

DISTRICT COURT, DENVER COUNTY, COLORADO Court Address: 1437 Bannock Street, Room 256, Denver, CO, 80202	DATE FILED: December 8, 2023 9:10 AM FILING ID: 85D69064B5152 CASE NUMBER: 2017CV31757
Plaintiff(s) OKLAHOMA POLICE PENSION AND RETIREMENT SYSTEM, Individually and on Behalf of All Others Similarly Situated v. Defendant(s) JAGGED PEAK ENERGY INC., et al.	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
Attorneys for Plaintiff: SHUMAN, GLENN & STECKER Rusty E. Glenn (Atty. Reg. No. 39183) 600 17th Street, Suite 2800 South, Denver, CO 80202 Tel.: (303) 861-3003; Fax: (303) 536-7849 Scott+Scott Attorneys at Law LLP Deborah Clark-Weintraub (<i>admitted pro hac vice</i>) Thomas L. Laughlin, IV (<i>admitted pro hac vice</i>) Emilie B. Kokmanian (<i>admitted pro hac vice</i>) Mandeep Minhas (<i>admitted pro hac vice</i>) 230 Park Ave., 17th Fl., New York, NY 10169 Tel.: (212) 223-6444; Fax: (212) 223-6334	Case Number: 2017CV31757 Division: 209
<p style="text-align: center;">REPLY MEMORANDUM OF LAW IN SUPPORT OF (I) PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION, AND (II) MOTION FOR AWARD OF ATTORNEYS' FEES AND EXPENSES AND PLAINTIFF'S REQUEST FOR AN AWARD FOR ITS REPRESENTATION OF THE SETTLEMENT CLASS</p>	

Pursuant to Colorado Rule of Civil Procedure (“C.R.C.P.”) 23, Plaintiff Oklahoma Police Pension and Retirement System (“OPPRS” or the “Plaintiff”), on behalf of itself and the Settlement Class, respectfully submits this reply memorandum of law in further support of its motion for: (1) final approval of the proposed \$8,250,000 settlement (the “Settlement”) of this securities class action (the “Action”); (2) approval of the proposed Plan of Allocation (the “POA”); (3) certification of the Settlement Class; and (4) award of attorneys’ fees and expenses and award to Plaintiff for its representation of the Settlement Class.

The terms of the Settlement are set forth in the Stipulation of Settlement dated August 21, 2023 (the “Stipulation”) filed with the Court that same day.¹

INTRODUCTION

As outlined in Plaintiff’s opening papers in support of final approval,² the proposed all-cash Settlement of \$8,250,000 is an excellent outcome for the Settlement Class, especially considering the reasonably recoverable damages estimated by Plaintiff’s expert, Dr. Scott D. Hakala, as well as the risks, costs and uncertainties of continued litigation. If approved, the Net Settlement Fund will be equitably distributed among Settlement Class Members in accordance

¹ All capitalized terms not otherwise defined herein have the meanings set forth in the Stipulation and the Declaration of Deborah Clark-Weintraub in Support of (i) Plaintiff’s Motion for Final Approval of Class Action Settlement and Plan of Allocation, and (ii) Motion for an Award of Attorneys’ Fees and Expenses and Plaintiff’s Request for an Award for Its Representation of the Settlement Class (“Weintraub Decl.”), filed with this Court on October 30, 2023. Unless otherwise indicated, citations are omitted and emphasis is added.

² See Plaintiff’s Motion for Final Approval of the Class Action Settlement and Plan of Allocation, and Memorandum of Law in Support Thereof (“Final Approval Motion”), Motion for Award of Attorneys’ Fees and Expenses and Award to Plaintiff for Its Representation of the Settlement Class, and Memorandum of Law in Support Thereof (“Motion for Award of Attorneys’ Fees and Expenses”), and the Weintraub Decl., filed with this Court on October 30, 2023.

with the proposed POA. Further, the requested attorneys' fees of 30% of the Settlement fund, or \$2,475,000, plus interest earned thereon from the date the Settlement proceeds were deposited into escrow, equate to a **negative** multiplier of 0.83, meaning that Plaintiff's Counsel are seeking to be paid for less than all of the hours they expended in prosecuting the Action. As for Plaintiff's Counsel's expenses totaling \$84,811.44, they reflect customary expenses typically incurred to litigate similar cases.

The deadline to submit an exclusion and/or objection request has lapsed, and the reaction from the Settlement Class has been positive. **No objection** to the Settlement, POA, award of attorneys' fees and expenses, or award to Plaintiff for its representation of the Settlement Class was filed with the Court or received by the Claims Administrator or the Parties' counsel. *See* Supplemental Declaration of Deborah Clark-Weintraub in Support of (i) Plaintiff's Motion for Final Approval of Class Action Settlement and Plan of Allocation, and (ii) Motion for an Award of Attorneys' Fees and Expenses and Plaintiff's Request for an Award for Its Representation of the Settlement Class, ¶3; Supplemental Affidavit of Ann Cavanaugh Regarding Notice Dissemination, Publication, and Requests for Exclusion and Objections Received to Date (the "Suppl. Cavanaugh Aff."), ¶9. Moreover, **no Settlement Class Member has sought to be excluded** from the Settlement Class. *See* the Suppl. Cavanaugh Aff., ¶8. This positive reaction follows the mailing of 17,049 Claim Packages to potential Settlement Class Members and Nominee Holders. *Id.*, ¶5.

For the reasons set forth herein and previously detailed in Plaintiff's opening papers, and in light of the overwhelmingly positive response from Settlement Class Members – which further supports the relief requested, Plaintiff respectfully submits that the Settlement and POA should be

finally approved, the Settlement Class should be finally certified, the requested attorneys' fees and expenses should be awarded, and Plaintiff's request for an award for its representation of the Settlement Class should be approved.

THE SETTLEMENT CLASS' REACTION STRONGLY SUPPORTS FINAL APPROVAL OF THE PROPOSED SETTLEMENT AND POA, THE REQUESTED ATTORNEYS' FEES AND EXPENSES, AND AWARD TO PLAINTIFF FOR ITS REPRESENTATION OF THE SETTLEMENT CLASS

Now that the deadline to submit exclusion requests and/or objections has passed, the Court can evaluate the last factor established by the Colorado Court of Appeal for determining whether a proposed class action settlement is fair, reasonable or adequate, *i.e.*, "the reaction of interested parties to the settlement." *Thomas v. Rahmani-Azar*, 217 P.3d 945, 948-49 (Colo. App. 2009); *see also Helen G. Bonfils Found. v. Denver Post Emps. Stock Tr.*, 674 P.2d 997, 998 (Colo. App. 1983). Here, the absence of any requests for exclusion and/or objections from Settlement Class Members serves as compelling evidence that both the Settlement and POA are fair, adequate, and reasonable. *See Shaw v. Interthinx, Inc.*, No. 13-cv-01229-REB-NYW, 2015 U.S. Dist. LEXIS 52783, at *11 (D. Colo. Apr. 21, 2015) (class members' reaction was deemed "extraordinarily positive" for out of 667 class members, "not a single [one] object[ed]" and only one member excluded himself); *Peace Officers' Annuity & Ben. Fund of Ga. V. Davita Inc.*, No. 17-cv-0304, 2021 U.S. Dist. LEXIS 71038-WJM-NRN, at *14-15 (D. Colo. Apr. 13, 2021) (the court "considered the significant fact that no class member . . . objected to any aspect of the settlement," adding that class members' response was "particularly significant" given that no "sophisticated institutional investors with the resources and motivation to object" filed an objection, thereby "show[ing] that the class also consider[ed] th[e] settlement fair and reasonable."). Likewise, the absence of any objection to Plaintiff's Counsel's request for an award of attorneys' fees and

expenses or to Plaintiff's request for an award for its representation of the Settlement Class serves as compelling evidence of the reasonableness of those requests. *See In re Crocs, Inc. Sec. Litig.*, No. 07-cv-02351-PAB-KLM, 2014 U.S. Dist. LEXIS 134396, at *17, 19 (D. Colo. Sept. 18, 2014) (noting "the fact that none of the class members objected to the requested attorneys' fees is significant and weighs in favor of the requested award," and that "[d]espite having nearly a month to review the request prior to the deadline for objections, no class members . . . objected to the requested expenses.").

CONCLUSION

For all of the foregoing reasons, and those stated in Plaintiff's opening papers, Plaintiff respectfully requests that this Court enter the (i) Proposed Final Order and Judgment granting final approval of the Settlement and certifying the Settlement Class,³ (ii) Proposed Order Approving the POA,⁴ and (iii) Proposed Order Awarding Attorneys' Fees and Expenses to Plaintiff's Counsel and Award to Plaintiff for Its Representation of the Settlement Class.⁵

Dated: December 8, 2023

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³ Attached as Exhibit 1 to the Final Approval Motion.

⁴ Attached as Exhibit 2 to the Final Approval Motion.

⁵ Attached to the Motion for Award of Attorneys' Fees and Expenses.

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CERTIFICATE OF SERVICE

I hereby certify that on December 8, 2023, the foregoing document was served on the following counsel by the Colorado Court E-Filing System:

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