UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF PENNSYLVANIA

DOUGLAS S. CHABOT, et al., Individually and on Behalf of All Others Similarly Situated, Plaintiffs, vs. WALGREENS BOOTS ALLIANCE, INC., et al., Defendants.	Civ. Action No. 1:18-cv-02118-JPW CLASS ACTION LEAD COUNSEL'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR ATTORNEYS' FEES AND LITIGATION EXPENSES, AND AWARDS TO LEAD PLAINTIFFS PURSUANT TO 15 U.S.C. §78u-4(a)(4)

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I. PRELIMINARY STATEMENT

After eight years of hard fought litigation, and with a three-week jury trial fast approaching, Lead Counsel achieved a $192.5 million cash settlement from Walgreens and its executives for the benefit of a Class of Rite Aid investors. Securities settlements paid by one company to the stockholders of a different company are incredibly rare, and a settlement of this magnitude, in any securities case, is unprecedented in this District. The $192.5 million Settlement is an outstanding result, brought about by Lead Counsel's determined and diligent litigation efforts, undertaken on a purely contingent basis, with no compensation for the duration of the case.[1]

Lead Counsel's request for an award of attorneys' fees and litigation expenses is reasonable and should be approved. As described in detail below, the requested 30% fee is below the most recent precedent in a securities case in this Court (35% awarded) and in the Western District of Pennsylvania (33.3% awarded). The requested fee is also supported by the Third Circuit's recommended ranges in

[1] Unless otherwise stated or defined, all capitalized terms used herein have the meanings provided in the Stipulation of Settlement dated October 18, 2023 (the "Stipulation"). ECF 307-1. All citations are omitted and emphasis is added unless otherwise indicated. The Court is respectfully referred to the accompanying Declaration of David A. Knotts in Support of Settlement Motions ("Knotts Decl.") for a more detailed history of the Action and the factors bearing on the reasonableness of these motions.

common fund cases generally (19% to 45%) and in securities settlements between $100 to $200 million (25% to 30%). *See infra*, §IV.C.7.

Lead Counsel devoted over 31,400 hours and advanced over $1.4 million in costs on a contingent basis over a span of eight years, all without any assurance of recovery. During that time, Lead Counsel successfully opposed Defendants' two motions to dismiss; obtained class certification; prevailed on multiple fiercely-contested discovery motions, including obtaining a crucial ruling that Walgreens waived its attorney-client privilege; took or defended twenty-four fact depositions; obtained and reviewed nearly one million pages of documents; engaged in complex expert discovery involving five experts, twelve expert reports, and six expert depositions; thoroughly briefed and defeated Defendants' voluminous, aggressive, and potentially dispositive 72-page motion for summary judgment; and prepared for trial. Knotts Decl., ¶¶15-93, 129.

The extreme risk that Lead Counsel faced in pursuing this litigation is illustrated by the rarity of this result, across multiple metrics. First, this Settlement is the largest securities class action recovery in history – by far – paid by a company and its executives for issuing misleading statements that impacted the stock price of a different and unaffiliated public company. *Id.*, ¶115. Second, it is the largest securities class action recovery ever achieved in this District. *Id.*, ¶114. Third, it is the second largest such recovery ever achieved in any Pennsylvania federal court. *Id.*

Fourth, this Settlement ranks in the top 100 largest securities class action recoveries of all time, in any jurisdiction. *Id.* Fifth, this is a rare $150+ million settlement with no contributing insurance money – Walgreens is paying Rite Aid investors $192.5 million out of Walgreens' own pocket, shortly before Rite Aid itself filed for bankruptcy protection. *Id.*, ¶102. This case's standing amongst such few others highlights the remarkable nature of this result, relative to the massive risk in litigating such a case.

This is also the only successful securities case in history alleging misrepresentations about the status of an FTC antitrust merger review. As such, there was no preexisting blueprint for litigating these claims. And because this case involved misrepresentations about an inherently legal process, most of the key evidence was initially concealed by redactions and attorney-client privilege designations. Lead Counsel developed and executed a high-risk, high-reward discovery strategy that involved fighting through those objections and prevailing in several contested discovery motions. As a result, Lead Counsel, with the Court's assistance, forcefully illuminated the previously redacted evidence contradicting the alleged misrepresentations at issue. There is no doubt that had Lead Counsel not embarked on (and succeeded in) this time-intensive strategy, this case would have been worth a mere fraction of its ultimate value.

Success was far from guaranteed; nor was a favorable outcome remotely foreseeable to other members of the plaintiffs' bar. At this litigation's inauspicious beginning, no other law firm even attempted to file a similar case. "When this suit got under way, no other law firm was willing to serve as lead counsel. Lack of competition not only implies a higher fee but also suggests that most members of the securities bar saw this litigation as too risky for their practices." *Silverman v. Motorola Sols., Inc.*, 739 F.3d 956, 958 (7th Cir. 2013). The same holds true here. This $192.5 million asset for Rite Aid investors was created solely through the efforts of Lead Plaintiffs and Lead Counsel.

For all the reasons set forth herein and in the accompanying filings, Lead Counsel respectfully submits that the requested attorneys' fees of 30% of the Settlement Amount (plus accrued interest earned at the same rate and for the same period as earned by the Settlement Fund) and expenses of $1,429,116.29 are fair and reasonable under the applicable legal standards, namely the exceptional result achieved, and should be awarded by the Court. Likewise, the awards sought by Lead Plaintiffs of a combined $50,000, pursuant to 15 U.S.C. §78u-4(a)(4), are reasonable given their substantial efforts on behalf of the Class.

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

To avoid repetition, Lead Counsel respectfully refers the Court to the accompanying Settlement Memorandum and the Knotts Declaration, the latter of

which contains a detailed discussion of the factual background and procedural history of the litigation, the efforts undertaken by Lead Counsel, the risks involved, and the arm's-length negotiations leading to the Settlement. *See generally* Knotts Decl.

III. STATEMENT OF ISSUES/FACTORS INVOLVED

"In a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h). The Private Securities Litigation Reform Act of 1995 (the "PSLRA") provides that "[t]otal attorneys' fees and expenses awarded by the court to counsel for the plaintiff class shall not exceed a reasonable percentage of the amount of any damages and prejudgment interest actually paid to the class." 15 U.S.C. §78u-4(a)(6).

The Third Circuit has held that a district court should consider the *Gunter* and *Prudential* factors when exercising its discretion to award attorney's fees. *In re Diet Drugs*, 582 F.3d 524, 541 (3d Cir. 2009). The *Gunter* factors are:

> (1) the size of the fund created and the number of persons benefitted; (2) the presence or absence of substantial objections by members of the class to the settlement terms and/or fees requested by counsel; (3) the skill and efficiency of the attorneys involved; (4) the complexity and duration of the litigation; (5) the risk of nonpayment; (6) the amount of time devoted to the case by plaintiffs' counsel; and (7) the awards in similar cases.

Gunter v. Ridgewood Energy Corp., 223 F.3d 190, 195 n.1 (3d Cir. 2000). The *Prudential* factors are:

> (8) the value of benefits attributable to the efforts of class counsel relative to the efforts of other groups, such as government agencies conducting investigations, (9) the percentage fee that would have been

> negotiated had the case been subject to a private contingent fee arrangement at the time counsel was retained, and (10) any innovative terms of settlement.

Diet Drugs, 582 F.3d at 541. "The fee award reasonableness factors 'need not be applied in a formulaic way' because each case is different, 'and in certain cases, one factor may outweigh the rest.'" *Id.* at 545.

IV. THE REQUEST FOR ATTORNEYS' FEES AND EXPENSES SHOULD BE APPROVED

A. Lead Counsel Is Entitled to a Fee from the Common Fund

"Congress, the Executive Branch, and [the Supreme] Court … have recognized that meritorious private actions to enforce federal antifraud securities laws are an essential supplement to criminal prosecutions and civil enforcement actions brought, respectively, by the Department of Justice and the Securities and Exchange Commission." *Amgen Inc. v. Connecticut Ret. Plans & Tr. Funds*, 568 U.S. 455, 478 (2013); *see also J.I. Case Co. v. Borak*, 377 U.S. 426, 432 (1964).

In such cases, "the PSLRA has made percentage-of-recovery the standard for determining whether attorneys' fees are reasonable." *In re Cendant Corp. Sec. Litig.*, 404 F.3d 173, 188 n.7 (3d Cir. 2005).

It is also well established that an attorney "who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). The Third Circuit has recognized "the stated goal in percentage fee-award cases of

'ensuring that competent counsel continue to be willing to undertake risky, complex, and novel litigation'" and "the importance of a financial incentive to entice qualified attorneys to devote their time to complex, time-consuming cases in which they risk non-payment." *Gunter*, 223 F.3d at 198.

B. The Requested Fee Is Presumptively Reasonable Because It Has Been Approved by the Court-Appointed Lead Plaintiffs

"Where the Lead Plaintiff approves the Lead Plaintiff's counsel's request[ed] fee award – as Lead Plaintiff does here – the Court should afford the fee requested a presumption of reasonableness." *See In re ViroPharma Inc. Sec. Litig.*, 2016 WL 312108, at *15-*16 (E.D. Pa. Jan. 25, 2016). Lead Plaintiffs, both individual investors with their own money at stake, support approval of the requested fee here. *See* Declarations of Douglas S. Chabot ("Chabot Decl."), ¶12 and Corey M. Dayton ("Dayton Decl."), ¶13.

C. The Requested Fee Is Fair and Reasonable Under the *Gunter* and *Prudential* Factors

1. The Size of the Common Fund Created

In awarding fees, the "most critical factor is the degree of success obtained." *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983). Here, the $192.5 million Settlement is of a record-breaking magnitude and provides an immediate cash recovery to a large Class of investors. As noted above, this Settlement is the largest securities class action recovery in history paid by a company and its executives for issuing misleading

statements that impacted the stock price of a different and unaffiliated public company. Knotts Decl., ¶¶115-119.[2] It is the largest securities class action recovery ever achieved in this District and is the second largest such recovery ever achieved in any Pennsylvania federal court. *Id.* The Settlement is nearly 15 times the median value of securities class action settlements in 2022. *Id.*, ¶114. Moreover, the Settlement yields an exceptional recovery of between 18% and 22.5% of Lead Plaintiffs' estimated recoverable damages – many times greater than the 1.7% median percentage recovery for cases settled with similar estimated damages. *Id.* By any measure, this is an incredible result.

"Suffice it to say that, through the exercise of their considerable skill, plaintiffs' counsel obtained a historic recovery for the class in a rare and complex kind of case where victory at trial would have been, at best, remote and uncertain." *In re Rite Aid Corp. Sec. Litig.*, 362 F. Supp. 2d 587, 590 (E.D. Pa. 2005). The first *Gunter* factor weighs heavily in favor of approving the requested fee.

2. Reaction of Class Members to the Fee Request

Over 148,300 copies of the Notice of this Settlement, including the 30% fee request, has been provided to potential Class Members and nominees. *See* accompanying Declaration of Ross D. Murray, ¶11. To date, ***no*** objections to the fee

[2] This definition excludes settlement payments by auditors, banks, and insurers engaged by, or owners of, the same corporation in which the Class invested, as described in more detail in the Knotts Declaration. *Id.*

request have been received. Thus, the reaction of the Class weighs in favor of approval of the requested fee as well.

3. The Skill and Efficiency of Counsel

The third *Gunter* factor – the skill and efficiency of counsel – is measured by the "'quality of the result achieved, the difficulties faced, the speed and efficiency of the recovery, the standing, experience and expertise of counsel, the skill and professionalism with which counsel prosecuted the case and the performance and quality of opposing counsel.'" *ViroPharma*, 2016 WL 312108, at *16.

As noted, this was a unique case and Lead Counsel had to develop the strategy, evidence, and theories of liability from scratch. One commentator from Thomson Reuters even wrote an article about this case entitled, *Judge certifies unusual class of Rite Aid investors to sue Walgreens over busted merger*, and observed, "[i]t's extremely rare for shareholders of one company to sue another corporation and its executives for allegedly defrauding them." Knotts Decl., Ex. 1. Walgreens used this unusual paradigm to argue at the outset of this case (and repeatedly thereafter): "The alleged fraudulent scheme appears pointless and the question 'why?' leaps off every page of the Complaint." ECF 39 at 1. Walgreens described the claims as a "nonsensical fraud," an "irrational fraud perpetrated without motive," and an "invention of Plaintiffs' counsel." ECF 49 at 5-7.

Gathering the evidence proving these claims was not easy, but Lead Counsel developed and executed a discovery plan that provided immense returns for the Class. *See* Knotts Decl., ¶¶28-64. This case involved alleged misrepresentations by Walgreens' executives about the status and progress of the FTC antitrust review of a multi-billion dollar merger. Lead Counsel initially suspected, therefore, that the key evidence in this case might be shrouded under claims of attorney-client privilege and work product. *Id.* And that is exactly what happened. In discovery, Lead Counsel uncovered that Defendants had redacted and withheld over 17,000 documents on purported grounds of privilege, or about 20% of their combined production in the litigation. *Id.*

After Lead Counsel's extensive meet-and-confer efforts regarding those documents proved unsuccessful, Lead Counsel sought court intervention. The ensuing discovery process involved five contested rulings from this Court on a variety of issues. *Id.*, ¶139. The most significant such ruling involved a finding that Walgreens waived its attorney-client privilege and an order that "Defendants shall produce and un-redact all documents containing information or analysis regarding the status of the FTC review process." ECF 135 at 15. Walgreens vigorously opposed that motion, arguing that it was a "lawless request." *Id.* at 3. Lead Counsel also prevailed on a motion to quash, which allowed Lead Plaintiffs to obtain documents from, and depose, Walgreens' outside antitrust counsel. Knotts Decl., ¶¶44-54. That motion

was fiercely contested across two jurisdictions, including the Southern District of New York. *Id.*[3]

As a result of Lead Counsel's tireless gathering and persuasive presentation of the evidence, on March 31, 2023, the Court denied Defendants' motion for summary judgment. ECF 286. Underscoring the risks in this case, the Court denied Lead Plaintiffs' concurrent motion for summary judgment as well. *Id.* The Court set this matter for trial commencing on January 29, 2024. ECF 292. Lead Counsel then conducted arm's-length settlement negotiations, while preparing for trial. Knotts Decl., ¶¶90-91.

The quality and vigor of opposing counsel is also relevant in evaluating the quality of the services rendered by Lead Counsel. Defendants were represented by attorneys from Weil, Gotschal & Manges LLP and Buchanan Ingersoll & Rooney PC, prominent and experienced law firms. Lead Plaintiffs also obtained valuable and sensitive documents over the strenuous objections of multiple third parties represented

[3] Exhibit 2 of the Knotts Declaration contains a redacted version of the Factual Background from the Court's summary judgment ruling, which illustrates the more limited evidentiary record that would have been available to support these claims at summary judgment and/or trial had Lead Counsel not litigated and prevailed on the motion to compel and motion to quash. *Id.*, ¶¶30-31, Ex. 2. To show the impact of those disputes, Lead Counsel has applied redactions for all evidence derived from those discovery motions. *Id.* It is clear that Lead Counsel's hard-fought discovery efforts had a transformative impact on the evidentiary record and corresponding value of this case for the Class. *Id.*

by many of the largest defense firms in the world. The ability of Lead Counsel to obtain a favorable settlement for the Class in the face of formidable opposition further confirms the superior quality of the representation.

4. The Complexity and Duration of the Litigation

"Regarding the fourth [*Gunter*] factor, securities litigation is inherently complex, expensive, and lengthy, usually requiring expert testimony on [a] variety of issues. Without a settlement, a significant amount of time and resources would be necessary to bring the case to a close." *See Utah Ret. Sys. v. Healthcare Servs. Grp., Inc.*, 2022 WL 118104, at *12 (E.D. Pa. Jan. 12, 2022). This case was no different.

The years of extensive fact and expert discovery, and motion practice, presented obstacles that Lead Counsel skillfully overcame. In order to secure this recovery, Lead Counsel analyzed a large quantity of complex documents concerning the highly detailed and nuanced antitrust review of a multi-billion dollar merger; secured key admissions on these complex issues in depositions; and used the fact and expert discovery record to assemble a compelling presentation of evidence at summary judgment. *See* Knotts Decl., ¶¶79-88. In light of the extreme complexity and duration of this case, this factor also favors approval of the requested attorneys' fees.

5. The Risk of Non-Payment

"The risk of non-payment is especially high in securities class actions, as they are 'notably difficult and notoriously uncertain.'" *Yedlowski v. Roka Bioscience, Inc.*,

2016 WL 6661336, at *21 (D.N.J. Nov. 10, 2016). "[T]he risk created by undertaking an action on a contingency fee basis militates in favor of approval." *In re Schering-Plough Corp. Enhance ERISA Litig.*, 2012 WL 1964451, at *7 (D.N.J. May 31, 2012).

As described above, this was not a typical case in terms of the risk undertaken by Lead Counsel. And Defendants' counsel exhausted every possible strategy in an effort to end the litigation without any recovery for the Class. Lead Counsel still did not rush to settle this case. The first and only mediation in this Action did not occur until July 2023, after the Court's request and over seven years into the litigation. Unlike defense counsel, who are paid on an hourly rate and reimbursed their expenses on a regular basis, Lead Counsel has not been compensated for any time or expense since this case and its predecessor began.

Lead Plaintiffs continued to face massive risk at trial. A three-week jury trial involving a complicated subject matter, where many issues would be resolved through a "battle of the experts," is always an uncertain endeavor. In addition, most of the fact witnesses in this case were employed by Walgreens or were highly compensated advisors of Walgreens. Knotts Decl., ¶125. And there are scores of lawsuits where – because of changes in the law during the pendency of the case, or a decision of a jury following a trial on the merits, or a reversal on appeal – similarly long and hard fought litigation efforts resulted in no fees, and massive expenses, for plaintiffs' counsel to bear. *Id.* These cases include some that were litigated by the undersigned Lead

Counsel. *Id.* On the other hand, this same team of Robbins Geller attorneys has taken post-merger cases to trial and won. *Id.*, ¶127. The fact that defendants and their counsel know that leading members of the plaintiffs' bar will go to trial in major, high-risk cases like this one gives rise to such meaningful settlements. As a result, this factor also strongly favors approval of the requested fee.

6. The Significant Time Devoted to This Case

The significant time that counsel devoted to this case favors approval of the requested attorneys' fees. Lead Counsel invested over 31,400 hours of attorney and support staff time over the course of eight years and incurred over $1.4 million in expenses prosecuting this case for the benefit of the Class. *See* Knotts Decl., ¶¶129-130. This factor also favors approval of the requested fee.

7. The Range of Fees Typically Awarded and Private Contingency Fee Agreements

Under *Gunter* factor seven and *Prudential* factor nine, this 30% fee request is supported by ample precedent from this Court and the Third Circuit. Most recently, the Court awarded fees of 35% to class counsel in a securities case, finding that percentage was "within the range typically awarded in similar cases in this Circuit." *Se. Pa. Transp. Auth. v. Orrstown Fin. Servs., Inc.*, 2023 WL 1454371, at *11 (M.D. Pa. Feb. 1, 2023) ("*SEPTA*") (preliminary approval order); *SEPTA*, No. 1:12-cv-00993-YK, ECF 309 at 2-3 (M.D. Pa. May 19, 2023) (final approval order). Also just a few months ago, the Western District of Pennsylvania approved a 33.3% fee on a

$74 million securities settlement in *Howard v. Arconic Inc.*, No. 2:17-cv-01057-MRH, ECF 253 at 1-2 (W.D. Pa. Aug. 9, 2023).

In addition, "the Third Circuit has noted that reasonable fee awards in percentage-of-recovery cases generally range from nineteen to forty-five percent of the common fund." *Whiteley v. Zynerba Pharms. Inc.*, 2021 WL 4206696, at *12 (E.D. Pa. Sept. 16, 2021) (33% fee request "[fell] in the middle" of the range of fees granted in the Third Circuit); *Schuler v. Medicines Co.*, 2016 WL 3457218, at *10 (D.N.J. June 24, 2016) (same quote; same result). Likewise, under *Prudential* factor nine, this Court has noted that "[i]n private contingency fee cases, attorneys routinely negotiate agreements for between thirty percent (30%) and forty percent (40%) of the recovery." *Wallace v. Powell*, 288 F.R.D. 347, 375 (M.D. Pa. 2012).

As for the specific size of the Settlement here, the Third Circuit has affirmed the district court's reliance on a "study of class action settlements between $100 million and $200 million that found recoveries in the 25-30% range were 'fairly standard.'" *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 303 (3d Cir. 2005), as amended (Feb. 25, 2005). In *In re Ikon Office Sols., Inc., Sec. Litig.*, for example, the Eastern District of Pennsylvania awarded attorneys' fees of 30% on a $111 million recovery in a securities class action. 194 F.R.D. 166, 194 (E.D. Pa. 2000). Courts nationwide have recently found similar percentages on similarly sized settlements reasonable:

- *Pearlstein v. Blackberry Ltd.*, 2022 WL 4554858, at *10 (S.D.N.Y. Sept. 29, 2022) (awarded 33.3% of $165 million recovery);
- *Hosp. Auth. of Metro. Gov. of Nashville v. Momenta Pharms., Inc.*, 2020 WL 3053468, at *1 (M.D. Tenn. May 29, 2020) (awarded 33.3% of $120 million recovery);
- *City of Pontiac Gen. Emps.' Ret. Sys. v. Wal-Mart Stores*, 2019 WL 1529517 (W.D. Ark. Apr. 8, 2019) (awarded 30% of $160 million recovery); and
- *Schuh v. HCA Holdings, Inc.*, 2016 WL 10570957 (M.D. Tenn. Apr. 14, 2016) (awarded 30% of $215 million recovery).

Because the requested fee is reasonable in relation to fees typically awarded in similar cases, this factor favors approval of the requested fee award.

8. Value Attributable to Plaintiffs' Counsel

Under *Prudential* factor eight, this case involved no accounting restatement or pre-lawsuit investigation or finding of wrongdoing by the SEC, DOJ, or any other entity that could have given Lead Counsel a head start in litigating these claims. Lead Counsel built this case from the ground up. As one court observed:

> Lead counsel did not ride on anyone's coattails in this action. No government or third-party action or investigation preceded the filing of the plaintiffs' claims. Therefore, all resulting benefits that accrue to the Settlement class members are attributable to the work of lead counsel,

> strengthening a conclusion that this Court should approve the requested fee award.

In re Innocoll Holdings Pub. Ltd. Co. Sec. Litig., 2022 WL 16533571, at *11 (E.D. Pa. Oct. 28, 2022). This factor thus also strongly weighs in favor of approval of the requested fee award.

9. "Innovative" Terms

Under the final *Prudential* factor, there are no "innovative" settlement terms here that would undermine the requested fee. The $192.5 million all-cash non-reversionary settlement amount is being deposited into an interest-bearing account, for the benefit of the Class. None of the unique concerns with "claims made" settlements, "clear sailing" agreed-upon fees, or "fee reversions" recently articulated by the Third Circuit in *WaWa, Inc.* are present here. *See In re Wawa, Inc. Data Sec. Litig.*, 85 F.4th 712 (3d Cir. 2023). This is not a claims-made settlement and there is no agreement with Defendants as to the amount of Lead Counsel's fees – if the Settlement is approved, Defendants will have no reversionary interest in the $192.5 million Settlement Fund under any circumstance.

D. The Requested Fee Is Reasonable Under a Lodestar Cross-Check

Courts in the Third Circuit may also use a "lodestar cross-check" to confirm the reasonableness of a percentage fee. *See Moore v. GMAC Mortg.*, 2014 WL 12538188, at *2 (E.D. Pa. Sept. 19, 2014) (stating that the "lodestar cross-check is 'suggested,'

but not mandatory"). The lodestar cross-check "should not displace a district court's primary reliance on the percentage-of-recovery method." *In re Schering-Plough Corp. Enhance Sec. Litig.*, 2013 WL 5505744, at *21 (D.N.J. Oct. 1, 2013). Indeed, the Third Circuit has recently recognized the criticism that a pure lodestar approach implicates a "perverse incentive for attorneys to inflate their billing rates, 'expend excessive hours,' and 'engage in duplicative and unjustified work.'" *Wawa, Inc.*, 85 F.4th at 721. When used, therefore, a lodestar cross-check "need entail neither mathematical precision nor bean-counting," and "district courts may rely on summaries submitted by the attorneys and need not review actual billing records." *Rite Aid Corp.*, 396 F.3d at 306-07.

"[M]ultiples ranging from 1 to 8 are often used in common fund cases." *Whiteley*, 2021 WL 4206696, at *14. The Third Circuit has also recognized that percentage awards that result in multipliers "'ranging from one to four are frequently awarded in common fund cases when the lodestar method is applied.'" *In re Veritas Software Corp. Sec. Litig.*, 396 F. App'x 815, 819 (3d Cir. 2010). Following guidance from the Third Circuit on appeal, the court in *Rite Aid Corp*. approved a fee involving a 6.96 multiplier. *See Rite Aid Corp*., 362 F. Supp. 2d at 590; *see also Stevens v. SEI Invs. Co.*, 2020 WL 996418, at *13 (E.D. Pa. Feb. 28, 2020) (approving multiplier of 6.16; such multiples "compensate counsel for the risk of assuming the representation on a contingency fee basis").

Here, the lodestar cross-check further demonstrates the reasonableness of the requested fee percentage. Lead Counsel spent 31,499.70 hours of attorney and other professional time prosecuting the Action for the benefit of the Class through August 22, 2023 (the date before the settlement term sheet was executed). Knotts Decl., ¶¶132-134. Lead Counsel's lodestar, derived by multiplying the hours spent on the litigation by each attorney or other professional by his or her current hourly rate, is $18,256,347.50. Thus, the requested fee of 30% of the Settlement Fund, or $57.75 million, represents a reasonable multiplier of 3.16 on counsel's lodestar. In sum, the lodestar cross-check further supports the requested fee.

E. Reasonably Incurred Litigation Expenses Should Be Awarded

"'In the Third Circuit, it is standard practice to reimburse litigation expenses in addition to granting fee awards.'" *Innocoll*, 2022 WL 16533571, at *12. Counsel in class actions are entitled to recover expenses that are "'adequately documented and reasonable and appropriately incurred in the prosecution of the class action.'" *ViroPharma*, 2016 WL 312108, at *18. Here, Lead Counsel requests payment of costs, charges, and expenses incurred by Lead Counsel in connection with the prosecution of this litigation in the amount of $1,429,116.29.

The expenses borne by Lead Counsel are documented in the accompanying firm declaration. *See* Robbins Geller Fee and Expense Decl., ¶¶5-6. These expenses include the typical categories, such as experts, travel, document hosting and

production, research costs, mediation fees, filing fees, copying, and delivery. *Id.*, ¶6. The majority of the expenses ($911,914.00) consisted of the fees paid to three testifying experts and two consulting experts, which were essential to litigate a case of this complexity to the brink of trial. *Id.* The second largest expense category ($162,634.32) was paid to a class action notice firm to provide the Court-ordered notice of pendency to this large Class of Rite Aid investors. *Id.* All of these expenses are of the same type routinely approved in securities class actions, and this amount is lower than the expenses incurred in other large securities class actions. *See, e.g.*, *Ikon*, 194 F.R.D. at 197 ($3.5 million in expenses approved on $111 million settlement).

F. Lead Plaintiffs Are Entitled to Awards Pursuant to 15 U.S.C. §78u-4(a)(4)

The PSLRA specifically allows for "the award of reasonable costs and expenses (including lost wages) directly relating to the representation of the class." 15 U.S.C. §78u-4(a)(4). "The Third Circuit favors encouraging class representatives, by appropriate means, to create common funds and to enforce laws – even approving 'incentive awards' to class representatives." *Schering-Plough*, 2013 WL 5505744, at *37; *Brady v. Air Line Pilots Ass'n*, 627 F. App'x 142, 146 (3d Cir. 2015) (approving lead plaintiff award).

Lead Plaintiffs Chabot and Dayton seek awards of $29,000 and $21,000, respectively, for the time they devoted to representing the Class, including: (a) responding to discovery requests and collecting documents for production; (b)

preparing for and sitting for lengthy depositions; (c) consulting with counsel regarding the litigation; (d) reviewing pleadings, motions, and briefs; (e) reviewing correspondence and status reports from counsel; and (f) providing frequent input on settlement negotiations. *See* Chabot Decl.; Dayton Decl. The requested class representative awards are reasonable and are less than or equal to awards in many similar cases. *See, e.g.*, *Schering-Plough*, 2013 WL 5505744, at *37 (approving awards to four lead plaintiffs totaling more than $102,000).

V. CONCLUSION

The $192.5 million Settlement for the Class represents a remarkably favorable culmination to the Action. The rarity of a Settlement of this magnitude compared to similar cases underscores the favorability of this result, as well as its inherent risk. For all of the reasons stated herein and in the accompanying declarations, Lead Plaintiffs and Lead Counsel respectfully request that the Court grant the requested fees, expenses, and Lead Plaintiffs' awards in connection with their work in creating this groundbreaking Class recovery.

DATED: January 3, 2024

Respectfully submitted,

ROBBINS GELLER RUDMAN
& DOWD LLP
RANDALL J. BARON
A. RICK ATWOOD, JR.
DAVID A. KNOTTS
TEO A. DOREMUS

DAVID A. KNOTTS

655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)

Lead Counsel for Plaintiffs

SAXTON & STUMP LLC
LAWRENCE F. STENGEL
CARSON B. MORRIS
280 Granite Run Drive, Suite 300
Lancaster, PA 17601
Telephone: 717/556-1000
lfs@saxtonstump.com
cbm@saxtonstump.com

Local Counsel

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on January 3, 2024, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the email addresses on the attached Electronic Mail Notice List, and I hereby certify that I caused the mailing of the foregoing via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

s/ David A. Knotts

DAVID A. KNOTTS

ROBBINS GELLER RUDMAN
& DOWD LLP
655 West Broadway, Suite 1900
San Diego, CA 92101-8498
Telephone: 619/231-1058
619/231-7423 (fax)

Email: dknotts@rgrdlaw.com

Mailing Information for a Case 1:18-cv-02118-JPW Chabot et al v. Walgreens Boots Alliance, Inc. et al

Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

- **A. Rick Atwood , Jr**
  ricka@rgrdlaw.com,e_file_sd@rgrdlaw.com,tdoremus@rgrdlaw.com
- **Randall J Baron**
  randyb@rgrdlaw.com,jaimem@rgrdlaw.com,e_file_sd@rgrdlaw.com
- **Thomas G. Collins**
  thomas.collins@bipc.com,christy.sunchych@bipc.com,theresa.gillis@bipc.com,krista.kiger@bipc.com,eservice@bipc.com
- **Stuart A Davidson**
  sdavidson@rgrdlaw.com,jdennis@rgrdlaw.com,e_file_sd@rgrdlaw.com,e_file_fl@rgrdlaw.com
- **Teo Doremus**
  tdoremus@rgrdlaw.com
- **David A Knotts**
  dknotts@rgrdlaw.com,jaimem@rgrdlaw.com,e_file_sd@rgrdlaw.com,tdoremus@rgrdlaw.com,dknotts@ecf.courtdrive.com
- **Sara E. Myirski**
  sara.myirski@bipc.com,christy.sunchych@bipc.com,theresa.gillis@bipc.com,krista.kiger@bipc.com,eservice@bipc.com
- **Mark Andrew Perry**
  mark.perry@weil.com
- **Jonathan D Polkes**
  jonathan.polkes@weil.com,mco.ecf@weil.com,jonathan-polkes-2906@ecf.pacerpro.com,walgreens.associate@weil.com,nymao@ecf.pacerpro.com
- **Lawrence F. Stengel**
  lfs@saxtonstump.com,cag@saxtonstump.com,cbm@saxtonstump.com
- **Caroline Zalka**
  caroline.zalka@weil.com,mco.ecf@weil.com,caroline-zalka-7810@ecf.pacerpro.com,adam.banks@weil.com,nymao@ecf.pacerpro.com

Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

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Mason Capital Master Fund, L.P.
,

Recovery Master, LLC
,
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UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF PENNSYLVANIA

DOUGLAS S. CHABOT, et al., Individually and on Behalf of All Others Similarly Situated, Plaintiffs, vs. WALGREENS BOOTS ALLIANCE, INC., et al., Defendants.	Civ. Action No. 1:18-cv-02118-JPW CLASS ACTION CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.8

Pursuant to LR 7.8(b)(2), I hereby certify that Lead Counsel's Memorandum of Law in Support of Motion for Attorneys' Fees and Litigation Expenses, and Awards to Lead Plaintiffs Pursuant to 15 U.S.C. §78u-4(a)(4) was prepared using the word processing program Microsoft Word and that employing the counting features of such program, the text of the Memorandum contains 4,995 words (excluding the Table of Contents, Table of Authorities, and signature block).

DATED: January 3, 2024

ROBBINS GELLER RUDMAN
& DOWD LLP
RANDALL J. BARON
A. RICK ATWOOD, JR.
DAVID A. KNOTTS
TEO A. DOREMUS

DAVID A. KNOTTS

655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)

Lead Counsel for Plaintiffs

SAXTON & STUMP LLC
LAWRENCE F. STENGEL
CARSON B. MORRIS
280 Granite Run Drive, Suite 300
Lancaster, PA 17601
Telephone: 717/556-1000
lfs@saxtonstump.com
cbm@saxtonstump.com

Local Counsel