

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 PLAINTIFFS' REPLY IN
) FURTHER SUPPORT OF MOTIONS
) FOR FINAL APPROVAL OF
) SETTLEMENT, PLAN OF
) ALLOCATION, ATTORNEYS' FEES
) AND LITIGATION EXPENSES, AND
) AWARDS TO LEAD PLAINTIFFS
) PURSUANT TO 15 U.S.C. §78u-4(a)(4)

Lead Plaintiffs and Lead Counsel respectfully submit this reply in further support of their motions for final approval of the \$192.5 million settlement, approval of the proposed Plan of Allocation, award of attorneys' fees and expenses, and awards to Lead Plaintiffs pursuant to 15 U.S.C. §78u-4(a)(4) in connection with their representation of the Class.¹

I. INTRODUCTION

This Settlement establishes a common fund of \$192.5 million, in cash, paid by Walgreens and certain of its executives for the benefit of a Class of Rite Aid investors. As detailed in Lead Plaintiffs' and Lead Counsel's opening papers, this certified class action followed eight years of intense litigation and was ultimately reached through arm's-length mediation overseen by the Honorable Layn R. Phillips (Ret.). There should be no doubt that Lead Plaintiffs attained the highest possible Class-wide recovery for these claims, relative to the extreme risks of this case and its continued litigation.

The reaction of the Class confirms that this Settlement represents an outstanding recovery. The robust Court-approved notice program involved, *inter alia*, sending over 149,400 copies of the Notice and Proof of Claim to potential Class

¹ Unless otherwise stated or defined, all capitalized terms used herein have the meanings provided in the Stipulation of Settlement (the "Stipulation"). ECF 307-1. All citations and footnotes are omitted and all emphasis is added, unless otherwise indicated.

Members and publishing in *The Wall Street Journal*. The January 24, 2024 deadline for objections set forth in the Notice has now passed.

In response to that extensive notice program, only two objections were filed. Neither objection is directed to the adequacy of the Settlement or the Settlement Amount. One objection challenges the \$10 minimum payment threshold in the Plan of Allocation. The Third Circuit and this Court, however, have expressly approved the same \$10 minimum threshold in settlement payment allocations. The other objector seeks individual compensation for the Rite Aid shares he purchased outside of the Class Period. Such shares are not in the Class, not part of this Action, and were dismissed from this Action long ago. Lead Counsel also received one handwritten request to postpone the upcoming final approval hearing, but the request is largely unintelligible and contains no meaningful justification or support.

No stockholder objected to the requested attorneys' fees or expenses. As described below, the Third Circuit counsels that the reaction of a class including institutional investors is a powerful indicator of the reasonableness of a requested fee in a large securities case. Here, despite a class filled with institutional investors with millions of dollars at stake, and the resources and sophistication to challenge an excessive fee, no such institutions objected. Nor did anyone else. This resoundingly positive reaction supports the requested attorneys' fees and litigation expenses.

In sum, the positive reaction of the Class further demonstrates that the proposed Settlement, the Plan of Allocation, the request for fees and expenses, and the request for Lead Plaintiff awards are fair and reasonable and should be approved.

II. THE CLASS OVERWHELMINGLY SUPPORTS THE SETTLEMENT

The Third Circuit has made clear that one of the principal factors district courts consider in connection with final approval of a settlement is “the reaction of the class to the settlement.” *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975). The Class’s reaction here is overwhelmingly supportive. As noted, over 149,400 copies of the Notice and Proof of Claim were sent to potential Class Members, the Summary Notice was published in *The Wall Street Journal* and transmitted over *Business Wire*, and the Notice was also posted to a case-specific website, www.riteaidsecuritiessettlement.com.² Only two individuals objected to the proposed Settlement and Plan of Allocation, but neither objected to the Settlement itself or the Settlement Amount.

With only two objections, the Class’s support for the Settlement and Plan of Allocation is apparent. In the Third Circuit, this demonstration of support weighs heavily in favor of approval. *See In re Cendant Corp. Litig.*, 264 F.3d 201, 235 (3d

² Declaration of Ross D. Murray Regarding Notice Dissemination, Publication, and Requests for Exclusion Received to Date (“Murray Decl.”), ¶¶5-14 (ECF 316), and Supplemental Declaration of Ross D. Murray Regarding Notice Dissemination, ¶¶3-4, submitted herewith.

Cir. 2001) (“[t]he vast disparity between the number of potential class members who received notice of the Settlement and the number of objectors creates a strong presumption that this factor weighs in favor of the Settlement”); *Bell Atl. Corp. v. Bolger*, 2 F.3d 1304, 1313-14 (3d Cir. 1993) (finding that 30 objectors out of numerous shareholders was “an infinitesimal number”). Each objection here is addressed in turn below.

A. The Jasperse Objection to the Plan of Allocation Should Be Overruled

Mr. Jasperse writes “to object to the proposed exclusion of claims that are less than \$10.00,” which is part of the Plan of Allocation. ECF 319. While Mr. Jasperse did not comply with the requirements for an objection – such as providing documentation regarding the number of shares purchased during the Class Period and identifying previous objections, *see* ECF 316-2 – Lead Plaintiffs will nevertheless substantively respond.

The Third Circuit rejected the same type of objection in *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 328-29 (3d Cir. 2011). In that case, “the objectors contend[ed] that the settlement’s minimum claim payment requirement of \$10 provides inadequate settlement relief, as it will eliminate the rights of many class members without providing any compensation.” *Id.* at 328. The Court ultimately held: “We disagree and find no abuse in the District Court’s decision to approve the minimum claim payment threshold.” *Id.*

In affirming, the Third Circuit explained that “‘*de minimis* thresholds for payable claims are beneficial to the class as a whole since they save the settlement fund from being depleted by the administrative costs associated with claims unlikely to exceed those costs and courts have frequently approved such thresholds, often at \$10.’” *Id.* (quoting *In re Gilat Satellite Networks, Ltd.*, 2007 WL 1191048, at *9 (E.D.N.Y. Apr. 19, 2007)). The Court also cited case law “noting that the minimum recovery requirement is a common procedure that addresses ‘the undeniable fact that claims-processing costs money, which comes out of the settlement fund.’” *Id.* (quoting *In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 463 (S.D.N.Y. 2004)).

Courts in this Circuit have applied *Sullivan* to uphold \$10 minimum claim payments in securities cases. *See, e.g., McDermid v. Inovio Pharms., Inc.*, 2023 WL 227355, at *9 (E.D. Pa. Jan. 18, 2023) (“The net settlement fund will be distributed to each authorized claimant entitled to at least \$10.”). This Court approved the same minimum in *SEPTA. Se. Pa. Transp. Auth. v. Orrstown Fin. Servs., Inc.*, 2023 WL 1454371, at *4 (M.D. Pa. Feb. 1, 2023) (“*SEPTA*”) (“The balance of the Settlement Fund is to be distributed pursuant to the proposed Plan of Allocation to Class Members submitting timely, valid claims, and whose payments would equal \$10.00 or more.”). Consistent with this authority, the Jasperse Objection should be overruled.

B. The Wysocki Objection to the Class Period Should Be Overruled

The Wysocki Objection asserts as follows:

Please note that I am writing to object to this settlement as I believe the period involved is not sufficient. All of the RAD shares purchases I made in 2016 and 2017 were impacted by the materially false and misleading statements made by the defendants . . . not just the ones between 20 October 2016 and 26 September 2017.

I realize that the judge for this case may not amend the settlement, therefore, I must object. However, if the settlement were to include all stock purchases made in 2016 and 2017, that may be an acceptable solution.

ECF 318.

This is not a valid objection for multiple reasons. First, purchases of Rite Aid stock outside of the Class Period are not in the Class that this Court certified. *See* Notice (ECF 316-2), ¶1 (“Description of the Action and the Class . . . all persons or entities who purchased or otherwise acquired Rite Aid Corporation (‘Rite Aid’) common stock between October 20, 2016 and June 28, 2017, inclusive (the ‘Class Period’).”). As a result, such shares receive no payment as part of the Settlement, and they are also not subject to any release. *Id.*, ¶54 (limiting all “Released Plaintiffs’ Claims” to claims that “relate to the purchase or acquisition of Rite Aid common stock during the Class Period”).

Second, while Mr. Wysocki writes that “the judge for this case may not amend the settlement,” he then requests that the Court do exactly that by seeking an

expansion of the Class Period. Mr. Wysocki sets forth no justification that could support a different certified class under Rule 23. *See Sullivan*, 667 F.3d at 312 (district court may not modify material settlement terms).

Third, the Court has already rejected a broader class period in this case. Lead Counsel initially filed a complaint “based on alleged false or misleading statements made by the defendants during the class period of October 27, 2015, to June 28, 2017.” *Hering v. Rite Aid Corp.*, 331 F. Supp. 3d 412, 416 (M.D. Pa. 2018). The Court dismissed the alleged misrepresentations prior to October 20, 2016, writing: “Starting October 20, 2016, the Walgreens Defendants began to express confidence that the deal would close and questioned newspaper reports of regulatory turbulence. With these statements, Plaintiff’s allegations have more merit.” *Id.* at 427.

The Court next ruled that purchasers of Rite Aid stock before October 20, 2016 have no standing to assert a claim for relief. After the initial motion to dismiss, the Court granted Walgreens’ motion for judgment on the pleadings, ruling: “Because Hering purchased Rite Aid stock before the now more clearly defined actionable statements, he does not have a legal right to bring an individual Rule 10b-5 claim and, therefore, would appear to have lost his personal stake in the outcome of the dispute.” *Hering v. Walgreens Boots All., Inc.*, 341 F. Supp. 3d 412, 415, 417 (M.D. Pa. 2018). The Court further ruled that “any claims based on statements made prior to October

20, 2016 . . . are no longer part of this action.” *Id.* at 416.³ The Wysocki Objection should also be overruled.

C. The Lenczuk Letter’s Request to Postpone the Hearing Should Be Rejected

Lead Counsel recently received the handwritten letter attached hereto as Exhibit A from Steven Lenczuk of Jersey City, New Jersey. While the document is largely unintelligible and difficult to decipher, it does state that “the hearing of at [sic] February 7, 2024 has to be postponed until April or May 2024[.] We cannot appear” Mr. Lenczuk does not provide justification for his request to postpone the hearing, nor does he provide any evidence of membership in the Class. Mr. Lenczuk also does not articulate any intelligible objection or substantive comment regarding the Settlement and, even if he did, he does not need to appear at the upcoming hearing to have any such objection heard. *See* Notice ¶70 (“You may file a written objection without having to appear at the Settlement Hearing.”). Lead Counsel strongly opposes the request to postpone the hearing given the lack of justification or explanation provided by Mr. Lenczuk, relative to the prejudice that Class Members will incur as a

³ Likewise, Mr. Wysocki’s additional purchases on October 11, 2017 and October 13, 2017 occurred long after Walgreens and Rite Aid announced that they had terminated the Merger on June 29, 2017. This case, however, is about Walgreens’ allegedly misleading statements regarding the likelihood of approval of the pending Merger before it was terminated. Purchases after June 28, 2017 are therefore not included in the Class Period.

result of the delay in claims processing resulting from a 60- to 90-day final approval hearing postponement.

III. THE REACTION OF THE CLASS SUPPORTS THE REQUESTED ATTORNEYS' FEES

In *Gunter*, the Third Circuit explained that district courts should consider “the presence or absence of substantial objections by members of the class to . . . [the] fees requested by counsel.” *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 195 n.1 (3d Cir. 2000).

The Notice identified that Lead Counsel intended to seek a fee of 30% of the Settlement Amount and payment of litigation expenses not to exceed \$1.9 million. As detailed in Lead Counsel’s opening brief, 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). ECF 312 at 14-16. The requested fee is also supported by the Third Circuit’s recommended ranges in common fund cases generally (19% to 45%) and in securities settlements between \$100 to \$200 million (25% to 30%). *Id.*

No Class Member has objected to Lead Counsel’s request for attorneys’ fees and payment of litigation expenses. The Third Circuit’s ruling in *Rite Aid Corp.* is therefore on point:

The class’s reaction to the fee request supports approval of the requested fees. Notice of the fee request and the terms of the settlement were mailed to 300,000 class members, and only two objected. We agree with

the District Court such a low level of objection is a “rare phenomenon.” Moreover, as the court noted, a significant number of investors in the class were “sophisticated” institutional investors that had considerable financial incentive to object had they believed the requested fees were excessive.

In re Rite Aid Corp. Sec. Litig., 396 F.3d 294, 305 (3d Cir. 2005). Other courts agree. *See, e.g., In re Bisys Sec. Litig.*, 2007 WL 2049726, at *1 (S.D.N.Y. July 16, 2007) (lack of objections from institutional investors supported the approval of fee request because “the class included numerous institutional investors who presumably had the means, the motive, and the sophistication to raise objections if they thought the [requested] fee was excessive”).

In short, “[t]he lack of objections to the requested attorneys’ fees supports the request, especially because the settlement class includes large, sophisticated institutional investors.” *In re Schering-Plough Corp. Enhance ERISA Litig.*, 2012 WL 1964451, at *6 (D.N.J. May 31, 2012). Accordingly, the Court should approve Lead Counsel’s request for attorneys’ fees of 30% of the Settlement Amount and payment of \$1,429,116.29 for litigation expenses.

IV. CONCLUSION

Lead Counsel obtained an exceptional result for the Class, and the Class agrees. For the reasons set forth above and in their previously filed briefs and declarations, Lead Plaintiff and Lead Counsel respectfully request that the Court approve the proposed Settlement and Plan of Allocation, as well as the request for attorneys’ fees

and payment of expenses and the Lead Plaintiff awards. Proposed orders are submitted herewith.

DATED: January 31, 2024

Respectfully submitted,

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



DAVID A. KNOTTTS

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 31, 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.

Mason Capital Master Fund, L.P.

,

Recovery Master, LLC

,

EXHIBIT A



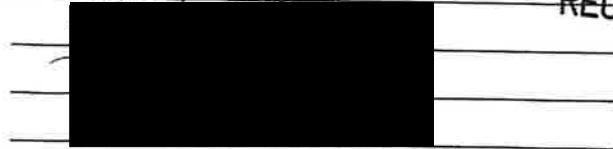
Certificate Of Mailing

To pay fee, affix stamps or meter postage here.

This Certificate of Mailing provides evidence that mail has been presented to USPS® for mailing. This form may be used for domestic and international mail.

From: *Stava Lexus*

RECEIVED JAN 26 2024

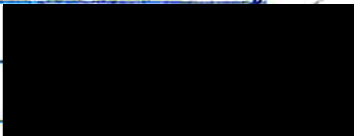


To: *Rite Aid Scouting
Robbin's Getten Redwood
+ Dow D.
655 West Broadway
Suite 9900
San Diego, Calif. 92101*

Postmark Here

December 3 2023
January 16/2024

Stewart Lenz



Attw. - Lawyer for Rite Aid stores

Read the W. Street Journal / one day

there was an article about a lawsuit
Walgreen, Walbourns Inc have has
changed names a few times

On Friday December 15 2023 at Public Sale
at Sidney Austin v. Lhp
1001 Page Mill Road Bldg (I)
Palo Alto, Calif.
94304 94304

the Rite Aid stores were closed in Hudson County
a few year ago. Some of the workers
were stealing money + a credit cards
used to sit in the back + read some
magazines

I finished school in High school with good grades

the article is difficult to understand

you cannot hear the case yet the Feb 7 2023
2024

will have to be delayed until April 2024
Because they at US District Court
are cannot hear the case against
Rite Aid Stores Inc.

Attw. David A. K.

Sidney Austin
Walbourn

Sidney Walbourn Orvey.
Walbourns Inc Walgreen Duane Reed
are in Default of \$192 millions
They owe there credits money they
have no legal rights to there
943,000,000 (over) products

Claims Adjuster
Rite Aid Securities
Gilardi + Co. LLC.
P.O. Box 301435
Los Angeles California
90030
44 35

Page 1

Walbourns Inc
Walbourns may be in default.
+ owe their creditors. Large sums of money.
Rite Aid Securities Sett Lenz
Rite Aid Securities Company 23, 689,000 \$ 3
Gilardi Sett / David Lenz Walgreen is in default.

Page 2

December 13, 2023
January 16, 17, 2024
2024

Steven Lenzok



Attorneys: Robyn Golan, Rudman
605 Broad St. West
Suite 200

Sidney Austin Walbaum,
Public Sale of
did sign an affidavit
in his attorney's name
that he had read
the article and
did not know
Walbaum

Read the Wall Street Journal (Page 1)
The article was difficult to understand

Friday, Dec 15, 2023 Public Sale of Merchandise
at Sidney Austin Walbaum
1000+ pages with text
Photos, Video, Merchandise
Rite Aid Store 94304

Claim: Sidney Austin Walbaum is in default
of a \$1 million loan from Rite Aid
Security Agreement dated 2019

We the lenders Rite Aid Securities
cannot appear on said date
we the lenders cannot accept a settlement
the meeting of February 7, 2024 we cannot
attend that meeting. What to be deferred to
another date April 4, 2024. 60 days later
we will sign as required. Again Sidney Austin
Walbaum

the lawyers: Weil, Gottschalck & Manges
Caroline Kelly Zalka
707 K Street, N.W.
New York, NY 10013

page 2

Respectfully,
Steven Lenzok
January 17, 2024

Continued

I once worked for a Brokerage House in Manhattan
for 2 years / A good job learned a lot.

If this is understood that many many days are
selling phony stock on the New York stock
exchange
you'll have to file Appeals. as

+ claims against Walgreens, Walgreens
they have no legal patent. Right to some
of their products

to be colorized
Toby

The Hearing of at February 7, 2024.

was to ~~postpone~~ until April or May
2024

We cannot appear at ~~before~~

U.S. District Court

Sylvia A. Rambo
Court House

1503 N. 6th St.

Harrisburg, Penn

67102

ation,

Kansas City Steak
Fleet Mgr. Inc.
129.99
800 793-9144
Frank 823 NW 1/2

Property Developers
are in Debt
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Overseas Hotel Fortune
God
22 Brant's 7,400 properties
Pres. Christopher J. Nassetti

Metwa Life Casualty
Court Law firm

Middle 20
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Putnam Nat'l 1064

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FORTUNE

Hilton
FOR THE STAY™

DOUGLASS S. CHABOT, et al., Individually and on Behalf of All Others Similarly Situated,

CLASS ACTION
Civ. Action No. 18-cv-02118-JPW

0547806131
Sept 23 Ltr

vs.
WALGREENS BOOTS ALLIANCE, INC., et al.

Plaintiffs: Walgreens, Walgreens Boots Alliance, Inc., et al.
Defendants: Walgreens, Walgreens Boots Alliance, Inc., et al.

SUMMARY NOTICE

IF YOU PURCHASED OR ACQUIRED RITE-AID CORPORATION ("RITE-AID") COMMON STOCK BETWEEN OCTOBER 20, 2016 AND JUNE 28, 2017, INCLUSIVE (THE "CLASS"), YOU COULD RECEIVE A PAYMENT FROM A CLASS ACTION SETTLEMENT. CERTAIN PERSONS ARE EXCLUDED FROM THE DEFINITION OF THE CLASS AS SET FORTH IN THE STIPULATION OF SETTLEMENT.

PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS MAY BE AFFECTED BY A CLASS ACTION LAWSUIT PENDING IN THIS COURT.

YOU ARE HEREBY NOTIFIED, pursuant to Rule 23 of the Federal Rules of Civil Procedure and by Order of the United States District Court for the Middle District of Pennsylvania, that in the above-captioned litigation (the "Action"), which is a certified class action, a Settlement has been proposed for \$19,500,000.00 in cash. A hearing will be held on February 7, 2024, at 1:30 p.m. Before the Honorable Jennifer P. Wilson, in Courtroom 8A, at the United States District Court for the Middle District of Pennsylvania, Sylvia H. Rambo U.S. Courthouse, 1501 North 6th Street, Harrisburg, PA 17103, for the purpose of determining whether: (1) the proposed Settlement should be approved by the Court as fair, reasonable, and adequate; (2) the proposed Plan of Allocation for distribution of the Settlement proceeds is fair, reasonable, and adequate and therefore should be approved; and (3) the application of Lead Counsel for the payment of attorneys' fees and expenses from the Settlement Fund, including interest earned thereon, and requests by Plaintiffs for their time and expenses, should be approved.

IF YOU ARE A MEMBER OF THE CLASS DESCRIBED ABOVE, YOUR RIGHTS MAY BE AFFECTED BY THE SETTLEMENT OF THE ACTION, AND YOU MAY BE ENTITLED TO SHARE IN THE NET SETTLEMENT FUND. If you have not received a detailed Notice of Proposed Settlement of Class Action ("Notice") and a copy of the Proof of Claim and Release ("Claim Form"), you may obtain copies of these documents by contacting the Claims Administrator, Rite Aid Securities Settlement, Claims Administrator, c/o Gilardi & Co. LLC, P.O. Box 301155, Los Angeles, CA 90030-1155; info@RiteAidSecuritiesSettlement.com; 1-866-651-4874. You may also obtain copies of the Stipulation of Settlement, Notice, and Claim Form at www.RiteAidSecuritiesSettlement.com.

If you are a Class Member, to be eligible to share in the distribution of the Net Settlement Fund, you must submit a Claim Form by mail postmarked no later than February 12, 2024, or submit it online by that date. If you are a Class Member and do not submit a valid Claim Form, you will not be eligible to share in the distribution of the Net Settlement Fund, but you will still be bound by any judgment entered by the Court in this Action (including the releases provided for therein).

If you are a Class Member, you will be bound by any judgment entered by the Court in this Action (including the releases provided for therein) whether or not you submit a Claim Form. If you previously excluded yourself from the Class, you will have no right to recover money pursuant to the Settlement.

Any objection to the Settlement, the Plan of Allocation, Lead Counsel's request for attorneys' fees and expenses, or Plaintiffs' request for time and expenses (if any) must be filed with the Court no later than January 24, 2024, and received by each of the following counsel no later than January 17, 2024:

Clerk of the Court
United States District Court, Middle District of Pennsylvania
Sylvia H. Rambo U.S. Courthouse
1501 North 6th Street
Harrisburg, PA 17102

Lead Counsel:

Robbins Geller Rudman & Dowd LLP
David A. Knotts
655 West Broadway, Suite 1900
San Diego, CA 92101

Counsel for Defendants:

Weil, Gotshal & Manges LLP
Caroline Hickey Zalka
767 Fifth Avenue
New York, NY 10153

PLEASE DO NOT CONTACT THE COURT OR THE CLERK'S OFFICE REGARDING THIS NOTICE. If you have any questions about the Settlement, you may contact Lead Counsel at the address listed above or email settlementinfo@rgdlaw.com.

DATED: October 23, 2023

BY ORDER OF THE COURT
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

Walgreens Int.
Walgreens &
Quarize Reed

Feb 7, 2024
Honorable Jennifer P. Wilson
Courtroom 8A
U.S. District Court
1501 North 6th Street
Harrisburg, PA
17102

NOTICE OF PUBLIC SALE BY SECURED PARTY

DEBTORS: Pivotal3, Inc. ("Pivotal3"), Pivotal3 Holdings, Inc. ("Holdings"), Nexgen Storage, Inc. ("Nexgen"), PV3 (an ABC), LLC (assignor pursuant to assignment for the benefit of creditors) ("Assignee")

ON FRIDAY, DECEMBER 15, 2023, AT 12:00 PM (PACIFIC TIME) at the offices of Siderer Austin LLP, 1001 Page Hill Road, Building 1, Palo Alto, CA 94304, a public sale ("Public Sale") will be conducted of substantially all of the assets (including without limitation, intellectual property, such as assets collectively, the "Sale Assets") of Pivotal3, Holdings, Nexgen and Assignee in accordance with Section 9-610 of the New York UCC and other applicable law. Access by videoconference may be made available upon request. The Public Sale is being conducted by Runway Growth Finance Corp. ("Secured Party") to enforce its rights as collateral agent pursuant to that certain Loan and Security Agreement, dated as of May 13, 2019 (as modified from time to time the "Loan Agreement"). Pivotal3, Holdings and Nexgen (collectively "Loan Parties") granted Agent a security interest in the Sale Assets to secure loans made pursuant to the Loan Agreement. Certain of the Sale Assets were transferred to Assignee subject to Secured Party's security interest. The outstanding principal balance under the Loan Agreement as of the October 19, 2023 is not less than \$23,582,365.89, plus accrued interest, fees and expenses.

Loan Parties were previously in the business of development and sale of hyperconverged infrastructure and video surveillance systems. In July 2022, Loan Parties ceased operations, Pivotal3 transferred substantially all assets to Assignee in an assignment for the benefit of creditors, and the software product of Pivotal3 previously known as "Pivotal3" was sold, and certain related underlying registered patents were exclusively licensed pursuant to a fully paid-up, royalty-free, worldwide, perpetual license for the video surveillance field (the "Existing License"). The Sale Assets consist primarily of intellectual property registered in the name of Loan Parties with the US PTO and IP offices of other jurisdictions, which is being sold subject to the Existing License, and the shares of Pivotal3 and Nexgen, which are pledged as collateral.

The Sale Assets may be offered in one or more lots at the discretion of Secured Party, and will be sold on a strictly "AS IS, WHERE IS" basis, with all faults, and without recourse to Secured Party or any lender under the Loan Agreement, without any representation or warranty, express or implied, as to the title, value, condition, merchantability or fitness for use of any of the Sale Assets or any other representation or warranty with respect to the Sale Assets whatsoever, which are hereby disclaimed, except for certain limited representations of Agent as expressly set forth in a form Asset Purchase Agreement which will be available upon request by any qualified party interested in bidding on the Sale Assets. Secured Party intends to sell the Sale Assets to the highest or otherwise best qualified bidder at the Public Sale. The Public Sale will be for cash or credit against outstanding indebtedness under the Loan Agreement, and subject to commercially reasonable bid procedures and other requirements established by Secured Party, which will be available upon request. Secured Party reserves the right to credit bid for some or all of the Sale Assets and to modify the terms, conditions, or procedures for the Public Sale, withdraw all or any portion of the Sale Assets from the Public Sale or continue the Public Sale to any future date for any reason, in Secured Party's discretion.

Any inquiries regarding the sale or the Sale Assets should be directed to Avisha Khabani at ak@runwaygrowth.com no later than December 14, 2023, 12:00 pm (Pacific time).

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