UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ROBERT BERG, On Behalf of Himself and All Others Similarly Situated,

Plaintiff,

v.

AKORN, INC., JOHN N. KAPOOR, KENNETH S. ABRAMOWITZ, ADRIENNE L. GRAVES, RONALD M. JOHNSON, STEVEN J. MEYER, TERRY A. RAPPUHN, BRIAN TAMBI, ALAN WEINSTEIN, RAJ RAI, FRESENIUS KABI AG, and QUERCUS ACQUISITION, INC.,

Defendants.

THEODORE H. FRANK,

Intervenor.

Case No. 1:17-cv-05016

Related cases:[1]
1:17-cv-05017
1:17-cv-05018
1:17-cv-05021

CLASS ACTION

Hon. Thomas M. Durkin

THEODORE H. FRANK'S OPPOSITION TO GINA M. SERRA AND RIGRODSKY LAW, P.A.'S RESPONSE TO ORDER TO SHOW CAUSE (Dkt. 173), CONCERNING WHETHER SANCTIONS SHOULD BE IMPOSED UNDER 15 U.S.C. § 78u-4(c)(1) AND RULE 11

[1] For case management purposes, all filings in the related cases are made on the *Berg* docket, No. 17-cv-5016. Dkt. 128.

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INTRODUCTION

Rigrodsky Law P.A. and its partner Gina M. Serra (collectively "Rigrodsky"), respond to the Court's Order to Show Cause by first asserting that they are not responsible for the complaint they admit they drafted, and that Seventh Circuit law concerning materiality should not apply in this remand from the Seventh Circuit. Dkt. 173, R6-12.[2] Rigrodsky then proceeds with a kitchen sink approach to reargue nearly every alleged deficiency pleaded in the *Berg* complaint, often without referencing, let alone rebutting, the Court's prior findings concerning the alleged deficiencies. R12-19. Finally Rigrodsky argues that no relief beyond their disclaimer of mootness fees is possible, hypothesizing extremely overbroad remedies to support the proposition that further nonmonetary sanction would "tak[e] them out of business." R21-30, R28. None of these responses withstand scrutiny.

Rigrodsky's threshold arguments fail. Its attempt to invoke Fifth Circuit law ignores that the conduct at issue—continued advocacy of these claims, the retention of jurisdiction for fees, and the opposition to disgorgement—occurred before this Court and was subject to Seventh Circuit review. Its effort to distance itself from the complaint is similarly unavailing: Rigrodsky Law, P.A. is the same corporate entity that filed the complaint under its former name, and attorney Serra admittedly drafted it. Rule 11 requires an individualized assessment of that conduct, not formalistic distinctions about firm names or titles.

At bottom, Rigrodsky seeks to relitigate materiality in the abstract while ignoring both the governing law of this Circuit and this Court's prior findings. The Seventh Circuit has already affirmed that the disclosures pursued in these cases were not "plainly material" and that the resulting fees were

[2] As permitted by the Court (Dkt. 189), this brief addresses the arguments of the Rigrodsky Respondents. For convenience their brief, Dkt. 173, will be abbreviated in the form RXX (so for example, R10 refers to page 12, Dkt. 173). Arguments between the Rigrodsky and other respondents overlap in many places, so to avoid unnecessary repetition they will be cited here in parallel where appropriate. Therefore, pages from the other Respondents' briefs—Levi & Korsinsky LLP ("LK"), Dkt. 171; Monteverde & Associates PC and Juan A. Monteverde ("Monteverde"), Dkt. 172; Brian D. Long and Richard A. Maniskas ("Long/RM"), Dkt. 174; and Faruqi & Faruqi LLP ("Faruqi"), Dkt. 175—will be cited in the form KXX, MXX, LoXX, and FXX, respectively.

Unless otherwise indicated, docket numbers refer to the *Berg* docket, No. 1:17-cv-05016.

unwarranted. Rigrodsky's response does not meaningfully engage with those determinations. Instead, it repackages the same "kitchen sink" disclosure demands—requests for incremental financial detail and analytic inputs—that courts have repeatedly found immaterial and that this Court has already rejected, more than once for some alleged deficiencies. Rigrodsky's *Berg* complaint demanded precisely the kind of incremental disclosures that *In re Walgreen Co. Stockholder Litig.* identifies as prototypically immaterial. 832 F.3d 718, 725 (7th Cir. 2016). The question is not whether additional information could be imagined, but whether a reasonable attorney could conclude that the alleged omissions rendered the proxy materially misleading. On this record, the answer is no.

Nor does Rigrodsky confront the structural problem identified in *Walgreen* and reaffirmed in *Alcarez v. Akorn, Inc.*, 99 F.4th 368, 378 (7th Cir. 2024): disclosure-only suits seeking marginal detail often impose real costs while providing no meaningful benefit to shareholders. Rigrodsky's prolific filing of hundreds of similar actions underscores that this was not an isolated misjudgment, but part of a broader litigation model. The sequence of events here—filing, supplemental disclosures, dismissal, and fee extraction—fits that pattern precisely, as this Court has already recognized.

Having failed to rebut the violation of Rule 11 that this Court has found for other Respondents, Rigrodsky must also be subject to "[m]andatory" sanctions under the Private Securities Litigation Reform Act (PSLRA), 15 U.S.C. § 78u-4(c)(1). 99 F.4th at 378. The purpose of Rule 11 sanctions is deterrence. A one-off disgorgement—especially in a case where hard-fought litigation was required to obtain it—does not alter the incentives that give rise to this conduct. Additional, narrowly tailored measures are therefore "needful" "[t]o discourage such greed." *Brown v. Stackler*, 612 F.2d 1057, 1059 (7th Cir. 1980).

ARGUMENT

Rigrodsky Law, P.A. is the same entity that filed the *Berg* complaint, and its attorney Serra admittedly drafted this complaint, confirming the individual role of these Respondents.

Seventh Circuit law concerning the merits of the complaint applies because Rigrodsky "later advocat[ed]" its entitlement to mootness fees in this district under Rule 11(b). Even if it did not apply, evidence of improper purpose supports sanctions.

Rule 11 requires an objective analysis, and this analysis confirms that each of Rigrodsky's assertedly material disclosure demands was immaterial, as the Court has already determined for the vast majority of them. Rigrodsky did not previously argue concerning some of the disclosures, but it fails to rebut the Court's determinations, and in some cases fails to address them entirely. Purported SEC and expert evidence does not bear on the central legal question: whether the initial Akorn disclosure was rendered misleading due to its alleged omissions.

Rigrodsky's prolific filing of strike suits further supports the inference of an improper purpose, and its hundreds of filings after having disclaimed attorneys' fees in this case show that disgorgement alone was not an adequate remedy.

Thus, additional sanctions should be imposed. Frank's disclosure proposals impose no more burden upon Rigrodsky that the scores of suits filed by Rigrodsky have imposed on courts and shareholders across the country. A modest three-year requirement to disclose the sanction order in further strike suits and merger transaction demand letters is not a "scarlet letter," but a narrow corrective aimed at directly deterring the mootness fee racket.

I. Rigrodsky Law, P.A. is the same corporate entity as Rigrodsky & Long, P.A.

Rigrodsky's response to the order to show cause persists in asserting that "R&L, not Rigrodsky Law, is the law firm listed in the signature block in the Complaint" (R7), but Intervenor Frank previously observed it is literally the same firm with a continuous Delaware registration dating to May 23, 2006. Dk.t 160 at 2.[3] Contrary to Rigrodsky's past claims otherwise (Dkt. 149 at 4, 14), and

[3] This filing references a Declaration of M. Frank Bednarz and Exhibits F1-F4, which was inadvertently not filed with the April 28, 2025 opposition to Rigrodsky's Motion to Intervene and Reconsider under Rule 59(e). The salient facts were all summarized in the filing itself, which Rigrodsky's response to the order to show cause seemingly ignores. *See* Dkt. 160 at 2-3.

its carefully-worded assertions here (R7, R21) Rigrodsky & Long, P.A. never ceased to exist; it still operates under the rebrand Rigrodsky Law, P.A. Following the departure of Brian D. Long, all his shares were sold to Seth D. Rigrodsky and the old name was simply "retired." Serra Decl. (Dkt. 173-1), ¶ 21. Rigrodsky Law, P.A. is described by its shareholder Seth Rigrodsky as a successor, which also claims entitlement to attorneys' fees earned while under the former name. Dkt. 160 at 2. As Frank argued, this is why Rigrodsky Law, P.A. need not intervene: it has continuously been within the jurisdiction of this Court through its own acts, including those of its former shareholder Brian D. Long. *Id.*

Appreciating the identity of Rigrodsky Law, P.A., many of Rigrodky's arguments implode. Rigrodsky asserts it never "sought" any mootness fee following the dismissal of this matter (R1), but of course it did. Its then-partner Brian Long appeared *pro hac vice* and took the lead on behalf of all plaintiffs in attempting to retain these fees. *See* Dkts. 78 at 11; 80 at 11; 84 at 16. If a firm "could purge [its] violation of Rule 11 merely by [changing its name], [it] would lose all incentive to stop, think and investigate more carefully before serving and filing papers." *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 398 (1990) (involving post-Rule 11 violation dismissal) (internal quotations omitted).

Likewise Rigrodsky's argument that attorney Serra is not the proper subject of a Rule 11 inquiry (R6) is unavailing. Rigrodsky admits that Serra drafted the complaint at issue (R20), and the complaint is the entire subject of the mandatory § 78u-4(c)(1) inquiry. Though Rigrodsky contends that Serra did not violate Rule 11 through signing, she is at least "responsible for the violation" and subject to sanction. Fed. R. Civ. P. 11(c)(1).

Intervenor Frank attaches these document to this response. Exhibit F1 shows the Delaware Secretary of State registration of Rigrodsky Law, P.A. with a formation date of May 23, 2006. Exhibit F2 shows the New York Department of State's foreign corporation registration, which as of the time of the declaration last year remained "Rigrodsky & Long, P.A." with the same date of incorporation as reflected in the Delaware registration. The New York registration has since then been renamed to "Rigrodsky Law, P.A." with the same dates of formation and initial registration. Exhibit F3 is an affidavit by Seth D. Rigrodsky characterizing Rigrodsky & Long, P.A. as its predecessor and seeking fees for work performed prior to the departure of Brian D. Long and the formation of Long Law, LLC. Exhibit F4 is a Transmittal Affidavit by Gina M. Serra where she swears to be "a partner in the law firm of Rigrodsky & Long, P.A." in 2019.

This fact alone distinguishes Serra from the associate in *King v. Whitmer*, who "had no role whatseoever in the drafting and content of the[] complaints," nor in subsequent litigation. 71 F.4th 511, 531 (6th Cir. 2023) (Kethledge, J.). Notably, sanctions against four other attorneys were upheld in that case even though they signed the relevant complaint only as "of counsel." *Id.* at 518. The panel thus found that Rule 11 sanctions turn on "an individual analysis" of attorney conduct, not a formalistic line between "of counsel" and other signing attorneys. *Id.* at 532. This is consistent with what the PSLRA requires: "specific findings" as to "each attorney," 15 U.S.C. § 78u-4(c)(1).

For the Rigrodsky Respondents, the individual analysis is straightforward: Serra drafted and Rigrodsky Law, P.A. (under its former name) filed a frivolous complaint for the improper purpose of extracting fees under the color of securities litigation. It does not matter whether attorney Serra negotiated the mootness fee agreement (the Rigrodsky and Long/RM Respondents are silent about who did); the complaint itself was filed for an improper purpose (to impose costs and extract fees). *See Sofaly v. Portfolio Recovery Associates, LLC*, 155 F.4th 289, 294 (3d Cir. 2025) (affirming improper purpose sanctions for complaints filed to "harass [defendant], increase its litigation costs, and gin up attorneys' fees"). This purpose is demonstrated not only from the meritless complaint itself, but from the Rigrodsky's industrial operation of filing hundreds of such complaints. *See* Dkt. 83-1, ¶¶ 12, 17 (listing 43 strike suits filed in 2017 with Rigrodsky attorneys signing or designated as "of counsel"), Dkt. 129-1, ¶ 86 (listing 259 strike suits filed in 2021-22, all of which post-date Brian Long's departure from Rigrodsky Law, P.A.). Rigrodsky then further advocated for the retention of mootness fees through its then-partner after the complaint was transferred to this Court. This satisfies the individual inquiry for Rigrodsky Respondents.

II. Seventh Circuit Law Applies

Rigrodsky's threshold contention—that Fifth Circuit law governs this sanctions proceeding (R8-R10)—is incorrect. The question on remand is whether counsel's actions in pursuing these disclosure claims—culminating in dismissal and fee arrangements and protracted opposition to disgorgement of the unwarranted fees—were objectively consistent with Rule 11. That inquiry is procedural and conduct-focused, and necessarily governed by the law of the forum supervising that conduct. Here, the conduct occurred in the Northern District of Illinois and should now be evaluated under the Seventh Circuit's mandate.

Rigrodsky argues that the *merits* of the underlying complaint should be evaluated under Fifth Circuit law at the time of filing. There are two problems with this argument. First, the merits of the mootness fee agreement premised on the Complaint were argued repeatedly by Rigrodsky's then-partner, Brian Long, who therefore "later advocat[ed]" arguments made frivolous in view of *Walgreen* in violation of Rule 11(b). Second, the argument entirely ignores the independent bases for sanctions under Rule 11(b)(1)—that the complaint was filed for an improper purpose, to "needlessly increase the cost of litigation" in order to extract a settlement upon meritless claims utterly worthless to shareholders or anyone else besides the Respondents.

A. Rigrodsky advocated frivolous positions before this Court.

Had Rigrodsky withdrawn the *Berg* complaint and forfeited entitlement to fees after the July 5, 2017 transfer to this Court, its arguments concerning choice of law might have been colorable. Instead, on July 14, 2017, Christopher Kupka, a New York-based Levi & Korsinsky attorney (counsel for Alcarez), appeared as local counsel for Berg (Dkt. 53). Kupka dismissed the *Berg* action without prejudice while expressly purporting to retain jurisdiction on behalf of all respondents for "any potential further proceedings related to the adjudication of any claim by Plaintiffs in the Akorn Section 14 Actions for attorneys' fees and/or expenses." Dkt. 54 at 6. Rigrodsky could have then, but did not, withdraw their entitlement to attorneys' fees. Then on September 15, 2017, attorney Kupka announced on behalf of all "Plaintiffs in the Akorn Section 14 Actions" that they "reached agreement with Defendants with respect to the Fee Claims and Defendants have agreed to provide Plaintiffs with a single payment of $322,500 in attorneys' fees and expenses to resolve any and all Fee Claims." Dkt. 65 at 6. Three days later, on September 18, Intervenor Frank moved to intervene specifically to disgorge fees unwarranted under Seventh Circuit Law. Dkt. 57. Rigrodsky could have then, but did not, withdraw their entitlement to attorneys' fees. Instead, Rigrodsky retained local counsel (Dkt. 69) and on October 18, 2017 filed their first of several oppositions to Intervenors Frank, listing as "of counsel" both Attorney Serra and the Rigrodsky firm under its previous name, Rigrodsky & Long, P.A.. Dkt. 78 at 11. Rigrodsky then filed a sur-reply on November 3, and finally filed an opposition to Intervenor Frank's renewed motion on December 22, each of which was similarly signed "of counsel" by the Rigrodsky firm and its attorney Serra. Dkt. 80 at 11; Dkt. 84 at 16.

At no point during these proceedings, nor in the appeal from the denial of Frank's motion to intervene, did Rigrodsky argue that Fifth Circuit law should govern their conduct or the standards applicable to their claims. Having assumed in 2017 the benefits of litigating in this Court to secure a mootness fee settlement with the Defendants, Rigrodsky cannot now invoke a different circuit's law as a shield against sanctions. At a minimum, any such argument has been forfeited.

Moreover, Rigrodsky could have at any earlier point withdrawn their entitlement to attorneys' fees in view of *Walgreen*, which Frank extensively briefed in 2017. They did not until March 13, 2018 when Respondent Brian D. Long, then of the Rigrodsky firm, filed under his own signature a motion and notice of motion to disclaim attorneys' fees. Dkt. 91. The disclaimer was not due to any epiphany that *Walgreen* governs in the Seventh Circuit, but instead because the imminent disintegration of the Akorn merger obliterated any fiction that either Rigrodsky or any other Respondent had provided a benefit to shareholders for a merger transaction that never occurred..[4] Had Rigrodsky withdrawn entitlement to fees after transfer on July 5, 2017, their argument about choice of law might be colorable, instead they purported to defend the merits of the underlying complaints within the Seventh Circuit. As such, Seventh Circuit law should be used to evaluate the sufficiency of the PSLRA complaint.

For the same reason, Rigrodsky is mistaken that sanctions would hold them to a standard that did not exist at the time of filing. *Contra* R11-12. Rigrodsky did not merely file a complaint in Louisiana; he retained jurisdiction for a fee motion before this Court, agreed to settle for mootness fees before

[4] Remarkably, the Monteverde Respondents persisted in asserting entitlement to attorneys' fees even after the Akorn merger collapsed.

this Court, and then strenuously opposed disgorgement of those baseless fees before this Court. This conduct is unlike a party that made colorable arguments under a new rule (*Hartmax*), and unlike attorneys who filed complaints rendered inoperative by later legal developments (*Laborers Lo. 938* and *Finkelstein*). Nor did Rigrodsky take a position on mootness fees that turned out to be unsupported "with the 20/20 vision of hindsight." *Corley v. Rosewood Care Ctr.*, 388 F.3d 990, 1014 (7th Cir. 2004). No discovery was required, as in *Corley*; Respondents simply needed to read and apply *Walgreen*. Because they did not, by frivolously seeking fees (before this Court), Respondents persisted in the "racket" that *Walgreen* instructed "must end.". 832 F.3d at 724.

B. In any event, Rigrodsky's Fifth Circuit argument fails to rebut its improper purpose for filing the complaint.

Even if the claims were colorable under Fifth Circuit law, and even if this were the only law applicable to judging Rigrodsky's advancement of the complaint and Rigrodsky's entitlement to mootness fees "[a] lawyer who pursues a plausible claim because of the costs the suit will impose on the other side, instead of the potential recovery on the claim, is engaged in abuse of process." *In re TCI, Ltd.*, 769 F.2d 441, 445 (7th Cir. 1985). Even if the complaint were "colorable," it remains sanctionable because of the improper purpose. *See FDIC v. MAXXAM, Inc.*, 523 F.3d 566, 587 (5th Cir. 2008) (increasing litigation costs to coerce settlement improper); *Janky v. Batistatos*, 259 F.R.D. 373, 382-84 (N.D. Ind. 2009) (attempt to coerce settlement not proper).

Rigrodsky's reliance on the *Aron v. Crestwood Midstream Partners LP* does not help, and in fact illustrates the vast procedural gulf between a class action settlement submitted for court approval compared to the procedural end-run attempted by Respondents. No. 4:15-CV-1367, 2016 U.S. Dist. LEXIS 152427, at *27 (S.D. Tex. Oct. 14, 2016). While Frank agrees that the district court's decision in *Crestwood* is almost certainly inconsistent with *Walgreen*, it was a *class-action settlement*, with counsel appointed by the court, and fees set following class notice opportunity to object. Had the *Crestwood* objector been timely, he could have challenged attorneys' fees to protect his interests without relying on a costly intervention only vindicated after years of litigation.[5] No improper purpose is suggested by submitting class action settlement and fee request to a court for scrutiny under Rule 23.

By contrast, Respondents' mootness racket sought to evade accountability from either courts or potential shareholder objectors, using the leverage of mass-filed lawsuits. *Cf. Pearson v. Target Corp.*, 968 F.3d 827, 832-34 (7th Cir. 2020) (relying on precedent from shareholder context to find that leveraging class device to extract personal gain is improper). In economic reality, defendants find it cheaper to pay off rather than contest disclosure demands and fee applications. Intervenor Frank contends, and the enormous mass of Respondent's unmitigated strike suit filings demonstrate, that Respondents did not intend to litigate the merits of their complaints, which were dismissed as "moot" even though not all of the alleged deficiencies were corrected, simply so that Respondents could then leverage the threat of a contested fee motion and extract a settlement outside of court supervision. This subversion of judicial process; clogging court dockets with hundreds of filings in order to turn them into penny-ante extortion tools, provides independent grounds for sanction: Respondents' improper purpose.

III. Rule 11 Requires Objective Reasonableness.

Rule 11 applies upon "presenting to the court a pleading, written motion, or other paper—whether by signing, filing, submitting, or later advocating it" that it is "not being presented for any improper purpose" and that "the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law." Rigrodsky did exactly that here by drafting and causing the filing of the complaint, and then continuing to advocate those disclosure claims in this Court after transfer and in the face of controlling Seventh Circuit precedent—without any case-specific, legally grounded basis

[5] Rigrodsky says "the district court in Crestwood granted final approval of the settlement over the objection of a purported class member who was represented by Frank in the case." R9. To be clear, at the time of the district court decision Rigrodsky cites, the objector represented himself *pro se*. The Center for Class Action Fairness subsequently represented the objector in an appeal. The Fifth Circuit did not reach the merits, finding that the objector lacked jurisdiction due to his untimely objection. *Farber v. Crestwood Midstream Partners, L.P.*, 863 F.3d 410, 417 (5th Cir. 2017).

to contend that the alleged omissions were materially misleading—thereby certifying both the propriety of its purpose and the objective reasonableness of its legal contentions.

A. Rigrodsky and other Respondents misstate the Rule 11 inquiry.

Rule 11 does not ask merely whether a claim can be defended in hindsight or supported by generalized appeals to uncertainty. It requires that an attorney, after a reasonable inquiry, certify that the claims are objectively reasonable in fact and law at the time they are presented and as they are later advocated. Fed. R. Civ. P. 11(b). The rule expressly applies not only to the filing of a pleading, but also to "later advocating" it, underscoring that counsel bears a continuing obligation to ensure that claims remain grounded in a reasonable legal and factual basis.

The Seventh Circuit has consistently emphasized that Rule 11 imposes an objective inquiry into counsel's conduct—whether conduct was reasonable under the circumstances. *See Fred A. Smith Lumber Co. v. Edidin*, 845 F.2d 750, 752 (7th Cir. 1988). This requires determining "whether the arguments actually advanced by counsel were reasonable, and not whether reasonable arguments could have been advanced in support of counsel's position." *Id*; *accord Mars Steel Corp. v. Continental Bank N.A.*, 880 F.2d 928, 938 (7th Cir. 1989) (*en banc*) ("a motion may be sanctionable even though something could have been said in its behalf").

Respondents' framing collapses that distinction. By equating "not plainly material" with "necessarily nonfrivolous," they effectively convert Rule 11 into a safe harbor for any claim that can be described as arguable in the abstract. That is not the law. Rule 11 does not immunize claims simply because materiality can be characterized as a "fact question" or because some category of disclosure has been discussed in other contexts. The question is whether, in the circumstances of this case and in light of controlling precedent requiring "plainly material" misrepresentations or omissions, a reasonable attorney would have believed that the alleged omissions were materially misleading to shareholders.

Nor does Rule 11 permit counsel to rely on post hoc rationalizations—expert opinions, industry commentary, or generalized references to regulatory practice—to justify claims that lacked a reasonable basis when asserted. The inquiry is *ex ante* and objective, and it focuses on what a reasonable lawyer should have understood about the viability of the claims when they were advanced.

B. *Walgreen* is directly relevant to objective reasonableness.

Rigrodsky (R11) and other Respondents (K4-5, M3-4, Lo6-9, F12) err in attempting to characterize *Walgreen* as irrelevant to the Rule 11 inquiry on the ground that it addressed settlement approval rather than sanctions.

Respondents have made this argument for nine years in numerous briefs before this Court and the Seventh Circuit. The argument was always far-fetched: *Walgreen* certainly seems to relate to pleading standards when it remarked that "a class action that seeks only worthless benefits for the class should be dismissed out of hand." 832 F.3d at 724. Nonetheless, different sets of Respondents filed independent briefs arguing otherwise and received a decisive and controlling answer in *Alcarez*. The Seventh Circuit approvingly quoted the Court's analysis that the disclaiming plaintiffs sought disclosures that "were not 'plainly material' and were worthless to shareholders" under *Walgreen* and thus that fees should be disgorged. *Alcarez*, 99 F.4th at 377. The Seventh Circuit only changed the basis of the Court's decision from inherent authority to § 78u-4(c)(1) and Rule 11. *Id. Alcarez* did not suggest, as all the Respondents had urged, that "plainly material" only applies to settlement approvals.[6]

The reason is straightforward. While *Walgreen* did not arise in the Rule 11 context, it squarely addressed the value—or lack thereof—of the very category of alleged disclosure relief at issue here. The Seventh Circuit explained that supplemental disclosures of marginal detail, including additional financial inputs and similar minutiae, often provide no meaningful benefit to shareholders while imposing real costs on shareholder who are supposed to be the beneficiaries of such litigation. Thus "plainly material" is the standard for putative supplemental disclosure claims in this Circuit.

Rigrodsky complains that "[b]y the phrase's ordinary meaning, the plaintiff gets no benefit of the doubt under 'plainly material'" (R10), but this conflates issues. A plaintiff is entitled to "all possible

[6] Rigrodsky (R4 n.1) and other Respondents (L5 n.6, F3 n.8) contend that the Seventh Circuit was wrong to find that § 78u-4(c)(1) applies to voluntary dismissals. They do not mention that Respondents unsuccessfully sought rehearing *en banc* and Supreme Court review on this precise issue.

inferences" when evaluating a complaint's sufficiency (R11), but plaintiffs did not attempt to prove the sufficiency of their claims. Their racket was much swifter than that. As in *Walgreen*, the putative class representatives "propose[d] that high transaction costs (notice and attorneys' fees) be incurred at the class members' expense to obtain [no benefit]" and thus did "not adequately protect[] the class members' interests." *Walgreen*, 832 F.3d at 725 (quoting *In re Aqua Dots Products Liability Litigation*, 654 F.3d 748, 752 (7th Cir. 2011)). A putative class representative and her counsel might be litigating in good faith, which entitles them to a benefit of doubt. But when the class representative instead insists that shareholders like them derivatively pay attorneys hundreds of thousands of dollars for worthless disclosures, the benefit of doubt no longer applies.

This standard obviously sets expectations for reasonable attorneys. Rule 11's objective reasonableness standard asks what a reasonable attorney practicing in this Circuit would infer from the underlying substantive law. *Walgreen* provides a clear warning that demands for incremental financial details—of the sort advanced here—are unlikely to satisfy the materiality standard governing shareholder voting.

Respondents' position would require the Court to treat *Walgreen* as simultaneously authoritative enough to govern settlement approval, yet irrelevant to evaluating whether similar claims are reasonably settled without seeking court approval whatsoever. That is untenable. The decision's reasoning speaks directly to whether such claims provide a sound legal and economic basis for attorneys' fees. In a footnote, Rigrodsky asserts that the Court incorrectly referred to a "settlement" in its orders (R10 n.3), but there *was* a settlement. "Defendants have agreed to provide Plaintiffs with a single payment of $322,500 in attorneys' fees and expenses to resolve any and all Fee Claims." Dkt. 56 at 6. The fact that Respondents sought to receive attorneys' fees without court approval makes their racket more repugnant than the one in *Walgreen*, not immune from the "plainly material" standard.

Nor does invoking the general principle that materiality is "fact-intensive" negate *Walgreen*'s relevance. Rule 11 does not require certainty; it requires objective reasonableness. Where controlling precedent identifies a class of relief as typically lacking meaningful value, counsel cannot proceed as though that guidance does not exist and then rely on abstract notions of debatable materiality to avoid scrutiny. "[O]strich tactics" cannot satisfy Rule 11. *City of Livonia Emple. Ret. Sys. v. Boeing Co.*, 711 F.3d 754, 762 (7th Cir. 2013). Rigrodsky's response treats this case as a series of isolated disclosure disputes—each reducible to whether a particular data point might be useful to someone, somewhere. That framing omits the central feature of *Walgreen*: the Seventh Circuit did not merely evaluate individual disclosures; it identified a structural problem with a class of litigation that extracts costs without delivering commensurate benefits.

Walgreen explains that disclosure-only suits can function as a cost-imposing mechanism: plaintiffs demand incremental details, defendants face asymmetric litigation costs, and the predictable result is supplemental disclosures followed by dismissal and fees. The court's concern was not that every such claim is invalid in isolation, but that—taken as a model—these cases often produce "additional disclosures of marginal value" while transferring wealth from shareholders to attorneys. *Walgreen*, 832 F.3d at 725.

A reasonable attorney seeking fees for merger disclosures must have a case-specific, legally grounded reason to believe that a particular suit falls outside that pattern. Rigrodsky offers none.

C. The allegedly materially disclosures were not close calls.

Rigrodsky attempts to portray the challenged omissions—additional financial inputs, projections detail, and related minutiae—as matters on which reasonable lawyers could disagree. The record and governing law show otherwise, especially in view of *Walgreen*. These were not borderline cases. They were paradigmatic requests for immaterial incremental detail.

Nearly every argument raised by Rigrodsky was previously considered and rejected by the Court—some of them twice. Additionally, most of Rigrodsky's arguments reason backwards from Akorn disclosures. The Court rejected this approach in its 2019 order, which was endorsed by the Seventh Circuit. "[T]he Court must assess whether the disclosures Plaintiffs sought in their complaints—not the disclosures Akorn made after the complaints were filed in the revised proxy and Form 8-K—are plainly material." *House v. Akorn, Inc.*, 385 F. Supp. 3d 616, 619 (N.D. Ill. 2019). To be clear, each kitchen sink deficiency Rigrodsky raises was demanded in the complaint filed for Berg, but Rigrodsky errs in repeatedly citing subsequent disclosure as confirmation "that it was reasonable to have alleged in the complaint that this material was material." R13. Disclosure simply does not confirm materiality; *Walgreen* proves no less. Rigrodsky has not even established it was responsible for changes between the Preliminary and June 15, 2017 Definitive Proxy. The Settling Parties agreed it was the July 10, 2017 Supplemental Disclosure—not the Definitive Proxy—that mooted Berg and other plaintiffs' complaints. Even if the all amendments to the Preliminary Proxy were inspired by Rigrodsky, a defendant's supplemental disclosure may show the information could be disclosed easily, cheaply, or strategically; it does not establish legal materiality or Rule 11 reasonableness.

To address each claimed deficiency from Rigrodsky's brief in turn:

1. Rigrodsky says that the Preliminary Proxy omitted **2017 Financial Projections**—granular line items—from the March 2017 Management Case, including net income, interest expense, depreciation, amortization, stock-based compensation, taxes, capital expenditures, and working-capital changes. R13-14. Rigrodsky claims those details were needed to compute rates of return and evaluate J.P. Morgan's Discounted Cash Flow (DCF). This is wrong because it treats "more financial detail" as inherently material. The Preliminary Proxy already disclosed projected revenues, Earnings Before Interest, Taxes, Depreciation, and Amortization (EBITDA), and Unlevered Free Cash Flow (UFCF) for the March 2017 Management Case. *See* Dkt. 85-2 at 48.[7] While Rigrodsky says that the Court has not previously considered these alleged deficiencies, it *did* opine on another plaintiffs' broad demand for "complete information concerning the substance of the March 2017 [projections] or the assumptions, analysis, projections, or conclusions reflected therein." *House*, 385 F. Supp. 3d at 622. The Court correctly observed that "'incomplete' statements are not necessarily 'misleading.'" *Id.* (citing *Brody v. Transitional Hosps. Corp.*, 280 F.3d 997, 1006 (9th Cir. 2002)). Rigrodsky does not even attempt to explain why the additional line items would be necessary to prevent the 2017 Management Case

[7] Rigrodsky attaches a non-searchable copy of the redline Definitive Proxy the Serra Declaration, but Frank will cite the earlier and machine-readable versions instead.

from being misleading, and instead asserts the disclosure of them suggests they were material. This does not follow, as explained above.

2. The **GAAP Reconciliations** were considered and rejected by the Court in 2019. Rigrodsky does not explain why the omission of the reconciliation could have rendered the Preliminary Proxy misleading, but instead complains that "[t]he authorities the Court cited in *House* in reviewing the materiality of GAAP reconciliations all post-date the filing of the Complaint." R14. But in fact the Court found Regulation G did not apply to "a disclosure relating to a proposed business combination," found this regulatory point "highly persuasive" on materiality, and simply cited *Assad* and *Bushansky* persuasively because they reached similar conclusion based on the same rule, which dates to 2003. *House*, 385 F. Supp. 3d at 619. Additional courts have reached the same decision since.[8] These decisions are all based on much older general principles that "a proxy need not include all financial data or projections that would be helpful in making an independent determination of fair value." *Himmel v. Bucyrus Int'l, Inc.*, Nos. 10-1104, -1106, -1179, 2014 WL 1406279, at *15 (E.D. Wis. Apr. 11, 2014) (citing *Skeen v. Jo-Ann Stores, Inc.*, 750 A.2d 1174 (Del. Ch. 2000) and *In re CheckFree Corp. Shareholders Litig.*, 2007 WL 3262188 (Del. Ch. Nov. 1, 2007)) (granting motion to dismiss). In *CheckFree*, the Delaware Chancery found that complete management projections were not material in the first place, so they did not need to be disclosed—even though they were relied upon by financial advisors in creating their fairness opinion. *See CheckFree*, 2007 WL 3262188, at *3; *accord In re Trulia, Inc. Stockholder Litig.*, 129 A.3d 884, 905 n.79 (Del. Ch. 2016) ("A fair summary, however, does not require disclosure of sufficient data to allow stockholders to perform their own valuation."). And *CheckFree* was decided long before the Delaware Chancery introduced a tougher "plainly material" standard, which is now the law of this Circuit. *See id.* at 898; *Walgreens*, 832 F.3d at 725 (adopting *Trulia*). Rigrodsky's new expert-sponsored gloss—that reconciliation helps "vet" non-GAAP metrics—is just a more elaborate version of the same "helpful" argument the Court already rejected.

[8] *See Mack v. Resolute Energy Corp.*, No. 19-cv-77-RGA, 2020 U.S. Dist. LEXIS 46776, at *23 (D. Del. Mar. 18, 2020); *Orbis Glob. Equity Fund Ltd. v. NortonLifelock Inc.*, No. CV-21-01995-PHX-JJT, 2023 U.S. Dist. LEXIS 20571, at *57 (D. Ariz. Feb. 7, 2023).

Recall that the November 2016 and March 2017 Management Cases were prepared by the company to provide the board with an overview of its business and operations. The Preliminary Proxy made clear that "[t]hese Financial Forecasts … were not prepared with a view toward public disclosure or complying with the guidelines established by the American Institute of Certified Public Accountants for preparation and presentation of prospective financial data, published guidelines of the SEC regarding forward-looking statements or generally accepted accounting principles in the United States ("GAAP")." The board of *Akorn* had no obligation to provide as much detail from the Management Cases as they did. The fact that shareholders received (optional) non-GAAP projections does not render the Proxy Statement misleading.

3. The **November 2016 Management Case** is even less significant than its March 2017 cousin. The November 2016 Management Case was an out-of-date financial projection that the board did *not* rely on to evaluate the proposed merger, as the Preliminary Proxy stated. Dkt. 85-3 at 48. Rigrodsky attempts to inject ahistorical significance to the November 2016 Management Case because comparing it to the March 2017 Management case reflected a decrease in the company's expectations, but they do not explain how the belated inclusion of this rosier past projection would have materially altered the total mix of information provided. Contrary to Rigrodsky's dramatic "get out" retelling (R15), the market reacted with a yawn to the June 15 Definitive Proxy. The share price rose one penny upward, closer to the target price, and the trade volume was low: the second-lowest volume day from that calendar week. The dates of the Definitive Proxy and July 10 Supplemental Disclosures are marked in stock chart below:

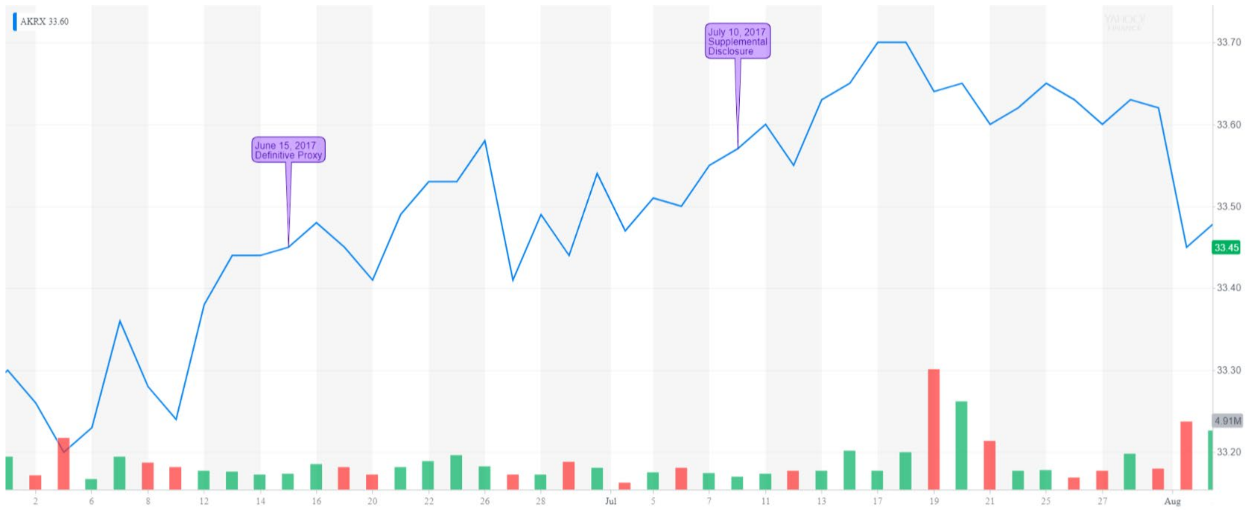

Fig. 1. Interactive chart available online at https://yhoo.it/2rdx6Ao.

Plaintiffs do not explain how a stale projection that Akorn disregarded could have materially altered the total mix of information. *See Wayne Cty. Emps. Ret. Sys. v. Corti*, 954 A.2d 319, 332 (Del. Ch. 2008) (rejecting argument that additional internal projections must be disclosed because, *inter alia*, "there is no evidence in the record that the . . . board relied on these . . . projections"). If anything, the reconciliation of out-of-date financial projections in the July 10 Supplemental Disclosure would have misled shareholders because Akorn's financial position had drastically worsened by July 2017.

4. **Terminal Values and Terminal Growth Values** within the J.P. Morgan's valuation were also considered by the Court in 2019, which concluded "with respect to data underlying a financial advisor's opinion, courts find that only a 'fair summary' must be disclosed, meaning that the company 'does not need to provide sufficient data to allow the stockholders to perform their own independent valuation.'" *House*, 385 F. Supp. 3d at 620 (quoting *Trulia*, 129 A.3d at 901). Here again, Rigrodsky does not rebut the Court's prior decision, instead nitpicking in a footnote (R15 n.6) that the Preliminary Proxy disclosed only the range of terminal growth rates and not the terminal values. That in no way answers the Court's conclusion.

5. Rigrodsky argues **Projected Net Debt** was material because it was the only adjustment J.P. Morgan made to Discounted Cash Flow values to determine equity value per share and because net debt had allegedly been volatile. Projected net debt is another input to J.P. Morgan's

valuation. Again, *Trulia* requires a fair summary, not all data needed to recreate the analysis. Rigrodsky's argument that investors could use net debt to test J.P. Morgan's model is exactly the "perform their own independent valuation" rationale the Court rejected. "[S]pecific details of the analysis underlying a financial advisor's opinion" unnecessary to provide a fair summary of the opinion. *In re Micromet, Inc. S'holders Litig.*, 2012 WL 681785, at *11 (Del. Ch. Feb. 29, 2012).

6. Rigrodsky slices bologna to argue that the **Assumptions for the Discount Rates** underlying J.P. Morgan's analysis should have also been disclosed (R16), but this suffers from the same defects as the trivial analyst inputs discussed above. Also, neither the Supplemental Disclosures nor the Definitive Proxy disclosed additional details concerning these assumptions, even though Berg (and all other plaintiffs) claimed their complaints had been rendered moot. This confirms that Rigrodsky's complaint was no more than a vehicle to obtain attorneys' fees. The failure to redress this pretextual deficiency is independently fatal to any attorneys' fee award. *Cf. Walgreens*, 832 F.3d at 725 ("it's not enough that the disclosures address the misrepresentation or omissions: they must correct them.").

7. Rigrodsky claims that **Potential Officer/Director Conflicts** omitted timing and nature of communications about future employment of Akorn officers and directors and then later added additional detail concerning disclosed post-merger employment arrangements for three officers. R16. This alleged deficiency was recently rejected by the Court in its order granting intervention:

> But the proxy statement provided that "there are no employment, equity contribution or other agreements, arrangements or understandings between any of the Company's directors or executive officers, on the one hand, and Fresenius Kabi, on the other hand, and the merger is not conditioned upon any of the Company's directors or executive officers entering into any such agreement, arrangement or understanding." Ex. 1 [Dkt. 85-3] at 52-53. There simply was no basis to seek any further disclosure on this issue. Notably, Plaintiffs' counsel do not address this disclosure in their briefs on this motion.

Dkt. 141 at 8. Notably, Rigrodsky does not address the disclosure quoted by the Court above in their response, much less the Court's prior decision concerning it.

8. Rigrodsky again claims the **Contingent Nature of J.P. Morgan's "Services Fee"** was not disclosed in the Preliminary Proxy. R16-17. The Court previously considered and rejected this

argument because the Preliminary Proxy stated that J.P. Morgan's $47 million fee would be paid "immediately prior to the consummation of the merger." *House*, 385 F. Supp. 3d at 621. Rigrodsky responds to this determination by constructing a strawman argument that the Court found that the contingent fee could be assumed because it was "certainly customary," but remained undisclosed. R17. But the Court actually found the meaning for the quote was "abundantly clear"—the Preliminary Proxy described a contingent fee "inferred from the fact that the amount of the fee will ultimately be measured only 'immediately prior to consummation' and is defined as a percentage of the amount to be paid in the transaction." *House*, 385 F. Supp. 3d at 621.

9. Rigrodsky argues that **Past Compensation Received by J.P. Morgan** was material, and that later disclosure showed J.P. Morgan had received less than $2 million from Akorn and less than $10 million from Fresenius. R17-18. The Court addressed compensation from Fresenius in its 2019 order finding that "exact historical payments are not material." *House*, 385 F. Supp. 3d at 621. Rigrodsky does not address or rebut this finding in any way, but complains that the Court's decision last year re-affirming this conclusion (Dkt. 141 at 10) cited a decision issued in 2023 "more than six years after the Complaint was filed." R18 n.7. The problem with this argument is that the cited 2023 decision cites three cases that predate the *Berg* complaint for the same proposition. *See Assad v. Botha*, No. 2022-0691-LWW, 2023 Del. Ch. LEXIS 462, at *14 n.71 (Del. Ch. Oct. 30, 2023). In any event, Rigrodsky appears to have lost sight of the fact that the complaint must identify omissions so material that they render the disclosure *misleading*. That a shareholder might, for unexplained reasons, conclude that J.P. Morgan was "influenced by any loyalty it had to Fresenius Kabi" does not actually suggest a deceptive disclosure.

10. Rigrodsky claims **Background of the Proposed Merger** was lacking, including why certain options were provided only to Fresenius and why the Board proceeded only if Fresenius removed a "contingent value right." The Court's 2019 order rejected the related "other potential buyers" demand, holding the proxy statement spoke for itself by explaining that other counterparties were unlikely to be interested due to competing strategic priorities and recent acquisitions, and that the proxy sensibly gave much greater detail on the one other company Akorn actually considered.

"Detailed information about potential buyers Akorn did not actually consider is not material." *House*, 385 F. Supp. 3d at 622. The Court extended this decision last year to related confidentiality agreements and the removal of the "contingent value right" from Fresenius's offer. "The board obviously believed that this contingency was not in the best interests of shareholders." Dkt. 141 at 9. Rigrodsky does not identify any error in the Court's analysis, but argues because Akorn provided *some* disclosures of the history leading up to the merger it "had an obligation to provide the stockholders with an accurate, full, and fair characterization of those historic events." R18 (quoting *Arnold v. Soc'y for Sav. Bancorp*, *Inc.*, 650 A.2d 1270, 1280 (Del. 1994)). But this is not what the Preliminary Proxy did: it did not omit the existence of offers or events within, it simply did not explain *decisions* that are self-evident from the text: *why* offers were made to Fresenius (answer: it was the only serious buyer besides "Company E") and *why* the board demanded removal of the "contingent value right" (answer: the board thought it not in shareholders' best interests). This is unlike the failure to disclose a $275 million auction bid on a subsidiary when the entire merger transaction was valued at $200 million. *Arnold*, 650 A.2d at 1281. These details instead fall into the category of "speculative information which would tend to confuse stockholders or inundate them with an overload of information." *Id.* at 1280. Rigrodsky offers no limiting principle to their argument. The board could have expressly said that the contingent value right was against shareholder interests, and a strike suit filer could still ask *why*? If the board further disclosed that it was because of downside risk, a plaintiff can still demand—*why?* Failure to disclose every detail about life, the universe, and everything does not render a narrative materially misleading.

In short, Rigrodsky's demands were not colorable material but for the "plainly material" standard. They are routine demands for cumulative details that controlling precedent had already identified as unlikely to matter under any standard.

D. Rigrodsky's SEC evidence is not helpful.

Rigrodsky's reliance on SEC comment letters and generalized regulatory practice does not rescue its claims. SEC disclosure requirements and comment-letter practice serve a different function than the judicial materiality standard governing shareholder claims. The SEC may request additional information to ensure clarity, completeness, or comparability in public filings. Those regulatory objectives are broader than, and not coextensive with, the question whether an omission renders a proxy materially misleading under the federal securities laws. An issuer's decision to provide additional information in response to SEC comments—or the SEC's request for such information—does not establish that the information is material in the sense required to support a private disclosure claim.[9]

E. The Neuzil Affidavit cannot establish Rule 11 compliance.

Rigrodsky's reliance on expert opinion suffers from a similar flaw. Expert testimony about what additional financial information might be hypothetically useful to analysts or investors does not establish that its omission would significantly alter the total mix of information available to a reasonable shareholder. Nor can *post hoc* expert analysis supply a reasonable basis for claims that lacked one when filed. Rule 11's inquiry is *ex ante* and objective; it does not turn on whether an expert can later construct a theory of usefulness.

Nearly all of the Neuzil Affidavit discusses disclosures allegedly provided by the June 15, 2017 Definitive Proxy rather than the July 10, 2017 Supplemental Disclosures that Berg, represented by Rigrodsky, repeatedly claimed to have mooted his complaint. *See* Dkt. 54 at 4 (July 14, 2017); Dkt. 56 at 5 (September 15, 2017); Dkt. 78 at 4 (October 18, 2017). Indeed, plaintiffs only moved for preliminary injunction on June 26, 2017—nine days *after* the final Definitive Proxy Statement issued—which they then claimed remained "false and misleading." No. 17-cv-5022, Dkt. 6 at 1 n.1 (joined by Berg). Neuzil does not discuss these facts.

The Neuzil affidavit operates at the wrong level of generality. It posits that additional inputs—such as more detailed projections or valuation assumptions—can be relevant to financial analysis. That proposition is uncontroversial, but it does not establish materiality, let alone plain materiality. The federal securities laws do not require disclosure of all information that might be useful to a sophisticated analyst. They require disclosure of information whose omission would significantly alter

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9 Rigrodsky cites *Hartmarx* for the proposition that SEC comment letters can demonstrate materiality (R13 n.5), but in fact the plaintiff there cited final rules published in 1999, not sundry letters sent by SEC staff to particular companies. *Hartmarx Corp. v. Abboud*, 326 F.3d 862, 867 (7th Cir. 2003).

the total mix of information available to a reasonable shareholder. *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976).

The Neuzil Affidavit also simply repeats arguments that this Court has already considered and soundly rejected. For example, it opines that "as alleged in the Berg Complaint, the Preliminary Proxy did not disclose whether the $47 million 'Services Fee' [for J.P. Morgan] was contingent on the consummation of the Transaction." Dkt. 173-5 at 21. But in fact, the Preliminary Proxy disclosed that J.P. Morgan will be paid "immediately prior to the consummation of the merger." Dkt. 85-1 at 22. While Neuzil quotes the passage, he does not discuss this language, much less explain why a reasonable investor would not understand it to mean that payment was to be contingent upon consummation of the merger. Instead, Neuzil quotes a number of SEC Letters that requested disclosure from entities that actually did not disclose whether fees were contingent—and in some cases did not quantify advisor fees at all.[10] It's not remarkable that the SEC requests disclosure when significant omissions exist. This does not imply that a reasonably-disclosed contingency fee is misleading if it does not contain certain magic words.

Ultimately, Rigrodsky's SEC and expert evidence attempts to reframe the case as a dispute about optimal disclosure practices. That is not the legal question. The question is whether the alleged omissions rendered the proxy plainly materially ***misleading*** under established law. On that question, the materials Rigrodsky cites do not provide support—and certainly not the kind of support that would make the claims objectively reasonable for purposes of Rule 11.

In short, the Neuzil affidavit demonstrates, at most, that more information can always be imagined. It does not show that the absence of that information rendered the proxy materially misleading, nor does it establish that it was objectively reasonable to assert such claims. Rule 11 requires more than an expert's generalized view that additional disclosure could be useful.

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[10] Dkt. 173-5 at 22. *See*, *for example*, Integrated Electrical Services, Inc. Response to SEC Letter Dated June 12, 2013, at 18 (no contingent fee existed, which was why none was disclosed). https://www.sec.gov/Archives/edgar/data/1048268/000119312513255331/filename1.htm.

IV. Rigrodsky's Improper Purpose

Rigrodsky claims that the Court should not infer an improper purpose from events after the filing of the Complaint (R19), but no such prohibition exists. "Recidivism is relevant in assessing sanctions." *City of Livonia Emple. Ret. Sys. v. Boeing Co.*, 711 F.3d 754, 762 (7th Cir. 2013). Courts regularly recount similarly vexatious litigation when decided appropriate attorney sanctions. *See, e.g., id.*; *Trump v. Clinton*, 161 F.4th 671, 690 (11th Cir. 2025) (affirming sanctions for a shotgun complaint filed for political purposes, including looking in part to a pattern of misconduct in outside cases); *Johnson v. 27th Ave. Caraf, Inc.*, 9 F.4th 1300, 1313-14 (11th Cir. 2021) (upholding sanctions against vexatious litigant filing abusive ADA lawsuits to seek fees); *City of Livonia Employees' Ret. Sys. v. Boeing Co.*, 306 F.R.D. 175, 182-83 (N.D. Ill. 2014) (accounting for pattern of misconduct in other cases). The volume of strike-suits filed by Respondents goes both to the inference of an improper purpose and the adequacy of any remedy.

Rigrodsky specifically complains that a background sentence from the Court's 2025 order makes any improper purpose impossible. R19 (other Respondents make the same argument. K9, M7). The offending sentence is in the first paragraph of the Court's 2025 order: "Plaintiffs voluntarily dismissed their cases after Akorn agreed to pay $332,500 in attorneys' fees. See 17 C 5016, R. 56 at 6." Dkt. 141 at 2. The LK and Faruqi Respondents previously cited this sentence as a material error in their Motion to Reconsider, which was denied. Dkt. 167.

The argument is unfounded because the citation at the end of the sentence makes the Court's meaning clear: the Order cites plaintiffs' dismissal *with* prejudice, and the cited stipulation of dismissal recounts both (1) the prior dismissals *without* prejudice, and (2) defendants' agreement "to provide Plaintiffs with a single payment of $322,500 in attorneys' fees and expenses to resolve any and all Fee Claims." Dkt. 56 at 6. Rigrodsky's assertion that the Court "gets the sequence of events backwards" (R19) misunderstands both the record and the legal significance of what occurred. The Court has already found that these cases followed the familiar pattern of disclosure-only litigation: plaintiffs filed suit, the company issued supplemental disclosures, the cases were dismissed, and plaintiffs' counsel obtained fees in exchange. The fact that the dismissal preceded the formal fee agreement does not sever the causal chain; it is the mechanism by which the racket operates. As the Court recognized, the disclosures and the fees were part of the same resolution, and the fees were paid "to avoid the nuisance of ultimately frivolous lawsuits disrupting the transaction." *House*, 385 F. Supp. 3d at 623. The settlement of the fee request *is* a settlement in substance, simply sequenced to avoid judicial scrutiny.

Nor does Rigrodsky's sequencing argument negate the Court's conclusion that the litigation produced no meaningful benefit and functioned as the "racket" described in *Walgreen*. The Court expressly abrogated the fee agreements on the ground that the underlying claims should have been "dismissed out of hand" and that the settlements conferred "nothing of value" on shareholders while extracting payment from the company. *Alcarez*, 99 F.4th at 377 (quoting with approval *House*, 385 F. Supp. 3d at 623). Rigrodsky (R19) and other Respondents (K9, M7) say this makes "quid pro quo" impossible, but this is untrue: plaintiffs purported to retain jurisdiction for their fee request precisely to retain leverage for extracting a settlement concerning fees.

Rigrodsky argues that an improper purpose "cannot be inferred from Frank's speculation about other cases or mootness fees generally," but Frank did not speculate about Rigrodsky's filing of 259 strike suits in 2021-22 (including both signed and "of counsel" filing). *See* Dkt. 129-1, ¶ 86. Rigrodsky has not disputed their involvement with a single one of these suits. Certainly, Frank does not know how frequently Rigrodsky's tactics succeeded, but that's simply a reason to provide disclosure on the matter, as discussed below.

Finally, Rigrodsky argues that attorney Serra's declaration asserting she believed the claims to be viable demonstrates no improper purpose. R20. In the first place, it would be peculiar that an attorney can avoid sanction by asserting he or she believe that a frivolous argument was not frivolous. But more substantively, this evidence ignores the structure of Rule 11(b)—frivolousness and improper purpose are separate prongs. "A lawyer who pursues a plausible claim because of the costs the suit will impose on the other side, instead of the potential recovery on the claim, is engaged in abuse of process." *In re TCI, Ltd.*, 769 F.2d at 445. That attorney Serra did not herself execute the mootness fee agreement (R21) does not say whether or not the complaint was originally filed for the improper purpose articulated in *Walgreen*.

Finally, Rigrodsky overstates matters when it says Rigrodsky Law, P.A. has not "ever appeared in this action." R21. As discussed in Section I, this is not quite true: Brian Long, then a shareholder of the firm appeared *pro hac vice* and led its argument for the retention of mootness fees unwarranted under Seventh Circuit law.

V. Additional Sanctions are Necessary

Rigrodsky (R30), like all of the Respondents, argues that additional actions would be unwarranted because their disclaimer and disgorgement of previously-obtained fees is sufficient to deter future conduct. That argument misunderstands both the purpose of Rule 11 and the nature of the conduct at issue.

Rule 11 does not merely remedy past harm; it is designed to deter repetition of conduct that imposes unjustified costs on the judicial system and litigants. Where a pattern of conduct reflects a litigation model rather than an isolated misjudgment, sanctions must be calibrated not only to the specific case but to provide "general deterrence" as well. *Brandt v. Schal Assocs., Inc.*, 960 F.2d 640, 645 (7th Cir. 1992). Rigrodsky's position would reduce Rule 11 to a one-time accounting exercise—returning fees after the fact while leaving the underlying incentives intact. If the penalty for inappropriately extracting attorneys' fees in a case were simply forfeiting the fees in that case, it's no deterrence at all. A "severer reaction is needful." *Brown*, 612 F.2d at 1059. This case is unusual not because of the meritless complaint filed—Rigrodsky has filed literally *hundreds* of them—it's unusual because Intervenor Ted Frank persisted in holding the filers accountable.[11]

[11] Virtually all Respondents objected to the proposed forms of sanction, and these Rigrodsky's are discussed along with related objections in the final section of Frank's Opposition to the Other Respondents' Response Order to Show Cause filed contemporaneously with this brief.

CONCLUSION

Rigrodsky's response does not meaningfully contest the central point: the complaint it drafted and caused to be filed asserted disclosure claims that lacked an objectively reasonable basis and were pursued in a manner consistent with the unethical pattern identified in *Walgreen*. This Court has already found that the vast majority of alleged deficiencies were immaterial, that the resulting fees were unwarranted, and that the litigation produced no meaningful benefit to shareholders. The Seventh Circuit has affirmed those conclusions and directed that Rule 11 be applied.

Under the PSLRA, sanctions are mandatory once a violation is found. The only remaining question is what sanctions are sufficient to deter repetition of the conduct at issue. Rigrodsky's proposed remedy—effectively none beyond their belated disclaimer of attorneys' fees—would leave the underlying incentives intact and permit the same conduct to continue. That is not consistent with Rule 11 or the statute.

The Court should therefore impose sanctions that are tailored, proportionate, and forward-looking: measures that address the specific litigation model at issue and ensure that similar conduct is not repeated. The requested relief—whether in the form of targeted disclosure, monetary sanctions, or both—falls well within the Court's authority and is necessary to give effect to the deterrent purposes of Rule 11 and the PSLRA. For these reasons, the Court should find that Rigrodsky violated Rule 11 and impose appropriate sanctions..

Dated: May 6, 2026

/s/ M. Frank Bednarz

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CERTIFICATE OF SERVICE

The undersigned certifies he electronically filed the foregoing Opposition to Gina M. Serra and Rigrodsky Law, P.A. Response to Order to Show Cause (Dkt. 173) via the ECF system for the Northern District of Illinois, thus effecting service on all attorneys registered for electronic filing.

Dated: May 6, 2026

/s/ M. Frank Bednarz