UNITED STATES DISTRICT COURT

DISTRICT OF RHODE ISLAND

RICHARD MEDOFF, Individually and On Behalf Of All Others Similarly Situated, Plaintiff, vs. CVS CAREMARK CORPORATION, et al., Defendants.	No. 1:09-cv-00554-JNL-PAS CLASS ACTION JOINT DECLARATION OF ROBERT M. ROTHMAN AND JONATHAN GARDNER IN SUPPORT OF: (1) CO-LEAD PLAINTIFFS' MOTION FOR FINAL APPROVAL OF SETTLEMENT AND PLAN OF ALLOCATION; AND (2) LEAD COUNSEL'S APPLICATION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES

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ROBERT M. ROTHMAN and JONATHAN GARDNER declare as follows:

1. Robert M. Rothman is a partner at Robbins Geller Rudman & Dowd LLP ("Robbins Geller"). Jonathan Gardner is a partner at Labaton Sucharow LLP ("Labaton Sucharow"). Robbins Geller and Labaton Sucharow (together, "Lead Counsel") are counsel for Court-appointed lead plaintiffs, City of Brockton Retirement System, Plymouth County Retirement System, and Norfolk County Retirement System (together, "Co-Lead Plaintiffs"), and the Court-appointed Lead Counsel for the Class. We have personal knowledge of the matters set forth herein based on our active participation in all aspects of the prosecution and resolution of the above-captioned action (the "Litigation").[1]

2. We submit this declaration in support of Co-Lead Plaintiffs' Motion for Final Approval of Settlement and Plan of Allocation.

3. We also submit this declaration in support of Lead Counsel's Application for an Award of Attorneys' Fees and Expenses incurred during the prosecution of the Litigation.

I. PRELIMINARY STATEMENT

4. Co-Lead Plaintiffs have achieved a favorable result for the Class. The Stipulation provides for the payment of $48 million in cash (the "Settlement Amount") for the benefit of the Class in exchange for a release of the Released Claims against defendants CVS Caremark Corporation ("CVS Caremark" or the "Company"), Thomas M. Ryan, David B. Rickard, and Howard A. McLure (together, "Defendants"). As described herein, the Settlement is the product of Co-Lead Plaintiffs' and Lead Counsel's careful analysis and vigorous prosecution of the claims and defenses involved in the case, as well as extensive arm's-length settlement negotiations between the parties,

[1] Unless otherwise indicated, all capitalized terms used herein shall have the same meanings as ascribed to them in the Stipulation of Settlement dated as of August 24, 2015 (the "Stipulation"). Dkt. No. 122.

which took place during the mediation session supervised by an experienced mediator, retired United States District Judge, the Honorable Layn R. Phillips.

5. We believe that the recovery on behalf of the Class is fair, reasonable, and in the Class' best interests, especially when considering the significant risk that the Class might obtain a much smaller recovery – or none at all – after many more years of costly litigation. For example, as detailed in §VII, below, if the Defendants' various arguments disputing liability, loss causation, or otherwise seeking to reduce or eliminate the Class' recoverable damages ultimately prevailed at summary judgment, trial, or on appeal, the Class would have been left with little or no recovery. In particular, Defendants presented strong challenges to loss causation, as the Court is aware from its dismissal of the amended complaint (the "Complaint"). Even though the decision was vacated and remanded, the United States Court of Appeals for the First Circuit cautioned that fact-intense loss causation issues remain ahead for a jury. There are also risks that Co-Lead Plaintiffs will be unable to prove that the Company experienced client retention issues because of merger-related problems. In sum, the Settlement provides for a substantial monetary benefit to the Class now, which is a very good result in light of the substantial risks involved in continued litigation.

6. As detailed herein, the Settlement is the product of a comprehensive investigation, detailed analyses, and extensive arm's-length negotiations by experienced counsel, with the assistance of a highly respected and experienced mediator. Lead Counsel, working closely with Co-Lead Plaintiffs, negotiated the Settlement with a thorough understanding of the strengths and weaknesses of the claims asserted against the Defendants. This understanding was gained through Lead Counsel's vigorous prosecution of the Litigation, including, *inter alia*: (i) conducting an extensive investigation into Defendants' conduct, including, among other things, speaking with more than 100 former CVS Caremark employees and reviewing and analyzing CVS Caremark's filings

with the United States Securities and Exchange Commission ("SEC"), press releases, other public statements issued by Defendants, media and news reports about the Company, and publicly available trading data relating to the price and volume of CVS Caremark's common stock; (ii) drafting an initial and amended complaint; (iii) briefing an opposition to Defendants' motion to dismiss; (iv) successfully appealing the dismissal of the Litigation to the United States Court of Appeals for the First Circuit; (v) following remand, briefing an opposition to Defendants' supplemental briefing in support of their motion to dismiss; (vi) conducting extensive discovery, including reviewing and analyzing more than 1.3 million pages of documents, subpoenaing 60 non-parties, and taking or defending 15 depositions; (vii) briefing a motion for class certification; (viii) retaining experts in the fields of prescription benefit management, health information technology, and economics; (ix) drafting and exchanging detailed written mediation submissions with supporting evidence; and (x) vigorously negotiating the Settlement with the mediation assistance of a retired District Judge. As a result of these efforts, Lead Counsel and Co-Lead Plaintiffs were fully informed regarding the strengths and weaknesses of the case against the Defendants before reaching the Settlement.

7. As noted above and discussed in greater detail herein, Co-Lead Plaintiffs faced serious risks going forward with the Litigation. In addition to the general risks associated with all cases concerning violations of the federal securities laws, Co-Lead Plaintiffs faced the significant risk that the Defendants could ultimately be successful in showing, among other things, that they did not make any actionable misstatements or omissions; that the Class' losses were caused by the Company's failure to meet previous earnings projections which were inactionable "forward-looking statements" rather than actionable statements regarding, among other things, the success of the merger and the integration of CVS Caremark's systems, which Co-Lead Plaintiffs asserted caused the damages and that are at issue in the Litigation; and that they did not possess the requisite scienter

required in connection with a claim for violations of the securities laws. Accordingly, while Lead Counsel believe that the Class' claims have merit, there was a significant chance that one or more of these arguments by the Defendants may have ultimately proved insurmountable – and the Class may have ended up with little or, perhaps, no recovery. The significance of these risks was heightened by the prospect of years of protracted litigation through costly fact and expert discovery, contested pre-trial motions, a trial, and the likely ensuing appeals. The Settlement avoids these and other risks while providing a substantial monetary benefit to the Class.

8. Lead Counsel believe that the Settlement is in the best interests of the Class – especially considering the significant risks involved in the case. Rather than proceed with this Litigation for years and risk obtaining little or nothing from any or all of the Defendants, the Settlement provides the Class with a substantial cash recovery now. The other terms of the Settlement are the product of careful negotiations between the parties, and are set forth in the Stipulation. Lead Counsel believe the Settlement is fair, reasonable and adequate, in the best interests of the Class, and should be approved by this Court.

9. Lead Counsel seek attorneys' fees of 30% of the amount of the Settlement (or $14,400,000.00) plus litigation costs, charges, and expenses of $857,631.86, with interest thereon earned at the same rate and for the same time as earned on the Settlement Fund. As discussed below (*see* ¶121), the requested fee amounts to a negative multiplier (0.89) of plaintiffs' counsel's collective "lodestar" (*i.e.*, plaintiffs' counsel's hourly rates multiplied by the hours spent on prosecuting and settling this Litigation). In other words, the fee requested by Lead Counsel is less than plaintiffs' counsel's collective lodestar.

10. Pursuant to the Order Certifying a Class, Preliminarily Approving Settlement, and Providing for Notice, dated November 9, 2015 (Dkt. No. 127) (the "Preliminary Approval Order"),

the Notice of Proposed Settlement of Class Action (the "Notice") and Proof of Claim and Release form (the "Proof of Claim") (together, the "Notice Packet") are being mailed to all Class Members who could be identified with reasonable effort, and summary notice of the Settlement (the "Summary Notice") was published in the national edition of *Investor's Business Daily* and over a national newswire service.

11. The Notice advised all recipients of, among other things: (i) the definition of the Class; (ii) their right to exclude themselves from the Class; (iii) their right to object to any aspect of the Settlement, the Plan of Allocation, and/or Lead Counsel's request for attorneys' fees and expenses; and (iv) the procedures and deadline for submitting a Proof of Claim in order to be eligible for a payment from the proceeds of the Settlement.

12. Lead Counsel have been advised by A.B. Data, Ltd. ("A.B. Data"), the Claims Administrator whose retention was authorized by the Court's Preliminary Approval Order, that as of December 11, 2015, copies of the Notice Packet have been mailed to over 500,000 potential Class Members, brokers, and nominees. *See* ¶¶2-10 to the Declaration of Adam D. Walter on Behalf of A.B. Data, Ltd. Regarding Mailing of Notice to Potential Class Members and Publication of Summary Notice (the "Walter Declaration" or "Walter Decl."), submitted herewith. The Summary Notice was published in *Investor's Business Daily* and transmitted over the *PR Newswire* on December 4, 2015. *Id.*, ¶11. Additionally, the Notice Packet and the Stipulation, among other court documents, have been posted on the website established for the Litigation: www.CVSSecuritiesSettlement.com. *Id.*, ¶14.

13. The Court-ordered deadline for filing objections to the Settlement or requesting to "opt-out" of the Class is January 6, 2016. To date, only one objection (a letter sent to the Court by a person who claims to be a CVS Caremark shareholder and Class Member) has been received. Co-

Lead Plaintiffs have previously responded to that objection (*see* Dkt. No. 125 and *infra* ¶111). If any additional objections are received, Co-Lead Plaintiffs will address them in their reply submission on January 12, 2016.

14. Upon approval of the Settlement, the claims asserted in the action against Defendants will be dismissed with prejudice, subject to the terms of the Stipulation and Final Judgment and Order of Dismissal with Prejudice. For the reasons set forth below, we respectfully submit that the terms of the Settlement and Plan of Allocation are fair, reasonable and adequate in all respects and, pursuant to Federal Rule of Civil Procedure 23(e), should be approved by this Court.

15. In sum, this Settlement is the product of extensive investigation and hard-fought litigation and negotiation, and takes into account the risks specific to this case. It was negotiated on both sides by experienced counsel with a firm understanding of the strengths and weaknesses of their clients' respective claims and defenses. The Settlement confers an immediate and substantial monetary benefit on the Class and eliminates the risks of continued litigation. Lead Counsel respectfully submit that under these circumstances the Settlement is in the best interest of the Class and should be approved as fair, reasonable, and adequate. The Court should also approve the Plan of Allocation and award of attorneys' fees in the amount of 30% of the Settlement Amount, plus expenses of $857,631.86 for counsel's efforts in creating this common fund for the benefit of the Class.

II. THE NATURE AND HISTORY OF THE LITIGATION

A. The Commencement of the Litigation

16. On November 17, 2009, plaintiff Richard Medoff initiated this Litigation in the United States District Court for the District of Rhode Island as a class action seeking to pursue remedies under the Securities Exchange Act of 1934 ("Exchange Act").

17. The Litigation asserted claims on behalf of purchasers of CVS Caremark common stock between May 5, 2009 and November 4, 2009, inclusive, seeking to pursue remedies under the Exchange Act.

B. The Appointment of Co-Lead Plaintiffs and Lead Counsel

18. Pursuant to the Private Securities Litigation Reform Act of 1995 ("PSLRA"), 15 U.S.C. §78u-4, on January 19, 2010, City of Brockton Retirement System, Plymouth County Retirement System, and Norfolk County Retirement System filed a motion to be appointed lead plaintiffs. Dkt. No. 10.

19. By Order dated March 1, 2010, the Court granted their motion and appointed them Co-Lead Plaintiffs. Dkt. No. 28.

20. In that same Order, the Court appointed Robbins Geller and Labaton Sucharow as Lead Counsel and Barry J. Kusinitz as Liaison Counsel.

C. Lead Counsel's Continued Investigation

21. Lead Counsel conducted an extensive investigation into the facts and circumstances underlying the action. This investigation included, among other things, review and analysis of CVS Caremark's filings with the SEC, regulatory filings and reports, securities analysts' reports and research data, investor conference transcripts, Company advisories, press releases and other public statements issued by the Company, media reports, and news articles.

22. The investigation also included Lead Counsel's in-house investigators speaking with approximately 119 potential witnesses, many of whom provided invaluable information based on their first-hand knowledge of the facts underlying the Litigation.

D. The Amended Complaint

23. On May 3, 2010, Co-Lead Plaintiffs filed an amended complaint and, on June 1, 2010, they filed a corrected version of the Complaint on behalf of themselves and all persons and entities, other than the Defendants named therein and other excluded individuals and entities, who purchased, or otherwise acquired, the common stock of CVS Caremark between October 30, 2008 and November 4, 2009, inclusive (the "Class Period"), and were damaged thereby, seeking to pursue remedies under the Exchange Act. Dkt. No. 33. The Complaint named as defendants CVS Caremark, Thomas M. Ryan, David B. Rickard, and Howard A. McLure.

24. The Complaint alleges that before and after the March 2007 merger of CVS Corp. ("CVS"), the nation's largest retail pharmacy chain, and Caremark Rx Inc. ("Caremark"), the second largest prescription benefits manager ("PBM"), Defendants made a series of allegedly false and misleading statements concerning the integration of the two companies.

25. According to the Complaint, the success of the merger allegedly hinged almost exclusively on CVS Caremark's ability to integrate the PBM systems of Caremark and CVS's PBM, PharmaCare. By November 2007, the Company allegedly misrepresented the status of the integration of CVS and Caremark, and falsely represented that CVS Caremark was now "operating as one company."

26. However, Co-Lead Plaintiffs allege the PBM business was never properly integrated, and this failure led directly to pervasive customer service problems, resulting in the departure of many large PBM clients. For instance, Coventry Health Care ("Coventry") terminated contracts worth over $4 billion annually and Horizon Blue Cross Blue Shield of New Jersey ("Horizon BCBS of NJ") terminated its contract worth as much as $1.3 billion annually.

27. As alleged by Co-Lead Plaintiffs, when the cause of these terminated relationships with CVS Caremark was disclosed, the Company's share price fell 20 percent.

E. The Motions to Dismiss

28. On July 2, 2010, Defendants filed a motion to dismiss. Dkt. No. 34. Defendants argued that Co-Lead Plaintiffs' claims should be dismissed because, among other things: (i) the Complaint failed to state a claim as to the preliminary earnings prediction, which they argued was protected by the PSLRA's safe-harbor provision because (a) it was accompanied by meaningful, narrowly tailored cautionary statements; and (b) Co-Lead Plaintiffs did not plead that Defendants knew that the prediction was false or misleading when made; (ii) the Complaint failed to adequately allege loss causation; (iii) the vast majority of the allegedly false or misleading statements were not actionable in that (a) Co-Lead Plaintiffs' theory that Defendants failed to disclose potential contract losses failed as a matter of law; and (b) generalized statements regarding the Company's strategic business model, sales outlook, and "success" of the merger were inactionable corporate puffery; (iv) the Complaint failed to plead the required strong inference of scienter in that (a) the allegations concerning insider stock sales failed to give rise to a strong inference of scienter; and (b) the remaining allegations failed to allege that Defendants acted with a high degree of recklessness; and (v) the Complaint failed to state a claim for control person liability.

29. On September 3, 2010, Lead Counsel filed a memorandum of law on behalf of Co-Lead Plaintiffs and the Class in opposition to Defendants' motion to dismiss. Dkt. No. 36. Co-Lead Plaintiffs argued, among other things, that the Complaint adequately alleged actionable misrepresentations and omissions because (i) Defendants' statements were not puffery; (ii) Defendants violated their duty to disclose accurate complete information regarding CVS

Caremark's service and merger integration issues that resulted in contract losses; and (iii) Defendants' statements were not protected by the PSLRA's safe harbor.

30. Co-Lead Plaintiffs also argued that the Complaint's detailed allegations gave rise to a strong inference of scienter in that: (i) Defendants had knowledge of the serious service and integration problems affecting CVS Caremark's PBM business that contradicted their public statements; (ii) Defendants had direct knowledge of contract terminations months before they were disclosed; (iii) Defendants' positions at CVS Caremark and their intimate involvement in the PBM business supported a showing of scienter; (iv) confidential witnesses corroborated the allegations concerning Defendants' scienter; and (v) Defendants' suspicious insider trading added to the strong inference of scienter.

31. Additionally, Co-Lead Plaintiffs argued that they sufficiently alleged claims against McLure, that they adequately alleged loss causation, and lastly, that the Complaint alleged control person liability under the Exchange Act.

32. In their reply, filed on October 4, 2010 (Dkt. No. 37), Defendants reiterated many of the same arguments raised in their opening brief and also raised additional arguments, including, (i) that Defendant Ryan's single stock sale was not suspicious; (ii) that Defendants McLure and Rickard trading pursuant to a Rule 10b5-1 trading plan negated any inference of scienter; (iii) that the Complaint failed to plead facts supporting the allegation that Defendants knew that customer service problems were causing contract losses; (iv) that the Complaint failed to identify any specific contract-related information that would have put Defendants on notice that their statements were false and misleading; and (v) that the statements attributed to confidential witnesses did not support a strong inference of scienter. Lastly, Defendants argued that, in the event the Court granted their motion to dismiss, the Complaint's request for leave to amend should be denied.

F. The Litigation Is Referred to the District of New Hampshire

33. On January 21, 2011, the Court entered an Order referring the case to the District of New Hampshire for assignment to a judge in that District sitting by designation. Dkt. No. 41.

34. On January 26, 2011, then-Chief Judge Steven J. McAuliffe issued a concurring order initially designating Judge Paul J. Barbadoro to preside over the Litigation. Dkt. No. 42.

35. Thereafter, on February 23, 2011, Judge McAuliffe issued an Amending Concurring Order reassigning the case to the Honorable Joseph N. Laplante. Dkt. No. 44.

G. Supplemental Briefing on Defendants' Motion to Dismiss Following Reassignment

36. On March 22, 2011, the Court ordered the parties to submit supplemental memoranda addressing the impact, if any, of the decisions by the Supreme Court in *Matrixx Initiatives, Inc. v. Siracusano*, 563 U.S. 27 (2011) and the First Circuit in *Anima S.G.P.R.A. v. Gozani*, 638 F.3d 40, 50 (1st Cir. 2011) on the issues of: (i) whether Defendants had a duty to disclose the risks of losing customer contracts when these losses were not substantially certain to occur; and (ii) whether Co-Lead Plaintiffs sufficiently alleged facts that Defendants acted with the requisite level of scienter. Dkt. No. 45.

37. On April 29, 2011, Defendants filed a supplemental memorandum addressing the impact of the *Matrix* and *Anima* decisions (Dkt. No. 46), arguing that these decisions confirmed that the Company had no duty to disclose contract losses unless they were substantially certain to occur, and that the Supreme Court's analysis in *Matrixx* confirmed that Co-Lead Plaintiffs had failed to plead scienter sufficiently.

38. Co-Lead Plaintiffs filed their response to Defendants' supplemental memorandum on May 13, 2011 (Dkt. No. 47), arguing that these two decisions further supported denial of Defendants' motion to dismiss. Co-Lead Plaintiffs argued that *Matrixx* reaffirmed that the Complaint adequately pled Defendants acted with fraudulent scienter. Co-Lead Plaintiffs further

argued that, contrary to Defendants' characterizations, the allegations were not limited to the failure to disclose certain contract losses, and that, regardless, under the *Anima* standard, the Complaint adequately alleged materially false statements and omissions that would have significantly altered the total mix of information if made available.

H. The Court Dismisses the Litigation

39. The Court heard oral argument on Defendants' motion to dismiss on May 18, 2012.

40. On June 18, 2012, the Court granted Defendants' motion in its entirety (Dkt. No. 50), "agree[ing] that the plaintiffs have not plausibly alleged that – with the exception of the earnings projection – any of the claimed misstatements or omissions caused the loss they suffered when the price of CVS Caremark shares declined following the earnings call of November 2009 . . . [and] that the plaintiffs cannot premise their claims on the earnings projection, because it is protected by the statutory safe harbor." *City of Brockton Ret. Sys. v. CVS Caremark Corp.*, 2012 U.S. Dist. LEXIS 189781, at *4 (D.R.I. June 18, 2012).

41. With regard to Co-Lead Plaintiffs' theory of liability, the Court noted two problems. "One problem . . . [was] that the earnings call simply did not contain many of these claimed 'disclosures.'" *Id.* at *31. The Court explained that "[s]tatements 'do not amount to a corrective disclosure' when 'they do not reveal to the market the falsity of the prior' misstatements (or disclose the previously undisclosed information)." *Id.* (citation omitted). "A further problem with the plaintiffs' loss causation theory . . . [was] that CVS Caremark's 'loss of billions of dollars of PBM contracts' had been disclosed several months before the November 5, 2009 call." *Id.* The Court held that these problems were "fatal to the loss causation theory" pled in the Complaint. *Id.* at *31-32.

I. The Appeal

42. On July 19, 2012, Co-Lead Plaintiffs filed a Notice of Appeal with the United States Court of Appeals for the First Circuit. Dkt. No. 52. Co-Lead Plaintiffs then filed their appellant brief on November 13, 2012, arguing that the Complaint complied with the standards for pleading loss causation established by the Supreme Court in *Dura Pharms., Inc. v. Broudo*, 544 U.S. 336 (2005).

43. Defendants filed their appellee brief on December 18, 2012, arguing that the District Court's dismissal of the Complaint for failure to plead loss causation was correct. Defendants argued that the District Court correctly dismissed the Complaint for failure to plead loss causation because (i) each of the large contract losses described in the Complaint was disclosed before the November 2009 earnings call; (ii) there was no disclosure on the November 2009 call that the CVS–Caremark merger had "failed" or that the Company had experienced systematic "service problems"; (iii) subjective statements in reports by third-party analysts do not remedy Co-Lead Plaintiffs' failure to identify a corrective disclosure in the November 2009 call; and (iv) Co-Lead Plaintiffs did not allege a corrective disclosure, whether by "mirror image" or otherwise. Defendants additionally contended that Co-Lead Plaintiffs had failed to plead any actionable misstatement or omission.

44. Co-Lead Plaintiffs filed their reply brief on January 17, 2013.

45. The First Circuit heard oral argument on Co-Lead Plaintiffs' appeal on March 6, 2013.

46. On May 24, 2013, the First Circuit vacated the dismissal of the Complaint, holding that for pleading purposes, the Complaint's allegations of loss causation were sufficiently plausible to foreclose dismissal. "The Retirement Systems' allegations indicate that the drop in CVS Caremark's share price was causally related to its misstatements regarding the integration of CVS and Caremark, and these allegations are sufficiently plausible to foreclose dismissal."

Massachusetts Ret. Sys. v. CVS Caremark Corp., 716 F.3d 229, 242 (1st Cir. 2013). However, the First Circuit also noted that "[i]f this case proceeds, it will be up to the Retirement Systems to prove how much of this drop resulted from revelations about CVS Caremark's integration, which are actionable, and how much resulted from disappointment in CVS Caremark's projected earnings, which is not actionable." *Id.*, 242 n.7.

47. As a result, the First Circuit remanded the case for the Court to consider whether Co-Lead Plaintiffs alleged an actionable misstatement or omission and whether they adequately pled scienter.

J. Supplemental Briefing on Defendants' Motion to Dismiss Following Remand

48. After the case was remanded to the District Court, Defendants filed a supplemental memorandum in support of their motion to dismiss. Dkt. No. 61. In their supplemental memorandum, Defendants argued (i) that the Complaint failed to allege any actionable misstatements or omissions in that (a) the Complaint failed to plead that the alleged misstatements were untrue; and (b) most of the alleged misstatements were inactionable corporate puffery; (ii) that the Complaint failed to plead a strong inference of scienter in that (a) the Complaint's allegations failed to allege that Defendants acted with recklessness or conscious intent to defraud; (b) allegations based on confidential witnesses did not support a strong inference of scienter; and (c) the allegations regarding insider stock sales failed to give rise to a strong inference of scienter; and (iii) that the Complaint did not state a claim for control person liability.

49. Co-Lead Plaintiffs filed their supplemental memorandum in further opposition to Defendants' motion to dismiss on August 16, 2013. Dkt. No. 63. In their supplemental memorandum, Co-Lead Plaintiffs argued (i) that the Complaint adequately alleged a causal connection between the misstatements and the shareholders' losses; (ii) that Defendants made

actionable misstatements of material fact; (iii) that the information Defendants withheld was material under Supreme Court precedent; and (iv) that Defendants failed to disclose material information they were required to disclose in order to make the statements made, in the light of the circumstances under which they were made, not misleading. Co-Lead Plaintiffs further argued that the Complaint's detailed allegations gave rise to a strong inference of scienter in: (i) that Defendants knew or recklessly disregarded that widespread service issues were compromising billions of dollars of PBM contracts; (ii) that Defendants' trading of CVS Caremark stock added to the strong inference of scienter; and (iii) that Defendants' settlement with the SEC further supported scienter.

50. On December 31, 2013, the Court denied Defendants' motion to dismiss in its entirety, *City of Brockton Ret. Sys. v. CVS Caremark Corp.*, No. 09-cv-554, 2013 WL 6841927, at *3 (D. R.I. Dec. 30, 2013), holding, among other things, that "at least at this stage, the plaintiffs' failure to specify which PBM contracts were re-priced on account of the alleged post-merger service problems is not fatal to their claim that, contrary to Ryan's statement in January 2009, CVS Caremark had indeed lowered its prices on half of those contracts for precisely that reason." The Court also held that some of the alleged misstatements were not inactionable corporate puffery, and that Co-Lead Plaintiffs had adequately alleged scienter with regard to Defendant Ryan's statement during the January 2009 earnings call. With respect to scienter, the Court explained, "While, to plead a securities fraud claim, a plaintiff must 'with respect to each act or omission, state with particularity facts giving rise to a strong inference that the defendant acted with the requisite state of mind,' . . . this court sees little utility in performing a statement-by-statement analysis of the complaint's scienter allegations at this point. As just discussed, the plaintiffs have adequately pled at least one actionable misstatement, and they have adequately pled scienter as to that misstatement." *Id.* at *5.

K. Discovery

51. Upon the Court's denial of the motion to dismiss, the PSLRA's mandated stay of discovery was lifted and Lead Counsel began to vigorously pursue discovery of Co-Lead Plaintiffs' claims.

52. During the course of discovery, Co-Lead Plaintiffs served seven separate sets of requests for the production of documents and two sets of interrogatories on Defendants.

53. Additionally, Co-Lead Plaintiffs served 60 document subpoenas on the following non-parties – including CVS Caremark's clients and analysts who followed the Company – who possessed documents relevant to Co-Lead Plaintiffs' claims:

1	1st Resource	31	Jefferies
2	Aon Hewitt	32	JPMorgan
3	Argus Institutional Partners Inc.	33	KB Financial
4	Arkansas BCBS	34	Lazard Capital
5	AT&T, Inc.	35	Lockheed Martin Corporation
6	Axia Strategies	36	Mail Handlers Benefit Plan
7	Bank of Am. Merrill Lynch	37	Mercer
8	Barclays Capital Inc.	38	Morgan Stanley Co
9	Blue Cross Blue Shield of South Carolina	39	Morgan Stanley Smith Barney
10	Blue Cross Blue Shield of Tennessee, Inc.	40	Morpace
11	BNY Mellon	41	Motorola Mobility, LLC
12	Boston Consulting Group	42	Motorola Solutions
13	Care Improvement Plus	43	New York City Transit Authority
14	CareOregon	44	Pamlico Capital II
15	Caresource Management Group	45	Pharm. Strategies Group
16	Chrysler Group, LLC	46	Principal Life Insurance Company
17	Cleveland Research	47	PwC Strategy&
18	Coventry Health Care, Inc.	48	Raymond James
19	Credit Suisse	49	SunTrust
20	Cummins, Inc.	50	Texas A&M University System
21	Dakotacare	51	The Burchfield
22	Deutsche Bank Securities Inc	52	The Segal Group
23	Elwyn	53	Thomas Weisel Partners
24	Empire Blue Cross Blue Shield	54	UBS Securities
25	Gamco Investors Inc.	55	UCare Minnesota
26	Goldman Sachs	56	United Healthcare Services, Inc.
27	Health Net, Inc.	57	Usable Mutual Insurance Company
28	Healthcare USA	58	Wells Fargo Advisors
29	Horizon Blue Cross of New Jersey	59	William Blair
30	HSBC USA	60	Xerox Corporation

54. In connection with Co-Lead Plaintiffs' efforts to obtain relevant documents from these non-parties, attorneys from Robbins Geller and Labaton Sucharow conversed with representatives from these non-parties on numerous occasions to address any objections and to negotiate the scope and details of production.

55. In response to these discovery requests, Defendants and non-parties produced approximately 1.3 million pages of documents, which were produced in electronic form. During the course of discovery, Lead Counsel also collected or received approximately 500,000 pages of additional documents from Co-Lead Plaintiffs, retained experts, confidential witnesses, and Co-Lead Plaintiffs' investment managers.

56. Lead Counsel loaded these documents on to an in-house electronic discovery platform, which was significantly less costly than using an outside vendor. Lead Counsel then reviewed and analyzed the 1.3 million pages of documents. The attorneys conducting and overseeing the review met frequently to share information regarding key documents and to discuss the review process.

57. During the course of discovery, the parties also took 15 depositions of party and non-party witnesses located in various cities across the country, including Boston, Massachusetts, Denver, Colorado, Pontiac, Michigan, and Washington, D.C.

Noticed by Co-Lead Plaintiffs

1	Scott Bond	CVS Caremark employee
2	David Joyner	CVS Caremark employee
3	James King	CVS Caremark employee
4	Chris Risher	CVS Caremark employee
5	Nancy Christal	CVS Caremark employee
6	Chris Luthin	CVS Caremark employee
7	William Spehr	CVS Caremark employee
8	Sonda Finley	Employee of City of Clarksville, a client of CVS Caremark

Noticed by Defendants

9	Kathleen Neal	Employee of Fiat Chrysler Automobiles, a client of CVS Caremark

10	UAW Retiree Medical Benefit Trust	Prospective client of CVS Caremark
11	RBC Global Asset Management	Investment manager of plaintiff
12	ICON Advisers, Inc.	Investment manager of plaintiff
13	Norfolk Country Retirement System	Co-Lead Plaintiff
14	Plymouth County Retirement System / Brockton Retirement System	Co-Lead Plaintiff
15	Steven Feinstein	Expert retained by Co-Lead Plaintiffs

L. Discovery Disputes

58. The parties met and conferred frequently to attempt to resolve any disputes they had regarding the scope of discovery. While those discussions were often successful, on several occasions the parties were required to bring discovery disputes to the Court.

M. Motion for Class Certification

59. On February 6, 2015, Co-Lead Plaintiffs moved for certification of a class consisting of all persons who purchased or acquired CVS Caremark common stock between October 30, 2008 and November 4, 2009, inclusive. Dkt. No. 94. In support of their motion, Co-Lead Plaintiffs filed a legal memorandum and the expert report of Professor Steven P. Feinstein, Ph.D., CFA, a noted forensic economist, to attest to the efficiency of the market for CVS Caremark common stock during the Class Period. Dkt. Nos. 95-96.

60. On March 20, 2015, Defendants filed their opposition to Co-Lead Plaintiffs' motion for class certification. Dkt. No. 103. In connection with their class certification challenge, Defendants also deposed Professor Feinstein.

61. On April 17, 2015, Co-Lead Plaintiffs filed a reply memorandum in further support of class certification. Dkt. No. 111.

III. SETTLEMENT NEGOTIATIONS

62. From time to time throughout the Litigation, the parties discussed whether it was possible to settle the action. To aid in those discussions, the parties jointly retained the services of

United States District Judge Layn R. Phillips (Ret.), a highly respected mediator with extensive experience mediating securities class action cases.

63. In connection with their scheduled mediation session, the parties exchanged detailed mediation statements setting forth their respective positions on the strengths and weaknesses of Co-Lead Plaintiffs' claims. After each side reviewed the other side's initial submissions, the parties exchanged reply submissions.

64. The parties' mediated negotiation took place on August 24, 2015, and after a full day of intense arm's-length negotiations, they reached an agreement-in-principle to settle the Litigation. At the mediation, the parties executed a Memorandum of Understanding providing for a resolution of the Litigation, subject to Court approval, in exchange for a payment of $48,000,000 in cash by the Defendants.

65. As a result of the investigation and discovery detailed above, Lead Counsel developed an in-depth knowledge of the strengths and weaknesses of the claims asserted in the Litigation. This knowledge permitted Co-Lead Plaintiffs and Lead Counsel to fully consider and evaluate the fairness of the Settlement to the Class.

66. Lead Counsel also retained an expert to provide an estimate of damages which Lead Counsel could use to evaluate potential settlement offers. Co-Lead Plaintiffs' damages expert estimated that the most realistic assessment of maximum recoverable damages in the case totaled approximately $900 million. This damage estimate, however, assumed certain facts – which might not be proved at trial – including that 70% of the decline of the price of CVS Caremark stock on November 5, 2009 was caused by revelations about CVS Caremark's integration, which were actionable, and just 30% of the stock price decline resulted from a downward revision to CVS Caremark's projected earnings, which were not actionable.

67. With these assumptions in mind, the $48,000,000 Settlement Fund secures approximately 5.33% of the likely maximum recoverable damages, which is within the range of reasonableness when compared to other securities class action settlements with similar levels of estimated damages.

68. Of course, if any of Co-Lead Plaintiffs' damages expert's assumptions or methodologies were successfully rebutted by Defendants or otherwise not accepted by the Court or a jury, the damages would be reduced accordingly. The Settlement eliminates that risk, as well as the risk that Defendants would prevail at summary judgment, trial, or on appeal, in which case the Class would recover nothing.

69. Lead Counsel and Co-Lead Plaintiffs discussed their views of the case, and after careful deliberation, all three Co-Lead Plaintiffs agreed to accept the Settlement.

70. Consistent with Lead Counsel's vigorous prosecution of the action, a settlement agreement was not reached until Lead Counsel had: (i) thoroughly investigated the claims by, among other things, having investigators speak with approximately 119 former CVS Caremark employees; (ii) opposed Defendants' motions to dismiss at the district court and appellate level; (iii) conducted extensive discovery, including subpoenaing 60 non-parties, reviewing and analyzing more than 1.3 million pages of documents, and taking or defending 15 depositions; (iv) retained experts in the fields of economic analysis, prescription benefit management, and healthcare information technology; and (v) fully briefed class certification.

71. Immediately following the agreement-in-principle to settle the Litigation, the parties engaged in further extensive negotiations concerning the terms of the Stipulation. As a result of the extensive negotiations and the mediation session with Judge Phillips, there can be no question that the Settlement was the result of hard-fought arm's-length negotiations.

IV. PRELIMINARY APPROVAL

72. Following the execution of the Stipulation, Lead Counsel also drafted the preliminary approval motion and accompanying submissions. The accompanying documents included the Notice of Proposed Settlement of Class Action (long form), the Summary Notice (for publication), a Proof of Claim and Release form, a proposed preliminary approval order (governing the procedure for giving notice to Class Members of the relevant dates, including dates for the final approval hearing, and the deadlines for filing claims, objections, and requests for exclusion), and a proposed Final Judgment.

73. On September 14, 2015, Co-Lead Plaintiffs filed the Stipulation (Dkt. No. 122) and an assented-to motion for preliminary approval (Dkt. No. 120). On November 9, 2015, the Court issued an order granting preliminary approval of the proposed Settlement and certifying the Class. Dkt. No. 127.

V. MAILING AND PUBLICATION OF NOTICE OF SETTLEMENT

74. Submitted herewith is the Walter Declaration, which attests that Notices have been mailed to more than 500,000 potential Class Members and nominees and that the Summary Notice was published in *Investor's Business Daily* and transmitted over the *PR Newswire* on December 4, 2015, as directed by the Court. Additionally, the Notice Packet and the Stipulation, among other court documents, have been posted on the website established for the Litigation: www.CVSSecuritiesSettlement.com.

75. The Notice informed Class Members of, among other things, the terms of the Settlement, the Plan of Allocation, and that Lead Counsel would apply for an award of attorneys' fees of up to 30% of the Settlement Amount and charges and expenses not to exceed $1,050,000, plus interest on both amounts.

76. The Notice also provided that any objections to the Settlement, the Plan of Allocation, or the application for attorneys' fees and expenses must be received by January 6, 2016.

VI. THE SETTLEMENT IS IN THE BEST INTERESTS OF THE CLASS AND WARRANTS APPROVAL

77. The Settlement is the result of hard-fought negotiations between experienced counsel, including a formal mediation with the assistance of a highly respected mediator. The Settlement avoids the hurdles Co-Lead Plaintiffs would have to clear not only with respect to proving the full amount of the Class' damages, but liability as well, and avoids the significant costs associated with further litigation of this complex securities class action, particularly the completion of fact and expert discovery, pre-trial motions, trial, and further appeals. Having considered the significant risks and additional time and expense involved in taking this Litigation further, it is the informed judgment of Lead Counsel that the Settlement is fair, reasonable and adequate, and is in the best interests of Co-Lead Plaintiffs and the Class.

78. In view of the litigation efforts of Lead Counsel and the discussions that occurred during the parties' settlement negotiations, Lead Counsel were able to identify the issues that are critical to the outcome of this case. Lead Counsel have considered the risks of continued litigation, the likelihood of getting past summary judgment after expensive fact and expert discovery, and if successful, the risk, expense, and length of time to prosecute the Litigation through trial and the inevitable subsequent appeals. Lead Counsel have also considered the substantial monetary benefit provided by the Settlement in light of the risks of taking the case to trial. Co-Lead Plaintiffs were participants in this assessment and were consulted, and kept apprised of the Settlement negotiations.

79. Lead Counsel are actively engaged in complex federal civil litigation, particularly the litigation of securities class actions. We believe that our reputations as attorneys who are unafraid to

zealously carry a meritorious case through the trial and appellate levels significantly strengthened Co-Lead Plaintiffs' negotiating position.

80. Lead Counsel respectfully submit that, under the circumstances, the Settlement represents a very good result for the Class. It will provide Class Members with an immediate benefit without the risk of no recovery, or a delayed recovery, were the Litigation to continue.

VII. SUMMARY OF THE RISKS FACED BY CO-LEAD PLAINTIFFS AND THE CLASS

81. As with all securities litigation under the PSLRA, Co-Lead Plaintiffs and Lead Counsel faced impediments to successfully prosecuting a claim. As a result, there was a real possibility that the Class would be unable to obtain a meaningful recovery. In the face of this risk, Lead Counsel undertook this prosecution entirely on a contingent-fee basis and assumed significant risk in bringing these claims.

82. As a result of the extensive legal and factual research and analysis conducted by Lead Counsel, together with the analysis of their damages expert, it is respectfully submitted that Co-Lead Plaintiffs and Lead Counsel had a thorough understanding of the strengths and weaknesses of the claims and the defenses at the time the parties agreed to settle the action. Co-Lead Plaintiffs and Lead Counsel considered, among other things: (i) the substantial monetary benefit to Class Members under the terms of the Stipulation; (ii) the expense, time, and difficulties involved in proving the claims at trial, where proof would have turned heavily on the jury's inherently unpredictable reactions to the parties' "battle of the experts"; (iii) the probability that, even if Co-Lead Plaintiffs won at trial, Defendants would file post-verdict motions and appeals resulting in additional risk to, and even more delay in obtaining, any recovery for the Class; and (iv) the risk that Defendants may ultimately be unable to satisfy a judgment after trial.

83. While Lead Counsel believe that all of the claims asserted against Defendants were well-founded, there were serious risks, as discussed above, that Co-Lead Plaintiffs would be unable to prevail on the merits at trial or, even if they could, they would not prevail during subsequent post-trial and appellate proceedings.

A. The Risk of Establishing Loss Causation

84. Co-Lead Plaintiffs faced a serious risk that they would not be able to prove loss causation. In fact, the Court initially dismissed the case on this very basis.

85. In order to prevail on their claims, Co-Lead Plaintiffs must prove loss causation, which requires them to "'show "a sufficient connection between [the fraudulent conduct] and the losses suffered."'" *Bricklayers & Trowel Trades Int'l Pension Fund v. Credit Suisse Sec. (USA) LLC,* 752 F.3d 82, 86 (1st Cir. 2014) (citation omitted). "In other words, the stock market must have reacted to the subsequent disclosure of the misconduct and not to a 'tangle of [other] factors.'" *Id.* (quoting *Dura Pharms., Inc. v. Broudo*, 544 U.S. 336, 343 (2005)).

86. Defendants have argued throughout the Litigation that "other factors" caused the price decline in CVS Caremark stock on November 5, 2009. One "factor" includes, for example, Defendants' disclosure, on the earnings call that day, that they would not achieve their previously announced earnings projections. Defendants have claimed this disclosure is what caused the price of CVS Caremark stock to decline. And because the initial earnings projection was inactionable as a matter of law, any decline in the price of the stock resulting from a correction to that earnings projection cannot be included within damages.

87. Specifically, Defendants have argued that the revelation on the November 5, 2009 earnings call that surprised investors, and which accounted for the sharp decline in CVS Caremark's stock price, was Defendant Ryan's disclosure that the Company would not meet previously

announced earnings projections for 2010. In August 2009, Ryan had told investors that he "would be very disappointed if [the Company] didn't have an EPS growth of at least 13 to 15% next year." On November 5, 2009, however, Defendants disclosed that 2010 operating profit was likely to decline "as much as 10% to 12%."

88. Co-Lead Plaintiffs have argued that the decline in the stock price was caused, at least in part, by a disclosure on the same call that the loss of a contract was attributable to "some service issues."

89. When initially granting Defendants' motion to dismiss, the Court had agreed with Defendants' argument that the decline in the price of CVS Caremark stock following the November 5, 2009 earnings call was caused entirely by the disclosure that the Company would not meet the previously represented 13% to 15% earnings growth projections – projections which are inactionable as a matter of law because they are forward-looking statements protected by the statutory safe harbor.

90. Although the First Circuit held that the allegations were plausible for pleading purposes, it expressly noted that "[i]f this case proceeds, it will be up to the Retirement Systems to prove how much of this drop resulted from revelations about CVS Caremark's integration, which are actionable, and how much resulted from disappointment in CVS Caremark's projected earnings, which is not actionable." *CVS Caremark Corp.*, 716 F.3d at 242 n.7.

91. Co-Lead Plaintiffs retained an expert, Dr. Steven Feinstein, to disaggregate the stock price decline caused by the correction of prior actionable versus prior inactionable statements. While he was able to do so, there was a significant risk that the Court on summary judgment or a jury at trial would disagree with his analysis, and as a result, Co-Lead Plaintiffs would be unable to establish loss causation.

B. The Risk of Establishing that Defendants Made False Statements

92. Defendants have argued that Co-Lead Plaintiffs cannot prove an actionable misstatement or omission. They claim that – although the Complaint is premised on the assertion that integration-related service issues caused the combined company to lose three large contracts during the putative class period – discovery has confirmed that none of these contracts and no other material client was lost due to service issues resulting from the merger. Defendants maintain that the record is devoid of evidence that the merger caused any significant service issues for CVS Caremark clients.

93. Defendants also claim that the only relevant integration was the integration of PharmaCare, CVS's PBM, with Caremark, which proved successful, and that the relatively small size of PharmaCare meant that this integration affected clients that generally had fewer members than Caremark's clients and generated modest amounts of revenue.

94. Defendants further argued that CVS Caremark did not lose any material contracts due to service issues arising from the merger. First, Defendants contend that, not only did CVS Caremark not lose a contract with Chrysler, but that Chrysler actually renewed its contract. Defendants further claim that, although CVS Caremark did lose Chrysler's UAW retirees, this loss was not the result of any service issues, but rather resulted from the decision of a newly created voluntary employees' beneficiary association to consolidate all UAW retirees under one PBM, and that CVS's competitor Medco was chosen to minimize disruption to members.

95. Second, Defendants claim that Horizon BCBS of NJ lost the contract with New Jersey's State Health Benefits Program for reasons unrelated to CVS Caremark's service. According to Defendants, New Jersey chose Medco over CVS Caremark based on an objective comparison of bids and had nothing to do with past service. In support of this claim, Defendants contend that New

Jersey issued a formal recommendation which explained its rationale and assigned scores to the respective bidders. In this recommendation, New Jersey did not voice any concerns over service provided by CVS Caremark and, actually, expressed concern that Horizon BCBS of NJ might stop relying on CVS Caremark for its PBM services.

96. Third, Defendants maintain that Coventry did not terminate its contracts with CVS Caremark due to merger-related service issues. Defendants claim that contemporaneous documents confirm that Coventry's decision to award the Med D contract to Medco, rather than CVS Caremark, was driven largely by price. While Defendants concede that certain service issues placed a strain on the relationship between Coventry and CVS Caremark, Defendants insist that there is no evidence that these service issues were caused by the merger in any way.

97. Fourth, Defendants argue that there is no evidence that other material contracts were lost due to service issues resulting from the merger. According to Defendants, the PBM industry is highly competitive and relies upon short-term contracts, and to the extent some terminating clients experienced service issues, customer complaints are inevitable for a $100 billion service company.

98. With respect to Co-Lead Plaintiffs' claims that CVS Caremark repriced contracts to compensate for poor service, Defendants profess that re-pricing is a standard industry practice, and that CVS Caremark did not systematically re-price contracts due to merger-related service issues. For example, Defendants claim that Medco, CVS Caremark's main competitor during this time, also aggressively re-priced contracts to gain extensions during the relevant period.

99. While Co-Lead Plaintiffs believe they have sufficient proof to prove that Defendants made materially false and misleading statements and omissions regarding the issues, if the Court or the jury were to accept Defendants' arguments on these issues, the Class would recover nothing.

C. The Risks of Establishing Scienter

100. Defendants also claim that, because Co-Lead Plaintiffs cannot prove a material misstatement, they necessarily cannot prove scienter, and even if Co-Lead Plaintiffs could prove a material misstatement, discovery has produced no evidence that any Defendant intended to misrepresent a subjective belief that the merger was causing contract losses.

101. Moreover, Defendants claim that certain Defendants' sale of stock could not support an inference of scienter because the majority of those sales were made pursuant to prearranged Rule 10b5-1 trading plans, which provide an affirmative defense.

D. The Risks of Establishing Damages

102. Co-Lead Plaintiffs also face the substantial risk that they would not be able to prove significant damages even if liability and loss causation were to be established. As noted above, the First Circuit cautioned Co-Lead Plaintiffs that they must "prove how much of [the stock] drop resulted from revelations about CVS Caremark's integration, which are actionable, and how much resulted from disappointment in CVS Caremark's projected earnings, which is not actionable." *CVS Caremark*, 716 F.3d at 242 n.7.

103. Proving this is a complicated and uncertain process, typically involving conflicting expert opinions. The reaction of a jury to such complex expert testimony is highly unpredictable. Expert testimony about damages could rest on many subjective assumptions, any one of which could be rejected by a jury as speculative or unreliable. Conceivably, a jury could find that there were no damages or that damages were only a fraction of the amount that Co-Lead Plaintiffs sought.

104. Although Lead Counsel believe that they would be able to provide convincing expert testimony proving "how much of the drop resulted from revelations about CVS Caremark's integration," *id*., they also realize that in the "battle of the experts," a jury might disagree with Co-

Lead Plaintiffs' experts. Accordingly, the risk of proving damages could not be eliminated until after a successful trial and the exhaustion of all appeals. Thus, even if Co-Lead Plaintiffs prevailed in establishing liability, additional risks would remain in establishing both loss causation and the existence or amount of damages, which counsels in favor of settlement approval.

105. Co-Lead Plaintiffs balanced these continuing risks of the Litigation against the Settlement's benefits, including the immediacy and certainty of a recovery.

VIII. PLAN OF ALLOCATION

106. The proposed Plan of Allocation (set forth in the Notice sent to Class Members) is the product of discussion and review by Lead Counsel and their damages expert and is based on the damage theory Lead Counsel and Co-Lead Plaintiffs would have presented at trial.

107. The Plan of Allocation provides for the distribution of the Net Settlement Fund to Class Members who purchased or otherwise acquired CVS Caremark common stock during the Class Period, based on their calculated claims as calculated pursuant to the Plan of Allocation. Class Members whose claims for recovery are allowed pursuant to the terms of the Stipulation are considered "Authorized Claimants."

108. In the event there are sufficient funds in the Net Settlement Fund, each Authorized Claimant will receive an amount equal to the Authorized Claimant's claim, as defined below. If, however, the amount in the Net Settlement Fund is not sufficient to permit payment of the total claim of each Authorized Claimant, then each Authorized Claimant shall be paid the percentage of the Net Settlement Fund that each Authorized Claimant's claim bears to the total of the claims of all Authorized Claimants.

109. Pursuant to the Plan of Allocation, a claim will be calculated as follows:

> For each share of CVS common stock purchased or otherwise acquired during the Class Period, and:

(a) sold within the Class Period, the claim per share is zero.

(b) sold on November 5, 2009, the claim per share is the lesser of:

(i) $5.44; or

(ii) the difference between the purchase price per share and the sales price per share.

(c) retained beyond November 5, 2009 but sold on or before February 2, 2010, the claim per share is the least of:

(i) $5.44; or

(ii) the difference between the purchase price per share and the sales price per share; or

(iii) the difference between the purchase price per share and the average closing price per share identified in Table-1 on page 6 of the Notice of Proposed Settlement of Class Litigation[2] for the date the share(s) were sold.

(d) retained beyond February 2, 2010, the claim per share is the lesser of:

(i) $5.44; or

(ii) the difference between the purchase price per share and $31.93 per share.

110. The Plan of Allocation, developed in consultation with Co-Lead Plaintiffs' damages expert, was designed to fairly and reasonably allocate the proceeds of the Net Settlement Fund among Class Members.

IX. REACTION OF CLASS

111. To date, Lead Counsel are only aware of one objector, a purported CVS Caremark shareholder who sent a letter to the Court asking the Court to "reject any offer that doesn't recover at least 25% of the damage." Dkt. No. 123. As explained in Co-Lead Plaintiffs' previously filed response (Dkt. No. 125), this objection misconstrues the damages in this Litigation. This objector

[2] *See* Exhibit A to the Walter Declaration, submitted herewith.

contends that he/she lost $8.00 for each share of CVS common stock that he/she held and equates the $8.00 loss to the Class' recoverable "damages" in this Litigation. But there is nothing in the record to suggest that damages are $8.00 per share. Indeed, the portion of the CVS Caremark share price drop on November 5, 2009 attributable to the alleged fraud was hotly contested. Defendants claimed that ***no*** portion of the price decline was attributable to the fraud. The Court initially agreed with Defendants and dismissed the case on that basis. While the First Circuit held the claims were sufficiently alleged for pleading purposes, the First Circuit expressly noted that "it will be up to the Retirement Systems to prove how much of this drop resulted from revelations about CVS Caremark's integration, which are actionable, and how much resulted from disappointment in CVS Caremark's projected earnings, which is not actionable." *CVS Caremark*, 716 F.3d at 242 n.7. The objection makes no attempt to perform this analysis. The objection assumes, without any analysis, that the objector is entitled to the entire amount of the dollar drop. But, as we have repeatedly explained, the Class can only recover based on that portion of the stock decline attributable to the alleged fraud, *i.e.*, Defendants' misrepresentations regarding the integration of Caremark.

112. Co-Lead Plaintiffs retained Dr. Steven Feinstein, an expert economist with substantial experience in modeling damages in securities class actions. According to Dr. Feinstein's analysis, assuming that 70% of the decline in the price of CVS stock on November 5 was caused by revelations about CVS Caremark's integration, which were actionable, and just 30% of the stock price decline resulted from disappointment in the revisions to CVS Caremark's projected earnings, which was not actionable, the maximum recoverable damages in the action would be approximately $900 million.

113. There is always the risk, however, that at summary judgment or trial Dr. Feinstein's analysis, including his assumptions, could be rejected, in which case the damages would be zero.

114. After carefully weighing these and other risks, and as set forth in their declarations,[3] submitted herewith, Co-Lead Plaintiffs – three large governmental retirement plans that have been heavily involved in the Litigation throughout its pendency – fully support the Settlement and are pleased with the recovery obtained for the Class.

X. APPLICATION FOR ATTORNEYS' FEES AND EXPENSES

115. Lead Counsel are also applying to the Court for an award of attorneys' fees and expenses in connection with the services rendered in the Litigation. Specifically, Lead Counsel seek a fee award of 30% of the Settlement Amount, and an award of $857,631.86 in litigation expenses, plus interest at the same rate and for the same time as that earned on the Settlement Fund.

116. Based on an analysis of each of the relevant factors, as further discussed below, and on the additional legal authorities set forth in the accompanying Memorandum of Law in Support of Lead Counsel's Application for an Award of Attorneys' Fees and Expenses (the "Fee Memorandum"), we respectfully submit that Lead Counsel's requested fee should be granted.

A. Application for Attorneys' Fees

1. The Requested Fee of 30% of the Settlement Amount Is Fair and Reasonable

117. Lead Counsel, in compensation for their extensive and effective efforts in obtaining a very good recovery for the Class, are applying for an award of 30% of the Settlement Amount. As set forth in the accompanying Fee Memorandum, the percentage method is the appropriate method of fee recovery in class actions because, among other things, it aligns the lawyers' interest in being

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[3] *See* Declaration of Norfolk County Retirement System in Support of Approval of Proposed Class Action Settlement and Request for Attorneys' Fees and Expenses ("Norfolk County Decl."); Declaration of Plymouth County Retirement System and City of Brockton Retirement System in Support of Approval of Proposed Class Action Settlement and Request for Attorneys' Fees and Expenses ("Plymouth County and City of Brockton Decl.").

paid a fair fee with the interests of the Class in achieving the maximum recovery in the shortest amount of time required under the circumstances. The percentage method is supported by public policy, has been recognized as appropriate by the United States Supreme Court for cases of this nature, and has certain structural advantages, including ease of administration.

118. Lead Counsel submit that a 30% fee award is justified in view of the result achieved for the Class, the extent and quality of work performed by Lead Counsel, the substantial risks of the litigation and the contingent nature of the representation. As discussed in the Fee Memorandum, a 30% fee is fair and reasonable for attorneys' fees in common fund cases such as this, and is well within the range of percentages typically awarded in securities class actions in this Circuit. Significantly, the Court-appointed Co-Lead Plaintiffs representing the Class support Lead Counsel's fee request. *See* Norfolk County Decl., ¶6; Plymouth County and City of Brockton Decl., ¶6.

119. As illustrated in §VII, *supra*, this Settlement was achieved only after Lead Counsel successfully dealt with numerous complex issues of law and fact. Chief among these issues was loss causation in which the parties had dramatically opposed views on the cause of the November 5, 2009 stock decline. While addressing this and other liability issues, such as falsity and scienter, Lead Counsel diligently and aggressively litigated the Class' claims for some six years, which entailed, among other things: comprehensively investigating the alleged wrongdoing, including interviewing over 100 former employees of the Company; drafting a memorandum opposing Defendants' motion to dismiss; successfully appealing the dismissal of Co-Lead Plaintiffs' claims to the First Circuit; drafting a supplemental memorandum opposing Defendants' motion to dismiss; zealously pursuing discovery by, among other things, serving seven sets of requests for the production of documents on Defendants, sending out approximately 60 subpoenas on non-parties, partaking in dozens of meet and confers in connection with these discovery requests, reviewing and analyzing approximately

1.3 million pages of produced documents, and taking or defending 15 depositions; and negotiating with defense counsel with the aid of retired District Judge Phillips.

120. As described in Lead Counsel's Fee Memorandum, not only is the requested fee fair and reasonable under the percentage approach, a lodestar cross-check confirms the reasonableness of the fee. *See* Fee Memorandum; Declaration of Robert M. Rothman Filed on Behalf of Robbins Geller Rudman & Dowd LLP in Support of Application for Award of Attorneys' Fees and Expenses ("Rothman Decl."); Declaration of Jonathan Gardner Filed on Behalf of Labaton Sucharow LLP in Support of Application for Award of Attorneys' Fees and Expenses ("Gardner Decl."); Declaration of Barry J. Kusinitz, Filed in Support of His Application for an Award of Attorneys' Fees and Expenses ("Kusinitz Decl."); Declaration of Bernard M. Gross Filed on Behalf of Law Offices Bernard M. Gross, P.C. in Support of Application for Award of Attorneys' Fees and Expenses ("Gross Decl."); Declaration of William L. Chapman Filed on Behalf of Orr & Reno, P.A. in Support of Application for Award of Attorneys' Fees and Expenses ("Chapman Decl.") (collectively, "Co-Lead Plaintiffs' Counsel's Declarations"). Each of the Co-Lead Plaintiffs' Counsel's Declarations also contain a schedule summarizing the timekeepers and lodestar of the firm, as well as a brief biography of the firm and its attorneys who were principally involved in this Litigation.

121. As set forth in Co-Lead Plaintiffs' Counsel's Declarations, counsel expended a total of 32,467.20 hours in the investigation and prosecution of this Litigation. The resulting lodestar is $16,146,146.00, and is based on time records regularly prepared and maintained by counsel. The requested fee, therefore, yields a 0.89 negative multiplier and is fair and reasonable based upon the significant risk of the Litigation, the high quality of representation by Co-Lead Plaintiffs' Counsel and the result obtained.

122. The hourly billing rates of plaintiffs' counsel here range from $375.00 to $975.00 for partners, $475.00 to $550.00 for of counsels, and $340.00 to $700.00 for other attorneys. *See* Co-Lead Plaintiffs' Counsel's Declarations. It is respectfully submitted that the hourly rates for attorneys and professional support staff included in these schedules are reasonable and customary. Attached as Exhibit H to the Gardner Decl. is a table of billing rates for defense firms compiled by Labaton Sucharow from fee applications submitted by such firms nationwide in bankruptcy proceedings in 2014. The analysis shows that across all types of attorneys, plaintiffs' counsel's rates here are consistent with, or lower than, the firms surveyed.

123. Lead Counsel took this case on a contingency basis, committed significant resources to, and prosecuted the Litigation for six years without any compensation or guarantee of success. Given the result achieved for the Class, the amount and quality of work performed, the substantial risks undertaken, and the contingent nature of the representation, Lead Counsel submit that the request for a 30% fee award is fair, reasonable, and consistent with other awards granted in complex securities law class actions such as this.

2. Standing and Expertise of Counsel

124. The expertise and experience of counsel are important factors in setting a fair fee, and here, both weigh in favor of granting Lead Counsel's requested award. As demonstrated in Co-Lead Plaintiffs' Counsel's Declarations, the attorneys representing Co-Lead Plaintiffs are experienced and skilled litigators with a highly successful record in securities class actions.

3. The Risks of Litigation and the Need to Ensure the Availability of Competent Counsel in High-Risk, Contingent Securities Actions

125. As noted above, the Litigation was undertaken on a wholly contingent basis. From the outset, Lead Counsel understood that they were embarking on a complex and expensive litigation

with no guarantee that the investment of time, money, and effort necessary to succeed would ever be recovered. Lead Counsel understood that Defendants would aggressively contest liability, damages, and class certification.

126. In accepting responsibility for prosecuting the Litigation, Lead Counsel made a commitment that sufficient attorney resources would be dedicated to the investigation of Co-Lead Plaintiffs' claims and that sufficient funds were available to advance the inevitable expenses incurred in prosecuting a highly complex action against sophisticated and determined opponents. Lead Counsel received no compensation at any time during the Litigation, and in total seek $857,631.86 in litigation expenses accrued while pursuing the Litigation on behalf of the Class.

127. At all times throughout the pendency of this Litigation, Lead Counsel bore the risk that no recovery would be achieved. As discussed above, this case presented a number of risks and uncertainties which could well have prevented any recovery whatsoever. Indeed, no matter how vigorous and competent Lead Counsel's efforts, success in contingent-fee litigation such as this is never assured.

128. Fully understanding the risks and the unique challenges involved in litigating Co-Lead Plaintiffs' claims, Lead Counsel diligently and skillfully developed the facts and legal theories necessary to successfully advance Co-Lead Plaintiffs' case and, ultimately, to induce Defendants to engage in serious settlement negotiations.

129. Courts have repeatedly recognized the strong public interest in having experienced and able counsel enforce the federal securities laws, as has the federal government. In passing the PSLRA, Congress emphasized that vigorous private enforcement of the federal securities laws can only occur if private plaintiffs, and particularly institutional investors like Co-Lead Plaintiffs, take an active role in protecting the interests of securities investors. It therefore follows that skilled

plaintiffs' counsel should be adequately compensated for undertaking the risks of prosecuting securities class actions, assuring that this important public policy continues to be effectuated.

4. The Reaction of the Class to Date

130. The reaction of the Class supports the requested fee. As of December 11, 2015, the Claims Administrator has sent the Notice to over 500,000 potential Class Members and their nominees informing them that, among other things, Lead Counsel intended to apply to the Court for an award of attorneys' fees in the amount of 30% of the Settlement Amount. *See* Walter Decl., ¶10. While the time to object to the fee-and-expense application does not expire until January 6, 2016, to date, only one objection – and only to the Settlement – has been received. *See* ¶111, above. Should any additional objections be received, Lead Counsel will address them in their reply papers to be filed on January 12, 2016.

131. In sum, given the complexity and uniquely challenging nature of this Litigation; the responsibility and risk undertaken by Lead Counsel; the difficulty of proving liability and damages; the experience of Lead Counsel and counsel for Defendants; and the contingent nature of Lead Counsel's agreement to prosecute this Litigation, Lead Counsel respectfully submit that the requested attorneys' fees are reasonable and should be approved.

B. Application for an Award of Litigation Expenses

132. Lead Counsel also request an award of $857,631.86 in litigation expenses incurred while prosecuting this Litigation for the benefit of the Class. These expenses are detailed and discussed in Co-Lead Plaintiffs' Counsel's Declarations submitted herewith. Lead Counsel respectfully submit that the expenses were necessary to the successful prosecution of the Litigation and are appropriate, fair, and reasonable and should be approved.

133. Lead Counsel have understood from inception of this Litigation that, in the event that Co-Lead Plaintiffs' claims were not successfully resolved, Lead Counsel would not recover any of their expenses. Thus, in addition to their fundamental commitment – furthering the interests of the Class – Lead Counsel had additional motivation to, and did, take significant steps to minimize expenses whenever practicable without jeopardizing the effective and efficient prosecution of the Litigation.

XI. CONCLUSION

134. For the reasons set forth above and in the accompanying Memorandum of Law in Support of Co-Lead Plaintiffs' Motion for Final Approval of Settlement and Plan of Allocation, and Memorandum of Law in Support of Lead Counsel's Application for an Award of Attorneys' Fees and Expenses, we respectfully submit that: (a) the Settlement is fair, reasonable, and adequate and should be approved; (b) the Plan of Allocation represents a fair method for distribution of the Net Settlement Fund among Authorized Claimants and should also be approved; and (c) the application for attorneys' fees and expenses should be granted.

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

DATED this 15th day of December 2015, at Melville, New York.

ROBERT M. ROTHMAN

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

DATED this 15th day of December 2015, at New York, New York.

JONATHAN GARDNER

CERTIFICATE OF SERVICE

I, Barry J. Kusinitz, hereby certify that on December 15, 2015, I caused a true and correct copy of the attached:

JOINT DECLARATION OF ROBERT M. ROTHMAN AND JONATHAN GARDNER IN SUPPORT OF: (1) CO-LEAD PLAINTIFFS' MOTION FOR FINAL APPROVAL OF SETTLEMENT AND PLAN OF ALLOCATION; AND (2) LEAD COUNSEL'S APPLICATION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES

to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such public filing to all counsel registered to receive such notice.

/s/ Barry J. Kusinitz
BARRY J. KUSINITZ

Mailing Information for a Case 1:09-cv-00554-JNL-PAS Medoff v. CVS Caremark Corporation et al

Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

- **Christopher M. Barrett**
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