UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: VALE S.A. SECURITIES LITIGATION	Case No. 15 Civ. 09539 (GHW) Consolidated with Case No. 16 Civ. 00658 (GHW)

REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF (I) LEAD PLAINTIFFS' 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

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Lead Plaintiffs, Alameda County Employees' Retirement Association and Orange County Employees Retirement System ("Lead Plaintiffs"), on behalf of themselves and the Settlement Class, and Lead Counsel respectfully submit this reply memorandum of law in further support of Lead Plaintiffs' Motion for Final Approval of Settlement and Plan of Allocation (ECF Nos. 197-198); and Lead Counsel's Motion for an Award of Attorneys' Fees and Litigation Expenses (ECF Nos. 199-200) (the "Motions").[1]

I. PRELIMINARY STATEMENT

The reaction of the Settlement Class confirms that the proposed $25,000,000 Settlement is a very favorable result given the risks of the case. Following an extensive Court-approved notice program—including the mailing of Notice to over 231,000 potential Settlement Class members and nominees—***not a single member of the Settlement Class objected to any aspect of the Settlement, the Plan of Allocation, or the requested fees and expenses***. This represents a significant endorsement of all aspects of the proposed Settlement and fee and expense request by the Settlement Class. Significantly, although institutional investors held the majority of Vale ADRs during the Class Period, no institutional investor has objected to the Settlement or fee request or has requested exclusion. And both Lead Plaintiffs, who are sophisticated institutional investors, have expressly endorsed the Settlement and the requested attorneys' fees and expenses. *See* ECF No. 201-1, at ¶¶ 8-11; ECF No. 201-2, at ¶¶ 8-11.

[1] Unless otherwise defined, all capitalized terms herein have the same meanings as set forth in the Stipulation and Agreement of Settlement dated February 5, 2020 (ECF No. 183-1), as amended on February 20, 2020 (ECF No. 188-2) (the "Stipulation") or in the Declaration of Richard D. Gluck in Support of (I) Lead Plaintiffs' 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 (ECF No. 201).

In addition, only twelve requests for exclusion from the Settlement Class were received, all from individuals, which represents an extremely small percentage of the Settlement Class—approximately 0.005%. Six of the twelve requests were submitted by persons who either provided no details on their trades in Vale ADRs or sold before the first corrective disclosure and thus were not damaged by the conduct alleged in the Action.

As explained below, this reaction of the Settlement Class further demonstrates that the proposed Settlement, the Plan of Allocation, and the request for attorneys' fees and expenses are fair and reasonable and should be approved.

II. THE REACTION OF THE SETTLEMENT CLASS SUPPORTS APPROVAL OF THE SETTLEMENT, THE PLAN OF ALLOCATION, AND THE REQUESTED ATTORNEYS' FEES AND LITIGATION EXPENSES

Lead Plaintiffs' opening papers demonstrated fully why approval of the Motions is warranted. Now that the time for objecting or requesting exclusion from the Settlement Class has passed, the lack of a single objection and the overwhelmingly positive reaction of the Settlement Class provides additional strong support for approval of the Motions.

A. The Court-Approved Robust Notice Program

In accordance with the Court's Preliminary Approval Order, over 231,000 copies of the Notice Packet have been mailed to potential Settlement Class Members and their nominees. *See* Supplemental Declaration of Luiggy Segura Regarding: (A) Mailing of the Notice and Claim Form and (B) Report on Requests for Exclusion Received (the "Suppl. Segura Decl."), filed herewith, at ¶ 2. The Notice informed Settlement Class Members of the terms of the proposed Settlement and Plan of Allocation, and that Lead Counsel would apply for an award of attorneys' fees in an amount not to exceed 17% of the Settlement Fund and payment of Litigation Expenses in an amount not to exceed $2 million. *See* Notice ¶¶ 5, 71. The Notice also apprised Settlement Class Members of their right to object to the proposed Settlement, the Plan of Allocation, and/or the request for

attorneys' fees and expenses; their right to exclude themselves from the Settlement Class; and the May 20, 2020 deadline for filing objections and for receipt of requests for exclusion. *See* Notice at p. 3 and ¶¶ 72, 78.[2]

On April 21, 2020, the Court entered an order confirming that the final Settlement Hearing scheduled for June 10, 2020 would be conducted by telephone given the public health concerns arising from the Covid-19 pandemic. ECF No. 196. That order, entered on the docket, provided Settlement Class Members and other interested parties with access information for the hearing. ECF No. 196, at ¶ 2. In addition, on April 22, 2020, the Claims Administrator updated the Settlement website, www.ValeSecuritiesLitigation.com, and Lead Counsel updated its website, www.blbglaw.com/cases/vale-sa, to inform Settlement Class Members of the telephonic hearing and the access information for the hearing.

On May 6, 2020, 14 days before the objection and exclusion deadline, Lead Plaintiffs and Lead Counsel filed their opening papers in support of the Settlement, Plan of Allocation, and fee and expense request. These papers are available on the public docket (ECF Nos. 197-201), on the Settlement website, *see* Suppl. Segura Decl. ¶ 3, and on Lead Counsel's website.

As noted above, following this notice program, ***not a single Settlement Class Member has objected*** to the Settlement, the Plan of Allocation, or Lead Counsel's application for attorneys' fees and Litigation Expenses. In addition, just twelve requests for exclusion from the Settlement Class have been received—all from individuals and none from institutional investors. *See* Supp.

[2] The Summary Notice, which informed readers of the proposed Settlement, how to obtain copies of the Notice and Claim Form, and the deadlines for the submission of Claim Forms, objections, and requests for exclusion, was published in *The Wall Street Journal* and released over the *PR Newswire* on March 30, 2020. *See* Declaration of Luiggy Segura Regarding: (A) Mailing of the Notice and Claim Form; (B) Publication of the Summary Notice; and (C) Report on Requests for Exclusion Received to Date (ECF No. 201-3) at ¶ 8.

Segura Decl. ¶ 4 & Ex. 1. Four of the twelve requests do not provide any information on the requestors' transactions in Vale ADRs, so it is not possible to determine if those individuals were ever members of the Settlement Class. Two other individuals sold all of their ADRs before the first alleged corrective disclosure and thus would not have been damaged by Defendants' alleged misconduct. The other six requests, in total, represent 1,055 Vale ADRs purchased during the Class Period. The twelve requests for exclusion received represent 0.005% of the total number of Notices mailed to potential Settlement Class Members and 0.0001% of the estimated number of damaged Vale ADRs purchased during the Class Period—by any measure a miniscule portion of the Settlement Class. In the letters submitted requesting exclusion, none of these individuals criticizes or takes any issue with any aspect of the proposed Settlement, the Plan of Allocation, or the requested fees and expenses. [3]

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

The absence of any objections and the small number of requests for exclusion support a finding that the Settlement is fair, reasonable, and adequate. Indeed, "the favorable reaction of the overwhelming majority of class members to the Settlement is perhaps the most significant factor in [the] *Grinnell* inquiry" into the fairness and adequacy of the Settlement. *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 119 (2d Cir. 2005); *see also id*. at 118 ("If only a small number of objections are received, that fact can be viewed as indicative of the adequacy of the settlement.") (quoting 4 NEWBERG ON CLASS ACTION § 13:58); *see also In re Virtus Inv. Partners, Inc. Sec. Litig.*, 2018 WL 6333657, at *2 (S.D.N.Y. Dec. 4, 2018) ("the absence of objections by the class

[3] While not all of the requests include all of the information about trading in Vale ADRs as required by the Notice (¶ 72) and two of the requests were not received by the Claims Administrator until after the May 20, 2020 deadline for receipt of such requests, Lead Plaintiffs and Lead Counsel request that the Court nonetheless grant all of the requests for exclusion from the Settlement Class.

is extraordinarily positive and weighs in favor of settlement"); *Fleisher v. Phoenix Life Ins. Co.*, 2015 WL 10847814, at *6 (S.D.N.Y. Sept. 9, 2015) ("the absence of objections may itself be taken as evidencing the fairness of a settlement"); *In re Advanced Battery Techs., Inc. Sec. Litig.*, 298 F.R.D. 171, 176 (S.D.N.Y. 2014) ("The absence of . . . objections and minimal investors electing to opt out of the Settlement provides evidence of Class members' approval of the terms of the Settlement.")

It is significant that no institutional investors—which held the overwhelming majority of Vale ADRs during the Class Period—have objected to the Settlement. Institutional investors are often sophisticated and possess the incentive and ability to object. The absence of objections by these sophisticated class members is further evidence of the fairness of the Settlement. *See In re Citigroup Inc. Bond Litig.*, 296 F.R.D. 147, 156 (S.D.N.Y. 2013) (the reaction of the class supported the settlement where "not one of the objections or requests for exclusion was submitted by an institutional investor"); *In re AOL Time Warner, Inc. Sec. & "ERISA" Litig.*, 2006 WL 903236, at *10 (S.D.N.Y. Apr. 6, 2006) (the lack of objections from institutional investors supported approval of settlement); *In re AT&T Corp. Sec. Litig.*, 2005 WL 6716404, at *4 (D.N.J. Apr. 25, 2005) (the reaction of the class "weigh[ed] heavily in favor of approval" where "no objections were filed by any institutional investors who had great financial incentive to object").

The uniformly positive reaction of the Settlement Class also supports approval of the Plan of Allocation. *See, e.g.*, *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 986 F. Supp. 2d 207, 240 (E.D.N.Y. 2013) (the conclusion that the proposed plan of allocation was fair and reasonable was "buttressed by the . . . absence of objections from class members"); *In re Veeco Instruments Inc. Sec. Litig.*, 2007 WL 4115809, at *14 (S.D.N.Y. Nov. 7, 2007) ("[N]ot one class member has objected to the Plan of Allocation which was fully explained in the Notice of

Settlement sent to all Class Members. This favorable reaction of the Class supports approval of the Plan of Allocation.").

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

The positive reaction of the Settlement Class should also be considered with respect to Lead Counsel's motion for an award of attorneys' fees and Litigation Expenses. The absence of any objections to the requested attorneys' fees and Litigation Expenses supports a finding that the request is fair and reasonable. *See, e.g.*, *Vaccaro v. New Source Energy Partners L.P.*, 2017 WL 6398636, at *8 (S.D.N.Y. Dec. 14, 2017) ("The fact that no class members have explicitly objected to these attorneys' fees supports their award."); *Asare v. Change Grp. of New York, Inc.*, 2013 WL 6144764, at *16 (S.D.N.Y. Nov. 18, 2013) ("not one potential class member has made an objection, a factor held by courts as supporting approval of an attorneys' fees award"); *In re Veeco Instruments Inc. Sec. Litig.*, 2007 WL 4115808, at *10 (S.D.N.Y. Nov. 7, 2007) (the reaction of class members to a fee and expense request "is entitled to great weight by the Court" and the absence of any objection "suggests that the fee request is fair and reasonable").

As with approval of the Settlement, the lack of objections by institutional investors particularly supports approval of the fee request. *See In re Rite Aid Corp. Sec. Litig*., 396 F.3d 294, 305 (3d Cir. 2005) (fact 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 the fee request); *In re Bisys Sec. Litig.*, 2007 WL 2049726, at *1 (S.D.N.Y. July 16, 2007) (noting that only one individual raised any objection, "even though the class included numerous institutional investors who presumably had the means, the motive, and the sophistication to raise objections if they thought the [requested] fee was excessive").

Accordingly, the uniformly favorable reaction of the Settlement Class strongly supports approval of the Settlement, Plan of Allocation, and the fee and expense request.

III. 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 request for attorneys' fees and Litigation Expenses. Copies of the (i) proposed Judgment, (ii) proposed Order Approving Plan of Allocation of Net Settlement Fund, and (iii) proposed Order Awarding Attorneys' Fees and Litigation Expenses are being filed herewith.

Dated: June 3, 2020

Respectfully submitted,

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