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11 Lead Counsel for Plaintiff

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 OAKLAND DIVISION

15 VISWANATH V. SHANKAR, Individually) Case No. 4:14-cv-01680-PJH
and on Behalf of All Others Similarly Situated,)
16) CLASS ACTION
Plaintiff,)
17)
vs.) REPLY MEMORANDUM OF LAW AND
18) STATEMENT OF NON-OPPOSITION IN
IMPERVA, INC., et al.,) FURTHER SUPPORT OF: (1) LEAD
19) PLAINTIFF'S MOTION FOR FINAL
Defendants.) APPROVAL OF CLASS ACTION
20) SETTLEMENT AND APPROVAL OF PLAN
OF ALLOCATION; AND (2) LEAD
21) COUNSEL'S MOTION FOR AN AWARD
OF ATTORNEYS' FEES AND EXPENSES
22) AND AWARD TO LEAD PLAINTIFF
PURSUANT TO 15 U.S.C. §78u-4(a)(4)

23 DATE: January 31, 2018
24 TIME: 9:00 a.m.
CTRМ: 3

1 Lead Plaintiff Delaware County Employees Retirement System (“Lead Plaintiff” or
2 “Delaware County”) and Lead Counsel Robbins Geller Rudman & Dowd LLP (“Lead Counsel”)
3 respectfully submit this reply memorandum of law and statement of non-opposition in further
4 support of: (i) Lead Plaintiff’s motion for final approval of the settlement and approval of the
5 proposed Plan of Allocation; and (ii) Lead Counsel’s motion for an award of attorneys’ fees and
6 payment of expenses, including reimbursement of Delaware County’s time related to its
7 representation of the Class. ECF Nos. 150-151.¹

8 **I. PRELIMINARY STATEMENT**

9 Lead Plaintiff and Lead Counsel are pleased to report that the January 3, 2018 deadline for
10 objections and exclusions has passed and there are *no objections* to the proposed settlement, Plan of
11 Allocation, or the fee and expense application. Additionally, while more than 15,000 copies of the
12 Notice of Pendency and Proposed Settlement of Class Action (“Notice”) and Proof of Claim and
13 Release (“Proof of Claim”) (together, “Notice Package”) have been mailed to potential Class
14 Members and nominees² and the Summary Notice was published in *The Wall Street Journal* and
15 transmitted over the *Business Wire*,³ *no requests for exclusion* have been received from investors.
16 These results are a testament to the fairness, adequacy, and reasonableness of the proposed
17 settlement, the proposed Plan of Allocation, and Lead Counsel’s fee and expense application.

18 **II. ARGUMENT**

19 **A. The Reaction of the Class Strongly Supports Approval of the** 20 **Settlement and Plan of Allocation**

21 The reaction of a class to a settlement is a significant factor in assessing its fairness and
22 adequacy. Indeed, “the absence of a large number of objections to a proposed class action

23 _____
24 ¹ Unless otherwise noted, all capitalized terms not defined herein have the same meanings set forth
in the Stipulation of Settlement, dated August 30, 2017 (ECF No. 143).

25 ² See Supplemental Declaration of Carole K. Sylvester Regarding Notice Dissemination, Requests
26 for Exclusion Received to Date, and Interim Claims Processing, ¶¶5-7 (“Supp. Mailing Decl.”),
submitted herewith.

27 ³ See Declaration of Carole K. Sylvester Regarding Notice Dissemination, Publication, Requests
28 for Exclusion Received to Date, Interim Claims Processing, and Estimate of Administration Fees and
Expenses, ¶15 (“Initial Mailing Decl.”) (ECF No. 154).

1 settlement raises a strong presumption that the terms of a proposed class [action] settlement . . . are
2 favorable to the class members.” *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1043 (N.D.
3 Cal. 2008) (citation omitted); *Destefano v. Zynga, Inc.*, No. 12-cv-04007-JSC, 2016 WL 537946,
4 at *13 (N.D. Cal. Feb. 11, 2016) (same). As the Honorable Jeremy Fogel, formerly of this district
5 and now director of the Federal Judicial Center, noted: “[T]he reaction of the class to the proffered
6 settlement . . . is perhaps the most significant factor to be weighed in considering its adequacy.” *In*
7 *re Rambus Inc. Derivative Litig.*, No. C 06-3513 JF (HRL), 2009 U.S. Dist. LEXIS 131845, at *10
8 (N.D. Cal. Jan. 20, 2009) (citation omitted). “Put another way, a ‘court may appropriately infer that
9 a class action settlement is fair, adequate, and reasonable when few class members object to it.’”
10 *Zynga*, 2016 WL 537946, at *13 (quoting *Larsen v. Trader Joe’s Co.*, No. 11-cv-05188-WHO, 2014
11 WL 3404531, at *5 (N.D. Cal. July 11, 2014)).

12 Here, no Class Member has objected to the settlement. The absence of objections to a
13 settlement “speaks volumes with respect to the overwhelming degree of support for the Proposed
14 Settlement among the Class Members” as “[t]hat unanimous, positive reaction to the Proposed
15 Settlement is compelling evidence that the Proposed Settlement is fair, just, reasonable, and
16 adequate.” *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004);
17 *see also Arnold v. Fitflop USA, LLC*, No. 11-CV-0973 W(KSC), 2014 WL 1670133, at *8 (S.D. Cal.
18 Apr. 28, 2014) (reaction to the settlement “presents the most compelling argument favoring
19 settlement” where only one objection was filed “indicating that the vast majority of Class Members
20 and other concerned parties are likely satisfied with the resolution of [the] case”).

21 In addition, there has not been a single objection to the proposed Plan of Allocation. This
22 reaction provides firm support for its approval. *Atlas v. Accredited Home Lenders Holding Co.*, No.
23 07-CV-00488-H (CAB), 2009 WL 3698393, at *4 (S.D. Cal. Nov. 4, 2009) (noting the
24 “predominantly positive response” to the plan of allocation where only two objections to it were
25 submitted); *see also In re EVCI Career Colls. Holdings Corp. Sec. Litig.*, No. 05 Civ. 10240(CM),
26 2007 WL 2230177, at *11 (S.D.N.Y. July 27, 2007) (stating that “[c]ourts also consider the reaction
27 of a class to a plan of allocation” and approving plan where “[n]o objections to the Plan of
28 Allocation have yet been received”).

1 Similarly, the fact that no requests for exclusion have been received in response to the
2 mailing of over 15,000 Notice Packages further supports approval of the settlement. *See, e.g.,*
3 *Zynga*, 2016 WL 537946, at *14 (noting that a low number of exclusions supports the
4 reasonableness of a securities class action settlement).

5 **B. The Reaction of the Class Strongly Supports Approval of the**
6 **Attorneys' Fee and Expense Application**

7 As to Lead Counsel's request for an award of attorneys' fees and for payment of expenses,
8 the Notice reported that Lead Plaintiff's counsel would request a fee award of 25% of the Settlement
9 Amount and payment of expenses not to exceed \$400,000, plus interest thereon. Lead Counsel also
10 filed its motion and memorandum of points and authorities ("Fee and Expense Brief") (ECF
11 No. 151) seeking an award of a 25% fee and \$346,800.96 in expenses, which was posted on the
12 website for the settlement. The absence of *any objections* to the requested fee or expense award
13 weighs strongly in favor of approval. *See, e.g., Zynga*, 2016 WL 537946, at *18 ("the lack of
14 objection by any Class Members also supports the 25 percent fee"); *Omnivision*, 559 F. Supp. 2d at
15 1048 (where no objection "raised any concern about the amount of the fee . . . [t]his factor . . . also
16 supports the requested award of 28% of the Settlement Fund"). Similarly, the lack of any objection
17 to Lead Plaintiff's request for an award under 15 U.S.C. §78u-4(a)(4), which was also disclosed in
18 the Notice and Lead Counsel's Fee and Expense Brief, supports approval of that request.
19 *Omnivision*, 559 F. Supp. 2d at 1049 (finding it "appropriate to reimburse Lead Plaintiffs for their
20 reasonable costs and expenses" where "[t]he Notice adequately informed all potential Class
21 Members that the Lead Plaintiffs would seek to recover these costs, and no one objected").

22 **III. CONCLUSION**

23 For the reasons set forth herein and in Lead Plaintiff's and Lead Counsel's previous
24 submissions, the Court is respectfully requested to approve the proposed settlement and Plan of
25 Allocation as fair, reasonable, and adequate, and to approve the request for attorneys' fees and
26 payment of expenses, including those incurred by the Lead Plaintiff. At the request of the Court,
27 three proposed orders were submitted on January 10, 2018: [Proposed] Final Judgment and Order of
28 Dismissal with Prejudice (ECF No. 156); [Proposed] Order Approving Plan of Allocation (ECF

1 No. 157); and [Proposed] Order Awarding Attorneys' Fees and Expenses and Award to Lead
2 Plaintiff Pursuant to 15 U.S.C. §78u-4(a)(4) (ECF No. 158).

3 DATED: January 17, 2018

Respectfully submitted,

4 ROBBINS GELLER RUDMAN
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Lead Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on January 17, 2018, 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 denoted on the attached Electronic Mail Notice List, and I hereby certify that I caused to be mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on January 17, 2018.

s/ Douglas R. Britton
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Mailing Information for a Case 4:14-cv-01680-PJH Shankar v. Imperva, 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)