

**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

[captions continued on the next page]

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.

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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.

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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.

[captions continued on the next page]

Case No. 17-cv-05017

CLASS ACTION

Hon. Amy J. St. Eve

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Case No. 17-cv-05018

CLASS ACTION

Hon. Elaine E. Bucklo

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Case No. 17-cv-05021

CLASS ACTION

Hon. Ronald A. Guzman

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

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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.

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Case No. 17-cv-05026

CLASS ACTION

Hon. Matthew F. Kennelly

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THEODORE H. FRANK,

Intervenor.

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**DECLARATION OF M. FRANK BEDNARZ**

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I, M. Frank Bednarz, 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.

2. I am an attorney with the Competitive Enterprise Institute's Center for Class Action Fairness ("CCAF").

3. For the last several months, I have been monitoring putative class action filings against companies involved in merger transactions. These suits are commonly known as merger "strike suits." The Seventh Circuit has explained the motivation behind strike suits:

In merger litigation the terms 'strike suit' and 'deal litigation' refer disapprovingly to cases in which a large public company announces an agreement that requires shareholder approval to acquire another large company, and a suit, often a class action, is filed on behalf of shareholders of one of the companies for the sole purpose of obtaining fees for the plaintiffs' counsel.

*In re Walgreen Co. Stockholder Litig.*, 832 F.3d 718, 721 (7th Cir. 2016) ("*Walgreens*").

4. In *Walgreens*, plaintiffs sued defendants Walgreen Co. in connection with a merger and reorganization with Swiss corporation Alliance Boots GmbH. Plaintiffs alleged that Walgreen Co. had withheld material information concerning the merger, and settled the case within weeks following the submission of supplemental disclosures. Ultimately, Walgreen Co. agreed not to oppose a \$370,000 fee request by plaintiffs' counsel. *Id.* CCAF represented a shareholder, John Berlau, who objected to the rent-seeking settlement. On appeal, Berlau succeeded in reversing final approval of the settlement. "No class action settlement that yields zero benefits for the class should be approved, and a class action that seeks only worthless benefits for the class should be dismissed out of hand." *Id.* at 724.

5. Unfortunately, the scourge of strike suits has not lifted. Securities lawsuits are being filed at "historic levels" partially because a "flood of merger objection lawsuit filings seems to be increasing." Kevin LaCroix, *First Half 2017 Securities Suit Filings Continue at Exceptional Levels*, THE D&O DIARY (July 5, 2017), <http://www.dandodiary.com/2017/07/articles/securities-litigation/first-half-2017-securities-suit-filings-continue-exceptional-levels/>. "Over the past 18 months, more securities

fraud class actions have been initiated in federal court than in any equivalent period since enactment of the Private Securities Litigation Reform Act of 1995 (PSLRA).” Gould, John, *Federal Class Action Securities Fraud Filings Hit Record Pace in H1 2017*, HARV. L. S. FORUM ON CORPORATE GOVERNANCE AND FINANCIAL REGULATION (Aug. 7, 2017), available online at: <https://corpgov.law.harvard.edu/2017/08/07/federal-class-action-securities-fraud-filings-hit-record-pace-in-h1-2017/>. This is largely attributable to strike suits: “Federal filings of class actions involving merger and acquisition (M&A) transactions increased to 95—up from 57 in the second half of 2016 and 28 in the first half of 2016.” *Id.*

6. This increase has been enabled by a change in tactics. Following CCAF’s victory in *Walgreens* and a similar precedent in Delaware (*In re Trulia, Inc. Stockholder Litigation*, 129 A.3d 884 (Del. Ch. 2016)), plaintiffs have generally ceased *settling* their class action complaints. Instead, plaintiffs dismiss their complaints and request that the court retain jurisdiction for an award of attorneys’ fees. Courts almost always oblige. *But see Parshall v. Stonegate Mortg. Corp.*, 17-cv-0711, 2017 WL 3530851, at \*1 (S.D. Ind. Aug. 11, 2017) (“the court is not willing to let the case linger on the docket . . . for the mere purpose of giving the plaintiff leverage in his attempt to negotiate the payment of an attorneys’ fee.”). In this way, plaintiffs can file complaints to more proposed mergers because attorneys no longer need to spend time following through with preliminary and final approval of class actions settlements.

7. Plaintiffs’ current racket—dismissing complaints and then negotiating fees—is modeled off of the Delaware Chancery’s concept of “mootness fees.” Securities cases in Delaware have increasingly followed this model over settlements, which prevailed before *Trulia*. See Rickey, Anthony, *Absent Reform, Little Relieve in Sight From Chronic “Merger Tax” Class-Action Litigation*, Legal Backgrounder, Washington Legal Foundation (Aug. 25, 2017), available at: [http://www.wlf.org/upload/legalstudies/legalbackgrounder/082517LB\\_Rickey.pdf](http://www.wlf.org/upload/legalstudies/legalbackgrounder/082517LB_Rickey.pdf).

8. However, no plausible mechanism for awarding such fees exists in federal court nor under the Exchange Act. Several reasons exist to doubt the legality of these payments.

9. Unfortunately, defendants encourage bad-faith class action settlements because each one finds it less expensive to simply pay plaintiffs off for nuisance value (that is, slightly less than defendants might pay meritoriously defending baseless complaints).

10. Plaintiffs and their counsel seek fees from meritless strike suits against corporations where I am a shareholder. All non-local counsel who signed Plaintiffs complaints have filed other strike suits to appropriate attorneys' fees. This includes Brian D. Long and Gina M. Serra of Rigrodsky & Long, P.A.; Richard Maniskas of RM Law, P.C.; Christopher J. Kupka, Donald J. Enright, and Elizabeth K. Tripodi of Levi & Korsinsky, LLP; Juan E. Monteverde of Monteverde & Associates PC; James M. Wilson, Jr. and Nadeem Faruqi of Faruqi & Faruqi, LLP; Daniel Kuznicki of Brower Pivin P.C.; and Lewis Kahn of Kahn Swick & Foti, LLC ("Plaintiffs' Counsel").

11. For example, including this case, Plaintiff Robert Berg has filed no fewer than 22 strike federal suits in the last four months, filing as recently as last Thursday. *See Berg v. MaxPoint Interactive, Inc. et al.*, No. 17-cv-0469 (E.D.N.C. Sep. 14, 2017); *Berg v. Kite Pharma, Inc. et al.*, No. 17-cv-6583 (C.D. Cal. Sep. 7, 2017); *Berg v. XCerra Corp. et al.* No. 17-cv-11583 (D. Mass. Aug. 23, 2017); *Berg v. Guidance Software, Inc. et al.*, No. 17-cv-6020 (C.D. Cal. Aug. 14, 2017); *Berg v. WebMD Health Corp. et al.*, No. 17-cv-6064 (S.D.N.Y. Aug. 11, 2017); *Berg v. ClubCorp Holdings, Inc. et al.*, No. 17-cv-2127 (D. Nev. Aug. 7, 2017); *Berg v. Monogram Residential Trust, Inc. et al.*, No. 17-cv-2231 (D. Md. Aug. 7, 2017); *Berg v. Bankrate, Inc. et al.*, No. 17-cv-5877 (S.D.N.Y. Aug. 3, 2017); *Berg v. ARI Network Services Inc et al.*, No. 17-cv-1033 (E.D. Wisc. Jul. 25, 2017); *Berg v. Nutraceutical International et al.*, No. 17-cv-0830 (D. Utah Jul. 21, 2017); *Berg v. EnerNOC, Inc. et al.*, No. 17-cv-11331 (D. Mass. Jul. 18, 2017); *Berg v. Whole Foods Market, Inc. et al.*, No. 17-cv-0677 (W.D. Tex. Jul. 14, 2017); *Berg v. Tribune Media Company et al.*, No. 17-cv-0938

(D. Del. Jul. 12, 2017); *Berg v. OneBeacon Insurance Group, Ltd. et al.*, No. 17-2155 (D. Minn. Jun. 21, 2017); *Berg v. Covisint Corp. et al.*, No. 17-cv-12000 (E.D. Mich. Jun. 21, 2017); *Berg v. Xactly Corporation et al.*, No. 17-3783 (N.D. Cal. Jun. 20, 2017); *Berg v. VWR Corp. et al.*, No. 17-cv-2676 (E.D. Penn. Jun. 14, 2017); *Berg v. Panera Bread Co. et al.*, No. 17-cv-1631 (E.D. Mo. Jun. 8, 2017); *Berg v. Span-America Medical Systems Inc. et al.*, No. 17-cv-1399 (D.S.C. May 26, 2017); *Berg v. KCG Holdings, Inc.*, No. 17-cv-3802 (S.D.N.Y. May 19, 2017); *Berg v. Sajan, Inc., et al.*, No. 17-cv-0379 (W.D. Wisc. May 16, 2017).

12. I understand that Intervenor Theodore H. Frank was a shareholder in some of these companies targeted by Plaintiff Berg, including at least KCG Holdings, Inc., Panera Bread Co., and Whole Foods Market, Inc. *See* Declaration of Theodore H. Frank (“Frank Decl.”), ¶ 17.

13. All but one of the Plaintiffs’ attorneys who signed complaints in this case have lodged complaints against other merging corporations where Intervenor Frank was or is a shareholder.

14. As for Plaintiff Robert Berg, his attorneys Brian D. Long and Gina M. Serra of Rigrodsky & Long, P.A. and Richard Maniskas of RM Law, P.C. have filed scores of strike since January, including all of the suits on behalf of Mr. Berg recounted above. Besides the KCG Holdings, Inc., Panera Bread Co., and Whole Foods Market Inc. cases listed above, these attorneys filed strike suits against companies where Intervenor Frank was or is a shareholder, including at least: *Parshall v. Neustar, Inc. et al.*, 17-cv-0060 (D. Del. Jan. 20, 2017); *Assad v. Stillwater Mining Co., et al.*, No. 17-cv-0267 (D. Colo. Jan. 27, 2017); *Parshall v. Universal American Corp. et al.*, No. 17-cv-0077 (D. Del. Jan. 27, 2017); *Hight v. VCA Inc. et al.*, No. 17-cv-0289 (N.D. Cal. Feb. 15, 2017); *Nuzzo v. InvenSense, Inc., et al.*, No. 17-cv-0859 (N.D. Cal. Feb. 21, 2017); *Witmer v. Ixia et al.*, No. 17-cv-1483 (C.D. Cal. Feb. 23, 2017); *Parshall v. Popeyes Louisiana Kitchen, Inc. et al.*, No. 17-cv-0700 (D. Minn. Mar. 6, 2017); *Parshall v. Stonegate Mortgage Corp. et al.*, No. 17-cv-0711 (S.D. Ind. Mar. 8, 2017); *Parshall v. WGL Holdings Inc. et al.*, No. 17-cv-560 (D.D.C. Mar. 28, 2017); *Scarantino v. Silver Bay Realty Trust Corp. et al.*, No. 17-cv-

1066 (D. Minn. Apr. 5, 2017); *Parshall v. Astoria Financial Corporation et al.*, No. 17-cv-2165 (E.D.N.Y. Apr. 10, 2017); *Parshall v. CU Bancorp et al.*, No. 17-cv-4303 (C.D. Cal. Jun. 9, 2017); *Stern v. Atwood Oceanics, Inc. et al.*, No. 17-cv-1942 (S.D. Tex. Jun. 23, 2017); *Loeb v. Care Capital Properties, Inc. et al.*, No. 17-cv-0859 (D. Del. Jun. 30, 2017); and *Scarantino v. Parexel International Corp. et al.*, No. 17-cv-11360 (D. Mass. Jul. 24, 2017).

15. As for Plaintiff Jorge Alcaez, his attorneys Donald J. Enright and Elizabeth K. Tripodi of Levi & Korsinsky, LLP have filed numerous strike suits, including suits against companies where Intervenor Frank was or is a shareholder, including at least: *Chicorel v. InvenSense, Inc., et al.*, No. 17-cv-0901 (N.D. Cal. Feb. 22, 2017); *Jackson v. WGL Holdings Inc. et al.*, No. 17-cv-530 (D.D.C. Mar. 23, 2017); *Dell'Osso v. Silver Bay Realty Trust Corp. et al.*, No. 17-cv-0969 (D. Md. Apr. 7, 2017); *Evangelista v. KCG Holdings, Inc. et al.*, No. 17-cv-3959 (S.D.N.Y. May 25, 2017); *Composto v. Atwood Oceanics, Inc. et al.*, No. 17-cv-1968 (S.D. Tex. Jun. 27, 2017); *Douglas v. Care Capital Properties, Inc. et al.*, No. 17-cv-4942 (N.D. Ill. Jun. 30, 2017); and *Riegel v. Whole Foods Market, Inc. et al.*, No. 17-cv-0674 (W.D. Tex. Jul. 13, 2017). Colleagues at Levi & Korsinsky, LLP have filed several other strike suits, including suits against companies where Intervenor Frank was or is a shareholder, including at least: *Topf v. Stillwater Mining Co., et al.*, No. 17-cv-0299 (D. Colo. Jan. 31, 2017) and *Moran v. VCA Inc. et al.*, No. 17-cv-1502 (C.D. Cal. Feb. 23, 2017).

16. As for Plaintiff Shaun A. House, his attorney Juan E. Monteverde of Monteverde & Associates PC has filed several strike suits, including suits against companies where Intervenor Frank was or is a shareholder, including at least: *Remple v. Stillwater Mining Co., et al.*, No. 17-cv-0400 (D. Colo. Feb. 15, 2017); *Siegal v. KCG Holdings, Inc. et al.*, No. 17-cv-3886 (S.D.N.Y. May 23, 2017); and *Vineyard v. Care Capital Properties, Inc. et al.*, No. 17-cv-0878 (D. Del. Jul. 3, 2017).



17. As for Plaintiff Sean Harris, his attorneys James M. Wilson, Jr. and Nadeem Faruqi of Faruqi & Faruqi, LLP have filed numerous strike suits, including suits against companies where Intervenor Frank was or is a shareholder: *Krieger v. VCA Inc. et al.*, No. 17-cv-1790 (C.D. Cal. Mar. 6, 2017); *Feinstein v. Stonegate Mortgage Corp. et al.*, No. 17-cv-0794 (S.D. Ind. Mar. 15, 2017); *Joyce v. Ixia et al.*, No. 17-cv-2071 (C.D. Cal. Mar. 15, 2017); *Jenkins v. Astoria Financial Corp. et al.*, No. 17-cv-2608 (E.D.N.Y. May 2, 2017); *Siegal v. KCG Holdings, Inc. et al.*, No. 17-cv-3886 (S.D.N.Y. May 23, 2017); *Gordon v. Care Capital Properties, Inc. et al.*, No. 17-cv-0859 (D. Del. Jun. 29, 2017); and *Carter v. Atwood Oceanics, Inc. et al.*, No. 17-cv-2013 (S.D. Tex. Jun. 30, 2017).

18. As for Plaintiff Robert Carlyle, his attorney Daniel Kuznicki of Brower Pivin P.C. has filed several strike suits, including suits against companies where Intervenor Frank was or is a shareholder, including at least: *Isaac v. Abdi, et al.*, No. 17-cv-1014 (N.D. Cal. Feb. 27, 2017) and *Fischer v. Parexel International Corp. et al.*, No. 17-cv-11364 (D. Mass. Jul. 25, 2017).

19. As for Plaintiff Demetrios Pullos, a partner of his attorney, Lewis Kahn of Kahn Swick & Foti, LLC, has filed several other strike suits, but I am not aware of any filed against corporations where Intervenor Frank was or is a shareholder—yet. Examples of strike suits filed by Michael J. Palestina of Kahn Swick & Foti LLC include *Solak v. Western Refining, Inc. et al.*, No. 17-cv-0020 (W.D. Tex. Feb. 17, 2017) and *Solak v. Cabela's Inc. et al.*, No. 17-cv-0763 (D. Del. Jun. 14, 2017).

20. Based on my review, it appears none of the strike suits filed in 2017 by non-local counsel for the six plaintiffs in the above-captioned actions has resulted in an injunction, although all of the complaints purport to seek such an injunction.

21. Instead, these complaints are dismissed with an agreement to retain jurisdiction for attorneys' fees. While not always disclosed, the counsel listed above have obtained fees in other cases.

22. For example, in a strike suit involving Arctic Cat, Inc.'s acquisition by Textron, Inc., plaintiffs secured a payment of \$237,500.00 to counsel, including attorneys from Levi & Korsinsky, LLP. See *Pajnigar v. Arctic Cat, Inc. et al.*, No. 17-cv-0443, Dkt. 28 (D. Minn. Mar. 28, 2017). Another Levi & Korinsky attorney has appeared here for all six Plaintiffs and filed the Alcaarez complaint. Upon information and belief, the firm of Rigrodsky & Long, P.A. also filed an analogous strike suit in state court in this same merger, *Parshall v. Arctic Cat Inc., et al.*, No. 27-CV-17-2073 (Min. 4th Jud. Dist.).

23. As another example, a strike suit involving the acquisition by Tricon Capital Group, Inc., resulted in \$350,000 for two plaintiffs' counsel: (1) attorneys at Levi & Korsinsky LLP including Mr. Enright and (2) Brian D. Long of Rigrodsky & Long, P.A. and Richard A. Maniskas of RM Law, who signed the Berg complaint in this matter. See *Dell'Osso v. Silver Bay Realty Trust Corp. et al.*, No. 17-cv-0969 (D. Md. Jun. 5, 2017); *Scarantino v. Silver Bay Realty Trust Corp. et al.*, No. 17-cv-01066, Dkt. 11 (D. Minn. Jun. 8, 2017).

24. As another example, a strike suit involving the acquisition of Cynosure, Inc. by Hologic, Inc. resulted in payment of \$300,000 to plaintiffs' counsel, including Rigrodsky & Long, P.A. and Richard A. Maniskas (*Vladimir Gusinsky Rev. Trust v. Cynosure, Inc. et al.*, No. 17-cv-10338 (D. Mass.)), and Juan E. Monteverde (*Bird v. Cynosure, Inc. et al.*, No. 17-cv-10349 (D. Mass.)).

25. Between them, Plaintiffs' Counsel have filed over 150 strike suits in federal courts in 2017 so far, and no evidence suggests they will slow their pace of filing anytime soon. Unless enjoined from receiving dubious attorneys' fees in such strike suits, Plaintiffs' Counsel will continue to harm shareholders in companies being acquired through merger, including shareholders like Intervenor Frank.

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 Chicago, Illinois.

/s/ M. Frank Bednarz  
M. Frank Bednarz