

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

Nu Ride Inc., *et al.*,

Reorganized Debtors.

Chapter 11

Case No. 23-10831 (MFW)

(Jointly Administered)

Related D.I.: 1203-1207

**REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF (I) CLASS
REPRESENTATIVE'S MOTION FOR APPROVAL OF OHIO SECURITIES
LITIGATION SETTLEMENT ON A FINAL BASIS AND PLAN OF ALLOCATION
AND (II) OHIO CLASS COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS'
FEEES AND PAYMENT OF EXPENSES**

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George Troicky (“**Class Representative**”), on behalf of himself and all members of the Ohio Settlement Class, and Ohio Class Counsel respectfully submit this memorandum of law in further support of: (i) Class Representative’s Motion for Approval of (I) Ohio Securities Litigation Settlement on a Final Basis and (II) the Proposed Plan of Allocation for Settlement Proceeds (Dkt. No. 1205) and (ii) Ohio Class Counsel’s Motion for an Award of Attorneys’ Fees and Payment of Expenses in Connection with the Ohio Securities Litigation Settlement (Dkt. No. 1203) (collectively, the “**Motions**”).¹

PRELIMINARY STATEMENT

On March 6, 2024, the Court entered an order confirming the Debtors’ Plan that, among other things, preliminarily approved the Ohio Securities Litigation Settlement, approved the forms of notice to the Ohio Settlement Class, appointed Strategic Claims Services (“**SCS**”) as the Ohio Settlement Claims Administrator, and scheduled a final hearing on the Motions for June 11, 2024.

Pursuant to and in compliance with the Confirmation Order, the Ohio Settlement Claims Administrator caused the Postcard Notice of the Settlement to be mailed by first-class mail to potential Settlement Class Members, or links of the notices to be e-mailed (to the extent e-mail addresses were provided). Through June 4, 2024, 473,122 potential Settlement Class Members or their nominees were notified of the Settlement by either mailed Postcard Notice or e-mailed direct link to the settlement webpage, Notice Packet, and Postcard Notice. *See* Supplemental Declaration

¹ The terms of the Settlement are in the: (i) *Third Modified First Amended Joint Chapter 11 Plan of Lordstown Motors Corp. and Its Affiliated Debtors* (together with all schedules and exhibits thereto, and as the same may be modified in accordance with its terms, the “**Plan**”); (ii) the *Stipulation Between Debtors, Ohio Securities Litigation Lead Plaintiff, Official Committee of Unsecured Creditors, and Official Committee of Equity Security Holders Regarding Ohio Securities Litigation Lead Plaintiff’s Motion To Apply Bankruptcy Rule 7023 To Class Claims and Proofs of Claim Numbers 1368, 1379, 1380, 1394, 1426, and 1434* (the “**7023 Stipulation**”), which was so ordered by the U.S. Bankruptcy Court for District of Delaware (“**Bankruptcy Court**” or “**Court**”) on February 5, 2024; and (3) the Court’s March 6, 2024 order confirming the Plan (the “**Confirmation Order**”).

of Paul Mulholland Concerning (A) Dissemination of the Postcard Notice; and (B) Report on Requests for Exclusion and Objections Received to Date, dated June 4, 2024 (“**Supplemental Mailing Decl.**”), ¶3, filed herewith.

On April 5, 2024, the Summary Notice of the Settlement was published in *The Wall Street Journal* and was disseminated over the internet using *PR Newswire*. See Declaration of Paul Mulholland Concerning (A) Dissemination of the Postcard Notice; (B) Publication of the Summary Notice; and (C) Report on Requests for Exclusion and Objections Received to Date, dated May 7, 2024 (“**Initial Mailing Decl.**”), ¶12 (Dkt. No. 1207-2). The Postcard Notice, long-form Notice and Ohio Claim Form were also posted, for review and easy downloading, on SCS’s website (“**Settlement Webpage**”). *Id.* ¶14.

The notices described, *inter alia*, the terms of the Settlement, the proposed Plan of Allocation for the proceeds of the Settlement, and the right to object to the Settlement and/or seek exclusion from the Ohio Settlement Class. See generally Initial Mailing Decl., Exs. A, B, and C. The notices also informed Ohio Settlement Class Members that Ohio Class Counsel would apply for an award of attorneys’ fees from the Ohio Securities Litigation Settlement Fund in an amount not to exceed 30% of the Settlement Fund and payment of litigation expenses in an amount not to exceed \$1,500,000, which may include an application by Class Representative pursuant to the PSLRA, for his reasonable costs and expenses (including lost wages). The notices also gave the deadlines for objecting, seeking exclusion, and submitting claims, and it advised potential Ohio Settlement Class Members of the scheduled hearing before this Court. *Id.* The deadline for objections and exclusions was May 21, 2024.

On May 7, 2024, Class Representative and Ohio Class Counsel filed their opening motion papers in support of the Settlement, Plan of Allocation, and fee and expense request. These papers

are available on the Reorganized Debtors' noticing agent's website for the Chapter 11 Cases, the Court's docket (Dkt. Nos. 1203-1207), and were promptly posted to the Settlement Webpage, as well as the website for Ohio Class Counsel.

In response to the dissemination of 473,122 notices, *no* objections to the Settlement have been received. *See* Supplemental Mailing Decl. ¶8. *No one* has objected to the proposed Plan of Allocation or to Ohio Class Counsel's motion for attorneys' fees and expenses. *Id.* Only one invalid request for exclusion has been received. *See* Initial Mailing Decl. ¶16.

As a result, Class Representative and Ohio Class Counsel respectfully submit that the reaction of the Ohio Settlement Class strongly supports approval of the Ohio Securities Litigation Settlement, the proposed Plan of Allocation governing the distribution of the proceeds of the Settlement, and the requested attorneys' fees and expenses. Accordingly, Class Representative and Ohio Class Counsel respectfully request entry of the proposed *Ohio Securities Litigation Final Approval Order* and *Order Granting Ohio Class Counsel's Motion for an Award of Attorneys' Fees and Expenses in Connection with Ohio Securities Litigation Settlement*, filed herewith.

ARGUMENT

I. THE REACTION OF THE OHIO SETTLEMENT CLASS STRONGLY SUPPORTS APPROVAL OF THE SETTLEMENT AND PLAN OF ALLOCATION

In evaluating the fairness of a proposed settlement of class claims, the Third Circuit asks courts to consider "the reaction of the class to the settlement." *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975).² Indeed, courts are strongly inclined to approve a class settlement where, as here, there are few or no objections. *See, e.g., In re Nat'l Football League Players Concussion Injury Litig.*, 821 F.3d 410, 438 (3d Cir. 2016) (finding objections from approximately 1% of class

² Unless otherwise noted, all internal citations and quotations are omitted.

members weighs in favor of settlement approval); *O'Hern v. Vida Longevity Fund*, LP, No. 21-402-SRF, 2023 WL 3204044, at *7 (D. Del. May 2, 2023) (“When there are many class members and few objectors, there is a strong presumption in favor of approving the class action settlement under the second *Girsh* factor.”). The fact that there were no objections from any institutional investor also supports approval, as courts have recognized that the absence of objections from such investors is notable and supports approval. *See In re Wilmington Tr. Sec. Litig.*, No. 10-cv-0990-ER, 2018 WL 6046452, at *5 (D. Del. Nov. 19, 2018) (lack of objections by institutional investors “weighs in favor of the settlements”); *In re DaimlerChrysler AG Sec. Litig.*, No. 00-993, 2004 WL 7351531, at *10 (D. Del. Jan. 28, 2004) (“That no one objected to the settlement, including the many institutional investors who are part of the class, is compelling evidence of the fairness of the settlement”).

Moreover, the fact there was only one invalid request for exclusion supports approval of the Settlement. *See, e.g., Halley v. Honeywell Int'l, Inc.*, 861 F.3d 481, 496 (3d Cir. 2017) (noting that the district court did not abuse its discretion in finding the second *Girsh* factor favored settlement where there was only a small number of opt outs).

Finally, the fact that there are no objections to the Plan of Allocation for the proceeds of the Settlement supports its approval. *See, e.g., In re Daimler Chrysler AG*, 2004 WL 7351531, at *14 (noting absence of objections to the plan of allocation confirms the fairness, reasonableness, and adequacy of the proposed allocation); *In re Lucent Techs., Inc. Sec. Litig.*, 307 F. Supp. 2d 633, 649 (D.N.J. 2004) (approving plan of allocation after finding it met the standards of fairness and reasonableness, including that no class member has objected to it); *In re Reliance Sec. Litig.*, No. 99-858-RRM, 2002 WL 35645209, at *11 (D. Del. Feb 8, 2002) (the fact that only two class members object to the plan of allocation weights in favor of approval).

II. THE REACTION OF THE OHIO SETTLEMENT CLASS STRONGLY SUPPORTS APPROVAL OF THE REQUESTED ATTORNEYS' FEES AND EXPENSES

Not one Ohio Settlement Class Member has objected to Ohio Class Counsel's motion for an award of attorneys' fees, payment of litigation expenses, or the PSLRA reimbursement request of the Class Representative. The fact that there have been no objections is strong evidence that the requested fees and expenses are fair and reasonable and should be approved by the Court. *See, e.g., In re Wilmington Tr. Sec. Litig.*, 2018 WL 6046452, at *8 (stating that the absence of objections to the attorneys' fee request weighs in favor of the requested fee); *In re Reliance Sec. Litig.*, 2002 WL 35645209, at *16 (only one objection to the fee request was received and court noted that "given the absence of substantial objections, this factor weighs in favor of granting the fee application").

CONCLUSION

For the reasons set forth above and in Class Representative's and Ohio Class Counsel's May 7, 2024 submissions, Class Representative and Ohio Class Counsel respectfully request that the Court enter the proposed *Ohio Securities Litigation Final Approval Order* and *Order Granting Ohio Class Counsel's Motion for an Award of Attorneys' Fees and Expenses in Connection with Ohio Securities Litigation Settlement*, filed herewith.

DATED: June 4, 2024

Respectfully submitted,

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