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 RESPONSES TO ORDER TO SHOW CAUSE BY OTHER RESPONDANTS CONCERNING WHETHER SANCTIONS SHOULD BE IMPOSED UNDER 15 U.S.C. § 78u-4(c)(1) AND RULE 11, NAMELY IN RESPONSE TO LEVI & KORSINSKY, LLP (Dkt. 171), MONTEVERDE & ASSOCIATES PC AND JUAN E. MONTEVERDE (Dkt. 172), BRIAN D. LONG AND RICHARD A. MANISKAS (Dkt. 174), AND FARUQI & FARUQI, LLP, NADEEM FARUQI AND JAMES WILSON (Dkt. 175)

[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

The Other Respondents'[2] responses to the Order to Show Cause confirm the need for Rule 11 sanctions. Like Rigrodsky, they do not meaningfully engage the governing standard of objective reasonableness or this Court's prior findings—affirmed by the Seventh Circuit—that the disclosure claims at issue were not "plainly material" and produced no cognizable benefit to shareholders. Instead, they offer variations on familiar themes: that *Walgreen* is irrelevant, that their claims were at least "arguably" material, and that belated disclaimers of fees or internal firm roles insulate them from responsibility. None of those arguments withstands scrutiny.

The Seventh Circuit has already resolved the central legal question. *Alcarez v. Akorn* applied *Walgreen* to these very claims and affirmed that the disclosures sought were not "plainly material" and that the resulting fees could be confirmed as unwarranted as the Court found in 2019. 99 F.4th 368, 377 (7th Cir. 2024). While the mandate directed the Court to provide process under § 78u-4(c)(1) and Rule 11, the panel endorsed the Court's application of the "plainly material" standard, and the Other Respondents provide no reason for the Court to depart from its earlier conclusion.

The Other Respondents propose a variety of "one weird tricks" that they insist should prevent the Court from affirming sanctions or ordering remedy beyond the previous disgorgement, but none of these withstand scrutiny. No, disclaiming fees after months of litigation is not a Rule 11 safe harbor. No, affixing "of counsel" next to your signature does not immunize oneself from Rule 11 liability. No, mandatory sanctions under the PSLRA don't instead bar all sanctions when the opposing party is not a defendant corporation. All of these gimmicks should be rejected, and the Court should confirm its prior findings constitute sanctionable conduct under Rule 11, reinstate at least the disgorgement

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[2] The "Other Respondents" are: 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. For convenience, pages from these briefs will be cited in the form KXX, MXX, LXX, and FXX, respectively (so for example, L10 refers to page 10 of the Long/RM brief, Dkt. 174).

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

order on this bases and at least require disclosures aimed at assessing the suitability of further sanction under Rule 11.

ARGUMENT

I. Rule 11 Requires Objective Reasonableness, Which Respondents Lacked

As explained in Intervenor's contemporaneously-filed opposition to Rigrodsky Respondents, Rule 11 requires an objective inquiry into whether counsel's claims were reasonable in fact and law at the time they were filed and as later advocated. That standard is not satisfied by pointing to abstract possibilities, *post hoc* expert support, or generalized statements that materiality can be "debatable." It requires a case-specific, legally grounded basis for concluding that the alleged omissions rendered the proxy materially misleading.

The remaining Respondents do not engage that standard. Instead, they each mirror *Rigrodsky's* premise that *In re Walgreen Co. Stockholder Litigation*, 832 F.3d 718 (7th Cir. 2016), is irrelevant outside the settlement context. *See* K4-5; M3-4; Lo6-9; F12. That argument fails as a matter of law and has already been rejected in this case. The Seventh Circuit affirmed that the disclosures sought here were not "plainly material" under *Walgreen* and affirmed this Court's conclusion that the resulting fees were unwarranted and could be disgorged § 78u-4(c)(1), which is the very statutory inquiry the Court must now engage in. *Alcarez v. Akorn, Inc.*, 99 F.4th 368, 377-78 (7th Cir. 2024). Had the panel believed *Walgreen* irrelevant, it would have said so instead of affirming that the disgorgement would hold under § 78u-4(c)(1) and Rule 11 after providing Respondents an opportunity to be heard. Therefore, *Alcarez* does not confine *Walgreen* to class action settlements and in fact expressly endorsed its application to the exact sanctions determinations this Court must make on remand. And *Alcarez* held so after several Respondents argued on appeal that *Walgreen* was irrelevant outside of class settlements. 99 F.4th at 373, 377.. The mandate rule does not permit its relitigation now.

This is because *Walgreen* speaks directly to objective reasonableness for PSLRA merger claims. It identifies a category of disclosure demands—incremental financial details, valuation inputs, and similar minutiae—that "often" provide no meaningful benefit to shareholders while imposing real costs. 832 F.3d at 725. A reasonable attorney practicing in this Circuit cannot ignore that guidance when proposing to impose "high transaction costs (notice and attorneys' fees) be incurred at the class members' expense to obtain no benefit." *Walgreen*, 832 F.3d at 725. While the dismissal of plaintiffs' claims in *Smykla* was affirmed without reference to the "plainly material" standard (R11, M4, Lo8), the plaintiff and attorneys in that case had not even proposed to do what Respondents here actually did: divert funds from the shareholders' corporation to private attorneys who provided no benefit to them. In any event, contrary to Respondents' protestations, the plaintiffs in that case did not simply seek worthless disclosures, but instead sought (unsuccessfully) to "enjoin the company from 'continuing to act in a manner that would force' them to pay capital gains taxes." *Smykla v. Molinaroli*, 85 F.4th 1228, 1233 (7th Cir. 2023).

Nor does Respondents' reliance on additional case citations or variations in phrasing alter the governing inquiry. Rule 11 asks whether the arguments actually advanced were reasonable under the circumstances—not whether some argument could be imagined in the abstract. Here, the claims asserted were not close calls. In other words, they fell far short of the *Walgreen* "plainly material" standard. They were paradigmatic requests for immaterial detail of the kind *Walgreen* identified as typically lacking value. Respondents' attempts to repackage those claims with additional citations do not transform them into objectively reasonable ones.

A. Some respondents' belated disclaimer of attorneys' fees does not provide a "safe harbor" under the mandatory PSLRA inquiry.

The Long/RM Respondents argue at length that their belated disclaimers of attorneys' fees foreclose or substantially mitigate any sanction under Rule 11 and the PSLRA. R13. That argument is incorrect as a matter of law and incompatible with the record.

The PSLRA does not provide a "safe harbor" for abandoning claims after they have been filed, pursued, and used to extract attorneys' fees. To the contrary, it mandates that courts "shall" make Rule 11 findings upon final adjudication of a private securities action. 15 U.S.C. § 78u-4(c)(1). The statute focuses on the conduct of counsel in filing and advocating the complaint—not on whether counsel ultimately elects to disclaim fees after the litigation has run its course. That is because the primary of aim of Rule 11 is deterrence, not compensation. 5A Charles Alan Wright & Arthur R. Miller, FEDERAL PRACTICE AND PROCEDURE § 1334 (3d ed. 2004); Advisory Committee Notes on 1993 Amendments to Rule 11. Allowing attorneys to avoid sanctions by disclaiming fees only after the challenged conduct has achieved its purpose would nullify the statute's deterrent function.

That is precisely what occurred here. Respondents did not withdraw their claims or disclaim fees upon transfer to this Court, upon the announcement of a fee agreement, or even upon the Intervenors Frank's repeated citations to *Walgreen* and in connection with his argument that they should be sanctioned under the Court's inherent authority. Dkt. 58 at 5, 10-11; Dkt. 79 at 9; Dkt. 83 at 14. Instead, Long/RM and the other Respondents they affirmatively retained jurisdiction to pursue fees, agreed to a fee settlement, and opposed efforts to disgorge those fees. Only after the collapse of the merger appeared imminent—months after Intervenors' filings proposing sanctions—did certain Respondents disclaim entitlement to fees. That sequence does not reflect a good-faith reassessment of the merits; it reflects a strategic retreat when the expected payoff disappeared.

Nor does a disclaimer cure the underlying Rule 11 violation. Rule 11 applies to both the filing of a complaint and the "later advocating" of it. Fed. R. Civ. P. 11(b). By the time Respondents disclaimed fees, they had already filed the complaint, leveraged it to obtain a negotiated attorneys' fee award, and defended that resolution repeatedly before this Court. The violation, if any, was complete. A subsequent disclaimer, at least one that does not occur with Rule 11's 21-day safe harbor, cannot retroactively render objectively unreasonable filings reasonable.

Respondents' position would produce perverse incentives. If the only consequence of filing and pursuing meritless disclosure claims were the possibility of disclaiming fees in the rare case where the conduct is challenged, then the expected value of the strategy would remain positive. Most such cases would still result in fee payments without scrutiny; only a small subset would result in disclaimers. Rule 11 and the PSLRA were designed to prevent precisely that dynamic, not to ratify it.

Finally, the record confirms that disclaimers in this case did not deter repetition. Even after disclaiming fees in 2018, Respondents including Long/RM continued to file large numbers of similar strike suits. *See* Dkt. 129-1, ¶¶ 85, 86-87 (listing 446 merger disclosure strike suits filed by Long/RM

Respondents between 2020 and 2023 alone).[3] That conduct underscores that a one-off disclaimer does not alter the underlying incentives or satisfy Rule 11's deterrent purpose. Additional sanctions are therefore necessary.

B. "Of counsel" attorneys are subject to Rule 11 when they are substantively involved in the filings and strategy.

Monteverde argues that attorneys designated "of counsel" fall outside Rule 11's reach. Untrue. Rule 11 applies to any attorney who signs, files, submits, or later advocates a paper, and it imposes a personal, non-delegable duty of reasonable inquiry. Fed. R. Civ. P. 11(b). Rule 11 permits sanctions against an attorney who violates the rule or is responsible for the violation. Fed. R. Civ. P. 11(c)(1). The rule turns on conduct, not titles. Attorneys who play a substantive role in drafting, directing, or advancing claims cannot avoid Rule 11 by pointing to internal firm labels.

Monteverde simply misrepresents the holding of *King v. Whitmer*, which did not, as his parenthetical claims reverse "sanctions against 'of counsel' that 'did not file or sign' complaint." M12. In fact, the district court sanctioned five "of counsel" lawyers in that case, and sanctions were only reversed for one of them. 71 F.4th 511, 518, 531 (6th Cir. 2023). Thus, unsurprisingly the reason was not because that attorney was listed as "of counsel," but because the record showed she had "no role whatsoever" in drafting the complaint or any other significant role in the litigation. *Id.* at 531. Meanwhile, an attorney listed as "of counsel" claimed to have known nothing about the case, but the panel agreed that his self-serving testimony was false given contrary evidence, so the panel affirmed sanctions. *Id.* at 531-32. This is because responsibility under Rule 11 depends on an "individual analysis," so whether "of counsel" attorneys may be sanctioned depends on their own conduct—not the conduct of Louisiana local counsel that Monteverde would prefer to blame.

Monteverde's citation to *Webb v. Bd. of Trs. of Ball State Univ.*, is also inapposite. IP 97-1268-T/G, 2001 U.S. Dist. LEXIS 6779, at *54 (S.D. Ind. Mar. 30, 2001). Intervenor Frank does not contend that local counsel are "excepted" from Rule 11, and even if he did take this position, it does

[3] The list of merger strike suits filed cited herein includes suits signed by each Respondent without qualification or as "of counsel" on the face of each complaint.

not militate against sanctioning attorneys like the Monteverde Respondents who filed and advocated frivolous complaints for an improper purpose, obtained an agreement for unjustified attorneys' fees to the detriment of shareholders, and then continued to argue without merit that they should retain these fees. Monteverde apparently finds it unjust that *his* local counsel, Kahn Swick & Foti ("KSF"), who was also counsel for plaintiff Pullos, has exited these proceedings. Intervenor Frank already explained why this occurred in the first joint status report post-remand:

> As for the remaining two plaintiffs (Carlyle, No. 17-cv-5022 and Pullos, No. 17-cv-5026), Frank does not intend to proceed, and those actions should be considered by the Court closed for all purposes. These matters are differently situated, inter alia, because Frank did not appeal denial of intervention with respect to those plaintiffs' actions, raising serious timeliness/laches defenses that the other plaintiffs lack. Moreover, plaintiff Carlyle did not file a putative class action in the first place, so much of the Seventh Circuit's reasoning does not apply to his action. Given the various distinctions between the Carlyle and Pullos actions and the other four actions, Frank reached stipulations with counsel for plaintiffs Carlyle and Pullos, which resolves these actions for all purposes. Frank and his counsel did not receive any personal pecuniary benefit from these settlements, nor did plaintiffs Carlyle or Pullos or their respective counsel receive any pecuniary benefit thereto. Frank is happy to share the stipulations with the court in camera.

Dkt. 125 at 8.

Had timeliness with respect to plaintiff Pullos been retained, Frank likely would have pursued sanctions against KSF as well. While KSF could have conceivably been sanctioned in its role as local counsel, even this would be tenuous as KSF had never appeared on behalf of a plaintiffs besides Pullos in this district. Finally, Intervenor determined that KSF has only been listed on a few dozen strike suit complaints dating back to 2016. In contrast, Intervenor Frank identified 176 such suits filed by Monteverde Respondents between 2020 and 2023 alone. Dkt. 129-1, ¶ 92. Whether KSF is sanctioned has no bearing on whether Monteverde Respondents are sanctioned—to streamline the proceedings, Frank has pursued sanctions only against the counsel of interest, not local counsel who might credibly not have understood the improper purpose of the strike suit mootness racket at the time the *Akorn* complaints were filed.

Frank admits that the Ninth Circuit reached a different result from the Sixth in *Lake v. Gates*, but Monteverde provides no reason to apply Ninth Circuit law here. 130 F.4th 1054, 1057 (9th Cir. 2025). In *Lake*, the panel found "of counsel" should be treated as signing attorneys going forward, but reversed the sanction as to one "of counsel" attorney because the Circuit had not previously announced such rule. *Id.* at 1061. A dissent argued that the panel should have taken the approach used by the Sixth Circuit in *King v. Whitmer*—the approach advocated by Frank here—which would judge reasonableness of an attorneys' compliance with Rule 11 based on the "*actual* responsibility rather than just the 'form' of the filings." *Id.* at 1064. The dissent found this more consistent with the text of Rule 11, which does not delineate an artificial separation based on how pleadings are styled, but depends on the particular "circumstances" of the representation. *Id.* at 1062.

This *Lake* dissent and the Sixth Circuit opinion in *King v. Whitmer* are better-reasoned. This is especially true in view of the PSLRA, which requires the Court to make Rule 11 findings as to "each party and each attorney" in a private securities action. 15 U.S.C. § 78u-4(c)(1). This mandate could be easily evaded if attorneys actually driving the litigation could insulate themselves through internal titles while participating in the very conduct the statute is designed to deter. The Court should reject that invitation.

In short, Monteverde's argument elevates form over substance. Rule 11 attaches to the lawyer's role in presenting and advocating the claims, not to the label attached to that role. Where, as here, an attorney was substantively involved in the filings and strategy that advanced objectively unreasonable claims, Rule 11 applies in full. In any event, this defense does not assist Monteverde who "later advocat[ed]" the improper *House* complaint under his unambiguous signature, putting the complaint solidly within the reach of Rule 11(b).

C. As Monteverde acknowledges, the Court found that the violations were not *de minimis* and was correct to do so.

Monteverde contends that any Rule 11 violation here was "de minimis" and therefore does not warrant meaningful sanctions. M8. That argument cannot be reconciled with this Court's prior findings or the governing standard. The Court has already determined that the disclosure claims at issue were not "plainly material," that the litigation produced no meaningful benefit to shareholders, and that the resulting fees were unwarranted. Those determinations foreclose any suggestion that the violations were trivial. A claim that yields no cognizable benefit while extracting value is not de minimis; it is the precise harm Rule 11 and the PSLRA are designed to deter.

Monteverde admits as much, but suggests the Court might change its view. M8. Monteverde advances no reason for the Court to do this, and should decline the invitation.

D. The other Respondents' repetitive materiality arguments fail.

All of the Other Respondents rehash (at least by citation) some of the arguments concerning the materiality of alleged deficiencies, and many of these are already addressed in the Opposition to Rigrodsky. (For example, Long/RM simply incorporates the Rigrodsky Response arguments and prior waves of briefing in their Response, Lo10 n.9.) However, some of the additional discussion needs to be addressed in this brief.

Faruqi takes a different approach from most Respondents in devoting most of their brief to just two allegedly deficient disclosures, which they introduce by asserting "Faruqi has never had an opportunity to have addressed the unique and specific issues in Rule 11(b) with respect to Faruqi and the *Harris* Action." F2. Then, under the first heading concerning the "Unique" *Harris* complaint Faruqi devotes several pages to the GAAP reconciliation demand. F4-8. Literally every other Respondent at least namechecks this issue in the response to the Order to Show Cause. *See* R14, L10-11, M6, Lo10. GAAP reconciliation has featured prominently in *every* prior wave of briefing because it's the only demand shared by all Respondents that Akorn also unambiguously provided supplemental disclosures concerning.

Faruqi tells a whimsical story that GAAP reconciliation would have been especially important in this case as applied to the November 2016 management case because unbeknownst to Harris or anyone else, Akorn did not disclose material deficiencies to Fresenius. F9. Of course, these undisclosed deficiencies actually pertained to data integrity reporting irregularities within Akorn's drug manufacturing sites potentially leading to hazardous drug products and massive liabilities. *Akorn, Inc.*

v. Fresenius Kabi AG, No. 2018-0300-JTL, 2018 Del. Ch. LEXIS 325, at *93 (Del. Ch. Oct. 1, 2018). The deficiencies did *not* concern non-GAAP financial metrics used by analysists in preparing a projections that Akorn's board didn't even rely on in recommending the merger. To the extent that Faruqi suggests that the GAAP reconciliation would have somehow blown the lid off of Akorn's violations of FDA and GMP manufacturing protocols, they do not explain how, and the market certainly didn't see anything in the unlevered free cash flow figures from the Management Case. The share price hardly budged when the imaginary bombshells dropped upon filing either the June 15, 2017 Definitive Proxy or the July 10, 2017 Supplemental Disclosure. *See* Opp. to Rigrodsky III.C.3, Fig. 1 (showing stock prices and volume over the period).

Faruqui does not—because it cannot—say that its narrative was known to them at the time of filing the Harris complaint, nor even when plaintiffs' negotiated their mootness fee payoff. It's constructed wholly from hindsight bias, and even then it doesn't make sense. For example, in agreeing to let Fresenius off the hook for the Akorn transaction, the Delaware chancellor cited drastic reductions to EBITDA and EBIT that occurred in the November **2017** performance update, not from the November 2016 Management Case that Harris sought. *See* 2018 Del. Ch. LEXIS 325, at *60. Ironically, the chancellor's conclusions are based on these non-GAAP figures which, if anything, confirms that they are valuable to knowledgeable commentators. If non-GAAP figures were so misleading, why would a Delaware chancellor find them persuasive without reconciliation?

Like Rigrodsky, Faruqi does not appreciate that the Court based its GAAP reconciliation determination on a decades-old SEC regulation, which could not be repealed by SEC letters or Commissioner speeches. The subsequent district court decisions simply confirmed for the Court that Regulation G was "highly persuasive." *House*, 385 F. Supp. 3d at 619. Faruqi does not address the Court's point that the rosier November 2016 projection does not add to the mix of information given the prior disclosure of slightly worse March 2017 Management Case. *Id.* at 620. Faruqi certainly does not explain how reconciliation of the November 2016 Management Case would have foretold the apocalyptic November 2017 results that Akorn logged as the bottom was falling out of the company.

Next, Faruqi asserts that the materiality of J.P. Morgan's net debt inputs, but does not address the Court's more recent order on the subject. Dkt. 141 at 7-8 (finding that disclosure of J.P. Morgan's projection without requiring every conceivable input provides the "fair summary" required by *Trulia*). Faruqi at no point explains why the absence of these inputs renders the disclosure misleading, and rests its case on this statement at the end of the section: " Indeed, so material was this metric that Akorn fixed this glaring omission that was in the Preliminary Proxy ***by including this metric in the Definitive Proxy, as was alleged should have been done by Faruqi in the Harris Complaint***." F11 (bold and italic in original). This isn't so. Additional information in a Proxy Statement more likely shows the information could be disclosed easily, cheaply, or strategically; it does not establish legal materiality or Rule 11 reasonableness.

II. Individual analysis of nearly all Other Respondents supports sanctions.

The individual analysis as to the Other Respondents shows convincing facts that should subject nearly all of them to Rule 11 sanctions.

As for the Monteverde Respondents, Mr. Monteverde individually led the effort to retain mootness fees even after the disclaiming plaintiffs concluded the enterprise too risky to persist. He, or perhaps another individual at Monteverde & Associates, P.C. presumably drafted the underlying *House* complaint which was filed listing Mr. Monteverde as "of counsel," No. 1:17-cv-5018, Dkt. 1 (Jun. 12, 2017). This *House* complaint was substantially plagiarized by Monteverde's local counsel (listing no other firms) into the now-dismissed *Pullos* complaint, No. 1:17-cv-5026 (Jun. 22, 2017). Intervenor does not know whether Monteverde was involved in negotiating the mootness fee arrangement, nor whether Monteverde & Associates PC was the firm that actually received payment from Defendants, but based upon their status report after the disgorgement order, Monteverde repaid the entire mootness fee award itself on July 2, 2019. Dkt. 83. Following disclaimer of attorneys' by three of the plaintiffs, Monteverde took a leading role in continuing to argue for their retention of the fee award, which would have then been divided among three firms instead of the original six plaintiff groups. To this end, Miles D. Schreiner of Monteverde & Associates PC appeared *pro hac vice* on behalf of House on October 19, 2018. No. 1:17-cv-5018, Dkt. 74. While the subsequent briefs in support of retaining attorneys' fees were signed by Monteverde and counsel from two other firms now dismissed from the case, Messrs. Monteverde and Schreiner responded to substantially all email correspondence from Intervenor Frank concerning these filings, which included multiple joint status reports—the other attorneys representing Pullos and Carlyle rarely chimed in. *See* No. 1:17-cv-5018, Dkts. 65, 68, 74, 75, 83. Following the Court's disgorgement order, Monteverde appealed on putative behalf of Mr. House. Mr. Monteverde argued for his entitlement to fees both before this Court and the Seventh Circuit. Additionally, Monteverde Respondents filed 176 apparent merger strike suits between 2020 and 2023 alone. Dkt. 129-1, ¶ 92.

As for the LK respondents, Mr. Enright and Ms. Tripodi are both listed as "of counsel" in the *Alcarez* complaint (No. 1:17-cv-5017, Dkt. 1). The complaint itself appears to have been written by a LK attorney named Brian Stewart based on document metadata that says "bstewart," presumably under the direction of his partners, Attorneys Enright & Tripodi. Upon transfer to this district, Attorney Kupka, who then worked for the LK firm, appeared as local counsel for Alcarez and notably also for plaintiff Berg, where Kupka filed both the dismissal without prejudice (purporting to reserve jurisdiction for an attorneys' fee application), Dkt. 54, and the notice announcing the stipulation of attorneys' fees with defendants, Dkt. 56. Mr. Kupka signed all of oppositions to Frank's initial motion to intervene in 2017. Dkts. 78, 80. Ms. Tripodi appeared *pro hac vice* in the Berg action on October 3, 2017. Dkt. 73. Additionally, LK Respondents filed 12 apparent merger strike suits between 2020 and 2021 alone (but substantially more prior to these dates). Dkt. 129-1, ¶ 91.

As for the Long/RM objectors, Attorneys Long and Maniskas were listed as "of counsel" in the original *Berg* complaint. Dkt. 1. Upon transfer to this district, Brian D. Long appeared *pro hac vice* (Dkt. 74), although he and Mr. Maniskas continued to sign each opposition to Mr. Frank's motions as "of counsel." Dkts. 78, 80, 85. The Long/RM Respondents assert that Mr. Maniskas "Maniskas had no role in drafting or filing the Berg Complaint. Maniskas' only role in the Berg Action was to act as referring counsel." To the extent this is correct, it may be that insufficient facts connect him to the underlying sanctionable conduct, but his peculiar referral arrangement is precisely with disclosure of the referral agreements with named plaintiffs in this case is prudent. *See* Section III.B.1, below. Additionally, Long/RM Respondents filed 446 apparent merger strike suits between 2020 and 2021 alone (but substantially more prior to these dates). Dkt. 129-1, ¶¶ 86, 88-89.

As for the Faruqi respondents, Attorneys Wilson and Nadeem Faruqi were listed as "of counsel" in the original *Harris* complaint. No. 17-cv-5021, Dkt. 1. Counsel plaintiff Harris, presumably including one or both of the individual Faruqi Respondents "reviewed and approved" the opposition to Frank's motion to intervene. Dkt. 78 at 1. Subsequent oppositions were less precise but upon information and belief the Faruqi Respondents continued to participate in the opposition to Frank's motions. Attorney Willson moved to appear *pro hac vice* in the *Harris* action on April 30, 2018, presumably to attend the telephonic hearing with all plaintiffs' counsel that occurred shortly thereafter. No. 17-cv-5021, Dkt. 52. Additionally, Faruqi Respondents filed 7 apparent merger strike suits between 2020 and 2021 alone (but substantially more prior to these dates). Dkt. 129-1, ¶ 91.

III. Disgorgement is Inadequate Sanction for Deterrence

Contrary to Respondents, the disclaimer or disgorgement of attorneys fees in the underlying suits provides inadequate deterrence to serve as the sole Rule 11 sanction. R30, Lo13, F15. The belated disclaimer of fees addresses only the proceeds of a particular case; it does not alter the underlying calculus that makes the conduct profitable or repeatable. As the Seventh Circuit has recognized in analogous contexts, a sanction that merely restores the status quo ante does not necessarily deter future violations where the conduct can be replicated at low cost and with predictable returns.

Here, the litigation model identified in *Walgreen* depends on precisely that dynamic: the assertion of claims seeking incremental disclosures, followed by supplemental disclosures, dismissal, and the negotiation of fees. If the only consequence of pursuing such claims is the potential return of fees in a subset of cases—often years later—the model remains viable. The expected value of the strategy is not meaningfully reduced. Virtually no cases result in sanctions proceedings. Defendants rarely advance demands under § 78u-4(c)(1) because the value of hypothetical sanctions in any individual case is generally dwarfed by the attorney time necessary to win them. The entire racket works though this reality: when the demands are low enough, it's cheaper to pay of meritless nuisance complaints than contest them. *Alcarez* makes clear that the PSLRA does not tolerate this result; it was drafted specifically to deter it, and deterrence remains necessary.

The lack of deterrence is shown in Rigrodsky's own conduct. Subsequent to disclaiming fees in March 2018, the firm filed hundreds of additional strike suits, including 259 such suits in 2021 and 2022 alone (this is *after* Mr. Long sold his shares and the firm was renamed Rigrodsky Law, P.A.). *See* Dkt. 129-1, ¶ 86 (listing suits). The judicial carnage inflicted by spamming courts with meritless suits designed to extract fees is difficult to fathom and in no way remedied by returning fees from one case where the unthinkable happened and a non-profit intervenor sought to stem the tide of suits filed for the improper purpose of extracting fees.

Moreover, disgorgement is inherently backward-looking. It does not remedy the costs imposed on defendants, courts, and absent shareholders, nor does it prevent repetition by the same counsel or others similarly situated. Rule 11's deterrent function requires more than a retrospective remedy; it requires measures that discourage the initiation and continued pursuit of objectively unreasonable claims in the first instance.

As explained in Intervenor's Opposition to Rigrodsky, a one-off fee remedy—particularly one obtained only after intervention—does not meaningfully deter the conduct at issue. The pattern identified in *Walgreen* and industrialized by the mootness fee racket is repeatable at low cost and with predictable upside: file, obtain supplemental disclosures of marginal value, and monetize the case through a fee. Returning fees in the rare instance of challenge simply restores the status quo; it does not change the underlying incentives. The mandatory findings and sanctions under the PSLRA is intended to curtail this sort of gamesmanship, the some Respondents propose artificial limits that would undermine its purpose. The Court should reject these.

A. PSLRA presumption is not exclusive.

Monteverde contend that the PSLRA's sanctions to the "appropriate sanction" described in 15 U.S.C. § 78u-4(c)(3) and thereby precludes any broader or additional relief. M10-11. That reading is incorrect. The statute establishes a minimum, by *requiring* that the court "shall" presumptively issue monetary sanctions "to the opposing party of the reasonable attorneys' fees and other expenses incurred in the action." § 78u-4(c)(3)(A) & (ii). This constrains courts by imposing a presumptive minimum—but it does not purport to displace Rule 11's broader remedial authority or to prohibit tailored, non-monetary sanctions where necessary to achieve deterrence.

The text confirms this. A presumption, by definition, is rebuttable, and § 78u-4(c)(3)(B) is expressly rebuttable, so does not foreclose other measures where the circumstances warrant. Nothing in the statute's language suggests exclusivity; to the contrary, it incorporates Rule 11 so leaves intact the court's authority to fashion sanctions "limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated." Fed. R. Civ. P. 11(c)(4). The PSLRA thus works in tandem with Rule 11, strengthening its mandatory application but not narrowing the range of permissible remedies.

That understanding accords with the statute's purpose. Congress enacted the PSLRA to enhance deterrence of abusive securities litigation, not to constrain courts to a single, mechanical remedy. Limiting sanctions to fee shifting—particularly in a setting where the underlying conduct can be replicated at low cost and with predictable returns—would undermine that objective. As courts have recognized, a sanction that merely restores the *status quo ante* may be insufficient where it fails to alter the incentives that produced the violation in the first place. "[T]he central purpose of Rule 11 is to deter baseless filings in District Court." *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 393 (1990). Where monetary sanctions are inadequate for deterrence (or unavailable as some Plaintiffs assert), additional, targeted measures are appropriate to ensure meaningful deterrence.

Respondents' contrary position would produce precisely the result Congress sought to avoid. If attorneys could file and pursue objectively unreasonable claims, extract value through the litigation process, and face at most the risk of returning fees in the rare case where their conduct is challenged, the expected value of the strategy would remain positive. The PSLRA does not mandate such an "efficient breach" regime. It requires courts to impose sanctions sufficient to deter repetition—and where fee shifting is impossible or inadequate, courts retain authority to impose additional, narrowly tailored remedies consistent with Rule 11.

Accordingly, the Court may—and should—consider sanctions beyond the statutory presumption where necessary to address the conduct at issue and to prevent its recurrence.

B. The PSLRA authorizes other sanctions.

Several Respondents (R22, K14-K15, Lo11-L12), assert that the PSLRA permits an award of attorneys' fees, but Rigrodsky admits that the PSLRA permits less burdensome sanctions as well. R23. Rigrodsky asserts that Frank's suggestions are *more* burdensome and therefore unavailable (R23), but this premise is clearly untrue. While non-monetary sanctions *can be* "substantially more severe," Frank does not propose anything like a requirement to attach a sanctions order and certification of paying sanctions to every *pro hac vice* application for five years. *See In re Prudential Ins. Co. Am. Sales Practice Litig. Actions*, 278 F.3d 175, 193 (3d Cir. 2002). Frank cited the model for his disclosure sanction: *Inv. Mgmt. Ab v. Symantec Corp.*, No. C 18-02902 WHA, 2021 WL 1540996, 2021 U.S. Dist. LEXIS 77040 (N.D. Cal. Apr. 20, 2021). This order which required the sanctioned firm to bring the sanctions order to the attention of courts deciding appointment of class counsel for a period of three years. Frank does not propose such a sanction "forever," a word Rigrodsky repeatedly writes within quotation marks even though Frank never used the word. R25 n.9, R27.

As for the disclosure remedies, Frank is not even sure whether they are sanctions *per se*, but instead demonstrate the need for further sanctions. They are akin to targeted discovery, so could not possibly be considered "more severe" than monetary sanctions.

1. Disclosures from Respondents are appropriate.

Two of Frank's suggestions are not exactly sanctions at all, but are disclosures more akin to discovery to demonstrate that further financial sanction is necessary. The disclosures Frank seeks are (Dkt. 129 at 25):

> 3. Requiring counsel to disclose retention agreements with the Plaintiffs; the racket only persists due to the stream of purported shareholders, and retention agreements may reveal an undisclosed kickback of "attorneys' fees."

> 4. Requiring counsel to disclose all purported mootness fees extracted by them in similar suits and demand letters, which will allow courts, academics, and lawmakers to evaluate the scope of the problem and whether reforms should be enacted to curb the conduct.

Requiring disclosures are not a sanction at all, but instead is necessary to determine the appropriateness of further monetary sanction, which the Court is disinclined to grant. Frank thinks of disclosure as requisite to demonstrating the need for further monetary sanction, which is why he enumerated it last as: "5. Imposing monetary penalties, whether to Frank's counsel or the Court." *Id.*

As for the first of these disclosures, Rigrodsky argues simultaneously that it has never seen the retention agreement for Berg and that disclosure of it might "invade the attorney-client relationship." R28. This is incoherent, and lacks any authority. In any event, to the extent Rigrodsky is correct that only RM Law communicated with Mr. Berg (*see* Serra Decl. ¶ 62), the disclosure obligation on Rigrodsky could not imaginably interfere with any attorney-client relationship. In fact, retention agreements are routinely discoverable and rarely privileged unless for some reason they include confidential attorney-client strategy, which they should not. *See Stopka v. Am. Family Mut. Ins. Co.*, 816 F. Supp. 2d 516, 532-33 (N.D. Ill. 2011) (citing cases). If Rigrodsky or Long/RM contend this is so here, they can file the retention agreement(s) *in camera* for the Court to determine whether colorable privilege exists.

Notably, only the counsel representing Mr. Berg raise an objection to the disclosure of the retention agreements.[4] Frank suspects this is related to the peculiar fact that Mr. Berg was a named plaintiff in at least 28 similar strike suits filed in 2017. *See* Dkt. 83-1, ¶ 12 (listing cases). Long/RM contends that the certification Berg "would not accept payment for serving as plaintiff" negates the need for this disclosure (Lo16), but the certification does not rule out the existence of other compensation that Mr. Berg may have received. It appears Mr. Berg acquired token ownership of a large fraction of companies engaged in merger transactions. *Compare* Dkt. 1-1 (indicating ownership of $594 worth of Akorn stock acquired January 2017) *with Berg, v. Sajan, Inc., et al.*, No. 17-cv-0379, Dkt. 1 (W.D. Wisc. May 16, 2017) ($300.15 in shares acquired December 2016); *Berg v. Panera Bread*

[4] Monteverde expressly reports "no problem" disclosing his retention agreement. M14.

Co. et al., No. 17-cv-1631, Dkt. 1-1 (E.D. Mo. Jun. 8, 2017) (10 shares worth $1881, acquired November 2016); *Berg v. Span-America Medical Systems Inc. et al.*, No. 17-cv-1399, Dkt. 1-1 (D.S.C. May 26, 2017) ($855 in shares acquired January 2017); *Berg v. KCG Holdings, Inc.*, No. 17-cv-3802, Dkt. 1-1 (S.D.N.Y. May 19, 2017) ($672.50 in shares acquired March 2017). At minimum, Mr. Berg's preference to buy small quantities of individual securities, presumably paying small (but not $0) transaction fees for each, is an unusual investment strategy. While the Long/RM respondents call Frank's inference that Berg was compensated an "outrageous accusation" (Lo16), the pattern of serial filing is unmistakable. Berg, alone among the named plaintiffs, filed a significant number of strike suits individually, and likely not coincidentally, Berg's counsel are the only respondents who take issue with Frank's proposal to disclose the underlying retention agreements. This militates in favor of requiring disclosure.

As for the second disclosure—the mootness fee agreements reached in other cases—this is necessary not just for academic interest, but to firmly disprove respondents' contention that disclaimer and disgorgement of fees in this case alone is an adequate remedy under Rule 11. Frank does not recommend an "unlimited" ongoing duty to disclose future settlements (*contra* R28), but simply for disclosure of past agreements reached so that the Court can assess a financial sanction proportional to deter the conduct.

Rigrodsky complains that such disclosure would be burdensome. R29. In part, Rigrodsky complains that the disclosure requirement is too open-ended, and Frank agrees that his terse suggestion "to disclose all purported mootness fees extracted by them in similar suits and demand letters" is not precise enough; it was offered at the end of his 25-page brief as a suggestion for further action by the Court in tailoring remedies to the conduct. Frank proposes this more exact definition, which avoids addresses all of Rigrodsky's reasonable objections to disclosure:

> Respondent attorneys and law firms should disclose all "Merger-Related Complaints and Demands" involving those attorneys as law firms from May 2, 2018 (the date that intervention was denied to the disclaiming respondents) until May 14, 2024 (the date of the Seventh Circuit *Alcarez* opinion). For each Merger-Related Complaints and Demand, the disclosure should cite docket numbers of the suit or suits filed by that Respondent and otherwise shall list

> the date of the letter(s) demanding disclosure. For each Merger-Related Complaints and Demand, the Respondent shall indicate whether a mootness or other attorneys' fee agreement was reached. The amount of fees for each agreement should be indicated if the agreements' terms are not confidential. For agreements where the existence of an agreement itself is purported to be confidential, these need not be identified in a public filing, but shall be listed separately for the Court's examination. The sum total of all fees secured in fee agreements shall be disclosed publicly, as shall the sum total of fees allocated to that Respondent.
>
> "Merger-Related Disclosure Proceeding" means any action or pre-suit demand by Respondents alleging materially misleading or incomplete disclosures in connection with a proposed merger, acquisition, of tender offer, where such action or demand aimed to or did result in (a) supplemental disclosures, or (b) a request for or payment of attorneys' fees in connection with allegedly improving previously-deficient disclosures. The definition does not cover requests for records unconnected to a disclosure suit action or threat thereof, nor does it cover lawsuits for the recovery of shareholder damages.

Thus, disclosure would not sweep in all historical litigation, nor litigation by attorneys besides the Respondents. To the extent that attorneys now with Rigrodsky or any other respondent firm filed previous strike suits, these should not be within the scope of the disclosure obligation. Similarly, any obligation to disclose demand letters should be limited to pre-suit communications asserting disclosure deficiencies in connection with a proposed transaction and seeking supplemental disclosures or attorneys' fees, whether explicitly or implicitly. Routine shareholder inquiries or communications unrelated to such demands, like records requests, are excluded. The form of disclosure is likewise modest. Respondents could provide a summary table, identifying (1) the transaction, (2) case name, court, and docket number, if applicable, (3) demand letter date(s), if applicable, and (4) whether an agreement concerning attorneys' or mootness fees was reached. Nothing in this requirement would compel disclosure of attorney-client communications or work product; it concerns only the existence and basic characteristics of proceedings and demands already directed at third parties.

To the extent that Rigrodsky's objection to the "burden" relates to the fact they have filed many hundred strikes suits (*see* Dkt. 129-1, ¶ 86, listing 259 strike suits from 2021 to 2022), this complaint is unpersuasive. The disclosure burden is precisely proportional to the much greater burden each Respondent imposed on courts and defendants by actually filing these suits and sending these demand letters. Frank expects disclosure to show that the existing disgorgement remedy was emphatically inadequate to deter the conduct, and will help the Court asses an appropriate further financial sanction commensurate with respondents' racket.

Rigrodsky (R29) and other respondents (M15, Lo16-Lo17) argue that disclosure would be impractical and tie the Court up in collateral confidentiality litigation that the Long/RM Respondents says could last "years" to resolve. Lo3. This is untrue, and Frank knows its untrue because of the disclosures he received from Kahn Swick & Foti, LLC ("KSF") in connection with dismissing them from these proceedings. As explained in Frank's response to the other Respondents, he reached a settlement with KSF because no appeal was taken from the disgorgement order as to KSF, so the timeliness of proceedings against KSF was questionable, and because KSF filed only a few dozen strike suits—far fewer than the Respondents. Frank agreed to stipulate KSF's dismissal in exchange for identifying mootness fee agreements it reached from cases that Frank's counsel identified as involving the firm. Because of this, Frank has gleaned that terms of the the vast majority of mootness settlements are confidential, but virtually none of them stipulate that the *existence of the agreement* itself is confidential. In other words, all of the existence of the agreements can generally be disclosed, even if the specific financial terms within them cannot.

Frank's practical proposal avoids running afoul of any confidentiality provisions. Respondents need only disclose *whether* a mootness or attorneys' fee settlement was reached. To the extent that the terms of the settlement are confidential—and Frank expects most of them are—it will simply so indicate in the disclosure, reporting individual dollar amounts only from settlements that are not confidential. Instead, as respondent Monteverde suggested (M15)—respondents may then disclose the "aggregate number and amount of mootness fees it has received." Frank disagrees with Monteverde's suggestion that disclosure be limited to the last year, but agrees that disclosing the gross amount of all mootness settlements and the proceeds received by each firm from the gross amount is a reasonable way to avoid messy questions about confidentiality.[5] Ultimately, the Court should likely

[5] In reaching a settlement with KSF, Frank learned that a small number of mootness settlements purport to make not just the terms of the settlement, but *the existence of the settlement* itself

disregard the Respondents' assertions of confidentiality entirely. Because their mootness fee racket is unlawful, public policy does not permit countenancing confidentiality agreements that be shield that racket from public view.

Rigrodsky objects (R29) that what constitutes a disclosure strike suit is subjective because they also filed a much smaller number of substantive lawsuits for a proper purpose. Intervenor Frank does not believe it's difficult to identify strike suits on their face. For example, *not one* of the suits that the Rigrodsky flags as substantive (Dkt. 173-1, ¶ 58) were included in the list of hundreds of apparent strike suits that Frank identified. Dkt. 129-1, ¶¶ 85-94. Frank's counsel took effort to avoid listing suits that did not appear to be part of the mootness fee racket, and it should be even easier for respondents to identify these suits.

These clarifications should provide a suitable framework for disclosure.

2. A modest disclosure requirement does not constitute a "scarlet letter"

Frank's disclosure remedy should be modeled after *Inv. Mgmt. Ab v. Symantec Corp.*, which fixed the period of disclosure to three years, not a "shaming exercise" that leaves Rigrodsky "no choice but to go out of business." *Contra* R26. The *Symantec* remedy issued by Judge Alsup demonstrates that targeted, time-limited disclosure requirements are a recognized and proportionate means of deterrence, not punishment. Such disclosure in no way restrains counsel from filing any suits they desire, it simply puts courts and defendants on notice that precedents exists to contest the mootness fee racket. To the extent that Respondents are no longer engaged in the practice, it imposes no burden at all. Such disclosure would only apply to suits and demand letters allegedly seeking to remedy deficient SEC disclosures. Most substantive securities suits do not primarily concern notice at all, and to the extent that Respondents file some, the disclosure requirement costs no more than a footnote.

confidential. Frank's proposal handles such agreements by only providing them to the Court for *in camera* review. In their public disclosures, Respondents will simply disclose the total number of these additional settlements that cannot be connected to any particular merger transaction. The dollars obtained from all mootness fee settlements together—non-confidential, those with confidential terms, and those where the existence of the agreement is confidential—may then be disclosed in aggregate form without violating any confidentiality provision.

C. Intervenor Frank may recover fees as the "opposing party" under the PSLRA.

Two Respondents argue that Intervenor Frank is not entitled to fees because he "voluntarily interjected himself" into this litigation and is not an "opposing party" within the meaning of the PSLRA. M8-10; L11-12 n.12. That argument is inconsistent with both the statute's purpose and analogous fee-shifting precedent.

As an initial matter, the PSLRA's fee provision is not a conventional prevailing-party statute; it is a sanctions regime directed at compensating those harmed by Rule 11 violations and deterring future misconduct. See 15 U.S.C. § 78u-4(c). The statutory focus is therefore on the violator's obligation to pay, not on formal party labels for the receiving party. Once a Rule 11 violation is established, the court must impose sanctions which presumptively includes payment of the reasonable attorneys' fees and expenses incurred as a direct result of the violation. *Id.* § 78u-4(c)(3). Frank plainly qualifies: his intervention was necessary to expose and remedy the misconduct, and the fees he incurred were a direct result of Respondents' Rule 11 violations, including their persistence is seeking to secure the spoils of their racket.

Even under traditional fee-shifting principles, intervenors who assume an adversarial role are treated as full parties for purposes of fee awards. The Seventh Circuit's decision in C*harles v. Daley* is instructive. There, the court held that intervenors defendants who "voluntarily . . . interject themselves into such lawsuits" and "fully participat[e]" in the litigation may be liable to prevailing plaintiffs under § 1988. 846 F.2d 1057, 1064-65, 1075 (7th Cir. 1988). The court emphasized that the intervenors had become "full-fledged parties," arguing "every issue with vigor" and effectively functioning as the defendants' "alter ego." *Id.* at 1064-65. That reasoning applies with equal force here. Respondents themselves characterize Frank as having "interjected himself," but that is precisely what renders him a proper fee recipient: having assumed the role of an adversary, he stands as the "opposing party" to the sanctioned conduct. *Id.* at 1074. While § 1988 does not use the "opposing party" language, the panel's logic would certainly apply to a statute like the PSLRA that *does* expressly use is. *See* 846 F.2d at 1074 ("at issue here is a statute which authorizes the payment of a successful civil rights litigant's attorneys' fees by the unsuccessful opposing party.").

The Seventh Circuit has likewise recognized that intervenors may recover fees where their efforts materially advance the litigation and are not merely duplicative. In *King v. Illinois State Board of Elections*, the court approved a fee award to intervenors who "carried the weight of the defense" and whose participation was not redundant of the named parties. 410 F.3d 404, 419-20 (7th Cir. 2005). The same is true here. Frank's efforts were not duplicative; no party otherwise pursued the Rule 11 violations or sought disgorgement. *King* limited its holding to cases where the intervenor was not "redundant" or "duplicative," but Intervenor Frank easily meets this bar. Without his intervention, the misconduct identified by this Court and the Seventh Circuit would likely have gone unremedied.

Sanctions under the PSLRA should be even more liberal to intervenors that in these fee-shifting cases because the statute aims to deter violators by making them pay. Artificially limiting potential recipients as "opposing parties" would frustrate the core function of the statute.

Monteverde's citation to an EAJA cases is inapposite for two reasons. First, the statute has a large set of limitations and case law construes them against a backdrop of express waiver of sovereign immunity (fees in EAJA cases are paid by the government). The EAJA is unlike a sanctions regime or even civil litigation fee shifting. Second, the prospective prevailing party in that case had not intervened so was not a "party" at all, but an *amicus*, which can only obtain attorneys' fees under limited circumstances. *See Lundin v. Mecham*, 980 F.2d 1450, 1461 (D.C. Cir. 1992).

Nor does Monteverde's citation to *Kay v. Ehrler* (M10) preclude recovery to Frank. *Kay* addresses pro se litigants and rests on the absence of an attorney-client relationship. 499 U.S. 432, 436-38 (1991). That rationale does not apply where, as here, legal work is performed within an organizational or professional structure that preserves such a relationship. Courts have repeatedly recognized that entities—including law firms—may recover fees for work performed by their attorneys, even where those attorneys are affiliated with the entity. *See*, e.g., *Gold, Weems, Bruser, Sues & Rundell v. Metal Sales Mfg. Corp.*, 236 F.3d 214, 218-19 (5th Cir. 2000); *Bond v. Blum*, 317 F.3d 385, 400 (4th Cir. 2003); *Baker & Hostetler LLP v. U.S. Dep't of Commerce*, 473 F.3d 312, 326 (D.C. Cir. 2006);

Nat'l Sec. Counselors v. CIA, 811 F.3d 22, 30–32 (D.C. Cir. 2016). These decisions reflect the "crystal clear" distinction between a pro se litigant and an organization represented by counsel.[6]

Finally, Respondents' rule would create perverse incentives. If intervenors who uncover and remedy Rule 11 violations cannot recover fees, while those who commit the violations face only limited downside risk, the statute's deterrent purpose would be undermined.

Frank is therefore entitled to recover the reasonable fees and expenses he incurred as a result of Respondents' Rule 11 violations, should the Court find them necessary and defendant's disclosures suggest them necessary.

CONCLUSION

The Other Respondents do not meaningfully dispute the central facts: they filed and pursued disclosure claims that this Court and the Seventh Circuit have already determined were immaterial, obtained or sought fees based on those claims, and now attempt to avoid consequences through hindsight arguments and belated disclaimers. That is not a close case under *Walgreen* and is not a close case under Rule 11.

The PSLRA requires more than a symbolic remedy. A one-off fee disgorgement—particularly one obtained only after intervention—does not alter the incentives that produced this conduct. Without additional sanctions, the same litigation model remains profitable and repeatable. That result would undermine both Rule 11 and Congress's express directive that sanctions be sufficient to deter repetition.

The Court should therefore impose sanctions that reflect the nature of the violation and the need for meaningful deterrence. Whether through monetary relief, targeted disclosure requirements, or other narrowly tailored measures, the remedy should ensure that the conduct identified in this case

[6] Frank would not seek compensation for his own time, but only on behalf of his colleagues who have worked on this case for years and have kept contemporaneous hours throughout the course of litigation.

is not repeated. For these reasons, the Court should find that the Other Respondents violated Rule 11 and impose appropriate sanctions.

Dated: May 6, 2026

<u>/s/ M. Frank Bednarz</u>

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CERTIFICATE OF SERVICE

The undersigned certifies he electronically filed the foregoing Consolidated Opposition to Other Respondents' Responses to Order to Show Cause (Dkts. 171, 172, 174, and 175) 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