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Lead Counsel for Lead Plaintiff

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

EVANSTON POLICE PENSION FUND, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. MCKESSON CORPORATION, et al., Defendants.	Case No. 3:18-cv-06525-CRB CLASS ACTION DECLARATION OF LUKE O. BROOKS IN SUPPORT OF MOTIONS FOR: (1) FINAL APPROVAL OF CLASS ACTION SETTLEMENT; (2) APPROVAL OF PLAN OF ALLOCATION; AND (3) AWARD OF ATTORNEYS' FEES AND EXPENSES DATE: June 2, 2023 TIME: 10:00 a.m. CTRM: 6, 17th Floor JUDGE: Honorable Charles R. Breyer

TABLE OF CONTENTS

I, LUKE O. BROOKS, declare as follows:

1. I am an attorney duly licensed to practice before all courts of the State of California. I am a member of the law firm of Robbins Geller Rudman & Dowd LLP ("Robbins Geller" or "Lead Counsel"), and counsel for Pension Trust Fund for Operating Engineers ("Lead Plaintiff" or the "Fund"). I have been actively involved in the prosecution of this Action since 2019 and am closely familiar with its proceedings (the "Litigation" or "Action").[1] I have personal knowledge of the majority of the matters set forth herein based upon my active participation in and supervision of all material aspects of the Litigation. As to the remaining matters, I have reviewed our litigation files and consulted with other attorneys and support staff who worked on this case. I could and would testify completely to the matters set forth herein if called upon to do so.

2. I submit this declaration in support of Lead Plaintiff's motions for: (a) final approval of the $141,000,000 all-cash settlement on behalf of the Class (the "Settlement"); (b) approval of the proposed Plan of Allocation; and (c) an award of attorneys' fees and expenses.

I. PRELIMINARY STATEMENT

3. This declaration does not seek to detail – nor could it detail – each and every event that occurred since the Litigation started in 2018. Rather, it provides the Court with key highlights of the Litigation, the extensive fact discovery, the events leading up to the Settlement, and the bases upon which Lead Plaintiff and Lead Counsel recommend the Settlement's approval.

4. The $141,000,000 proposed Settlement is the culmination of more than four years of hard-fought litigation. As detailed below, Lead Plaintiff, through Lead Counsel, zealously prosecuted its claims throughout this Action through multiple motions to dismiss, a motion for leave to move for reconsideration of the Court's October 30, 2019 Order Denying Motion to Dismiss (ECF 67) ("MTD Order"), a motion for class certification, and a motion for partial summary judgment. The Settlement, which represents approximately 20% of the estimated recoverable damages for the one corrective disclosure remaining following the Court's MTD Order and October 21, 2021 Order

[1] Unless otherwise defined herein, capitalized terms not defined herein shall have the same meaning set forth in the Stipulation of Settlement dated November 30, 2022 (ECF 277) (the "Stipulation").

Granting Motion for Partial Summary Judgment (ECF 212) ("MSJ Order") (as calculated by Lead Plaintiff's consultant), is an exceptional result for the Class.

5. As further detailed herein, proceeding to further pleading challenges, summary judgment, and then a jury trial would each present substantial risks. In agreeing to settle the Action now, Lead Plaintiff and Lead Counsel carefully considered the strengths of the case, as well as the substantial risks they faced by continuing the Litigation. In opting to settle, Lead Plaintiff and Lead Counsel concluded that settlement on the terms they obtained was in the Class's best interest. Representatives of Lead Plaintiff – who supervised Lead Counsel and remained well informed during the settlement negotiations – ultimately approved the Settlement. *See* Declaration of Dan Reding and James E. Murray in Support of Final Approval of Lead Plaintiff's Proposed Class Action Settlement ("Fund Decl."), ¶3, attached hereto as Exhibit A.

6. As detailed below, Lead Plaintiff achieved the proposed Settlement after more than four years of litigation, during which time it, *inter alia*:

- successfully moved to appoint the Fund as Lead Plaintiff, and Robbins Geller as Lead Counsel, in December 2018;
- conducted an extensive investigation of publicly available information and drug pricing, market share, and supply information from proprietary databases, culminating in the filing of the Consolidated Class Action Complaint for Violations of the Federal Securities Laws (ECF 43) ("Complaint") in April 2019;
- partially defeated Defendants' motion to dismiss the Complaint in October 2019;
- defeated Defendants' motion for leave to move for reconsideration of the Court's MTD Order in December 2019;
- conducted extensive party discovery involving 56 requests for production, 21 interrogatories, and 267 requests for admission, culminating in Defendants' production of over 970,000 documents totaling over 3.7 million pages;
- conducted extensive third-party document discovery, culminating in over 30 third parties collectively producing over 780,000 documents;
- conducted a document review of over 1.7 million documents to identify and analyze critical documents supporting Lead Plaintiff's allegations, prepare for fact depositions, and support a mediation statement;
- responded to Defendants' various discovery requests and interrogatories;

- engaged in multiple lengthy and contentious discovery-related disputes concerning, among other things, the scope of fact discovery, Defendants' document production, Defendants' responses to Lead Plaintiff's interrogatories, and Lead Plaintiff's responses to Defendants' interrogatories;

- prepared for and took or defended depositions of the parties' market efficiency and loss causation experts;

- achieved certification in April 2021 of a class of all persons and entities who purchased or acquired McKesson common stock between October 24, 2013 and November 3, 2016;

- briefed and argued Defendants' motion for partial summary judgment;

- based on Lead Counsel's analysis of information produced in discovery, drafted and filed the Amended Consolidated Class Action Complaint for Violations of the Federal Securities Laws (ECF 223) ("Amended Complaint") in December 2021;

- opposed Defendants' motions to dismiss the Amended Complaint in March 2022; and

- prepared a detailed mediation statement and participated in a full-day mediation and follow-up mediation negotiations, culminating in the settlement of the Action in principle in September 2022.

7. The substantial investigation, fact discovery, motion practice, and mediation outlined herein meaningfully informed Lead Counsel of the case's strengths and weaknesses. Lead Counsel consistently considered this information in determining the best course of action for the Class. And, while Lead Plaintiff is confident that proceeding through fact and expert discovery could unveil further evidence in support of its claims, Lead Plaintiff understands the substantial risk and delays of proceeding with further discovery, summary judgment, trial, and any possible appeals.

8. Lead Plaintiff alleges that in violation of §§10(b) and 20(a) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 promulgated thereunder, Defendants engaged in a fraudulent scheme to artificially inflate the price of McKesson's common stock by making materially false and misleading statements and/or omissions concealing that the increases in generic drug pricing that contributed to McKesson's financial success resulted in part from an alleged massive price-fixing scheme among the Company's generic drug manufacturing suppliers.

¶¶134-178.[2] Lead Plaintiff also alleges that in violation of §20A of the Exchange Act, Defendant John H. Hammergren sold McKesson common stock while in possession of material non-public information. ¶¶242-247; Amended Complaint, App. 2. Defendants, on the other hand, have argued that to prove they made materially false or misleading statements, Lead Plaintiff would have to prove that generic drug manufacturers had engaged in a conspiracy(ies); Defendants did not make any materially false or misleading statements or omissions during the Class Period; even if they had made false or misleading statements, Lead Plaintiff would be unable to prove scienter because Defendants lacked the requisite intent; and they did not cause any investor losses. *See, e.g.*, ECF 173 at 1 n.1; ECF 237 at 10-25. There is no doubt that Defendants would have continued to vigorously pursue these defenses throughout the Litigation and at trial.

9. Accordingly, the proposed Settlement avoids the substantial additional costs and risks of further litigating liability and damages if this case were to continue. Indeed, Lead Plaintiff faced substantial risk that the Court would dismiss the Amended Complaint in its entirety in response to Defendants' pending motions to dismiss. Even in the event Lead Plaintiff prevailed against these motions, it faced substantial risks that the case would be fully or partially adjudicated against it following a motion for summary judgment from Defendants. Given the significant risks in continuing to litigate this Action, Lead Plaintiff and Lead Counsel concluded that the $141,000,000 Settlement is in the best interest of the Class.

10. The proposed Settlement is the direct result of Lead Plaintiff's and Lead Counsel's skill and relentless efforts over the past four years to obtain an exceptional recovery on behalf of the Class. The Settlement is also the product of the parties' serious, extensive arm's-length negotiations and mediation sessions, facilitated by Mr. Greg Danilow of Phillips ADR, a highly respected mediator with extensive experience in complex securities litigation. These negotiations were conducted by experienced counsel from both sides who are closely connected to the Litigation.

11. Lead Plaintiff also seeks approval of the proposed Plan of Allocation, which Lead Counsel submits is fair and reasonable. Lead Counsel drafted the Plan of Allocation with the

[2] All "¶_" or "¶¶_" references are to the Amended Complaint, unless otherwise stated.

assistance of Lead Plaintiff's damages and loss causation consultant. As further described below and in the Notice, the Plan of Allocation provides formulas for calculating the recognized claim of each Class Member, based on such information as when the person purchased and sold its McKesson common stock on the open market. Each Authorized Claimant, including Lead Plaintiff, will receive a *pro rata* distribution pursuant to the Plan of Allocation, and Lead Plaintiff will be subject to the same formula for distribution of the Net Settlement Fund. Importantly, the Plan of Allocation does not treat Lead Plaintiff or any other Class Member preferentially.

12. Lead Counsel prosecuted the Litigation on a wholly contingent basis, advancing and incurring substantial litigation expenses and charges over the years. Lead Counsel shouldered substantial risk in doing so, and, to this date, has not received any compensation for its efforts. Accordingly, in consideration of its extensive efforts on behalf of the Class, Lead Counsel is applying for a benchmark award of attorneys' fees in the amount of 25% of the Settlement Amount, plus interest.

13. The requested fee is within the range of fees awarded in similar Private Securities Litigation Reform Act of 1995 ("PSLRA") securities class action settlements, and is fully justified in light of the substantial benefits conferred on the Class, the significant risks overcome in achieving the Settlement, the quality of representation, and the nature and extent of the legal services Lead Counsel performed in this complex litigation. To date, no Class Members have objected, which suggests Class-wide approval of both the Settlement and the requested fees. Lead Counsel submits that the fee application is fair to the Class under all applicable standards and warrants the Court's approval.

14. Lead Counsel also seeks an award in the amount of $1,027,452.95, plus interest, for expenses and charges reasonably and necessarily committed to the prosecution of the Litigation over the last four years. These expenses include: (a) fees and expenses of consultants whose services were required for a fulsome investigation and analysis of the case; (b) fees of Lead Plaintiff's market efficiency and loss causation expert; (c) online factual and legal research; (d) administrative expenses; (e) document management expenses; (f) transcript charges; and (g) mediation expenses.

15. The following summarizes the principal events during the Litigation and the legal services Lead Counsel provided to Lead Plaintiff and the Class.

II. HISTORY OF THE ACTION

A. Pension Trust Fund for Operating Engineers Is Appointed Lead Plaintiff

16. On October 25, 2018, the initial complaint was filed in this Action alleging that Defendants violated §§10(b) and 20(a) of the Exchange Act by issuing materially false and misleading statements and omissions between October 24, 2013 and January 25, 2017, inclusive. ECF 1.

17. On December 26, 2018, the Fund moved to have itself appointed as Lead Plaintiff and Robbins Geller appointed as Lead Counsel. ECF 29. The Court subsequently granted the motion, appointing the Fund as Lead Plaintiff and Robbins Geller as Lead Counsel on February 8, 2019. ECF 40.

B. Lead Plaintiff Vigorously Pursues Its Claims at the Pleading Stage

18. Lead Counsel conducted an extensive factual investigation prior to filing the Complaint, analyzing years of McKesson's public filings with the Securities and Exchange Commission, media reports, analyst reports, and trading data. In addition, Lead Counsel also retained and consulted extensively with an expert whose focus is developing market analyses and methodologies aimed at identifying, *inter alia*, anticompetitive conduct and generating statistical analysis supporting Lead Plaintiff's claims. Prior to filing the Complaint, Lead Counsel also performed legal research to evaluate exactly which theories of liability Lead Plaintiff could allege and how to allege them. Following that investigation, Lead Plaintiff filed the Complaint on April 9, 2019. ECF 43.

19. The Complaint alleged violations of §§10(b), 20(a), and 20A of the Exchange Act and Rule 10b-5 promulgated thereunder on behalf of all persons who purchased or otherwise acquired McKesson common stock between October 24, 2013 and January 25, 2017, inclusive. ECF 43 at 1. The Complaint alleges that Defendants violated the securities laws by making materially false and misleading statements and omissions pertaining to McKesson. *Id.*, ¶¶135-182. Specifically, the

Complaint alleges that Defendants falsely attributed generic drug price inflation to non-existent supply disruptions affecting a small number of manufacturers and a small proportion of generic drugs (*id.*, ¶¶135-138, 141-142, 145-146, 148, 150, 154-155, 162), falsely represented that McKesson was negotiating competitive prices for its customers (*id.*, ¶¶79, 136, 138, 147-148, 153, 156, 159, 161-162, 164-165), misrepresented the competitiveness of the generic drug market (*id.*, ¶¶155-157), concealed that the Company's generic drug manufacturing subsidiary was part of an overarching generic pharmaceutical price-fixing conspiracy (*id.*, ¶¶155, 157, 159, 164), failed to disclose that the Company's Class Period financial results were positively impacted by, and heavily reliant upon, collusive profits (*id.*, ¶¶ 135, 138-139, 143-144, 147, 149, 151, 153, 158, 162, 164, 169-181), and falsely assured investors that McKesson's future earnings were "derisked" from further generic drug price deflation (*id.*, ¶¶160, 172, 179). The Complaint further alleges that when the relevant truth regarding the alleged misstatements was revealed through a series of partial disclosures in 2016-2017, artificial inflation was removed from the share prices of McKesson stock, causing the Class to suffer damages. *Id.*, ¶¶193-203. The Complaint also alleges that Defendant Hammergren sold McKesson common stock while in possession of material, non-public information. *Id.*, ¶¶230-235.

20. On June 10, 2019, Defendants moved to dismiss the Complaint in its entirety, raising several challenges under the Federal Rules of Civil Procedure ("FRCP") and the PSLRA. ECF 49. Defendants argued that Lead Plaintiff failed to adequately allege material falsity (both because Lead Plaintiff did not plead with particularity that McKesson joined, facilitated, or knew about the manufacturers' alleged conspiracy and because Lead Plaintiff did not identify any category of misstatements rendered false or misleading by virtue of alleged price fixing), scienter, and loss causation. *Id.* at 8-34. Defendants also sought dismissal of the §20A claims against Hammergren. *Id.* at 34-35. Lead Plaintiff opposed Defendants' motion on July 25, 2019 (ECF 53), and Defendants replied on August 26, 2019 (ECF 58). On October 18, 2019, the Court heard oral argument. ECF 62.

21. The Court issued the MTD Order on October 30, 2019. ECF 67. The Court denied in part and granted in part Defendants' motion to dismiss, finding that the Complaint failed to

sufficiently allege McKesson's participation in a price-fixing conspiracy. *Id.* at 10-12. Nonetheless, the Court concluded the Complaint adequately alleged that Defendants were aware of or recklessly disregarded price-fixing activity by generic drug manufacturers (*id.* at 18-21), and that such activity rendered three categories of challenged statements actionable: statements attributing the Company's increased profitability to generic drug price increases driven by "supply disruptions" (*id.* at 14-15); statements describing the generic drug market as competitive (*id.* at 16); and financial results accompanied by statements attributing those positive results to legitimate market forces (*id.* at 16-17). The Court also determined that three categories of statements were not adequately alleged as materially false and misleading: statements concerning the value McKesson provided to its customers by obtaining competitive pricing for generic drugs (*id.* at 15-16); statements concerning McKesson's manufacturing subsidiary, NorthStar Rx (*id.* at 16); and statements claiming McKesson had derisked its fiscal year 2017 earnings from generics inflation (*id.* at 17). The Court also concluded Lead Plaintiff adequately alleged loss causation (*id.* at 21-24), the control person claim against Defendants Hammergren and James Beer (*id.* at 24), and the insider trading claims against Defendant Hammergren (*id.* at 24-26).

22. On December 6, 2019, Defendants moved for leave to file a motion for reconsideration and clarification of the MTD Order. ECF 70. Defendants sought reconsideration of the Court's scienter analysis (*id.* at 2-9) and clarification as to whether the Court's loss causation analysis applied to all four corrective disclosures (*id.* at 10-13). Lead Plaintiff opposed the motion on December 9, 2019. ECF 71. On December 19, 2019, the Court denied Defendants' request for reconsideration and clarified that the Complaint pled loss causation as to the disclosures on January 11, 2016 and November 3, 2016. ECF 72 ("Reconsideration Order"). The Court held that loss causation as to the October 27, 2016 and January 25, 2017 disclosures was not adequately alleged. *Id.* at 3.

C. Lead Plaintiff Conducted Significant Discovery from Defendants and Third Parties

23. Following resolution of the motions to dismiss and for reconsideration, Lead Plaintiff promptly commenced fact discovery, including serving document requests and interrogatories directed to Defendants and subpoenas *ducus tecum* directed to third parties.

24. Within one month of the Reconsideration Order, Lead Plaintiff through its counsel conducted the Rule 26 conference with Defendants, submitted the Joint Case Management Conference Statement to the Court (ECF 77), participated in the Court's Case Management Conference (ECF 78), and served 46 requests for production of documents ("First Requests for Documents") and a total of 21 interrogatories on Defendants. On January 23, 2020, Lead Plaintiff served another 10 requests for production of documents (together with the First Requests for Documents, "Requests for Documents"). The Parties began their negotiations over Defendants' production of documents. Throughout the course of discovery, and following multiple, lengthy meet and confers and discovery disputes (discussed below), Defendants produced over 974,000 documents.

25. The Parties negotiated a protective order covering claims of confidentiality with respect to documents produced by the Parties and third parties, and on May 6, 2020, submitted to the Court the Stipulated Protective Order that governed production of documents in this case. ECF 91, 93. The Parties also negotiated a Stipulated Order re: Discovery of Electronically Stored Information that set out how the Parties would produce electronic discovery over the course of the Action. ECF 106, 107. The Parties also had extensive, lengthy negotiations over Defendants' use of technology-assisted review to review and produce documents, culminating in the Parties entering a Protocol Governing Production of Responsive Information Using Technology Assisted Review on March 4, 2021.

26. In addition, Lead Plaintiff served document subpoenas on multiple third parties and was successful in negotiating substantial document productions, allowing it to prove up its claims and bring this case to a successful resolution. These third parties largely comprised generic drug manufacturers alleged to have engaged in anticompetitive activities. The third parties also included

individuals who worked for manufacturers, organizations representing pharmaceutical distributors, and McKesson's auditor.

27. Defendants and each third party raised unique challenges to producing documents. For example, Defendants initially asserted that discovery concerning antitrust-related matters was not discoverable, but that instead "the proper scope of discovery in this case is limited to the information that was relied upon by Defendants in making the challenged statements or that otherwise informed Defendants' understanding of generic drug pricing at the time of the challenged statements." ECF 77 at 5-7. Further, the Parties had starkly different views on the number and identities of proper custodians, as well as the number and identities of appropriate generic drugs to include in the search protocol. These baseline disputes required multiple rounds of negotiations, correspondence, and drafting joint discovery letters to bring the matters before the Court. *See, e.g.*, ECF 94, 110, 112, 118, 131. As a result of the Parties' dispute, numerous third-party generic drug manufacturers also initially took the position that information in their possession was irrelevant to Lead Plaintiff's securities fraud claims against McKesson and refused to produce documents. Lead Counsel conducted a significant amount of legal research, and participated in multiple meet and confers and hearings in order to overcome many of the challenges raised and to have documents produced.

28. Lead Plaintiff served two key interrogatories (among 21 total interrogatories and 267 requests for admission served on Defendants) that sought identification of the generic drugs with supply disruptions and/or price increases that drove McKesson's sales and profitability each fiscal quarter. McKesson initially refused to answer these interrogatories, which required additional meet and confers, correspondence, joint discovery letters, and oral argument for Defendants to supplement their responses. *See, e.g.*, ECF 112.

29. Over the course of fact discovery, Lead Plaintiff received over 6.5 million pages of email, pdf, Word, Excel, and other files from Defendants and third parties. Lead Counsel assembled a team of attorneys, forensic accountants, and administrative staff to piece together and review the documents for evidence supporting its claims and refuting Defendants' defenses.

30. Lead Plaintiff also responded to Defendants' discovery, including 29 requests for documents and 12 interrogatories, pursuant to which Lead Plaintiff produced records, documents, and information. As to certain of the interrogatories, Defendants disputed the sufficiency and/or timing of Lead Plaintiff's responses, which required protracted negotiations, discovery letters to the Court, and oral argument. *See, e.g.*, ECF 172, 173, 201. Lead Plaintiff also prepared for and defended the deposition of Lead Plaintiff's market efficiency and loss causation expert, Dr. Steven Feinstein, and prepared for and took the deposition of Defendants' market efficiency and loss causation expert, Dr. Rene Stulz. Defendants also served document subpoenas on Lead Plaintiff's investment managers.

D. Lead Plaintiff Zealously Litigated Class Certification, Partial Summary Judgment, and Another Round of Motions to Dismiss

31. Lead Plaintiff filed its motion to certify the class pursuant to FRCP 23, which Defendants opposed. ECF 133, 139, 142, 148, 149. Defendants argued that certification of the full period from October 14, 2013 to November 3, 2016 was not appropriate because the November 2016 disclosure had no statistically significant price impact on McKesson's stock (ECF 139 at 5-10) and all relevant information that was corrected that date was known to the market by January 11, 2016 (*id.* at 10-15). Following discovery related to the propriety of class certification, and over Defendants' opposition, the Court certified the Class on April 8, 2021. ECF 159. In its order, the Court also permitted Defendants to file a motion for partial summary judgment as to the November 3, 2016 corrective disclosure. *See id.*

32. Pursuant to FRCP 56, Defendants moved for partial summary judgment on June 7, 2021. ECF 166. Defendants argued summary judgment as to the November 3, 2016 corrective disclosure was appropriate because the corrective information disclosed on that date had previously been circulating in the marketplace (*id.* at 10-17); loss causation cannot be based on the timing of criminal charges because that information was speculative (*id.* at 17-20); and the stock price decline that day was not statistically significant (*id.* at 20-25). Lead Plaintiff opposed Defendants' motion, Defendants replied, and Lead Plaintiff sought permission to file a supplemental expert declaration. ECF 177, 190, 200. On October 21, 2021, the Court heard oral argument. ECF 209.

33. The Court issued its order granting partial summary judgment the same day. ECF 212 ("MSJ Order"). In the order, the Court held there was no proximate causal relationship between McKesson's alleged fraud (*i.e.*, "that McKesson misled investors by suggesting that its profits were likely to continue because . . . the manufacturers' inflated drug prices were lawful") and any losses suffered by shareholders on November 3, 2016 because the corrective information had previously been disclosed. *Id.* at 7-10. The Court shortened the Class "to include all persons and entities that acquired McKesson common stock from October 24, 2013 through January 11, 2016." *Id.* at 10.

34. Following the MSJ Order, and based on information learned during discovery, Lead Plaintiff drafted and filed the Amended Complaint on December 29, 2021, which alleged a Class Period from October 24, 2013 through October 27, 2016, inclusive. ECF 223. The Amended Complaint kept intact the theory of fraud and violations alleged in the Complaint, but removed allegations dismissed in the Court's MTD and MSJ Orders (*see* ECF 223-1 at 1 n.1) and added new allegations, including allegations pertaining to two additional corrective disclosures (*see id.*, ¶¶159, 192-194, 196-214). The January 11, 2016 misrepresentation and October 27-28, 2016 corrective disclosure had previously been dismissed by the Court in its MTD Order, and the Amended Complaint realleged them based on Lead Counsel's review and analysis of information produced in discovery.

35. Defendants moved to dismiss the Amended Complaint on February 14, 2022. ECF 237, 240. Defendants argued that the January 2016 misstatement is inactionable because it was forward-looking, an opinion statement, and not false when made (*id.* at 10-12); the October 2016 disclosure did not contain information relevant to the fraud (*see id.* at 12-16); their supply disruption statements and financial results are not actionable (*see id.* at 16-21); and loss causation is inadequately alleged (*id.* at 21-25). Hammergren also sought dismissal of the §20A claim alleged against him. ECF 240. Lead Plaintiff opposed the motions (ECF 245, 248), and Defendants replied (ECF 253, 257).

36. Just prior to filing the Amended Complaint, Lead Counsel was arranging for depositions, including negotiating a limit of 30 noticed depositions per side, preparing deposition

files, and scheduling the first seven depositions of former McKesson employees. Discovery was stayed pending resolution of Defendants' motions to dismiss. ECF 225, ¶5.

III. THE SETTLEMENT

37. The $141,000,000 Settlement is the result of extensive arm's-length negotiations between the parties for nearly five months. The Settlement unmistakably provides the Class with a substantial benefit and eliminates the significant risks of proceeding with litigation. Lead Counsel believes that the Settlement is fair, reasonable, and an exceptional result for Class Members, considering the risk of falling short, and recovering nothing, at future inflection points, including Defendants' motions to dismiss the Amended Complaint, a subsequent motion for summary judgment, and trial.

A. Reaching the Settlement

38. The parties engaged Greg Danilow of Phillips ADR in direct settlement discussions during the course of the Litigation. Mr. Danilow has substantial experience mediating securities fraud class actions.

39. On May 6, 2022, the parties participated in a full-day, in-person mediation before Mr. Danilow. In advance of the mediation, the parties prepared and exchanged detailed mediation submissions, with each side discussing the strengths and weaknesses of their claims and the other's defenses. At the mediation, the parties responded to merits- and damages-related questions from Mr. Danilow and his staff. Although the parties made substantial progress during the mediation session, they did not reach an agreement to settle the Action.

40. Although the case did not resolve at the mediation, the mediation efforts continued. The parties had further mediation conversations with Mr. Danilow. Ultimately, these subsequent mediation efforts resulted in Mr. Danilow on September 21, 2022 issuing a mediator's proposal to resolve the Action for an all cash payment of $141,000,000, which the Parties eventually accepted.

41. Thereafter, on November 30, 2022, Lead Plaintiff filed the Stipulation of Settlement and its Notice of Unopposed Motion and Unopposed Motion for Preliminary Approval of Proposed Settlement, and Memorandum of Points and Authorities in Support Thereof, including attachments ("Preliminary Approval Motion"), which outlined the agreement in detail. ECF 275. On January 20,

2023, the Court heard the motion (ECF 280) and issued its Order Preliminarily Approving Settlement and Providing for Notice (the "Preliminary Approval Order"), which granted preliminary approval of the parties' Stipulation, approved the form and manner of notice to the Class, and set a schedule for events leading up to the final approval hearing, including objection, opt-out, and claims-filing deadlines (ECF 281).

B. Reasons for the Settlement

42. Lead Plaintiff and Lead Counsel strongly endorse the Settlement. Lead Plaintiff is a sophisticated institutional investor and has actively overseen the prosecution of this Litigation since 2018. Lead Counsel, meanwhile, specializes in complex securities litigation and is highly experienced in such litigation. *See* accompanying Declaration of Spencer A. Burkholz Filed on Behalf of Robbins Geller Rudman & Dowd LLP in Support of Application for Award of Attorneys' Fees and Expenses ("RGRD Declaration"), Ex. H. Based on their experience and intimate knowledge from litigating this case, Lead Counsel and Lead Plaintiff determined that the Settlement was in the best interest of the Class.

43. An all-cash payment of $141,000,000 represents a significant recovery for the Class in light of the Court's prior rulings about the sufficiency of Lead Plaintiff's allegations, and the multiple opportunities for dismissal still available to Defendants. The most imminent threat of dismissal arises from Defendants' pending motions to dismiss. ECF 237, 240. As discussed above, Defendants filed motions seeking dismissal of the Action in its entirety in response to the Amended Complaint. While Lead Plaintiff believes it had strong arguments to defeat the motions, Lead Plaintiff cannot be sure how the Court would rule on either motion, and imminent dismissal on this basis is a real possibility. Indeed, the Court expressed concerns at the hearing on Defendants' motion for partial summary judgment that requiring a company to describe the conduct of third parties over which the company "ha[s] no control" sets "a very, very high standard." Oct. 21, 2021 Hg. Tr. at 8-9.

44. Even if the Court disagreed with Defendants and Lead Plaintiff defeated the motions to dismiss, continuing to litigate would present numerous additional risks. For instance, Lead Plaintiff risks that Defendants would prevail on the merits after a summary judgment motion or trial.

Regarding a decision on the merits, Lead Plaintiff must meet its burden of proof for all elements of its claims, while Defendants need only succeed on one defense to defeat the entire Action.

45. Securities class actions face serious risks of dismissal and non-recovery at all stages, and these risks were heightened in this difficult action. For example, the need to prove an antitrust "case within a case" to establish liability – specifically, the falsity of Defendants' public statements related to the alleged anticompetitive conduct of McKesson's generic drug manufacturing suppliers – greatly amplified Lead Plaintiff's litigation risks. Lead Counsel anticipates that Defendants would take the position that, in order to establish liability, Lead Plaintiff would have had to prove an underlying antitrust conspiracy(ies) against generic drug manufacturers before Lead Plaintiff could establish any alleged securities law violations. Indeed, Defendants have argued that "[t]o establish the element of falsity, Plaintiff ***must*** prove the conspiracy(ies) upon which its securities fraud claims are based" (ECF 173 at 1 n.1), and likely would have argued following discovery that Lead Plaintiff could not establish that McKesson's generic drug manufacturing suppliers participated in a wide-ranging antitrust conspiracy that caused the dramatic price increases at issue that, in turn, drove in part McKesson's profits and revenues.

46. While Lead Plaintiff believes it had strong arguments in response, it is clear that if the Court or a jury were to have credited such arguments at summary judgment or trial, any class recovery could have been eliminated outright. *E.g.*, *In re Mylan N.V. Sec. Litig.*, 2023 WL 2711552, at *27-*34 (S.D.N.Y. Mar. 30, 2023).

47. In addition to the risk of outright dismissal, Lead Plaintiff also faces substantial risk that the potential recoverable damages could be trimmed significantly, as they were by the Court's MTD and MSJ Orders, which narrowed the Class Period, including by dismissing a corrective disclosure in response to which McKesson's stock price dropped 22.67%. *See* ECF 223-1, ¶17. The summary judgment and trial stages each present an opportunity for Defendants to further narrow the Class Period, or strike specific corrective disclosures, which would limit recoverable damages significantly. Indeed, Defendants have repeatedly argued that the alleged corrective disclosure on January 11, 2016 – the only corrective disclosure remaining following the MTD and MSJ Orders – cannot, standing alone, constitute a corrective disclosure, as the Court observed in the MTD Order

that "on their own . . . disappointing financial results . . . would [not] be sufficient to demonstrate loss causation." MTD Order at 22. Lead Plaintiff would need to continue to combat such arguments.

48. In addition to risks associated with potentially losing on the merits, Lead Plaintiff faces the inevitable certainty that there could be substantial delay in its recovery by proceeding with the Litigation. A final decision on the merits after a jury trial and any appeals, even if Lead Plaintiff cleared all the obstacles described above, could take several years to obtain.

49. In contrast to these risks, the Settlement now guarantees a prompt and sizeable recovery for the Class without the risks of lesser or no recovery associated with further litigation. Lead Plaintiff and Lead Counsel have assessed and weighed the risks and the potential for significant delay against the benefit of substantial recovery now, and have determined that the Settlement represents an exceptional result for the Class.

C. The Plan of Allocation Is Fair and Reasonable

50. Lead Plaintiff has proposed a Plan of Allocation to govern the method by which Class Members' claims will be calculated, *i.e.*, how the proceeds of the Settlement will be allocated among Class Members who suffered economic losses as a result of the alleged fraud. The Plan of Allocation provides that the Net Settlement Fund will be distributed to Class Members who submit timely, valid Proofs of Claim and whose claims for recovery have been permitted under the terms of the Settlement Agreement ("Authorized Claimants"). The Plan of Allocation provides that Class Members will only be eligible to participate in the distribution of the Net Settlement Fund if they purchased or otherwise acquired McKesson common stock during the Class Period and have a Recognized Loss Amount as described in the Notice.

51. Lead Counsel developed the Plan of Allocation in conjunction with its loss causation and damages consultant who calculated the estimated alleged artificial inflation in McKesson common stock proximately caused by Defendants' alleged false and misleading statements and material omissions. To do this, the consultant considered the market and industry adjusted price changes for such securities. *See* Declaration of Ross D. Murray Regarding (A) Notice

Dissemination; (B) Publication/Transmission of Summary Notice; and (C) Requests for Exclusion Received to Date ("Murray Decl."), Ex. C, Notice at 5-8, attached hereto as Exhibit B.

52. Under the Plan of Allocation, for each Class Period purchase of McKesson common stock that is properly documented, a "Recognized Loss Amount" will be calculated according to the formulas described in the Notice. In simple terms, the calculation of a Claimant's Recognized Loss Amount is based on a formula that takes into account such information as: (a) when a Claimant's share was purchased and sold; (b) the amount of the alleged artificial inflation per share at the time of purchase and sale; and (c) the purchase price of the share. Because the alleged corrective disclosures reduced the artificial inflation in stages over the course of the Class Period, the Recognized Loss Amounts of Claimants may vary.

53. In sum, the Plan of Allocation represents a reliable and time-tested method by which to weigh, in a fair and equitable manner, the claims of Authorized Claimants against one another for the purpose of making *pro rata* allocations of the Net Settlement Fund.

IV. THE APPLICATION FOR ATTORNEYS' FEES AND EXPENSES

54. The successful prosecution of this Litigation required Lead Counsel and its para-professionals to perform 44,164 hours of work, valued at $27,519,601.50, and incur $1,027,452.95 in expenses and charges, as detailed in the accompanying RGRD Declaration.

55. Based on the result achieved, the unique risks of this case, and Lead Counsel's extensive efforts on behalf of the Class, Lead Counsel is applying for compensation from the Settlement Fund on a percentage basis in the amount of 25% of the Settlement Amount, and for $1,027,452.95 in litigation expenses and charges, plus interest at the same rate and for the same time as that earned on the Settlement Fund.

56. Lead Counsel and Lead Plaintiff respectfully submit that the fees and expenses described above should be granted.

A. The Requested Attorneys' Fees Are Fair and Reasonable

1. The Results

57. The fact that Lead Counsel was able to obtain such an exceptional result for the Class supports the requested fee. The $141,000,000 cash Settlement represents approximately 20% of estimated recoverable damages for the one corrective disclosure that remained following the MTD and MSJ Orders, and is more than 11 times the size of the median percentage recovery for securities class actions settled in 2022 with estimated damages of between $500 and $999 million. *See* Laarni T. Bulan & Laura E. Simmons, *Securities Class Action Settlements: 2022 Review and Analysis* at 5-6 (Cornerstone Research 2023), attached hereto as Exhibit C; Janeen McIntosh, Svetlana Starykh, & Edward Flores, *Recent Trends in Securities Class Action Litigation: 2022 Full-Year Review*, at 17, Fig. 18 (NERA Jan. 24, 2023), attached hereto as Exhibit D.

2. The Complexity and Risk Inherent in the Litigation

58. The requested fee is also reasonable in light of the very significant risks Lead Plaintiff faced over the four-plus years the case was litigated, as well as the complexity of the Litigation.

59. The Litigation was highly complex, both procedurally and substantively, which rendered the path to resolution time-consuming, challenging, and fraught with risk. Lead Counsel vigorously prosecuted the Class's claims for over four years against top-tier law firms. In doing so, Lead Counsel undertook extensive investigative efforts and engaged in substantial briefing of complex legal and factual issues on motions to dismiss and for partial summary judgment.

60. Lead Counsel undertook this complicated case on a wholly-contingent basis, and pursued the Class's claims against a large, sophisticated corporation with virtually limitless resources to fight such allegations.

61. Lead Counsel conducted an extensive pre-filing investigation; drafted detailed complaints; undertook substantial discovery; litigated multiple discovery disputes; obtained class certification; and opposed partial summary judgment. The Litigation settled only after Lead Counsel overcame a relentless stream of complex legal and factual challenges.

62. The requested fee is also reasonable in light of the substantial risks Lead Plaintiff faced. This case posed higher risk than most securities class actions from the outset. The risk of outright dismissal increased substantially as this Court dismissed all but one corrective disclosure, which it had previously criticized as being unable to establish loss causation on its own. *See* MTD Order at 22. Nonetheless, Lead Counsel proceeded with an expensive and time-consuming discovery review process and complaint amendment in order to secure recovery for the Class.

63. In light of the complexity of the factual and legal issues presented during the Litigation and the substantial risks that Lead Plaintiff overcame, Lead Counsel submits that the requested benchmark 25% fee is fair, reasonable, and should be approved.

3. The Contingent Nature of the Fee and the Financial Burden Carried by Lead Counsel

64. Lead Counsel prosecuted this Litigation on an "at-risk" contingent-fee basis. At the outset in 2018, Lead Counsel knew it was embarking on complex and expensive litigation with no guarantee of compensation for the time, money, and effort it poured into this case over its multi-year lifespan. Accordingly, Lead Counsel fully assumed the risk of an unsuccessful result and to date has received no compensation for services rendered or the significant expenses incurred in litigating this Action.

65. In undertaking the responsibility for prosecuting the Litigation, Lead Counsel assured that sufficient attorney resources were dedicated to advancing Lead Plaintiff's and the Class's claims over the years, and that sufficient funds were available to advance the expenses required to zealously pursue such complex litigation. Lead Counsel received no compensation, while at the same time incurring over $27.5 million in lodestar and over $1 million in litigation expenses and charges in prosecuting this Litigation for the benefit of the Class.

66. Lead Counsel also shouldered the risk that no recovery would be achieved. Lead Counsel knows from experience that success in contingent-fee litigation is never assured, and that the commencement of a securities class action in no way guarantees a recovery. Instead, it takes diligence, commitment, and years of tireless work by skilled counsel to secure recovery for the Class.

67. Courts have repeatedly found that having experienced and able counsel enforce the securities laws promotes the public interest. Vigorous private enforcement of the federal securities laws can only occur if private plaintiffs – particularly institutional investors like Lead Plaintiff – can obtain some parity in representation with that available to large corporate defendants. If this important public policy is to be carried out, courts should award fees that will adequately compensate private plaintiffs' counsel, taking into account the enormous risks inherent in prosecuting securities class actions on a contingent-fee basis.

4. The Standing and Expertise of Lead Counsel

68. Lead Counsel is among the most experienced and skilled securities litigation law firms in the field, as illustrated by Lead Counsel's firm biography attached as Exhibit H to the RGRD Declaration. Indeed, Lead Counsel has consistently obtained significant recoveries for defrauded investors, including in: *In re Enron Corp. Sec. Litig.*, No. H-01-3624 (S.D. Tex.) (recovering in excess of $7.2 billion for investors); *Jaffe v. Household Int'l, Inc.*, No. 02-C-05893 (N.D. Ill.) (largest securities class action settlement following a trial: $1.575 billion); *In re Valeant Pharms. Int'l, Inc. Sec. Litig.*, No. 3:15-cv-07658 (D.N.J.) (largest pharmaceutical securities class action settlement ever: $1.21 billion); *In re Am. Realty Cap. Props., Inc., Litig.*, No. 1:15-mc-00040 (S.D.N.Y.) (recovering $1.025 billion for investors); and *In re Twitter Inc. Sec. Litig.*, No. 4:16-cv-05314 (N.D. Cal.) (recovering $809.5 million for investors, the largest securities fraud class action recovery in more than a decade in the Ninth Circuit and the second-largest ever in that Circuit).

69. The quality of work Lead Counsel provided in attaining the Settlement should also be evaluated in light of the quality of opposing counsel in this Litigation. Over the course of the Litigation, Defendants were well-represented by teams of attorneys from Sidley Austin LLP and Simpson Thacher & Bartlett LLP, prominent international law firms. Faced with knowledgeable, experienced, and formidable opposing counsel, Lead Counsel were nonetheless able to withstand dismissal and summary judgment, and still persuade Defendants to settle the Action for $141,000,000.

5. The Class's Reaction to Date

70. The Notice advises the Class that Lead Counsel intends to request an award of attorneys' fees in an amount not to exceed 25% of the Settlement Amount, plus interest, and for payment of litigation expenses not to exceed $1.5 million, plus interest. *See* Murray Decl., Ex. C, Notice at ¶5. Class Members have until May 12, 2023 to submit objections to Lead Counsel's fee and expense application.

71. While the time to object to the fee and expense application has not expired, it is my understanding that to date, no Class Members have objected to the Settlement, demonstrating widespread acceptance of the deal and its terms.

B. Application for Litigation Expenses and Charges

72. In addition to fees, Lead Counsel requests $1,027,452.95 for expenses and charges reasonably and necessarily incurred in prosecuting Lead Plaintiff's claims for the past four years. Lead Counsel respectfully submits that this amount is appropriate, fair, and reasonable, and should be approved.

73. Since 2018, Lead Counsel knew it might never recover any of the expenses it incurred in prosecuting this case. Lead Counsel also understood that, even assuming the case was ultimately successful, an award of expenses would not compensate it for the lost use of the funds it had dedicated to this Litigation. Accordingly, Lead Counsel was motivated to, and did, take steps to minimize expenses where practicable without jeopardizing the vigorous and efficient prosecution of this Litigation.

74. As set forth in the RGRD Declaration, the expenses, charges, and costs incurred were necessary and appropriate in light of the complex nature of the Action and were associated with, among other things, hiring consultants, service of process, online legal and factual research, document management, transcript charges, and mediation.

V. CONCLUSION

75. In light of the $141,000,000 Settlement obtained by Lead Plaintiff and Lead Counsel, the substantial risks Lead Counsel faced, the exceptional quality of Lead Counsel's work, the

contingent nature of the requested fee, and the substantial complexity of the case, Lead Plaintiff and its Counsel respectfully submit that the Court should approve the Settlement and Plan of Allocation as fair, reasonable, and adequate, and approve Lead Counsel's application for an award of attorneys' fees and expenses.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 28th day of April 2023, at San Diego, California.

LUKE O. BROOKS

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on April 28, 2023, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the email addresses on the attached Electronic Mail Notice List, and I hereby certify that I caused the mailing of the foregoing via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

s/ Spencer A. Burkholz

SPENCER A. BURKHOLZ

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Mailing Information for a Case 3:18-cv-06525-CRB Evanston Police Pension Fund v. McKesson Corporation et al

Electronic Mail Notice List

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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.

- (No manual recipients)