

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

DIEGO CERVANTES, Individually and )	Civil Action No. 1:18-cv-02551-AT
on Behalf of the Invesco 401(k) Plan )	
and All Others Similarly Situated, )	<u>CLASS ACTION</u>
Plaintiff, )	
vs. )	REPLY MEMORANDUM OF LAW
INVESCO HOLDING COMPANY )	IN FURTHER SUPPORT OF:
(US), INC., et al., )	(I) PLAINTIFF'S MOTION FOR
Defendants. )	FINAL APPROVAL OF
)	SETTLEMENT AND APPROVAL OF
)	PLAN OF ALLOCATION, AND (II)
)	CLASS COUNSEL'S MOTION FOR
)	AN AWARD OF ATTORNEYS'
)	FEES, EXPENSES, AND INCENTIVE
)	AWARD

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Plaintiff Diego Cervantes (“Plaintiff”), on behalf of himself and the Class, and Class Counsel respectfully submit this reply memorandum in further support of:

(i) Plaintiff’s motion for final approval of the Settlement and approval of the Plan of Allocation of the net Settlement proceeds to Class Members (ECF No. 99), and

(ii) Class Counsel’s motion for attorneys’ fees, expenses, and Incentive Award for Plaintiff Diego Cervantes (ECF No. 100).<sup>1</sup>

**THE POSITIVE REACTION OF THE CLASS PROVIDES FURTHER  
SUPPORT FOR FINAL APPROVAL OF THE SETTLEMENT**

Plaintiff and Class Counsel respectfully submit that their opening memoranda and supporting declarations (ECF Nos. 99-100, the “Opening Papers”)<sup>2</sup> demonstrate that approval of the motions is warranted. And the deadline for Class Members to object has now passed without a single objection, providing notable additional

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<sup>1</sup> Unless otherwise specified, all capitalized terms used herein have the same meanings as defined in the Amended Settlement Agreement. ECF No. 93-1.

<sup>2</sup> The Opening Papers were filed on July 2, 2020, as set forth in the Court’s April 3, 2020 Order Preliminarily Approving Settlement and Providing for Notice, ¶15 (ECF No. 94) (“Preliminary Approval Order”); however, the Declaration of Evan J. Kaufman in Support of: (A) Plaintiff’s Motion for Final Approval of Class Action Settlement and Approval of Plan of Allocation; and (B) Class Counsel’s Motion for an Award of Attorneys’ Fees, Expenses, and Incentive Award, was inadvertently omitted from that filing. Class Counsel discovered this omission on the evening of July 27, 2020, and promptly filed the declaration on July 28, 2020 (ECF No. 103) and posted it on the Settlement website.

support for final approval of the Settlement, Plan of Allocation, and Class Counsel's request for attorneys' fees, expenses, and Incentive Award.

The proposed Settlement resolves the Litigation in its entirety in exchange for a cash payment of \$3,470,000.00. As detailed in Plaintiff's and Class Counsel's Opening Papers, the Settlement is the product of hard-fought litigation and extended arm's-length settlement negotiations. The Settlement represents an excellent result for the Class in light of the substantial challenges that Plaintiff would have faced in first defeating Defendants' anticipated motion to dismiss and then proving liability and establishing damages, as well as the risks and delays of continued litigation, particularly under the circumstances of the COVID-19 pandemic. Pursuant to the Court's Preliminary Approval Order, the Claims Administrator, under the supervision of Class Counsel, conducted an extensive notice program, including mailing the Court-approved Notice to over 8,000 potential Class Members.<sup>3</sup> The

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<sup>3</sup> See accompanying Supplemental Declaration of Christopher D. Amundson of Analytics Consulting LLC Regarding Implementation of Notice Program ("Suppl. Amundson Decl."); Declaration of Christopher D. Amundson of Analytics Consulting LLC Regarding Implementation of Notice Program ("Amundson Decl.") (ECF No. 99-3). In addition to dissemination of the Notice, Analytics made important documents related to the Settlement, including the Notice and Plaintiff's and Class Counsel's Opening Papers, available on the Settlement website, [www.InvescoERISASettlement.com](http://www.InvescoERISASettlement.com), and created and maintained a toll-free telephone support line (1-888-970-3711) as a resource for Class Members seeking information about the Settlement. Suppl. Amundson Decl., ¶¶5-8; Amundson Decl., ¶¶10-17.

Notice apprised Class Members of their right to object to the Settlement, the Plan of Allocation, and/or to Class Counsel's application for attorneys' fees and litigation expenses, and an Incentive Award of up to \$5,000 for Plaintiff. Notice, ¶¶14, 16. The deadline to file objections was July 17, 2020, and not one Class Member objected to the \$3.47 million Settlement, the Plan of Allocation, or Class Counsel's request for attorneys' fees, expenses, and Incentive Award.

This overwhelmingly positive response from Class Members strongly supports a finding that the Settlement and Plan of Allocation are fair, reasonable, and adequate, and that Class Counsel's fee and expense request warrants approval. *See, e.g., In re Arby's Rest. Grp., Inc. Data Sec. Litig.*, No. 1:17-cv-1035-WMR, 2019 WL 2720818, at \*1 (N.D. Ga. June 6, 2019) ("The lack of objection is a strong indicator that both the settlement agreement and the Application [for attorneys' fees and expenses] are reasonable and fair."); *George v. Acad. Mortg. Corp. (UT)*, 369 F. Supp. 3d 1356, 1373 (N.D. Ga. 2019) ("The lack of opposition to the Settlement clearly supports final approval."); *Columbus Drywall & Insulation, Inc. v. Masco Corp.*, No. 1:04-cv-3066-JEC, 2012 WL 12540344, at \*7 (N.D. Ga. Oct. 26, 2012) ("the absence of any objection by class members" supported the requested "award of attorney fees equal to one-third of the settlement fund"); *In re NetBank, Inc. Sec. Litig.*, No. 1:07-cv-2298-

TCB, 2011 WL 13176646, at \*5 (N.D. Ga. Nov. 9, 2011) (“The absence of any objection to the settlement here further supports final approval.”).

### **CONCLUSION**

For the reasons set forth herein and in the Opening Papers, Plaintiff respectfully requests that the Court approve the Settlement and Plan of Allocation as fair, reasonable, and adequate. Class Counsel also respectfully submits that the request for attorneys’ fees, expenses, and an Incentive award for Plaintiff Diego Cervantes are reasonable and warrant the Court’s approval. Proposed orders for approval of these requests are submitted concurrently herewith.

Respectfully submitted: July 31, 2020.

HERMAN JONES LLP

*/s/ John C. Herman*

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### **CERTIFICATE OF COMPLIANCE**

We hereby certify that, pursuant to L.R. 5.1B and 7.1D of the Northern District of Georgia, the foregoing *Reply Memorandum of Law in Further Support of: (I) Plaintiff's Motion for Final Approval of Settlement and Approval of Plan of Allocation, and (II) Class Counsel's Motion for an Award of Attorneys' Fees, Expenses, and Incentive Award* complies with the font and point selections approved by the Court in L.R. 5.1B. The foregoing motion was prepared on a computer using 14-point Times New Roman font.

Respectfully submitted: July 31, 2020.

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### **CERTIFICATE OF SERVICE**

I hereby certify that on this day, I electronically filed the foregoing *Reply Memorandum of Law in Further Support of: (I) Plaintiff's Motion for Final Approval of Settlement and Approval of Plan of Allocation, and (II) Class Counsel's Motion for an Award of Attorneys' Fees, Expenses, and Incentive Award* with the Clerk of the Court using the CM/ECF system, which will send electronic notification to counsel of record.

Prepared and submitted: July 31, 2020.

HERMAN JONES LLP

*/s/ John C. Herman*

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