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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

CITY OF BIRMINGHAM RELIEF AND RETIREMENT SYSTEM and OHIO CARPENTERS' PENSION FUND, Individually and on Behalf of All Others Similarly Situated,

Plaintiffs,

v.

ACADIA PHARMACEUTICALS INC., STEPHEN R. DAVIS, and SRDJAN (SERGE) R. STANKOVIC,

Defendants.

No. 3:21-cv-00762-WQH-MSB

PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR CLASS CERTIFICATION AND APPOINTMENT OF CLASS REPRESENTATIVES AND CLASS COUNSEL

Hon. William Q. Hayes

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Lead Plaintiff City of Birmingham Retirement and Relief System ("Birmingham" or "Lead Plaintiff") and additional plaintiff Ohio Carpenters' Pension Fund ("Ohio Carpenters," and together with Birmingham, "Plaintiffs") submit this Memorandum of Points and Authorities in support of their motion for class certification under Federal Rule of Civil Procedure ("Rule") 23, for appointment of Plaintiffs as class representatives, and for appointment of Scott+Scott Attorneys at Law LLP ("Scott+Scott") as class counsel.

INTRODUCTION

Class certification is justified. Plaintiffs—both large institutional investors—allege that during the period September 9, 2019 to April 4, 2021, inclusive ("Class Period"), Defendants violated §10(b) of the Exchange Act and Rule 10b–5 promulgated thereunder by making material misrepresentations and omissions concerning Acadia's Pharmaceuticals, Inc.'s ("Acadia") supplemental New Drug Application ("sNDA") to expand the approved treatment indication for Acadia's flagship drug, pimavanserin. At bottom, Plaintiffs allege that Defendants misled investors about the nature and scope of agreements that Acadia allegedly had with the Food and Drug Administration ("FDA") as to the clinical data it needed to see to approve the sNDA, and the nature and results of the key clinical trials offered to support the sNDA. Those misrepresentations artificially inflated the price at which shares of Acadia common stock traded during the Class Period, and caused investors substantial losses when the truth was revealed.

The Rule 23(a) prerequisites for class certification are plainly met in this case. ***First***, with millions of Acadia common shares traded on the NASDAQ during the Class Period, thousands of Class members likely exist, thus rendering the Class so numerous that joinder is impracticable. ***Second***, this case turns on multiple common questions of fact and law, including whether Defendants' relevant statements and omissions were materially misleading, whether the price of Acadia common stock was artificially inflated as a result, and whether Defendants acted with scienter.

Third, Plaintiffs' claims are typical of other Class members' claims, as they allege that the same actionable misstatements and omissions caused all Class members to be injured in the same way because they all purchased Acadia shares at artificially inflated prices. ***Fourth***, Plaintiffs will fairly and adequately represent the Class as they have no conflicts with other Class members, are committed to prosecuting this action, and have selected experienced counsel with the resources to prosecute this case through its resolution.

The predominance and superiority requirements of Rule 23(b)(3) also are met. In §10(b) class actions, predominance typically boils down to whether the plaintiffs may benefit from a class-wide presumption of reliance by successfully invoking the fraud-on-the market doctrine, which in turn requires a showing that the securities at issue traded in an efficient market. As set forth in the accompanying expert report of Professor Steven Feinstein, PhD, C.F.A., application of the well-established *Cammer* analysis establishes that the common stock of Acadia (a multibillion dollar, NASDAQ-listed company) traded in an efficient market throughout the Class Period. The other requirements for invoking a fraud-on-the-market presumption of reliance—namely, that the misleading statements at issue were made publicly and that Plaintiffs purchased their shares after those statements were made but before the full truth was revealed—are also satisfied. Dr. Feinstein's report further shows that common damages also predominate, as damages can be calculated for all class members (as is invariably the case in §10(b) actions) using common damages formulas based on a common inflation-per-share-based methodology. And as to superiority, a class action is plainly the superior way to resolve Class members' claims, given the expense and inefficiencies of the alternative of individually litigating those claims.

Finally, Scott+Scott—Court-appointed Lead Counsel in this case—meets the Rule 23(g) requirements to serve as Class Counsel, and (like the proposed class representatives, Birmingham and Ohio Carpenters) is fully committed to vigorously

litigating this matter through to a successful resolution for the Class.

Accordingly, Plaintiffs' motion should be granted.

STATEMENT OF FACTS

A. The Common Facts Underlying Plaintiffs' Claims

Plaintiffs allege that Defendants made various material misrepresentations and omissions during the Class Period concerning the nature and scope of Acadia's purported agreements with the FDA about the data needed to obtain approval of the sNDA, and the deficiencies in both the primary study (Harmony) and another clinical trial (-019) used to support the sNDA. *See* Am. Compl. ("AC") ¶¶107–42, Dkt. No. 45;[1] *see also* Order on Motion to Dismiss ("MTD Order") at 26 (Sept. 27, 2022), Dkt. No. 65 ("The Court has determined that the [AC] alleges sufficient facts to support an inference that Defendants' statements concerning the agreement with the FDA and omissions of adverse information about the Harmony and -019 Studies misled investors into underestimating the risk that the FDA would deny Acadia's sNDA.").

By way of background, in 2016 the FDA had approved pimavanserin to treat hallucinations and delusions associated with Parkinson's disease psychosis ("PDP"), which is only one of several types of dementia-related psychosis ("DRP"). ¶¶2–3, 31. Thereafter, Acadia sought to ***expand*** pimavanserin's approved treatment indication to include not only those suffering from PDP, but also those suffering from any other type of DRP—such as dementia associated with Alzheimer's disease, dementia with Lewy bodies, vascular dementia, and frontotemporal dementia. ¶¶2–4, 39. FDA approval of pimavanserin for such a broadened indication (beyond just PDP sufferers) would dramatically increase the commercial value of the drug. ¶36. To support the planned sNDA to obtain such a broader treatment indication, Acadia launched the Harmony Study—a Phase 3 clinical trial to study pimavanserin in

[1] Subsequent citations to "¶__" are to the AC. Unless otherwise indicated, in quoted language, emphasis is added and internal quotation marks are omitted.

patients suffering from various types of DRP. ¶¶3–5.

On September 9, 2019—the first day of the Class Period—Defendants announced that Acadia had stopped the Harmony Study early due to purportedly positive efficacy results. ¶¶4, 57. Specifically, Acadia announced that Harmony had met its primary endpoint by demonstrating a highly statistically significant longer time to relapse of psychosis with pimavanserin compared to a placebo in the overall patient pool. ¶¶4, 107. That same day, Defendants also announced that the FDA had confirmed that Acadia's forthcoming sNDA for DRP could "rely on a single, well-controlled study [*i.e.*, the Harmony Study] whose results were both statistically and clinically very persuasive." ¶¶5, 109. Thereafter, "Defendants repeatedly continued to stress both the 'positive' results of the Harmony [S]tudy, and that the FDA had already signed off on the adequacy of that study's design for purposes of obtaining the broader use authorization that the Company wanted." ¶5; *see also, e.g.*, ¶125 (Defendants' representation that Acadia had "got a clear agreement [] with the FDA" and "executed the plan"). *See generally* ¶¶107–42.

Unfortunately for investors, however, Defendants' repeated assurances that the FDA had agreed that Harmony's design was adequate for such purposes were materially false and misleading, and "failed to disclose that in fact [Harmony's] design was so flawed that even the kinds of facially 'positive' results that it produced could not support FDA approval of pimavanserin for additional types of DRP beyond [PDP] (which was the primary purpose for conducting the Harmony Study in the first place)." ¶7; *see also* ¶¶107–42.

In particular, by including in Harmony a large number of patients who suffered from PDP (the condition for which pimavanserin was already FDA approved)—while simultaneously failing to include robust numbers of DRP patients from any ***non***-PDP subgroups—Harmony was "under-powered" from the outset to generate the kind of results that would justify expanding the drug's existing label to approve it as a treatment for DRP patients generally (rather than for just PDP

patients). ¶8. Accordingly, unbeknownst to investors (but as Defendants knew or recklessly disregarded), Harmony "would have to produce truly extraordinary results within the relevant sub-group populations to support approval for those subgroups." *Id.* Instead, while Harmony generated a statistically significant "topline" success rate ***for the entire patient pool***, that result was driven by the very high success rate for PDP patients (for which pimavanserin had ***already*** been approved)—and the study ***failed*** to establish meaningful evidence of the drug's efficacy in any ***non***-PDP cohorts (whether viewed collectively or individually). ¶¶8, 79–83.[2] In sum, as the Court put it, Plaintiffs allege that "Defendants materially misled investors . . . by emphasizing cherry-picked positive results while omitting known shortcomings in the studies submitted with the sNDA, including disappointing data, which posed major obstacles to FDA approval." MTD Order at 11; *see also id.* at 26 (finding that "the [AC] alleges sufficient facts to support an inference that Defendants' statements concerning the agreement with the FDA and omissions of adverse information about the Harmony and -019 Studies misled investors into underestimating the risk that the FDA would deny Acadia's sNDA").

After the close of the market on March 8, 2021, Acadia announced that the FDA had identified unspecified "deficiencies" in the sNDA "that preclude[d] discussion of labeling and post-marketing requirements" at that time; in response, on March 9, the price of Acadia shares plummeted by $20.76 per share, representing a one-day decline of over 45%. ¶¶9, 143–44. Four weeks later, on April 5, 2021, Acadia announced that the FDA had sent it a "Complete Response Letter" ("CRL"), which meant that the FDA would not approve the sNDA. ¶¶10, 145. As Acadia also stated, the FDA's CRL "cited a lack of statistical significance in some of the patient subgroups of dementia, and insufficient numbers of patients with certain less common dementia subtypes as lack of substantial evidence of effectiveness to

[2] The Complaint also alleges with particularity how deficiencies in the -019 Study that Acadia also submitted as part of its NDA were far from "supportive," let alone sufficient to overcome the deficiencies in the Harmony Study. ¶¶84–90.

support approval." ¶145. In response, Acadia shares fell another 17%. ¶146.

During the Class Period, individual Defendants Davis and Stankovic sold substantial portions of their holdings of Acadia stock at artificially inflated prices, allowing them to reap roughly $24.8 million and $18.9 million in insider-selling proceeds, respectively. ¶¶13, 105–06.

B. The Proposed Class and Proposed Class Representatives

Plaintiffs seek to certify the following proposed Class:

> All persons and entities who purchased or otherwise acquired shares of Acadia common stock during the period from September 9, 2019 through April 4, 2021 (inclusive), and were damaged thereby. Excluded from the Class are (i) Defendants; (ii) the past and current officers and directors of Acadia; (iii) the immediate family members, legal representatives, heirs, parents, subsidiaries, predecessors, successors, and assigns of any excluded person or entity; and (iv) any entity in which any excluded person(s) have or had a majority ownership interest, or that is or was controlled by any excluded person or entity.

See ¶148. The proposed class representatives are Birmingham and additional plaintiff Ohio Carpenters. Both purchased Acadia common shares during the Class Period at artificially inflated prices and suffered losses as the truth was revealed. *See infra* §I.D (discussing Plaintiffs' adequacy under Rule 23(a)(4)).

ARGUMENT

Courts certify classes where plaintiffs meet the prerequisites of numerosity, commonality, typicality, and adequacy of representation under Rule 23(a), and the further requirements of predominance and superiority under Rule 23(b)(3). *Amgen Inc. v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 460 (2013). "In determining whether certification is proper, a district court must take the substantive allegations of the complaint as true, and may also consider extrinsic evidence submitted by the parties." *In re Cooper Cos. Inc. Sec. Litig.*, 254 F.R.D. 628, 633 (C.D. Cal. 2009). However, "a district court has no authority to conduct a preliminary inquiry into the merits of a suit at class certification unless it is necessary to determine" whether Rule 23's requirements are met. *Amgen*, 568 U.S. at 466. This §10(b) case, like most securities cases, is "particularly well-suited" to class certification. *See, e.g.*, *In re*

VeriSign, Inc. Sec. Litig., 2005 WL 7877645, at *9 (N.D. Cal. Jan. 13, 2005).

I. RULE 23(a) IS SATISFIED

All the Rule 23(a) prerequisites—numerosity, commonality, typicality, and adequacy—are easily satisfied.

A. Numerosity

"Rule 23(a)(1) requires the proposed class to be so numerous that joinder of all members is impracticable." *Ali v. Franklin Wireless Corp.*, 2023 WL 25718, at *2 (S.D. Cal. Jan. 3, 2023). "As a general matter, courts have found that numerosity is satisfied when class size exceeds 40 members." *Moore v. Ulta Salon, Cosms. & Fragrance, Inc.*, 311 F.R.D. 590, 602–03 (C.D. Cal. 2015). Where, as here, the defendant-corporation "had millions of shares trading on NASDAQ during the Class Period, the Court can infer that the number of shareholders and other potential class members damaged by Defendants' actions would be far too numerous to join." *In re BofI Holding, Inc. Sec. Litig.*, 2021 WL 3742924, at *2 (S.D. Cal. Aug. 24, 2021) (citation omitted); *see also, e.g.*, *In re Twitter Inc. Sec. Litig.*, 326 F.R.D. 619, 626 (N.D. Cal. 2018) (numerosity readily met where millions of shares of defendant's common stock traded on national exchange during class period); *Ali*, 2023 WL 25718, at *3 (same).

During the Class Period, over 632 million outstanding shares of Acadia common stock were traded on the NASDAQ, a national stock exchange. *See* Declaration of William Fredericks ("Fredericks Decl.") Ex. A (Report on Market Efficiency and Damages Methodology by Professor Steven Feinstein ("Feinstein Report")) ¶58. Numerosity, based on the number of nationally traded Acadia shares, is therefore satisfied.

B. Common Questions of Law and Fact

"To satisfy Rule 23(a)(2) commonality, [e]ven a single [common] question will do." *Torres v. Mercer Canyons Inc.*, 835 F.3d 1125, 1133 (9th Cir. 2016) (alteration in original). "Commonality exists when plaintiffs' claims depend upon a

common contention . . . capable of class[-]wide resolution." *Twitter*, 326 F.R.D. at 626. Courts routinely find that "the elements of securities fraud claim[s] . . . are indisputably subject to common proof and identical legal analysis" sufficient to establish commonality under Rule 23. *BofI Holding*, 2021 WL 3742924, at *3; *see, e.g.*, *Baker v. SeaWorld Ent., Inc.*, 2017 WL 5885542, at *6 (S.D. Cal. Nov. 29, 2017) (commonality met given shared issues of "whether Defendants violated federal securities law[s]" and "whether Defendants' statements during the class period misrepresented or omitted facts," among others).

Here, the claims of Class members depend on numerous common issues that can be resolved on a class-wide basis, including:

- Whether Defendants' statements or omissions (as detailed at ¶¶107–42 of the AC) violated federal securities laws;
- Whether Defendants' statements or omissions were materially false or misleading;
- Whether Defendants acted with the requisite scienter;
- Whether the price of Acadia common stock was artificially inflated as a result of Defendants' misrepresentations or omissions; and
- Whether disclosures of Defendants' wrongdoing caused Class members to suffer damages, and if so what is the proper measure of damages.

Such issues "are core factual and legal issues common to the class" that courts routinely find sufficient to show commonality in securities fraud cases. *Ali*, 2023 WL 25718, at *4; *see also, e.g.*, *In re Bridgepoint Educ., Inc. Sec. Litig.*, 2015 WL 224631, at *5 (S.D. Cal. Jan. 15, 2015) (commonality met where "common questions[] includ[ed] whether [defendant] made false statements, whether those statements were material, whether they were intentionally false, and whether they caused class members' losses"). In sum, the commonality requirement is also met.

C. Typicality

Rule 23(a)(3) "requires that the claims and defenses of the representative

parties are typical of the claims and defenses of the class." *Cooper*, 254 F.R.D. at 635. "The test of typicality is whether other class members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct." *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010). Where named plaintiffs "and the proposed class members all purchased . . . common stock shares" in the same entity and assert the same claims "based on the same misstatements [or] omissions by Defendants," courts routinely find typicality. *Ali*, 2023 WL 25718, at *4; *see, e.g.*, *Twitter*, 326 F.R.D. at 629 (typicality met where named plaintiffs' "claims and injuries . . . ar[o]se from the same events and conduct that gave rise to the claims of other Class members").

Here, Plaintiffs' claims are plainly typical of the Class. ***First***, the injury alleged by Plaintiffs is the same injury suffered by other Class members: purchasing Acadia shares during the Class Period at artificially inflated prices caused by Defendants' knowing or reckless material misrepresentations or omissions. ***Second***, there are no unique defenses or circumstances peculiar to Plaintiffs as compared to other Class members that might defeat typicality. *See Ali*, 2023 WL 25718, at *4. ***Third***, all Class members have been injured by the same alleged conduct, *i.e.*, Defendants' materially misleading statements and omissions. *Bridgepoint*, 2015 WL 224631, at *5 (typicality met where plaintiffs' "claims arise from the same events and conduct that gave rise to the claims of other class members"); *Cooper*, 254 F.R.D. at 636 (typicality met where plaintiff "retirement funds bought [defendant's] stock and sold it for investment purposes, subject to the same information and representations as the market at large").

D. Adequacy

"Rule 23(a)(4) requires the class representative[s] to fairly and adequately protect the interests of the class." *Ali*, 2023 WL 25718, at *4. Two factors determine adequacy under Rule 23: (1) whether "the named plaintiffs and their counsel have

any conflicts of interest with the other class members"; and (2) whether "the named plaintiffs and their counsel [will] prosecute the action vigorously on behalf of the class." *BofI Holding*, 2021 WL 3742924, at *3. In securities fraud actions, courts routinely find that large, institutional-investor plaintiffs that retain experienced counsel are adequate. *See, e.g.*, *id.* at *3–4; *Bridgepoint*, 2015 WL 224631, at *5 (adequacy met where named plaintiffs were "institutional investors who ha[d] every incentive to actively litigate th[e] case" and their counsel had "experience in litigating securities-fraud class actions"). The same is merited here.

First, Plaintiffs' interests plainly align with the interests of the Class "because all class members have allegedly suffered losses due to the same conduct." *Bridgepoint*, 2015 WL 224631, at *5; *see also, e.g.*, *Ali*, 2023 WL 25718, at *5 (same). There is simply no indication of any "apparent" conflict—let alone one that goes to "the very heart of the suit" and is thus "so significant [as] to render the proposed class representatives unable to vigorously prosecute the suit," which is the standard for assessing whether an alleged conflict is sufficient to render a proposed class representative inadequate. *Cooper*, 254 F.R.D. at 636. Nor is there "evidence, or allegation, of collusion between the class representatives and Defendants." *Id.* In short, "there is no indication of any actual or potential conflict" that would undermine a finding of adequacy, *Ali*, 2023 WL 25718, at *5; to the contrary, each proposed class representative has attested to their commitment to protecting the interests of the Class, *see* Fredericks Decl. Ex. B (Declaration of Jay P. Turner ("Turner Decl.")) ¶6; *id.* Ex. C (Declaration of Timothy Linville ("Linville Decl.")) ¶7.

Second, Plaintiffs have already shown they are willing and able to prosecute this Action vigorously on behalf of the Class. Their "active[] involve[ment] in pursuing this litigation," *Ali*, 2023 WL 25718, at *5, is evidenced by, *inter alia*, their regular consultations with counsel, review of case filings, and participation in discovery, *see* Turner Decl. ¶¶4–5; Linville Decl. ¶¶5–6. They also understand that,

as fiduciaries, they have an obligation to—and are committed to—ensuring that this matter continues to be vigorously prosecuted for the benefit of the Class. *See* Turner Decl. ¶4; Linville Decl. ¶5; *see also Bridgepoint*, 2015 WL 224631, at *5 (adequacy met where "[p]laintiffs submitted declarations attesting to their commitment to vigorously litigating this case").

Similarly, Plaintiffs request that Lead Counsel Scott+Scott be appointed to serve as Class Counsel. *See* Turner Decl. ¶7; Linville Decl. ¶8. It is respectfully submitted that Scott+Scott is a law firm well-qualified to represent the proposed class. Indeed, as this Court observed when it appointed Lead Plaintiff's selection of Scott+Scott as Lead Counsel, "Scott+Scott is highly experienced in the area of securities litigation and class actions and has successfully prosecuted numerous securities litigations and securities fraud class actions on behalf of investors." Order Appointing Lead Plaintiff and Lead Counsel ("PSLRA Order") at 6 (Sept. 29, 2021), Dkt. No. 38. A copy of Scott+Scott's firm resume has previously been submitted to the Court, *see* Dkt. Nos. 12-5 & 33-5, and additional information about the firm is also available at www.scott-scott.com. *See also Bridgepoint*, 2015 WL 224631, at *5 (approving class counsel where firm "documented its experience in litigating securities-fraud class actions"). Moreover, it is respectfully submitted that Scott+Scott has demonstrated both its skills and its commitment to vigorously prosecuting this action by, *inter alia*: (1) conducting a thorough pre-filing investigation of the claims; (2) preparing the detailed AC; (3) defeating Defendants' motion to dismiss (and their subsequent motion to reconsider); (4) serving comprehensive discovery requests and engaging in extensive meet-and-confer negotiations; (5) engaging in the ongoing process of reviewing documents that have been produced on a rolling basis by Defendants and various third parties; and (6) retaining appropriate experts, including Professor Feinstein. *See* Fredericks Decl. ¶2.

II. THE REQUIREMENTS OF RULE 23(b)(3) ARE ALSO SATISFIED

Under Rule 23(b)(3), an action may proceed as a class on a showing that (1) "the questions of law or fact common to class members predominate over any questions affecting only individual members," and (2) "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." *Erica P. John Fund, Inc. v. Halliburton Co.*, 563 U.S. 804, 809 (2011) ("*Halliburton I*"). That standard is met here. *See, e.g.*, *Ali*, 2023 WL 25718, at *5 ("In the typical securities fraud case (like this case), the factual and legal issues related to most of these elements are common to the class, so the requirements for class certification are usually readily met.").

A. Predominance

The predominance inquiry "tests whether the proposed class is sufficiently cohesive to warrant adjudication by representation." *Twitter*, 326 F.R.D. at 629. "When common questions present a significant aspect of the case and they can be resolved for all members of the class in a single adjudication, there is clear justification for handling the dispute on a representative rather than on an individual basis." *Ali*, 2023 WL 25718, at *5.

Predominance is "readily" shown in securities fraud cases, *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625 (1997), and "begins . . . with the elements of the underlying cause of action," *Halliburton I*, 563 U.S. at 809. The elements of a private §10(b) fraud claim are "(1) a material misrepresentation or omission by the defendant; (2) scienter; (3) a connection between the misrepresentation or omission and the purchase or sale of a security; (4) reliance upon the misrepresentation or omission; (5) economic loss; and (6) loss causation." *Id.* at 809–10. Courts widely recognize that these elements, other than reliance, "are necessarily common to the class because they depend on defendants' actions, not those of any class member." *In re Banc of Cal. Sec. Litig.*, 326 F.R.D. 640, 648 (C.D. Cal. 2018). Indeed, the Supreme Court has held that materiality, loss causation, and the false or misleading

nature of a defendant's alleged "statements or omissions" raise predominating common questions for resolution at a later, post-class-certification stage of the litigation. *Amgen*, 568 U.S. at 470, 475. Instead, the predominance inquiry "in a securities fraud action often turns on the element of reliance," where Plaintiffs typically seek to invoke a class-wide (and predominating) presumption of reliance using the fraud-on-the-market theory. *Halliburton I*, 563 U.S. at 810–11.

1. Common Reliance Questions Predominate Because the Fraud-on-the-Market Doctrine Applies, Giving Rise to a Class-Wide Presumption of Reliance

The fraud-on-the-market theory holds that "the market price of shares traded on well-developed markets reflects all publicly available information, and, hence, any material misrepresentations." *Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U.S. 258, 268 (2014). "As a result, whenever [an] investor buys or sells stock at the market price, his reliance on any public material misrepresentations . . . may be presumed for purposes of a Rule 10b–5 action." *Id.* at 268. To invoke the fraud-on-the-market presumption of reliance at class certification, Plaintiffs must show that: (1) "the stock traded in an efficient market"; (2) "the alleged misrepresentations were publicly known"; and (3) "the relevant transaction[s] took place between the time the misrepresentations were made and the time the truth was revealed." *Amgen*, 568 U.S. at 471–72; *see also, e.g.*, *Ali*, 2023 WL 25718, at *6 (same). Because each of those elements is met here, reliance issues also predominate. *See, e.g.*, *Cooper*, 254 F.R.D. at 639 ("District courts in the Ninth Circuit have held that when plaintiffs plead a fraud-on-the-market theory, questions of whether misleading conduct occurred, and whether that conduct occurred with fraudulent intent, predominate over other questions.").

a. Acadia Common Stock Trades in an Efficient Market

To assess market efficiency, courts in this Circuit routinely utilize the five-factor test set forth in the seminal case of *Cammer v. Bloom,* namely*:*

> (1) whether the stock trades at a high weekly volume; (2) whether securities analysts follow and report on the stock; (3) whether the stock has market makers and arbitrageurs; (4) whether the company is

> eligible to file SEC Registration Form S-3; and (5) whether there are "empirical facts showing a cause and effect relationship between unexpected corporate events or financial releases and an immediate response in the stock price."

Baker, 2017 WL 5885542, at *9 (quoting *Cammer v. Bloom*, 711 F. Supp. 1264, 1287 (D.N.J. 1989)). Consideration of the *Cammer* factors often is "supplemented by other measures," including three additional factors cited in *Krogman v. Sterritt*, 202 F.R.D. 467, 477–78 (N.D. Tex. 2001), namely, "(6) the company's market capitalization"; (7) the stock's "bid-ask spread"; and (8) the stock's "float." *Petrie v. Elec. Game Card, Inc.*, 308 F.R.D. 336, 349 (C.D. Cal. 2015); *see, e.g., Junge v. Geron Corp.*, 2022 WL 1002446, at *4 (N.D. Cal. Apr. 2, 2022) (applying *Cammer/Krogman* factors); *Sheet Metal Workers Nat'l Pension Fund v. Bayer Aktiengesellschaft*, 2023 WL 3569981, at *9 (N.D. Cal. May 19, 2023) (same).

Here, ***all*** eight of the *Cammer/Krogman* factors weigh in favor of finding market efficiency—although it should be stressed that, as ample case law holds, there is no requirement that all eight factors must be met to establish efficiency as long as the relevant factors, viewed collectively, support efficiency. *See, e.g., Angley v. UTi Worldwide Inc.*, 311 F. Supp. 3d 1117, 1121 (C.D. Cal. 2018) (the *Cammer/Krogman* "factors are an analytical tool, not a checklist of requirements"). Moreover, as courts routinely observe, a security's listing on a major U.S. exchange strongly supports a finding of market efficiency, such that Acadia common stock's listing on the NASDAQ in itself supports an initial presumption of efficiency. *Cammer,* 711 F. Supp. at 1292 ("at a minimum, there should be a presumption—probably conditional for class determination—that certain markets [including the NASDAQ] are developed and efficient for virtually all the securities traded there"); *see also, e.g.*, *Todd v. STAAR Surgical Co.*, 2017 WL 821662, at *6 (C.D. Cal. Jan. 5, 2017) (NASDAQ listing "strongly favors a finding of market efficiency"); *Brown v. China Integrated Energy Inc.*, 2015 WL 12720322, at *16 (C.D. Cal. Feb. 17, 2015) (same).

***Cammer/Krogman* Factor No. 1: Trading Volume**

A high average trading volume tends to show market efficiency because it suggests "significant investor interest in the company" and, in turn, a "likelihood that many investors are executing trades on the basis of newly available or disseminated corporate information." *Cammer*, 711 F. Supp. at 1286. "Turnover, measured by average weekly trading of 2% or more of the outstanding shares would justify a strong presumption that the market for the security is an efficient one." *Petrie*, 308 F.R.D. at 349.

The average weekly trading volume of Acadia's common stock during the Class Period—8.01 million shares, equal to 5.15% of its outstanding shares—easily surpasses that threshold. *See* Feinstein Report ¶60; *Petrie,* 308 F.R.D. at 349; *see also, e.g.*, *Todd*, 2017 WL 821662, at *7 (average weekly trading volume of "3.01% of shares outstanding . . . weigh[ed] in favor of a finding of market efficiency").

***Cammer/Krogman* Factor No. 2: Analyst Coverage**

Securities analyst coverage of a company's stock "indicates market efficiency because it implies that available information on the company was closely reviewed by investment professionals, who would in turn make buy/sell recommendations to client investors, which would in turn affect the price of the stock." *Petrie*, 308 F.R.D. at 350. Under this factor, courts also consider news coverage of the company and institutional ownership of its stock as indicators of market efficiency because such circumstances are consistent with widespread dissemination of information about the company to the market. *See, e.g.*, *Banc of Cal.*, 326 F.R.D. at 649 (news coverage); *Todd*, 2017 WL 821662, at *7 (institutional ownership).

During the Class Period, 21 analyst firms covered Acadia, including 16 that regularly published reports about Acadia and five others that participated in quarterly earnings calls with investors. Feinstein Report ¶¶64–65. That exceeds the number of reporting firms courts have found sufficient to support a finding of market efficiency. *See, e.g.*, *In re Diamond Foods, Inc. Sec. Litig.*, 295 F.R.D. 240, 248

(N.D. Cal. 2013) (13 analyst firms). Additionally, over 770 news reports were published about Acadia during the Class Period and roughly 688 major institutions owned Acadia stock during the Class Period, Feinstein Report ¶¶71, 73, which further shows the widespread dissemination of information about Acadia stock.

***Cammer/Krogman* Factor No. 3: Number of Market Makers**

"The more market-makers for a particular security . . . , the more reasonable it is to infer that the security is liquid, and, therefore, more likely the market for that security is efficient." *Petrie*, 308 F.R.D. at 351. Although no bright-line rule prescribes the number of market makers for a security that must be present to support a finding of market efficiency, "[t]en market makers for a security" has been held to "justify a substantial presumption that the market for the security is an efficient one." *Cammer*, 711 F. Supp. at 1293; *see also, e.g.*, *Petrie*, 308 F.R.D. at 351 (collecting cases involving as few as 11 market makers supporting finding of efficiency).

Here, Plaintiffs' expert, Dr. Feinstein, identified 109 market makers that transacted in Acadia stock during the Class Period. Feinstein Report ¶78. That far exceeds the number of market makers (ten) that courts have held sufficient to support a finding of market efficiency under the *Cammer* analysis. More fundamentally, Acadia common stock trades on the NASDAQ, which is a modern market that uses a centralized computer system to match orders and to provide quotes for the stocks that it lists. *Id.* ¶77. To support those functions, the NASDAQ provides price, volume, and trade details for its stocks on a continuous and public basis. *Id.* The NASDAQ (and other markets with such characteristics) is typically assumed to be efficient in a way that is dispositive of this *Cammer* factor. *See, e.g.*, *Junge*, 2022 WL 1002446, at *4 ("*Third*, [defendant-company's] stock was actively traded on the NASDAQ, not over the counter . . . ."). Thus, while having 109 market makers enhanced the efficiency of the market for Acadia shares, because they traded on the NASDAQ these shares already had considerable liquidity and traded in a market that had the ability to respond to information about Acadia swiftly and efficiently.

Feinstein Report ¶¶77–79. Thus, the third *Cammer* factor also supports finding efficiency.[3]

***Cammer/Krogman* Factor No. 4: Eligibility to File SEC Form S-3**

Form S-3 "is a short form registration statement reserved for companies (1) with $75 million in common equity held by non-affiliates of the registrant"—*i.e.*, companies with a $75 million float—and "(2) that have filed reports with the" SEC "for 12 consecutive months." *Petrie*, 308 F.R.D. at 352. Eligibility to file a Form S-3 registration statement is probative of the efficiency of the market in which a stock trades because "the SEC permits an S-3 [r]egistration statement only on the premise that the stock is already traded on an open and efficient market." *Id.*; *see also* Feinstein Report ¶¶85, 88. Here, Acadia satisfies this factor because its average float during the Class Period was $4.86 billion, orders of magnitude higher than the threshold requirement for eligibility to file a Form S-3, and it regularly filed reports with the SEC. Feinstein Report ¶89. And Acadia did file a Form S-3 registration statement during the Class Period, on August 25, 2020. *Id.*[4] Thus, this factor also strongly supports a finding of market efficiency.

***Cammer/Krogman* Factor No. 5: Cause-and-Effect Relationship**

"The fifth *Cammer* factor is whether there are facts to support a cause-and-effect relationship between unexpected corporate events . . . and an immediate response in stock price." *Petrie*, 308 F.R.D. at 352. "Event studies are by far the most common test for a causal connection." *Id.* An event study is a statistical analysis that "calculate[s] the effect of an event on the value of the stock of a

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[3] Although arbitrageurs also are considered under the third *Cammer* factor, "most courts consider only the number of market makers." *Todd*, 2017 WL 821662, at *7. In any event, Dr. Feinstein has found evidence consistent with the presence of arbitrageurs in the market for Acadia common stock, *see* Feinstein Report ¶¶81–83, which has been held to contribute to a finding of market efficiency, *see, e.g.*, *Diamond Foods*, 295 F.R.D. at 248 ("trading activity of [company's] stock indicate[d] the presence of arbitrage activity").

[4] Acadia filed a Form S-3ASR, which is a type of Form S-3 available for certain "seasoned" issuers to file. *See* Feinstein Report ¶90.

company." *Diamond Foods*, 295 F.R.D. at 248; *see also* Feinstein Report ¶108. Event studies determine how much of a stock price's movement is attributable to the release of new company-specific information. *Id.* As part of an event study, a statistical-regression analysis is run to determine how much of a stock price's movement is attributable to market- or industry-sector factors as opposed to the release of new company-specific information. *Id.* ¶131.

A common type of event study used to test market efficiency is a collective event study. *Id.* ¶¶113–14. Such studies "compare price movements" of a security "on news days to non- or lesser-news days," where "news days" are days on which new company-specific information is released. *Id.* ¶113. Here, Dr. Feinstein conducted ***two*** collective event studies to assess whether specific new information about Acadia had a causal effect on the price of Acadia common stock. The first defined "news days" as Class Period days on which events reported in Acadia's Form 8-K filings occurred and became publicly known ("8-K Event Days"). *Id.* ¶¶118–19. The second defined "news days" as Class Period days with the highest frequency of news coverage of Acadia ("Top-Article-Count Days"). *Id.* ¶¶121–22.

In his first study, Dr. Feinstein identified 17 8-K Event Days. *Id.* ¶150. He determined that Acadia common stock experienced statistically significant price reactions on four of the 17 8-K Event Days. *Id.* In his second collective event study, Dr. Feinstein identified 19 Top-Article-Count Days, which represented the top 5% of Class Period days with the most Acadia-specific news published. *Id.* ¶¶121, 154. He determined that Acadia common stock experienced statistically significant price reactions on five of the 19 Top-Article-Count Days. *Id.* ¶154. To establish that those findings were indicative of a cause-and-effect relationship between the release of Acadia-specific information—as quantified by 8-K Event Days and Top-Article-Count Days—and the price of Acadia common stock, Dr. Feinstein compared the price reactions of Acadia common stock on those days to all other days of the Class Period (*i.e.*, on non- or lesser-news days). *Id.* ¶¶150–55. He found that while

23.53% of 8-K Event Days had statistically significant share price reactions, only 5.29% of all other Class Period days (*i.e.*, non- or lesser-news days) had statistically significant share price reactions. *Id.* ¶¶150–51. He also found that while 26.32% of Top-Article-Count Days had statistically significant share price reactions, only 6.38% of all other Class Period days (*i.e.*, non- or lesser-news days) had statistically significant share price reactions. *Id.* ¶¶154–55.[5] Using widely accepted methods of statistical analysis, Dr. Feinstein eliminated the possibility that those divergences in incidence rates could be due to random chance alone with confidence levels of 98.53% and 99.16%, respectively. *Id.* ¶¶153, 155.

Accordingly, Dr. Feinstein's analyses demonstrate a clear cause-and-effect relationship between the release of material news about Acadia and changes to its common stock price. *Id.* ¶¶156–58. Courts have found substantially similar analyses sufficient to establish the cause-and-effect relationship that the fifth *Cammer* factor calls for in supporting a finding of market efficiency. *See, e.g.*, *Angley*, 311 F. Supp. 3d at 1122 (event study showed "difference in the occurrence of abnormal returns on new days as compared to no-news days"); *Todd*, 2017 WL 821662, at *8–10 (market efficiency shown based in part on event study conducted by Dr. Feinstein). Thus, the fifth *Cammer* factor here further buttresses Plaintiffs' showing that the market for Acadia common stock was efficient.

***Cammer/Krogman* Factor No. 6: Market Capitalization**

A company's market capitalization equals the number of its shares outstanding multiplied by the prevailing market price per share. Feinstein Report ¶52. Market capitalization is indicative "of market efficiency because there is a greater incentive for stock purchasers to invest in more highly capitalized

[5] As Dr. Feinstein explained, one would not expect that there would be statistically significant price movements on all "news event dates," given that, *inter alia*, news days may simply repeat prior news or announce events already expected by the market, or that positive and negative news released on the same day may largely offset each other, in which case one would not expect a statistically significant price change in response. *See* Feinstein Report ¶¶126–28.

corporations." *Krogman*, 202 F.R.D. at 478; *see also* Feinstein Report ¶52. Here, during the Class Period, the market capitalization of Acadia common stock was, on average, $7 billion (ranging from $4 billion to $9.03 billion), which was larger than the market capitalizations of more than 88% of all publicly traded entities in the United States. Feinstein Report ¶94. That places Acadia's market capitalization well above the threshold at which courts have found companies' market capitalizations to support a finding of market efficiency. *See Junge*, 2022 WL 1002446, at *4 ("35th to 46th percentiles"); *Krogman*, 202 F.R.D. at 478 (60th percentile). Thus, the first *Krogman* factor further supports a finding that Acadia common stock traded in an efficient market during the Class Period.

***Cammer/Krogman* Factor No. 7: Bid-Ask Spread**

A bid-ask spread is "the difference between the price at which current stockholders are willing to buy the stock and the price at which current stockholders are willing to sell their shares." *Petrie*, 308 F.R.D. at 356. While "[a] large bid-ask spread is indicative of an inefficient market[] because it suggests that the stock is too expensive to trade," *Krogman*, 202 F.R.D. at 478, a narrow bid-ask spread "makes trading in the security less costly," suggesting efficiency in its market, Feinstein Report ¶54. Here, the average bid-ask spread for Acadia common stock during the Class Period was 0.11%, which is substantially narrower than the 0.58% average bid-ask spread for all stocks traded on national exchanges in the United States during the Class Period. *Id.* ¶100. Accordingly, the narrow bid-ask spread of Acadia common stock during the Class Period supports a finding of market efficiency under the second *Krogman* factor.

***Cammer/Krogman* Factor No. 8: Stock Float**

A stock's float measures the shares of a company's stock available for public investors to trade in the open market—that is, it excludes shares held by insiders and affiliates of the company. *Id.* ¶53. A larger float indicates a greater percentage of a company's shares are available to the trading public and thus "supports a finding of

market efficiency." *Petrie*, 308 F.R.D. at 357. Here, during the Class Period, 69.56% of Acadia common stock was in float, which means that roughly 70% of shares of Acadia common stock were held by the public. Feinstein Report ¶97. As Dr. Feinstein found, that float was "larger than the entire respective market capitalizations . . . of 85.0% of all other publicly traded companies in the" United States. *Id.* Thus, the third *Krogman* factor further counsels in favor of finding that Acadia common stock traded in an efficient market during the Class Period.

* * *

Because the weight of the *Cammer/Krogman* factors (and indeed, ***all*** such factors) supports a finding that the market for Acadia shares was efficient, the market efficiency element for invoking the fraud-on-the-market presumption is met.

b. Defendants' Alleged Misrepresentations Were Public

The material misrepresentations at issue here all were made publicly, as they were disseminated through press releases, on earnings calls with analysts (transcripts of which were also promptly made public), at industry conferences for market participants, and in filings made with the SEC. *See, e.g.*, ¶¶107, 119 (press releases); ¶¶113, 115 (earnings calls); ¶127 (SEC filing); ¶¶132, 134 (presentations to analysts at healthcare conferences). Where alleged misrepresentations are made through such channels, the "publicly known" element for invoking the fraud-on-the-market presumption of reliance is readily met. *See Ali*, 2023 WL 25718, at *6 ("publicly known" element met where defendants' "alleged misrepresentations and omissions were publicized in various releases, statements, and quarterly reports [filed with the SEC]"); *Baker*, 2017 WL 5885542, at *9 (element met where "alleged false statements and omissions occurred during conference calls and public interviews, and were reflected in SEC filings").

c. Plaintiffs Bought After the Misrepresentations Were Publicly Made and Before the Truth Fully Emerged

The last element for invoking the fraud-on-the-market presumption of reliance requires that "the relevant transactions took place between the time the alleged

misrepresentations were made and when the alleged truthful disclosures were made." *Baker*, 2017 WL 5885542, at *9. Plaintiffs' transactions in Acadia common stock meet that requirement. Here, the first alleged misrepresentations were made on September 9, 2019 (the first day of the Class Period), ¶¶107–08, and the truth was not fully revealed until April 4, 2021 (the last day of the Class Period), ¶¶145–46. Plaintiff Birmingham purchased Acadia shares on June 6, November 25, and December 8, 2020. *See* Dkt. No. 12-3, Schedule A, at 6 (PSLRA certification evidencing purchases). Plaintiff Ohio Carpenters purchased Acadia shares on November 24, 2020 and February 17, 2021. Dkt. No. 7-3, at 3 (PSLRA certification). As these purchases occurred after the first actionable statement and before the truth was fully revealed, the "transaction timing" requirement is also met.

In sum, because the three requirements of market efficiency, public statements, and class period transactions by the proposed class representatives (and, by definition, all other putative class members) are met here, the fraud-on-the-market doctrine applies, and the presumption of reliance may be invoked on a common, and predominating, class-wide basis.

2. Common Class-Wide Damages Questions Also Predominate

Finally, in determining whether common questions predominate over individual questions, courts must also find that there is a common class-wide method for calculating damages, where class members' "damages stem[] from the defendant's actions that created the legal liability" at issue. *Baker*, 2017 WL 5885542, at *13; *see also BofI Holding*, 2021 WL 3742924, at *5 (same).

In securities fraud cases, courts routinely find that use of "the 'out-of-pocket' or 'event study' method" satisfies the "class-wide damages" requirement. *Hatamian v. Advanced Micro Devices, Inc.*, 2016 WL 1042502, at *8 (N.D. Cal. Mar. 16, 2016). Under that method, damages are quantified in terms of the "artificial inflation" per share caused by the alleged misstatements and omissions. Feinstein Report ¶164. An event study is used to determine the amount of per-share artificial

inflation in the company's stock price caused by the alleged misrepresentations and omissions as of both dates of purchase and dates of sale of a given class member's shares. *Id.* ¶¶169–70. Whether particular misrepresentations and omissions artificially inflate a company's stock price, and the extent of such inflation, are questions that the out-of-pocket methodology necessarily answers in the same way for all Class members transacting during the relevant period; in other words, the artificial inflation, or damages, on a per-share basis is the result of a common calculation. *Id.* As Dr. Feinstein explains, the common calculation of class-wide damages can then be applied "to each Class member's stock trading data" formulaically. *Id.* ¶169. This methodology is also plainly consistent with Plaintiffs' §10(b) theory of liability that Defendants' misrepresentations and related omissions artificially inflated the price of Acadia common stock during the Class Period, that Class members relied on the integrity of the (inflated) market price in purchasing their shares, and that they suffered damages when disclosure of the truth dissipated the artificial price inflation. *See, e.g.*, *Todd*, 2017 WL 821662, at *11 (approving use of event study methodology for common damages calculation proffered by Dr. Feinstein).

Accordingly, Plaintiffs have established predominance.

B. A Class Action Is the Superior Method of Adjudication

Superiority under Rule 23(b)(3) turns on four factors:

> (1) the interest of individuals within the class in controlling their own litigation; (2) the extent and nature of any pending litigation commenced by or against the class involving the same issues; (3) the convenience and desirability of concentrating the litigation in the particular forum; and (4) the manageability of the class action.

Ali, 2023 WL 25718, at *6. "District courts have consistently recognized that the common liability issues involved in securities fraud cases are ideally suited for resolution by way of a class action." *Cooper*, 254 F.R.D. at 641; *see BofI Holding*, 2021 WL 3742924, at *10 ("[M]any of the elements required to prove a [securities] violation . . . will be capable of proof on a class-wide basis and thus, concentrating

potential plaintiffs' claims into a single action will promote judicial efficiency.").

This action is no exception. Resolving all Class members' claims through a class action is far superior to adjudicating numerous individual suits by those who purchased Acadia stock. With respect to the first two superiority factors, the expense and burden of litigating each individual claim compared to the potential recovery makes it unlikely that many individuals will attempt to bring such claims. *See, e.g.*, *Baker*, 2017 WL 5885542, at *15. Nor are Plaintiffs aware of any other securities fraud actions under the Exchange Act currently pending against Defendants related to the AC's allegations, which indicates that individuals have a minimal interest in commencing separate actions. Moreover, concentrating the litigation in this forum is appropriate because Acadia "maintains its headquarters in this District." *Hatamian*, 2016 WL 1042502, at *10. Finally, with respect to managing the litigation, "this factor involves the same considerations as Rule 23(b)(3)'s predominance requirement," and is satisfied for the reasons set forth above. *Id.* Thus, a class action is superior here.

III. SCOTT+SCOTT MERITS APPOINTMENT AS CLASS COUNSEL

Under Rule 23(g), in appointing class counsel, courts consider four factors:

> (i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel's knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class.

Fed. R. Civ. P. 23(g)(1)(A)(i)–(iv); *see, e.g.*, *Bridgepoint*, 2015 WL 224631, at *8. These considerations all support appointing Scott+Scott (which the Court previously appointed as Lead Counsel, *see* PSLRA Order at 6–7) as Class Counsel.

Scott+Scott and the team of attorneys it has assembled to vigorously litigate this case has devoted extensive time and resources to pursuing the claims at issue. *See* Fredericks Decl. ¶2. To date, this work has included: (1) conducting an extensive pre-filing investigation into the facts underlying the claims at issue; (2) developing viable factual and legal theories of liability; (3) drafting the AC;

(4) successfully opposing Defendants' motion to dismiss the AC; (5) successfully opposing Defendants' motion to reconsider the Court's order denying their motion to dismiss; (6) pursuing discovery of information from Defendants and relevant non-parties, including through the service of document requests, interrogatories and third-party subpoenas; (7) engaging in extensive meet-and-confer calls and exchanging extensive correspondence relating to numerous discovery issues; (8) working with Lead Plaintiff to identify and collect information to produce in response to Defendants' discovery requests; and (9) working with experts, including in connection with the preparation of the expert report on market efficiency and common damages methodology submitted in support of class certification. *See id.* In sum, Scott+Scott has been committed to, and will remain committed to, fairly and adequately representing the Class, and it merits appointment as Class Counsel.

CONCLUSION

Plaintiffs respectfully request that the Court certify this action as a class action under Rule 23, appoint Birmingham and Ohio Carpenters as class representatives, and appoint Scott+Scott as Class Counsel.

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Respectfully submitted,

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