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

IN RE IMMUNITYBIO, INC.
SECURITIES LITIGATION

THIS DOCUMENT RELATES TO:
ALL ACTIONS

No. 3:23-cv-01216-GPC-VET

CLASS ACTION

**REPLY MEMORANDUM IN FURTHER
SUPPORT OF LEAD PLAINTIFF'S
UNOPPOSED MOTIONS FOR (1)
FINAL APPROVAL OF CLASS
ACTION SETTLEMENT AND (2) FEES
AND EXPENSES**

Judge: Hon. Gonzalo P. Curiel

Date: June 13, 2025

Time: 1:30 p.m.

Courtroom: 2D

TABLE OF AUTHORITIES

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2 **Cases** **Page(s)**

3 *Dilts v. Penske Logistics LLC,*

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11 *In re Omnivision Techs., Inc.,*

12 559 F. Supp. 2d 1036 (N.D. Cal. 2008)..... 1, 2

13 *In re Regulus Therapeutics Inc. Sec. Litig.,*

14 2020 WL 6381898 (S.D. Cal. Oct. 30, 2020) 3

15 *Khoja v. Orexigen Therapeutics, Inc.,*

16 2021 WL 5632673 (S.D. Cal. Nov. 30, 2021)..... 3

17 *Mauss v. NuVasive, Inc.,*

18 2018 WL 6421623 (S.D. Cal. Dec. 6, 2018) 3

19 *Nat’l Rural Telecomm. Coop. v. DIRECTV, Inc.,*

20 221 F.R.D. 523 (C.D. Cal. 2004)..... 1

21 *Patel v. Axesstel, Inc.,*

22 2015 WL 6458073 (S.D. Cal. Oct. 23, 2015)..... 2, 3

23 *Ziegler v. GW Pharms., PLC,*

24 2024 WL 1470532 (S.D. Cal. Apr. 3, 2024) 2, 3

25 **Rules**

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TABLE OF DEFINED TERMS

Defined Term	Definition	Cross Reference
Action	<i>In re ImmunityBio, Inc. Securities Litigation</i> , Case No. 23-cv-01216	Stip. ¶ 1.0
Authorized Claimants	Settlement Class members who submit timely and valid Proof of Claims	Stip. ¶ 1.1
Claimant	A Person who or which submits a Proof of Claim	Stip. ¶ 1.3
Co-Lead Counsel	Pomerantz LLP and Holzer & Holzer, LLC	Stip. § 1.A
Defendants	ImmunityBio, Inc., Richard Adcock, David C. Sachs, and Patrick Soon-Shiong	Stip. at 1
ImmunityBio	ImmuntiyBio, Inc.	Stip. at 1
Lead Plaintiff	Dipak Patel	Stip. at 1
Notice	The Notice of Proposed Settlement of Class Action, Motion for Attorneys’ Fees and Expenses, and Settlement Fairness Hearing.	Stip. ¶ 1.17
Plan of Allocation	The plan or formula for allocating the Net Settlement Fund to Authorized Claimants.	Stip. ¶ 1.22
Proof of Claim	The Proof of Claim and Release Form to be submitted by Claimants.	Stip. ¶ 1.24
Settlement	The settlement of the Action on the terms set forth in the Stipulation	Stip. ¶ 1.32
Settlement Amount	Ten million five hundred thousand dollars (\$10,500,000.00) in cash to be paid pursuant to ¶ 2.0 of the Stipulation	Stip. ¶ 1.34
Settlement Class	All persons who purchased or acquired ImmunityBio, Inc. securities during the Settlement Class Period and were damaged thereby	Stip. ¶ 1.35
Settlement Class member	Any person or entity that is a member of the Settlement Class that does not exclude himself, herself, or itself by filing a timely request for exclusion in accordance with the requirements set forth in the Notice	Stip. ¶ 1.36
Settlement Class Period	March 10, 2021, to May 10, 2023, inclusive	Stip. ¶ 1.35
Settlement Fund	The Settlement Amount before any authorized expenditures	Stip. ¶ 1.40
Stipulation	Stipulation of Settlement, dated January 28, 2025	ECF No. 80-2

1 Lead Plaintiff, individually and on behalf of all others similarly situated,
2 respectfully submits this reply memorandum in further support of his Unopposed Motion
3 for Final Approval of Class Action Settlement (ECF No. 91) (the “**Final Approval**
4 **Motion**”) and Unopposed Motion for Award of Attorneys’ Fees, Reimbursement of
5 Expenses, and Award to Lead Plaintiff (ECF No. 92) (the “**Fee and Expense Motion,**”
6 and, together with the Final Approval Motion, the “**Motions**”).¹

7 On May 14, 2025, Lead Plaintiff filed the Motions, which sought the entry of a final
8 judgment and order (1) granting final approval of the proposed Settlement of this Action
9 on the terms and conditions set forth in the Stipulation, including the proposed Plan of
10 Allocation; (2) granting final certification of the Settlement Class, as defined in the
11 Stipulation; (3) awarding attorneys’ fees in the amount of thirty percent (30%) of the gross
12 Settlement Fund, plus interest at the same rate and for the same period as the Settlement
13 Fund; (4) granting reimbursement of \$180,049.92 in reasonable and necessary expenses
14 incurred by Co-Lead Counsel in connection with the prosecution of the Action; and (5)
15 approving a compensatory award to Lead Plaintiff in the amount of \$10,000.

16 As set forth in the Motions, one of the factors that courts are directed to consider
17 when evaluating a motion to grant final approval of a class action settlement or a fee and
18 expense application is the reaction of the class to the proposal. *See Hanlon v. Chrysler*
19 *Corp.*, 150 F.3d 1011, 1025 (9th Cir. 1998) (final settlement approval); *In re Omnivision*
20 *Techs., Inc.*, 559 F. Supp. 2d 1036, 1048 (N.D. Cal. 208) (fee and expense request).
21 Indeed, a positive reaction by the class provides “compelling evidence” that the proposal
22 is fair, reasonable, and adequate under the circumstances. *Nat’l Rural Telecomm. Coop.*
23 *v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004); *see also Dilts v. Penske Logistics*
24 *LLC*, 2015 WL 12025286, at *2 (S.D. Cal. Feb. 27, 2015) (“strongest evidence” that
25 proposal is fair is “the class’s reaction” to it).

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27 ¹ Unless otherwise defined herein, all capitalized terms have the meaning set forth in
28 the Motions, both of which incorporated defined terms from the Stipulation. Unless
otherwise noted, all internal citations and quotations are omitted.

1 As detailed in the Mahan Declaration accompanying the Motions, notice of the
2 proposed Settlement was sent to over 40,000 potential Settlement Class Members and
3 published on *PR Newswire*. Among other things, these short-form notices summarized
4 the material terms of the Settlement, advised that Co-Lead Counsel planned to apply for
5 an award of attorneys’ fees in an amount not to exceed 33 ⅓% of the gross Settlement
6 Amount and request reimbursement of litigation expenses in an amount not to exceed
7 \$200,000, stated that Lead Plaintiff planned to request an award not to exceed \$15,000,
8 and directed potential Settlement Class Members to a Settlement website where they could
9 obtain more information regarding the Settlement, including the terms of the Plan of
10 Allocation and how to submit a Proof of Claim, object to the Settlement, or request
11 exclusion from the Settlement Class. The deadline for filing any objections or requesting
12 exclusion from the Settlement Class was May 23, 2025. As set forth in the accompanying
13 Supplemental Declaration of Justin D. D’Aloia (the “**Supplemental D’Aloia**
14 **Declaration**”) and the Declaration of Susanna Webb (the “**Webb Declaration**”), there
15 have been *no objections* to the proposed Settlement, *no objections* to proposed Plan of
16 Allocation, *no objections* to the potential fee and expense awards, and *no requests for*
17 *exclusion* from the Settlement Class through the date of this filing.

18 The lack of any objections or requests for exclusion after such an extensive notice
19 program provides strong evidence that the Settlement is fair, reasonable, and adequate
20 within the meaning of Fed. R. Civ. P. 23(e)(2). *See Ziegler v. GW Pharms., PLC*, 2024
21 WL 1470532, at *6 (S.D. Cal. Apr. 3, 2024) (“The Court may appropriately infer that a
22 class action settlement is fair, adequate, and reasonable when few class members object
23 to it.”); *Patel v. Axesstel, Inc.*, 2015 WL 6458073, at *6 (S.D. Cal. Oct. 23, 2015) (the
24 “absence of a single objection to the settlement” is “compelling evidence that the Proposed
25 Settlement is fair, just, reasonable, and adequate”); *see also Omnivision*, 559 F. Supp. 2d
26 at 1043 (“By any standard, the lack of objection of the Class Members favors approval of
27 the Settlement”). Indeed, the fact that there were no objections from “sophisticated
28 institutional investors”—who have the means and resources to object when appropriate—

1 reinforces this conclusion. *In re Regulus Therapeutics Inc. Sec. Litig.*, 2020 WL 6381898,
2 at *6 (S.D. Cal. Oct. 30, 2020).

3 In addition, the absence of any objections to the proposed Plan of Allocation—
4 which, as noted in the Final Approval Motion, uses industry-standard methods to calculate
5 each Authorized Claimant’s share of the Settlement proceeds—shows that the Settlement
6 Class endorses the plan and further supports its approval. *See Khoja v. Orexigen*
7 *Therapeutics, Inc.*, 2021 WL 5632673, at *8 (S.D. Cal. Nov. 30, 2021) (approval of plan
8 of allocation supported by fact that “zero Class Members have requested exclusion from
9 or filed objections to the Settlement”); *Mauss v. NuVasive, Inc.*, 2018 WL 6421623, at *4
10 (S.D. Cal. Dec. 6, 2018) (fact that “[t]he Plan of Allocation was described in detail in the
11 notice and no class member objected” supported its approval); *Patel*, 2015 WL 6458073,
12 at *7 (plan of allocation warranted approval when its term were “laid out in detail in the
13 notice, and no class members objected”).

14 Similarly, the lack of any objections provides additional evidence that the fees and
15 expenses requested by Co-Lead Counsel are reasonable under the circumstances. *See*
16 *Ziegler*, 2024 WL 1470532, at *10 (33.3% fee award in securities case supported by “the
17 lack of any class member objections”); *Khoja*, 2021 WL 5632673, at *9 (reasonableness
18 of 33% fee request in securities case “bolstered by . . . the fact that not a single Class
19 Member has objected”); *Patel*, 2015 WL 6458073, at *8 (the “lack of any objection from
20 the class members” supported 30% fee request in securities case); *see also Hunt v. Bloom*
21 *Energy Corp.*, 2024 WL 1995840, at *8 (N.D. Cal. May 6, 2024) (30% fee award in
22 securities case “buttress[ed]” by fact that “no class members have objected”); *In re*
23 *Heritage Bond Litig.*, 2005 WL 1594389, at *16 (C.D. Cal. June 10, 2005) (“[T]he lack
24 of significant objections to the requested fees justifies an award of one-third of the
25 Settlement Fund.”). Likewise, the absence of any objections validates that the award
26 sought by Lead Plaintiff for his service on behalf of the Settlement Class is proper. *See*
27 *Mauss*, 2018 WL 6421623, at *10 (\$15,000 award to two class representatives in securities
28 class action supported by “the lack of any objection”).

1 Based on the foregoing, and the entire record herein, Lead Plaintiff respectfully
2 requests that the Court grant the Motions and enter an Order and Final Judgment (1)
3 granting final approval of the proposed Settlement of this Action on the terms and
4 conditions set forth in the Stipulation; (2) granting final certification of the Settlement
5 Class, as defined in the Stipulation; (3) awarding attorneys' fees in the amount of thirty
6 percent (30%) of the gross Settlement Fund, plus interest at the same rate and for the same
7 period as the Settlement Fund; (4) granting reimbursement of \$180,049.92 in reasonable
8 and necessary expenses incurred by Co-Lead Counsel in connection with the prosecution
9 of the Action; and (5) approving an award to Lead Plaintiff in the amount of \$10,000. In
10 accordance with the Court's Civil Chamber rules, a word copy of the proposed Final
11 Judgment and Order has been furnished by email.

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1 Dated: May 30, 2025

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