

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

IN RE ACUITY BRANDS, INC.  
SECURITIES LITIGATION

Civil Action No. 1:18-cv-02140-MHC

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

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Court-appointed Class Representative the Public Employees' Retirement System of Mississippi ("Class Representative"),<sup>1</sup> on behalf of itself and the Court-certified Class, and Class Counsel respectfully submit this Reply Memorandum in further support of (i) Class Representative's Motion for Final Approval of Class Action Settlement and Plan of Allocation (ECF No. 163); (ii) and Class Counsel's Motion for an Award of Attorneys' Fees and Litigation Expenses (ECF No. 164) (together, the "Motions").

## **I. PRELIMINARY STATEMENT**

As detailed in Class Representative's and Class Counsel's opening papers in support of the Motions filed on April 29, 2022 (ECF Nos. 163-65) ("Opening Papers"), the proposed Settlement—providing for a \$15,750,000 cash payment in exchange for the resolution of all claims asserted in the Action against Defendants—is an excellent result for the Class. The Settlement takes into account the risks, complexities, delay and expense of continued litigation and is the result of protracted

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<sup>1</sup> All capitalized terms used and not otherwise defined in this Reply Memorandum have the meanings ascribed to them in the Stipulation and Agreement of Settlement, dated as of December 2, 2021 (ECF No. 158-3), or in the Joint Declaration of Andrew L. Zivitz and James W. Johnson in Support of (A) Class Representative's Motion for Final Approval of Class Action Settlement and Plan of Allocation; and (B) Class Counsel's Motion for an Award of Attorneys' Fees and Litigation Expenses, dated April 29, 2022 (ECF No. 165) ("Joint Declaration" or "Joint Decl.>").

arm's-length negotiations between experienced counsel, including two formal mediation sessions, under the guidance of a well-respected mediator. Likewise, Class Counsel's request for a 25% fee—the “benchmark” fee award in common fund cases in the Eleventh Circuit<sup>2</sup>—and Litigation Expenses is also fair and reasonable, especially considering the result achieved for the Class, the caliber of work performed, the risks of litigation, and comparable fee and expense awards.

Given the quality of the Settlement, it is no surprise that the Class's response to the Settlement, the Plan of Allocation, and Class Counsel's request for attorneys' fees and Litigation Expenses has been overwhelmingly positive. In accordance with the Court's December 23, 2021 Order Preliminarily Approving Settlement and Providing for Notice (ECF No. 162), the Court-authorized Claims Administrator, Strategic Claims Services (“SCS”), conducted an extensive notice campaign, including mailing Notices to 120,940 potential Class Members and nominees, publishing a summary notice in *The Wall Street Journal* and transmitting the same over *PR Newswire*, and posting relevant information and documents—including the

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<sup>2</sup> Notably, if approved, a 25% fee would result in a fractional or *negative* multiplier of approximately 0.22 on Plaintiff's Counsel's lodestar. As set forth in the Fee and Expense Memorandum (ECF No. 164-1), through April 15, 2022, Plaintiff's Counsel devoted more than 33,000 hours to this Action, resulting in a lodestar of \$18,111,103.50, and have continued to expend time on this Action since that date.

Opening Papers—on the webpage [www.strategicclaims.net/acuity](http://www.strategicclaims.net/acuity).<sup>3</sup> In addition, Defendants have issued notice pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1715 *et seq.* ECF No. 159. The foregoing notice efforts have informed Class Members of the Settlement, the Plan of Allocation, and the requested fees and Litigation Expenses, as well as, *inter alia*, Class Members’ options in connection with the Settlement. *See, e.g.*, Initial Craig Decl., Exs. A & B.

Following this notice campaign, ***not a single member of the Class has objected to any aspect of the Settlement, the Plan of Allocation, or the requested fees and Litigation Expenses.*** Class Representative—a sophisticated institutional investor—also supports the Settlement and the fee and expense request. Further, out of the tens of thousands of potential Class Members that received notice of the Settlement, ***only six*** requests for exclusion from the Class have been received, further underscoring the positive reaction of the Class. *See* Supp. Craig Decl., ¶ 7.<sup>4</sup>

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<sup>3</sup> *See* Supplemental Declaration of Margery Craig Concerning (A) Mailing of the Notice and Claim Form; (B) Update on Toll-Free Telephone Line and Settlement Webpage; and (C) Report on Requests for Exclusion, Objections and Claims Received (“Supplemental Craig Declaration” or “Supp. Craig Decl.”) submitted herewith as Exhibit 1, as well as the previously filed Declaration of Margery Craig, dated April 29, 2022 (ECF No. 165-3) (“Initial Craig Decl.”).

<sup>4</sup> It is worth noting that three of the individuals requesting exclusion do not appear to be Class Members from the information provided with the requests, and two of the individuals requesting exclusion have not provided enough information to determine whether they are Class Members. *See* Initial Craig Decl., Ex. D; Supp. Craig Decl., Ex. A. Moreover, only two of the requests for exclusion included the

Additionally, to date, 73,909 Claims have been received from potential Class Members seeking a distribution from the Settlement. Supp. Craig Decl., ¶ 9.<sup>5</sup> Clearly, the Class's reaction is a further indication that the Settlement, the Plan of Allocation, and Class Counsel's request for attorneys' fees and Litigation Expenses are fair and reasonable and should be approved.

## **II. THE CLASS'S REACTION PROVIDES ADDITIONAL SUPPORT FOR APPROVAL OF THE MOTIONS**

In their Opening Papers, Class Representative and Class Counsel demonstrated that the Settlement, the Plan of Allocation, and the request for attorneys' fees and Litigation Expenses are fair and reasonable and warrant the Court's approval. Now that the time for objecting or requesting exclusion has passed, the Class's reaction also clearly supports approval.

### **A. The Class's Reaction Supports Approval of the Settlement and Plan of Allocation**

The Eleventh Circuit instructs district courts to consider the opposition to the settlement in determining whether to approve a class action settlement. *Bennett v.*

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information required for a valid exclusion pursuant to the Preliminary Approval Order and Notice, and accordingly, only these two requests for exclusion are included on Exhibit 1 to the proposed Judgment submitted herewith.

<sup>5</sup> Given that SCS is in the early stages of reviewing Claims, this number is preliminary and subject to change, and is not intended to be construed as a final count of valid Claims. *Id.*, ¶ 9, n.2.



*Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984).<sup>6</sup> Moreover, “[t]he lack of opposition to the Settlement supports the conclusion that the Settlement is fair, reasonable, and adequate and deserves final approval.” *See Ferron v. Kraft Heinz Foods Co.*, 2021 WL 2940240, at \*12 (S.D. Fla. July 13, 2021).

Here, the absence of *any* objections from Class Members strongly supports approval of the Settlement and Plan of Allocation. *See Gonzalez v. TCR Sports Broadcasting Holding, LLP*, 2019 WL 2249941, at \*5 (S.D. Fla. May 24, 2019) (“This lack of opposition, and implicitly overwhelming Settlement Class Member support, weighs strongly in favor of the Court’s approval of the Settlement Agreement.”); *In re Home Depot, Inc. Customer Data Sec. Breach Litig.*, 2016 WL 6902351, at \*6 (N.D. Ga. Aug. 23, 2016) (“The low percentage of objections demonstrates the reasonableness of the Settlement and supports the Settlement’s approval.”); *In re NetBank, Inc. Sec. Litig.*, 2011 WL 13176646, at \*5 (N.D. Ga. Nov. 9, 2011) (“The absence of any objection to the settlement here further supports final approval.”); *see also In re Rayonier Inc. Sec. Litig.*, 2017 WL 4535984, at \*1 (M.D. Fla. Oct. 5, 2017) (approving plan of allocation where no objections to the plan were submitted). In particular, the absence of any objections from institutional

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<sup>6</sup> Unless otherwise noted, all internal quotation marks, citations, and other punctuation are omitted, and all emphasis is added.

investors, who possessed ample means and incentive to object to the Settlement if they deemed it unsatisfactory, is further evidence of the Settlement’s fairness. *See, e.g., In re Facebook, Inc. IPO Sec. & Derivative Litig.*, 343 F. Supp. 3d 394, 410 (S.D.N.Y. 2018) (“That not one sophisticated institutional investor objected to the Proposed Settlement is indicia of its fairness.”), *aff’d* 822 F. App’x 40 (2d Cir. 2020).

Likewise, the fact that only six requests for exclusion were received following extensive notice efforts—representing *less than 0.005%* of the 120,940 Notices mailed—further supports approval of the Settlement. *See, e.g., Janicijevic v. Classica Cruise Operator, Ltd.*, 2021 WL 2012366, at \*7 (S.D. Fla. May 20, 2021) (finding “no objections and only eight exclusion requests from Class Members [to proposed settlement]” weighed strongly in favor of final approval); *In re CP Ships Ltd., Sec. Litig.*, 2008 WL 4663363, at \*4 (M.D. Fla. Oct. 21, 2008) (approving settlement where seven class members submitted requests for exclusion), *aff’d*, 578 F. 3d 1306 (11th Cir. 2009); *Destefano v. Zynga, Inc.*, 2016 WL 537946, at \*14 (N.D. Cal. Feb. 11, 2016) (noting low number of exclusions supports reasonableness of securities class action settlement). By way of comparison, SCS has to date received 73,909 Claims from potential Class Members seeking to receive a distribution from the Settlement. Supp. Craig Decl., ¶ 9.

**B. The Class’s Reaction Also Supports Approval of Class Counsel’s Request for Attorneys’ Fees and Litigation Expenses**

The reaction of the Class similarly supports Class Counsel’s motion for an award of attorneys’ fees and Litigation Expenses. Here, the lack of *any* objections is strong evidence that the requested fees and expenses are reasonable. *See In re Health Ins. Innovations Sec. Litig.*, 2021 WL 1341881, at \*12 (M.D. Fla. Mar. 23, 2021) (noting “lack of objections by the Class also supports the Counsel’s fee request), R. & R. adopted, 2021 WL 1186838 (M.D. Fla. Mar. 30, 2021); *In re Food Serv. Equip. Hardware Antitrust Litig.*, 2011 WL 13175440, at \*4 (N.D. Ga. Dec. 27, 2011) (“The lack of objections to the attorneys’ fee and expense award is evidence that the requested fee is fair.”); *Pinto v. Princess Cruise Lines, Ltd.*, 513 F. Supp. 2d 1334, 1343 (S.D. Fla. 2007) (“That this sizeable class did not give rise to a single objection on the fees request further justifies the full award.”). And, as with the Settlement and Plan of Allocation, the lack of any objections by institutional investors particularly supports approval of the fee request. *See, e.g., In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 305 (3d Cir. 2005) (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” and did not do so, supported approval of request).

Accordingly, the favorable reaction of the Class provides strong support for the Settlement, the Plan of Allocation, and Class Counsel's request for attorneys' fees and Litigation Expenses.

### III. CONCLUSION

For the foregoing reasons, and those set forth in their Opening Papers, Class Representative and Class Counsel respectfully request that the Court approve the Settlement, the Plan of Allocation, and the request for attorneys' fees and Litigation Expenses. Copies of (i) the [Proposed] Judgment Approving Class Action Settlement; (ii) the [Proposed] Order Approving Plan of Allocation of Net Settlement Fund; and (iii) the [Proposed] Order Awarding Attorneys' Fees and Litigation Expenses are submitted herewith.

Dated: May 27, 2022

Respectfully submitted,

*s/ Andrew L. Zivitz*

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*s/ Michael A. Caplan*

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**RULE 7.1(D) CERTIFICATION**

The undersigned counsel certifies that this document has been prepared with one of the font and point selections approved by the Court in Civil Local Rule 5.1(C).

*s/ Andrew L. Zivitz* \_\_\_\_\_

Andrew L. Zivitz

**CERTIFICATE OF SERVICE**

I hereby certify that on May 27, 2022, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system. Notice of this filing will be sent to counsel of record by operation of the Court's electronic filing system.

*s/ Andrew L. Zivitz* \_\_\_\_\_

Andrew L. Zivitz



# **EXHIBIT 1**

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

IN RE ACUIITY BRANDS, INC.  
SECURITIES LITIGATION

Civil Action No. 1:18-cv-02140-MHC

**SUPPLEMENTAL DECLARATION OF MARGERY CRAIG  
CONCERNING (A) MAILING OF THE NOTICE AND CLAIM FORM;  
(B) UPDATE ON TOLL-FREE TELEPHONE LINE AND SETTLEMENT  
WEBPAGE; AND (C) REPORT ON REQUESTS FOR EXCLUSION,  
OBJECTIONS AND CLAIMS RECEIVED**

I, Margery Craig, declare as follows:

1. I am a Project Manager of Strategic Claims Services (“SCS”), a nationally recognized class action administration firm. I have over fourteen years of experience specializing in the administration of class action cases. SCS was established in April 1999 and has administered over five-hundred (500) class action cases since its inception. Pursuant to the Court’s Order Preliminarily Approving Settlement and Providing for Notice, dated December 23, 2021 (the “Preliminary Approval Order”), SCS was retained as the Claims Administrator in connection with the Settlement of the above-captioned Action.<sup>1</sup> I submit this

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<sup>1</sup> All terms with initial capitalization not otherwise defined herein shall have the meanings ascribed to them in the Stipulation and Agreement of Settlement, dated as of December 2, 2021 (the “Stipulation”) and in the Initial Mailing

declaration as a supplement to my previously filed Declaration of Margery Craig Concerning (A) Mailing of the Notice and Claim Form; (B) Publication of the Summary Notice; and (C) Report on Requests for Exclusion and Objections Received to Date, dated April 29, 2022 (ECF No. 165-3) (the “Initial Mailing Declaration”) in order to provide the Court and the Parties with updated information regarding the dissemination of notice to potential Class Members, as well as updates concerning other aspects of the Settlement administration process. I have personal knowledge of the facts set forth herein, and if called on to do so, I could and would testify competently thereto.

**UPDATE ON MAILING OF THE NOTICE AND CLAIM FORM**

2. As reported in the Initial Mailing Declaration, SCS mailed the Notice and Claim Form (collectively, the “Notice Packet”) to 1,820 individuals and organizations identified in the transfer records provided by Defendants’ Counsel. SCS also mailed or emailed 2,204 letters to the Nominee Account Holders and Institutional Groups contained on SCS’s master mailing list. Following these mailings and in response to requests from individuals and nominees, SCS mailed an additional 105,760 Notice Packets to potential Class Members and nominees. Additionally, as noted in the Initial Mailing Declaration, SCS was notified by two

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Declaration (defined below).

nominees that they emailed a copy of the Notice Packet to 15,180 of their customers. Since the Initial Mailing Declaration, no additional Notice Packets have been mailed or emailed by SCS. In total, as of the date of this Declaration, 120,940 Notice Packets have been mailed or emailed to potential Class Members and nominees.

3. As further reported in the Initial Mailing Declaration, as of April 29, 2022, 4,217 Notice Packets were returned to SCS as undeliverable. SCS re-mailed Notice Packets to 336 that were returned by the United States Postal Service (“USPS”) with forwarding addresses as well as to 975 where updated addresses were located through skip tracing efforts. Since the Initial Mailing Declaration, an additional 210 Notice Packets were returned to SCS as undeliverable. Of the 210 Notice Packets returned, the USPS provided forwarding addresses for five, and SCS immediately mailed another Notice Packet to the updated addresses. For the remaining 205 Notice Packets returned to SCS as undeliverable, SCS performed a skip trace address search using Experian and was able to obtain 60 updated addresses. SCS immediately mailed another Notice Packet to the 60 updated addresses obtained from the skip trace efforts.

**UPDATE ON TOLL-FREE TELEPHONE LINE**

4. The Initial Mailing Declaration noted that SCS maintains a toll-free telephone number (1-866-274-4004) for Class Members to call and obtain information about the Settlement as well as request a Notice Packet. SCS has promptly responded to each telephone inquiry and will continue to respond to Class Member inquiries via the toll-free telephone number.

**UPDATE ON SETTLEMENT WEBPAGE**

5. The Initial Mailing Declaration also noted that on January 12, 2022, SCS's website [www.strategicclaims.net](http://www.strategicclaims.net), was updated to include a specific webpage for this Settlement. The webpage is accessible 24 hours a day, 7 days a week and contains a current status of the case, important Settlement-related deadlines, downloadable copies of the Claim Form, the Notice, the Preliminary Approval Order, the Stipulation, and the operative complaint, and an online claim filing link. On May 2, 2022, SCS posted to the Settlement webpage copies of the papers filed in support of Class Representative's motion for final approval of the Settlement and Plan of Allocation and Class Counsel's motion for an award of attorneys' fees and Litigation Expenses (ECF Nos. 163-65). In addition, on May 27, 2022, SCS updated the webpage to inform Class Members that the June 3, 2022 Settlement Hearing would be held remotely via Zoom and provide the

telephone number and passcode to access hearing. SCS will continue to maintain and, as appropriate, update the Settlement webpage with relevant case information until the conclusion of the administration.

### **REPORT ON REPORT ON EXCLUSIONS, OBJECTIONS, AND CLAIMS**

6. The notices and Settlement webpage informed Class Members that written requests for exclusion were to be mailed to SCS such that they were received no later than May 13, 2022. SCS has been monitoring all mail received for this case.

7. As previously reported in the Initial Mailing Declaration, SCS received five requests for exclusion. Copies of these five exclusion requests were attached as Exhibit D to the Initial Mailing Declaration. Since the Initial Mailing Declaration, SCS has received one additional request for exclusion. The sixth request for exclusion was received after the May 13, 2022 deadline for requesting exclusion. A copy of this request for exclusion, with personal information redacted, is attached as **Exhibit A** hereto.

8. According to the Notice, Class Members seeking to object to the proposed Settlement, the proposed Plan of Allocation, and/or Class Counsel's request for attorneys' fees and Litigation Expenses were required to submit their objection in writing such that the objection was received by Class Counsel and

Defendants' Counsel, as well as filed with the Court, no later than May 13, 2022. As of the date of this Declaration, SCS has not received any misdirected objections.

9. The notices and Claim Form also informed Class Members that if they wished to participate in the Settlement they must submit a Claim Form to SCS, with supporting documentation, postmarked, if mailed, or online via the Settlement webpage by May 18, 2022. As of the date of this Declaration, SCS has received 73,909 Claims (representing approximately 32,541,786 shares of Acuity common stock purchased during the Class Period).<sup>2</sup> Of the Claims received, 72,586 Claims were filed electronically, 810 Claims were submitted by mail, and 513 Claims were submitted through the Settlement webpage's claim filing link.

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<sup>2</sup> SCS is currently in the process of reviewing and analyzing the Claims received for this Settlement and the Claim number provided should not be construed as a final count of valid Claims. The Claims received are subject to further review, analysis, and quality control. Further, some of the Claims received contain deficiencies (such as inadequate or no supporting documentation), which will be addressed during the normal course of the administration. In addition, Claims that do not meet the submission requirements after being given an opportunity to cure deficiencies may ultimately be rejected.

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 27<sup>th</sup> day of May 2022, in Media, Pennsylvania.

  
Margery Craig



## **EXHIBIT A**

Donald Leithauser, Jr.

8 May 2022

Acuity Brands, Inc.  
Securities Litigation, c/o Strategic Claims Service  
600 N. Jackson St. – Suite 205  
Media, Pa. 19063

Re: Civil Action No. 1:18-cv-02140-MHC  
Request for Exclusion from Class Action

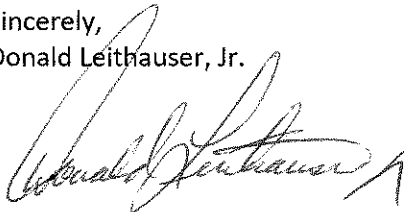
To Whom it May Concern:

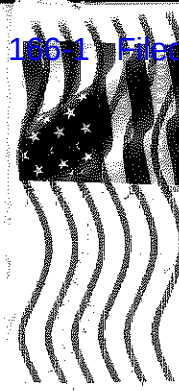
I am a former employee of the Mark Architectural Lighting division of Acuity Brands during the time window described in the notice I received regarding this class action suit. While I never actually purchased Acuity stock during that time, I held a Director's position which entitled me to bonuses and was part of an LTIP (long term incentive plan), both of which included stock grants. I resigned my position at the company when they closed the doors to the Mark facility in Edison, NJ at the end of 2016. I have long since sold all of the stock I had and no longer hold any.

Unfortunately, I do not have any records of exactly when or how much stock I was granted, held or sold during that time, so I cannot provide any of that data to you.

Please be aware that I wish to exclude myself from this class action suit and hope that this letter is satisfactory for that purpose. Please feel free to contact me if you have any questions.

Sincerely,  
Donald Leithauser, Jr.

A handwritten signature in black ink, appearing to read "Donald Leithauser, Jr.", with a stylized flourish at the end.



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MAY 11 2022

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Acuity Brands, Inc.  
SECURITIES LITIGATION  
c/o STRATEGIC CLAIMS SERVICE  
600 N. JACKSON ST. - SUITE 205  
MEDIA, PA, 19063

19063-255455

