UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF ARKANSAS

ROBERT MURRAY, On Behalf of Himself and All Others Similarly Situated, Plaintiff, vs. EARTHLINK HOLDINGS CORP., et al. Defendants.	No. 4:18-cv-00202-JM CLASS ACTION LEAD PLAINTIFF'S REPLY IN FURTHER SUPPORT OF MOTIONS FOR FINAL APPROVAL OF SETTLEMENT, PLAN OF ALLOCATION, ATTORNEYS' FEES AND LITIGATION EXPENSES, AND AWARD TO LEAD PLAINTIFF PURSUANT TO 15 U.S.C. §78u-4(a)(4)

Lead Plaintiff and Plaintiff's Counsel respectfully submit this reply in further support of the motions for final approval of the $85 million settlement, approval of the proposed Plan of Allocation, award of attorneys' fees and expenses, and award to Lead Plaintiff pursuant to 15 U.S.C. §78u-4(a)(4) in connection with his representation of the Settlement Class.[1]

I. INTRODUCTION

This Settlement establishes a common fund of $85 million, in cash, payable to a class of stockholders in connection with the 2017 Merger of Windstream and EarthLink. As detailed in the opening papers, this complex class action followed six-years of hard fought litigation and was ultimately reached through two arm's-length mediation sessions. There should be no doubt that Lead Plaintiff attained the highest possible class-wide recovery for these claims, relative to the extreme risks of this case and its continued litigation.

The reaction of the Settlement Class confirms that this Settlement represents an outstanding recovery. The robust Court-approved notice program involved, *inter alia*, sending over 94,000 copies of the Notice and Proof of Claim to potential Settlement Class Members and publishing in *The Wall Street Journal*. The January 16, 2025 deadline for objections and requests for exclusion set forth in the Notice has now passed. In response to that extensive notice program, no objections were filed. No stockholder objected to the Settlement, no stockholder objected to the Plan of Allocation, no stockholder objected to the requested attorneys' fees or expenses, and no stockholder even submitted a request for exclusion regarding the Settlement. The Settlement Class is thus universally in favor of this Settlement and the related requests.

As described below, consistent with Eighth Circuit precedent, courts recognize that the reaction of a class including a significant number of sophisticated institutional investors is a

[1] Unless otherwise stated or defined, all capitalized terms used herein have the meanings provided in the Stipulation of Settlement (the "Stipulation"). ECF 182. All citations and footnotes are omitted and all emphasis is added, unless otherwise indicated.

powerful indicator of the reasonableness of a settlement and requested fee in a large securities case. Here, despite a class filled with hundreds of institutional investors with millions of dollars at stake, and the resources and sophistication to challenge an excessive fee, no such institutions objected. Nor did anyone else. This uniformly positive reaction supports the Settlement and the requested attorneys' fees and litigation expenses.

In sum, the positive reaction of the Settlement Class further demonstrates that the proposed Settlement, the Plan of Allocation, the request for fees and expenses, and the request for a Lead Plaintiff award are fair and reasonable and should be approved.

II. THE SETTLEMENT CLASS OVERWHELMINGLY SUPPORTS THE SETTLEMENT

The Eighth Circuit has made clear that a positive reaction or limited objections from a class supports final approval of a settlement. *See, e.g.*, *DeBoer v. Mellon Mortg. Co.*, 64 F.3d 1171, 1178 (8th Cir. 1995) ("The fact that only a handful of class members objected to the settlement similarly weighs in its favor."); *Keil v. Lopez*, 862 F.3d 685, 698 (8th Cir. 2017) ("'while there have been objections, they are small in number, which speaks well of class reaction to the Settlement'").

As noted, over 94,000 copies of the Notice and Proof of Claim were sent to potential Settlement Class Members, the Summary Notice was published in *The Wall Street Journal* and transmitted over *Business Wire*, and the Notice was also posted to a case-specific website, www.earthlinkmergersettlement.com.[2] Following that extensive outreach, not a single stockholder filed an objection. Nor did anyone request exclusion from the Settlement Class. Receiving no objections to a settlement in a securities case "strongly weighs in favor of approving the Settlement."

[2] *See* Declaration of Ross D. Murray Regarding Notice Dissemination, Publication, and Requests for Exclusion Received to Date ("Murray Decl."), ¶¶5-11 (ECF 195), and Supplemental Declaration of Ross D. Murray Regarding Notice Dissemination and Requests for Exclusion Received to Date, ¶¶3-4, submitted herewith.

Beaver Cnty. Employees' Ret. Fund v. Tile Shop Holdings, Inc., 2017 WL 2574005, at *4 (D. Minn. June 14, 2017).

III. THE REACTION OF THE SETTLEMENT CLASS SUPPORTS THE REQUESTED ATTORNEYS' FEES AND EXPENSES

In *Caligiuri v. Symantec Corp.*, 855 F.3d 860, 866 (8th Cir. 2017), the Eighth Circuit approved the district court's consideration of "the reaction of the class" when affirming the reasonableness of a 33.3% percentage fee award. Here, no Settlement Class Member has objected to Plaintiff's Counsel's request for attorneys' fees and payment of litigation expenses.

The Notice identified that Plaintiff's Counsel intended to seek a fee of 32% of the Settlement Amount and payment of litigation expenses not to exceed $950,000. As detailed in Plaintiff's Counsel's opening brief, the requested 32% fee falls comfortably within the range of percentage fees affirmed by the Eighth Circuit and awarded by this Court in common fund cases. In the Eighth Circuit, "courts have frequently awarded attorneys' fees ranging up to 36% in class actions." *Huyer v. Buckley*, 849 F.3d 395, 399 (8th Cir. 2017). The requested fee here is well below that percentage.

The lack of objections from a class made up of a large number of sophisticated institutional investors is significant. Here, Defendants submitted analysis stating that the class of EarthLink stockholders receiving Windstream shares in connection with the Merger includes 214 institutions, holding 80% of the shares at issue. ECF 135-9, ¶¶16-17. The Third Circuit's ruling in *Rite Aid Corp.* is on point:

> The class's reaction to the fee request supports approval of the requested fees. Notice of the fee request and the terms of the settlement were mailed to 300,000 class members, and only two objected. We agree with the District Court such a low level of objection is a "rare phenomenon." Moreover, as the court noted, 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.

In re Rite Aid Corp. Sec. Litig., 396 F.3d 294, 305 (3d Cir. 2005). This ruling is consistent with Eighth Circuit precedent. *See, e.g.*, *In re BankAmerica Corp. Sec. Litig.*, 350 F.3d 747, 750 (8th Cir.

2003) (affirming approval of securities settlement where "[t]he district court further noted the absence of objections from institutional investors"). Other courts agree. *See, e.g.*, *In re Bisys Sec. Litig.*, 2007 WL 2049726, at *1 (S.D.N.Y. July 16, 2007) (lack of objections from institutional investors supported the approval of fee request because "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").

In short, "'[t]he lack of objections to the requested attorneys' fees supports the request, especially because the settlement class includes large, sophisticated institutional investors.'" *In re Schering-Plough Corp. Enhance ERISA Litig.*, 2012 WL 1964451, at *6 (D.N.J. May 31, 2012); *see also Yarrington v. Solvay Pharms., Inc.*, 697 F. Supp. 2d 1057, 1064 (D. Minn. 2010) ("the Settlement Class strongly supports Settlement Class Counsel's request for attorneys' fees of 33% of the Settlement Fund, based on the fact that only one untimely objection was made"). Accordingly, the Court should approve Plaintiff's Counsel's request for attorneys' fees of 32% of the Settlement Amount and payment of $636,422.45 for expenses in connection with the Action.

IV. CONCLUSION

Lead Plaintiff and Plaintiff's Counsel obtained an exceptional result for the Settlement Class, and the Settlement Class agrees. For the reasons set forth above and in their previously filed briefs and declarations, Lead Plaintiff and Plaintiff's Counsel respectfully request that the Court approve the proposed Settlement and Plan of Allocation, as well as the request for attorneys' fees and payment of expenses and the Lead Plaintiff award. Proposed orders are submitted herewith.

DATED: January 30, 2025

Respectfully submitted,

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