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12 [Additional counsel appear on signature page.]

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 OAKLAND DIVISION

16 LOGAN HESSEFORT, Individually and on)
17 Behalf of All Others Similarly Situated,)
18 Plaintiff,)

19 vs.)

20 SUPER MICRO COMPUTER, INC., et al.,)
21 Defendants.)

Lead Case No. 4:18-cv-00838-JST
CLASS ACTION
REPLY MEMORANDUM AND
STATEMENT OF NON-OPPOSITION IN
FURTHER SUPPORT OF: (1) LEAD
PLAINTIFF’S MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT AND PLAN OF
ALLOCATION, AND (2) LEAD
COUNSEL’S MOTION FOR AN AWARD
OF ATTORNEYS’ FEES AND EXPENSES

JUDGE: Honorable Jon S. Tigar
DATE: March 2, 2023
TIME: 2:00 p.m. (via videoconference)

1 Lead Plaintiff New York Hotel Trades Council & Hotel Association of New York City,
 2 Inc. Pension Fund (“New York Pension Fund” or “Lead Plaintiff”) and Lead Counsel Robbins
 3 Geller Rudman & Dowd LLP (“Robbins Geller”) respectfully submit this reply memorandum in
 4 further support of: (i) Lead Plaintiff’s Motion for Final Approval of Class Action Settlement and
 5 Plan of Allocation (ECF 160); and (ii) Lead Counsel’s Motion for an Award of Attorneys’ Fees
 6 and Expenses (ECF 161).¹

7 **I. INTRODUCTION**

8 The February 9, 2023 deadline for objections to the \$18,250,000 all-cash Settlement has
 9 now passed. Lead Counsel is pleased to report that no Class Member has lodged an objection to
 10 the Settlement, the Plan of Allocation, or Lead Counsel’s fee and expense application, and only
 11 one putative Class Member has requested exclusion from the Class. This lack of objections “is
 12 perhaps the most significant factor to be weighed in considering [the Settlement’s] adequacy,” *In*
 13 *re Rambus Inc. Derivative Litig.*, 2009 WL 166689, at *3 (N.D. Cal. Jan. 20, 2009), and is a
 14 testament to the fairness, adequacy, and reasonableness of the proposed Settlement, the proposed
 15 Plan of Allocation, and Lead Counsel’s fee and expense application, and further underscores why
 16 each warrants the Court’s approval.

17 **II. ARGUMENT**

18 **A. The Notice Provided to the Class Met All Due Process Requirements**

19 As detailed in prior submissions, the comprehensive notice program approved by the Court
 20 and implemented here was “the best notice that [was] practicable under the circumstances,
 21 including individual notice to all members who [could] be identified through reasonable effort.”
 22 Fed. R. Civ. P. 23(c)(2)(B). To date, the Claims Administrator has mailed more than 22,000
 23 Notice Packets to potential Class Members and Nominees; the Summary Notice was published in
 24 *The Wall Street Journal* and transmitted over *Business Wire*; and all pertinent information has been

25 _____
 26 ¹ Unless otherwise noted, all capitalized terms not defined herein have the same meaning set
 27 forth in the Stipulation of Settlement dated April 8, 2022, filed as Exhibit 1 (ECF 154 at 2-30) to
 the Declaration of Daniel J. Pfefferbaum in Support of Lead Plaintiff’s Unopposed Motion for
 Preliminary Approval of Proposed Settlement (ECF 152-1).

1 posted and made generally available on the website dedicated to the Settlement. *See* Declaration
 2 of Ross D. Murray Regarding Notice Dissemination, Publication, and Requests for Exclusion
 3 Received to Date (“Murray Decl.”) (ECF 162-2), ¶¶5-15, and Supplemental Declaration of Ross
 4 D. Murray Regarding Notice Dissemination, Requests for Exclusion Received to Date, and Claims
 5 Received to Date (“Murray Suppl. Decl.”), ¶4, submitted herewith. Thus, the Court should
 6 conclude that Lead Counsel has provided “the best notice that [was] practicable,” as Rule 23
 7 requires and due process demands. *See, e.g., Destefano v. Zynga, Inc.*, 2016 WL 537946, at *7
 8 (N.D. Cal. Feb. 11, 2016) (finding individual notice mailed to class members combined with
 9 summary publication constituted “the best form of notice available under the circumstances”).

10 **B. The Reaction of the Class Strongly Supports Approval of the**
 11 **Settlement and Plan of Allocation**

12 Given that the objection deadline has passed, the Court may now assess the final *Hanlon*
 13 factor: “the reaction of the class members to the proposed settlement.” *Hanlon v. Chrysler Corp.*,
 14 150 F.3d 1011, 1026, 1027 (9th Cir. 1998) (“[T]he fact that the overwhelming majority of the class
 15 willingly approved the offer and stayed in the class presents at least some objective positive
 16 commentary as to its fairness.”). That reaction – as measured by objections – has been
 17 overwhelmingly positive.

18 No Class Member has objected to any aspect of the Settlement.² This “unanimous, positive
 19 reaction to the Proposed Settlement is compelling evidence that the Proposed Settlement is fair,
 20 just, reasonable, and adequate.” *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523,
 21 529 (C.D. Cal. 2004). Simply stated, this absence of objections “raises a strong presumption that
 22 the terms of [the] proposed class settlement action are favorable to the class members.” *In re*
 23 *Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1043 (N.D. Cal. 2008); *accord AdTrader, Inc. v.*
 24 *Google LLC*, 2022 WL 16579324, at *5 (N.D. Cal. Nov. 1, 2022) (“A court may appropriately

25 _____
 26 ² Lead Counsel received a single request that an individual, and his wife, be excluded from the
 27 Settlement. The request did not provide any supporting documentation showing that these
 28 individuals purchased shares during the Class Period, nor did it explain why they chose not to
 participate.

1 infer that a class action settlement is fair, adequate, and reasonable when few class members object
2 to it.”) (citation omitted); *In re Regulus Therapeutics Inc. Sec. Litig.*, 2020 WL 6381898, at *6
3 (S.D. Cal. Oct. 29, 2020) (“Many potential class members are sophisticated institutional investors;
4 the lack of objections from such institutions indicates that the settlement is fair and reasonable.”).
5 Similarly, the lack of objections to the proposed Plan of Allocation provides firm support for its
6 approval. *See In re Heritage Bond Litig.*, 2005 WL 1594403, at *11 (C.D. Cal. June 10, 2005)
7 (“The fact that there has been no objection to this plan of allocation favors approval of the
8 Settlement.”). Thus, the Court should approve the Settlement as fair, adequate, and reasonable.

9 **C. The Reaction of the Class Strongly Supports Approval of the**
10 **Requested Attorneys’ Fees and Expenses**

11 The Notice identified that Lead Counsel intended to seek a benchmark fee of 25% of the
12 Settlement Fund and payment of litigation expenses not to exceed \$310,000. No Class Member
13 has objected to Lead Counsel’s request for attorneys’ fees and payment of litigation expenses.
14 Again, this lack of objections weighs strongly in favor of both approval and granting of the
15 requested attorneys’ fees and expenses. *See Zynga*, 2016 WL 537946, at *18 (“[T]he lack of
16 objection by any Class Members also supports the 25 percent fee award.”); *In re Nuvelo, Inc. Sec.*
17 *Litig.*, 2011 WL 2650592, at *3 (N.D. Cal. July 6, 2011) (finding only one objection to fee request
18 to be “a strong, positive response from the class”); *Omnivision*, 559 F. Supp. 2d at 1048 (“None
19 of the objectors raised any concern about the amount of the fee. This factor . . . also supports the
20 requested award of 28% of the Settlement Fund.”). Accordingly, the Court should approve Lead
21 Counsel’s request for attorneys’ fees of 25% of the Settlement Fund and payment of \$304,937.06
22 for litigation expenses.

23 **III. CLAIMS INFORMATION TO DATE**

24 To be timely, Proofs of Claim must be postmarked (if mailed) or electronically submitted
25 by February 27, 2023. *See Murray Supp. Decl.*, ¶9. As of February 22, 2023, the Claims
26 Administrator has received 3,337 Claims. *Id.* Based on the Claims Administrator’s preliminary
27 review of the Claims received to date, they cover purchases of approximately 153,451,397 shares

1 of Super Micro common stock during the Class Period. *Id.* Based on the experience of both Lead
2 Counsel and the Claims Administrator, the vast majority of Claims, including those filed by large
3 institutions and other third party filers, can be expected to be submitted for processing at or
4 immediately before the deadline. *Id.*, ¶9. Therefore, counsel expects this number to increase
5 significantly following the February 27, 2023 deadline.

6 **IV. CONCLUSION**

7 Lead Counsel obtained a very good result for the Class, and the Class agrees. For the
8 reasons set forth above and in their previously filed briefs and declarations, Lead Plaintiff and
9 Lead Counsel respectfully request that the Court approve the proposed Settlement and Plan of
10 Allocation, as well as the request for attorneys' fees and payment of expenses. Proposed orders
11 are submitted herewith.³

12 DATED: February 23, 2023

Respectfully submitted,

13 ROBBINS GELLER RUDMAN
14 & DOWD LLP
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23
24
25 ³ As noted in Defendants' Counsel's February 6, 2023 letter to the Court (ECF 163), notice
26 required pursuant to the Class Action Fairness Act ("CAFA") was not timely provided. The 90-
27 day statutory notice provision under CAFA expires on May 4, 2023. Therefore, if the Court is
inclined to approve these motions, the parties respectfully request that the Court withhold entry of
the proposed orders until it is notified after the May 4, 2023 deadline of the existence or non-
existence of any objection by state or federal officials.

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on February 23, 2023, 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/ Daniel J. Pfefferbaum

DANIEL J. PFEFFERBAUM

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Mailing Information for a Case 4:18-cv-00838-JST Hessefort v. Super Micro Computer, Inc. et al**Electronic Mail Notice List**

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Manual Notice List

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- (No manual recipients)