

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

BEAVER COUNTY EMPLOYEES’
RETIREMENT FUND; ERIE COUNTY
EMPLOYEES’ RETIREMENT SYSTEM;
and LUC DE WULF, Individually and on
Behalf of All Others Similarly Situated,

Plaintiffs,

vs.

TILE SHOP HOLDINGS, INC.; ROBERT
A. RUCKER; THE TILE SHOP, INC.;
TIMOTHY C. CLAYTON; PETER J.
JACULLO, III; JWTS, INC.; PETER H.
KAMIN; TODD KRASNOW; ADAM L.
SUTTIN; WILLIAM E. WATTS;
ROBERT W. BAIRD & CO.
INCORPORATED; CITIGROUP
GLOBAL MARKETS, INC.; CJS
SECURITIES, INC.; HOULIHAN LOKEY
CAPITAL, INC.; PIPER JAFFRAY
& CO.; SIDOTI & COMPANY, LLC;
TELSEY ADVISORY GROUP LLC; and
WEDBUSH SECURITIES, INC.,

Defendants.

) Civ. No. 0:14-cv-00786-ADM-TNL

) CLASS ACTION

) REPLY MEMORANDUM IN FURTHER
) SUPPORT OF (I) CLASS
) REPRESENTATIVES’ MOTION FOR
) FINAL APPROVAL OF CLASS ACTION
) SETTLEMENT AND PLAN OF
) DISTRIBUTION; AND (II) CLASS
) COUNSEL’S MOTION FOR
) ATTORNEYS’ FEES AND EXPENSES
) AND REIMBURSEMENT OF CLASS
) REPRESENTATIVES’ COSTS AND
) EXPENSES

) DATE: May 3, 2017

) TIME: 10:00 a.m.

) CTRM: The Honorable Ann D.
) Montgomery

TABLE OF CONTENTS

	<u>Page</u>
I. PRELIMINARY STATEMENT	1
II. ARGUMENT	3
A. THE CLASS’ REACTION STRONGLY SUPPORTS APPROVAL OF THE SETTLEMENT AND THE PLAN OF DISTRIBUTION	3
B. THE CLASS’ REACTION ALSO STRONGLY SUPPORTS APPROVAL OF CLASS COUNSEL’S FEE AND EXPENSE REQUESTS	4
III. CONCLUSION	5

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>9-M Corp. v. Sprint Commc’ns. Co. L.P.</i> , No. 11-3401, 2012 WL 5495905 (D. Minn. Nov. 12, 2012).....	5
<i>In re Charter Commc’ns, Inc. Sec. Litig.</i> , No. MDL 1506, 2005 WL 4045741 (E.D. Mo. June 30, 2005).....	4
<i>In re EVCI Career Colls. Holding Corp. Sec. Litig.</i> , No. 05 Civ. 10240 (CM), 2007 WL 2230177 (S.D.N.Y. July 27, 2007)	4
<i>In re Heritage Bond Litig.</i> , No. 02-ML-1475 DT, 2005 WL 1594403 (C.D. Cal. June 10, 2005)	4
<i>In re Wireless Tel. Fed. Cost Recovery Fees Litig.</i> , 396 F.3d 922 (8th Cir. 2005)	3
<i>In re Xcel Energy, Inc. Sec. Derivative & ERISA Litig.</i> , 364 F. Supp. 2d 980 (D. Minn. 2005).....	5
<i>Yarrington v. Solvay Pharms. Inc.</i> , 697 F. Supp. 2d 1057 (D. Minn. 2010).....	5
<i>Zilhaver v. UnitedHealth Grp., Inc.</i> , 646 F. Supp. 2d 1075 (D. Minn. 2009).....	4
Statutes	
15 U.S.C. §78u-4(a)(4).....	2, 4

Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Court-appointed Class Representatives Beaver County Employees' Retirement Fund, Erie County Employees' Retirement System and Luc DeWulf (collectively, "Class Representatives"), on behalf of themselves and the Court-certified Class¹ in the Action, respectfully submit this reply memorandum of law in further support of (1) Class Representatives' Motion for Final Approval of Class Action Settlement and Plan of Distribution (ECF No. 386) and (2) Class Counsel's Motion for Attorneys' Fees and Expenses and Reimbursement of Class Representatives' Costs and Expenses (ECF No. 389).

I. PRELIMINARY STATEMENT

In accordance with the Court's Order Preliminarily Approving Settlement and Providing for Notice and Settlement Hearing dated January 19, 2017 (ECF No. 384), the Court-approved claims administrator for the Settlement, Gilardi & Co. LLC ("Gilardi"), has disseminated over 41,000 Notices to potential Class Members or their nominees.² The Notice informed recipients of, among other things, the essential terms of the Settlement, the Plan of Distribution, and Class Counsel's intention to apply to the Court for attorneys' fees in an amount not to exceed 24% of the Settlement Fund, payment of

¹ All capitalized terms that are not defined in this reply memorandum have the same meanings as those set forth in the Stipulation of Settlement dated July 13, 2017 (ECF No. 381) (the "Stipulation") and the Joint Declaration of Matthew L. Mustokoff and Joseph Russello in Support of (I) Class Representatives' Motion for Final Approval of Class Action Settlement and Plan of Distribution; and (II) Class Counsel's Motion for Attorneys' Fees and Expenses and Reimbursement of Class Representatives' Costs and Expenses (ECF No. 392).

² See Supplemental Declaration of Carole K. Sylvester Regarding Further Dissemination of the Notice and Proof of Claim and Requests for Exclusion Received, dated April 25, 2017 (the "Supp. Sylvester Decl.") at ¶ 3, submitted herewith.

expenses incurred in connection with the institution, prosecution and resolution of the claims against Defendants in an amount not to exceed \$1,200,000, and reimbursement of Class Representatives' costs and expenses (including lost wages) in connection with their representation of the Class pursuant to 15 U.S.C. §78u-4(a)(4) in an aggregate amount not to exceed \$40,000. In addition, the Notice as well as the papers in support of final approval of the Settlement, the Plan of Distribution, and Class Counsel's fee and expense requests were made available on the website established for the Settlement, www.tileshopsecuritiessettlement.com, and the Summary Notice was published in *The Wall Street Journal* and transmitted over the *PR Newswire*.³ The deadlines to file an objection to any aspect of the Settlement and for Class Members to request exclusion from the Class have passed.

Class Representatives and Class Counsel are pleased to advise the Court that there are ***no*** objections to any aspect of the Settlement, the Plan of Distribution, or the requested attorneys' fees and expenses. In addition, only three requests for exclusion from the Class have been received, representing a total of 516 shares of Tile Shop Holdings, Inc. common stock. *See* Supp. Sylvester Decl., ¶ 4; Ex. A.

Further, as set forth in Class Representatives' opening papers, each of the Class Representatives appointed by the Court to prosecute, monitor, and oversee this complex litigation – including two sophisticated institutional investors – has expressly endorsed

³ *See* Declaration of Carole K. Sylvester Regarding (A) Mailing of the Notice and Proof of Claim, (B) Publication of the Summary Notice, and (C) Requests for Exclusion Received To Date, dated March 17, 2017, at ¶ 13 (the "Sylvester Decl.") (ECF No. 396).

both the Settlement and Class Counsel's requested attorneys' fees and expenses. *See* ECF No. 393, ¶¶ 6-10; ECF No. 394, ¶¶ 6-10; ECF No. 395, ¶¶ 6-7. Class Representatives' support for – and the total absence of objections to – the Settlement, the Plan of Distribution, and the fee and expense requests are clear testaments to their fairness, adequacy and reasonableness.

II. ARGUMENT

A. THE CLASS' REACTION STRONGLY SUPPORTS APPROVAL OF THE SETTLEMENT AND THE PLAN OF DISTRIBUTION

Class Representatives and Class Counsel respectfully submit that their opening papers in support of the motion for final approval of the proposed Settlement and Plan of Distribution amply demonstrate that the motion should be granted. Now that the time for submitting objections has passed, the Class' reaction also clearly supports approval.

As discussed in Class Representatives' opening papers (ECF Nos. 388, 392), the Eighth Circuit has established “the amount of opposition to the settlement” as a factor for courts to consider in determining whether a proposed class action settlement is fair, reasonable and adequate. *See In re Wireless Tel. Fed. Cost Recovery Fees Litig.*, 396 F.3d 922, 933 (8th Cir. 2005) (finding the fact that “the amount of opposition to the settlement [was] miniscule” supported approval of the settlement). To that end, it is well settled that the complete absence – or even a small number – of objections to a proposed class action settlement is strong evidence that the settlement is fair and reasonable. *See In re Zurn Pex Plumbing Prods. Liab. Litig.*, Court File No. 08-MDL-1958 ADM/AJB, 2013 WL 716088, at *7 (D. Minn. Feb. 27, 2013) (“The absence of any opposition to the

settlement strongly supports final approval.”); *Zilhaver v. UnitedHealth Grp., Inc.*, 646 F. Supp. 2d 1075, 1080 (D. Minn. 2009) (“Without any class objection, this factor strongly supports settlement approval.”). Following the extensive notice program undertaken in accordance with the Court’s Preliminary Approval Order, the fact that *not a single* objection was filed strongly supports approval of the Settlement.

In addition, there have been no objections to the Plan of Distribution. As discussed in Class Representatives’ opening papers, just like the Settlement as a whole, a proposed plan of allocation must be fair and reasonable. *See In re Charter Commc’ns, Inc. Sec. Litig.*, No. MDL 1506, 2005 WL 4045741, at *10 (E.D. Mo. June 30, 2005). Here, Class Counsel submit that the Plan of Distribution – which was developed in consultation with Class Representatives’ damages expert – is fair and reasonable. *See* ECF No. 392, ¶¶ 66-72. Thus, the Class’ reaction provides additional strong support for approving the Plan of Distribution.⁴

B. THE CLASS’ REACTION ALSO STRONGLY SUPPORTS APPROVAL OF CLASS COUNSEL’S FEE AND EXPENSE REQUESTS

Finally, not a single Class Member has objected to Class Counsel’s motion for attorneys’ fees and expenses, including the request for reimbursement of costs and expenses to Class Representatives pursuant to the Private Securities Litigation Reform Act of 1995, 15 U.S.C. §78u-4(a)(4). The lack of objections is strong evidence that the

⁴ *See In re EVCI Career Colls. Holding Corp. Sec. Litig.*, No. 05 Civ. 10240 (CM), 2007 WL 2230177, at *11 (S.D.N.Y. July 27, 2007) (courts should “consider the reaction of a class to a plan of allocation” and, where no objections are received, “the Plan of Allocation should be approved”); *In re Heritage Bond Litig.*, No. 02-ML-1475 DT, 2005 WL 1594403, at *11 (C.D. Cal. June 10, 2005) (“The fact that there has been no objection to this plan of allocation favors approval.”).

requested amount of fees and expenses is reasonable. *See 9-M Corp. v. Sprint Commc'ns. Co. L.P.*, No. 11-3401 (DWF/JSM), 2012 WL 5495905, at *3 (D. Minn. Nov. 12, 2012) (“The absence of objections or disapproval by class members to Settlement Class Counsel’s fee-and-expense request further supports finding it reasonable.”); *see also In re Xcel Energy, Inc. Sec. Derivative & ERISA Litig.*, 364 F. Supp. 2d 980, 998 (D. Minn. 2005) (concluding that the reaction of the class supported the requested fee amount where there were a “minuscule” number of total objections); *Yarrington v. Solvay Pharms. Inc.*, 697 F. Supp. 2d 1057, 1064 (D. Minn. 2010) (noting that the settlement class supported counsel’s fee request based on the fact that only one untimely objection was received).

III. CONCLUSION

For the reasons discussed in this reply memorandum and detailed in Class Representatives’ and Class Counsel’s opening papers, Class Representatives and Class Counsel respectfully request that the Court approve (i) the Settlement; (ii) the Plan of Distribution; and (iii) Class Counsel’s request for attorneys’ fees and expenses, including those costs and expenses incurred by Class Representatives.

DATE: April 26, 2017

Respectfully submitted,

KESSLER TOPAZ MELTZER
& CHECK, LLP

/s/ Matthew L. Mustokoff

MATTHEW L. MUSTOKOFF

Matthew L. Mustokoff (admitted *pro hac vice*)
Kimberly A. Justice (admitted *pro hac vice*)

Michelle M. Newcomer (admitted *pro hac vice*)
Margaret E. Onasch (admitted *pro hac vice*)
Nathan Hasiuk (admitted *pro hac vice*)
280 King of Prussia Road
Radnor, PA 19087
Telephone: (610) 667-7706
Facsimile: (610) 667-7056
mmustokoff@ktmc.com
kjustice@ktmc.com
nnewcomer@ktmc.com
monasch@ktmc.com,
nhasiuk@ktmc.com

and

Stacey M. Kaplan (admitted *pro hac vice*)
Paul A. Breucop (admitted *pro hac vice*)
One Sansome Street, Suite 1850
San Francisco, CA 941904
Telephone: (415) 400-3000
Facsimile: (415) 400-3001
skaplan@ktmc.com
pbreucop@ktmc.com

Samuel H. Rudman (admitted *pro hac vice*)
Joseph Russello (admitted *pro hac vice*)
Francis P. Karam (admitted *pro hac vice*)
William J. Geddish (admitted *pro hac vice*)
Christopher T. Gilroy (admitted *pro hac vice*)

ROBBINS GELLER RUDMAN
& DOWD, LLP

/s/Joseph Russello
JOSEPH RUSSELLO
58 South Service Road, Suite 200
Melville, NY 11747
Telephone: (631) 367-7100
Facsimile: (631) 367-1173
srudman@rgrdlaw.com
jrussello@rgrdlaw.com
fkaram@rgrdlaw.com

wgeddish@rgrdlaw.com
cgilroy@rdgrdlaw.com

and

JEFFREY D. LIGHT (*pro hac vice*)
655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)
jeffl@rgrdlaw.com

Class Counsel for Plaintiffs

Karl L. Cambronne (#14321)
Jeffrey D. Bores (#227699)
Bryan L. Bleichner (#0326689)
CHESTNUT CAMBRONNE, PA
17 Washington Avenue North, Suite 300
Minneapolis, MN 55401-2048
Telephone: (612) 339-7300
Facsimile: (612) 336-2940
kcambronne@chestnutcambronne.com
jbores@chestnutcambronne.com
bbleichner@chestnutcambronne.com

Liaison Counsel for Plaintiffs

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

BEAVER COUNTY EMPLOYEES')
RETIREMENT FUND; ERIE COUNTY)
EMPLOYEES' RETIREMENT SYSTEM;)
and LUC DE WULF, Individually and on)
Behalf of All Others Similarly Situated,)

Plaintiffs,)

vs.)

TILE SHOP HOLDINGS, INC.; ROBERT)
A. RUCKER; THE TILE SHOP, INC.;)
TIMOTHY C. CLAYTON; PETER J.)
JACULLO, III; JWTS, INC.; PETER H.)
KAMIN; TODD KRASNOW; ADAM L.)
SUTTIN; WILLIAM E. WATTS; ROBERT)
W. BAIRD & CO. INCORPORATED;)
CITIGROUP GLOBAL MARKETS, INC.;)
CJS SECURITIES, INC.; HOULIHAN)
LOKEY CAPITAL, INC.; PIPER JAFFRAY)
& CO.; SIDOTI & COMPANY, LLC;)
TELSEY ADVISORY GROUP, LLC; and)
WEDBUSH SECURITIES, INC.,)

Defendants.)

Civil Action No. 14-cv-786-ADM-TNL

CLASS ACTION

**CERTIFICATE OF COMPLIANCE
WITH LOCAL RULE 7.1 WORD-
COUNT AND TYPE-SIZE LIMITS**

I, Matthew L. Mustokoff, certify that the Reply Memorandum in Further Support of (I) Class Representatives' Motion for Final Approval of Class Action Settlement and Plan of Distribution; and (II) Class Counsel's Motion for Attorneys' Fees and Expenses and Reimbursement of Class Representatives' Costs and Expenses complies with the word-count limitations of Local Rule 7.1(f), and the type-size limitations of Local Rule 7.1(h). The Memorandum was prepared using Microsoft ® Office Word 2010, and is in a

13-point font. The Memorandum contains 1,348 words, exclusive of the caption, signature block and tables. I further certify that the word-count function of my word-processing software has been applied specifically to include all text, including headings, footnotes, and quotations.

DATE: April 26, 2017

Respectfully submitted,

KESSLER TOPAZ MELTZER
& CHECK, LLP

/s/ Matthew L. Mustokoff

MATTHEW L. MUSTOKOFF

Matthew L. Mustokoff (admitted *pro hac vice*)
Kimberly A. Justice (admitted *pro hac vice*)
Michelle M. Newcomer (admitted *pro hac vice*)
Margaret E. Onasch (admitted *pro hac vice*)
Nathan Hasiuk (admitted *pro hac vice*)
280 King of Prussia Road
Radnor, PA 19087
Telephone: (610) 667-7706
Facsimile: (610) 667-7056
mmustokoff@ktmc.com
kjustice@ktmc.com
nnewcomer@ktmc.com
monasch@ktmc.com,
nhasiuk@ktmc.com

and

Stacey M. Kaplan (admitted *pro hac vice*)
Paul A. Breucop (admitted *pro hac vice*)
One Sansome Street, Suite 1850
San Francisco, CA 941904
Telephone: (415) 400-3000
Facsimile: (415) 400-3001
skaplan@ktmc.com
pbreucop@ktmc.com

Samuel H. Rudman (admitted *pro hac vice*)
Joseph Russello (admitted *pro hac vice*)
Francis P. Karam (admitted *pro hac vice*)
William J. Geddish (admitted *pro hac vice*)
Christopher T. Gilroy (admitted *pro hac vice*)
ROBBINS GELLER RUDMAN
& DOWD, LLP
58 South Service Road, Suite 200
Melville, NY 11747
Telephone: (631) 367-7100
Facsimile: (631) 367-1173
srudman@rgrdlaw.com
jrussello@rgrdlaw.com
fkaram@rgrdlaw.com
wgeddish@rgrdlaw.com
cgilroy@rdgrdlaw.com

and

JEFFREY D. LIGHT (*pro hac vice*)
655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)
jeffl@rgrdlaw.com

Class Counsel for Plaintiffs

Karl L. Cambronne (#14321)
Jeffrey D. Bores (#227699)
Bryan L. Bleichner (#0326689)
CHESTNUT CAMBRONNE, PA
17 Washington Avenue North, Suite 300
Minneapolis, MN 55401-2048
Telephone: (612) 339-7300
Facsimile: (612) 336-2940
kcambronne@chestnutcambronne.com
jbores@chestnutcambronne.com
bbleichner@chestnutcambronne.com

Liaison Counsel for Plaintiffs