

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

IN RE RESIDEO TECHNOLOGIES, INC.
DERIVATIVE LITIGATION

Case No. 0:21-cv-01965 (WMW/ECW)

**REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF PLAINTIFFS'
MOTION FOR FINAL APPROVAL OF SETTLEMENT**

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Plaintiffs Riviera Beach Police Pension Fund, City of Hialeah Employees Retirement System, Jawad A. Ayaz, and Daniel Sanclemente respectfully submit this reply memorandum in further support of their Motion for Final Approval of Settlement (“Motion”) in connection with the above-captioned shareholder derivative action, brought on behalf of nominal defendant Resideo Technologies, Inc. (“Resideo” or the “Company”).¹

I. INTRODUCTION

Over the 60-day notice period, only two individual Resideo stockholders filed objections, and only as to the Settlement’s requirement that Resideo commit to a more diverse board of directors. As detailed below, this diversity requirement will likely generate considerable tangible and intangible benefits for Resideo and its stockholders for years to come. A third stockholder submitted a vague response that does not purport or appear to be an objection. Plaintiffs received no objections at all from institutional stockholders or to the requested Fee and Service Awards. Overall, this muted response underscores that the Settlement and these awards are fair and reasonable, and Plaintiffs respectfully reiterate their request that the Court approve them.

II. THE REACTION OF THE STOCKHOLDERS STRONGLY SUPPORTS FINAL APPROVAL OF THE SETTLEMENT

Resideo stockholders were adequately informed of the Settlement and their right to object. The Court-approved notice program was reasonably calculated to apprise Resideo

¹ Unless otherwise indicated, all capitalized terms have the same meaning as in the Stipulation and Agreement of Compromise, Settlement and Release dated February 3, 2023 (the “Stip.”) (Dkt. 35-1).

shareholders of the pendency of the action and the right to object to the Settlement, and included mailing of the notice to over 123,000 stockholders and publication of the notice in *The Wall Street Journal* and the *PR Newswire*.

The Eighth Circuit has established “the amount of opposition to the settlement” as an important factor for courts to consider in determining whether a proposed settlement is fair, reasonable, and adequate. *See In re Wireless Tel. Fed. Cost Recovery Fees Litig.*, 396 F.3d 922, 933 (8th Cir. 2005) (finding the fact that “the amount of opposition to the settlement [was] minuscule” supported approval of the settlement). Receiving few or no objections to a settlement is strong evidence that the settlement is fair and reasonable. *In re CenturyLink Sales Pracs. & Sec. Litig.*, MDL No. 17-2795, 2020 WL 7133805, at *7 (D. Minn. Dec. 4, 2020) (only 8 objectors out of 17.2 million class members proved “little opposition to the Settlement”); *McClean v. Health Sys., Inc.*, No. 6:11-CV-03037, 2015 WL 12426091, at *6 (W.D. Mo. June 1, 2015) (total “lack of opposition clearly supports approval”).

Here, only two individual stockholders submitted substantive objections to the Settlement. The fact that no institutional investors—who have substantial means and incentive to object—objected to the Settlement is further evidence of the Settlement’s fairness. *In re Cathode Ray Tube (CRT) Antitrust Litig.*, MDL No. 1917, 2017 WL 2481782, at *4 (N.D. Cal. June 8, 2017) (absence of any objections from institutions means that “the inference that the class approves of the settlement is even stronger”); *In re Charter Commc’ns, Inc., Sec. Litig.*, MDL No. 1506, 2005 WL 4045741, at *8 (E.D. Mo. June 30,

2005) (court should consider “the absence of objections from other large institutional investors”).

Further, no stockholder has objected to Plaintiffs’ request for attorney’s fees and expenses, which underscores the fairness and reasonableness of Plaintiffs’ request. *See, e.g., CenturyLink*, 2020 WL 7133805, at *12 (noting “[t]he reaction of the Class shows little dissatisfaction with the Settlement” in approving counsel’s fee request); *Beaver Cnty. Emps.’ Ret. Fund v. Tile Shop Holdings, Inc.*, No. 0:14-CV-00786, 2017 WL 2588950, at *3 (D. Minn. June 14, 2017) (total “lack of objections is strong evidence that the requested amount of fees and expenses is reasonable”).

III. THE SETTLEMENT RECEIVED ONLY TWO OBJECTIONS, WHICH FOCUS ON THE SETTLEMENT’S DIVERSITY REQUIREMENT AND ARE WITHOUT MERIT

After the 60-day notice period, Plaintiffs have received only two objections, and one additional vague response. None of these should prevent the Court from approving the meaningful and long-negotiated Settlement. The two objections are substantively identical: Resideo stockholders Charles Gruner and John Lahr both object only to Paragraph IV.E of the Settlement Notice, which relates to Resideo’s formal requirement that at least 30% of its board of directors consist of diverse members following the next election cycle. *See* Stip. Ex. A, §E. As discussed below, beyond their intrinsic significance, diversity requirements have been found to correlate with several benefits for companies’ performance and value. The third communication was filed by Resideo stockholder Dilip Pandya, but Mr. Pandya’s communication does not state or imply that he objects to the Settlement, and provides no substantive information beyond proof of his

stock ownership. Because this communication does not purport to be an objection or comply with the requirements of the Settlement Notice, the Court need not consider it.

First, Messrs. Gruner and Lahr both object that Board membership should be based solely on “merit” and “integrity,” while variously criticizing the Settlement’s diversity requirement as “woke,” “illegal,” and “immoral.”² Dkts. 46, 48. Respectfully, Messrs. Gruner and Lahr’s objections are unfounded. As an initial matter, Plaintiffs emphasize the inherent virtue of ensuring that a corporation’s board at least approximates the diverse demographics of its employees, customers, and the country that it operates in. But beyond this principled goal, an ever-growing body of academic and legal research attests to the many tangible benefits that greater board diversity can help bring about.

Regarding gender diversity, the International Finance Corporation (a member of the World Bank) has observed that a “growing body of research shows a range of business benefits associated with gender diversity on boards,” which include “improved financial performance and shareholder value, reduced risk of fraud and corruption, increased customer and employee satisfaction, greater investor confidence, and enhanced market knowledge and reputation.”³ Similarly, a study performed by MSCI (a prominent financial

² Plaintiffs note that both of these objections are procedurally deficient. In violation of the Settlement notice, neither of the objections provide documentary evidence of when the objectors’ Resideo shares were acquired, and Mr. Gruner did not send his objection to Plaintiffs’ counsel. Plaintiffs nonetheless respond substantively to these objections out of an abundance of caution and due respect to these objectors.

³ International Finance Corporation, *Women on Boards and in Business Leadership*, September 2022, https://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/ifc+cg/topics/women+on+boards+and+in+business+leadership.

advisory firm) found that companies with gender-diverse boards and leadership generated substantially higher returns on equity, and that “companies lacking board diversity suffered more governance-related controversies than average.”⁴

Racial and ethnic diversity brings many similar benefits. Studies have found that for American companies, the “difference in returns between stocks of companies with the highest number of people of color on their boards and those with the least was 1.5%.”⁵ Similarly, McKinsey & Company has found that “[c]ompanies with the most ethnically/culturally diverse boards worldwide are 43% more likely to experience higher profits,”⁶ while “[c]ompanies whose boards are in the top quartile of gender diversity are 28 percent more likely than their peers to outperform financially.”⁷ The Office of the Illinois State Treasurer has reported on research findings that racial and ethnic diversity is associated with substantially higher profitability and improved overall financial returns compared to peers, while also attesting to the myriad benefits of gender diversity.⁸ In

⁴ Joan MacLeod Heminway, *Corporate Management Should All Be Feminists*, 40 MINN. J.L. & INEQ. 409, 415 (2022) (citing MSCI). Additional research finding significant tangible benefits associated with gender diversity is attached for the Court’s reference as Exhibits A-B to the Declaration of Michael J. Barry, submitted herewith (hereinafter, “Ex. _”).

⁵ Morgan Stanley, *Does Ethnic Diversity on Corporate Boards Affect Stock Prices?*, Jan. 5, 2022, <https://www.morganstanley.com/ideas/corporate-board-diversity-stock-price#>.

⁶ Vivian Hunt *et al.*, *Delivering through Diversity*, McKinsey & Company, Jan. 2018, <https://www.mckinsey.com/capabilities/people-and-organizational-performance/our-insights/delivering-through-diversity>.

⁷ Vivian Hunt *et al.*, *Diversity Wins: How Inclusion Matters*, McKinsey & Company, May 2020, <https://www.mckinsey.com/~media/mckinsey/featured%20insights/diversity%20and%20inclusion/diversity%20wins%20how%20inclusion%20matters/diversity-wins-how-inclusion-matters-vf.pdf>.

⁸ Office of the Illinois State Treasurer, *The Investment Case for Board Diversity*, Oct. 2020, at 4, [https://illinoistreasurergovprod.blob.core.usgovcloudapi.net/twocms/media/doc/il%20treasurer%](https://illinoistreasurergovprod.blob.core.usgovcloudapi.net/twocms/media/doc/il%20treasurer%20investment%20case%20for%20board%20diversity.pdf)

perhaps the most convincing evidence that corporate diversity is a worthwhile financial—rather than just moral—investment, Vanguard has stated its belief that “[d]iverse boards make better decisions, and better decisions lead to better results over the long term.”⁹

Recognizing these myriad benefits, several courts have approved shareholder derivative action settlements which included the requirement of hiring or considering diverse board members. *See, e.g., In re Wynn Resorts Limited Deriv. Litig.*, Case 2:18-cv-00293-KJD-DJA (D. Nev. Jan. 12, 2021) (Joint Stipulation and Order to Dismiss) (ECF No. 101 at 46) (settlement included goal to achieve 50% diversity on the board); *In re Conduent Inc. S’holder Deriv. Litig.*, 1:20-cv-10964-MKV (S.D.N.Y. June 10, 2022) (Declaration and Stipulation of Settlement) (ECF No. 43 at 16, 25-28, 73-74) (settlement required company to consider at least one member of an unrepresented community whenever the board seeks candidates for the nomination of non-incumbent directors). In light of these substantial tangible and intangible benefits, the Court should approve the Settlement notwithstanding Messrs. Gruner and Lahr’s objections.

Second, in response to the Settlement Notice, Mr. Pandya submitted a response where he noted that he did not plan to attend the settlement hearing, and attached proof of stock ownership. Dkt. 47. Mr. Pandya did not state or imply that he objects to the Settlement. Even if Mr. Pandya intended to object, he failed to comply with the terms of the Notice of Settlement, which required objecting stockholders to include a “written

20white%20paper%20-%20the%20investment%20case%20for%20board%20diversity%20(oct%202020).pdf.

⁹ Vanguard Group, *Investment Stewardship: 2019 Annual Report*, August 2019, at 18 (Ex. C).

detailed statement of each objection being made that states with specificity the grounds for the objection...” Settlement Notice, §IX(A)(5). Because Mr. Pandya has not actually stated that he objects to the Settlement or complied with this requirement, the Court need not consider Mr. Pandya’s vague, non-compliant response. *See In re Yahoo! Inc. Customer Data Sec. Breach Litig.*, No. 16-MD-02752, 2020 WL 4212811, at *14 (N.D. Cal. July 22, 2020), *aff’d*, 2022 WL 2304236 (9th Cir. June 27, 2022) (finding that the court need not consider noncompliant objections that failed to provide required information).

IV. CONCLUSION

For all of the foregoing reasons, Plaintiffs respectfully request that this Court: (i) approve the Settlement, (ii) approve the requested Fee Award, and (iii) approve the requested service awards.

Dated: May 31, 2023

Respectfully Submitted,

/s/ Michael J. Barry

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CERTIFICATE OF SERVICE

I hereby certify that on May 31, 2023, I caused to be filed a true and correct copy of the foregoing with the Clerk of Court via CM/ECF. Notice of this filing will be sent electronically to all registered parties by operation of the Court's electronic filing system.

/s/ Michael J. Barry
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**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

IN RE RESIDEO TECHNOLOGIES, INC.
DERIVATIVE LITIGATION

Case No. 0:21-cv-01965 (WMW/ECW)

**CERTIFICATE OF COMPLIANCE WITH D. MINN. LR 7.1(F) AND (H) FOR
REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF PLAINTIFFS'
MOTION FOR FINAL APPROVAL OF SETTLEMENT**

I, Michael J. Barry, certify that the Reply Memorandum of Law in Further Support of Plaintiffs' Motion for Final Approval of Settlement complies with Local Rule 7.1(f) and 7.1(h).

I further certify that, in preparation of this memorandum, I used Microsoft Word 2019, and that this word processing program has been applied specifically to include all text, including headings, footnotes, and quotations in the following word count. I further certify that the above-referenced memorandum contains 1,685 words, exclusive of the caption and signature block.

Dated: May 31, 2023

/s/ Michael J. Barry
Michael J. Barry