

1 THE RESTIS LAW FIRM, P.C.
2 William R. Restis, Esq. (Cal. Bar No. 246823)
3 225 Broadway, Suite 2220
4 San Diego, California 92101
5 +1.619.270.8383
6 william@restislaw.com

7 AFN LAW PLLC
8 Angus F. Ni, Esq. (Wash. Bar No. 53828)
9 Admitted *pro hac vice*
10 506 2nd Ave, Suite 1400
11 Seattle, WA 98104
12 646.453.7294
13 angus@afnlegal.com

14 HGT LAW
15 Hung G. Ta, Esq. (Cal. Bar No. 331458)
16 Alex Hu, Esq. (Cal. Bar No. 279585)
17 250 Park Avenue, 7th Floor
18 New York, NY 10177
19 (646) 453-7288
20 hta@hgtlaw.com

21 *Attorneys for Plaintiff Jonathan Shomroni*
22 *And the Putative Class*

23 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
24 **COUNTY OF SAN FRANCISCO**

25 **JONATHAN SHOMRONI**, Individually and
26 on behalf of others similarly situated,

27 Plaintiff,

28 v.

FEI LABS INC., a Delaware Corporation,
JOSEPH SANTORO, an Individual,
BRIANNA MONTGOMERY, an Individual,
SEBASTIAN DELGADO, an Individual, and
DOES 1-10.

Defendants,

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

10/11/2023
Clerk of the Court
BY: SANDRA SCHIRO
Deputy Clerk

Case No: CGC-22-598995

Assigned for all purposes to
the Hon. Ethan P. Schulman, Dep't 304

CLASS ACTION

REPLY IN FURTHER SUPPORT OF
PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT

Date: October 27, 2023

Time: 10:00 a.m.

Dept: 304

Judge: Hon. Ethan P. Schulman

1 **I. INTRODUCTION**

2 The deadline to object has expired, and no Class Member has objected to the Settlement.
3 Only one Class Member opted out.

4 Class Members submitted Claims amounting to approximately \$23.1 million in Recognized
5 Losses. *See* Declaration of Simpluris in Further Support of Plaintiff’s Motion for Final Approval
6 of Class Action Settlement, filed October 11, 2023 (“10/11/23 Simpluris Decl.”), at ¶ 5.d. Simpluris
7 expects that claiming Class Members will receive approximately 56% of their claimed Recognized
8 Losses, or 56 cents on each dollar claimed from the Net Settlement Fund. *Id.*, ¶ 5.d. Almost 15%
9 of Class Members with the largest contributions to the Genesis Event made claims, and Class
10 Member wallets that submitted Claims represented over 13% of all the ETH contributed to the
11 Genesis Event. *Id.*, ¶¶ 5.a and 5.d.

12 By any measure, the reaction of the Class Members to the Settlement has been
13 overwhelmingly positive, indicating that it should be finally approved.

14 **II. ARGUMENT**

15 As noted in Plaintiff’s Motion for Final Approval of Class Action Settlement, filed
16 September 21, 2023 (the “9/21/23 Motion Final Approval”), this Reply is intended to address the
17 one “*Kullar* Factor” that had not ripened at the time of the original motion: “the reaction of the
18 class members to the proposed settlement.” *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal. App.
19 4th 116, 128 (a presumption of fairness exists if, *inter alia* “the percentage of objectors is small”);
20 *see* 9/21/23 Motion Final Approval, at n. 8 (reaction of Class Members would be addressed in
21 reply).

22 Here, the reaction of Class Members was overwhelmingly positive.

23 First, as noted in Plaintiff’s opening brief, there was only one request for exclusion. *See*
24 *Destefano v. Zynga, Inc.*, 2016 U.S. Dist. LEXIS 17196, at *47 (N.D. Cal. Feb. 11, 2016) (“low
25 number of exclusions representing a small fraction of shares in the public float also supports the
26 reasonableness of a securities class action settlement.”)

1 Second, no Class Members objected to any aspect of the Settlement. *See* 10/11/23 Simpluris
2 Decl., at ¶ 7 (no objections received); Declaration of William Restis in Further Support of Plaintiff’s
3 Motion for Final Approval, filed October 11, 2023 (“10/11/23 Restis Decl.”), ¶ 2 (no objections
4 received). No Class Members have asked to speak at the Final Approval Hearing, or sought to
5 intervene.

6 The lack of objectors strongly favors final approval. *Destefano*, 2016 U.S. Dist. LEXIS
7 17196, at *47 (“By any standard, the lack of objection of the Class Members favors approval of the
8 Settlement.”); *In re Portal Software, Inc. Sec. Litig.*, 2007 U.S. Dist. LEXIS 88886, at *12 (N.D.
9 Cal. Nov. 26, 2007) (“Factor (8) considers the reaction of class members to the proposed settlement
10 and supports the settlement because no objections and only one opt-out was made from the class of
11 roughly 17,937 members. ... Accordingly, the reaction of the class members as a whole supports
12 the settlement.”) (citations omitted).

13 Third, a high percentage of injured Class Members have submitted valid claims, with Class
14 Members who were larger participants in the Genesis Event submitting a relatively larger number
15 of claims. As of the date of this Reply, Class Members who contributed approximately 13% of all
16 the ETH to the Genesis Event have submitted claims, representing approximately 4% of total Class
17 Member wallets by wallet count (*i.e.*, all Class Member wallets, regardless of whether or not they
18 suffered any losses). 10/11/23 Simpluris Decl., at ¶ 5.d and Ex A (715 Valid Claims).¹ This gross
19 participation rate is consistent with approved settlements. *See Shames v. Hertz Corp.*, 2012 U.S.
20 Dist. LEXIS 158577, at *47-49 (S.D. Cal. Nov. 5, 2012) (collecting cases finding response rates of
21 1%, 2%, 4%, 5%, 7% to weigh in favor of, or at least not against, settlement); *Touhey v. United*
22 *States*, 2011 U.S. Dist. LEXIS 81308, at *21-22 (C.D. Cal. July 25, 2011) (describing 2% response
23 claim rate as “muted, but positive” and weighing in favor of approval); *Gascho v. Glob. Fitness*
24 *Holdings, LLC*, 822 F.3d 269, 289 (6th Cir. 2016) (noting that expert who had administered 3,000
25

26
27 ¹ As noted in Plaintiff’s April 21, 2023 initial motion for preliminary approval, “[i]t is likely that
28 some Class Members used multiple wallets to contribute to the Genesis Event, meaning that the
number of Class Members will be less than 17,570.” *Id.*, at p. 13, n. 8.

1 settlements had testified that “response rates in class actions generally range from 1 to 12 percent,
2 with a median response rate of 5 to 8 percent”).

3 In fact, the participation rate of *injured* Class Members (*i.e.*, Class Member wallets that did
4 suffer losses) is likely far higher than 4%. As previously explained, not all Class Members that
5 participated in the Genesis Event incurred cognizable damages. Instead, damages appear to be
6 clustered primarily in a much smaller subset of Class Members who “pre-swapped” large portions
7 of their FEI tokens for TRIBE. *See* Declaration of William R. Restis in Support of Plaintiff’s
8 Motion for Final Approval of Class Action Settlement and Motion for Fee Application, filed
9 September 21, 2023, ¶¶ 15-17 (“most of the Class Members’ estimated damages are associated with
10 TRIBE”); ¶ 19 (noting that approximately 87% of FEI were traded at or near prices that resulted in
11 approximately \$0.20 profit per token); *see also id.*, at ¶¶ 4-5 (discussing the “Final Redemption”
12 that provided quasi-restitution to many Class Members). Said differently, many Class Members
13 had no or very insignificant damages, and would not have filed claims. *See* 3 ALBA CONTE &
14 HERBERT NEWBERG, NEWBERG ON CLASS ACTIONS § 8.45 (4th ed. 2002) (“NEWBERG”) (“Claims
15 response levels will tend to vary with the circumstances, types of class notices employed, *and size*
16 *of individual claims involved in each case.*”) (emphasis added).

17 This is further supported by the fact that participation rates among Class Members *increased*
18 with the size of their investments. Approximately 15% of Class Members with the largest
19 investments made claims, and the Recognized Loss of this group constituted 81% of the
20 Recognized Loss of all Claimants as a whole. 10/11/23 Simpluris Decl.at ¶ 5.a (describing how
21 Class Members with the smallest investments claimed at much lower rates than Class Members
22 with larger expected losses). This means that Class Members with the greatest losses will obtain
23 the most recovery. *See* NEWBERG, § 12:17 (4th ed. 2002) (explaining that “[h]igher claiming rates
24 tend to correspond with smaller classes and larger payouts”).

25 ///

26 ///

27 ///

1 **III. CONCLUSION**

2 Like all the other *Kullar* Factors, the reaction of Class Members strongly favors final
3 approval of the Settlement. Here, there were no objections, only one exclusion, a high participation
4 rate, especially amongst injured Class Members, and a high payout rate. All of these facts indicate
5 that the Settlement is fair, adequate and reasonable, with a presumption of fairness. This Honorable
6 Court should grant final approval of the Settlement.

7
8 Respectfully submitted,

9
10 DATED: October 11, 2023

THE RESTIS LAW FIRM, P.C.

11 /s/ William R. Restis
12 William R. Restis, Esq.
13 225 Broadway, Suite 2220
14 San Diego, CA 92101
15 Tel: +1.619.270.8383
16 Email: william@restislaw.com

17 AFN LAW PLLC
18 Angus F. Ni, Esq., *pro hac vice*
19 506 2nd Ave, Suite 1400
20 Seattle, WA 98104
21 646.453.7294
22 angus@afnlegal.com

23 HGT LAW
24 Hung G. Ta, Esq.
25 Alex Hu, Esq.
26 250 Park Avenue, 7th Floor
27 New York, NY 10177
28 (646) 453-7288
hta@hgtlaw.com

*ATTORNEYS FOR PLAINTIFF
AND THE PUTATIVE CLASS*