves this litigation for a cash payment of $75,000,000. As detailed in Lead Plaintiffs' opening papers (ECF Nos. 439-441), the Settlement is the product of seven years of hard-fought litigation, and the Settlement represents a favorable result for Class Members. Now that the deadline for objections to the Settlement has passed, the reaction of the Class further confirms that the proposed Settlement merits final approval.

Following an extensive Court-approved notice program—including the mailing of notice to more than 1.8 million potential Class Members and nominees—only three objections have been received, which represent an exceedingly small fraction of the Class. As discussed below, the three objections are without merit and may be swiftly overruled. Two of the objections relate only to the method of claims processing and are based on a misapprehension that the Claims Administrator possesses information about Class Members' trading in Qualcomm common stock. *See* ECF No. 442 and Ex. 1.[1] The final objection, which also finds no support in law or fact, was submitted by a serial objector with a substantial track record of asserting frivolous objections to class actions settlements. *See* ECF No. 443.

Notably, no institutional investor has submitted an objection, even though institutional investors held the great majority of Qualcomm common stock during the Class Period. The absence of any objection by these sophisticated class members is additional evidence of the fairness and reasonableness of the proposed Settlement, Plan of Allocation, and the fee and expense request.

II. THE REACTION OF THE CLASS SUPPORTS APPROVAL

A. The Court-Approved Notice Program

Pursuant to the Court's Preliminarily Approval Order (ECF No. 433), the Claims Administrator, A.B. Data, Ltd., conducted a robust notice program under

[1] References to "Ex. __" in this memorandum refer to exhibits to the Supplemental Joint Declaration of Jonathan D. Uslaner and Gregg S. Levin, filed herewith.

Lead Counsel's supervision. The notice program included mailing or emailing over 1.8 million copies of the notice to potential Class Members and nominees, publishing the Summary Settlement Notice in *The Wall Street Journal* and over the *PR Newswire*, and posting notices and documents concerning the Settlement to the case website. *See* ECF No. 441-3, at ¶¶ 2-11; *see also* Supplemental Declaration of Jack Ewashko ("Supp. Ewashko Decl.") (Ex. 2).

The notices informed Class Members of the terms of the proposed Settlement and that Lead Counsel would apply for attorneys' fees in an amount of 23% of the Settlement Fund and for payment of Litigation Expenses in an amount not to exceed $7.5 million. *See* Postcard Notice; Settlement Notice ¶¶ 5, 53 (ECF No. 441-3, at 10, 13, 23). The notices also advised Class Members of their right to object to the proposed Settlement, the Plan of Allocation, or the request for attorneys' fees and expenses, as well as the September 6, 2024 deadline for doing so. *See* Postcard Notice; Settlement Notice at p. 3 and ¶¶ 57-58 (ECF No. 441-3, at 10, 14, 24-25).

Following this extensive notice program, just three individuals have submitted objections—representing less than 0.00017% of the notices mailed.

B. The Reaction of the Class Supports Approval of the Settlement and Plan of Allocation

The fact that only three objections were received after mailing the Notice to over 1.8 million potential Class Members supports approval of the Settlement. *See Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 967 (9th Cir. 2009) (affirming as "a favorable reaction to the settlement" the submission of 54 objections relative to 376,301 notices); *Fernandez v. CoreLogic Credco, LLC.*, 2024 WL 3209391, at *13 (S.D. Cal. June 24, 2024) (the "absence of a large number of objections weighs in favor of settlement"); *see also Nat'l Rural Telecomm. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004) (the "absence of a large number of objections" raises a "strong presumption" that the settlement terms are "favorable to the class members").

Moreover, institutional investors held the great majority of outstanding shares of Qualcomm common stock during the Class Period (ranging from 76.6% to 84%). *See* ECF No. 217-2, at ¶¶ 24, 27. Many of these institutions have substantial financial interests in the Settlement, have legal departments to review the proposed Settlement, and have objected to settlements in other cases. The absence of any objections or requests for exclusion from these sophisticated investors with ample means and incentive to object to the Settlement provides further evidence of the Settlement's fairness. *See, e.g.*, *In re Extreme Networks, Inc. Sec. Litig.*, 2019 WL 3290770, at *9 (N.D. Cal. July 22, 2019) ("Many potential class members are sophisticated institutional investors; the lack of objections from such institutions indicates that the settlement is fair and reasonable."); *Hefler v. Wells Fargo & Co.*, 2018 WL 6619983, at *9 (N.D. Cal. Dec. 18, 2018) ("That not one sophisticated institutional investor objected to the Proposed Settlement is indicia of its fairness.").

C. The Reaction of the Class Supports Approval of the Fee and Expense Request

The reaction of the Class may also be considered with respect to Lead Counsel's motion for attorneys' fees and Litigation Expenses. The receipt of just two objections to the fee motion—which, as discussed below, are meritless—further supports a finding that the requested fees and expenses are fair and reasonable. *See, e.g.*, *Waldbuesser v. Northrop Grumman Corp.*, 2017 WL 9614818, at *5 (C.D. Cal. Oct. 24, 2017) (finding that receipt of two objections to the fee, after mailing 210,000 notices, was "remarkably small given the wide dissemination of notice," and justified a fee award of one-third of the settlement fund); *In re Nuvelo, Inc. Sec. Litig.*, 2011 WL 2650592, at *3 (N.D. Cal. July 6, 2011) (finding one objection to the fee request to be "a strong, positive response from the class, supporting an upward adjustment of the benchmark" fee award).

Additionally, "[a]s with the Settlement itself, the lack of objections from institutional investors who presumably had the means, the motive, and the

sophistication to raise objections weighs in favor of approval" of the requested attorneys' fees. *Wells Fargo*, 2018 WL 6619983, at *15.

III. THE THREE OBJECTIONS LACK MERIT

A. The Sosna and Alexander Objections Lack Merit

Michael Sosna submitted an objection (ECF No. 442) to the claims process because it requires shareholders to locate and submit information about their Qualcomm stock ownership. ECF No. 442, at 1. Mr. Sosna believes this requirement is unnecessary because the information is purportedly known already to the Claims Administrator or counsel. *Id*. But, in fact, neither the Parties nor the Claims Administrator know or can access this information regarding private trading records. Similarly, Hayley Alexander submitted an email "objection" noting that her relevant files "have long since been placed in long-term storage" and that "many claimants will find it too difficult or inconvenient to locate the information required to file a claim after so much time has passed." Ex. 1.

These objections should be overruled. Courts have repeatedly upheld the appropriateness in securities class actions of claim processes—identical to those here—that require individual claimants to submit their securities transaction information to be eligible for payment. As courts recognize, the requirement that class members submit transaction information "comport[s] with the long-approved procedures for the efficient management of class-action settlement distributions," and "[w]ithout that necessary information, the Claims Administrator could not calculate claimants' distributions." *See, e.g.*, *In re Marsh & McLennan Cos. Inc. Sec. Litig.*, 2009 WL 5178546, at *25 (S.D.N.Y. Dec. 23, 2009); *see also In re WorldCom, Inc. Sec. Litig.*, 2004 WL 2591402, at *12 (S.D.N.Y. Nov. 12, 2004) (rejecting objection to requirement that claimants submit transaction information).

With respect to issues raised in Ms. Alexander's objection, Lead Counsel are aware of the possible challenges posed in obtaining documentation and took steps to try to alleviate that problem to the extent that they could. Among other things, Lead

Counsel advised potential class members at the earliest opportunity in the Class Notice mailed in the fall of 2023, to save their records of trading in Qualcomm common stock. *See* ECF No. 328-1, at 4 ("Please keep your investment records concerning Qualcomm common stock"); Class Notice ¶ 12 (ECF No. 328-2, at 5) ("retain your documentation reflecting your transactions and holdings in Qualcomm common stock"); Class Notice ¶ 13 (ECF No. 328-2, at 6) (same).

Additionally, Lead Counsel and the Claims Administrator have responded—and will continue to respond—to inquiries from potential Class Members seeking assistance in tracking down, where possible, information from their brokers. Moreover, neither Defendants nor any counsel benefit in any way if Class Members are unable to submit potentially valid claims; there is no reversion of any of the settlement funds to Defendants based on the amount of claims submitted, and the Net Settlement Fund is distributed on a *pro rata* basis to Class Members who submit eligible claims. *See* Stipulation ¶ 12 (ECF No. 428-1, at 14-15).

In addition to objecting to the claims process, Ms. Alexander makes a brief and generalized objection to fee requests. *See* Ex. 1, at 1. Ms. Alexander's objection does not identify any reasons why the fee sought in this specific case is purportedly excessive. Nor is the fee requested in this case excessive; indeed, as detailed in Lead Counsel's initial papers, the 23% fee request in this case is below the "benchmark" in the Ninth Circuit of 25%, as well as the "norm" of 30% in common fund cases. *See* ECF No. 440, at 6 (citing cases). The fee request is also fair and reasonable when considering counsel's extensive efforts over the past seven years of litigation and represents a negative lodestar multiplier. Accordingly, Ms. Alexander's generalized objection may easily be overruled. *See Asghari v. Volkswagen Grp. of Am., Inc.*, 2015 WL 12732462, at *29-30 (C.D. Cal. May 29, 2015) (rejecting objections to fee requests that "do not articulate why the requested fees are excessive or unreasonable"); *In re Lidoderm Antitrust Litig.*, 2018 WL 4620695, at *5 (N.D. Cal. Sept. 20, 2018) (rejecting as "conclusory" an objection that contended that class

counsel's requested fees were too high, but did "not cite any record evidence or legal authority").

B. The Hayes Objection Lacks Merit

Mr. Hayes is a serial objector. In his objection (ECF No. 443), Mr. Hayes challenges the Plan of Allocation and the request for attorneys' fees.[2] Both aspects of Mr. Hayes's objection are entirely without merit and should be rejected.

1. Mr. Hayes Is a Serial Objector

While Mr. Hayes's objection can be—and should be—firmly rejected on the merits, the Court should be aware that Mr. Hayes has a substantial track record in asserting meritless objections to class action settlements. *See e.g.*, *Hayes v. Harmony Gold Mining Co.*, 509 F. App'x 21, 23 n.1, 24 (2d Cir. Jan. 29, 2013) (noting Hayes is "a frequent class action objector and appellant" and "[w]e have considered all of Hayes's . . . arguments and conclude that they are without merit"); *In re Facebook, Inc. IPO Sec. & Derivative Litig.*, No. 1:12-md-02389-CM-GWG, slip op. at 4 (S.D.N.Y. May 5, 2022), ECF No. 627 (Ex. 3) ("Hayes's motion is another frivolous and vexatious attempt to relitigate precisely the same argument . . . . Both the District Court and the Second Circuit have found his argument to be entirely without merit. . . . [T]here is nothing for this court to do except deny Hayes's renewed motion as a paradigmatic example of a frivolous and vexatious litigation.").

In addition, Mr. Hayes has sought to profit from his objections by seeking payments from class counsel in exchange for agreeing to withdraw his objections or appeals. *See In re Initial Pub. Offering Sec. Litig.*, 728 F. Supp. 2d 289, 294 (S.D.N.Y. 2010) (finding Hayes to be a "serial objector" who had withdrawn an objection to a class settlement in exchange for payment to himself and a related organization). Mr. Hayes has been quoted as saying that he considers his class-action objections to be a "business," and that "'[e]ven a frivolous appeal will prevent' an

[2] A duplicate copy of Mr. Hayes's objection was submitted at ECF No. 444.

immediate payout. . . . 'So they're usually willing to settle for some payment.'" David Glovin, *'Vexatious' Geologist Makes Class-Action Fights His Business*, Bloomberg, Nov. 10, 2011, at 1, 4 (Ex. 4).

Mr. Hayes has been repeatedly sanctioned for his conduct in pursuing objections. *See, e.g.*, *Hayes v. Harmony Gold Mining Co.*, No. 13-635, Order at 2 (2d Cir. Dec. 16, 2013), ECF No. 142 (Ex. 5) (imposing "leave-to-file" sanction on Hayes for "continued filing of duplicative, vexatious, or clearly meritless appeals, motions, or other papers"); *In re Genesis Health Ventures, Inc.*, 362 B.R. 657, 662 (D. Del. 2007), *aff'd* 248 F. App'x 475 (3d Cir. 2007) (affirming sanctions imposed on Hayes, noting that he presented the "quintessential case for the application of sanctions" due to his "bad faith" and "unreasonable and vexatious litigation").

2. Mr. Hayes's Objection to the Plan of Allocation

In his objection, Mr. Hayes argues that the Plan of Allocation should be amended to provide payment only for Class Members who purchased their shares on 21 selected trading days (rather than during the course of the five-year Class Period) and sold on one specific day. *See* ECF No. 443, at 1-2, 4.

This objection is without merit. The Plan of Allocation proposed by Lead Plaintiffs has a highly rational basis because it tracks the allegations made in the Complaint, the scope of the certified Class, and Lead Plaintiffs' damages expert's analysis as to loss causation and damages. *See* ECF No. 441-3, at 28-33; *see also Nguyen v. Radient Pharms. Corp.*, 2014 WL 1802293, at *5 (C.D. Cal. May 6, 2014) (a proposed plan of allocation "need only have a reasonable, rational basis"). The Plan of Allocation is based on Lead Plaintiffs' claims that: (a) Defendants made material misstatements and omissions concerning Qualcomm's alleged anti-competitive bundling between February 1, 2012 through January 20, 2017; (b) these misstatements and omissions artificially inflated the price of Qualcomm common stock; and (c) the alleged artificial inflation was dissipated through a series of corrective disclosures from November 18, 2015 through January 23, 2017, which

caused Qualcomm's stock price to decline. The proposed Plan of Allocation is consistent with Lead Plaintiffs' claims and the analysis of Lead Plaintiffs' damages expert, and is consistent with the manner in which damages would be calculated if Lead Plaintiffs had prevailed at trial. Under Lead Plaintiffs' proposed Plan, claimants who purchased during the Class Period, held their shares through at least one corrective disclosure and sold or held their shares for a loss, will be eligible to recover under the Plan.

In contrast, the alternative Plan of Allocation proposed by Mr. Hayes is not consistent with the claims alleged in the Action or with the contours of the certified Class. Mr. Hayes contends that the only investors who should be entitled to recovery are those who (a) purchased Qualcomm shares from November 18, 2015 through December 7, 2015 or from January 7, 2017 through January 19, 2017, *and* (b) sold those shares on one specific day, January 23, 2017. ECF No. 443, at 4. Mr. Hayes' alternative Plan would deny any recovery for investors who purchased Qualcomm common stock during the great majority of the Class Period, even though those investors are members of the certified Class, purchased shares at the same allegedly inflated prices as other Class Members, and were damaged by the same alleged corrective disclosures.

It would be improper and unfair to provide no recovery under the Settlement for the great majority of Class Members who were injured by Defendants' alleged misconduct and who will be releasing their claims in this Settlement. Likewise, it would be improper and unfair to direct all proceeds of the Settlement to an arbitrary subset of claimants who did not suffer any greater injury and who do not possess any stronger claims than the other members of the Class. Mr. Hayes' conclusory assertions otherwise are baseless and may be rejected.

3. Mr. Hayes's Objection to the Motion for Attorney's Fees

Mr. Hayes also objects to Lead Counsel's motion for attorneys' fees, contending that the "attorney fee request is excessive considering that Lead Counsels

have not disclosed their institutional clients nor their clients' transaction in [Qualcomm common stock]." ECF No. 443, at 3.

First, Lead Plaintiffs Sjunde AP-Fonden ("AP7") and Metzler Asset Management GmbH ("Metzler") have, in fact, disclosed their transactions in Qualcomm common stock during the Class Period, which were set out in their certifications that were publicly filed at the outset of this litigation (ECF No. 11-6) and in related loss charts (ECF No. 11-7). To the extent that Hayes is contending that Lead Counsel were required to disclose trading of other clients of their firms who have had no involvement in this litigation, Hayes provides no support (nor is there any) for that baseless assertion. The Court-appointed Lead Plaintiffs AP7 and Metzler have closely overseen this litigation and have reviewed and approved all major litigation decisions, including decisions concerning the Class Period to be asserted. *See* ECF No. 441-1, at ¶¶ 4-7; 441-2, at ¶¶ 4-7.

Also contrary to Hayes's groundless assertions, neither Lead Plaintiffs nor Lead Counsel has any potential conflict of interest with other Class Members based on the timing of Lead Plaintiffs' trading in Qualcomm stock. Throughout this Action, Lead Plaintiffs and Lead Counsel have advocated for the broadest Class Period consistent with the evidence.[3] Courts have routinely rejected arguments, such as Hayes's argument here, that differences in the timing of class representatives' purchases and sales of shares give rise to a conflict of interest in a securities action. *See, e.g.*, *Blackie v. Barrack*, 524 F.2d 891, 909 (9th Cir. 1975) ("[C]ourts have generally declined to consider conflicts [arising from timing of Class Period purchases] sufficient to defeat class action status"); *In re Zillow Grp., Inc. Sec. Litig.*, 2020 WL 6318692, at *5 (W.D. Wash. Oct. 28, 2020) (the "substantial majority of

[3] Moreover, the operative Class Period of February 1, 2012 through January 20, 2017 is consistent with the first-filed complaint that was filed by a different plaintiff (and different law firm) at the start of the Action. *See* ECF No. 1, at 2 (alleging class period of February 1, 2012 through January 17, 2017).

courts that have addressed the propriety of class certification based on the timing of the class representative's sale or purchases have found . . . that the timing of the transactions does not necessarily create fundamentally divergent interests with the putative class").

In addition, the Class was certified here well before the Settlement was reached, following a contested class certification motion that was opposed by experienced defense counsel, and which included depositions of representatives of Lead Plaintiffs. Following this motion, the Court found that Lead Plaintiffs and Lead Counsel were adequate representatives of the Class and had no conflicts with other Class Members. *See* ECF No. 279, at 18. This highly contested process further disposes of Mr. Hayes's baseless conjecture that Lead Plaintiffs and Lead Counsel somehow colluded to certify an overly long Class Period for their benefit.

In short, Hayes's arguments concerning a purported conflict of interest are entirely without merit. As discussed in Lead Counsel's initial papers, the requested fee of 23% of the Settlement Fund is below the benchmark fee award in this Circuit, results in a fee that is only a fraction of counsel's total lodestar dedicated to the case, and is fair and reasonable under all the circumstances.

IV. CONCLUSION

For the foregoing reasons, and those set forth in their opening papers, Lead Plaintiffs and Lead Counsel respectfully request that the Court approve the Settlement, the Plan of Allocation, and the motion for attorneys' fees and expenses. Copies of the proposed Judgment and proposed orders approving the Plan of Allocation and the motion for attorneys' fees and Litigation Expenses are attached to the Supplemental Joint Declaration as Exhibits 6, 7, and 8.

Dated: September 20, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 20, 2024, I electronically filed the foregoing Reply Memorandum in Further Support of (I) Lead Plaintiffs' Motion for Final Approval of Settlement and Plan of Allocation; and (II) Lead Counsel's Motion for Attorneys' Fees and Litigation Expenses with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record. In addition, I sent copies of this document by FedEx and/or email to the individuals who submitted objections at the following addresses:

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