UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ROBERT CARLYLE, 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, and ALAN WEINSTEIN, Defendants.	Case No. 1:17-cv-04455 CLASS ACTION Hon. Robert M. Dow, Jr
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.	Case No. 1:17-cv-05016 CLASS ACTION Hon. Thomas M. Durkin

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JORGE ALCAREZ, On Behalf of Himself and All Others Similarly Situated,

Plaintiff,

v.

AKORN, INC., KENNETH S. ABRAMOWITZ, ADRIENNE L. GRAVES, RONALD M. JOHNSON, STEVEN J. MEYER, TERRY A. RAPPUHN, BRIAN TAMBI, and ALAN WEINSTEIN,

Defendants.

Case No. 17-cv-05017

CLASS ACTION

Hon. Amy J. St. Eve

SHAUN HOUSE, 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, and ALAN WEINSTEIN,

Defendants.

Case No. 17-cv-05018

CLASS ACTION

Hon. Elaine E. Bucklo

SEAN HARRIS, On Behalf of Himself and All Others Similarly Situated,

Plaintiff,

v.

AKORN, INC., JOHN N. KAPOOR, RONALD M. JOHNSON, STEVEN J. MEYER, BRIAN TAMBI, ALAN WEINSTEIN, KENNETH S. ABRAMOWITZ, ADRIENNE L. GRAVES, and TERRY A. RAPPUHN,

Defendants.

Case No. 17-cv-05021

CLASS ACTION

Hon. Ronald A. Guzman

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ROBERT CARLYLE, 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, and ALAN WEINSTEIN, Defendants.	Case No. 17-cv-05022 CLASS ACTION Hon. Sharon Johnson Coleman
DEMETRIOS PULLOS, 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, and ALAN WEINSTEIN, Defendants.	Case No. 17-cv-05026 CLASS ACTION Hon. Matthew F. Kennelly
THEODORE H. FRANK, Intervenor.	

DECLARATION OF THEODORE H. FRANK

I, Theodore H. Frank, declare as follows:

1. I have personal knowledge of the facts set forth herein and, if called as a witness, could and would testify competently thereto.

Center for Class Action Fairness

2. I founded the non-profit Center for Class Action Fairness ("CCAF" or the "Center"), a 501(c)(3) non-profit public-interest law firm based out of Washington, DC, in 2009. In 2015, CCAF merged with the non-profit Competitive Enterprise Institute ("CEI").

3. CCAF litigates on behalf of class members against unfair class-action procedures and settlements. *See, e.g.*, *Pearson v. NBTY, Inc.*, 772 F.3d 778, 787 (7th Cir. 2014) (praising CCAF's work); *In re Dry Max Pampers Litig.*, 724 F.3d 713, 716-17 (6th Cir. 2013) (describing CCAF's client's objections as "numerous, detailed and substantive") (reversing settlement approval and certification); *Richardson v. L'Oreal USA, Inc.*, 991 F. Supp. 2d 181, 205 (D.D.C. 2013) (describing CCAF's client's objection as "comprehensive and sophisticated" and noting that "[o]ne good objector may be worth many frivolous objections in ascertaining the fairness of a settlement") (rejecting settlement approval and certification.) The Center has received national acclaim for its work. *See, e.g.*, Caleb Hannan, *This Lawyer Is Making It Less Profitable To Sue When Companies Merge*, BLOOMBERG BUSINESSWEEK (Aug. 2, 2017); Adam Liptak, *When Lawyers Cut Their Clients Out of the Deal*, N.Y. TIMES (Aug. 13, 2013) (calling me "the leading critic of abusive class action settlements"); Gina Passarella, *Third Circuit Vacates $18.5 Mil. Cy Pres Award in Baby Products Class Action*, L. INTELLIGENCER (Feb. 20, 2013); Jeffrey B. Jacobson, *Lessons From CCAF on Designing Class Action Settlements*, Law360 (Aug. 6, 2013) (discussing Center's track record); Ashby Jones, *A Litigator Fights Class-Action Suits*, WALL ST. J. (Oct. 31, 2011).

4. The Center has been successful, winning reversal in fifteen federal appeals decided to date. *In re Subway Footlong Sandwich Mktg. and Sales Practices Litig.*, No. 16-1652, -- F.3d, ---, 2017 WL 3666635 (7th Cir. Aug. 25, 2017); *In re Target Corp. Customer Data Security Breach Litig.*, 847 F.3d 608 (8th Cir. 2017); *In re Walgreen Co. Stockholder Litig.*, 832 F.3d 718 (7th Cir. 2016); *In re EasySaver Rewards Litig.*, No. 13-55373 (9th Cir. Mar. 19, 2015) (unpublished); *In re BankAmerica Corp. Secs. Litig.*, 775 F.3d 1060

(8th Cir. 2015); *Pearson*, 772 F.3d 778; *Redman v. RadioShack Corp.*, 768 F.3d 622 (7th Cir. 2014); *In re MagSafe Apple Power Adapter Litig.*, 571 Fed.Appx. 560 (9th Cir.) (unpublished); *In re Dry Max Pampers Litig.*, 724 F.3d 713; *In re HP Inkjet Printer Litigation*, 716 F.3d 1173 (9th Cir. 2013); *In re Baby Products Antitrust Litigation*, 708 F.3d 163 (3d Cir. 2013); *Dewey v. Volkswagen*, 681 F.3d 170 (3d Cir. 2012); *Robert F. Booth Trust v. Crowley*, 687 F.3d 314 (7th Cir. 2012); *Nachshin v. AOL, LLC*, 663 F.3d 1034, 1039 (9th Cir. 2011); *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935 (9th Cir. 2011).

5. CCAF has won more than a hundred million dollars for class members by driving the settling parties to reach an improved bargain or by reducing outsized fee awards. Andrea Estes, *Critics hit law firms' bills after class-action lawsuits*, BOSTON GLOBE (Dec. 17, 2016). *See also, e.g., McDonough v. Toys "R" Us*, 80 F. Supp. 3d 626, 661 (E.D. Pa. 2015) ("CCAF's time was judiciously spent to increase the value of the settlement to class members") (internal quotation omitted); *In re Citigroup Inc. Secs. Litig.*, 965 F. Supp. 2d 369 (S.D.N.Y. 2013) (reducing fees, and thus increasing class recovery, by more than $26 million to account for a "significantly overstated lodestar"); *In re Apple Inc. Sec. Litig.*, No. 5:06-cv-05208-JF, 2011 U.S. Dist. LEXIS 52685 (N.D. Cal. May 17, 2011) (parties nullify objection by eliminating *cy pres* and augmenting class fund by $2.5 million).

6. CCAF feels strongly enough about the problem of bad-faith objectors profiting at the expense of the class through extortionate means that it has initiated litigation to require such objectors to disgorge their ill-gotten gains to the class. *Pearson v. NBTY, Inc.*, No. 11-cv-7972 (N.D. Ill.); *see also* Jacob Gershman, *Lawsuits Allege 'Objector Blackmail' in Class Action Litigation*, Wall Street Journal Law Blog (Dec. 7, 2016).

7. While I am often accused of being an "ideological objector," the ideology of CCAF's objections is merely the correct application of Rule 23 to ensure the fair treatment of class members. Likewise, I have often seen class counsel assert that I oppose all class actions and am seeking to end

them, not improve them. The accusation—aside from being utterly irrelevant to the legal merits of any particular objection—has no basis in reality. I have been writing and speaking about class actions publicly for nearly a decade, including in testimony before state and federal legislative subcommittees, and I have never asked for an end to the class action, just proposed reforms for ending the abuse of class actions and class-action settlements. That I oppose class action abuse no more means that I oppose class actions than someone who opposes food poisoning opposes food. As a child, I admired Ralph Nader and consumer reporter Marvin Zindler (whose autographed photo was one of my prized childhood possessions), and read every issue of *Consumer Reports* from cover to cover. I have focused my practice on conflicts of interest in class actions because, among other reasons, I saw a need to protect consumers that no one else was filling, and as a way to fulfill my childhood dream of being a consumer advocate. I have frequently confirmed my support for the principles behind class actions in declarations under oath, interviews, essays, and public speeches, including a January 2014 presentation in New York that was broadcast nationally on C-SPAN and in my certiorari petition filed in 2015 in *Frank v. Poertner*. On multiple occasions, successful objections brought by CCAF have resulted in new class-action settlements where the defendants pay substantially more money to the plaintiff class without CCAF objecting to the revised settlement.

8. On October 1, 2015, after consultation with its board of directors and its donors, the Center merged with the much larger Competitive Enterprise Institute ("CEI"), to take advantage of the economies of scale realized by eliminating some of the enormous fixed costs required for bureaucratic administration of and regulatory compliance by non-profits. The Center was on financially sound footing, and consistently growing its assets faster than its spending, but a disproportionate amount of attorney time was taken up with non-litigation tasks, and we were not

large enough to justify hiring full-time communications, fundraising, or regulatory-compliance staff, which I felt was limiting our effect.

9. Prior to its merger with CEI, the Center never took or solicited money from corporate donors other than court-awarded attorneys' fees. CEI, which is much larger than the Center, does take a percentage of its donations from corporate donors. As part of the merger agreement, I negotiated a commitment that CEI would not permit donors to interfere with CCAF's case selection or case management. In the event of a breach of this commitment, I am permitted to treat the breach as a constructive discharge entitling me to substantial severance pay. CEI has honored that commitment.

10. None of the corporate donors to CEI have earmarked contributions to CCAF. I am unaware of whether there exist any corporate donors to CEI who take a position on the underlying litigation in this case, though it is possible one exists. CEI pays me on a salary basis that does not vary with the result in any case. I do not receive a contingent bonus based on success in any case, a structure that would be contrary to I.R.S. restrictions.

11. For example, I am personally the objector-appellant in a pending Ninth Circuit appeal against the *cy pres* settlement of a corporate donor to CEI who has contributed substantially to CEI. No one at CEI has complained that I am currently prosecuting that appeal against the donor, sought to interfere with the pending appeal, or even told me that I was adverse to the donor. I only discovered that information by happenstance when looking at the corporate donor's website.

12. Similarly, CEI represents an objector to the massive Volkswagen diesel MDL settlement, arguing that the settlement structure short-changed class members by hundreds of millions of dollars. I learned only after a plaintiffs' attorney opposed our motion for leave to file an *amicus* brief in that case that Volkswagen had previously donated to CEI. No one at CEI had told me Volkswagen was a donor, or asked me to refrain from litigating against a donor's interests.

13. My understanding is that CEI's litigation history includes several lawsuits against the interests of some of its corporate donors. Based on this and based on my own experience working at CEI since 2015, I have every confidence that CCAF will continue to have the autonomy for which I negotiated.

My Standing as Shareholder and Awareness of Fee Stipulation

14. On June 20, 2017, I purchased 100 shares of Akorn, Inc. common stock, which trades under the symbol AKRX. I have owned Akorn, Inc. common stock continuously from that day and have expanded my holdings. Currently, I own 1000 shares.

15. I first became aware of the agreement for fees in this case on September 15, 2017, when my colleague M. Frank Bednarz, forwarded me the Stipulation and [Proposed] Order Closing Case of All Purposes filed in the Plaintiff Berg action. No. 17-cv-5016 Dkt. 56.

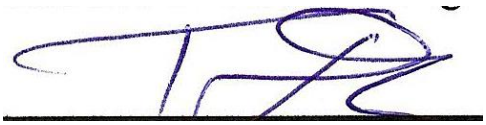
16. Previously, the parties had asked the court to retain jurisdiction for a possible forthcoming fee application. No. 17-cv-5016 Dkt. 55. To my knowledge, no information prior to September 15, 2017 suggested that the parties would settle their otherwise disputed fee application.

17. I have also been—or am currently—the shareholder of several corporations named as defendants in merger strike suits. These companies include: Astoria Financial Corp.; Atwood Oceanics, Inc.; Care Capital Properties, Inc.; CU Bancorp; InvenSense, Inc.; Ixia; KCG Holdings, Inc.; Neustar, Inc.; Panera Bread Co.; Parexel International Corp.; Popeyes Louisiana Kitchen, Inc.; Silver Bay Realty Trust Corp.; Stillwater Mining Co.; Stonegate Mortgage Corp.; Universal American Corp.; VCA Inc.; WGL Holdings Inc.; and Whole Foods Market, Inc.

18. I understand the Plaintiffs and their counsel have filed strike suits against all of these corporations. Unless Plaintiffs and their counsel are enjoined from collecting fees from future strike suits, it is near-certain I will be the shareholder of corporations extorted by Plaintiffs and their counsel.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on September 18, 2017 in Washington, DC.



Theodore H. Frank