UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

WASHTENAW COUNTY EMPLOYEES' RETIREMENT SYSTEM, Individually and on Behalf of All Others Similarly Situated, Plaintiff, v. WALGREEN CO. et al., Defendants.	Civil Action No. 1:15-cv-3187 Honorable Sharon Johnson Coleman

JOINT DECLARATION OF DAVID KESSLER AND ANDREW L. ZIVITZ IN SUPPORT OF (I) CLASS REPRESENTATIVE'S MOTION FOR FINAL APPROVAL OF SETTLEMENT AND PLAN OF ALLOCATION; AND (II) CLASS COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND LITIGATION EXPENSES

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We, David Kessler and Andrew L. Zivitz, declare as follows pursuant to 28 U.S.C. § 1746:

1. We are partners with the law firm of Kessler Topaz Meltzer & Check, LLP ("Kessler Topaz," "Lead Counsel" or "Class Counsel"). Kessler Topaz serves as counsel for Court-appointed Lead Plaintiff and Class Representative, Industriens Pensionsforsikring A/S ("Industriens," "Lead Plaintiff" or "Class Representative"), and the certified Class in the above-captioned Action.[1]

2. We have actively supervised and participated in the prosecution and resolution of the Action and have personal knowledge of the matters set forth herein.

3. We respectfully submit this Joint Declaration in support of Class Representative's motion pursuant to Rule 23(e) of the Federal Rules of Civil Procedure ("Federal Rules" or "Rules") for final approval of the proposed settlement with defendants Walgreen Co. ("Walgreens" or the "Company"), Gregory D. Wasson ("Wasson") and Wade D. Miquelon ("Miquelon") (collectively, "Defendants"), for $105,000,000 in cash (the "Settlement"). If approved, the Settlement will resolve all claims asserted in the Action against Defendants on behalf of the following Court-certified Class: all persons and entities who purchased or otherwise acquired Walgreens common stock between April 17, 2014 and August 5, 2014, inclusive, and were damaged thereby.[2] The Court preliminarily approved the Settlement by Order dated June 29, 2022 (Doc. 510) ("Preliminary Approval Order").

[1] Unless otherwise defined herein, capitalized terms shall have the meanings ascribed in the Stipulation and Agreement of Settlement dated June 23, 2022 (Doc. 505) ("Stipulation").

[2] The Class was subsequently narrowed by the Court's November 2, 2021 Order granting in part Defendants' motion for summary judgment. Doc. 483. Excluded from the Class are: (i) any Defendant in this Action; (ii) the officers and directors of Walgreens; (iii) members of the immediate families of the Individual Defendants in this Action; (iv) any entity in which any Defendant has or had a controlling interest; and (v) the legal representative, heirs, successors, or assigns of any such excluded party. Stipulation, ¶ 1.i. Also excluded from the Class are the persons and entities that submitted a request for exclusion in response to Class Notice, as set forth in Appendix 1 to the Stipulation. *Id*.

4. We also respectfully submit this Joint Declaration in support of: (i) the proposed plan for allocating the net proceeds of the Settlement to eligible Class Members (the "Plan of Allocation" or "Plan"); and (ii) Class Counsel's motion, on behalf of Plaintiff's Counsel,[3] for an award of attorneys' fees in the amount of 27.5% of the Settlement Fund and payment of Litigation Expenses incurred by Plaintiff's Counsel in the total amount of $2,250,420.62, plus interest; and, in accordance with the Private Securities Litigation Reform Act of 1995 ("PSLRA"), reimbursement of $32,960 to Class Representative for costs it incurred in connection with its representation of the Class ("Fee and Expense Application").

5. For the reasons discussed below and in the accompanying memoranda,[4] we, on behalf of Class Counsel, respectfully submit that: (i) the terms of the Settlement are fair, reasonable, and adequate in all respects and should be approved by the Court; (ii) the Plan of Allocation is fair, reasonable, and adequate and should be approved by the Court; and (iii) the Fee and Expense Application is fair, reasonable, supported by the facts and the law, and should be granted. Moreover, the Settlement, the Plan of Allocation, and the Fee and Expense Application have the full support of the Class Representative—a sophisticated, institutional investor that has actively supervised the Action since its inception. *See* Declaration of Jan Østergaard ("Østergaard Declaration" or "Østergaard Decl.") filed concurrently herewith.

[3] "Plaintiff's Counsel" refers collectively to: (i) Class Counsel, Kessler Topaz; and (ii) Court-appointed Liaison Counsel, Robbins Geller Rudman & Dowd LLP ("Robbins Geller").

[4] In addition to this Joint Declaration, Class Representative and Class Counsel are submitting: (i) Class Representative's Motion and Memorandum of Law In Support of Its Motion for Final Approval of Settlement and Plan of Allocation ("Settlement Memorandum"); and (ii) Class Counsel's Motion and Memorandum of Law in Support of Its Motion for an Award of Attorneys' Fees and Litigation Expenses ("Fee and Expense Memorandum").

I. INTRODUCTION

6. Following more than seven years of hard-fought litigation, and while the Parties were preparing to file pre-trial *Daubert* motions that could have significantly narrowed the available evidence at trial or led to the disposition of this Action altogether, Class Representative and Class Counsel, with the guidance of a well-respected mediator, successfully negotiated a resolution of the Action with Defendants in exchange for $105,000,000 in cash (the "Settlement Amount"), for the benefit of the Class. Pursuant to the Stipulation and Preliminary Approval Order, the Settlement Amount has been fully funded and is currently being held in an interest-bearing Escrow Account on behalf of the Class. As provided for in the Stipulation, in exchange for this consideration, the Settlement resolves all claims asserted in the Action (and related claims) by Class Representative and the Class against Defendants and the other Defendants' Releasees. If approved, the Settlement will resolve this Action in its entirety.

7. As detailed herein, the Parties vigorously litigated the Action from its inception in 2015 until they reached an agreement in principle to resolve the litigation in May 2022. At the time of settlement, the Parties were in the final stages of preparing to file *Daubert* motions, after which ongoing trial preparations (and related pre-trial proceedings) would have accelerated. Prior to resolving the Action, Class Counsel, under the supervision of Class Representative, had, among other things: (i) conducted an extensive legal and factual investigation into the Class's claims; (ii) drafted two detailed amended complaints—the Consolidated Class Action Complaint for Violations of the Federal Securities Laws (Doc. 47) ("Consolidated Complaint"), and the operative First Amended Consolidated Complaint for Violations of the Federal Securities Laws (Doc. 198) ("Amended Consolidated Complaint" or "FACC"); (iii) opposed two rounds of motions to dismiss; (iv) conducted extensive fact discovery, which included (a) propounding 50 discrete document requests, 30 interrogatories, and 197 requests for admission on Defendants, (b) responding to

26 document requests, 23 interrogatories, and 78 requests for admission directed to Class Representative, (c) engaging in numerous telephonic meet and confers and extensive written correspondence regarding the scope of discovery and objections thereto, (d) making numerous oral and written motions to compel Defendants' production of critical documents and/or responses to interrogatories, (e) reviewing more than 1.1 million pages of documents that Defendants and non-parties produced, (f) preparing for and taking 23 fact witness depositions, (g) defeating two motions for protective orders regarding the depositions of Walgreens' former general counsel and then-current Chief Executive Officer ("CEO"), (h) serving more than 20 subpoenas on non-parties, and (i) reviewing and producing nearly 2,000 pages of documents on behalf of Class Representative and its external investment manager; (v) conducted thorough expert discovery, including consulting with four experts on the service of ten expert reports and rebuttal reports (regarding class certification and merits issues) and preparing for and taking or defending 10 expert depositions; (vi) successfully moved for class certification, including preparing for and defending the depositions of Lead Plaintiff and its external investment manager; (vii) conducted an extensive Class-notice program advising prospective Class Members of the Action's pendency and their right to request exclusion from the Class; (viii) filed a motion for partial summary judgment and defeated, in part, Defendants' summary judgment motion; (ix) opposed Defendants' motion for reconsideration of the Court's summary judgment ruling; (x) drafted pre-trial *Daubert* motions directed at Defendants' proffered expert witnesses; and (xi) engaged in two rounds of arm's-length settlement negotiations (including two formal mediations) overseen by experienced third-party neutrals, the latter of which was with the Honorable Layn R. Phillips (Ret.) of Phillips ADR ("Judge Phillips"), whose recommendation to resolve the Action for $105 million was accepted by the Parties on May 19, 2022.

8. As a result of these thorough and continuous efforts as well as other efforts discussed herein, at the time of the settlement, Class Representative and Class Counsel had a thorough understanding of the strengths and weaknesses of the Class's claims against Defendants and the risks of proceeding to trial. Among other things, the knowledge that Class Counsel amassed enabled it to evaluate the prospect of securing a judgment greater than the Settlement Amount following a jury verdict in the Class's favor, as well as the costs and delays attendant with proceeding to trial and through a likely appeal, and, accordingly, to recommend acceptance of Judge Phillips' proposal to resolve the Action to Class Representative.

9. Had the Settlement not been reached, Defendants would have continued vigorously to contest the Class's claims against them, as they did throughout this Action. For example, at the time of settlement, the Parties were prepared to file *Daubert* motions to limit or exclude expert testimony. An adverse ruling for the Class on any of Defendants' *Daubert* motions could have significantly narrowed the Class's trial evidence, including precluding the Class's loss causation and damages expert, without whose trial testimony the Class likely would have had insufficient evidence to prove the required elements of its claims.

10. Even if Class Representative defeated Defendants' anticipated *Daubert* motions in their entirety, the Class still faced significant risks associated with trial and post-trial appeals. At trial, Defendants would have mounted a vigorous defense, arguing, as they did throughout this Action, *inter alia*, that the alleged misrepresentations were true or reflected Defendants' honestly held beliefs, and that they acted in good faith (without scienter), including because they relied on Walgreens' internal disclosure processes to vet and approve the remaining challenged statements still at issue in the case. Further, Defendants were prepared to raise several defenses to loss causation and damages that, if accepted by a jury, would have materially reduced or eliminated the

Class's claim to damages. While Class Representative and Class Counsel deeply believed in the Class's claims, and that it had strong responses to each of Defendants' arguments, there would be no guarantee that a jury would agree. Indeed, the risk of losing one or more jurors on determinations as to Defendants' state of mind was particularly acute. And, the complex elements of loss causation and damages would likely come down to a battle of the Parties' highly-qualified experts, where one or more jurors may find Defendants' damages expert to be more credible, resulting in the Class recovering nothing at all. Finally, even if a favorable outcome for the Class was obtained at trial, it likely would have been appealed, resulting in significant additional costs, considerable delay, and further uncertainty as to the ultimate recovery for the Class.

11. In agreeing to the Settlement, Class Representative and Class Counsel carefully considered the strengths and weaknesses of the Class's claims against Defendants and the significant risks, costs, and delays associated with advancing the Class's claims through *Daubert* motion practice, trial, and post-trial appeals.

12. Class Counsel believes that the Settlement, particularly when viewed in the context of these risks and uncertainties, is an excellent result for the Class. If approved, the Settlement will provide a guaranteed recovery to eligible Class Members and conclude this lengthy Action. The recovery obtained for the Class—$105 million—represents approximately 9.5% of the Class's *maximum* estimated damages, based on the analysis of the Class's damages expert, assuming a victory at trial on all aspects of liability and damages.[5] This recovery is in line with or greater than

[5] The Class's damages expert estimated that the Class's maximum aggregate damages were approximately $1.1 billion. The Class's damages expert further concluded that if Defendants succeeded in arguing that some portion of the stock decline on August 6, 2014, was attributable to other news Walgreens announced that day (e.g., that Walgreens was not pursuing a tax inversion), aggregate damages would decrease to no more than $900 million. If, however, the jury accepted Defendants' damages expert's opinion at trial, the Class's damages would be zero, or at the very most, approximately $248 million. Doc. 401-32, ¶ 120.

numerous other securities class action recoveries in this jurisdiction and elsewhere.[6] By contrast, if Defendants succeeded in any of their arguments opposing Class Representative's evidence of loss causation and damages, the Class's estimated aggregate damages would have been substantially reduced or eliminated in their entirety. Taking into consideration such risks, the Settlement would represent an even larger portion of the Class's potential recoverable damages. Moreover, viewed in absolute terms, the $105,000,000 recovery ranks as one of the ten largest securities class action settlements ever achieved in this Circuit.

13. The reaction of the Class to date also supports the Settlement. In accordance with the Preliminary Approval Order, Class Counsel has worked with the Court-authorized Claims Administrator, A.B. Data, Ltd. ("A.B. Data"), to disseminate notice of the Settlement to Class Members as directed in the Preliminary Approval Order. In this regard, A.B. Data has mailed 278,052 Postcard Notices and 4,749 Settlement Notices to prospective Class Members and nominees.[7] The Summary Settlement Notice also was published in *Investor's Business Daily* on August 8, 2022, and transmitted over *PR Newswire* on August 11, 2022 (*see* Schachter Decl., ¶ 11), and the long-form Settlement Notice, Claim Form, Stipulation, and Preliminary Approval Order were posted to the website created in connection with Class Notice, www.WalgreensSecuritiesLitigation.com. *Id.*, ¶ 13. As ordered by the Court and stated in the Settlement notices, objections are due to be received no later than September 16, 2022. To date,

[6] *See, e.g.*, *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 583 (N.D. Ill. 2011) (approving settlement representing 10% of estimated class damages, and noting courts have approved class settlements below this percentage); *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008) (approving a settlement amount in the range of 6%-9% of the total possible damages and noting that this is "higher than the median percentage of investor losses recovered in recent shareholder class action settlements"); *Goldsmith v. Tech. Sols. Co.*, 1995 WL 17009594, at *5 (N.D. Ill. Oct. 10, 1995) (approving settlement of securities class action representing approximately 6.1% of estimated class damages).

[7] *See* Declaration of Eric Schachter Regarding: (A) Mailing of Postcard Notice and Notice Packets; (B) Publication of Summary Settlement Notice; and (C) Updates to Case Website and Toll-Free Telephone Helpline ("Schachter Decl."), filed concurrently herewith, ¶ 9.

no objections have been filed with respect to any aspect of the Settlement, the Plan of Allocation, or the maximum amount of fees and expenses to be requested by Class Counsel as set forth in the Settlement notices. In accordance with the Preliminary Approval Order, Class Counsel will provide the Court with further information on the Class's response to the Settlement in its reply submission to be filed on September 30, 2022—one week prior to the Settlement Hearing scheduled for October 7, 2022.

14. Further, in an effort to detail the work that Plaintiff's Counsel performed to secure the Settlement, to demonstrate the risk that Class Representative and Class Counsel assumed in litigating this matter for over seven years, and to aid the Court in its review of the instant motions, we have broken up this Joint Declaration in the following manner: (a) Summary of Class Representative's Claims (Section II), (b) The Litigation Timeline (Section III), (c) Mediation (Section IV), (d) Risks of Continued Litigation (Section V), (e) Issuance of Notice of the Settlement to the Class and the Reaction of the Class to Date (Section VI), (f) The Plan for Allocating the Net Settlement Fund to the Class (Section VII), and (g) Class Counsel's Fee and Expense Application (Section VIII).

II. SUMMARY OF CLASS REPRESENTATIVE'S CLAIMS

15. This Action asserted claims against Walgreens and its former CEO, Gregory D. Wasson, and former Chief Financial Officer ("CFO"), Wade D. Miquelon, for alleged violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §§ 78j(b) and 78t(a), and Rule 10b-5, promulgated thereunder, 17 C.F.R. § 240.10b-5. At the time of settlement, the claims that Class Representative was litigating were predicated on Defendants' statements made between April 17, 2014 and August 5, 2014, inclusive, regarding the impact of generic inflation and reimbursement pressure on Walgreens' pharmacy business. Class Representative further alleged that the price of Walgreens common stock was artificially inflated

during this period as a result of Defendants' alleged misstatements, and that the artificial inflation was removed when the truth was revealed on August 6, 2014, causing damage to the Class.

16. More specifically, Class Representative asserted claims against Defendants based upon: (i) Wasson's April 17, 2014 statements that "we're not seeing anything that I would call unusual" with respect to reimbursement pressure, but rather "it's more normal course of business," and that generic drug price inflation "was really kind of a one-time phenomenon" and "was probably an anomaly" and (ii) Wasson and/or Miquelon's May 16, 2014 statements, memorialized in a same-day Morgan Stanley report, that Walgreens "has not seen any unusual activity, but purchasing JV leaves it in better shape than peers to cope with generic price increases." Class Representative alleged that, instead, unprecedented levels of generic inflation and related reimbursement pressure from Walgreens' uniquely structured contracts that assumed generic price deflation, were severely impacting the Company's pharmacy business and driving a roughly $2 billion shortfall to its publicly announced goal for fiscal year 2016 EBIT (earnings before interest and taxes) for the combined Walgreens-Alliance Boots, Inc. company, following consummation of its merger with the European pharmacy chain (the "FY16 EBIT Goal" or "Goal").

17. Class Representative further alleged the truth regarding these issues was revealed on August 6, 2014, when Walgreens disclosed that it was revising its FY16 EBIT Goal on account of generic inflation and reimbursement pressures, among other issues. In response to this disclosure, the price of Walgreens common stock declined by approximately 14%, allegedly damaging investors.

III. THE LITIGATION TIMELINE

A. Commencement of the Action and Appointment of Lead Plaintiff and Lead Counsel

18. Over seven years ago on April 10, 2015, the first securities class action complaint, captioned *Washtenaw County Employees' Retirement System v. Walgreen Co., Gregory D. Wasson, and Wade D. Miquelon*, No. 1:15-cv-03187, was filed in this Court. The initial complaint asserted violations of Sections 10(b) and 20(a) of the Exchange Act, and Rule 10b-5, promulgated thereunder, on behalf of a putative class of investors who purchased or otherwise acquired Walgreens common stock between March 25, 2014 and August 5, 2014, inclusive. Doc. 1.

19. That same day, consistent with the PSLRA, notice was published in *Business Wire* advising members of the putative class of the pendency of the litigation and their right to move the Court to be appointed to serve as lead plaintiff by June 9, 2015. Doc. 34-1.

20. On June 9, 2015, Industriens filed a motion for appointment as lead plaintiff and approval of its selection of Kessler Topaz as Lead Counsel and Robbins Geller as Liaison Counsel. Docs. 34-36.

21. By Order dated June 16, 2015, the Court appointed Industriens as Lead Plaintiff, and approved Lead Plaintiff's selection of Kessler Topaz as Lead Counsel and Robbins Geller as Liaison Counsel for the putative class, pursuant to the PSLRA. Doc. 41. The Court set a deadline of August 17, 2015, for filing an amended complaint in the Action. Doc. 40.

B. The Consolidated Complaint

22. Prior to filing the Consolidated Complaint, Lead Counsel, under Lead Plaintiff's supervision, conducted an exhaustive investigation into the facts underlying this Action. *See infra* Section VIII.A.2.

23. Based upon Lead Counsel's thorough investigation and research, Lead Plaintiff filed the Consolidated Complaint on August 17, 2015. Doc. 47. The Consolidated Complaint alleged, *inter alia*, that during the period from March 25, 2014 through August 5, 2014, inclusive, Defendants made materially false or misleading statements and omissions regarding: (i) the impact of generic drug price inflation and reimbursement pressures on Walgreens' pharmacy business; (ii) Walgreens' publicly announced FY16 EBIT Goal; (iii) expected synergies related to the Company's anticipated merger with Alliance Boots, Inc.; (iv) the factors impacting the Company's gross margins; (v) Medicare Part D prescriptions and market share; and (vi) the reasons for withdrawing the FY16 EBIT Goal. *Id*. In particular, the Consolidated Complaint alleged that these statements downplayed unprecedented and systemic generic inflation and reimbursement pressures, that Defendants knew of for months, as nothing "unusual," and misattributed softening profit margins to the lack of new generic introductions, claiming they were "the most significant factor," while concealing the magnified impact generic inflation was having on Walgreens due to its uniquely structured reimbursement contracts that assumed generic price deflation, and that these problems were driving a roughly $2 billion shortfall to the FY16 EBIT Goal.

C. Defendants' Motion to Dismiss the Consolidated Complaint

24. On October 16, 2015, Defendants Walgreens and Wasson jointly moved to dismiss the Consolidated Complaint for failure to state a claim pursuant to Rules 9(b) and 12(b)(6) of the Federal Rules and pursuant to the pleading requirements of the PSLRA. Docs. 55-56. Defendant Miquelon separately moved to dismiss the Consolidated Complaint for failure to state a claim pursuant to Rules 9(b) and 12(b)(6), and the PSLRA. Docs. 57-58.[8] Defendants asserted that the Consolidated Complaint alleged inactionable opinions and statements protected by the PSLRA

[8] Walgreens' and Wasson's motion to dismiss, along with Miquelon's motion to dismiss and their accompanying memoranda of law, are collectively referred to herein as "MTD #1."

safe harbor for forward-looking statements, did not adequately allege that any statement was materially false or misleading or that any Defendant actually made certain statements, and failed to raise a strong inference of Defendants' scienter. Docs. 55-58.

25. Lead Counsel reviewed and analyzed the briefing, exhibits, and extensive legal authority cited in Defendants' MTD #1, while conducting additional legal research into these arguments. On December 22, 2015, Lead Plaintiff filed an omnibus response in opposition to Defendants' MTD #1. Doc. 59. In its opposition, Lead Plaintiff vigorously defended its allegations, arguing that the Consolidated Complaint adequately alleged all elements of Lead Plaintiff's claims, including falsity, materiality, and scienter. *Id*.

26. Defendants filed reply briefs in support of their MTD #1 on February 5, 2016, reiterating many of their earlier arguments and claiming that Lead Plaintiff's opposition did not overcome the numerous pleading deficiencies identified in their motions. Docs. 63-64.

27. By Memorandum Opinion and Order dated September 30, 2016, the Court granted in part, and denied in part, Defendants' MTD #1 ("First MTD Order"). Doc. 71. In particular, the Court sustained claims based on: (i) Miquelon's March 25, 2014 statement that "[w]hile we always experience some level of reimbursement pressure the most significant factor affecting the pharmacy margin was dramatically slower rate [sic] of new generic introductions year over year"; (ii) Defendants' March 27, 2014 statement that the Company's "[r]etail pharmacy margins were negatively impacted by a significant reduction in the number of brand to generic drug conversions and lower market driven reimbursements"; and (iii) Wasson's April 17, 2014 statement that Walgreens "is seeing nothing unusual at this point" with respect to generic inflation. *Id*. at 10, 16. The Court, however, granted Defendants' MTD #1 as to all other claims based on all the other misstatements and omissions alleged, including regarding achievability of the FY16 EBIT Goal

and the reasons for its withdrawal on June 24, 2014, materially narrowing the scope of the alleged claims. *Id.* at 12-25.

28. Defendants answered the Consolidated Complaint on November 4, 2016 (Doc. 75) and filed Amended Answers on January 16, 2017 (Docs. 86-87).

D. The Commencement of Discovery, Federal Rule 26(f) Conference, Initial Disclosures, and Bifurcation of Class and Merits Discovery

29. Immediately after the Court's ruling on Defendants' MTD #1, Lead Plaintiff commenced merits discovery, including scheduling and participating in a Rule 26(f) discovery conference, serving initial disclosures, serving initial document requests and interrogatories on Defendants, and subpoenaing multiple non-parties for documents relevant to its claims.

30. On January 5, 2017, the Parties conducted an initial discovery conference pursuant to Rule 26(f) of the Federal Rules. Doc. 88, ¶ 3. During the conference, the Parties agreed on a date for the exchange of initial disclosures pursuant to Rule 26(a)(1), but were unable to reach agreement as to any other aspects of a discovery plan at that time. In particular, during the conference Defendants expressed their beliefs that: (i) class certification and merits discovery should be bifurcated; and (ii) the Court's First MTD Order (specifically, *dicta* in the Court's introduction that the class period "runs from March to June 2014" (Doc. 71 at 4)) raised questions about whether Industriens remained the most adequate Lead Plaintiff under the PLSRA since it did not purchase Walgreens stock until July 2014. Defendants further expressed their position that these questions should be resolved before *any* discovery proceeded, and noted their intent to move to re-open the lead plaintiff appointment process to address these issues.

31. On January 19, 2017, the Parties exchanged initial disclosures, as agreed during their Rule 26(f) conference. Resisting Defendants' suggestion that class and merits discovery should be bifurcated, Lead Plaintiff also served its first set of document requests on Defendants

that day, consisting of 27 unique requests covering a broad range of topics. On February 10, 2017, Lead Plaintiff also served its first set of interrogatories on Defendants.

32. On January 26, 2017, the Parties filed their Rule 26(f) Report with the Court, outlining their positions and respective proposals regarding the timing and sequence of discovery. Doc. 88. The next day, Defendants filed a motion to reopen the lead plaintiff appointment process. Doc. 89.

33. By Minute Order dated January 30, 2017, the Court continued Defendants' motion to reopen the lead plaintiff appointment process, but ordered the Parties to submit further briefing regarding Defendants' bifurcation request (Doc. 92), which the Parties did on February 6, 2017 (Docs. 93, 94).

34. Continuing vigorously to litigate this case on behalf of the putative Class, on January 27, 2017, Lead Plaintiff served subpoenas on eight non-party analysts who covered Walgreens during the Class Period. Lead Counsel engaged in negotiations with counsel for these non-parties and obtained documents from several analysts. On February 10, 2017, Lead Plaintiff also subpoenaed non-party pharmacy benefits managers who were collectively responsible for the majority of Walgreens' generic drug reimbursements, for relevant documents.

35. On February 22, 2017, the Court granted Defendants' request and ordered that discovery be bifurcated into class certification and merits discovery, deferring all merits discovery until after the Court ruled on Lead Plaintiff's motion for class certification ("Bifurcation Order"). Doc. 96.

E. Class Certification

36. From the Bifurcation Order, until the Court ultimately granted Lead Plaintiff's motion for class certification, Lead Plaintiff and Lead Counsel devoted considerable time and resources to obtaining class certification in this Action. As described more fully below, these

efforts included: (i) negotiating a protective order governing the production of documents; (ii) conducting extensive discovery to develop the evidentiary record to support class certification, including serving additional interrogatories and requests for admission targeted at class certification issues, subpoenaing additional financial analysts for relevant documents, engaging in hard-fought negotiations with Defendants and these non-parties, and moving to compel the production of certain documents and responses to interrogatories from Defendants; (iii) reviewing and responding to document requests and written discovery propounded by Defendants on Lead Plaintiff and its external investment advisor, Aristotle Capital Management ("Aristotle"), as well as the Rule 30(b)(6) deposition notice served on Lead Plaintiff, and preparing for and defending the depositions of Lead Plaintiff and Aristotle; (iv) retaining an expert financial economist to opine on whether the market for Walgreens common stock was efficient during the Class Period and whether there was a class-wide methodology for measuring damages; (v) conducting extensive legal and factual research; and (vi) preparing a detailed memorandum (Doc. 115) to support the motion for class certification filed on April 21, 2017 (Doc. 114) ("Class Certification Motion").

1. Class Certification Discovery

37. On March 1, 2017, Lead Plaintiff served on Defendants: (i) its second set of interrogatories; and (ii) its first set of requests for admission, both directed at class certification issues.[9] Counsel for the Parties met and conferred regarding Lead Plaintiff's class certification requests, but were unable to agree on the scope of responsive discovery that was relevant to class certification, leading to motion practice. On March 31, 2017, Lead Plaintiff filed a Motion to Compel Defendants to Produce Documents in Response to Document Request Nos. 11, 12, 16, 21, and 22 and to Answer Interrogatory No. 2. Doc. 104. In preparation for filing the motion, Lead

[9] Defendants served responses and objections to Lead Plaintiff's second set of interrogatories and first set of requests for admission on March 31, 2017.

Counsel conducted legal and factual research, and prepared a detailed memorandum supporting Lead Plaintiff's position. While Magistrate Judge Mary M. Rowland ("Magistrate Judge Rowland") denied the motion, she did so based in part on Defendants' representation at oral argument that they would not make materiality or loss causation based arguments, or rely on internal Company records, in opposing class certification. Docs. 116-117.

38. Lead Plaintiff also prosecuted the non-party analyst subpoenas it served prior to the Bifurcation Order, and continued to negotiate with such analysts' counsel to obtain documents relevant to class certification. Through these efforts, Lead Counsel successfully secured additional documents, which it reviewed, along with the documents received prior to the Bifurcation Order.

39. During class certification discovery, the Parties also negotiated a Protective Order to govern the production and use of confidential information in the Action. On April 18, 2017, after multiple rounds of negotiations, the Parties lodged an Agreed Confidentiality Order with the Court, which the Court entered that same day. Doc. 112.

40. In addition, Defendants also propounded document and written discovery on Lead Plaintiff, including a first set of document requests and interrogatories dated April 25, 2017. Lead Plaintiff and Lead Counsel reviewed, drafted, and served detailed responses and objections to these requests on May 25, 2015, collected, reviewed, and produced documents responsive to these requests, and drafted and served verified responses to the interrogatories, subject to Lead Plaintiff's objections. Additionally, Defendants noticed the deposition of Lead Plaintiff's corporate representative pursuant to Rule 30(b)(6) on May 23, 2017, identifying ten topics on which they sought testimony. Lead Counsel reviewed, drafted, and served detailed responses and objections to the Rule 30(b)(6) notice on June 2, 2017, and prepared for and defended the June 13, 2017 deposition of Lead Plaintiff's corporate representative, Jan Østergaard.

41. Lead Counsel also reviewed and responded to discovery Walgreens propounded on Industriens' external investment manager, Aristotle, which transacted in Walgreens common stock during the relevant time period on Lead Plaintiff's behalf. In particular, Lead Counsel: (i) reviewed and provided detailed responses and objections to the May 23, 2017 document and deposition subpoenas Walgreens served on Aristotle seeking the production of eight unique categories of documents and testimony from Aristotle's corporate representative regarding five broad topics; (ii) collected, reviewed, and produced documents on Aristotle's behalf in response to Defendants' document subpoena; and (iii) prepared for and defended the deposition of Aristotle's corporate representative, Victor Hawley, on June 27, 2017.

42. Also, in connection with the Class Certification Motion, Lead Counsel: (i) retained Chad Coffman, C.F.A. ("Mr. Coffman") of Global Economics Group, LLC, to provide expert opinions regarding the efficiency of the market for Walgreens common stock during the proposed class period, and the ability to calculate damages on behalf of the proposed class, using a common methodology; (ii) consulted with Mr. Coffman regarding the preparation of an expert report related to class certification; (iii) prepared for and defended Defendants' deposition of Mr. Coffman on June 15, 2017; (iv) consulted with Mr. Coffman regarding the rebuttal expert report of Defendants' financial economist expert, Christopher M. James, Ph.D. ("Dr. James") dated July 3, 2017, submitted in opposition to class certification (Doc. 124-2); (v) prepared for and deposed Dr. James regarding his opinions on September 8, 2017; and (vi) consulted with Mr. Coffman regarding the preparation of a rebuttal report in September 2017, responding to Dr. James' criticisms (Doc. 129-8).

2. Lead Plaintiff's Motion to Certify the Class

43. As noted above, Lead Plaintiff filed its Class Certification Motion on April 21, 2017, seeking to certify the Action as a class action on behalf of a class of all persons and entities

who purchased or otherwise acquired Walgreens common stock between March 25, 2014 and August 5, 2014, inclusive, and were damaged thereby. Doc. 114.

44. Defendants filed a memorandum in opposition to the Class Certification Motion on July 3 2017 (Doc. 124), supported by the Expert Report of Christopher M. James, Ph.D., and exhibits thereto (Doc. 124-2). Defendants argued, *inter alia*, that Lead Plaintiff had not established that: (i) it was an adequate or typical class representative under Rule 23(a); or (ii) damages could be calculated on a class-wide basis consistent with plaintiffs' theory of liability, as required under *Comcast Corp. v. Behrend*, 133 S. Ct. 1426 (2013). Doc. 124. Lead Plaintiff deposed Dr. James on September 8, 2017.

45. On September 15, 2017, Lead Plaintiff filed a detailed reply brief responding to Defendants' opposition. Doc. 129. Accompanying Lead Plaintiff's reply brief was the Rebuttal Report of Chad Coffman, CFA, and exhibits thereto, which responded to certain criticisms by Dr. James. Doc. 129-8.

46. By Memorandum Opinion and Order dated March 29, 2018 ("Class Certification Order"), the Court granted Lead Plaintiff's motion, certifying the Class,[10] appointing Industriens as Class Representative, appointing Kessler Topaz as Class Counsel, and appointing Robbins Geller as Liaison Class Counsel. Doc. 133.

F. The Parties' Extensive Merits Discovery

47. Following the Court's Class Certification Order, Lead Plaintiff began pursuing merits discovery, which had been stayed since February 2017. Merits discovery in the Action was

[10] As noted above, the class certified by the Court pursuant to the Class Certification Order (i.e., all persons and entities who purchased or otherwise acquired Walgreens common stock between March 25, 2014 and August 5, 2014, inclusive, and were damaged thereby) was subsequently adjusted by operation of the Court's ruling on Defendants' motion for summary judgment to: all persons and entities who purchased or otherwise acquired Walgreens common stock between April 17, 2014 and August 5, 2014, inclusive, and were damaged thereby.

extremely hard-fought for years. In order to present a compelling record to the jury, over the course of the entire litigation, Class Counsel vigorously pursued document discovery (totaling over 1.1 million pages), written discovery (comprising 30 interrogatories over four sets, and 197 requests for admission over three sets), and deposition testimony from 23 fact witnesses (including Defendants, current and former Walgreens employees, and non-party analysts). To obtain the discovery sought, Class Counsel engaged in hard-fought negotiations with counsel for Defendants and non-parties, a number of which resulted in disputes being brought before Magistrate Judge Rowland and, later, Magistrate Judge Gabriel Fuentes ("Magistrate Judge Fuentes").

48. Through Class Counsel's efforts, Class Representative obtained critical discovery for the benefit of the Class. Significantly, the discovery obtained led to the filing of the detailed FACC in December 2018, through which Class Representative revived claims previously dismissed and successfully pled new claims (*see infra* Section III.G). Further, as set forth below, Class Counsel reviewed and analyzed these documents to prepare for depositions, engage experts, and ultimately develop the record for summary judgment and in anticipation of trial.

49. Class Counsel's extensive discovery efforts provided it and Class Representative with a thorough understanding of the strengths and weaknesses of the claims and the evidence, and assisted Class Counsel in considering and evaluating the fairness of the Settlement. A detailed discussion of those merits discovery efforts follows.

1. Class Representative's Renewed Merits Discovery Requests, the Parties' Negotiations, and Related Motions to Compel

50. Upon the commencement of merits discovery, Class Counsel re-engaged Defendants on Class Representative's outstanding document requests and interrogatories, which had been held in abeyance pending class certification. Additionally, on September 28, 2018, Class

Representative served its second set of document requests on Defendants, consisting of requests for documents and testimony produced to the SEC in connection with its investigation and settlement with Walgreens announced on September 28, 2018.[11]

51. Class Counsel engaged in extensive negotiations with counsel for Defendants regarding these requests and interrogatories—which included hours of telephonic meet and confers on ***nearly a dozen*** separate occasions, including with eDiscovery experts for each side, and through the exchange of ***nearly two dozen*** emails and letters—for more than a year. Among other things, the Parties negotiated:

- Defendants' objections to Class Representative's document requests and interrogatories;
- The scope of relevant discovery, including: (i) the relevant time period for which Defendants would produce responsive documents; (ii) whether documents concerning the FY16 EBIT Goal and Medicare Part D were relevant when those statements had been dismissed; and (iii) whether Defendants were required to produce Walgreens' reimbursement contracts or any documents or information regarding the same;
- How Defendants planned to search for documents responsive to Class Representative's document requests, including: (i) the number and identity of custodians whose files Walgreens would search; (ii) non-custodial data sources Defendants intended to search; (iii) the seed sets and other parameters by which Defendants intended to train their technology assisted review ("TAR") model to identify responsive documents; (iv) Defendants' "responsiveness criteria" for determining whether documents identified through their review were responsive; (v) Defendants' use of email threading to reduce the universe of documents to review; and (vi) processes for validating the results of Defendants' review;
- The scope of the SEC production relevant to this Action; and
- A protocol for collecting and producing electronically-stored information ("ESI").[12]

[11] Defendants served responses and objections to Class Representative's second set of document requests on October 29, 2018.

[12] After protracted negotiations over many months, the Parties ultimately agreed on the terms of an ESI protocol, which they submitted to the Court for approval on December 20, 2018. Docs. 196-97.

52. Important information regarding Defendants' view of relevance and proposed search methods came to light through Class Counsel's efforts and led to extensive motion practice to ensure critical discovery was obtained for the benefit of the Class. Reflecting that merits discovery was hard-fought at every step, Magistrate Judge Rowland scheduled bi-weekly discovery conferences for the Parties to raise disputes expeditiously with the Court, including:

- August 16, 2018—Lead Plaintiff's Motion to Compel Documents Responsive to its First Set of Document Requests and an Answer to Interrogatory No. 1. Doc. 142.
- November 14, 2018—Lead Plaintiff's oral motion to compel the production of documents related to the SEC investigation and addressing the Parties' dispute regarding whether TAR should be applied to Defendants' review of the SEC production. Doc. 171.
- November 14, 2018—hearing addressing the Parties' dispute regarding whether the Court's October 15, 2018 Order compelling production of documents responsive to Request Nos. 11, 12, 16, 21, and 22 was limited to the Pharmacy division and the time period from September 1, 2013 through October 8, 2014. Doc. 171.
- December 3, 2018—hearing addressing the Parties' disputes regarding the Court's November 14, 2018 Order compelling production, including: (i) how Defendants would identify documents from the SEC production that solely concerned international operations or non-pharmacy matters; (ii) when Defendants would produce such documents; and (iii) whether documents concerning statements by the Company regarding Medicare Part D reimbursement pressure were responsive to Request Nos. 11, 12, 16, 21, and 22.[13] Doc. 173.
- December 14, 2018—Lead Plaintiff's Motion to Compel Documents and Additional Custodians (Doc. 190), including to compel Defendants' compliance with the Court's October 15, 2018 Order by incorporating the language and subject matter of the document requests, as written, into their "responsiveness criteria," and to search 13 custodian files.[14]

53. Prior to filing and/or raising each of the foregoing discovery disputes, Class Counsel expended significant time and resources conducting legal and factual research to support its positions and in attempting to reach a resolution before bringing the matter to the Court's

[13] This dispute ultimately was held in abeyance after Class Representative filed the FACC, pending the Court's decision on Defendants' motion to dismiss the FACC (Doc. 227), and was subsequently denied without prejudice to refiling following the Court's decision (Doc. 241).

[14] On July 2, 2019, Magistrate Judge Rowland denied the motion without prejudice to resubmission following the Court's decision on Defendants' motion to dismiss the FACC. Doc. 241.

attention. This process, which was time consuming and sometimes contentious, led to the production of highly relevant documents.

54. Also during this time, Class Counsel continued to pursue document discovery from the previously subpoenaed non-parties, as well as additional non-parties identified through its diligence and ongoing review of documents, which resulted in the production of additional materials that were utilized to prosecute the Action.

2. Class Counsel Implements and Executes a Document Review Protocol

55. Class Counsel's document review, which proceeded according to the protocols discussed below, began shortly after Defendants started producing documents on June 25, 2018, and continued through the end of fact discovery in October of 2020. The bulk of Defendants' documents were not produced until mid- to late-fall of 2018, after the Magistrate Judge ruled on certain of Class Representative's motions to compel.

56. To facilitate an efficient and productive review, Class Counsel established a state-of-the-art document review platform to accommodate the large size of the anticipated production, enable the review of documents housed on the database by multiple users situated in different locations, offer the latest coding, review, and search capabilities for electronic discovery management, and offer advanced litigation support in regards to electronic discovery.

57. Once the documents were loaded into the database, Class Counsel was able to use the database to organize and search the large volume of documents produced, including categorizing documents by issues and level of relevance, which could be utilized to identify the critical documents supporting the Class's claims. Class Counsel also utilized an algorithm-based, active learning TAR model to rank documents by relevance and prioritize its review, focusing on the most relevant documents first, and weeding out potentially irrelevant material by prioritizing documents based on their relative importance.

58. To facilitate the document review, Class Counsel developed a detailed review protocol, including comprehensive relevance coding instructions and "tags" covering relevant issues and sub-issues. The experienced document review team assembled by Class Counsel (*see infra* Section VIII.A.2) reported directly to senior counsel and partners at Kessler Topaz, and participated in weekly meetings to discuss their findings. In requiring the attorneys involved in document analysis to meet at least weekly, Class Counsel sought to ensure that the reviewing attorneys were aware of: (i) issues being identified across the document review; (ii) why certain documents were high-value documents; and (iii) how such documents were informing Class Representative's theories of liability. The weekly meetings also enabled Class Counsel to assure that the document review and analysis was proceeding efficiently and effectively. Beyond these formal weekly meetings, the review team communicated frequently to ensure that coding decisions were applied consistently and that all team members were apprised of important developments in the document review and of case theories.

59. Class Counsel was also well aware that the documents produced in discovery would form the basis for eliciting deposition testimony and establishing liability at summary judgment or trial. Therefore, simultaneously with the review of Defendants' documents, Class Counsel engaged certain team leading staff attorneys in a number of additional discovery projects that involved a more targeted review and synthesis of the documents produced. These projects included: (i) presentations and memoranda regarding key factual aspects of the case; (ii) presentations and memoranda regarding key players and potential deponents, which were key in Class Counsel's determination of which custodians to seek documents from and which witnesses to depose; (iii) timelines of key events; and (iv) the preparation of deposition kits identifying key documents to introduce with deponents.

60. In total, Class Counsel reviewed and analyzed over one million pages of documents produced by Defendants and non-parties, prior to or in conjunction with utilizing certain of the documents to examine deponents, to support or oppose discovery filings, to support Class Representative's Motion for Partial Summary Judgment, to defend against Defendants' Motion for Summary Judgment, and in mediation.

G. The FACC and Defendants' Motion to Dismiss

61. Class Counsel's significant efforts to obtain and review documents yielded substantial benefits, including providing the factual bases to amend the Consolidated Complaint.

62. On December 21, 2018, in accordance with the deadline set forth in the Court's Scheduling Order (Doc. 137), Class Representative filed the FACC. Doc. 198. The FACC sought to: (i) re-plead claims previously dismissed based on Miquelon's March 25, 2014 FY16 EBIT Goal statements, and Walgreens' April 30, 2014 statements and May 16, 2014 statements regarding generic inflation and reimbursement pressure (Doc. 198, ¶¶ 180-99, 206-19); (ii) plead additional facts supporting the claims based on Wasson's statements during the April 17, 2014 J.P. Morgan conference previously sustained by the Court (*id.*, ¶¶ 200-205); (iii) plead claims based on two additional statements by Wasson during the April 17, 2014 conference—that "it [generic inflation] was really kind of a one-time phenomenon," "was probably an anomaly" and that Walgreens had "a better opportunity than anyone to offset that generic inflation" through its purchasing joint venture with Alliance Boots, Inc. (*id.*, ¶ 201); and (iv) plead additional claims based on statements regarding the FY16 EBIT Goal made by Miquelon during a May 14-15, 2014 Goldman Sachs investor conference, as memorialized in a May 23, 2014 Goldman Sachs report (*id.*, ¶¶ 220-223).

63. On February 19, 2019, Defendants filed a motion to dismiss the FACC for failure to state a claim pursuant to Rules 9(b) and 12(b)(6) of the Federal Rules and pursuant to the pleading requirements of the PSLRA, and accompanying memorandum of law (collectively,

"MTD #2"). Doc. 223. More specifically, Defendants argued, *inter alia*, that: (i) the FY16 EBIT Goal statements remained protected by the PSLRA safe harbor; (ii) the FACC did not allege sufficient new facts that would disturb the Court's prior conclusion regarding the April 30, 2014 statements and who made the May 16, 2014 analyst report statements; (iii) Wasson's newly-pled April 17, 2014 statements were inactionable opinions (i.e., honestly and reasonably held); and (iv) the FACC did not adequately plead the elements of scienter and loss causation. *Id.* As for loss causation, Defendants argued that because Walgreens withdrew the FY16 EBIT Goal on June 24, 2014, and identified generic inflation and reimbursement pressure as impacting the Company, Class Representative could not plead loss causation for the stock decline on August 6, 2014. *Id.* This argument became a primary battleground throughout the course of the litigation.

64. Class Counsel reviewed and analyzed the briefing, exhibits, and extensive legal authority cited in Defendants' MTD #2. Class Counsel also conducted additional legal research into Defendants' arguments. On April 5, 2019, Class Representative filed its response in opposition to Defendants' MTD #2. Doc. 232.

65. In its opposition, Class Representative thoroughly defended its new allegations, arguing that the FACC: (i) cured the pleading deficiencies previously identified by the Court with respect to the FY16 EBIT Goal statements, the April 30, 2014 statements, and the May 16, 2014 analyst report statements; (ii) adequately alleged new claims based on Wasson's April 17, 2014 statements and Miquelon's May 14-15, 2014 Goal statements; and (iii) adequately pled scienter and loss causation. *Id.*

66. On April 26, 2019, Defendants filed a reply brief in further support of their motion to dismiss the FACC. Doc. 239.

H. Merits Discovery during the Pendency of Defendants' MTD #2 and Mediation

67. During the pendency of Defendants' MTD #2, as instructed by the Court (Doc. 221), the Parties continued to engage in reasonable discovery related to the claims already sustained, while holding in abeyance deposition and other discovery that could be impacted by the Court's impending ruling. Principally, these efforts included: (i) continuing to review and analyze Defendants' voluminous document production; (ii) conferring regarding Defendants' compliance with the Magistrate Judge's discovery orders; (iii) engaging in negotiations regarding documents withheld or redacted for privilege; (iv) conferring on missing native files and other technical issues with respect to Defendants' document production; (v) continuing to pursue discovery from additional non-parties identified through Class Representative's review of Walgreens' documents; and (vi) serving additional written discovery, including requests for admission to obtain factual admissions for trial. In connection with these efforts, the Parties engaged in extensive negotiations, including through the exchange of over a dozen emails and letters and participation in telephonic meet and confers. While the Parties were able to resolve some of their disputes, their disagreements as to certain matters necessitated further motion practice (discussed below).

68. As discussed below (*see infra* Section IV), also during this time, the Parties participated in a full-day, in-person mediation session on May 21, 2019. Prior to the mediation, the Parties exchanged detailed mediation statements and damages analyses. The mediation did not result in a resolution, and the Parties continued to pursue discovery.

I. Merits Discovery after the Court's Ruling on the FACC and Class Notice

1. The Court's Partial Denial of Defendants' MTD #2

69. By Memorandum Opinion and Order dated September 23, 2019, the Court granted in part and denied in part Defendants' MTD #2 ("Second MTD Order"). Doc. 244. The Court

sustained the FACC's claims based on: (i) Defendants' FY16 EBIT Goal statements, holding the PSLRA safe harbor did not foreclose liability at the pleading stage; (ii) Wasson's additional statements on April 17, 2014; and (iii) the May 16, 2014 statements, holding that the FACC adequately pled that Wasson and/or Miquelon made the statements. The Court also rejected Defendants' arguments as to scienter and loss causation with respect to the sustained claims, but dismissed claims based on all other statements not previously sustained. *Id*.

70. Defendants answered the FACC on October 28, 2019. Docs. 267-268.

2. Additional Document Requests, Subpoenas, and Related Motions to Compel

71. Following the Court's Second MTD Order, Class Representative's discovery efforts continued. During this time, Class Representative propounded additional document requests and other written discovery, deposed numerous fact witnesses, engaged in hard-fought negotiations regarding this discovery, and continued to negotiate other ongoing disputes, including regarding Defendants' privilege log assertions and related redactions. While the Parties were able to resolve certain disputes through these efforts, they continued to disagree on other matters, necessitating additional motion practice. A detailed summary of these efforts follows.

72. *First*, shortly after the Court's Second MTD Order partially denying Defendants' MTD #2, Class Representative renewed its Motion to Compel Additional Custodians. Doc. 258. Magistrate Judge Fuentes granted the motion in part on November 15, 2019, compelling Defendants to search the files of three additional custodians for discoverable materials. Doc. 293.

73. *Second*, insofar as the Court's Second MTD Order denying in part Defendants' MTD #2 expanded the scope of the case, Class Counsel engaged with Defendants regarding updating their responses to Class Representative's outstanding document requests. These efforts resulted in the production of additional documents and an amended interrogatory response.

Additionally, on November 6, 2019, Class Representative served its third set of document requests, for additional documents concerning the FY16 EBIT Goal and other newly-sustained statements, and others identified through Defendants' document productions.

74. *Third*, Class Counsel continued to pursue discovery from non-party analysts, pharmacy benefit managers ("PBMs"), and consultants previously subpoenaed, and served additional document subpoenas on other non-parties (activist investors and consultants) whose relevance to the matters at issue crystalized through Class Counsel's ongoing document review. Class Counsel also engaged in extensive negotiations with these non-parties regarding their objections to the subpoenas. As a result of these efforts, Class Counsel obtained the production of highly relevant documents and/or testimony supporting the alleged claims. Indeed, had the Action proceeded to trial, certain of these documents and testimony would have been included on Class Representative's trial exhibit list.

75. *Fourth*, Class Counsel continued to engage in negotiations with Defendants regarding Walgreens' privilege logs and the documents withheld and redacted under claims of privilege. These negotiations spanned several months and included extensive written correspondence. Ultimately, the Parties were unable to resolve their differences, and on June 2, 2020, Class Representative filed a Motion for *In Camera* Inspection and to Compel Production of Documents Withheld on Assertion of Privilege. Doc. 330. Magistrate Judge Fuentes granted this motion, in part, ordering the Parties to meet and confer regarding the logging and description of email attachments withheld as privileged. Docs. 346-347.

3. Notice to the Class of the Pendency of the Action as a Class Action

76. After protracted negotiations with Defendants, the intervening FACC, and the Court's Second MTD Order that expanded the Class's claims, Class Counsel, on December 5, 2019, filed a Joint Stipulated Motion to Approve the Form and Manner of Class Notice (Doc. 301)

("Class Notice Motion"), which the Court granted on December 18, 2019 (Doc. 303) ("Class Notice Order"). Prior to filing the Class Notice Motion, Class Counsel requested and reviewed detailed bids obtained from several organizations specializing in class action notice and claims administration, and conducted follow-up communications with certain of these organizations. As a result of this bidding process, Class Counsel authorized Class Counsel to select A.B. Data to issue and administer notice to potential Class Members.

77. Pursuant to the Court's Class Notice Order, beginning on January 21, 2020, A.B. Data caused the Class Notice to be disseminated to 236,945 potential Class Members and nominees. *See* Doc. 348, ¶¶ 3-9. Also pursuant to the Class Notice Order, A.B. Data caused a summary Class Notice to be published in the national edition of *Investor's Business Daily* and released via *PR Newswire* on January 27, 2020, and developed a case-dedicated website, www.WalgreensSecuritiesLitigation.com. *Id*., ¶¶ 10, 12.

78. The Class Notice advised potential Class Members that the Action had been certified by the Court to proceed as a class action on behalf of the Class. Doc. 348-2.[15] The Class Notice provided Class Members with the opportunity to request exclusion from the Class, explained that right, and set forth the procedures for doing so, including a postmark deadline of April 20, 2020 (which deadline was extended to July 6, 2020, pursuant to General Orders issued in the District in response to the Coronavirus COVID-19 public emergency). Doc. 348, ¶ 13. The Class Notice also advised Class Members that it would be within the Court's discretion to permit or deny a second opportunity to request exclusion if there was a settlement. Doc. 348-2, ¶ 18.

79. In total, out of the 236,945 Notices mailed, only 75 requests for exclusion from the Class were received. *See* Doc. 348-5; *see also* Stipulation, Appendix 1.

[15] The Class Notice also advised potential Class Members that "[t]he Class definition may be subject to change by the Court pursuant to Rule 23 of the Federal Rules of Civil Procedure." *Id.*, ¶ 4.

4. Deposition Discovery and Related Motions to Compel

80. Class Counsel began taking depositions of fact witnesses on December 17, 2019. Between December 2019 and October 2020 (a period expanded to address the emergence of the COVID-19 pandemic), Class Counsel deposed 19 of Walgreens' current and former employees, including defendants Wasson and Miquelon. Class Counsel also deposed two of Walgreens' corporate representatives pursuant to Rule 30(b)(6), as well as representatives of Morgan Stanley and Goldman Sachs, financial analyst firms covering Walgreens during the Class Period. Most depositions lasted a full-day, and more than 400 exhibits in total were marked. Adding to the complexity was the fact that most depositions took place after the onset of the COVID-19 pandemic and had to be performed remotely, as detailed below.

81. The fact depositions that Class Counsel took were at times highly technical, concerning complex aspects of financial forecasting, synergy and risk assessments, and generic drug pricing and reimbursement. Class Counsel's significant discovery efforts, however, enabled it to elicit testimony to construct what it believed to be a compelling narrative of events during the relevant time period, facilitated through Walgreens' internal documents. All told, testimony elicited through these depositions was instrumental in gathering facts and establishing admissible evidence to prove the Class's claims.

82. For the Rule 30(b)(6) depositions of Walgreens, which were based on a comprehensive notice identifying nine topics, and dozens of sub-topics, Class Counsel deposed two of Walgreens' corporate designees. The Parties extensively negotiated the scope of testimony to be provided regarding these topics over the course of numerous meet and confer sessions, and exchanges of correspondence setting forth their respective positions.

83. Class Counsel also worked hard to reduce deposition costs, while ensuring that critical information supporting the Class's allegations was obtained. To that end, Class Counsel

negotiated highly favorable pricing for court reporters and videographers. And, after the onset of the global COVID-19 pandemic in March 2020, successfully negotiated, including by raising the matter with Magistrate Judge Fuentes, for most of the merits depositions in this Action to be conducted remotely by video. Doing so reduced costs and avoided undue delay in Class Counsel's prosecution of the Action. The Parties also engaged in hard-fought negotiations, through numerous telephonic communications, written correspondence, and the exchange of multiple drafts, over the terms of a remote deposition protocol governing such depositions.

84. Additionally, Class Counsel successfully defeated two motions for a protective order filed by Defendants with respect to the depositions of Walgreens' former General Counsel, Thomas Sabatino (Doc. 359), and its current CEO, Stefano Pessina, who was a Walgreens Board member and the CEO of Alliance Boots, Inc. during the Class Period (Doc. 368).

5. Written Discovery and Related Motions to Compel Responses

85. As Class Counsel's knowledge of the case evolved through its analysis of the documentary record—Class Counsel pursued targeted written discovery designed, *inter alia*, to better understand: (i) the bases for the alleged misstatements; (ii) the bases for certain internal forecasts produced in discovery; (iii) what defenses Defendants intended to pursue at trial, including whether Defendants intended to rely on any legal or professional advice at trial; and (iv) the facts and evidence Defendants intended to rely on for their defenses, as well as to obtain factual admissions for trial. These efforts included serving additional substantive interrogatories in February 2020, contention interrogatories at the close of fact discovery in September 2020, and additional requests for admission in August 2020 to streamline issues for trial.

86. Defendants served responses and objections to each of Class Representative's written discovery requests, and the Parties met and conferred regarding Defendants' objections, but were unable to resolve all of their disagreements, resulting in further motion practice. In

particular, on June 24, 2020, Class Representative filed its Motion to Compel Complete Responses to Plaintiff's Third Set of Interrogatories, including regarding Defendants' intent to rely on legal advice in its defense at trial (Doc. 336), which motion Magistrate Judge Fuentes granted, in part (Doc. 353).

87. Defendants also served contention interrogatories on Class Representative at the close of fact discovery, and thereafter, propounded their own set of requests for admission for trial. Class Counsel devoted significant time and resources to responding to these wide-ranging requests, including conducting extensive factual research and preparing detailed responses and objections on behalf of Class Representative.

J. Class Counsel's Work with Merits Experts

88. The Parties also engaged in extensive expert discovery. Class Representative proffered four testifying experts, who were interviewed and retained by Class Counsel on Class Representative's behalf: (i) Mr. Coffman, of Global Economics Group, LLC, who was engaged to testify regarding the economic importance of the information allegedly misrepresented and/or concealed, loss causation, and damages; (ii) Benjamin Sacks ("Mr. Sacks"), of The Brattle Group, Inc., who was engaged to testify regarding whether Walgreens' internal financial forecasts, analyses, and other data available to it during the relevant time period, supported Walgreens' publicly disseminated FY16 EBIT Goal; (iii) Dr. Rena Conti ("Dr. Conti"), an Associate Professor at Questrom School of Business, Boston University, who was engaged to testify regarding generic drug prices and trends and the customary reimbursement mechanisms that Walgreens and other U.S. pharmacies use to earn revenue from the sale of generic drugs; and (iv) Professor Frank Partnoy ("Professor Partnoy"), the Adrian A. Kragen Professor of Law at the UC Berkeley School of Law and co-chair of the UC Berkeley Center for Law and Business, who was engaged as a rebuttal expert to respond to the testimony of Defendants' SEC disclosure expert, Paul S. Atkins.

In total, Class Representative's experts produced six separate expert reports and/or rebuttal reports. Class Counsel also prepared these experts for and defended each of their depositions.

89. Defendants also proffered four testifying experts: (i) Douglas Skinner, Ph.D. ("Dr. Skinner"), who was engaged to testify on matters pertaining to loss causation and damages; (ii) Mark Duggan, Ph.D. ("Dr. Duggan"), who was engaged to testify about the generic drug industry, price trends and factors impacting generic pricing, and how market participants such as Walgreens analyzed and projected changes in generic drug prices during this period; (iii) Paul S. Atkins ("Mr. Atkins"), who was engaged to testify about Walgreens' disclosure process during 2013-2014 and assess its design and operation, as well as Walgreens' cautionary language for forward-looking statements; and (iv) Laura Weil ("Ms. Weil"), who was engaged as a rebuttal witness, to respond to the opinions offered by Mr. Sacks. Defendants' experts issued six reports, each of which required Class Counsel to confer extensively with its experts in order to formulate appropriate responses. Class Counsel also prepared for and deposed each of Defendants' experts.

1. Expert Reports and Depositions of the Parties' Loss Causation and Damages Experts

90. In connection with merits expert discovery, Mr. Coffman prepared an expert report on the economic importance of the information allegedly misrepresented and/or omitted, loss causation and damages, which Class Counsel served on Defendants on November 11, 2020.

91. As set forth in his expert report, Mr. Coffman opined that: (i) information was disclosed to investors on August 6, 2014, that revealed the relevant truth concealed by Defendants' alleged misstatements and omissions; (ii) Walgreens' stock price experienced a residual decline that day that was statistically significant; and (iii) there was $8.69 of artificial inflation per share present in Walgreens common stock throughout the Class Period as a result of Defendants' alleged misstatements and omissions.

92. Defendants served Dr. Skinner's affirmative expert report on loss causation and damages on November 11, 2020. Dr. Skinner opined, *inter alia*, that Class Representative could not show loss causation for any of the challenged statements relating to Walgreens' FY16 EBIT Goal or generic inflation and reimbursement pressure.

93. On December 14, 2020, Class Counsel served Mr. Coffman's rebuttal report on Defendants, which responded to Dr. Skinner's opinions, and made certain observations and challenges to Dr. Skinner's affirmative opinions. On December 14, 2020, Defendants also served a rebuttal report for Dr. Skinner responding to Mr. Coffman's affirmative opinions.

94. Class Counsel deposed Dr. Skinner on the opinions set forth in his expert and rebuttal reports on January 6, 2021, and defended Mr. Coffman's deposition on January 29, 2021.

2. Expert Reports and Depositions of the Parties' Industry Experts

95. Class Counsel served the expert reports of Dr. Conti and Mr. Sacks on November 11, 2020. In her report, Dr. Conti opined that: (i) beginning in the fall of 2013, Walgreens experienced unprecedented aggregate generic drug price inflation that was expected to continue through FY14 and beyond; (ii) Walgreens experienced increased reimbursement pressure throughout FY14; and (iii) the combined effect of generic drug price inflation and Walgreens' "locked-in" reimbursement contracts eroded pharmacy division earnings in FY14.

96. In his report, Mr. Sacks opined that objective evidence available to Walgreens at the start of (and throughout) the Class Period, including internal projections forecasting a shortfall of hundreds of millions of dollars and over $1 billion in additional risk, as a result of "structural" and "systemic" generic drug price inflation, did not support, and was materially inconsistent with, the publicly stated FY16 EBIT Goal during the Class Period.

97. Defendants served the affirmative expert reports of Dr. Duggan and Mr. Atkins on November 11, 2020. In his affirmative report, Dr. Duggan opined that: (i) during 2013 and 2014

it would not have been reasonably possible for market participants to fully assess and accurately predict the severity and longevity of generic price inflation; (ii) given these challenges, it is not surprising that views about the projected severity and longevity, as well as impact, of generic price increases differed internally within Walgreens and across market participants, nor that views evolved over time; and (iii) Walgreens' efforts to understand and predict generic inflation over the course of 2013 and 2014 were consistent with how a health economist would approach that exercise in light of the significant complexities around the factors causing generic inflation.

98. In his affirmative report, Mr. Atkins opined that: (i) Walgreens' disclosure process was well-designed, well-documented, and consistent with common practice at large public companies and (ii) Walgreens' cautionary statements were consistent with common practice at large public companies, and were not boilerplate.

99. On December 14, 2020, Class Counsel served rebuttal reports by Dr. Conti, who responded to the opinions set forth in Dr. Duggan's report, and Professor Partnoy, who responded to Mr. Atkins' opinions. Also on December 14, 2020, Defendants served the rebuttal report of Ms. Weil, responding to the opinions of Mr. Sacks.

100. Class Counsel prepared for and deposed Mr. Atkins on January 22, 2021, Ms. Weil on January 28, 2021, and Dr. Duggan on February 11 2021. Class Counsel prepared for and defended the depositions of Mr. Sacks on December 30, 2020, Professor Partnoy on February 5, 2021, and Dr. Conti on February 10, 2021.

K. The Parties' Motions for Summary Judgment

1. Defendants' Motion for Summary Judgment

101. On March 5, 2021, Defendants filed a motion for summary judgment against Class Representative and the Class ("MSJ"), seeking summary judgment on all claims and issues. Doc. 394. Defendants' MSJ was accompanied by a memorandum (Doc. 404), a Local Rule 56.1(a)

statement of putatively uncontroverted facts and conclusions of law (Doc. 405), appendices (Docs. 404-2–404-6) and exhibits (Docs. 397-402, 408). In particular, Defendants argued summary judgment should be granted because: (i) Class Representative could not prove loss causation; (ii) many of the alleged misstatements were either forward-looking statements protected by the PSLRA safe harbor, truthful statements or inactionable opinions that were honestly and reasonably held; (iii) Class Representative cannot establish who made the analyst report statements; (iv) there was no triable issue with respect to scienter because Defendants' actions and testimony affirmatively demonstrates they acted in good faith, and honestly believed their statements at the time they were made; and (v) Class Representative's cannot establish reliance because it purchased Walgreens common stock after the Company withdrew the FY16 EBIT Goal on June 24, 2014, and reveled that generic inflation and reimbursement pressures were impacting the Company.

102. Class Representative filed an opposition to Defendants' MSJ on April 30, 2021. Doc. 425. Class Representative's opposition was accompanied by its Local Rule 56.1(b)(2) Responses and Objections to Defendants' Statement of Material Facts (Doc. 425-1), a Local Rule 56.1(b)(3) Statement of Additional Facts (Doc. 425-2), and exhibits (Docs. 426-434). On May 27, 2021, Class Representative filed its Corrected Local Rule 56.1(b)(2) Responses and Objections to Defendants' Statement of Material Facts (Doc. 443) and a corrected set of exhibits (Docs. 446-462).

103. In its opposition, Class Representative argued that the Court should not grant summary judgment for Defendants on any issue because the evidence—including extensive contemporaneous internal emails and analyses, testimony from percipient witnesses, and a robust event study by its expert—raised numerous material questions of fact for the jury.

104. On June 16, 2021, Defendants filed their reply in support of their MSJ (Doc. 474), accompanied by their response to Class Representative's Local Rule 56.1(b)(3) Statement of Additional Facts (Doc. 475) and additional supporting exhibits (Docs. 476-477).

2. Class Representative's Motion for Partial Summary Judgment

105. On March 5, 2021, Class Representative filed a motion for partial summary judgment against all Defendants ("MPSJ"), on the issues of falsity, materiality, and scienter. Doc. 406. Class Representative's MPSJ was accompanied by its memorandum (Doc. 409), a Local Rule 56.1(a)(2) Statement of Material Facts (Doc. 409-1), and supporting exhibits (Docs. 410-416).

106. Defendants filed their opposition to Class Representative's MPSJ on April 30, 2021. Doc. 420. Defendants' opposition was accompanied by their Local 56.1(b)(2) Response, a Local Rule 56.1(b)(3) Statement of Additional Material Facts in Opposition to Plaintiff's Motion for Partial Summary Judgment (Doc. 423), and supporting exhibits (Docs. 424, 435-439).

107. On June 16, 2021, Class Representative filed a reply in further support of its MPSJ (Doc. 467), accompanied by their Responses and Objections to Defendants' Local Rule 56.1(b)(3) Statement of Additional Material Facts (Doc. 468), and additional evidentiary support (Docs. 469-472). Again, Class Counsel devoted significant time and resources to preparing the reply submission, including reviewing and analyzing Defendants' lengthy opposition and evidence, and conducting additional legal and factual research.

3. The Court's Summary Judgment Order

108. On November 2, 2021, by Memorandum Opinion and Order ("Summary Judgment Order") the Court granted in part, and denied in part, Defendants' MSJ, and denied Class Representative's MPSJ in its entirety. Doc. 483. More specifically, by its Summary Judgment Order, the Court granted Defendants' MSJ as to the March 25, 2014 generic inflation,

reimbursement pressure and FY16 EBIT Goal statements, but denied it with respect to Wasson's April 17, 2014 statements, the May 16, 2014 statements, and Miquelon's May 14-15, 2014 FY16 EBIT Goal statements, and found that the issues of scienter, reliance, and loss causation remained triable issues for the jury.

4. Defendants' Motion for Partial Reconsideration

109. On November 18, 2021, Defendants filed a Motion for Partial Reconsideration, or Alternatively for an Order Certifying an Interlocutory Appeal of the Court's Summary Judgment Order (the "MFR"). Doc. 484. Defendants argued that reconsideration was warranted because Miquelon's May 14-15, 2014 FY16 EBIT Goal statements were forward-looking and were accompanied by meaningful cautionary language and should be dismissed for the same reasons as the March 25, 2014 FY16 EBIT Goal statements. Alternatively, Defendants argued that the Court should certify to the Seventh Circuit, the question of whether the May 2014 FY16 EBIT Goal statements were forward-looking and accompanied by meaningful cautionary language.

110. On December 17, 2021, Class Representative filed an opposition to the MFR (Doc. 487) and on January 7, 2022, Defendants filed a reply (Doc. 489).

111. Reflecting the material risk that still remained in the case even at this late juncture, by Memorandum Opinion and Order dated March 2, 2022 ("MFR Order"), the Court granted Defendants' MFR and dismissed the May 14-15, 2014 Goal statements. Doc. 490. As a result of the Court's MFR Order, the only remaining statements to be tried by a jury were Defendants' April 17, 2014 and May 16, 2014 statements regarding generic inflation and reimbursement pressure. This had the effect of removing all statements directly addressing the FY16 EBIT Goal from the case, and, per Defendants' arguments, substantially increased the risk of proving loss causation and damages at trial on behalf of the Class.

L. *Daubert* Motions

112. At the time of settlement, the Parties were finalizing *Daubert* motions, which (after the Court twice extended the filing deadline at the Parties' request) were due to be filed with the Court on June 23, 2022 (Docs. 494, 498, 501), the same day the Parties executed the Stipulation and Class Representative filed its motion for preliminary approval of the Settlement with the Court. Prior to reaching the Settlement, Class Counsel conducted extensive legal and factual research and prepared an omnibus memorandum of law in support of Class Representative's anticipated motion to preclude each of Defendants' experts from testifying in whole, or in part, at trial.

IV. MEDIATION

113. The Parties engaged in settlement negotiations at two distinct junctures in the case. First, on May 21, 2019, after the Court's entry of the Class Certification Order, the Parties had engaged in merits discovery for more than a year, and while Defendants' MTD #2 was pending, the Parties participated in their first in-person mediation session. In advance of mediation, the Parties prepared and submitted detailed mediation briefs. This mediation session, however, did not result in an agreement to resolve the Action as the Parties were too far apart in their respective positions to reach an agreement.

114. Several years passed before the Parties agreed even to broach the subject of a potential resolution again. Indeed, it was not until after the Parties had completed briefing on their respective summary judgment motions, that they were able to schedule a formal mediation session for November 17, 2021, in Chicago with Judge Phillips, a highly respected mediator and former United States District Judge. This was six years after the inception of the Action. In advance of the mediation, both sides prepared detailed mediation statements setting forth their respective views on the key legal and factual issues in the case, and of the relevant evidence, to assist the Parties and the mediator in evaluating the strengths and weaknesses of the Parties' claims and

defenses. After the Parties submitted their opening mediation statements to Judge Phillips, but before the mediation had taken place, the Court issued its Summary Judgment Order, which the Parties addressed in detailed reply mediations statements. At the mediation, counsel for the Parties adjusted their presentations to account for the new reality of the case in light of the Summary Judgment Order. The Parties also discussed critical issues concerning loss causation and damages and the impact of the Parties' anticipated *Daubert* motions. While the Parties did not reach an agreement to resolve the Action at the November 2021 mediation, they made progress towards a resolution and agreed to continue to discuss a potential resolution with Judge Phillips.

115. The Parties continued their arms-length negotiations through Judge Phillips for the next six months, making slow but steady progress towards a resolution through telephonic meetings and a virtual mediation session held on April 5, 2022, but were still unable to reach full agreement. As a result, on May 17, 2022, Judge Phillips issued a mediator's proposal to resolve the Action, for a total of $105 million in cash. The mediator's proposal was accepted by the Parties on May 19, 2022.

116. On May 25, 2022, the Parties memorialized the main terms of their agreement in a confidential term sheet ("Term Sheet"). Thereafter, the Parties spent the next month negotiating the complete terms of the Settlement, as set forth in the Stipulation (and exhibits thereto), and a confidential Supplemental Agreement that would only apply if the Court allowed a second opportunity for Class Members to request exclusion in connection with the Settlement proceedings.[16] The Parties exchanged multiple drafts of these documents over the course of several

[16] The Supplemental Agreement set forth the conditions under which Walgreens could exercise a right to withdraw from the Settlement in the event that the Court allowed a second opportunity to request exclusion and the requests for exclusion from the Class exceeded certain agreed-upon conditions. As set forth in the Preliminary Approval Order, the Court did not permit a second opportunity to request exclusion "[i]n light of the extensive notice program undertaken in connection with class certification and the ample opportunity provided to Class Members to request exclusion from the Class at that time, as well as the notification Class

weeks, before executing them on June 23, 2022. Class Counsel also began working on various documents to be submitted with Class Representative's motion for preliminary approval of the Settlement. During this time, Class counsel also worked closely with Mr. Coffman, its damages expert, to develop the Plan of Allocation.

117. On June 23, 2022, Class Representative filed its Unopposed Motion for Preliminary Approval of Proposed Settlement and Authorization to Disseminate Notice of Settlement with the Court ("Preliminary Approval Motion"). Doc. 504. Along with its Preliminary Approval Motion, Class Representative also filed: (i) the Stipulation and accompanying exhibits (Doc. 505); and (ii) a supporting memorandum of law (Doc. 504-1). Following a conference with the Court, on June 29, 2022, the Court issued its Preliminary Approval Order, finding that "it will likely be able to finally approve the Settlement under Rule 23(e)(2) as being fair, reasonable, and adequate to the Class, subject to further consideration at the Settlement Hearing" (Doc. 510, ¶ 1), and set the Settlement Hearing for October 7, 2022 at 10:30 a.m. in Courtroom 1241 of the United States District Court for the Northern District of Illinois, Eastern Division (*id*., ¶ 2).

118. Thus, the Settlement was reached only after extensive arms'-length negotiations through Judge Phillips, which took place over the course of six additional months following the November 2021 in-person session. Moreover, the negotiations with Judge Phillips concluded after roughly seven years of extremely hard-fought litigation, including full fact and expert discovery, as well as summary judgment.

V. RISKS OF CONTINUED LITIGATION

119. At the time the Parties reached their agreement in principle to resolve this Action, Class Representative and Class Counsel—as a result of their extensive legal analysis, document

Members received that there may not be a second opportunity to opt out." Doc. 510, ¶ 11. Accordingly, the Supplemental Agreement is now moot.

discovery, deposition efforts, consultation with experts, and the Court's prior rulings—understood the strengths and weaknesses of the claims remaining to be tried.

120. This understanding informed Class Representative and Class Counsel that while the Class's case had merit, there were also a number of risks that made the outcome of continued litigation uncertain. Class Representative and Class Counsel evaluated all of these factors in determining that the Settlement was in the best interest of the Class.

121. For example, while Class Representative firmly believes that the Class would have presented a compelling case at trial, there was no way to predict which evidence the Court would admit or exclude, and which inferences, interpretations or testimony a jury would accept, or the amount of damages it would award. And, even if the Class prevailed at trial, Defendants likely would have appealed that verdict, creating further risk (and delay). The more significant risks, which Class Representative and Class Counsel carefully evaluated in determining to resolve this Action, are outlined below. Given these risks, the complexities of the claims involved, and the delays in proceeding through trial and likely appeals, Class Representative and Class Counsel concluded that the Settlement represents an excellent result for the Class.

A. Risks of Defeating *Daubert* Motion Aimed at the Class's Loss Causation and Damages Expert

122. At the time of settlement, the Parties were on the verge of filing *Daubert* motions that could have significantly altered the available evidence at trial. In particular, Defendants intended to move to exclude the Class's loss causation and damages expert, Mr. Coffman, which motion, if granted, would have left the Class with little evidence to present at trial on the critical elements of loss causation and damages. Indeed, Defendants argued at summary judgment that: (i) Mr. Coffman improperly identified August 6, 2014, when Walgreens revealed new FY16 financial goals that implied the FY16 EBIT Goal was at least $1.8 billion lower than expectations,

as the corrective disclosure date and (ii) the relevant truth was fully disclosed on June 24, 2014, when Walgreens withdrew the Goal and revealed that generic inflation and reimbursement pressures were affecting the Company. While the Court held that Defendants' argument failed to take into account that the relevant truth can leak out over time, and that the statistically significant decline in Walgreens' stock price on August 6, 2014, itself created a genuine dispute of material fact about whether the information disclosed that day was previously known to the market, it further held that "the parties' criticisms of the designated loss causation experts and their reports are best left for the upcoming *Daubert*/Federal Rule of Evidence 702 motions," creating further risk for the Class. Doc. 483 at 10.

B. Risks of Proving Liability at Trial

123. Had this case gone to trial, the Class would have faced significant risks in proving Defendants' liability—in other words establishing that Defendants made false statements or omissions, that the misrepresentations and omissions were material, and that Defendants acted with scienter.

124. Throughout the litigation, Defendants continuously argued their statements were true and not materially misleading, and reflected Defendants' good-faith and honestly held beliefs. Further, Defendants maintained that the market knew of the unprecedented nature of generic inflation and would not have been misled by their statements. Additionally, Defendants maintained that the Class would be unable to prove that any Defendant was liable as the maker of the May 16, 2014 statements. Defendants presented evidence supporting their positions at summary judgment. Even though the Class presented extensive contradictory evidence, and the Court held that the evidence presented by the Parties raised triable issues regarding the truth or falsity of these statements and materiality, Class Counsel and Class Representative understood that Defendants had viable arguments which could have resonated with a jury.

125. In addition to the very real risks the Class faced in establishing falsity and materiality, it also faced the risk of convincing a jury that Defendants acted with scienter. Throughout the Action, Defendants adamantly denied any knowledge that their statements were false or misleading at the time they were made, and claimed that they acted in good faith at all times, including by relying upon robust disclosure processes within the Company to ensure that their public statements were accurate, and testified as much at depositions in this Action. Compounding this testimony, the Class faced substantial challenges in gathering sufficient admissible evidence of Defendants' direct knowledge or reckless disregard that their statements regarding generic inflation and reimbursement pressure were materially misleading. Indeed, Defendants would argue that the Class did not identify a "smoking gun" document within the universe of internal corporate records that Defendants produced, establishing their direct knowledge of the fraud. And, because the alleged fraud concerns complex matters regarding generic drug pricing trends and forecasts, the Class faced similar hurdles in establishing scienter for Walgreens' senior-most executives and the Individual Defendants through evidence of recklessness.

126. Thus, while Class Representative and Class Counsel strongly believed in the Class's claims, and that Class Counsel had identified substantial evidence supporting those claims, such that the Class would be able to establish Defendants' scienter at trial, there was no guarantee that a jury would agree with this assessment of the discovery record. Indeed, because a trial would ultimately have turned on what a jury concluded was in the minds of each Defendant, the risk of losing one or more jurors was significant.

C. Risks of Proving Loss Causation and Damages

127. Assuming the Class overcame each of the risks described above and successfully obtained a unanimous verdict on liability at trial, it would still have faced substantial risks in

proving loss causation and damages. At trial, Defendants likely would have reiterated their summary judgment arguments that, if accepted by jurors, could have materially reduced, or outright precluded, any recovery for the Class.

128. In particular, the Class faced a real risk that a jury would have found the alleged misstatements did not cause the Class's losses. Indeed, Defendants' damages expert, Dr. Skinner, opined that the Class could not show loss causation because: (i) Defendants already disclosed on June 24, 2014, that generic inflation and reimbursement pressures were negatively impacting Walgreens' business when they withdrew the FY16 EBIT Goal, and there was no statistically significant decline in Walgreens' stock price that day; (ii) the Class would be unable to prove that any new, value-relevant information about generic inflation and reimbursement pressure disclosed on August 6, 2014, had an incremental negative impact on Walgreens' stock price beyond that from the downward revision of its FY16 earnings estimates that day; and (iii) Mr. Coffman failed to adequately disaggregate the impact of other, non-fraud related information disclosed on August 6, 2014, including European headwinds and that Walgreens would not be pursuing a tax inversion in connection with the Alliance Boots, Inc. merger. If the jury credited Dr. Skinner's testimony, the Class would have been unable to show that any loss on August 6, 2014, was caused by Walgreens' further disclosures regarding generic inflation and reimbursement pressure's impact on the magnitude of the FY16 EBIT Goal shortfall.

129. Ultimately, the issues of loss causation and damages would have come down to a "battle of the experts." Class Representative and Class Counsel recognize the very real risk that the Court in ruling on the Parties' *Daubert* motions could have found Dr. Skinner's criticisms of Mr. Coffman valid to the point of rendering his opinions unsound, or that a jury would have found Dr. Skinner's testimony to be more credible, resulting in the Class recovering nothing at all. And,

even if the Class was able to overcome Dr. Skinner's criticisms and establish at trial that the alleged misstatements were a substantial factor in causing the alleged stock price declines for loss causation purposes, the Class still faced a significant risk that a jury would find that only a small fraction of the total damages was attributable to those statements as opposed to confounding information, significantly reducing any recovery for the Class.

D. Risks After Trial

130. The Class also faced the risk that even if it prevailed at trial, Defendants likely would have appealed the judgment. On appeal, Defendants would have renewed their arguments as to why the Class had failed to establish liability, loss causation, and damages, thereby exposing the Class to the risk of having any favorable judgment reversed or reduced below the Settlement Amount after years of litigation. These appeals, even if unsuccessful, would have proved costly and resulted in months, if not years, of further litigation before Class Members would receive their recovery (if any).

131. Moreover, even if a judgment in the Class's favor was affirmed on appeal, Defendants could then have challenged reliance and damages as to each Class Member, including Class Representative, in an extended series of individual proceedings. That process could have taken multiple additional years, and could have severely reduced any recovery to the Class as Defendants "picked off" Class Members, reducing or eliminating their ability to recover.[17] Thus, even if the Class prevailed at trial, the subsequent processes of an appeal and challenges to individual Class Members could have materially reduced, or even eliminated, any recovery—and,

[17] For example, in *In re Vivendi Universal SA Sec. Litig.*, 765 F. Supp. 2d 512, 584, 586 (S.D.N.Y. 2011), the district court acknowledged that in any post-trial proceedings, "Vivendi is entitled to rebut the presumption of reliance on an individual basis," and that "any attempt to rebut the presumption of reliance on such grounds would call for separate inquiries into the individual circumstances of particular class members." Over the course of several years, Vivendi indeed successfully challenged several class members' reliance in individual proceedings.

at minimum, could have added several years of further delay before Class Members would have seen any recovery, if at all.

132. Based on the factors summarized above, Class Representative and Class Counsel respectfully submit that it is in the best interest of the Class to accept the near-term, substantial benefit conferred by the Settlement Amount, instead of incurring the significant risk that the Class would recover a lesser amount, or nothing at all, after what could be several additional years of arduous litigation (on top of the seven years already spent on the matter).

VI. ISSUANCE OF NOTICE OF THE SETTLEMENT TO THE CLASS AND THE REACTION OF THE CLASS TO DATE

133. In its Preliminary Approval Order, the Court authorized Class Counsel to retain A.B. Data, the administrator previously approved by the Court to disseminate the Class Notice, as the Claims Administrator "to supervise and administer the notice procedure in connection with the proposed Settlement as well as the processing of Claims." Doc. 510, ¶ 4. In accordance with the Preliminary Approval Order, A.B. Data, working in conjunction with Class Counsel: (i) mailed the Postcard Notice to potential Class Members who were previously mailed a copy of the Class Notice and to any other potential Class Members who otherwise was identified through further reasonable effort; (ii) mailed a copy of the long-form Settlement Notice and Claim Form (together, the "Notice Packet") to the nominees contained in A.B. Data's nominee database and to potential Class Members upon request; (iii) published the Summary Settlement Notice in *Investor's Business Daily* and transmitted the same over *PR Newswire*; (iv) updated the toll-free telephone helpline's pre-recorded information; and (v) updated the case website, www.WalgreensSecuritiesLitigation.com, including posting downloadable copies of the Settlement Notice and Claim Form. *See generally* Schachter Decl.

134. The Postcard Notice contains important information concerning the Settlement and, along with the Summary Settlement Notice, directs recipients to the Settlement Website for additional information regarding the Settlement (and the Action), including the long-form Settlement Notice, which includes, among other things, details about the Settlement and a copy of the Plan of Allocation as Appendix A.

135. Collectively, the Settlement notices provide the Class definition, a description of the Settlement, information regarding the claims asserted in the Action and information to enable Class Members to determine whether to: (i) participate in the Settlement by completing and submitting a Claim Form; or (ii) object to any aspect of the Settlement, the Plan of Allocation, and/or the Fee and Expense Application. The Postcard Notice and Settlement Notice also inform prospective Class Members of Class Counsel's intent to: (i) apply for an award of attorneys' fees in an amount not to exceed 27.5% of the Settlement Fund; and (ii) request Litigation Expenses in connection with the institution, prosecution, and resolution of the Action in an amount not to exceed $2.6 million, which amount may include a request for reimbursement of the costs incurred by Class Representative directly related to its representation of the Class in the Action in accordance with 15 U.S.C. § 78u-4(a)(4). *See* Schachter Decl., Exs. A & B.

136. In accordance with the Preliminary Approval Order, A.B. Data began disseminating Postcard Notices to potential Class Members and Notice Packets to nominees on July 28, 2022. Schachter Decl., ¶¶ 5-6. To date, A.B. Data has mailed 278,052 Postcard Notices and 4,749 Notice Packets to potential Class Members and nominees. *Id.*, ¶ 9. In addition, A.B.

Data caused the Summary Settlement Notice to be published in *Investor's Business Daily* on August 8, 2022, and transmitted over *PR Newswire* on August 11, 2022. *Id.*, ¶ 11.[18]

137. A.B. Data also updated and currently maintains the Settlement Website, www.WalgreensSecuritiesLitigation.com, to provide Class Members and other interested parties with information concerning the Settlement and important dates and deadlines in connection therewith, as well as downloadable copies of the Settlement Notice, Claim Form, Stipulation, Preliminary Approval Order, and FACC. *Id.*, ¶¶ 12-13. Additionally, A.B. Data updated and maintains a toll-free telephone number to respond to inquiries regarding the Settlement. *Id.*, ¶ 12. Class Members with questions can also contact A.B. Data by email at info@WalgreensSecuritiesLitigation.com. *Id.*, Exs. A-B.

138. As noted above and as set forth in the Settlement notices, the deadline for Class Members to submit an objection to the Settlement, the Plan of Allocation, and/or the Fee and Expense Application is September 16, 2022.[19] To date, there have been no objections of any kind. Should any objections be received after the date of this submission, Class Counsel will address them in its reply to be filed on or before September 30, 2022.

VII. THE PLAN FOR ALLOCATING THE NET SETTLEMENT FUND TO THE CLASS

139. In accordance with the Preliminary Approval Order, and as explained in the Settlement Notice, Class Members who wish to participate in the distribution of the Net Settlement Fund (i.e., the Settlement Fund less: (i) any Taxes; (ii) any Settlement Notice and Administration Costs; (iii) any Litigation Expenses awarded by the Court; (iv) any attorneys' fees awarded by the

[18] Class Counsel has been informed that Defendants, in accordance with the Stipulation, issued notice of the Settlement pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715 on June 29, 2022.

[19] As noted above, Class Members cannot request exclusion from the Class in connection with the Settlement proceedings.

Court; and (v) any other costs or fees approved by the Court pertaining to Class Representative's prosecution of the Action) must submit a valid Claim Form and all required supporting documentation to the Claims Administrator, A.B. Data, postmarked (if mailed), or online through the Settlement Website, no later than November 5, 2022. As provided in the Settlement Notice, the Net Settlement Fund will be distributed to Authorized Claimants[20] in accordance with the plan for allocating the Net Settlement Fund among Authorized Claimants approved by the Court.

140. The Plan of Allocation proposed by Class Representative is attached as Appendix A to the Settlement Notice. *See* Schachter Decl., Ex. B. The Plan is designed to achieve an equitable and rational distribution of the Net Settlement Fund. The calculations made pursuant to the Plan, however, are not intended to be estimates of, nor indicative of, the amounts that Class Members might have been able to recover at trial.

141. Class Counsel developed the Plan in consultation with the Class's damages expert, Mr. Coffman and his team at Global Economics Group, LLC. The Plan creates a framework for the equitable distribution of the Net Settlement Fund among Class Members who suffered economic losses as a result of Defendants' alleged violations of the federal securities laws set forth in the FACC, as opposed to economic losses caused by market or industry factors unrelated thereto. To that end, and consistent with the analysis set forth in his class certification report and merits expert report, Mr. Coffman calculated the estimated amount of alleged artificial inflation in the per share price of Walgreens common stock over the course of the Class Period that was allegedly caused by Defendants' materially false and misleading misrepresentations and omissions.

[20] As defined in Paragraph 1(d) of the Stipulation, an "Authorized Claimant" is a Class Member who submits a Claim to the Claims Administrator that is approved by the Court for payment from the Net Settlement Fund. Once the claims-administration process is complete, Class Counsel will file a motion seeking the Court's approval of the Claims Administrator's determinations and authorization to conduct a distribution.

Appendix A of the Plan sets forth the formula that will be utilized in calculating a Claimant's Recognized Loss Amount, and ultimately the Claimant's overall Recognized Claim.[21]

142. As set forth in the Plan, a Claimant's Recognized Loss Amount will depend upon several factors, including the date(s) when the Claimant purchased or acquired his, her, or its shares of Walgreens common stock during the Class Period, and whether such shares were sold and if so, when and at what price.[22] In order to have a Recognized Claim under the Plan, a Claimant must have suffered losses proximately caused by the disclosure of the relevant truth concealed by Defendants' alleged fraud. Specifically, shares of Walgreens common stock purchased or acquired during the Class Period (i.e., between April 17, 2014 and August 5, 2014, inclusive) must have been held through the alleged corrective disclosure that removed alleged artificial inflation related to that information (i.e., August 6, 2014).

143. A.B. Data, as the Claims Administrator, will determine each Authorized Claimant's *pro rata* share of the Net Settlement Fund by dividing the Authorized Claimant's Recognized Claim (i.e., the sum of the Claimant's Recognized Loss Amounts as calculated under the Plan) by the total Recognized Claims of all Authorized Claimants, and then multiplying that amount by the total amount in the Net Settlement Fund. Class Representative's losses will be calculated in the same manner.

144. Once A.B. Data has processed all submitted Claim Forms and provided Claimants with an opportunity to cure any deficiencies in their Claims or challenge the rejection of their Claims, Class Counsel will file with the Court a motion for approval of A.B. Data's determinations

[21] Pursuant to Paragraph 2 of the Plan, a "Recognized Loss Amount" will be calculated for each share of Walgreens common stock purchased or otherwise acquired between April 17, 2014 and August 5, 2014, inclusive, that is listed in the Claim Form and for which adequate documentation is provided. The sum of a Claimant's Recognized Loss Amounts will be the Claimant's "Recognized Claim."

[22] The calculation of Recognized Loss Amounts also takes into account the PSLRA's statutory limitation on recoverable damages. *See* Section 21D(e)(1) of the PSLRA.

with respect to all submitted Claims and authorization to distribute the Net Settlement Fund to Authorized Claimants. As set forth in the Plan, if nine months after the initial distribution, there is a balance remaining in the Net Settlement Fund (whether by reason of uncashed checks, or otherwise), and if it is cost-effective to do so, Class Counsel will conduct a re-distribution of the funds remaining after payment of any unpaid fees and expenses incurred in administering the Settlement, including the costs for such re-distribution, to Authorized Claimants who have cashed their initial distribution checks and would receive at least $10.00 from such re-distribution. Redistributions will be repeated until it is determined that re-distribution of the funds remaining in the Net Settlement Fund is no longer cost effective. Thereafter, any remaining balance will be contributed to non-sectarian, not-for-profit organization(s) to be recommended by Class Counsel and approved by the Court.

145. As discussed in the Settlement Memorandum, the structure of the Plan is similar to the structure of plans of allocation that have been used to apportion settlement proceeds in other securities class actions. To date, no objections to the Plan have been received. In sum, Class Counsel believes that the Plan provides a fair and reasonable method to equitably distribute the Net Settlement Fund among Authorized Claimants, and respectfully submits that the Plan should be approved by the Court.

VIII. CLASS COUNSEL'S FEE AND EXPENSE APPLICATION

146. In addition to seeking final approval of the Settlement and Plan of Allocation, Class Counsel is applying for an award of attorneys' fees and payment of expenses incurred by Plaintiff's Counsel during the course of the Action. Specifically, Class Counsel is applying for attorneys' fees in the amount of 27.5% of the Settlement Fund and for Litigation Expenses in the total amount

of $2,283,380.62.[23] This amount *includes* a request for reimbursement in the amount of $32,960 for the costs incurred by Class Representative in representing the Class in the Action, as permitted by 15 U.S.C. § 78u-4(a)(4). *See* Østergaard Decl., ¶¶ 8, 10. As noted above, Class Counsel's Fee and Expense Application is consistent with the maximum fee and expense amounts set forth in the Postcard Notice and Settlement Notice and, as set forth in the Østergaard Declaration, is supported by Class Representative who carefully considered the appropriateness of the attorneys' fees and expenses Class Counsel seeks. To date, no objections to Class Counsel's requests for attorneys' fees and Litigation Expenses have been received.[24]

147. Courts in the Seventh Circuit consider several factors when approving a fee request from a common fund, including *inter alia*: (1) the quality of plaintiff's counsel's performance, (2) the amount of work necessary to resolve the litigation, and (3) the risk of nonpayment. *See, e.g.*, *In re Synthroid Mktg. Litig.*, 264 F.3d 712, 721 (7th Cir. 2001); *see also Taubenfeld v. AON Corp.*, 415 F.3d 597, 599 (7th Cir. 2005).[25] Accordingly, below we provide a summary of the primary factual bases supporting Class Counsel's Fee and Expense Application consistent with Seventh Circuit case law. For the Court's convenience, we also break down the number of hours spent and identify the specific tasks that Class Counsel performed in the matter on an *annual basis*

[23] The lodestar and expense submissions of: (i) Andrew L. Zivitz, on behalf of Kessler Topaz ("Kessler Topaz Fee and Expense Decl."); and (ii) James E. Barz, on behalf of Robbins Geller ("Robbins Geller Fee and Expense Decl.") (together, the "Fee and Expense Declarations"), are filed herewith. The Fee and Expense Declarations set forth the names of the attorneys and professional support staff employees who worked on the Action and their respective hourly rates, the lodestar value of the time expended by each such attorney and professional support staff employees, the expenses incurred by Plaintiff's Counsel, and the background and experience of each firm.

[24] In its reply to be filed with the Court by September 30, 2022, Class Counsel will address any objections received after this submission.

[25] A full analysis of the factors considered by courts in the Seventh Circuit when evaluating requests for attorneys' fees and expenses from a common fund, as well as the supporting legal authority, is presented in the accompanying Fee and Expense Memorandum.

so that the Court can more easily evaluate the amount of time and effort that went into this seven+ year litigation.

A. Class Counsel's Fee Request Is Fair and Reasonable and Warrants Approval

1. The Favorable Settlement Achieved

148. Courts consider the quality of plaintiff's counsel's performance and the result achieved in making a fee award. *See* Fee and Expense Memorandum, § II.D.1. As described above, when viewed in absolute terms, the $105,000,000 Settlement is a significant result as it ranks as one of the ten largest securities class action settlements ever achieved in this Circuit.

149. The Settlement is also significant as it represents approximately 9.5% of the Class's estimated *maximum* aggregate damages (i.e., approximately $1.1 billion) based on the analysis of the Class's damages expert, assuming all theories of liability, causation, and damages were upheld by a jury. Ultimately, however, the percentage recovery of potential aggregate damages would vary widely depending on the findings returned by a jury. In addition to representing a meaningful percentage of the Class's estimated damages, the Settlement is also favorable when considered in view of the substantial risks and obstacles to obtaining a larger recovery (or, any recovery) were the Action to continue towards trial. As detailed above, at the time of settlement, only two sets of statements and one corrective disclosure remained in the case, making this a high-risk case to bring before a jury. Here, the Settlement avoids substantial risks to recovery in the absence of settlement and, as a result, numerous Class Members will benefit and receive compensation for their losses.

2. The Time and Labor Devoted to the Action by Plaintiff's Counsel

150. Over the course of more than seven years, Class Counsel along with Court-appointed Liaison Counsel devoted substantial time to the investigation, prosecution, and resolution of the Action. As more fully described above, Class Counsel's efforts included: (i) conducting an extensive investigation into the alleged fraud, which included a detailed review

of Walgreens' public SEC filings covering multiple fiscal periods, securities analysts' reports, conference call transcripts, press releases and other public statements, media reports, and court documents from Miquelon's defamation action filed against Walgreens in the Illinois Circuit Court of Cook County, Chancery Division, captioned *Wade D. Miquelon v. Walgreen Co*., No. 14-CH-16825 (the "Miquelon Litigation"), interviewing confidential witnesses, and conducting extensive legal research to confirm the theories of liability Industriens could pursue on behalf of the putative Class and the applicable pleading standards; (ii) drafting and filing two detailed amended complaints based on this investigation; (iii) fully briefing and opposing two rounds of motions to dismiss; (iv) completing full fact discovery, including the review of more than 1.1 million pages of documents, participation in dozens of meet and confer sessions with Defendants regarding complex discovery disputes, filing of multiple motions to compel, and the depositions of 23 fact witnesses; (v) completing full expert discovery (class certification and merits), including consulting with four experts on the service of eight separate expert reports and rebuttal reports and preparing for and taking or defending 10 expert depositions; (vi) successfully moving for class certification, including preparing for and defending the depositions of Lead Plaintiff and its external investment advisor; (vii) conducting an extensive Class-notice program; (viii) preparing and filing the MPSJ and accompanying Rule 56.1 statement, and responding to Defendants' opposition and counter-statement, which submissions exceeded 540 pages in total and 426 appendices and exhibits; (ix) responding to and defeating, in part, Defendants' MSJ and Rule 56.1 statement, which submissions exceeded 500 pages in total and 448 exhibits; (x) opposing Defendants' motion for reconsideration of the Court's Summary Judgment Order; (xi) preparing to file *Daubert* motions to limit or exclude expert testimony; and (xii) engaging in extensive arm's-length negotiations to achieve the Settlement. At all times throughout the Action,

Class Counsel's efforts were driven and focused on advancing the litigation to achieve the most successful outcome for the Class, whether through settlement or trial, by the most efficient means possible.

151. The time devoted to this Action by Plaintiff's Counsel is set forth in the accompanying Fee and Expense Declarations. Included with the Fee and Expense Declarations are schedules that summarize the time expended by the attorneys and professional support staff employees at each firm, as well as each firm's expenses ("Fee and Expense Schedules"). The Fee and Expense Schedules report the amount of time spent by each attorney and professional support personnel who worked on the Action. Plaintiff's Counsel secured the $105 million Settlement following the investment of thousands of attorney hours and payment of millions of dollars in expenses without any guarantee of reimbursement. In total, Class Counsel, on behalf of Plaintiff's Counsel, is seeking attorneys' fees in the amount of 27.5% of the Settlement Fund (i.e., $28.875 million). Such a fee award would result in a negative multiplier of 0.976 on Plaintiff's Counsel's total lodestar of $29,591,935.75, which was calculated by multiplying the total hours expended by Plaintiff's Counsel—56,007.70 hours—by their current hourly rates.[26] In other words, the requested fee is a discount on what Plaintiff's Counsel would have earned had they been compensated by a paying client using counsel's hourly rates. As discussed in the Fee and Expense Memorandum, when using a lodestar cross-check, courts routinely award fee requests with *positive* multipliers in securities class actions. *See* Fee and Expense Memorandum, § II.C.

[26] The hourly rates of Class Counsel here range from $780 to $1,000 per hour for partners, $690 to $740 per hour for counsel, $390 to $560 per hour for associates, $385 to $410 per hour for staff attorneys, $340 to $350 per hour for contract attorneys, $275 to $320 per hour for paralegals, and $260 to $315 per hour for in-house investigators. *See* Kessler Topaz Fee and Expense Decl., Ex. A. The hourly rates of Liaison Counsel here range from $770 to $1,350 per hour for partners, $925 to $1,090 per hour for counsel, $400 to $595 per hour for associates, $350 to $375 per hour for paralegals, and $290 per hour for an in-house investigator. *See* Robbins Geller Fee and Expense Decl., Ex. A. These hourly rates are reasonable for this type of complex litigation. *See* Fee and Expense Memorandum, § II.C, n.8.

152. Class Counsel believes that the time and lodestar calculations reflected in the Kessler Topaz Fee and Expense Declaration are reasonable and were necessary for the effective and efficient prosecution and resolution of the Action. Robbins Geller has attested to the same with respect to their time and lodestar calculations. *See* Robbins Geller Fee and Expense Decl., ¶ 4.

153. For purposes of its Fee Application, Kessler Topaz exercised its billing judgment to eliminate time entries for anyone who billed less than 30 hours on the Action. Class Counsel also did not include any time incurred after August 26, 2022, or any time incurred in preparing the Fee and Expense Application. Liaison Counsel did not include any time incurred after July 15, 2022, or any time incurred in preparing the Fee and Expense Application. Additionally, Plaintiff's Counsel will not be seeking reimbursement for any time spent after August 26, 2022, and leading up to the Settlement Hearing or for any time after the Settlement Hearing spent overseeing the processing of Claims and distribution of the Net Settlement Fund.

154. Class Counsel primarily staffed this matter with: (i) three partners (one of whom was promoted from counsel during the course of the litigation); (ii) two counsel (including the aforementioned counsel who was promoted to partner); (iii) one junior associate; (iv) three primary staff attorneys; (v) two paralegals; (vi) one investigator; and (vii) three document review attorneys who were contracted through an outside agency. As the case moved through its various phases (e.g., class certification discovery, merits discovery, depositions, summary judgment, motions to exclude, and pre-trial preparation), additional Kessler Topaz attorneys and other support personnel were assigned to either supplement or replace certain members of the litigation team, as discussed below. All of these attorneys and support personnel are highly qualified in the area of securities class action litigation and greatly assisted in the prosecution of this Action for more than seven

years. *See* Kessler Topaz Fee and Expense Decl., Ex. C (professional bios). Below are summaries of the work Class Counsel performed during each year of the litigation, which tracks and builds upon the Litigation Timeline contained in Section III herein.

a. 2015 Staffing and Tasks

155. Following the filing of the initial complaint on April 10, 2015, Class Counsel's Lead Plaintiff and Client Development departments drafted an extensive client memo, worked with Industriens to secure retention in this matter, and filed briefing and oppositions in connection with Industriens' appointment as Lead Plaintiff and for approval of its selection of Kessler Topaz as Lead Counsel and Robbins Geller as Liaison Counsel. Industriens' proposed appointment as Lead Plaintiff was opposed by one other movant, which eventually withdrew its application, and thereafter, Industriens was appointed as Lead Plaintiff by Order of the Court on June 16, 2015.

156. After the appointment of Lead Plaintiff and Lead Counsel, the case was principally staffed by two partners, one counsel, two associates, and an investigator. I, David Kessler, am a senior partner of the firm, and I was part of the oversight of the litigation team from the outset of the matter, being involved primarily in overall litigation strategy, damage assessment, and eventually, mediation and settlement.

157. In preparing the 109-page, 309-paragraph Consolidated Complaint which was filed 60 days after Industriens' appointment as Lead Plaintiff, on August 17, 2015, Lead Counsel enlisted a broader team of experienced investigators and staff attorneys. Prior to filing the Consolidated Complaint, Lead Counsel conducted a thorough investigation into the facts underlying the Action, including an exhaustive review of: (i) Walgreens' filings with the SEC covering multiple fiscal periods; (ii) securities analysts' reports about Walgreens; (iii) transcripts of Walgreens' conference calls with securities analysts and investors; (iv) Walgreens' press

releases and other public statements; (v) media reports concerning Walgreens; and (vi) court documents, including those from the Miquelon Litigation, and the internal Company emails and other documents appended thereto.

158. On October 16, 2015, Defendants Walgreens and Wasson filed a memorandum of law in support of their motion to dismiss, while Defendant Miquelon filed a memorandum in support of his separate motion to dismiss. Lead Counsel reviewed and analyzed the briefing, exhibits, and extensive legal authority cited in Defendants' MTD #1. On December 22, 2015, Lead Counsel filed an omnibus response in opposition to Defendants' MTD #1 on behalf of Lead Plaintiff.

159. Over the course of 2015, Kessler Topaz expended approximately 3,411 hours primarily to the tasks referenced above.

b. 2016 Staffing and Tasks

160. As 2016 commenced, Lead Counsel assessed Defendants' MTD #1 reply brief and reviewed the current state of the law. For the next seven months, the attorneys and professional support staff working on the Action were assigned to several other matters while Defendants' MTD #1 remained pending. This utilization of resources had the effect of no unnecessary lodestar being incurred in this matter.

161. On September 30, 2016, the Court entered its First MTD Order granting in part and denying in part Defendants' MTD #1. After analyzing the Court's First MTD Order, Lead Counsel prepared initial disclosures, began the process of drafting discovery requests, and reviewed Defendants' answers to the Consolidated Complaint. As the case was now entering into the discovery phase, Lead Counsel expanded the litigation team in anticipation of the demands necessitated by discovery and scheduling to include an additional partner and an additional

associate, both of whom were selected because of their considerable experience in complex litigation. As the senior partner on the case, I, David Kessler, routinely discussed staffing with the other partners on the case, which was driven based on the particular needs of the case.

162. Over the course of 2016, Kessler Topaz expended approximately 475 hours primarily to the tasks referenced above.

c. 2017 Staffing and Tasks

163. With the Consolidated Complaint having been sustained, 2017 commenced with a heavy dose of discovery preparation, meet and confers, scheduling efforts and Court appearances. For example, the Parties participated in the Rule 26(f) conference on January 5, 2017, and ultimately exchanged initial disclosures later that month. Lead Counsel also had to counter Defendants' efforts to reopen the lead plaintiff appointment process and to bifurcate discovery. In addition, in the first few months of 2017, Lead Counsel prepared and served significant discovery requests on Defendants for the production of documents (27 distinct requests), interrogatories (six interrogatories over two sets), and requests for admissions (52 requests), responded to 26 unique document requests and six interrogatories propounded on Lead Plaintiff by Defendants, and began the process of identifying non-parties who may have had critical information relevant to Lead Plaintiff's claims. Lead Counsel ultimately served subpoenas and engaged in numerous meet and confer conferences regarding objections with 11 distinct non-parties.

164. After a full round of briefing and a hearing, the Court, by Order dated February 22, 2017, granted Defendants' bifurcation request and ordered that all merits discovery be deferred until after the Court ruled on Lead Plaintiff's motion for class certification. Following the Court's Bifurcation Order, the Parties negotiated and filed a confidentiality order to govern the production and use of confidential information in the Action.

165. March 2017 saw the Parties' first of a dozen motions to compel and/or protective orders filed throughout this Action that each had to be fully researched and briefed and subsequently argued before Magistrate Judges Rowland or Fuentes either in conference calls or during various status conferences. The issues raised in these motions to compel and protective orders were highly important for both sides and required significant effort on behalf of Lead Counsel.

166. In April 2017, Lead Plaintiff filed its Class Certification Motion, supported in part by a market efficiency report from its expert, Mr. Coffman. In connection therewith, Defendants served Lead Plaintiff with written discovery, which commenced full-blow class certification discovery. Indeed, following the aforementioned negotiation and entry by the Court of a confidentiality order in the case, Defendants propounded discovery on Lead Plaintiff and its external investment manager (26 document requests and six interrogatories to Lead Plaintiff, eight document requests with multiple sub-parts to its investment manager, and 30(b)(6) deposition requests to both Lead Plaintiff and its external investment manager, Aristotle). After preparing and providing responses and objections to Defendants' discovery requests and engaging in several meet and confer sessions, Lead Plaintiff gathered potentially responsive documents for production that had to be reviewed for privilege and relevancy. Lead Counsel assigned two staff attorneys to review the production in this regard and ultimately produced almost 2,000 pages of documents on behalf of Lead Plaintiff and Aristotle, in response to Defendants' document requests. Following the production, Lead Plaintiff, Aristotle, and its market efficiency expert were each prepared for and defended by Lead Counsel at their respective depositions.

167. On July 3, 2017, Defendants filed an opposition to Lead Plaintiff's Class Certification Motion, accompanied by their own expert's report disputing various elements of

Mr. Coffman's report. After preparing for and taking their rebuttal expert's deposition and conducting additional research, Lead Counsel filed a reply brief in further support of the Class Certification Motion on Lead Plaintiff's behalf, which was supported by Lead Plaintiff's expert's reply report, on September 15, 2017.

168. As merits discovery had been stayed pending the resolution of the Class Certification Motion, the litigation team effectively geared down until the Court issued its class certification decision at the end of March 2018.

169. Over the course of 2017, in connection with the tasks referenced above, among others, Kessler Topaz expended approximately 2,902 hours.

d. 2018 Staffing and Tasks

170. The Court issued its Order certifying the Class, appointing Industriens as Class Representative, and appointing Kessler Topaz as Class Counsel on March 28, 2018. Following the issuance of the Class Certification Order, among other important tasks, Class Representative: (i) commenced enforcing its prior merits discovery requests, including spending nearly six months engaging in meet and confers with Defendants regarding their objections to these requests, the scope of responsive documents, negotiating an ESI Protocol, and developing a discovery plan and schedule with Defendants; (ii) reviewed Defendants' initial document productions to identify additional potential document custodians at Walgreens; (iii) issued a Rule 30(b)(6) deposition notice to Walgreens; (iv) recommenced non-party discovery with additional subpoena requests, engaged in numerous meet and confer sessions with these non-parties, and reviewed the document production received as a result of these efforts; and (v) prepared for and attended several status conferences before the Court throughout the first three quarters of 2018.

171. During the various meet and confers with Defendants, several impasses were reached and Class Representative either prepared written motions or orally moved at status conferences five separate times to compel the production of documents and/or responses to written discovery over the course of 2018. All of these motions were fully argued orally or through written submissions, including at times replies and sur-replies, and all of these motions were eventually ruled upon by Magistrate Judges Rowland or Fuentes, thereby eliciting further meet and confers and productions when successful.

172. On September 28, 2018, Walgreens announced that it had entered into a consent decree with the SEC. Class Counsel began analyzing the benefit of amending the Consolidated Complaint to bring the consent decree issues before the Court, as well as introducing new evidence that had been discovered since the Consolidated Complaint had been filed. In addition, Class Representative sought the production of all documents and transcripts Defendants produced to the SEC in connection with its investigation. Discovery hearings were held in October, November, and December with Magistrate Judge Rowland to assist the Parties with various discovery disputes, including those related to the SEC's settlement.

173. After substantial research, analysis, and drafting, on December 21, 2018, in accordance with the deadline set forth in the Court's Scheduling Order, Class Counsel filed the 124-page, 348-paragraph operative FACC on Class Representative's behalf.

174. Over the course of 2018, in connection with the tasks referenced above, among others, Kessler Topaz expended approximately 2,991 hours.

e. 2019 Staffing and Tasks

175. Class Counsel's primary projects for 2019 involved responding to Defendants' MTD #2, continuing to work to resolve prior discovery disputes resulting in two additional motions

to compel, reviewing the substantial document productions by Walgreens and various non-parties (totaling more than one million pages), preparing for 23 fact witness depositions (including an initial 30(b)(6) deposition), preparing, negotiating, submitting and ultimately disseminating Class Notice, evaluating the Court's decision on Defendants' MTD #2, engaging in the first mediation, continuing party discovery with new requests for production of documents, and appearing and arguing at motions to compel hearings and status/scheduling conferences.

176. Defendants' MTD #2 required Class Counsel to confront a variety of new and challenging arguments raised in Defendants' opening brief and voluminous exhibits offered in support of their motion. Class Counsel reviewed and analyzed the briefing, exhibits, and extensive legal authority submitted with Defendants' MTD #2, conducted additional legal research, and filed a response in opposition to the MTD #2 on April 5, 2019. On April 26, 2019, Defendants filed a reply brief in further support of their MTD #2.

177. With the MTD #2 pending, the Parties took the first step in attempting to resolve the matter in a mediation. In advance of the mediation, the Parties exchanged mediation statements and damages analyses outlining their respective views of the case and met for an in-person mediation on May 21, 2019. After a full day of discussions, while agreeing to keep in touch, it became readily apparent that the Parties were not close to a resolution and Class Counsel redoubled its efforts in discovery. To help review the massive document production from Defendants and non-parties, and to prepare for the impending depositions, Class Counsel retained six contract attorneys from an outside agency and assigned two additional staff attorneys to the case.

178. By its Second MTD Order dated September 23, 2019, the Court granted in part and denied in part Defendants' MTD #2, thereby ushering in additional meet and confer sessions regarding Class Representative's outstanding document requests and Defendants' obligations with

respect thereto, as well as motions to compel the production of documents from additional custodians, and other discovery.

179. In November 2019, Class Representative served 21 additional document requests on Defendants related to the expanded scope of the case and for additional documents identified through Defendants' document productions.

180. Class Counsel also began preparing for and ultimately took the first 30(b)(6) deposition of Defendants on December 17, 2019.

181. In connection with the tasks referenced above, among others, Kessler Topaz expended approximately 14,112 hours on this Action in 2019.

f. 2020 Staffing and Tasks

182. In January 2020, when it became clear that the Parties were not close to any type of resolution and in light of the demands of the discovery schedule, Class Counsel revamped the litigation team once again. In this respect, I, Andrew Zivitz was added to the team, along with our partner, David Bocian ("Mr. Bocian") and Eric Gerard ("Mr. Gerard"), then counsel at Kessler Topaz. I, Andrew Zivitz, personally have trial experience in securities class action matters having tried *In re BankAtlantic Bancorp, Inc. Sec. Litig.*, No. 07–61542–CIV to verdict in the Southern District of Florida, and Mr. Bocian and Mr. Gerard are each former Assistant United States Attorneys for the Department of Justice, with extensive trial experience. At this juncture of the case, Class Counsel was set to notice up to 20 depositions, and needed to dedicate substantial resources to complete merits discovery, engage in expert discovery, brief summary judgment motions and ultimately, prepare for trial. Class Counsel also had some associate turnover as 2019 concluded and 2020 began and replaced these team members. Furthermore, as some of our staff attorneys assigned to other matters became available in 2020, Class Counsel enlisted their help in

undertaking targeted searches of documents in preparing for depositions. To this end, the staff attorneys were assigned one or more fact witnesses and were tasked with identifying critical documents to consider utilizing in the examination of each witness. These staff attorneys were also asked to identify witness-specific evidence in the productions on relevant facets of the litigation such as generic inflation, reimbursement pressure, and tracking of the shortfall in Walgreens' FY16 EBIT Goal.

183. As Class Counsel delved into the million-plus page document production, it also became apparent that numerous privilege log entries were worth challenging. As a result, Class Counsel engaged in numerous meet and confer sessions and filed two motions to compel regarding the breadth of the attorney-client privilege attributable to Defendants' document production. Further, Class Counsel's review identified relevant non-party PBMs and consultants in early 2020 from whom it subsequently sought additional discovery later in the year.

184. Perhaps most challenging from a litigation perspective, in March 2020, the COVID-19 pandemic shut down the courts, Class Counsel's offices, and society in general. Class Counsel reacted quickly, establishing a remote working environment for all of the attorneys and professional support staff working on this matter (including staff and contract attorneys) and investigated and pressed for remote depositions with Defendants in an effort to stay on track with the previously-agreed upon schedule with as little disruption as possible. Remote depositions was a novel concept at the outset of the pandemic, so it took several weeks for the Parties to even consider moving forward with them and thereafter engaged in hard-fought negotiations regarding a protocol that would balance both safety concerns and the need to successfully elicit deposition testimony.

185. After agreeing on a remote deposition protocol, Class Counsel began preparing for and ultimately taking the depositions of 19 then-current or former employees of Walgreens, including Defendants Wasson and Miquelon. Class Counsel also took a second 30(b)(6) deposition and depositions of representatives from two market analyst firms. Class Counsel spent thousands of hours conducting targeted searches of documents for use at these depositions, ultimately marking over 400 exhibits. This massive undertaking was made even more challenging during the pandemic as no one could be in the same room to discuss the documents or examine the witnesses.

186. While merits depositions were ongoing, Class Counsel researched, interviewed, and retained four separate experts to assist at trial. Class Counsel also began developing an order of proof to use at summary judgment and trial. In addition, Class Counsel was separately responding to Class Member inquiries regarding the Class Notice that began to be disseminated in January 2020.

187. Given the fast pace of discovery, the litigation team conducted virtual weekly meetings to ensure that all facets of the litigation were advancing as necessary, that party and non-party discovery requests were being followed up on with speed and vigor, that the review of documents was being conducted efficiently, and that efforts were not being duplicated.

188. In the middle of 2020, Defendants sought to re-depose Industriens, which efforts Class Counsel successfully resisted through extensive meet and confer efforts, while in August and September 2020, key Defendant witnesses moved for protective orders barring their depositions. Also in August 2020, Class Counsel served additional requests for admission on Walgreens.

189. The Parties served contention interrogatories on each other in September 2020, while expert discovery also commenced in earnest, with the exchange of six expert reports (three

per side) on November 11, 2020, in the fields of economics and loss causation, budgetary forecasting, generic price trends, and SEC disclosure rules. Two additional experts filed rebuttal reports, as did four of the original six experts, on December 14, 2020, and Class Counsel prepared to take or defend each of these depositions in the upcoming months.

190. In connection with the tasks referenced above, among others, Kessler Topaz expended approximately 23,247 hours in 2020.

g. 2021 Staffing and Tasks

191. As 2021 commenced, Class Counsel's primary focus centered upon taking and defending the depositions of the Parties' experts, while simultaneously marshalling the evidence to support Class Representative's anticipated motion for partial summary judgment and to defend against Defendants' anticipated summary judgment motion, which were due in early March 2021. Class Counsel's work on an Order of Proof and Rule 56.1 statement and counterstatement was extensive throughout the first half of 2021.

192. On March 5, 2021, Defendants filed their MSJ and supporting memorandum of law against Class Representative and the Class. Defendants' MSJ was accompanied by statements of facts and conclusions of law consisting of 115 paragraphs, 5 appendices, and 229 exhibits. That same day, Class Counsel filed Class Representative's MPSJ against all Defendants on behalf of the Class. The MPSJ was accompanied by a 120-paragraph statement of facts and 325 supporting exhibits. Prior to filing the MPSJ and accompanying fact statement, Class Counsel conducted extensive legal and factual research, including an exhausted review of the evidentiary record.

193. On April 30, 2021, Defendants filed their opposition to Class Representative's MPSJ, which was accompanied by a counter statement of facts and conclusions of law, and 165 supporting exhibits. That same day, Class Counsel filed an opposition to Defendants' MSJ on

behalf of Class Representative, which was accompanied by a counter statement of material facts and over 100 supporting exhibits. Once again, prior to filing its opposition and accompanying counter factual statement, Class Counsel conducted extensive legal and factual research, including an exhausted review of the evidentiary record.

194. On June 16, 2021, Defendants filed a reply to their MSJ, which was accompanied by their responses and objections to Class Representative's statement of additional facts and included further documentary support in the form of nearly two dozen additional documents. That same day, Class Counsel filed a reply to the MPSJ on behalf of Class Representative, which was accompanied by Class Representative's responses and objections to Defendants' statement of additional facts and included 76 exhibits as additional documentary support. Once again, prior to filing the reply, Class Counsel conducted extensive legal and factual research, including an exhaustive review of the evidentiary record.

195. While the summary judgment motions were pending, the Parties agreed to attempt to resolve the matter and scheduled a mediation with Judge Phillips for November 2021. After extensive preparatory work, each side submitted and exchanged detailed mediation statements towards the end of October 2021.

196. Approximately two weeks before the scheduled mediation, on November 2, 2021, the Court issued its Summary Judgment Order, denying in part and granting in part Defendants' MSJ and denying Class Representative's MPSJ in its entirety. As discussed above, the Court dismissed all statements other than the statements made on two dates (April 17, 2014 and May 16, 2014) relating to generic inflation and/or reimbursement pressure and statements made on May 14-15, 2014 relating to the Company's FY16 EBIT Goal. The Court also denied Defendants' MSJ as to the issues of reliance and loss causation. After extensive analysis and consultation with Class

Representative and the economics and loss causation expert retained on behalf of the Class, Class Counsel adjusted its mediation approach to account for the Court's ruling and submitted a mediation reply. Defendants likewise submitted a reply statement that Class Counsel evaluated prior to the mediation. In addition, Class Counsel prepared a fulsome power point presentation to deliver during the mediation.

197. Although the Parties made some progress during the mediation and agreed to continue their negotiations, the Parties left the November 17, 2021 mediation without a resolution.

198. The following day, on November 18, 2021, Defendants filed the MFR with respect to the May 14-15, 2014 FY16 EBIT Goal statements.

199. After thoroughly researching the law set forth in Defendants' moving papers, Class Counsel filed an opposition to the MFR on December 17, 2021. In the meantime, the Parties continued to negotiate with Defendants through Judge Phillips, but they made no real progress towards a resolution. Accordingly, Class Counsel began to prepare pre-trial *Daubert* motions and to defend against anticipated *Daubert* motions from Defendants.

200. In connection with the tasks referenced above, among others, Kessler Topaz expended approximately 6,181 hours on this matter in 2021.

h. 2022 Staffing and Tasks

201. On January 7, 2022, Defendants filed a reply brief in support of their MFR.

202. Once again illustrating the risks associated with this case, on March 2, 2022, the Court granted Defendants' MFR and dismissed the May 14-15, 2014 FY16 EBIT Goal statements. As a result of the Court's MFR Order, the remaining statements to be tried were Defendants' April 17, 2014 and May 16, 2014 qualitative statements regarding generic inflation and

reimbursement pressure and a single corrective disclosure. Defendants argued that without the FY16 EBIT Goal statement, Class Representative's case had become materially weaker.

203. In light of the Court's MFR Order, Class Counsel, with the assistance of its economic expert, evaluated its impact on Class damages and continued to prepare motions to exclude the testimony of Defendants' experts in accordance with the Court's schedule. In this regard, Class Counsel prepared an omnibus memorandum of law in support of their anticipated motion to exclude each of Defendants' experts from testifying in whole, or in part, at trial.

204. During this time period, Judge Phillips continued to mediate the matter through a series of telephonic negotiations, and a final virtual mediation session. Judge Phillips ultimately issued a mediator's proposal to resolve the Action for $105 million that the Parties accepted on May 19, 2022. Thereafter, the Parties drafted, negotiated and executed the Term Sheet setting forth the material points of their agreement in principle to resolve the Action on May 25, 2022.

205. Once the Term Sheet was executed, the Parties immediately commenced negotiating the full settlement papers, including the Stipulation, Postcard Notice, Summary Settlement Notice and long-form Settlement Notice (inclusive of the Plan of Allocation), proposed preliminary and final orders, a Proof of Claim and Release Form, and the Supplemental Agreement regarding requests for exclusion. This process, which involved several meet and confer sessions, ultimately culminated in the Parties executing the Stipulation one month later on June 23, 2022. That same day, Class Counsel filed their preliminary approval papers, along with Class Representative's motion and supporting memorandum of law seeking preliminary approval of the Settlement.

206. Following a conference with the Court, on June 29, 2022, the Court issued its Preliminary Approval Order and scheduled the Settlement Hearing for October 7, 2022. Notice of the Settlement was issued in accordance with the Court's Preliminary Approval Order.

207. In connection with the tasks referenced above, among others, Kessler Topaz expended approximately 1,469 hours in 2022 to date.

208. As mentioned above, Class Counsel has only included time incurred through August 26, 2022, in its Fee Application and Liaison Counsel has only included time incurred through July 15, 2022. Additional time will be expended on this matter that is not included in this application—and for which Class Counsel will not seek reimbursement—including: (i) finalizing the Settlement Memorandum and supporting papers; (ii) responding to any objections should they arise; (iii) preparing for and arguing in support of the Settlement at the Settlement Hearing on October 7, 2022; (iv) administering the Settlement should the Court approve the Settlement; (v) responding to Class Member inquiries regarding Claims; and (vi) ultimately, moving to distribute the Net Settlement Fund to eligible Class Member.

209. As set forth in the accompanying Fee and Expense Memorandum, courts within the Seventh Circuit typically endorse a market-based approach to calculating and approving fees in securities class action litigation by applying a fee percentage to the total settlement fund to arrive at an appropriate fee in a given matter. For all of the reasons detailed in the Fee and Expense Memorandum, including the work Plaintiff's Counsel performed over the course of this litigation as detailed herein, Class Counsel respectfully submits that the requested fee of 27.5% of the Settlement Fund is fair, reasonable, and in line with other awards in this jurisdiction.

210. While not required, should the Court wish to cross check Plaintiff's Counsel's lodestar against the requested 27.5% fee, this Joint Declaration, the accompanying Fee and

Expense Declarations, and the Tables below provide ample detail from which to make the calculation.

211. The Table below was prepared from contemporaneous daily time records regularly prepared and maintained by Kessler Topaz[27] and specifically lists by timekeeper category, the total hours and lodestar per timekeeper category, and the average hourly rate for each timekeeper category, as well as for Class Counsel as a whole.

Timekeeper Category	Total Hours	Lodestar	Avg. Hourly Rate
Partners	10,037.00	$9,388,845.00	$935.42
Associates/Counsel	11,649.10	$6,899,568.00	$592.28
Contract Attorneys	8,686.10	$3,022,511.00	$347.97
Staff Attorneys	20,261.90	$8,103,991.50	$399.96
Paralegals	3,720.50	$1,107,084.00	$297.56
Investigators	436.80	$131,950.00	$302.08
TOTALS:	**54,791.40**	**$28,653,949.50**	**$522.96**

Primary Litigators and Professional Support Personnel

212. Over the course of more than seven years of litigation, which included some employee turnover and a remote work environment due to the COVID-19 pandemic, Class Counsel was required to assign numerous attorneys and professional support personnel to this complex matter, as reflected in the lodestar summary report attached as Exhibit A to the Kessler Topaz Fee and Expense Declaration. Notably, however, as reflected in the Table below, the 14 primary litigators and professional support personnel that worked on this matter accounted for approximately 67% of Class Counsel's total hours in the case and over 68% of Class Counsel's total lodestar:

[27] Daily time records are available at the Court's request.

Primary Litigator Name	*Hours*	*Lodestar*
Gerard, Eric (P)	**1,016.50**	**$792,870.00**
Greenstein, Eli (P)	**4,614.90**	**$4,384,155.00**
Whitman, Jr., Johnston de F. (P)	**1,697.70**	**$1,612,815.00**
Gerard, Eric (C)[28]	**1,434.20**	**$989,598.00**
Newcomer, Michelle M. (C)	**4,239.40**	**$3,137,156.00**
Rader, Melanie (A)	**1,060.80**	**$424,320.00**
Bigelow, Emily (PL)	**1,939.10**	**$620,512.00**
Sim, Joan (PL)	**552.72**	**$151,998.00**
Calhoun, Elizabeth W. (SA)	**4,577.30**	**$1,876,693.00**
Starks, Melissa J. (SA)	**3,318.20**	**$1,360,462.00**
Hu, Sufei (SA)	**4,957.90**	**$1,908,791.50**
Carlson, Matthew H. (CA)	**1,626.00**	**$569,100.00**
Noll, Timothy A. (CA)	**2,610.50**	**$913,675.00**
Shaner, Roberta (CA)	**2,687.20**	**$940,520.00**
Maginnis, Jamie (I)	**207.30**	**65,299.50**
TOTALS:	**36,539.70**	**$19,747,960.00**

213. While this is not designed in any way to undermine or diminish the critical and sophisticated work performed by the remaining lawyers and professional support personnel set forth on Exhibit A to the Kessler Topaz Fee and Expense Declaration who are not included in the above Table, this Table reflects the continuity Class Counsel continued to rely upon as the case moved through the various phases of litigation.

[28] Mr. Gerard was promoted to partner at the conclusion of 2020 and thus, he is billed at his counsel rate for time expended prior to January 1, 2021, and at his partner rate for time incurred after January 1, 2021.

Contracted Document Review Attorneys

214. Class Counsel retained the contracted document review attorneys who worked on this matter because it required additional resources to conduct the document review and analysis necessitated by the complexity and scale of this matter. Upon receipt of the first substantial portion of the massive merits document production from Defendants and an assessment of the significant challenges involved in reviewing and analyzing this record, Class Counsel engaged a team of five contracted document review attorneys dedicated to this litigation. Three of these five contracted document review attorneys worked on this case for between two and five months. Class Counsel added another contract attorney to the case in December 2019, so that three contracted document review attorneys stayed active on the case until October of 2020, after the majority of the depositions were completed.

215. Pre-pandemic, the contracted document review attorneys worked in a dedicated workspace at Class Counsel's offices in Radnor, Pennsylvania, worked on computer equipment provided by Class Counsel, obtained firm email addresses like all of Class Counsel's employees, and received access credentials to the electronic discovery platform. Post-pandemic, the three contracted document review attorneys on the case worked remotely, like all of Class Counsel's other attorneys. At all times these attorneys were fully supervised by Class Counsel's counsel and associate attorneys, which included regular, weekly meetings and ongoing communications via telephone and email. Moreover, the attorneys that oversaw the document review projects monitored progress and performance, including the speed and quality of the review.

216. As noted above, over the course of the litigation, the number of contracted document review attorneys assigned to the case varied between one and six people, depending on the specific litigation needs at the time. The number of hours billed by the contracted document

review attorneys similarly fluctuated based on the needs of the case. Thus, from June 2019 through October 2020, the contracted document review attorneys assigned to this matter expended approximately 8,686 hours for a total lodestar of $3.02 million, representing roughly 16% of Class Counsel's overall hours and 10.5% of Class Counsel's overall lodestar at an average hourly rate of $347.97.

Staff Attorneys

217. As the case moved from inception and investigation, into class discovery, document discovery, deposition preparation, and eventually to summary judgment, the needs for staff attorney assistance increased accordingly. In this respect, two staff attorneys assisted with the drafting of the Consolidated Complaint (Mr. Thomer and Ms. Calhoun) and were assigned to other matters after the Consolidated Complaint was filed. When it came time to review Lead Plaintiff's document production in connection with class certification discovery, Ms. Calhoun participated in the review and production. It was not until July 2018 that staff attorney assistance was needed in connection with the identification of potential custodians for Defendants and Ms. Calhoun was once again assigned to this case.

218. As 2018 came to a close, it became apparent that more staff attorneys were needed to conduct targeted searches for documents to support Class Representative's key allegations, to develop timelines for the various litigation themes, and to become experts on Walgreens' complex reimbursement contracts and generic inflation at the heart of the case. As a result, Class Counsel added three more staff attorneys (Ms. Tomich, Ms. Starks, and Ms. Hu) to the litigation team, bringing the total to four (along with Ms. Calhoun) staff attorneys. Staff attorney staffing largely remained at this level until the end of 2019 and beginning of 2020, when Class Counsel began to prepare for dozens of depositions. At that time, Class Counsel added 11 additional staff attorneys

to the litigation team, bringing the total to 15 staff attorneys. Three of the newly added staff attorneys (Mr. Weiler, Ms. Berger, and Mr. Grossi) focused their efforts on assisting the contracted document review attorneys' review and analysis of the one million documents produced by Defendants and non-parties in advance of depositions. Class Counsel assigned the other staff attorneys to create deposition kits for specified deponents and/or to help create strategy memos on various themes of the litigation. By the time the COVID-19 pandemic hit in March 2020, five of the 11 recently added staff attorneys had completed their tasks and had been taken off of the matter (Ms. Rosseel, Ms. Gamble, Mr. Greenwald, Mr. Seechrist, and Ms. Berger) and by August 2020, the other six staff attorneys (Mr. Thomer, Ms. Dragovich, Mr. Grossi, Ms. Swerdloff, Mr. Weiler, and Ms. Alsaleh) had completed their assignments and were reassigned to other cases.

219. As fact discovery was completed, in November 2020, Class Counsel reassigned one of the three remaining staff attorneys (Ms. Starks), while the other two stayed on the case through expert discovery in April 2021 (Ms. Calhoun) and through summary judgment filings in mid-2021 (Ms. Hu). These three staff attorneys alone accounted for 12,853 hours and roughly $5.145 million in lodestar over the course of the litigation, representing over 63% of all staff attorney hours and 18% of Class Counsel's total lodestar.

220. Over the course of the litigation, the number of staff attorneys assigned to the case varied between one and 14, depending on the specific litigation needs at the time. The number of hours billed by the staff attorneys similarly fluctuated based on the needs of the case. All told, between July 2015 and December 2021, the staff attorneys who worked on this matter expended a total of 20,261 hours for a total lodestar of roughly $8.104 million, representing 37% of Class Counsel's overall hours and 28% of Class Counsel's overall lodestar at an average hourly rate of $399.96

Total Lodestar & Hourly Rates

221. As reflected in Exhibit A to the Kessler Topaz Fee and Expense Declaration, Class Counsel's attorneys and professional support personnel involved in this Action collectively devoted more than 54,791 hours to the Action from its inception through August 26, 2022, resulting in $28,653,949.50 in total lodestar. This lodestar was calculated based on current hourly rates for those individuals still with Kessler Topaz and the hourly rates in place in the year of departure for those attorneys and professional support personnel who are no longer at the Kessler Topaz.

222. Based on the information in Exhibit A to the Kessler Topaz Fee and Expense Declaration, the following Table lists for each timekeeper category: (i) the hours and resulting lodestar; (ii) the percentage of the total hours and lodestar; and (iii) the average hourly rate.

Timekeeper Category	Total Hours	% of Class Counsel's Total Hours	Lodestar	% of Class Counsel's Total Lodestar	Avg. Hourly Rate
Partners	**10,037.00**	**18.32%**	**$9,388,845.00**	**32.77%**	**$935.42**
Associates/Counsel	**11,649.10**	**21.26%**	**$6,899,568.00**	**24.08%**	**$592.28**
Staff Attorneys	**20,261.90**	**36.98%**	**$8,103,991.50**	**28.28%**	**$399.96**
Contract Attorneys	**8,686.10**	**15.85%**	**$3,022,511.00**	**10.55%**	**$347.97**
Paralegals	**3,720.50**	**6.79%**	**$1,107,084.00**	**3.86%**	**$297.56**
Investors	**436.80**	**0.80%**	**$131,950.00**	**0.46%**	**$302.08**
Totals	**54,791.40**	**100.00%**	**$28,653,949.50**	**100.00%**	**$522.96**

223. As reflected in the above Table, the majority of the hours and the lodestar in this matter were incurred by associates, counsel, and staff attorneys (over 58% of Class Counsel's total hours and over 52% of Class Counsel's total lodestar).

224. As set forth in the Kessler Topaz Fee and Expense Declaration, the hourly rates for the attorneys and professional support personnel included in Exhibit A are the same as, or comparable to, the rates submitted by Kessler Topaz in other securities class action litigation fee applications and have been accepted by courts for lodestar cross-checks in courts throughout the country as well as in this jurisdiction.

225. Moreover, Kessler Topaz's hourly rates are set based on periodic analysis of costs, as well as hourly rates used by plaintiff and defense firms performing comparable work. Different timekeepers within the same employment category (e.g., partners, associates, paralegals, etc.) may have different rates based on a variety of factors, including years of practice, and the hourly rates of similarly experienced peers at Kessler Topaz or other firms, but they are each well within the bounds of what is reasonable for litigation requiring this degree of expertise.

3. The Experience and Standing of Plaintiff's Counsel

226. Both Kessler Topaz and Robbins Geller are experienced and skilled firms in the field of complex litigation, have a track record of national success, and are regarded as being among the top complex commercial litigation plaintiffs' firms in the United States.

227. Kessler Topaz specializes in complex civil litigation, with approximately 90 lawyers between its offices in Radnor, Pennsylvania and San Francisco, California. As demonstrated by its firm resume attached as Exhibit C to the Kessler Topaz Fee and Expense Declaration, Kessler Topaz handles a wide-range of matters, with dedicated practice groups focusing on securities class action litigation, antitrust and consumer litigation, derivative and shareholders rights litigation, and whistleblower representation. Kessler Topaz has earned national and international recognition, and has achieved success in courts throughout the United States.

228. With respect to securities litigation in particular, Kessler Topaz is consistently ranked among the top plaintiffs' firms in the country. The firm has represented defrauded

shareholders from around the world, and is serving or has served as lead or co-lead counsel in many of the largest and most significant securities class actions pending in the United States, including actions against: Bank of America, Duke Energy, Goldman Sachs, Kraft Heinz, Hewlett Packard, Johnson & Johnson, JPMorgan Chase, Morgan Stanley, and MGM Mirage, among others.

229. Relevant to this matter, Kessler Topaz has amassed extensive experience prosecuting cases against pharmaceutical companies, medical device companies, pharmacies, and other participants in the life sciences industry and serves as counsel in the following active healthcare securities litigation matters: *Industriens Pensionsforsikring A/S v. Becton, Dickinson and Co*., No. 2:20-cv-002155 (D.N.J.) (medical device safety and compliance with FDA regulations); *In re: Mylan Securities Litigation*, No. 2:20-cv-00955 (W.D. Pa.) (cGMP compliance regarding generic drug manufacturing); *In re: Celgene Corporation Securities Litigation*, No. 2:18-cv-04772 (D.N.J.) (compliance with FDA new drug application standards); *Franklin Mutual Series Funds v. Teva Pharmaceuticals Ind. Ltd., et al*., No. 3:18-cv-01681 (D. Conn.) (generic drug price fixing); and *In re: Cardinal Health Derivative Litigation*, No. 2:19-cv-02491 (S.D. Ohio) (compliance with controlled substance distribution laws).

230. Likewise, during its nearly thirty-five year history, Kessler Topaz has taken a leadership role in more than 60 complex cases that involved a pharmaceutical or life sciences company as a primary defendant. Those matters include: *In re Pfizer Inc. Securities Litigation*, No. 04-cv-9866 (LTS)(HBP) (S.D.N.Y.) (misrepresentations of drug safety and efficacy); *SEB Investment Management AB v. Endo Int'l plc*, No. 17-3711 (E.D. Pa.) (misrepresentations regarding safety of opioid drug); *Minneapolis Firefighters' Relief Association v. Medtronic, Inc.*

et al., No. 0:08-cv-06324-PAM-AJB (D. Minn.) (off label promotion); and *In re: Loestrin Fe 24 Antitrust Litigation*, MDL No. 2472 (D.R.I.) (delay in generic drug introduction).

231. Robbins Geller is a similarly experienced securities class action firm, as evidenced by its firm resume attached as Exhibit F to the Robbins Geller Fee and Expense Declaration and its Chicago-based office played a valuable role as Liaison Counsel in the Action. Accordingly, Class Counsel believes Plaintiff's Counsel's extensive experience in the field, Liaison Counsel's valuable experience in this jurisdiction, and the collective ability of their attorneys added valuable leverage during the prosecution and resolution of the Action.

4. The Standing and Caliber of Defendants' Counsel

232. The quality of the work performed and risk overcome by Class Counsel in attaining the Settlement should also be evaluated in light of the quality of the opposition. Here, Defendants were represented by experienced and extremely able counsel from, among others, Sidley Austin LLP, Wilson Sonsini Goodrich & Rosati, Riley Safer Homes & Cancilla LLP, and Lawrence H. Levine Law Offices, which vigorously represented their clients. In the face of this skillful and well-financed opposition, Class Counsel was nonetheless able to negotiate with Defendants to settle the case on terms that are favorable to the Class.

233. More specifically, as detailed above, Defendants' Counsel zealously and exhaustively advocated for their clients from the inception of the Action, which had the effect of both increasing the risk to any recovery for the Class, and the work that Plaintiff's Counsel was required to undertake. For example, Defendants' Counsel succeeded in bifurcating class and merits discovery following the Court's decision on Defendants' MTD #1. This forced Plaintiff's Counsel to litigate class certification without the benefit of full merits discovery and had they received an adverse ruling on the Class Certification Motion, the Class likely would have recovered nothing. Likewise, Defendants' Counsel fought tirelessly in merits discovery, leading to *dozens* of meet

and confer sessions with Plaintiff's Counsel and multiple motions to compel. Defendants' Counsel also thoroughly prepared each fact and expert witness they represented such that the majority of depositions involved hard-fought exchanges and seven hours on the record. Finally, Defendants' Counsel successfully moved for reconsideration of the Court's decision on Defendants' MSJ, thereby increasing Class's risk at trial.

234. Accordingly, Class Counsel respectfully submits that the skill, caliber, and efforts of Defendants' Counsel is another factor supporting its request for attorneys' fees.

5. The Risks of Litigation and the Need to Ensure the Availability of Competent Counsel in High-Risk Contingent Securities Cases

235. The risks faced by Class Counsel in prosecuting this Action are highly relevant to the Court's consideration of an award of attorneys' fees, as well as its approval of the Settlement. Here, Class Counsel faced considerable risk at nearly every stage of this litigation that the Class's claims would be narrowed or dismissed entirely. These risks were born out, as the Court narrowed the scope of this Action several times throughout the litigation. Moreover, Defendants adamantly deny any wrongdoing and as discussed above, if the Action continued, Defendants would have aggressively litigated their defenses through trial and post-trial appeals.

236. The case-specific litigation risks (detailed in Section V above) are in addition to the risks accompanying securities litigation generally, such as the fact that the Action is governed by stringent PSLRA requirements and case law interpreting the federal securities laws, and was undertaken on a contingent-fee basis. From the outset, Class Counsel understood that this would be a complex, expensive, and potentially lengthy litigation with no guarantee of ever being compensated for the substantial investment of time and financial expenditures that vigorous prosecution of the case would require. In undertaking that responsibility, Class Counsel was obligated to ensure that sufficient resources were dedicated to prosecuting the Action, including

developing the relevant facts and legal theories and presenting a compelling case at trial, or persuading Defendants to engage in serious settlement discussions, and that funds were available to compensate vendors and consultants and to cover the considerable out-of-pocket costs that a case of this magnitude typically demands. With an average lag time of several years for these cases to conclude—*more than seven years in this case*—the financial burden on contingent-fee counsel is far greater than on a firm that is paid on an hourly, ongoing basis. Indeed, Class Counsel alone has dedicated over 54,791 hours to litigating this Action for the benefit of the Class, yet has received no compensation to date for its efforts. Underscoring this risk and burden, Class Counsel undertook the risk that the discovery of facts unknown when the case commenced, or changes in the law during the pendency of the Acton would result in no fee for counsel.

237. Moreover, courts have repeatedly recognized that it is in the public interest to have experienced and able counsel enforce the securities laws and regulations pertaining to the duties of officers and directors of public companies. As recognized by Congress through the passage of the PSLRA, vigorous private enforcement of the federal securities laws can occur only if private investors, particularly institutional investors, take an active role in protecting the interests of shareholders. If this important public policy is to be carried out, courts should award fees that adequately compensate plaintiffs' counsel, taking into account the risks undertaken in prosecuting a securities class action.

238. Class Counsel's efforts in the face of substantial risks and uncertainty have resulted in what it believes to be a significant and guaranteed recovery for the Class. In these circumstances, and in consideration of Class Counsel's hard work and the favorable result achieved, Class Counsel submits that the requested fee of 27.5% of the Settlement Fund should be approved.

6. Class Representative Has Authorized and Supports the Fee Request

239. In calculating an award of attorneys' fee, a certain amount of discretion is provided to the class representative or lead plaintiff for determining an appropriate fee request with the ultimate authority resting with the Court for the award itself.

240. In this regard, as reflected in the Østergaard Declaration, the Court-appointed Class Representative, a sophisticated institutional investor, is in full agreement with all aspects of the Settlement and Fee and Expense Application. Østergaard Decl, ¶¶ 5-7. Class Counsel has worked very closely with Class Representative over the more than seven years that this Action has been pending, and no one expected Class Counsel to be seeking a fee that would be less than the lodestar incurred in the case, despite resolving the case for $105 million, plus interest.

241. That is why Class Representative concurs that the fee grid set forth at the outset of the Action in 2015 upon Lead Counsel's retention needed to be revisited. The original grid would have provided for fees in the blended amount of 24.85% of the recovery (i.e., 25% of the first $100 million and 22% for the next $50 million, calculated on a cumulative basis). In these circumstances, a resulting fee of $26.6 million would have resulted in a negative multiplier of approximately 0.898 on Plaintiff's Counsel's lodestar of more than $29.5 million. In light of the result achieved for the Class and the risks undertaken (including the contingent nature of any fees and expenses to counsel), Class Representative has allowed Class Counsel to seek attorneys' fees in the amount of 27.5% of the Settlement Fund, to approximate better Plaintiff's Counsel's total lodestar in the Action. Østergaard Decl, ¶ 6. Of course Class Counsel recognizes that it is ultimately up to the Court to determine the appropriateness of any fee award.

242. Moreover, as set forth in the Fee and Expense Memorandum (*see* § II.A), Class Representative has been made aware that Class Counsel's request for attorneys' fees of 27.5% is

within the range of fees that courts in this Circuit and elsewhere have awarded in other complex class actions with comparable recoveries.

B. Class Counsel's Request for Payment of Litigation Expenses Is Fair and Reasonable and Warrants Approval

243. Class Counsel also seeks payment from the Settlement Fund of $2,250,420.62 for expenses that were reasonably and necessarily incurred by Plaintiff's Counsel in prosecuting the Action. The Postcard Notice and Settlement Notice inform the Class that Class Counsel will apply for Litigation Expenses in an amount not to exceed $2.6 million, which amount may include a request for reimbursement of the reasonable costs incurred by Class Representative directly related to its representation of the Class in accordance with 15 U.S.C. § 78u-4(a)(4). The amount of Litigation Expenses requested by Class Counsel, along with the amount requested by Class Representative ($32,960), is well below the cap set forth in the notices. To date, there have been no objections to the maximum amount of Litigation Expenses set forth in the notices.

244. From the beginning of the Action, Class Counsel was aware that it might not recover any of the expenses Plaintiff's Counsel incurred in prosecuting the claims against Defendants and, at the very least, would not recover any of their out-of-pocket expenses until the Action was successfully resolved. Class Counsel also understood that, even assuming the Action was ultimately successful, an award of expenses would not compensate counsel for the lost use or opportunity costs of funds advanced to litigate the claims against Defendants. Thus, Class Counsel was motivated to, and did, take significant steps to minimize expenses whenever practicable without jeopardizing the vigorous and efficient prosecution of the Action.

245. Plaintiff's Counsel's expenses include charges for, among other things: (i) experts and consultants utilized in connection with various stages of the litigation; (ii) establishing and maintaining a database to house the voluminous amount of documents produced in discovery;

(iii) the Class Notice campaign; (iv) online factual and legal research; (v) deposition-related expenses; and (vi) mediation and settlement negotiations with two private neutrals. Courts have consistently found that these kinds of expenses are payable from a fund recovered by counsel for the benefit of a class.[29]

246. The largest component of Plaintiff's Counsel's expenses ($1,332,605.11, or approximately 59% of their total expenses) was incurred for the retention of experts and consultants. The retention of these experts and consultants was necessary and reasonable in order to prove the Class's claims and to meet the considerable challenges posed by Defendants' well-credentialed experts. *See supra* ¶¶ 88-100. Mr. Coffman and his team also assisted Class Counsel in developing the proposed Plan of Allocation.

247. Unsurprisingly, the second largest component of Plaintiff's Counsel's expenses ($329,270.85) was incurred in connection with document review and production and litigation support. Class Counsel had to retain the services of an outside vendor to, among other things: (i) maintain the electronic database through which the more than 1.1 million pages of documents produced by Defendants and non-parties were reviewed; (ii) process documents so they would be in a searchable format; and (iii) produce documents to Defendants in response to their requests to Class Representative. Class Counsel believes it kept these costs exceedingly low at roughly 15% of the total expenses. Plaintiff's Counsel also incurred $85,294.62 for the costs of court reporters, videographers, and transcripts in connection with the depositions they took or defended in the Action. As noted above, Class Counsel worked hard to reduce deposition costs by negotiating highly favorable pricing for court reporters and videographers. Further, after the onset of the

[29] These expenses are reflected in Plaintiff's Counsel's books and records, which are prepared in the normal course of business and are an accurate record of the expenses incurred in the prosecution of his matter. *See* Kessler Topaz Fee and Expense Decl., Ex. B and Robbins Geller Fee and Expense Decl., Exs. B-E.

COVID-19 pandemic in March 2020, Class Counsel successfully negotiated for most of the merits depositions in this Action to be conducted remotely by video, further reducing costs and avoiding undue delay in prosecuting the Action. Additionally, Class Counsel incurred $73,042.86 for the costs of travel for numerous depositions, Court appearances, and mediation.

248. Class Counsel incurred $72,730.78 for online research. This amount represents charges for computerized research services such as Lexis, Westlaw, and PACER, among others. It is standard practice for attorneys to use online services to assist them in researching legal and factual issues, and courts recognize that these tools create efficiencies in litigation and save money for clients. Here, online research was necessary to prepare the detailed Consolidated Complaint and FACC, research the law pertaining to the claims asserted and damages, oppose Defendants' motions to dismiss, MSJ, and motion for reconsideration of the Court's Summary Judgment Order, and support Class Representative's motions for class certification and partial summary judgment, and numerous motions to compel discovery.

249. Class Counsel also incurred $215,700.23 for the Class Notice campaign conducted by A.B. Data as well as $64,453.80 for its portion of the charges related to the two separate rounds of mediations, and subsequent settlement negotiations that followed with Judge Phillips' assistance.

250. The remaining expenses, although each making up a small percentage of Plaintiff's Counsel's total expenses, were all reasonable and necessary in the investigation, prosecution, and resolution of the claims asserted in the Action and are of the type routinely charged to clients billed by the hour. These expenses include, among others, court fees, process servers, document reproduction costs, and postage and overnight delivery expenses.

251. All of the expenses incurred by Plaintiff's Counsel have been approved by Class Representative. *See* Østergaard Decl., ¶ 7.

252. The request for reimbursement to Class Representative is also fair and reasonable. The PSLRA specifically provides that an "award of reasonable costs and expenses (including lost wages) directly relating to the representation of the class" may be made to "any representative party serving on behalf of a class." 15 U.S.C. § 78u-4(a)(4). Industriens seeks reimbursement of $32,960 for 240 hours expended in connection with the Action by its employees. *See* Østergaard Decl., ¶¶ 8-10. Industriens' request is supported by the detailed declaration of Jan Østergaard filed herewith, setting forth the significant amount of time and effort Industriens' employees devoted to this Action over the course of seven years, including travel by its Chief Investment Officer from Denmark to New York to prepare for and provide testimony at deposition. *Id*., ¶¶ 3-4.

253. Class Representative has been fully committed to pursuing the Class's claims since it became involved in the Action in 2015. As discussed in the supporting Østergaard Declaration and in the Fee and Expense Memorandum, Class Representative has diligently fulfilled its obligations as Court-appointed Lead Plaintiff and Class Representative, providing valuable assistance to Class Counsel during the prosecution and resolution of the Action. The efforts expended by Class Representative during the Action include regular communications with Class Counsel concerning significant developments in the litigation and case strategy; reviewing significant pleadings and briefs filed in the Action; responding to discovery requests and collecting responsive documents; preparing and sitting for a deposition; and participating in protracted settlement negotiations. *See* Østergaard Decl., ¶¶ 3-4. These are precisely the types of activities courts have found to support reimbursement of class representatives, and fully support Class Representative's request for reimbursement here.

IX. CONCLUSION

254. For all of the reasons set forth above, Class Counsel respectfully submits that the Settlement and the Plan of Allocation should be approved as fair, reasonable, and adequate. Class Counsel further submits that the requested attorneys' fees in the amount of 27.5% of the Settlement Fund should be approved as fair and reasonable, and the request for Plaintiff's Counsel's Litigation Expenses in the total amount of $2,250,420.62 and Class Representative's costs, in the amount of $32,960, should also be approved.

We declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge. Executed on September 2, 2022, in Radnor, Pennsylvania.

/s/ David Kessler
David Kessler

/s/ Andrew L. Zivitz
Andrew L. Zivitz