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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION**

IN RE MYRIAD GENETICS, INC.  
SECURITIES LITIGATION

Case No. 2:19-cv-00707-JNP-DBP

**REPLY MEMORANDUM OF LAW IN  
FURTHER SUPPORT OF (A) LEAD  
PLAINTIFF'S MOTION FOR FINAL  
APPROVAL OF SETTLEMENT AND  
PLAN OF ALLOCATION AND (B) LEAD  
COUNSEL'S MOTION FOR AN AWARD  
OF ATTORNEYS' FEES AND  
LITIGATION EXPENSES**

District Judge Jill N. Parrish

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Court-appointed Lead Plaintiff and Class Representative Los Angeles Fire and Police Pensions (“Los Angeles”), on behalf of itself and the Court-certified Class, and Court-appointed Lead Counsel and Class Counsel, Bernstein Litowitz Berger & Grossmann LLP (“Lead Counsel”), respectfully submit this reply memorandum of law in further support of (i) Lead Plaintiff’s Motion for Final Approval of Settlement and Plan of Allocation (ECF No. 288) and (ii) Lead Counsel’s Motion for an Award of Attorneys’ Fees and Litigation Expenses (ECF No. 289) (together, the “Motions”).<sup>1</sup>

## **I. PRELIMINARY STATEMENT**

The proposed Settlement resolves this litigation in its entirety in exchange for a \$77,500,000 payment, with at least \$20,000,000 paid in cash and the remainder paid in either additional cash or shares of freely-tradeable Myriad Genetics, Inc. (“Myriad”) common stock. As detailed in the opening papers in support of the Motions (ECF Nos. 288-290), the Settlement, if approved, would be the largest securities class action recovery ever achieved in Utah and among the top ten such recoveries in Tenth Circuit history. As also detailed in the opening papers, the Settlement is the result of hard-fought litigation and extensive arm’s-length settlement negotiations, and is the product of a joint mediator’s proposal. The Settlement also represents a very favorable result for the Class in light of the substantial challenges that Los Angeles would have faced in proving liability and establishing loss causation and damages, as well as the

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<sup>1</sup> Unless otherwise defined herein, all capitalized terms have the meanings set forth in the Stipulation and Agreement of Settlement dated August 3, 2023 (ECF No. 283-1) or in the Declaration of Abe Alexander in Support of (A) Lead Plaintiff’s Motion for Final Approval of Settlement and Plan of Allocation and (B) Lead Counsel’s Motion for An Award of Attorneys’ Fees and Litigation Expenses (ECF No. 290). Unless otherwise indicated, internal quotations and citations are omitted.

substantial risk that even if Los Angeles was successful in establishing Defendants' liability at trial, Myriad would have been forced into bankruptcy rather than be able to pay a judgment.

The reaction of the Class confirms that all aspects of the proposed Settlement are fair and reasonable, and that the Motions should be granted. Following an extensive Court-approved notice program—including the mailing of over 104,000 copies of the Settlement Notice to potential Class Members and nominees—not a single member of the Class objected to any aspect of the Settlement or the Plan of Allocation, or to any aspect of the requested attorney's fees and expenses. This lack of objections represents a significant endorsement by the Class (the group most affected by the pending Motions) of the proposed Settlement and the requested fees and expenses. Indeed, the complete absence of objections is especially noteworthy here because institutional investors held more than 86 percent of Myriad common stock during the Class Period, placing Myriad's institutional ownership above the 95<sup>th</sup> percentile of all NYSE and NASDAQ traded companies, *see* ECF No. 87, at ¶43—and even though such investors typically have the staff and resources to object if they believe there is cause to do so, none did. Relatedly, Los Angeles, itself a sophisticated institutional investor, has expressly endorsed the Settlement and the requested attorneys' fees and expenses. *See* ECF No. 290-1, at ¶¶8-10.

As explained below, the overwhelmingly positive reaction of the Class further supports a finding that the proposed Settlement, Plan of Allocation, and request for attorneys' fees and expenses are all fair and reasonable, and should be approved. The Motions should be granted.

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

Los Angeles and Lead Counsel respectfully submit that their opening papers demonstrated why approval of the Motions is warranted. Now that the time for objecting has passed, the lack of objections establishes that the “reaction of the class” factor also strongly supports approval of both Motions.

In accordance with the Court’s Preliminary Approval Order, 104,397 copies of the Settlement Notice Packet have been mailed to potential Class Members and their nominees. *See* Supplemental Declaration of Jack Ewashko Regarding Mailing of the Settlement Notice and Claim Form (the “Suppl. Ewashko Decl.”), filed herewith, at ¶3. The Settlement Notice informed 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 19% of the Settlement Fund (in combination of cash and stock in the same proportion that the Cash Settlement Amount and the Settlement Shares comprise the Settlement Amount) and payment of Litigation Expenses (including an award to Los Angeles as authorized under the PSLRA) in an amount not to exceed \$1,700,000. *See* Settlement Notice, ECF No. 290-3, Ex. A, at ¶¶5, 51. The Settlement Notice also apprised Class Members of their right to object to the proposed Settlement, the Plan of Allocation, and/or the request for attorneys’ fees and expenses, and the November 17, 2023 deadline for submitting any objections. *See id.*, at p. 3 and ¶55.<sup>2</sup>

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<sup>2</sup> The Summary Settlement Notice, which informed readers of the proposed Settlement, how to obtain copies of the Settlement Notice and Claim Form, and the deadlines for the submission of Claim Forms and objections, was published in *The Wall Street Journal* and released over the *PR Newswire* on October 2, 2023. *See* Declaration of Jack Ewashko Regarding: (A) Mailing of the

On November 3, 2023, 14 days before the objection and exclusion deadline, Los Angeles 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. 288-290), and were posted on the case website ([www.MyriadGeneticsSecuritiesLitigation.com](http://www.MyriadGeneticsSecuritiesLitigation.com)), *see* Suppl. Ewashko Decl. ¶4, and on Lead Counsel’s website ([www.blbglaw.com/cases-investigations/myriad-genetics](http://www.blbglaw.com/cases-investigations/myriad-genetics)).

As noted above, following implementation of this extensive notice program, no Class Member objected to any aspect of the Settlement, the Plan of Allocation, or Lead Counsel’s motion for attorneys’ fees and Litigation Expenses.

“The reaction of the class to the proffered settlement . . . is perhaps the most significant factor to be weighed in considering its adequacy[.]” *Ryskamp v. Looney*, No. 10-cv-00842-WJM-KLM, 2012 WL 3397362, at \*4 (D. Colo. Aug. 14, 2012). Here, the absence of any objections supports a finding that the Settlement is fair, reasonable, and adequate. *See In re Davita Healthcare Partners, Inc. Derivative Litig.*, No. 12-cv-2074-WJM-CBS, 2015 WL 3582265, at \*3 (D. Colo. June 5, 2015) (“the fact that no objections to the settlement were filed by any shareholder weighs heavily in favor of approval of the . . . settlement.”); *In re Virtus Inv. Partners, Inc. Sec. Litig.*, No. 15cv1249, 2018 WL 6333657, at \*2 (S.D.N.Y. Dec. 4, 2018) (“the absence of objections by the class is extraordinarily positive and weighs in favor of settlement”).

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Settlement Notice and Claim Form; and (B) Publication of the Summary Settlement Notice (ECF No. 290-3) at ¶6.



It is also particularly significant that no institutional investors—who held the vast majority of Myriad common stock during the Class Period—have objected to the Settlement. Institutional investors are sophisticated and possess the incentive and ability to object. The absence of objections by these sophisticated class members is thus further evidence of the fairness of the Settlement. *See In re Signet Jewelers Ltd. Sec. Litig.*, No. 1:16-cv-06728-CM-SDA, 2020 WL 4196468, at \*6 (S.D.N.Y. July 21, 2020) (finding that the absence of objections from institutional investors, which are “often sophisticated and possess the incentive and ability to object” was “further evidence of the fairness of the Settlement.”); *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”).

The uniformly positive reaction of the Class also supports approval of the Plan of Allocation. *See, e.g., In re Crocs, Inc. Sec. Litig.*, 306 F.R.D. 672, 692 (D. Colo. 2014) (“the favorable reaction of the Class supports approval of the proposed Plan of Allocation.”); *Ponca Tribe of Indians of Okla. v. Cont’l Carbon Co.*, No. 05-445, 2009 WL 2836508, at \*2 (W.D. Okla. July 30, 2009) (approving plan of allocation where there were no objections to the settlement); *see also, In re Veeco Instruments Inc. Sec. Litig.*, No. 05 MDL 01695 (CM), 2007 WL 4115809, at \*14 (S.D.N.Y. Nov. 7, 2007) (“not 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.”).

Finally, the positive reaction of the 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 fee supports a finding that the fee and expense request is fair and

reasonable. *See, e.g., In re Crocs, Inc. Sec. Litig.*, No. 07-cv-02351-PAB-KLM, 2014 WL 4670886, at \*5 (D. Colo. Sept. 18, 2014) (“the fact that none of the class members objected to the requested attorneys’ fees is significant and weighs in favor of the requested award.”); *Id.* (finding amount of requested expenses reasonable where “no class members have objected to the requested expenses”); *Anderson v. Merit Energy Co.*, No. 07-cv-00916-LTB-BNB, 2009 WL 3378526, at \*4 (D. Colo. Oct. 20, 2009) (“The absence of any Class Members’ objection is an additional factor that supports this Court’s approval of the requested attorneys’ fees.”); *Droegemueller v. Petroleum Dev. Corp.*, Nos. 07-cv-1362-JLK-CBS, 07-cv-2508, 2009 WL 961539, at \*4 (D. Colo. Apr. 7, 2009) (“The absence of any Class members’ objection is an additional factor that supports this Court’s approval of the requested attorneys’ fees.”); *Barr v. Qwest Commc’ns Co., LLC*, No. 1:01-cv-00748-WYD-KLM, 2013 WL 141565, at \*5 (D. Colo. Jan. 11, 2013) (“The absence of substantial objections or disapproval by class members to Settlement Class Counsel’s fee-and-expense request further supports finding it reasonable.”); *Fager v. Centurylink Commc’ns, LLC*, No. 14-cv-00870 JCH/KK, 2015 WL 13357867, at \*4 (D.N.M. June 25, 2015) (“The absence of objection by class members to Settlement Class Counsel’s fee-and-expense request further supports finding it reasonable.”); *Hitch Enters., Inc. v. Cimarex Energy Co.*, No. CIV-11-13-W, 2013 WL 12090055, at \*3 (W.D. Okla. July 2, 2013) (finding amount of requested attorneys’ fees appropriate and reasonable “in the absence of any objection” to such request); *Cox v. Sprint Commc’ns Co. L.P.*, No. 6:10-cv-01262-KGG, 2012 WL 5512381, at \*4 (D. Kan. Nov. 14, 2012) (“The absence of objections or disapproval by class members to Settlement Class Counsel’s fee-and-expense request further supports finding it reasonable.”).

As with approval of the Settlement, the lack of objections by institutional investors in particular 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”, but did not do so, supported approval of the fee request); *In re Bisy Sec. Litig.*, No. 04 Civ. 3840 (JSR), 2007 WL 2049726, at \*1 (S.D.N.Y. July 16, 2007) (noting that there was only one objection from an individual—and none from any institutions—“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 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, Los Angeles 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 Approving Class Action Settlement; (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: December 1, 2023

Respectfully submitted,

/s/ Abe Alexander

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**CERTIFICATE OF SERVICE**

I certify that on the 1st of December, 2023, I caused to be served a true and correct copy of the foregoing **REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF (A) LEAD PLAINTIFF'S MOTION FOR FINAL APPROVAL OF SETTLEMENT AND PLAN OF ALLOCATION AND (B) LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND LITIGATION EXPENSES**, with the Clerk of the Court using the CM/ECF systems that will send an electronic notification to all counsel of record.

/s/ Abe Alexander  
Abe Alexander