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9 Lead Counsel for Lead Plaintiff

10 UNITED STATES DISTRICT COURT
 11 CENTRAL DISTRICT OF CALIFORNIA

12 MATT KARINSKI, Individually and on)
 13 Behalf of All Others Similarly Situated,)

14 Plaintiff,)

15 vs.)

16 STAMPS.COM, INC., et al.,)

17 Defendants.)
 18 _____)

Case No. 2:19-cv-01828-MWF-SK

CLASS ACTION

LEAD PLAINTIFF'S NOTICE OF
 NON-OPPOSITION AND REPLY IN
 FURTHER SUPPORT OF (1) FINAL
 APPROVAL OF CLASS ACTION
 SETTLEMENT; (2) APPROVAL OF
 PLAN OF ALLOCATION;
 (3) AWARD OF ATTORNEYS' FEES
 AND EXPENSES; AND (4) AWARD
 TO LEAD PLAINTIFF PURSUANT
 TO 15 U.S.C. §78u-4(a)(4)

DATE: January 24, 2022

TIME: 10:00 a.m.

CTRM: 5A

JUDGE: Hon. Michael W. Fitzgerald

28

1 Lead Plaintiff and Class Representative Indiana Public Retirement System
2 (“Lead Plaintiff”), by and through its counsel Robbins Geller Rudman & Dowd LLP
3 (“Lead Counsel”), respectfully submits this reply in further support of final approval
4 of the \$100 million Settlement, approval of the proposed Plan of Allocation, and an
5 award of attorneys’ fees and payment of expenses, including an award to Lead
6 Plaintiff in connection with its representation of the Class.¹

7 **I. PRELIMINARY STATEMENT**

8 Pursuant to the October 14, 2021 Order Preliminarily Approving Settlement and
9 Providing for Notice (ECF No. 199) (“Notice Order”), over 84,900 copies of the
10 Notice of Pendency and Settlement of Class Action (“Notice”) and Proof of Claim and
11 Release form (“Proof of Claim”) (together, the “Claim Package”) were mailed to
12 potential Class Members and nominees² and the Summary Notice was published in
13 *The Wall Street Journal* and transmitted over *Business Wire*.³ The January 3, 2022
14 deadline for filing objections and submitting requests for exclusion has now passed.
15 Lead Plaintiff and Lead Counsel are pleased to report that no objections to the
16 proposed Settlement, Plan of Allocation, or fee and expense request were filed and
17 only two requests for exclusion have been received.⁴

18 In sum, the favorable response from Class Members, the absence of any
19 objections to this motion, along with the modest exclusion requests after this extensive
20 notice program, strongly indicates that the Class supports the Settlement, the Plan of
21 Allocation, and the fee and expense application, and weighs in favor of their approval.

22 _____
23 ¹ Unless otherwise noted, all capitalized terms used herein are defined in the
Stipulation of Settlement dated August 16, 2021. ECF No. 196.

24 ² See Supplemental Declaration of Ross D. Murray Regarding Notice
25 Dissemination and Requests for Exclusion Received to Date (“Supp. Murray Decl.”),
¶4, submitted herewith.

26 ³ See Declaration of Ross D. Murray Regarding Notice Dissemination,
27 Publication, and Requests for Exclusion Received to Date (“Murray Decl.”), ¶12.
ECF No. 206.

28 ⁴ Supp. Murray Decl., ¶6 and Exhibit A.

1 *See, e.g., Roberti v. OSI Sys., Inc.*, No. CV-13-09174 MWF (MRW), 2015 WL
 2 8329916, at *5 (C.D. Cal. Dec. 8, 2015) (“By any standard, the lack of objection
 3 favors final approval.”); *Destefano v. Zynga, Inc.*, No. 12-cv-04007-JSC, 2016 WL
 4 537946, at *13-*14 (N.D. Cal. Feb. 11, 2016) (“[T]he lack of objection of the Class
 5 Members favors approval of the Settlement” and “a low number of exclusions
 6 representing a small fraction of shares in the public float also supports the
 7 reasonableness of a securities class action settlement.”).

8 **II. THE REACTION OF THE CLASS STRONGLY SUPPORTS**
 9 **APPROVAL OF THE SETTLEMENT AND PLAN OF**
 10 **ALLOCATION**

11 The “reaction of the class members to the proposed settlement” is a factor to be
 12 considered in assessing the adequacy of the settlement. *Hanlon v. Chrysler Corp.*,
 13 150 F.3d 1011, 1026 (9th Cir. 1998); *In re MRV Commc’ns, Inc. Deriv. Litig.*, No. CV
 14 08-03800 GAF (MANx), 2013 WL 2897874, at *5 (C.D. Cal. June 6, 2013) (“[T]he
 15 reaction of the class to the proffered settlement . . . is perhaps the most significant
 16 factor to be weighed in considering its adequacy.”).⁵

17 The Ninth Circuit has recognized that when “the overwhelming majority of the
 18 class willingly approved the offer and stayed in the class,” this “presents at least some
 19 objective positive commentary as to [the] fairness” of the settlement. *Hanlon*, 150
 20 F.3d at 1027. Indeed, “[i]t is established that the absence of a large number of
 21 objections to a proposed class action settlement raises a strong presumption that the
 22 terms of a proposed class [action] settlement . . . are favorable to the class members.”
 23 *Sudunagunta v. NantKwest, Inc.*, No. CV 16-1947-MWF (JEMx), 2019 WL 2183451,
 24 at *5 (C.D. Cal. May 13, 2019).

25 Here, the reaction of the Class to the Settlement strongly supports final approval.
 26 Pursuant to the Court’s Notice Order, an extensive notice program was conducted. *See*
 27 *generally* Murray Decl. and Suppl. Murray Decl. The Court-approved Notice provided

28 ⁵ Citations are omitted throughout unless otherwise noted.

1 detailed information about the Settlement, including the process of objecting and the
 2 consequences of inaction. Murray Decl., Ex. A. The deadline for objecting to any
 3 aspect of the Settlement has passed, and not a single Class Member has objected,
 4 raising a strong presumption that the Settlement is favorable to Class Members. *See*
 5 *OSI Sys.*, 2015 WL 8329916, at *5. The receipt of only two requests for exclusion also
 6 supports final approval of the Settlement. *See, e.g., Aichele v. City of Los Angeles*, No.
 7 CV12-10863-DMG (FFMx), 2015 WL 5286028, at *4 (C.D. Cal. Sept. 9, 2015) (“As
 8 the Final Order Approving Class Action Settlement explains, there were no objections,
 9 and a total of four opt-outs. . . . As discussed in that Order, the reaction of the class
 10 supports approval of the settlement and it similarly supports the requested award of
 11 attorney's fees.”); *Schulein v. Petroleum Dev. Corp.*, No. SACV 11-1891 AG (ANx),
 12 2015 WL 12698312, at *4 (C.D. Cal. Mar. 16, 2015) (“The class has responded well to
 13 the proposed settlement agreement. . . . Seven class members have requested to be
 14 excluded from the settlement agreement Therefore, this factor weighs in favor of
 15 approving the settlement.”); *Cagle v. Anti-Aging Essentials, Inc.*, No. CV11-02940
 16 AHM (JEMx), 2012 WL 12883828, at *4 (C.D. Cal. June 6, 2012) (“The absence of
 17 any objection to the settlement, and the low opt-out numbers weigh in favor of
 18 approval.”).

19 **III. THE REACTION OF THE CLASS STRONGLY SUPPORTS**
 20 **APPROVAL OF LEAD COUNSEL’S REQUEST FOR AN AWARD**
 21 **OF ATTORNEYS’ FEES AND EXPENSES AND AN AWARD TO**
 22 **LEAD PLAINTIFF PURSUANT TO 15 U.S.C. §78u-4(a)(4)**

23 “[D]istrict courts in the Ninth Circuit also traditionally consider the reaction of
 24 the class when deciding whether to award the requested fee.” *Cagle*, 2012 WL
 25 12883828, at *5; *see also In re Heritage Bond Litig.*, No. 02-ML-1475-DT (RCX),
 26 2005 WL 1594389, at *15 (C.D. Cal. June 10, 2005) (“The presence or absence of
 27 objections from the class is also a factor in determining the proper fee award.”).

28 The Court-approved Notice reported that Lead Counsel would request a fee award
 of up to 16.75% of the Settlement Amount (plus interest), as well as the payment of

1 litigation expenses, totaling no more than \$600,000 (plus interest). *See* Murray Decl.,
2 Exhibit A, Notice at ¶5; *cf. Aichele*, 2015 WL 5286028, at *6 (“In defining a ‘reasonable
3 fee’ in representative actions, the law should ‘mimic the market. . . .’ Attorneys
4 ‘regularly contract for contingent fees between 30% and 40%.’”). And consistent with
5 the Notice, Lead Counsel has requested an award of attorneys’ fees of 16.75% of the
6 Settlement Amount (plus interest), and payment of litigation expenses of \$526,792.79
7 (plus interest). *See* ECF No. 203.

8 To date, no objection to the requested fee and expense award has been filed, and
9 this fact weighs in favor of approval. *See, e.g., In re Omnivision Techs., Inc.*, 559
10 F. Supp. 2d 1036, 1048 (N.D. Cal. 2008) (noting that class members’ reaction may be
11 “a determining factor in . . . determining the fee award” and holding that this factor
12 supported the requested award where no objection “raised any concern about the
13 amount of the fee”); *In re Immune Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1177
14 (S.D. Cal. 2007) (“the lack of objection from any Class Member supports the
15 attorneys’ fees award”); *Heritage Bond*, 2005 WL 1594389, at *16 (concluding “that
16 the lack of significant objections to the requested fees” justified the requested award).

17 The lack of any objection to Lead Plaintiff’s request for an award under 15 U.S.C.
18 §78u-4(a)(4) also supports the approval of that request. *See Omnivision*, 559 F. Supp. 2d
19 at 1049 (finding it “appropriate to reimburse Lead Plaintiffs for their reasonable costs
20 and expenses” where “[t]he Notice adequately informed all potential Class Members that
21 the Lead Plaintiffs would seek to recover these costs, and no one objected”).

22 **IV. CONCLUSION**

23 Based on the foregoing and the entire record herein, Lead Plaintiff respectfully
24 requests that the Court approve the Settlement and Plan of Allocation as fair,
25 reasonable and adequate and in the best interests of the Class and enter final approval
26 of the Settlement and Plan of Allocation; and grant Lead Counsel’s application for
27 attorneys’ fees, litigation expenses and an award to Lead Plaintiff.

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DATED: January 14, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on January 14, 2022, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses on the attached Electronic Mail Notice List, and I hereby certify that I caused the mailing of the foregoing via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

s/ Eric I. Niehaus
ERIC I. NIEHAUS

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Mailing Information for a Case 2:19-cv-01828-MWF-SK Matt Karinski v. Stamps.com, Inc. et al

Electronic Mail Notice List

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Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

- (No manual recipients)