UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

PLYMOUTH COUNTY RETIREMENT SYSTEM, Individually and on Behalf of All Others Similarly Situated, Plaintiffs, vs. PATTERSON COMPANIES, INC., et al., Defendants.	Civ. No. 0:18-cv-00871-MJD-HB CLASS ACTION NOTICE OF NON-OPPOSITION AND REPLY IN FURTHER SUPPORT OF (1) CLASS REPRESENTATIVES' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND APPROVAL OF PLAN OF ALLOCATION; AND (2) LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES AND AWARDS TO PLAINTIFFS PURSUANT TO 15 U.S.C. §78u-4(a)(4)

Class Representatives Plymouth County Retirement Association, Pembroke Pines Pension Fund for Firefighters and Police Officers, Central Laborers Pension Plan, and Gwinnett County Public Employees Retirement System (collectively, "Plaintiffs") and Lead Counsel respectfully submit this notice of non-opposition and reply in further support of (i) Plaintiffs' motion for final approval of the proposed class action Settlement and approval of the Plan of Allocation (ECF 249); and (ii) Lead Counsel's application for an award of attorneys' fees and expenses and for awards to Plaintiffs pursuant to 15 U.S.C. §78u-4(a)(4) (ECF 252).[1]

I. Preliminary Statement

Following a wide-ranging, Court-approved notice program, Plaintiffs are pleased to advise the Court that there has been a unanimously positive reaction from the Class to the proposed $63,000,000 Settlement, Plan of Allocation, and the fee and expense application. As described in the accompanying Supplemental Declaration of Ross D. Murray Regarding Notice Dissemination and Requests for Exclusion Received to Date ("Suppl. Murray Decl.") and the prior Murray Declaration (ECF 255-1), notice of the Settlement was sent to more than 184,000 potential Class Members and their nominees. Notice was also published in *The Wall Street Journal*, transmitted over *Business Wire* and posted on the Claims Administrator's dedicated website. The deadline for objections was May 19, 2022,

[1] Unless otherwise noted, all capitalized terms not defined herein have the same meanings set forth in the Stipulation of Settlement dated October 11, 2021 ("Stipulation") (ECF 241), or the Joint Declaration of Lucas F. Olts and Lester R. Hooker in Support of (I) Motion for Final Approval of Class Action Settlement and Approval of Plan of Allocation; and (II) Motion for an Award of Attorneys' Fees and Expenses and Awards to Plaintiffs Pursuant to 15 U.S.C. §78u-4(a)(4) ("Joint Declaration") (ECF 255).

and ***no Class Members objected to any aspect of the Settlement, Plan of Allocation or the fee and expense application***. The Class's reaction is indicative of the fairness, adequacy and reasonableness of the Settlement, Plan of Allocation and the fee and expense application.

The Class's universally positive response to the Settlement also reinforces the fact that the $63 million recovery is an excellent result for the Class. As discussed in Plaintiffs' motion, the $63 million Settlement represents 7% to 73% of investors' realistically recoverable damages of $86 to $855 million. *See* Joint Declaration, ¶5. This range reflects the inherent uncertainty that the Class faced in proceeding through summary judgment and trial. While Defendants steadfastly maintained throughout the litigation and argued at summary judgment that there were no recoverable damages, Plaintiffs' damages expert estimates that ***if*** Plaintiffs fully prevailed on each of their claims at both summary judgment and trial, and ***if*** the Court and jury fully accepted Plaintiffs' loss causation and damages arguments – *i.e.*, Plaintiffs' best-case scenario – the total recoverable damages would be approximately $855 million. But numerous issues – including proving each element of their claims and the need to prevail on a host of factual disputes regarding loss causation – put the possibility of that maximum recovery at significant risk. If Defendants had prevailed on their loss causation arguments regarding the November and March disclosures, for example, the Class's maximum recoverable damages would have been at most $86 million. *Id.* These risks strongly support approval of the Settlement.

For the reasons set forth below and in the previously submitted memoranda and declarations in support thereof, Plaintiffs and Lead Counsel respectfully request that the

Court grant final approval of the Settlement, the Plan of Allocation, and Lead Counsel's fee and expense application.

II. The Reaction of the Class Strongly Supports Final Approval of the Settlement and the Plan of Allocation

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 class action 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] miniscule" supported approval of the settlement); *McClean v. Health Sys., Inc.*, 2015 WL 12426091, at *6 (W.D. Mo. June 1, 2015) (where no class member objected to the settlement, this "lack of opposition clearly supports approval"). Here, not a single Class Member objected to the Settlement or Plan of Allocation, and no valid requests for exclusion from the Settlement Class were received.[2]

Following the extensive notice program undertaken in accordance with the Court's Preliminary Approval Order, the fact that not a single objection was filed strongly supports

[2] Seven requests for exclusion were received in response to the Notice of Pendency of Class Action provided in 2021 following Class Certification. Pursuant to the Stipulation and the Preliminary Approval Order, these seven individuals are not Class Members. *See* Stipulation at ¶¶1.5-1.6; Preliminary Approval Order at 2, ¶¶13 and 18. Court-appointed claims administrator Gilardi received two timely requests for exclusion in response to the Settlement Notice. Neither of these opt-outs is valid. One request for exclusion was from an individual who was already excluded from the Class in response to the Notice of Pendency. *See* Stipulation at ¶1.5; Preliminary Approval Order, ¶13; Settlement Notice at 2, 8. The second request for exclusion is invalid as it did not include the required information related to the individual's ownership of Patterson shares, including the number of Patterson shares the individual purchased and/or sold during the Class Period and the dates and prices of each purchase/acquisition and sale. *See* Settlement Notice at 8; Preliminary Approval Order, ¶18.

approval of the Settlement. *See In re Zurn Pex Plumbing Prods. Liab. Litig.*, 2013 WL 716088, at *7 (D. Minn. Feb. 27, 2013) ("The absence of any opposition to the settlement strongly supports final approval."); *In re CenturyLink Sales Pracs. & Sec. Litig.*, 2020 WL 7133805, at *7 (D. Minn. Dec. 4, 2020) ("There were 8 objectors out of 17.2 million Class Members, demonstrating that there is little opposition to the Settlement.").

The fact that no institutional investors have objected to the Settlement is additional evidence of the Settlement's fairness, particularly since these sophisticated investors held approximately 90% of Patterson's publicly traded common stock outstanding during the Class Period and have the means and incentive to object to a settlement if they believe an objection was warranted. *See, e.g.*, *In re Celebrex (Celecoxib) Antitrust Litig.*, 2018 WL 2382091, at *3 (E.D. Va. Apr. 18, 2018) (awarding one-third of $94 million settlement as there "were no objections to the Settlement, . . . no opt-out requests" and the "largest class members" supported the settlement); *In re Cathode Ray Tube (CRT) Antitrust Litig.*, 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 addition, there have been no objections to the Plan of Allocation. As discussed in Plaintiffs' opening papers, like the Settlement, the Plan of Allocation – which was developed in consultation with Plaintiffs' damages expert – is fair and reasonable. *See* ECF 251 at 22-24; ECF 255, ¶87. Thus, the Class's reaction provides additional strong support for approving the Plan of Allocation.

III. The Unanimous Reaction of the Class Supports Approval of the Fee and Expense Application

As with the Settlement and Plan of Allocation, no Class Member has objected to Lead Counsel's request for attorneys' fees and expenses, and no Class Member has objected to Plaintiffs' requested awards. The fact that there have been no objections demonstrates the fairness and reasonableness of the requested fee and expense awards. *See Seaman v. Duke Univ.*, 2019 WL 4674758, at *3 (M.D.N.C. Sept. 25, 2019) (awarding one-third fee in a $54.5 million recovery, as "[t]he absence of any objections to the settlement indicates that 'counsel have achieved a superior result for the class and weighs in favor of their requested award'"); *In re 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).

As set forth in greater detail in Plaintiffs' opening brief, Lead Counsel's fee request of 33-1/3% of the Settlement Fund is well within the normal range of awards for similar class action litigations and is both fair and reasonable under the facts. ECF 254 at 18-25. The reaction of the Class following the Court-approved notice program reinforces that conclusion and further supports the requested $1,563,412.71 in expenses incurred by Lead Counsel in prosecuting this Action and the requested awards to the Class Representatives, for the time they spent representing the Class. *Id.* at 26-27.

IV. Conclusion

The $63 million Settlement, which was achieved after more than four years of hard-fought litigation, represents a recovery for Class Members significantly higher than the median percentage of recoveries achieved in similar actions. ECF 254 at 10. For the

reasons set forth herein and in their prior submissions, Plaintiffs and Lead Counsel respectfully request that the Court approve the Settlement and the Plan of Allocation as fair, reasonable and adequate, and approve Lead Counsel's request for an award of attorneys' fees and expenses and the awards sought by Plaintiffs pursuant to 15 U.S.C. §78u-4(a)(4). Proposed orders are being submitted herewith.

DATED: June 2, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on June 2, 2022, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the email addresses on the attached Electronic Mail Notice List, and I hereby certify that I caused the mailing of the foregoing via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

s/ LUCAS F. OLTS
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- (No manual recipients)