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15 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA
 16 **SAN FRANCISCO DIVISION**

17 JULIA JUNGE and RICHARD JUNGE, on
 behalf of themselves and a class of similarly
 situated investors,
 18
 19 Plaintiffs,
 20 v.
 21 GERON CORPORATION and JOHN A.
 SCARLETT,
 22 Defendants.

Case No. 3:20-cv-00547-WHA (DMR)
Class Action

(Consolidated with Case No. 3:20-cv-01163-WHA; Related to Case No. 3:20-cv-02823-WHA; 3:22-mc-80051-WHA)

**PLAINTIFFS’ OMNIBUS REPLY
 MEMORANDUM OF POINTS AND
 AUTHORITES IN SUPPORT OF
 MOTION FOR FINAL APPROVAL OF
 SETTLEMENT AND PLAN OF
 ALLOCATION AND IN SUPPORT OF
 MOTION FOR AWARD OF
 ATTORNEYS’ FEES,
 REIMBURSEMENT OF LITIGATION
 EXPENSES AND AWARDS TO LEAD
 PLAINTIFFS FOR LOST WAGES
 UNDER 15 U.S.C. § 78u-4(a)(4)**

Judge: Hon. William H. Alsup
 Courtroom: 12, 19th Floor
 Date: March 30, 2023
 Time: 11:00 a.m.

1 **I. INTRODUCTION AND PRELIMINARY STATEMENT**

2 Lead Plaintiffs and Lead Counsel respectfully submit this omnibus reply memorandum in
3 further support of Lead Plaintiffs' Motion for Final Approval of Settlement and Plan of Allocation
4 (the "Final Approval Motion") (ECF No. 260), and in further support of Lead Counsel's Motion
5 for Award of Attorneys' Fees, Reimbursement of Litigation Expenses and Awards to Lead
6 Plaintiffs for Lost Wages under 15 U.S.C. § 78u-4(a)(4) (the "Fee Motion") (ECF No. 261), filed
7 in the above-consolidated securities class action (the "Action").¹

8 Defendant Geron has now agreed to pay in cash the \$7 million balance owing on the \$24
9 million Settlement Amount, rather in Geron common stock. Accordingly, the Settlement set forth
10 in the Stipulation and Agreement of Settlement (the "Stipulation" or the "Settlement"), dated
11 September 2, 2022 (ECF No. 247),² provides for a non-reversionary Settlement Fund of \$24 million
12 in cash plus interest (\$284,479.76 through March 31, 2023).

13 Pursuant to the Court's Order Setting Schedule in Advance of March 30, 2023 Fairness
14 Hearing ("Preliminary Approval Order") (ECF No. 259), more than 145,000 copies of the Court-
15 approved Notice of Pendency and Proposed Settlement of Class Action ("Settlement Notice") were
16 mailed to potential Class Members and their nominees. The Settlement Notice advised Class
17 Members of the \$24 million Settlement, the proposed Plan of Allocation, Lead Counsel's request
18 for an award of attorneys' fees and reimbursement of expenses, and Lead Plaintiffs' request for
19 reasonable costs and expenses.

20 ¹ The [Proposed] Judgment Approving Class Action Settlement that has been agreed to by the
21 parties in the Action is filed concurrently herewith and updates the form of proposed judgment that
22 is Exhibit B to the Stipulation. ECF No. 247-5. On March 22, 2023, counsel for Defendants Geron
23 Corporation ("Geron") and John A. Scarlett (the "Defendants") confirmed to Plaintiffs' counsel
24 that it reviewed and approved the proposed judgment. Separately, a proposed order granting the
25 Fee Motion and a proposed order approving the Plan of Allocation are filed concurrently herewith.
26 The proposed orders shall be delivered to the Court by email and hard copy.

27 ² All capitalized terms used herein have the same meaning as set forth in the Stipulation, unless
28 otherwise defined. All citations to ECF No. ___ are to filings in the Action, and pagination is to the
original version of the document unless otherwise noted. All emphasis is added, and footnotes and
quotations omitted, unless otherwise noted herein.

As referenced herein, the "2/2/2023 Campisi Declaration" or "2/2/23 Campisi Decl." refers to the
Declaration of Jeffrey P. Campisi in Supp. of Mot. for Final Approval of Settle. and Plan of
Allocation and in Supp. of Lead Counsel's Mot. for an Award of Attorneys' fees, Reimbursement
of Litigation Expenses and Award to Lead Plaintiffs for Lost Wages under 15 U.S.C. § 78u-4(a)(4),
dated February 2, 2023 (ECF No. 262) and the exhibits thereto.

1 Following the filing of the Final Approval Motion and the Fee Motion on February 2, 2023,
 2 and the expiration of the March 9, 2023 deadline for filing objections, the Class’s overwhelming
 3 support for the Settlement, the Plan of Allocation, and the application for fees and expenses is
 4 beyond question. As of the date of this filing, Lead Plaintiffs and Lead Counsel have not received,
 5 and are not aware of, any objections to the Settlement, the Plan of Allocation, or to the application
 6 for fees and expenses. The absence of a single objection to the Settlement is compelling evidence
 7 that the proposed Settlement is fair, just, reasonable, and adequate.³

8 Further, the Claims Administrator reports that only twenty-five (25) requests for exclusion
 9 from the Settlement (as distinct from the Original Class Notice) have been received, the deadline
 10 of which to file a request was March 9, 2023. No institutional investors have requested to be
 11 excluded from the Class and over 1,177 institutional investors have already filed claims.⁴ That there
 12 are only 25 timely requests for exclusion from the Settlement – representing only 13,478 shares out
 13 of over 138.9 million estimated damaged shares and comprising a fraction of the responses to the
 14 over 145,000 Settlement Notice Packets mailed to potential Class Members or their nominees –
 15 strongly demonstrates the positive reaction of the Class to the Settlement. Further, two members of
 16 the Class who opted out in response to the Original Class Notice, opted back in to the Class and
 17 filed claims.

18 The absence of objections and the de minimis exclusion requests is a testament to the
 19 fairness, reasonableness, and adequacy of the Settlement, Plan of Allocation, and the application
 20 for fees and expenses. Moreover, the deadline for potential class members to file claims was
 21 February 16, 2023, and to date 5,908 claims have been filed, and preliminarily represent
 22 \$63,526,003 in recognized losses under the Plan of Allocation.⁵

23 ³ Defendants do not oppose the Final Approval Motion. *See* ECF No. 266.

24 ⁴ *See* Supplemental Declaration of Jessie Mahn Regarding: (I) Mailing of Settlement Notice and
 25 Proof of Claim and Release Form; (II) Publication of Summary Notice; (III) Call Center Services;
 26 (IV) The Settlement Website; and (V) Requests for Exclusion, Objections and Claims Received to
 Date (the “Mahn Supp. Dec.”), dated March 23, 2023, ¶¶28 (“Mahn Supp. Decl.” or “Mahn
 Supplemental Declaration”).

27 ⁵ As stated in the Mahn Supp. Dec., ¶¶24, 29-30, these are preliminary numbers and are subject to
 28 further review and auditing by the Claims Administrator for duplicates and other potential

1 Based on the foregoing and the entire record herein, Lead Plaintiffs and Lead Counsel
2 respectfully requests that the Court grant the Final Approval Motion and Fee Motion.

3 **II. ARGUMENT**

4 **A. The Reaction of the Class Strongly Supports Approval of the Settlement and**
5 **Plan of Allocation**

6 To determine whether to approve a class action settlement, the Ninth Circuit instructs
7 district courts to consider, among various factors, “the reaction of the class members to the
8 proposed settlement.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998), *overruled*
9 *on other grounds by Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011). Here, the fact that there
10 are no objections from members of the Class strongly supports approval of the Settlement.

11 Indeed, “the absence of a large number of objections to a proposed class action settlement
12 raises a strong presumption that the terms of a proposed class settlement action are favorable to the
13 class members.” *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1043 (N.D. Cal. 2008); *SEB*
14 *Investment Management AB v. Symantec Corp.*, No. C 18-02902-WHA, 2022 WL 409702, at *7
15 (N.D. Cal. Feb. 10, 2022) (Alsup, J.) (noting that “[o]nly eleven individual class members (no
16 institutional investors) have opted out in connection with the proposed settlement” and “[n]ot a
17 single class member has submitted an objection.”); *Luna v. Marvell Tech. Group*, No. C 15-05447
18 WHA, 2018 WL 1900150, at *3 (N.D. Cal. Apr. 20, 2018) (Alsup, J.) (noting lack of objections);
19 *Fleming v. Impax Labs. Inc.*, No. 16-CV-06557-HSG, 2022 WL 2789496, at *7 (N.D. Cal. July 15,
20 2022) (“The Court finds that the absence of objections indicates strong support among the [c]lass
21 [m]embers and weighs in favor of approval.”); *Destefano v. Zynga, Inc.*, No. 12-cv-04007-JSC,
22 2016 WL 537946, at *13 (N.D. Cal. Feb. 11, 2016) (“a ‘court may appropriately infer that a class
23 action settlement is fair, adequate, and reasonable when few class members object to it.’”); *In re*
24 *Wells Fargo & Co. S’holder Der. Litig.*, 445 F. Supp. 3d 508, 518 (N.D. Cal. 2020), *aff’d*, 845 F.
25 App’x 563 (9th Cir. 2021) (“The absence of a large number of objections to a proposed class action
26 settlement raises a strong presumption that the terms of a proposed class ... action [settlement] are
27 deficiencies, and a final report on Submitted Claims (as defined therein) will be provided in
28 connection with the motion for distribution or such further reports as the Court may require. The
Claims Administrator indicates that this process may take five (5) months.

1 favorable to the class members.”).

2 Further, the absence of any objections from institutional investors, is further evidence of the
3 Settlement’s fairness. *See, e.g., In re Extreme Networks, Inc. Sec. Litig.*, No. 15-cv-04883-BLF,
4 2019 WL 3290770, at *9 (N.D. Cal. July 22, 2019) (“Many potential class members are
5 sophisticated institutional investors; the lack of objections from such institutions indicates that the
6 settlement is fair and reasonable.”); *In re Cathode Ray Tube (CRT) Antitrust Litig.*, MDL No. 1917,
7 2017 WL 2481782, at *4 (N.D. Cal. June 8, 2017) (the absence of any objections from institutional
8 investors supports “the inference that the class approves of the settlement is even stronger”).

9 In addition, there are no objections to the Plan of Allocation, which also supports the Court’s
10 approval. *See CRT*, 2017 WL 2481782, at *5 (approving plan of allocation and noting that the lack
11 of objections “favors” approval of the plan of allocation); *Atlas v. Accredited Home Lenders*
12 *Holding Co.*, No. 07-CV-00488-H (CAB), 2009 WL 3698393, at *4 (S.D. Cal. Nov. 4, 2009)
13 (noting the “predominantly positive response” to the plan of allocation where only two objections
14 were submitted to the plan).

15 Likewise, the fact that, following a robust notice program, only 25 requests for exclusion
16 from the Settlement were submitted by potential members of the Class (*see* Mahn Supp. Decl., ¶¶
17 34-39 and Ex. B), further supports approval of the Settlement. *See, e.g., Zynga*, 2016 WL 537946,
18 at *14 (noting that only 32 exclusion requests were received, none from institutional investors, that
19 16 of the 32 did not provide the required share information, and the other 16 represented only
20 34,852 shares or .0176 percent of the total number of shares held publicly during the Class Period).
21 Here, 18 of the 25 requests for exclusion from the Settlement submitted the required share
22 information, and based on that number alone, 13,478 shares sought exclusion from the Settlement.
23 Mahn Supp. Decl., ¶34. These shares represent .0097 % of the 138.9 million estimated damaged
24 shares.

25 Accordingly, the reaction of the Class strongly supports granting the Final Approval
26 Motion.

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28

1 **B. THE LACK OF OBJECTIONS SUPPORTS APPROVAL OF THE FEE**
 2 **MOTION**

3 Not one Class Member has objected to the Fee Motion. Mahn Supp. Decl., ¶41. The Fee
 4 Motion requests an award for attorney’s fees of 18% of the Settlement Fund, reimbursement of
 5 litigation expenses of \$1,086,353.27, and awards for the Lead Plaintiffs for lost wages in the
 6 amount of \$10,000 to Julia Junge, and \$1,544.88 to Richard Junge. On February 2, 2023, Lead
 7 Counsel made its detailed billing records and expenses available to members of the Class to review.
 8 *See 2/2/23 Campisi Decl.*, ¶¶ 314, 321; ECF No. 263; Mahn Supp. Dec., ¶20(a) (billing records and
 9 expenses posted to www.GeronSecuritiesLitigation.com with link to billing records and expenses).

10 Interest on the \$24 million Settlement Amount is \$284,479.76 (this includes actual interest
 11 earned since inception of the Escrow Account and projected interest through March 31, 2023).
 12 Therefore, as of March 31, 2023, a fee of eighteen percent (18%) of the Settlement Fund would be
 13 \$4,371,206.36.

14 The fact that there have been no objections is strong evidence that awards and
 15 reimbursement requested in the Fee Motion is fair and reasonable. *See, e.g., Zynga*, 2016 WL
 16 537946, at *18 (“the lack of objection by any Class Members also supports the 25 percent fee”);
 17 *Baird v. BlackRock Institutional Tr. Co., N.A.*, No. 17-CV-01892-HSG, 2021 WL 5113030, at *2,
 18 *7 (N.D. Cal. Nov. 3, 2021) (finding that an upward adjustment of the benchmark fee award to
 19 29% on a settlement of \$9.65 million was reasonable and justified where, among other factors, “no
 20 [c]lass [m]ember objected to the settlement . . . suggesting support for the settlement’s outcome”);
 21 *In re Immune Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1177 (S.D. Cal. 2007) (“the lack of
 22 objection from any Class Member supports the attorneys’ fees award”).

23 As with the Settlement and Plan of Allocation, the lack of any objections by institutional
 24 investors also weighs in favor of approving the fee and expense request. *See, e.g., Heffler v. Wells*
 25 *Fargo & Co.*, No. 16-CV-05479-JST, 2018 WL 6619983, at *15 (N.D. Cal. Dec. 18, 2018) (“[T]he
 26 lack of objections from institutional investors who presumably had the means, the motive, and the
 27 sophistication to raise objections weighs in favor of approval [of plaintiffs’ counsel’s fees
 28 request].”), *aff’d sub nom. Heffler v. Pekoc*, 802 F. App’x 285 (9th Cir. 2020).

1 Accordingly, the reaction of the Class supports granting the Fee Motion.

2 **C. THE CLAIMS ADMINISTRATOR COMPLETED THE NOTICE**
 3 **PROGRAM**

4 The Claim Administrator has completed the Court-approved notice program set forth in its
 5 Preliminary Approval Order and Scheduling Order. ECF Nos. 253, 259. In addition, the Final
 6 Approval Motion and Fee Motion were filed on February 2, 2023—five weeks in advance of the
 7 March 9, 2023 deadlines for potential Class Members to file objections or opt out of the Settlement,
 8 satisfying the requirements of *In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988, 995 n.2
 9 (9th Cir. 2010) and the Northern District of California's Procedural Guidelines for Class Action
 10 Settlements.

11 As outlined in the Final Approval Motion, the notice program approved by the Court
 12 comports with due process, the requirements of the Private Securities Litigation Reform Act of
 13 1995 (“PSLRA”), and satisfies all applicable requirements under Fed. R. Civ. P. 23(e). ECF No.
 14 260, Section III, at 20-22; *see, e.g., Luna v. Marvell Tech. Group*, No. C 15-05447 WHA, 2018
 15 WL 1900150, at *1-*2 (N.D. Cal. Apr. 20, 2018) (Alsup, J.) (finding court’s notice plan adequate,
 16 and fulfilled by claims administrator, where notice included mailed notice, publication of a
 17 summary notice in the *Wall Street Journal*, over the *Business Wire* and on the DTC Legal Notice
 18 System); *Hayes v. MagnaChip Semiconductor Corp.*, Case No. 14-cv-01160-JST, 2016 WL
 19 6902856, at *4-*5 (N.D. Cal. Nov. 21, 2016) (approving notice program of mailed notice with
 20 summary notices published in *Investor’s Business Daily* and over *Globe Newswire*); *Zynga*, 2016
 21 WL 537946, at *7 (finding individual notice mailed to class members combined with summary
 22 publication constituted “the best form of notice available under the circumstances”).

23 The Claims Administrator disseminated notice through direct mailings of the Settlement
 24 Notice to potential members of the Class or nominees, publication of the Summary Settlement
 25 Notice, and maintenance of an online website. 2/2/23 Campisi Decl., ECF No. 262, Section L, ¶¶
 26 190-192; ECF No. 262-8 (Mahn Declaration), ¶¶4-26. The Claims Administrator also identified
 27 alternative addresses for Settlement Notice Packets returned as undeliverable through methods such
 28 as recontacting nominees that had provided invalid addresses. *See* ECF No. 262-8 (Mahn

1 Declaration), ¶¶20-24; Mahn Supp. Decl., ¶¶7-11.

2 In addition to the work of the Claims Administrator to disseminate notice to potential
3 members of the Class, Lead Counsel took additional steps beyond those taken by the Claims
4 Administrator to disseminate notice, including reissuance of the Summary Settlement Notice on
5 January 16, 2023 on Globe Newswire. 2/2/23 Campisi Decl., ECF No. 262, Section L, ¶¶199-200
6 and Exhibit L (“Kaplan Fox Announces GERON CORPORATION (NASDAQ: GERN)
7 INVESTOR ALERT – Important Claims Filing Deadline in Proposed Settlement in the Geron
8 Securities Litigation is February 16, 2023). Lead Counsel also responded to many inquiries from
9 members of the Class regarding the claims process and participation in the Settlement, and it
10 conducted follow up with the Claims Administrator concerning any follow up needed to provide
11 potential members of the Class with information, additional copies of the Proof of Claim and
12 Release Form or Settlement Notice. Mahn Supp. Decl., ¶12.

13 As set forth in the Mahn Decl., a relatively small number of mailings to potential Class
14 members or nominees were returned as undeliverable or received an e-mail bounceback. *See e.g.*,
15 2/2/23 Campisi Decl., Ex. H (Mahn Decl.), ¶¶22 and 24. The Mahn Decl. and Mahn Supp. Decl.
16 set forth Epiq’s efforts to locate updated contact information, yet some remain undeliverable. This
17 Court recognized in cases such as *Symantec* that a notice program satisfies Rule 23 even with a
18 certain number of undeliverable notices, and noting the additional notice provided by websites and
19 publication. *See Symantec*, 2022 WL 409702, at *5-*6 (3,452 notice packets out of 169,578, or 2%,
20 remained undeliverable). According to the Mahn Supp. Decl., 5.3% of the total mailed Settlement
21 Notice Packets are undeliverable. Mahn Supp. Decl., ¶11.

22 The notice program implemented by the Claims Administrator and Lead Counsel satisfy
23 the requirements of due process, the PSLRA and due process.⁶

24 **D. INTERIM CLAIMS UPDATE**

25 February 16, 2023 was the deadline for potential Class Members to submit a Proof of Claim
26 and Release Form. 2/2/23 Campisi Decl., Ex. H (Mahn Decl.), ¶35. The Claims Administrator is

27 ⁶ Defendants’ counsel has indicated that the notice required under Class Action Fairness Act
28 (“CAFA”) has been disseminated. ECF No. 247, ¶21. Proof of the CAFA notification, and lack
of response thereto, was filed on March 23, 2023. ECF No. 268.

1 reviewing and processing each submitted Proof of Claim and Release Form (“Submitted
2 Claim(s)”). Mahn Supp. Decl., ¶30. This process may take five months, and therefore, if final
3 approval is granted, it is recommended that any hearing on a distribution motion be set in or around
4 October 2023, subject to the Court’s availability. *Id.*, ¶48.

5 As set forth in the Mahn Declaration, more than 145,486 Settlement Notice Packets were
6 mailed or e-mailed to potential Class Members as of February 2, 2023. The 145,486 number does
7 not seek to exclude duplicates or to screen recipients for whether each was in fact a Class Member.

8 In response to the 145,486 Settlement Notice Packets that were mailed/e-mailed, to date the
9 Claims Administrator has received 5,908 Submitted Claims (approximately 4% of the Settlement
10 Notice Packets resulted in Submitted Claims). In *Marvell*, for example, this Court granted final
11 approval to a settlement wherein 38,513 notices were mailed, and 1,363 claims were received, or
12 3.5 %. *Marvell*, 2018 WL 1900150, at *2.

13 Based on the data set out in the Mahn Supp. Declaration, 36,050,900 shares out of an
14 estimated 138.9 million damaged shares have filed claims. This represents approximately 26% of
15 the 138.9 million estimated damaged shares. 2/2/23 Campisi Decl., ¶255. In addition, the total
16 estimated Recognized Loss of \$63,526,003 of all Submitted Claims to date reflects 23-49% of
17 estimated damages of \$130 to \$272 million.⁷ If untimely claims are permitted, subject to Court
18 approval, these numbers will likely increase.

19 **III. CONCLUSION**

20 For these reasons, Lead Plaintiffs and Lead Counsel respectfully request that the Court grant
21 the Final Approval Motion and the Fee Motion, and enter the proposed judgment, proposed order
22 approving the Plan of Allocation and the proposed order granting the Fee Motion.

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28 ⁷ See Motion for Final Approval (ECF No. 260), at 9-10; 2/2/23 Campisi Decl., ¶230.

1 DATED: March 23, 2023

Respectfully submitted,

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