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12 **UNITED STATES DISTRICT COURT**  
13 **SOUTHERN DISTRICT OF CALIFORNIA**

14 LOU BAKER, Individually and on  
15 Behalf of All Others Similarly Situated,

16 Plaintiff,

17 vs.

18 SEAWORLD ENTERTAINMENT,  
19 INC., et al.,

20 Defendants.

Case No. 3:14-cv-2129-MMA-AGS

**CLASS ACTION**

**REPLY MEMORANDUM IN FURTHER  
SUPPORT OF (I) CLASS  
REPRESENTATIVES' MOTION FOR  
FINAL APPROVAL OF SETTLEMENT  
AND PLAN OF ALLOCATION; AND  
(II) CLASS COUNSEL'S MOTION FOR  
AN AWARD OF ATTORNEYS' FEES  
AND LITIGATION EXPENSES**

Hearing Date: July 22, 2020

Time: 10:00 a.m. PDT

Courtroom: 3D; Dial-in: (888) 251-2909;

Access Code: 5686947

Judge: Hon. Michael M. Anello

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1 Court-appointed Class Representatives,<sup>1</sup> on behalf of themselves and the Court-  
 2 certified Class, and Class Counsel respectfully submit this reply memorandum in further  
 3 support of (I) Class Representatives’ Motion for Final Approval of Settlement and Plan of  
 4 Allocation (ECF No. 521); and (II) Class Counsel’s Motion for an Award of Attorneys’  
 5 Fees and Litigation Expenses (ECF No. 522) (the “Motions”).

## 6 **I. PRELIMINARY STATEMENT**

7 Class Representatives and Class Counsel are pleased to advise the Court that,  
 8 following the extensive Court-approved notice campaign—including the mailing of notice  
 9 to over 21,000 potential Class Members and nominees—*not a single member of the Class*  
 10 *has objected to any aspect of the Settlement, the Plan of Allocation, or the requested fees*  
 11 *and expenses*. This represents a significant endorsement of all aspects of the proposed  
 12 Settlement and fee and expense request by the Class. In addition, Class Representatives—  
 13 both sophisticated, institutional investors—have expressly endorsed the Settlement and the  
 14 requested attorneys’ fees and expenses. *See* ECF No. 523-1 at ¶¶ 8-11; ECF No. 523-2 at  
 15 ¶¶ 8-11. The Class’s reaction is a further indication that the proposed Settlement, the Plan  
 16 of Allocation, and the request for attorneys’ fees and Litigation Expenses are fair and  
 17 reasonable and should be approved.

## 18 **II. THE FAVORABLE REACTION OF THE CLASS PROVIDES** 19 **ADDITIONAL SUPPORT FOR APPROVAL OF THE MOTIONS**

20 Class Representatives’ and Class Counsel’s opening final approval papers, filed with  
 21 the Court on June 17, 2020 (ECF Nos. 521-523), provide comprehensive support  
 22 demonstrating why the Motions should be granted in full. Given that the Motions were  
 23 unopposed by Defendants, and do not face any timely objections by any Class Member,  
 24

25 <sup>1</sup> Unless otherwise defined, all capitalized terms herein have the same meanings as set  
 26 forth in the Stipulation and Agreement of Settlement dated February 10, 2020 (ECF No.  
 27 516-3), or in the Joint Declaration of Joshua E. D’Ancona and Jeffrey J. Angelovich in  
 28 Support of (A) Class Representatives’ Motion for Final Approval of Settlement and Plan  
 of Allocation; and (B) Class Counsel’s Motion for an Award of Attorneys’ Fees and  
 Litigation Expenses (ECF No. 523).

1 Class Representatives and Class Counsel will not restate any of their opening arguments  
2 here. Instead, Class Representatives file this reply to submit the additional point that the  
3 lack of a single timely objection provides additional support for approval of the Motions.

4 **A. The Court-Approved Notice Program**

5 Pursuant to the Court’s Preliminary Approval Order, over 21,000 settlement notices  
6 were mailed to potential Class Members and their nominees. *See* Supplemental Declaration  
7 of Ed Barrero Regarding: (A) Mailing of Postcard Notice and Notice; (B) Update on Call  
8 Center Services and Settlement Website; and (C) Report on Claims Received to Date (the  
9 “Suppl. Barrero Decl.”), filed herewith, at ¶ 2. In addition, a summary notice was published  
10 in *Investor’s Business Daily* and transmitted over *PR Newswire* and the long form Notice,  
11 along with other relevant information and documents, were posted on the Settlement  
12 Website, [www.SeaWorldSecuritiesLitigation.com](http://www.SeaWorldSecuritiesLitigation.com).

13 The notices informed Class Members of the terms of the Settlement and Plan of  
14 Allocation, and that Class Counsel would apply for an award of attorneys’ fees in an  
15 amount not to exceed 22% of the Settlement Fund plus Litigation Expenses in an amount  
16 not to exceed \$2.8 million. *See* Postcard Notice; Notice ¶¶ 5, 56. The notices also apprised  
17 Class Members of their right to object to the Settlement, the Plan of Allocation, and/or the  
18 request for fees and expenses, and that the deadline to do so was July 1, 2020. *See* Postcard  
19 Notice; Notice at p. 3 and ¶¶ 59-65. In addition, Class Representatives’ and Class Counsel’s  
20 opening papers—filed 14 days prior to the objection deadline—are and have been available  
21 on the public docket and on the Settlement Website. *See* Suppl. Barrero Decl. ¶ 3. The  
22 Settlement Website was also updated on July 14, 2020 to inform Class Members that the  
23 Settlement Fairness Hearing will be held by teleconference and to provide the necessary  
24 information for participating in the teleconference. *Id.* As noted above, following this  
25 extensive notice program, *not a single Class Member* has objected to any aspect of the  
26 Settlement.

1           **B.     The Class’s Reaction Supports Approval of the Settlement, Plan of**  
2           **Allocation, and Class Counsel’s Request for Fees and Expenses**

3           The absence of any objections from Class Members strongly supports a finding that  
4 the Settlement is fair, reasonable, and adequate. *See Destefano v. Zynga, Inc.*, 2016 WL  
5 537946, at \*13 (N.D. Cal. Feb. 11, 2016) (“By any standard, the lack of objection of the  
6 Class Members favors approval of the Settlement.”); *In re Biolase, Inc. Sec. Litig.*, 2015  
7 WL 12720318, at \*6 (C.D. Cal. Oct. 13, 2015) (finding class’s positive reaction and  
8 absence of objections favored granting final approval of settlement). In particular, the  
9 absence of objections from institutional investors, who possessed ample means and  
10 incentive to object to the Settlement if they deemed it unsatisfactory, is further evidence of  
11 the Settlement’s fairness. *See, e.g., In re Facebook, Inc. IPO Sec. & Derivative Litig.*, 343  
12 F. Supp. 3d 394, 410 (S.D.N.Y. 2018) (“That not one sophisticated institutional investor  
13 objected to the Proposed Settlement is indicia of its fairness.”).

14           In addition, there have been no objections to the Plan of Allocation or Class  
15 Counsel’s request for attorneys’ fees and Litigation Expenses, which provides additional,  
16 strong support for their approval. *See, e.g., Patel v. Axesstel, Inc.*, 2015 WL 6458073, at  
17 \*7 (S.D. Cal. Oct. 23, 2015) (approving plan of allocation where it “was laid out in detail  
18 in the notice, and no class members objected”); *Destefano*, 2016 WL 537946, at \*18  
19 (finding “the lack of objection by any Class Members” supported the 25% fee award); *In*  
20 *re Heritage Bond Litig.*, 2005 WL 1594403, at \*21 (C.D. Cal. June 10, 2005) (“The absence  
21 of objections or disapproval by class members to Class Counsel’s fee request further  
22 supports finding the fee request reasonable.”). As with approval of the Settlement, the lack  
23 of any objections by institutional investors particularly supports approval of the fee request.  
24 *See In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 305 (3d Cir. 2005) (finding the fact that  
25 “a significant number of investors in the class were ‘sophisticated’ institutional investors  
26 that had considerable financial incentive to object had they believed the requested fees  
27 were excessive” and did not do so, supported approval of the fee request).

1 Accordingly, the uniformly favorable reaction of the Class strongly supports  
2 approval of the Settlement, Plan of Allocation, and the fee and expense request.

3 **III. CONCLUSION**

4 For the foregoing reasons, and those set forth in their opening papers, Class  
5 Representatives and Class Counsel respectfully request the Court approve the Settlement,  
6 the Plan of Allocation, and the request for attorneys’ fees and Litigation Expenses. Copies  
7 of (i) the proposed Judgment; (ii) the proposed Order Approving Plan of Allocation of Net  
8 Settlement Fund; and (iii) the proposed Order Awarding Attorneys’ Fees and Litigation  
9 Expenses are being submitted via email in accordance with Section 2(h) of the Electronic  
10 Case Filing Administrative Policies and Procedures and Section VII of this Court’s Civil  
11 Chambers Rules.

12 Dated: July 15, 2020

Respectfully submitted,

13 **KESSLER TOPAZ**  
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**CERTIFICATE OF SERVICE**

I hereby certify that on July 15, 2020, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system. Based upon the records currently on file, the Clerk of the Court will transmit a Notice of Electronic Filing to the following ECF registrants:

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I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

/s/ Joshua E. D'Ancona  
Joshua E. D'Ancona