UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE AKORN, INC. DATA INTEGRITY SECURITIES LITIGATION	Civ. A. No. 1:18-cv-01713 Hon. Steven C. Seeger

DECLARATION OF ANDREW J. ENTWISTLE IN FURTHER SUPPORT OF LEAD PLAINTIFFS' MOTION FOR (I) FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION; AND (II) AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

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I, ANDREW J. ENTWISTLE, declare pursuant to 28 U.S.C. § 1746 as follows:

1. I, Andrew J. Entwistle, am the managing partner of the law firm of Entwistle & Cappucci LLP ("E&C" or "Lead Counsel"), counsel for Lead Plaintiffs Gabelli & Co. Investment Advisors, Inc. and Gabelli Funds, LLC (together, "GAMCO" or "Lead Plaintiffs") and Court–appointed Lead Counsel for the Settlement Class in this class action (the "Action").[1] I have personal knowledge of the matters set forth herein based upon my close supervision of, and active participation in, the Action.

2. I respectfully submit this declaration (the "Declaration") in further support of Lead Plaintiffs' Motion for: (i) Final Approval of Class Action Settlement and Plan of Allocation; and (ii) Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Final Approval Motion" or "Motion") (ECF Nos. 144-148).

I. INTRODUCTION

3. The proposed Settlement will resolve all claims asserted in the Action against Defendants on behalf of the Settlement Class. In turn, the Settlement Class will receive: (i) up to $30 million in cash; (ii) approximately 8.7 million shares of Akorn common stock (valued at between $32.5 million and $65.4 million);[2] and (iii) up to $60.0 million in Contingent Value Rights ("CVRs") issued by Akorn (the "Settlement Consideration"). Lead Plaintiffs estimate the dollar value of the Settlement Consideration to be approximately $62.5 million to $155.4 million.

4. The Settlement was reached after extensive litigation efforts by Lead Plaintiffs and comprehensive negotiations between Lead Counsel and counsel for Defendants with the assistance

[1] Unless otherwise defined, all capitalized terms herein have the same meanings set forth in the Stipulation and Agreement of Settlement, dated August 9, 2019 (the "Stipulation"). (ECF No. 127-1).

[2] This range reflects the closing price of Akorn common stock on December 9, 2019 ($3.73 per share) at the low end, and the highest price at which shares of Akorn common stock have traded since the decision of the Delaware Chancery Court on October 1, 2018 ($7.49 per share) at the high end.

of former United States District Court Judge Layn R. Phillips, a well–respected and experienced mediator.

5. The Settlement benefits each member of the Settlement Class by conferring a guaranteed and immediate benefit while avoiding the substantial risks and expense of continued litigation, including the risk of recovering less than the Settlement amount after substantial delay, or of no recovery at all. As discussed below, the Settlement's combination of cash, Akorn Settlement Shares and CVRs provides valuable and immediate recovery paired with additional upside in the event Akorn's "turnaround plan" returns the Company to profitability.

6. The recovery is particularly significant given Akorn's precarious financial condition. In the Company's recently filed third quarter Form 10-Q, Akorn disclosed that there is a "substantial doubt as to the entity's ability to continue as a going concern within one year." Notably, pursuant to Akorn's standstill agreement with its lenders (described further below), Akorn must either refinance its existing debt or enter into a comprehensive amendment with its lenders by December 13, 2019. If Akorn does not reach an agreement by December 13, 2019, an event of default will occur and bankruptcy proceedings will likely commence. Moreover, Akorn's ability to use cash to fund a settlement of judgment without approval of its debtholders is severely constrained.

7. Although Akorn has implemented a "turnaround plan" to make the Company profitable, Lead Plaintiffs and Lead Counsel believe several major obstacles remain, including: (i) the continuing costs of remediating its FDA compliance issues, which the Delaware Chancery Court found to be significant in the Akorn–Fresenius litigation (the "Merger Litigation"); (ii) a merger–related counterclaim by Fresenius filed in the Delaware Chancery Court for more than $100 million in damages; and (iii) the ongoing bankruptcy risk stemming from the Fresenius suit,

the debt renegotiation, and this and related litigation. Further, the Company is continuing to lose money, reporting a GAAP net loss of $146.1 million for the nine month period ended September 30, 2019, and EBITDA of negative $105.6 million for the same period.

8. At the time the Settlement was reached, Lead Plaintiffs had a clear understanding of the strengths and weaknesses of the asserted claims given the thorough prosecution of the case by Plaintiffs' Counsel. Plaintiffs' Counsel conducted extensive work to prosecute and evaluate the claims, including: (i) conducting a thorough investigation of the claims against Defendants; (ii) filing two detailed consolidated amended class action complaints; (iii) review and analysis of voluminous documents produced by Defendants in fact discovery and consideration of the extensive trial record in the Merger Litigation; (iv) consulting with experts to assess class–wide damages, market efficiency and loss causation, as well as Akorn's solvency and ability to pay; and (v) preparing and filing Lead Plaintiffs' motion for class certification, which included a detailed expert report on class–wide reliance and related issues.

9. While Lead Plaintiffs and Lead Counsel were confident in the strength of the asserted claims, the Settlement Class faced the possibility of a much smaller recovery or no recovery at all had the Action proceeded to summary judgment or trial. The Settlement represents an outstanding recovery for the Settlement Class considering these risks and Lead Plaintiffs' thorough appreciation of the strengths and weaknesses of the asserted claims.

10. For these reasons, and for the additional reasons set forth below, I respectfully submit that the Settlement and Plan of Allocation are fair, reasonable, and adequate and warrant final approval under Federal Rule of Civil Procedure 23(e).

II. AKORN'S PRECARIOUS FINANCIAL CONDITION

11. The Settlement is carefully structured to maximize the Settlement Class Members' recovery in light of Akorn's precarious financial condition. Indeed, Akorn's ability to use cash to fund a judgment or settlement is severely constrained by the terms of its standstill agreement.

12. On May 6, 2019, Akorn and certain of its lenders entered into a Standstill Agreement and First Amendment to its Term Loan Agreements (the "Standstill Agreement"), which provides, among other things, that Akorn must enter into a comprehensive amendment or refinance to address its outstanding term loans by December 13, 2019. These loans total approximately $843 million. If Akorn fails to address these issues by December 13, 2019, Akorn will be in default.

13. Notably, the Negative Covenants and Other Covenants in the Standstill Agreement severely restrict Akorn's ability to use assets to fund a judgment or settlement in connection with this litigation without prior approval by the Company's lenders.

14. Even if Akorn could use available assets to fund a greater judgment or settlement without the approval of its lenders, Akorn does not have the cash on hand necessary to do so. As of June 30, 2019, Akorn reported $178 million in cash on its balance sheet. However, Akorn also reported a net working capital of negative $439.9 million. In other words, Akorn faces imminent debt repayments, from line items such as accounts receivable ($173 million) and inventory ($163 million), that exceed its cash on hand ($178 million).

15. In addition to Akorn's financial woes, the Company faces a counterclaim by Fresenius in the Merger Litigation for breach of contract damages of more than $100 million. Both parties have filed summary judgment motions regarding the breach of contract claim. Briefing in the Chancery Court was completed on December 9, 2019. Given Vice Chancellor Laster's

familiarity with the facts and issues in that case (he presided over a five-day bench trial and issued a 246 page Memorandum Opinion), it is likely that a decision will be issued soon hereafter.

16. Akorn also faces ongoing financial challenges related to its data integrity problems – *i.e.*, the same alleged wrongdoing that gave rise to this litigation. Akorn continues to spend significant resources to remediate its regulatory compliance issues. It has also been unable to quickly receive FDA approvals for new products, and has experienced recent FDA compliance concerns. For example, in an FDA Warning Letter for Akorn's Somerset, New Jersey facility in June 2019, the FDA found, among other things, that despite ongoing remediation efforts, Akorn still had inadequate investigations into trial injections and other data integrity problems (the same type of problems Lead Plaintiffs allege Akorn suffered from, but concealed from investors).

17. In addition to spending its diminishing funds to remediate its regulatory compliance issues, Akorn appears to have had difficulty introducing new products to capitalize on its purportedly valuable "product pipeline." Indeed, only one of Akorn's five U.S. facilities (Amityville) has received an ANDA approval from the FDA in the last 16 months. Unsurprisingly, in the Merger Litigation the Chancery Court found Akorn's data integrity problems will likely have a financial impact on the Company totaling hundreds of millions of dollars.

III. THE SETTLEMENT SATISFIES THE REQUIREMENTS FOR FINAL APPROVAL

18. I respectfully submit that the Settlement satisfies the elements of Federal Rule of Civil Procedure 23(e) and applicable Seventh Circuit precedent:

A. Lead Plaintiffs And Plaintiffs' Counsel Adequately Represented The Class

19. Lead Plaintiffs have litigated the Action on behalf of the Settlement Class since March 2018. Among other things, Lead Plaintiffs consulted with Lead Counsel on litigation strategy and case developments, collected extensive internal documents in response to Defendants'

discovery requests, and made representatives available to Lead Counsel for critical fact gathering in support of the alleged claims. Lead Plaintiffs also attended both mediation sessions before Judge Phillips and were closely involved in all settlement negotiations.

20. Plaintiffs' Counsel has vigorously represented the Settlement Class throughout the litigation. Among other things, Plaintiffs' Counsel has: (i) conducted a comprehensive factual investigation of the claims at issue in the Action; (ii) prepared detailed amended complaints; (iii) briefed and argued a motion to lift the PSLRA discovery stay; (iv) engaged in extensive factual discovery; (v) reviewed and analyzed the extensive record from the Merger Litigation; (vi) reviewed and prepared for the production of documents from Lead Plaintiffs' internal files; (vii) prepared a comprehensive submission in support of class certification; (viii) consulted with experts on issues pertaining to class–wide damages, loss causation, and Akorn's solvency; and (ix) engaged in protracted arm's–length settlement negotiations with counsel for Defendants. Moreover, since executing the Stipulation of Settlement in August 2019, Lead Counsel has developed the Plan of Allocation, sought and obtained preliminary approval of the Settlement, and worked with the Claims Administrator to provide Notice to potential Settlement Class Members.

B. The Settlement Was Negotiated At Arm's–Length And There Was No Fraud Or Collusion

21. The Settlement was reached after extensive arm's–length negotiations by experienced counsel with the assistance of Judge Phillips (Ret.), a well–respected mediator. The parties engaged in two formal in–person mediation sessions with Judge Phillips on May 3, 2019 and May 21, 2019.

22. Following the mediation sessions, Lead Plaintiffs and Defendants continued to negotiate for the next three months through experienced counsel and with the assistance of Judge Phillips. The parties reached the Settlement only after thorough negotiations that considered the

relative strengths and weakness of the alleged claims and defenses. There was no fraud or collusion in reaching the Settlement.

C. The Settlement Is Fair, Reasonable And Adequate Given The Costs, Risks, And Delay Of Trial And Appeal

23. Despite significant evidence supporting Lead Plaintiffs' claims, Lead Plaintiffs realize that the Settlement Class faces considerable risks in pursuing the Action through trial and appeal. Lead Plaintiffs and counsel carefully considered each of these risks in reaching the Settlement.

24. Lead Plaintiffs and Lead Counsel faced significant challenges and defenses on each element of the claims asserted against Defendants. These defenses include disputing, among other things, Lead Plaintiffs' ability to establish: (i) scienter, (ii) falsity, (iii) that the alleged misstatements are actionable under the federal securities laws, (iv) loss causation, and (v) a class-wide theory of damages necessary to certify the class. Lead Plaintiffs took into the account the significant risks of not being able to prove each element of their claim.

25. In addition to the many risks inherent in securities class action litigation, Lead Plaintiffs also faced the additional significant risk concerning Defendant Akorn's precarious financial condition. In Lead Plaintiffs' view, and as noted above, Akorn faces numerous obstacles to returning to profitability. First, Akorn must remediate its FDA compliance issues, which the Delaware Chancery Court found likely to cost hundreds of millions of dollars. Second, Akorn faces a Merger–related counterclaim by Fresenius filed in the Delaware Chancery Court for more than $100 million in damages. Third, Akorn is required to imminently refinance or renegotiate more than $840 million in debt, which must be completed by December 13, 2019. Given these factors, Akorn faces an ongoing bankruptcy risk and there is a significant risk that Akorn would not be able to satisfy a significant judgment obtained at trial.

26. Akorn is likely unable to fund a significantly greater judgment or settlement than the Settlement Consideration. Akorn's balance sheet and the terms of Akorn's debt severely restrict its ability to use cash and other assets to fund the Settlement or to pay a judgment in the Action. Moreover, Akorn is funding the cash component of the litigation using the Applicable Insurance Policies. Should the litigation continue, most, if not all, of the funds available from these policies will be used to defend the Action. Accordingly, further litigation against Akorn runs the risk that Akorn would have even fewer assets available to satisfy a judgment or settlement at a later stage of the proceedings.

27. Given the risks outlined above, including Akorn's precarious financial condition, I submit that the Settlement represents an excellent recovery for the Settlement Class.

D. The Proposed Method Of Distributing Settlement Proceeds Is Effective

28. The proceeds of the Settlement, after deducting all Taxes, Tax Expenses, Notice and Administration Expenses, and attorneys' fees and Litigation Expenses awarded by the Court (the "Net Settlement Fund"), will be distributed to eligible Settlement Class Members according to a plan of allocation approved by the Court.

29. Lead Plaintiffs' proposed plan of allocation (the "Plan of Allocation" or "Plan") is set forth in the Notice mailed to potential Settlement Class Members. Lead Counsel developed the Plan of Allocation in consultation with Lead Plaintiffs' expert, Dr. David Tabak.

30. The Plan is intended to compensate Settlement Class Members who purchased Akorn common stock during the Class Period at prices that Lead Plaintiffs allege were artificially inflated by the alleged material misstatements or omissions, and who incurred losses when the alleged misrepresentations were revealed and the price of Akorn common stock declined. The Plan is consistent with allocation methods approved by courts in this Circuit, as well as Dr. Tabak's previously–submitted expert report in support of class certification.

31. I respectfully submit that the Plan of Allocation provides a fair and reasonable method for disbursing the Net Settlement Fund to the Settlement Class. Further, no Settlement Class Members have objected to the Plan of Allocation.

E. The Requested Attorneys' Fees And Expenses Are Fair And Reasonable

32. In addition to seeking final approval of the Settlement and Plan of Allocation, Lead Counsel applied to the Court for an award of attorneys' fees to Plaintiffs' Counsel of 25% of each component of the Settlement Consideration. Plaintiffs' Counsel also requests payment for expenses incurred by Plaintiffs' Counsel in connection with the prosecution of the Action in the amount of $1,040,077.52.

33. Based on the results achieved, the extent and quality of the work performed, the significant risks of the litigation, and the fully contingent nature of the representation, Lead Counsel has requested a fee award which Lead Plaintiffs and Plaintiffs' Counsel believe is fair, reasonable, and consistent with the percentages awarded in class actions in this District and Circuit for comparable settlements.

34. No Settlement Class Members have objected to the requested attorneys' fees or the reimbursement of litigation expenses.

F. The Parties' Settlement Agreement And Incorporated CVR Agreement And Supplemental Agreement Are Fair, Reasonable, And Adequate

35. In connection with the Settlement, the parties have executed the following agreements: (i) Stipulation of Settlement, (ii) CVR Agreement, and (iii) Supplemental Agreement.

36. The Stipulation of Settlement has been filed with the Court and details the Settlement Consideration, each of the parties' respective rights and obligations under the Settlement, and the mutual release of claims by the parties, among other things. (ECF No. 127–

1). The CVR Agreement detailing the operation of the CVR component of the Settlement Consideration, was also filed with the Court. (ECF No. 127–7).

37. The parties' confidential Supplemental Agreement also does not affect the fairness of the Settlement. This Supplemental Agreement merely allows Defendants to terminate the Settlement if a defined threshold of Settlement Class Members request exclusion from the Settlement Class, which is a standard provision in class action settlements.

G. The Settlement Treats Settlement Class Members Equitably

38. There is no preferential treatment for any member of the Settlement Class. Lead Plaintiffs and the other Settlement Class Members will receive recoveries based on the same formula as detailed in the Plan of Allocation. The Claims Administrator will uniformly apply the plan to calculate each claimant's Recognized Loss based on the transaction data submitted with each claim.

39. Following the calculation of each claimants' Recognized Loss, each Authorized Claimant will receive its pro rata share of the Net Settlement Fund. Thus, the Plan of Allocation treats all Settlement Class Members fairly and equitably. There have been no objections to the Plan of Allocation.

H. Lead Counsel, Lead Plaintiffs And Settlement Class Members Support Final Approval

40. Lead Counsel, Lead Plaintiffs and Settlement Class Members continue to support the Settlement. Indeed, despite the large number of notices provided to potential Settlement Class members, no one objected to the amount of the Settlement Consideration, the proposed Plan of Allocation, or the request for attorneys' fees and reimbursement of litigation expenses.

41. The only objection concerns a limited issue relating to the scope of the releases in the Settlement (*see* Section VII below).

I. The Stage Of The Proceedings And Amount Of Discovery Completed Favor Final Approval

42. When the Action settled, Lead Plaintiffs had recently moved for class certification and completed substantial discovery. This included, among other things, the (i) exchange of initial disclosures and letters concerning discovery issues; (ii) review and analysis of over 3.75 million documents produced by Defendants and third parties using targeted searches; (iii) review and analysis of the voluminous record in the Merger Litigation; (iv) collection and review of over 89,000 document pages from Lead Plaintiffs' internal files in preparation for production; and (v) consultation with experts on both merits and class certification issues.

43. In addition to this extensive discovery, the parties exchanged two rounds of confidential mediation statements in advance of the mediation sessions before Judge Phillips. These statements contained details regarding each parties' respective litigation positions and arguments.

44. Accordingly, I respectfully submit that at the time of the Settlement, the parties were well informed of the strengths and weaknesses of their positions.

IV. THE SETTLEMENT CLASS SHOULD BE CERTIFIED

45. The Settlement Class is defined as:

> all persons and entities that purchased or otherwise acquired Akorn's common stock from November 3, 2016 through January 8, 2019, inclusive, and were damaged thereby, including any and all of their respective successors in interest, predecessors, representatives, trustees, executors, administrators, heirs, assigns or transferees, immediate and remote, and any person or entity acting for or on behalf of, or claiming under, any of them.
>
> Excluded from the Settlement Class are:
>
> (i) Defendants; (ii) any person who was an officer, director or managing agent of Akorn or any of its subsidiaries or affiliates at any point during the Class Period; (iii) members of the immediate family of any of the foregoing individuals (including all trusts and other entities related to, owned or controlled by such individuals); (iv) any affiliate of Akorn; (v) any entity in which any Defendant has

or had a controlling interest; and (vi) the legal representatives, heirs, predecessors, successors or assigns of any of the foregoing.

46. Also excluded from the Settlement Class are any persons or entities who or which validly exclude themselves by submitting a request for exclusion from the Settlement Class in accordance with the requirements set forth in the Notice. Copies of the requests for exclusion are attached as Exhibit C to the Supplemental Declaration of Luiggy Segura ("Segura Decl.") filed herewith as Exhibit 1, and the names of the entities requesting exclusion are also specified in Exhibit 1 to the [Proposed] Order of Final Approval and Final Judgment submitted pursuant to the Court's procedures.

47. Judge Kennelly preliminarily certified the Settlement Class in the Preliminary Approval Order. (ECF No. 132). The Settlement Class continues to meet all requirements of Rule 23:

a. **Numerosity**. The Class is so numerous that joinder of all Settlement Class Members is impracticable. Hundreds if not thousands of shareholders purchased Akorn's common stock during the Class Period and were damaged by Defendants' conduct. Indeed, Lead Plaintiffs' experts calculate that there are over 250 million damaged Akorn shares.

b. **Commonality**. Questions of law and fact are common to the Class. Among others, this includes whether Defendants made materially false and misleading statements concerning Akorn's compliance with data integrity regulations, and whether Defendants did so knowingly or recklessly.

c. **Typicality**. The claims asserted by Lead Plaintiffs are typical of the Class's claims. All claims arise from the same alleged material misstatements and omissions during the Class Period. In addition, all Class Members purchased Akorn common stock at prices alleged to be artificially inflated by Defendants' misrepresentations and suffered losses when the truth about Akorn's data integrity compliance was disclosed and the value of their securities declined.

d. **Adequacy**. Lead Plaintiffs and Lead Counsel have adequately protected the interests of the Class throughout the litigation. They have vigorously prosecuted claims on behalf of the Class since March 2018, and have succeeded in obtaining a significant recovery.

e. **Superiority**. A class action is the superior method for fairly and efficiently resolving all claims asserted against Defendants. The current claims administration process is effective in managing the distribution of the Net Settlement Amount to Settlement Class Members.

f. **Predominance**. Common questions of law and fact among Settlement Class Members predominate over any individualized issues. This includes, among others, whether: (i) Defendants made material misrepresentations and omissions during the Class Period; (ii) Defendants' alleged misrepresentations were material; (iii) the extent to which the significant drops in Akorn's stock price is attributable to the alleged wrongdoing; and (iv) the Individual Defendants exercised control over Akorn.

48. Lead Plaintiffs respectfully submit that all requirements of Fed. R. Civ. P. 23(a) and (b)(3) have been met and support entry of a final Judgment certifying the Settlement Class. In addition, Defendants have stipulated to class certification for settlement purposes only.

V. NOTICE TO THE CLASS SATISFIED RULE 23

49. The Court's August 29, 2019 Preliminary Approval Order (ECF No. 132) directed that the Notice and Claim Form be disseminated to the Settlement Class and appointed JND Legal Administration ("JND") to supervise and administer the notice procedure in connection with the proposed Settlement and the processing of claims.

50. As of December 9, 2019, JND disseminated a total of 64,890 copies of the Notice and Claim Form (together, the "Notice Packet") to potential Settlement Class Members and nominees. *Id.* ¶ 2. JND also maintains a settlement website (www.akorn2019securitiessettlement.com) and toll-free number for potential Settlement Class Members to obtain copies of the Notice Packet and additional information regarding the Settlement.

51. As required by Fed. R. Civ. P. 23(c)(2)(B), the Notice described: (i) the nature of the Action; (ii) the definition of the Settlement Class; (iii) the Settlement Class claims, issues, and defenses; (iv) the process by which Settlement Class Members may enter an appearance through

their own counsel; (v) how Settlement Class Members can exclude themselves from the Settlement Class; (vi) the binding effect of the Settlement approval proceedings; (vii) the proposed Plan of Allocation; and (viii) the reasons the Settling Parties are proposing the Settlement. The Notice also supplied the date, time, and place of the Settlement Hearing, and the procedures for commenting on the Settlement and appearing at the hearing.

52. The Notice also satisfied the requirements under the PSLRA by including: (i) the amount of the Settlement proposed to be distributed to the parties to the Action, determined in the aggregate and on an average per-share basis; (ii) a statement from the Settling Parties concerning the issues on which the Settling Parties disagree; (iii) a statement indicating the maximum amount of attorneys' fees and expenses (both on an aggregate and per share basis) sought by Lead Counsel, and a brief explanation supporting the requested fees and expenses; (iv) the names, telephone numbers, and addresses of Lead Counsel who are reasonably available to answer questions concerning any matter contained in the Notice; and (v) a brief statement explaining the reasons why the Settling Parties are proposing the Settlement. *See* 15 U.S.C. § 78u-4(a)(7)(A)-(F).

53. Pursuant to the Court's Order entered November 1, 2019 (ECF No. 150), the Settlement Website was updated to include a notice of the change in courtroom for the final Settlement approval hearing. Segura Decl. ¶ 4. Likewise, on November 5, 2019, an updated copy of the Summary Notice was published on *PRNewswire* advising Settlement Class Members of the change in courtroom for the final Settlement approval hearing. Segura Decl. ¶ 5.

54. Pursuant to the Court's Order entered November 26, 2019 (ECF No. 163), notice of the adjournment of the settlement fairness hearing was published on the Settlement Website on November 26, 2019 and on *PRNewswire* on November 27, 2019. Segura Decl. ¶ 6. Notice of the adjournment was provided to counsel of record for the objector via email on November 26, 2019.

VI. THE APPLICATION FOR ATTORNEYS' FEES AND LITIGATION EXPENSES IS REASONABLE AND APPROPRIATE

55. As noted above, Lead Counsel applied to the Court for an award of attorneys' fees to Plaintiffs' Counsel of 25% of each component of the Settlement Consideration, as follows: (i) approximately $6,614,980.62 in cash, (ii) 1,621,593 Akorn shares (as well as up to 562,332 additional Akorn shares when they become available from the expiration of out–of–the–money Akorn stock options) and (iii) 25% of the Settlement CVRs. Plaintiffs' Counsel also requests payment for expenses incurred by Plaintiffs' Counsel in connection with the prosecution of the Action from the Settlement Funds in the amount of $1,040,077.52.

56. Lead Counsel is applying for a fee award to be paid from the Settlement Fund on a percentage basis for the efforts of Plaintiffs' Counsel on behalf the Settlement Class. The percentage method is the standard and appropriate method of fee recovery in securities class actions.

57. This Action was litigated by Lead Counsel entirely on a contingent–fee basis, and there was a real possibility that Lead Counsel would have received little or no compensation for their extensive work in this matter.

58. The time and labor expended by Plaintiffs' Counsel in pursuing the Action and achieving the Settlement strongly support the reasonableness of the requested fee. The work counsel undertook in investigating and prosecuting this case and achieving the Settlement has been time–consuming and challenging. As of September 30, 2019, Plaintiffs' Counsel collectively expended a total of 12,464.5 hours in the investigation, prosecution and resolution of the Action. Plaintiffs' Counsel's aggregate lodestar (*i.e.*, the number of hours worked multiplied by the attorneys' hourly rates) as of September 30, 2019 was $8,551,740.25. Plaintiffs' Counsel has

continued to work vigorously on behalf of the Settlement Class in October, November and December 2019.

59. The high stakes of this Action also support the requested fees. The Settlement Class collectively suffered market losses of over $2 billion in connection with its investments in Akorn common stock. For Defendants, the Action represents essentially a "bet-the-company" matter, as the alleged damages far exceed Akorn's market capitalization.

60. The requested attorneys' fees are not opposed. Lead Plaintiffs have endorsed and approved the requested attorneys' fee of 25% of each component of the Settlement Consideration as fair and reasonable in light of the results achieved, the work counsel performed, and the risks of the litigation. Moreover, following an extensive notice program, no objections have been made to the requested attorneys' fees.

61. Based on the results achieved, the extent and quality of the work performed, the significant risks of the litigation, and the fully contingent nature of the representation, Lead Counsel has requested a fee award of 25% of each component of the Settlement Consideration, which Lead Plaintiffs and Lead Counsel believe is fair, reasonable, and consistent with the percentages awarded in class actions in this District and Circuit for comparable settlements.

62. Lead Counsel also seeks reimbursement from the Settlement Fund of $1,040,077.52 in Litigation Expenses that were reasonably incurred by Plaintiffs' Counsel in connection with investigating, commencing, litigating, and settling the claims asserted in the Action. These expenses consist primarily of fees paid to experts and consultants, for document management costs, online research, and mediation costs.

VII. OBJECTION AND EXCLUSION REQUESTS

63. Out of the 64,890 Notice Packets disseminated to potential Settlement Class Members, a single objection has been received. The objection filed by Mr. Dale Trsar concerns the scope of the release in the Stipulation of Settlement and is substantively addressed in Lead Plaintiffs' Reply Memorandum in Further Support of its Motion filed concurrently herewith (the "Reply Memorandum").

64. Notably, there are no objections to: (i) the sufficiency of the Settlement Consideration; (ii) the Plan of Allocation; or (iii) the request for attorneys' fees and reimbursement of litigation expenses.

65. Three litigation groups have requested exclusion from the Settlement.[3] The three groups consist of seven families of related funds (each family sharing an investment manager), and nineteen individual funds. The requests for exclusion are attached as Exhibit C to the Segura Suppl. Decl., filed herewith, and the names of the nineteen entities requesting exclusion are also specified in Exhibit 1 to the [Proposed] Order of Final Approval and Final Judgment submitted pursuant to the Court's procedures.

66. These funds are highly risk tolerant investment vehicles, many of which frequently employ an opt-out strategy. Notably, two of the families of funds commenced litigation against Defendants well before the class action Settlement.

[3] The three litigation groups represented by common counsel are: (i) Oxford Quant Fund Limited (the "Oxford Group"), (ii) Absolute Return Master Account, L.P., AQR DELTA Sapphire Fund, L.P., AQR DELTA XN Master Account L.P., CNH Master Account L.P., AQR DELTA Master Account, L.P., AQR Global Alternative Premia Master Account, L.P. (the "AQR Group"), and (iii) Fir Tree Value Master Fund, L.P., Twin Master Fund, Ltd., Twin Opportunities Fund, LP, Twin Securities, Inc., Manikay Master Fund, LP, Manikay Merger Fund, LP, Magnetar Constellation Fund II-PRA LP; Magnetar Systematic Multi- Strategy Master Fund Ltd, MProved Systematic Merger Arbitrage Fund, Magnetar PRA Master Fund Ltd, Magnetar MSW Master Fund Ltd, AMX Master – Magnetar – Passive Risk Arbitrage ("the Lowenstein Sandler Group"). Further, the following funds are not Settlement Class Members, but submitted requests for exclusion: AQR Funds – AQR Diversified Arbitrage Fund, LUMYNA – AQR Global Relative Value UCITS Fund, and AQR Funds – AQR Multi-Strategy Alternative Fund.

67. As detailed in the Reply Memorandum, the sole objection further supports final approval of the Settlement, Plan of Allocation, and request for attorneys' fees.

VIII. CONCLUSION

68. For all the reasons discussed above, Lead Plaintiffs and Lead Counsel respectfully submit that the Settlement and the Plan of Allocation should be approved as fair, reasonable, and adequate. Lead Counsel further submits that the requested fee in the amount of 25% of the Settlement Funds, less Litigation Expenses, should be approved as fair and reasonable, and the request for reimbursement of Litigation Expenses in the total amount of $1,040,077.52 should also be approved.

I declare, under penalty of perjury, that the foregoing facts are true and correct.

Executed on December 10, 2019

Andrew J. Entwistle