

1 **KESSLER TOPAZ**
2 **MELTZER & CHECK, LLP**
3 STACEY M. KAPLAN (Bar No. 241898)
4 skaplan@ktmc.com
5 One Sansome Street, Suite 1850
6 San Francisco, CA 94104
7 Telephone: (415) 400-3000
8 Facsimile: (415) 400-3001

9 *Counsel for Lead Plaintiff Arkansas Teacher*
10 *Retirement System and*
11 *Plaintiff John A. Prokop and*
12 *Lead Counsel for the Settlement Class*

13 [Additional Counsel on signature page.]

14
15 **UNITED STATES DISTRICT COURT**
16 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
17 **WESTERN DIVISION**

18 CORY LONGO, individually and on behalf
19 of all others similarly situated, et al.,

20 Plaintiffs,

21 v.

22 OSI SYSTEMS, INC., et al.,

23 Defendants.

Case No. 2:17-cv-08841-FMO-SKx

CLASS ACTION

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

Hearing Date: May 12, 2022

Time: 10:00 a.m.

Courtroom: 6D

Judge: Hon. Fernando M. Olguin

1 Court-appointed Lead Plaintiff,¹ on behalf of itself and the Settlement Class, and
 2 Lead Counsel respectfully submit this reply memorandum in further support of (i) Lead
 3 Plaintiff’s Motion for Final Approval of Settlement and Plan of Allocation (ECF No. 133);
 4 and (ii) Lead Counsel’s Motion for an Award of Attorneys’ Fees and Litigation Expenses
 5 (ECF No. 134) (together, the “Motions”).

6 I. PRELIMINARY STATEMENT

7 As detailed in Lead Plaintiff’s and Lead Counsel’s opening papers in support of the
 8 Motions filed on February 28, 2022 (ECF Nos. 133-35) (“Opening Papers”), the proposed
 9 Settlement—providing for a \$12,500,000 cash payment in exchange for the resolution of
 10 all claims asserted in the Action against Defendants—is an excellent result for the
 11 Settlement Class. The Settlement takes into account the risks, complexities, and expense of
 12 continued litigation and is the result of extensive arm’s-length negotiations between
 13 experienced counsel under the guidance of a well-respected mediator and former federal
 14 judge. Likewise, Lead Counsel’s request for attorneys’ fees—the Ninth Circuit’s 25%
 15 benchmark award²—and Litigation Expenses is also fair and reasonable, especially
 16 considering the result achieved for the Settlement Class, the caliber of work performed, the
 17 risks of litigation, and comparable fee and expense awards.

18 Given the quality of the Settlement, it is no surprise that the Settlement Class’s
 19 response to the Settlement, the Plan of Allocation, and Lead Counsel’s request for
 20 attorneys’ fees and Litigation Expenses has been overwhelmingly positive. In accordance
 21 with the Court’s December 30, 2021 Preliminary Approval Order (ECF No. 131), the Court-

23 ¹ Capitalized terms have the meanings contained in the Stipulation and Agreement of
 24 Settlement dated October 22, 2021 (ECF No. 125-4) (“Stipulation”), or in the Declaration
 25 of Eli R. Greenstein in Support of (I) Lead Plaintiff’s Motion for Final Approval of
 Settlement and Plan of Allocation; and (II) Lead Counsel’s Motion for an Award of
 Attorneys’ Fees and Litigation Expenses dated February 28, 2022 (ECF No. 135).

26 ² Notably, if approved, a 25% fee would result in a fractional or *negative* multiplier of
 27 approximately 0.77 on Plaintiffs’ Counsel’s lodestar. As set forth in the Fee Memorandum
 28 (ECF No. 134), through December 30, 2021, Plaintiffs’ Counsel devoted more than 7,547
 hours to this Action, resulting in a lodestar of \$4,054,672.25, and have continued to expend
 time on this Action since that date.

1 authorized Claims Administrator, A.B. Data, Ltd. (“A.B. Data”), conducted an extensive
 2 notice campaign, including mailing Notices to over 51,500 potential Settlement Class
 3 Members and nominees, publishing a summary notice in *The Wall Street Journal* and
 4 transmitting the same over *PR Newswire*, and posting relevant information and
 5 documents—including the Opening Papers—on the Settlement Website,
 6 www.OSISystemsSecuritiesSettlement.com.³ In addition, Defendants have advised Lead
 7 Counsel that they issued notice pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715
 8 et seq, in accordance with the Stipulation. ECF No. 135, ¶ 96. The foregoing notice efforts
 9 have informed Settlement Class Members of the Settlement, the Plan of Allocation, and the
 10 requested fees and Litigation Expenses, as well as, *inter alia*, Settlement Class Members’
 11 options in connection with the Settlement. *See, e.g.*, Initial Schachter Decl., Exs. A-C.

12 Following this notice campaign, ***not a single member of the Settlement Class has***
 13 ***objected to any aspect of the Settlement, the Plan of Allocation, or the requested fees and***
 14 ***Litigation Expenses***. Lead Plaintiff—a sophisticated institutional investor—has also
 15 expressly endorsed the Settlement and the fee and expense request. *See* ECF No. 125-6.
 16 Further, out of the tens of thousands of potential Settlement Class Members that received
 17 notice of the Settlement, only fourteen requests for exclusion from the Settlement Class
 18 have been received, further underscoring the positive reaction of the Settlement Class. *See*
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25 ³ *See* Supplemental Declaration of Eric Schachter Regarding: (A) Continued
 26 Dissemination of the Notice Packet; (B) Update on Telephone Helpline and Settlement
 27 Website; and (C) Report on Requests for Exclusion Received (“Supplemental Schachter
 28 Declaration” or “Supp. Schachter Decl.”) submitted herewith, as well as the previously filed
 Declaration of Eric Schachter dated February 28, 2022 (ECF No. 133-2) (“Initial Schachter
 Decl.”).

1 Supp. Schachter Decl., ¶ 7.⁴ The Settlement Class’s reaction is a further indication that the
 2 Settlement, the Plan of Allocation, and Lead Counsel’s request for attorneys’ fees and
 3 Litigation Expenses are fair and reasonable and should be approved.

4 **II. THE SETTLEMENT CLASS’S REACTION PROVIDES ADDITIONAL**
 5 **SUPPORT FOR APPROVAL OF THE MOTIONS**

6 In their Opening Papers, Lead Plaintiff and Lead Counsel demonstrated that the
 7 Settlement, the Plan of Allocation, and the request for attorneys’ fees and Litigation
 8 Expenses are fair and reasonable and warrant the Court’s approval. Now that the time for
 9 objecting or requesting exclusion has passed, the Settlement Class’s reaction also clearly
 10 supports approval.

11 **A. The Settlement Class’s Reaction Supports Approval of the Settlement**
 12 **and Plan of Allocation**

13 The Ninth Circuit instructs district courts to consider the reaction of the class in
 14 determining whether to approve a class action settlement. *Churchill Vill., L.L.C. v. Gen.*
 15 *Elec.*, 361 F.3d 566, 575 (9th Cir. 2004).⁵ Moreover, “[i]t is established that the absence of
 16 _____

17 ⁴ As set forth in the Supplemental Schachter Declaration, there were a few instances
 18 where individuals submitted *both* completed Claim Forms *and* Exclusion Request Forms.
 19 Supp. Schachter Decl., ¶ 6 n.3. A.B. Data contacted these individuals to confirm whether
 20 they wanted to participate in the Settlement, or exclude themselves from the Settlement
 21 Class. *Id.* ¶ 6. In all of these instances, the individuals confirmed that their intent was to
 22 submit a Claim Form and participate in the Settlement, but indicated that they had been
 23 confused about what to do with the Exclusion Request Form and decided to submit that as
 24 well. *Id.* Given this confusion, A.B. Data, after conferring with Lead Counsel, has attempted
 25 to contact twelve (12) other individuals who submitted Exclusion Request Forms but who
 26 did not include information regarding their transactions in OSI Securities in order to
 27 confirm that these individuals actually intended to request exclusion from the Settlement
 28 Class. *Id.* During this follow up, A.B. Data also requested that the required transactional
 information be provided. *Id.* To date, five (5) of the individuals A.B. Data contacted have
 confirmed their requests for exclusion and one (1) of the individuals has confirmed that they
 did not intend to request exclusion. *Id.* A.B. Data has not heard from six (6) of the
 individuals contacted. *Id.* To the extent A.B. Data hears from any of these individuals after
 the date of this submission and they advise A.B. Data that they did not intend to exclude
 themselves from the Settlement Class, Lead Counsel will notify the Court.

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

1 a large number of objections to a proposed class action settlement raises a strong
2 presumption that the terms of a proposed class settlement action are favorable to the class
3 members.” *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D.
4 Cal. 2004).

5 Here, the absence of *any* objections from Settlement Class Members strongly
6 supports approval of the Settlement and Plan of Allocation. *See Destefano v. Zynga, Inc.*,
7 2016 WL 537946, at *13 (N.D. Cal. Feb. 11, 2016) (“By any standard, the lack of objection
8 of the Class Members favors approval of the Settlement.”); *Kaye v. Immunocellular*,
9 No. SA CV 17-3250 FMO (SKx), slip op. (ECF No. 147) at 9 (C.D. Cal. Nov. 19, 2019)
10 (Olguin, J.) (finding “[t]he lack of objections” to “support approval of the settlement”); *In*
11 *re Biolase, Inc. Sec. Litig.*, 2015 WL 12720318, at *6 (C.D. Cal. Oct. 13, 2015) (finding
12 class’s positive reaction and absence of objections favored granting final approval of
13 settlement); *see also Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1284-85 (9th Cir.
14 1992) (confirming district court’s approval of plan of allocation as fair, reasonable, and
15 adequate over one objection); *Patel v. Axesstel, Inc.*, 2015 WL 6458073, at *7 (S.D. Cal.
16 Oct. 23, 2015) (approving plan of allocation where it “was laid out in detail in the notice,
17 and no class members objected”). In particular, the absence of any objections from
18 institutional investors, who possessed ample means and incentive to object to the Settlement
19 if they deemed it unsatisfactory, is further evidence of the Settlement’s fairness. *See, e.g.*,
20 *In re Facebook, Inc. IPO Sec. & Derivative Litig.*, 343 F. Supp. 3d 394, 410 (S.D.N.Y.
21 2018) (“That not one sophisticated institutional investor objected to the Proposed
22 Settlement is indicia of its fairness.”); *In re Cathode Ray Tube (CRT) Antitrust Litig.*,
23 2017 WL 2481782, at *4 (N.D. Cal. June 8, 2017) (absence of any entity objection supports
24 “the inference that the class approves of the settlement is even stronger”).

25 Likewise, the fact that only fourteen requests for exclusion were received following
26 extensive notice efforts—representing approximately 0.027% of the over 51,500 Notices
27 mailed—further supports approval of the Settlement. *See, e.g., Destefano*, 2016 WL
28 537946, at *14 (noting that a low number of exclusions supports the reasonableness of a

1 securities class action settlement); *Bostick v. Herbalife Int’l of Am., Inc.*, 2015 WL
2 12731932, at *26 (C.D. Cal. May 14, 2015) (approving settlement with 687 exclusion
3 requests and noting that “[c]ourts generally consider a low number of requests for exclusion
4 [] to weigh strongly in favor of settlement approval”); *Gong-Chun v. Aetna Inc.*, 2012 WL
5 2872788, at *16 (E.D. Cal. July 12, 2012) (finding the fact that “less than two percent of
6 Class Members opted out of the Settlement” supported approval).

7 **B. The Settlement Class’s Reaction Also Supports Approval of Lead**
8 **Counsel’s Request for Attorneys’ Fees and Litigation Expenses**

9 The reaction of the Settlement Class similarly supports Lead Counsel’s motion, on
10 behalf of Plaintiffs’ Counsel, for an award of attorneys’ fees and Litigation Expenses. Here,
11 the lack of *any* objections is strong evidence that the requested fees and expenses are
12 reasonable. *See Destefano*, 2016 WL 537946, at *18 (finding “the lack of objection by any
13 Class Members” to support the 25% fee award); *see also, e.g., Waldbuesser v. Northrop*
14 *Grumman Corp.*, 2017 WL 9614818, at *5 (C.D. Cal. Oct. 24, 2017) (finding receipt of two
15 objections to fee request “remarkably small given the wide dissemination of notice,” which
16 justified fee award of one-third of settlement fund); *In re Nuvelo, Inc. Sec. Litig.*, 2011 WL
17 2650592, at *3 (N.D. Cal. July 6, 2011) (finding one objection to the fee request to be “a
18 strong, positive response from the class, supporting an upward adjustment of the
19 benchmark” fee award). And, as with the Settlement and Plan of Allocation, the lack of any
20 objections by institutional investors particularly supports approval of the fee request. *See In*
21 *re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 305 (3d Cir. 2005) (that “a significant number
22 of investors in the class were ‘sophisticated’ institutional investors that had considerable
23 financial incentive to object had they believed the requested fees were excessive” and did
24 not do so, supported approval of request); *Heffler v. Wells Fargo & Co.*, 2018 WL 6619983,
25 at *15 (N.D. Cal. Dec. 18, 2018) (“[T]he lack of objections from institutional investors who
26 presumably had the means, the motive, and the sophistication to raise objections weighs in
27 favor of approval.”).

28

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

4 **III. CONCLUSION**

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

11 Dated: April 11, 2022

Respectfully submitted,

**KESSLER TOPAZ
MELTZER & CHECK, LLP**

/s/ Stacey M. Kaplan
STACEY M. KAPLAN (Bar No. 241898)
skaplan@ktmc.com
One Sansome Street, Suite 1850
San Francisco, CA 94104
Telephone: (415) 400-3000
Facsimile: (415) 400-3001

-and-

DANIEL ROTKO (*pro hac vice*)
drotko@ktmc.com
HENRY W. LONGLEY (*pro hac vice*)
hlongley@ktmc.com
280 King of Prussia Road
Radnor, PA 19807
Telephone: (610) 667-7706
Facsimile: (610) 667-7056

*Counsel for Lead Plaintiff Arkansas Teacher
Retirement System and Plaintiff John A. Prokop
and Lead Counsel for the Settlement Class*

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KIESEL LAW LLP
PAUL R. KIESEL (Bar No. 119854)
kiesel@kiesel.law
JEFFREY A. KONCIUS (Bar No. 189803)
koncius@kiesel.law
CHERRISSE HEIDI A. CLEOFE (Bar No. 290152)
cleofe@kiesel.law
8648 Wilshire Boulevard
Beverly Hills, CA 90211
Telephone: (310) 854-4444
Facsimile: (310) 854-0812

Liaison Counsel for the Settlement Class

KEIL & GOODSON P.A.
MATT KEIL (*pro hac vice*)
mkeil@kglawfirm.com
406 Walnut Street
Texarkana, AR 71854
Telephone: (870) 772-4113
Facsimile: (870) 773-2967

SAXENA WHITE P.A.
MAYA SAXENA
msaxena@saxenawhite.com
JOSEPH E. WHITE, III
jwhite@saxenawhite.com
LESTER R. HOOKER (Bar No. 241590)
lhooker@saxenawhite.com
5200 Town Center Circle, Suite 601
Boca Raton, FL 33486
Telephone: (561) 394-3399
Facsimile: (561) 394-3382

Additional Counsel