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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

In re:

ARIZONA THERANOS, INC.  
LITIGATION

**No. 2:16-cv-2138-DGC**

(Consolidated with)  
No. 2:16-cv-2373- HRH  
No. 2:16-cv-2660- HRH  
No. 2:16-cv-2775- DGC  
No. 2:16-cv-3599- DGC

**FINAL ORDER AND JUDGMENT**

1 This matter came before the Court for hearing on February 6, 2024, pursuant to the  
2 Court’s Preliminary Approval Order dated October 10, 2023 (ECF No. 601) (“Preliminary  
3 Approval Order”), and on (i) Plaintiffs’ Motion (“Motion”) for Final Approval of (a) the  
4 September 6, 2023 Stipulation of Class Action Settlement entered into by Plaintiffs and  
5 Defendants Walgreens Boots Alliance, Inc. and Walgreen Arizona Drug Co. (together,  
6 “Walgreens”) (the “Walgreens Settlement Agreement”); (b) the September 6, 2023  
7 Stipulation of Class Action Settlement entered into by Plaintiffs and Defendant Ramesh  
8 “Sunny” Balwani (the “Balwani Settlement Agreement”); and (c) the September 6, 2023  
9 Stipulation of Class Action Settlement entered into by Plaintiffs, Walgreens, and Theranos  
10 (assignment for the benefit of creditors), LLC (“Theranos ABC”) (the “Theranos ABC  
11 Agreement”) as to the terms related to the Class claims only (collectively, the “Settlement  
12 Agreements”); and (ii) Class Counsel’s Motion for an Award of Attorneys’ Fees and  
13 Expenses and Service Awards (“Attorneys’ Fee and Expense Application”). Due and  
14 adequate notice having been given to the Class Members of the proposed Settlement  
15 Agreements and the pending motions, as directed by the Court’s Preliminary Approval  
16 Order, and upon consideration of all papers filed and proceedings had herein, and good  
17 cause appearing, the Court hereby ORDERS as follows:

18 1. Capitalized terms not otherwise defined herein have the meanings set forth in  
19 the Walgreens Settlement Agreement.

20 2. The Court finds that the notice provisions set forth under the Class Action  
21 Fairness Act, 28 U.S.C. § 1715, were complied with in this matter.

22 3. The Court reaffirms the appointment of Lieff Cabraser Heimann & Bernstein  
23 LLP and Keller Rohrback L.L.P. as Class Counsel.

24 4. The Court reaffirms the appointment of Plaintiffs A.J., A.R., B.P., B.B., D.L.,  
25 R.G., and S.L. as class representatives for the Class; Plaintiffs A.J. B.P., B.B., D.L., R.G.,  
26 and S.L. as class representatives for the Arizona Subclass; Plaintiff A.R. as class  
27 representative for the California Subclass; and Plaintiff B.P. as class representative for the  
28 Walgreens Edison Subclass.

1           5.       The Court finds that the Notice Plan for disseminating notice to the Class  
2 provided for in the Walgreens Settlement Agreement and previously approved and directed  
3 by the Court in its Preliminary Approval Order has been implemented by the Settlement  
4 Administrator and the Settling Parties. The Court finds that such Notice Plan, including the  
5 approved forms of notice: (a) included direct individual notice to all Class Members who  
6 could be identified through reasonable effort, as well as supplemental notice via a social  
7 media and internet notice campaign and newspaper publication notice; and (b) constituted  
8 notice that was reasonably calculated, under the circumstances, to apprise Class Members  
9 of the nature of this Action, the definition of the Class and Subclasses, the class claims and  
10 issues, the right of Class Members to object to or comment on the Settlement Agreements  
11 or the Attorneys' Fees and Expenses Application, and the binding effect of a class judgment;  
12 (c) constituted due, adequate, and sufficient notice to all persons entitled to notice; and  
13 (d) met all applicable requirements of Federal Rule of Civil Procedure 23, due process under  
14 the U.S. Constitution, and any other applicable law.

15           6.       The Court hereby finds that all Class Members were adequately provided with  
16 an opportunity to exclude themselves from the Class by submitting a request for exclusion  
17 in conformance with the terms of the litigation class notice approved by the Court and  
18 previously implemented. ECF Nos. 447, 482. All persons who submitted timely and valid  
19 requests for exclusion are not in the Class or Subclasses and are not bound by this Final  
20 Order and Judgment. A list of those persons who submitted timely and valid requests for  
21 exclusion was lodged with the Court, ECF No. 482-1 at Ex. E, 483. Also excluded from the  
22 Class and Subclasses are (i) Walgreens and its officers, directors, management, employees,  
23 subsidiaries, and affiliates; and (ii) the judges in this case and members of their immediate  
24 families. Other than those excluded persons specified in this Paragraph 6, all persons who  
25 fall within the definitions of the Class and Subclasses are Class Members and members of  
26 the Subclasses, respectively, and shall be bound by this Final Order and Judgment and the  
27 Settlement Agreement.  
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1           7.     The Court finds that the Settlement Agreements warrant final approval  
2 pursuant to Fed. R. Civ. P. 23(e)(2) because the Court finds that the Settlement Agreements  
3 are fair, reasonable, and adequate and in the best interest of the Class Members, after  
4 weighing the relevant considerations.

5           a.     First, the Court finds that Plaintiffs and Class Counsel have adequately  
6 represented the Class and Subclasses and will continue to do so through settlement  
7 implementation.

8           b.     Second, the Settlement Agreements were reached as a result of arm's-  
9 length negotiations. The Walgreens Settlement Agreement was supervised by, and reached  
10 pursuant to a mediator's proposal proposed by, experienced mediator Hon. Layn R. Phillips  
11 (Ret.), and both the Balwani Settlement Agreement and the Theranos ABC Agreement were  
12 reached with the further assistance of Judge Phillips's staff. Further, the Settlement  
13 Agreements were reached after significant litigation, investigation, and discovery.

14           c.     Third, the Court finds that the relief proposed to be provided is fair,  
15 reasonable, and adequate, taking into account, *inter alia*: (i) the costs, risks, and delay of  
16 trial and appeal for all Settling Parties; (ii) the legal issues presented in this Action; (iii) the  
17 interests of Class Members; (iv) the effectiveness of the proposed method of distributing  
18 relief (via mailed checks, without the need for Class Members to file claims); (v) the fact  
19 that Balwani claims to lack meaningful resources to satisfy a judgment in this case, and  
20 there are limited Theranos assets for distribution to Theranos's creditors; (vi) the fact that  
21 the release by Balwani will facilitate the payment of additional funds by the Theranos ABC  
22 (in addition to the relief provided by the Walgreens Settlement Agreement) to the Class;  
23 and (vii) the terms of the requested award of Attorneys' Fees and Expenses, and Service  
24 Awards.

25           d.     Fourth, the Court finds that the Settlement Agreements, including the  
26 proposed Plan of Allocation, treat Class Members equitably relative to each other, and that  
27 the proposed allocation of settlement funds is reasonable and equitable.  
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1           8.       In granting final approval of the Settlement Agreements, the Court has also  
2 considered the factors that courts in this Circuit consider in evaluating proposed class  
3 settlements, which overlap considerably with the factors to be considered under Fed. R.  
4 Civ. P. 23(e)(2), and finds that they favor final approval. *See Churchill Village LLC v. Gen.*  
5 *Elec. Corp.*, 361 F.3d 566, 575 (9th Cir. 2004).

6           9.       With respect to the reaction of the Class Members to the Settlement  
7 Agreements, the Court notes that no Class Members have filed objections to any aspect of  
8 the Settlement Agreements, indicating a positive reaction from the Class.

9           10.      The Motion is hereby GRANTED, and the Settlement Agreements and their  
10 terms are hereby APPROVED as fair, reasonable, and adequate and in the best interest of  
11 the Class Members. The Settling Parties and Settlement Administrator are directed to  
12 consummate and implement the Settlement Agreements in accordance with their terms  
13 (including the Theranos ABC Agreement as related in any way to the Class claims only),  
14 including distributing settlement payments to Class Members and other disbursements from  
15 the Settlement Fund as provided by the Settlement Agreements.

16           11.      Walgreens, Balwani, and Theranos are hereby dismissed from this Action  
17 with prejudice and without costs to any party, other than as specified in the Settlement  
18 Agreements, this Final Order and Judgment, and any order(s) by this Court regarding Class  
19 Counsel's Attorneys' Fees and Expenses Application.

20           12.      In consideration of the benefits provided under the Walgreens Settlement  
21 Agreement, and for other good and valuable consideration set forth in the Walgreens  
22 Settlement Agreement, (a) each Plaintiff and each Class Member shall, by operation of this  
23 Final Order and Judgment, have fully, finally, and forever released, relinquished, acquitted,  
24 and discharged all Plaintiffs' Released Claims against all Walgreens Released Parties,  
25 including Walgreens' counsel; and (b) Walgreens shall, by operation of this Final Order  
26 and Judgment, have fully, finally, and forever released, relinquished, and discharged all  
27 Walgreens' Released Claims against Plaintiffs' Related Parties, including Class Counsel,  
28 in accordance with Section IX of the Walgreens Settlement Agreement, the terms of which

1 section are incorporated herein by reference. The terms of the Walgreens Settlement  
2 Agreement, which are incorporated by reference into this Order, shall have *res judicata* and  
3 other preclusive effects as to the Released Claims as against the Released Persons. The  
4 Released Persons may file the Walgreens Settlement Agreement and/or this Order in any  
5 other litigation to support a defense or counterclaim based on principles of *res judicata*,  
6 collateral estoppel, release, good-faith settlement, judgment bar or reduction, or any similar  
7 defense or counterclaim.

8 13. All Plaintiffs and Class Members and anyone claiming through or on behalf  
9 of any of them will be forever barred and enjoined from commencing, instituting,  
10 prosecuting, or continuing to prosecute any action or other proceeding in any court of law  
11 or equity, arbitration tribunal, or administrative forum, asserting Plaintiffs' Released Claims  
12 against any Walgreens Released Parties. This permanent bar and injunction are necessary  
13 to protect and effectuate the Walgreens Settlement Agreement and this Order, and this  
14 Court's authority to effectuate the Settlement, and is ordered in aid of this Court's  
15 jurisdiction and to protect its judgments. Notwithstanding the foregoing, nothing in this  
16 Order and Judgment shall preclude an action to enforce the terms of the Walgreens  
17 Settlement Agreement.

18 14. In consideration of the benefits provided under the Balwani Settlement  
19 Agreement, (a) each Plaintiff and each Class Member shall, by operation of this Final Order  
20 and Judgment, be subject to the release set forth in Paragraph 3 of the Balwani Settlement  
21 Agreement; and (b) Mr. Balwani shall, by operation of this Final Order and Judgment, be  
22 subject to the release set forth in Paragraph 4 of the Balwani Settlement Agreement.

23 15. In consideration of the benefits provided under the Theranos ABC  
24 Agreement, and for other good and valuable consideration set forth in the Theranos ABC  
25 Agreement, each Plaintiff and each Class Member and the Theranos ABC shall, by  
26 operation of this Final Order and Judgment, have fully, finally, and forever released,  
27 relinquished, acquitted, and discharged their claims as set forth in Paragraphs 4 (Class  
28 Plaintiffs) and 5 (Assignee) thereof, and shall be bound by the Covenant Not to Sue set forth

1 with respect to these Released Claims in Paragraph 6 thereof. This Final Order and  
2 Judgment is the final, appealable judgment in the Action as to these Released Claims.

3 16. Without affecting the finality of this Final Order and Judgment in any way,  
4 this Court retains jurisdiction over (a) implementation of the Settlement Agreements and  
5 the terms of the Settlement Agreements (except the Theranos ABC Agreement, over which  
6 this Court retains jurisdiction only as to terms related in any way to the Class claims);  
7 (b) Class Counsel's Attorneys' Fees and Expenses Application; (c) distribution of the  
8 settlement payments related to Class claims, Class Counsel's Attorneys' Fees and  
9 Expenses, and any Service Awards; (d) any request for payment of the Settlement  
10 Administrator's expenses in the event of an expenses overage as set forth in the Preliminary  
11 Approval Order; and (e) all other proceedings related to the implementation, interpretation,  
12 validity, administration, consummation, and enforcement of the terms of the Settlement  
13 Agreements. The time to appeal from this Final Order and Judgment shall commence upon  
14 its entry.

15 17. If the Walgreens Settlement Agreement Effective Date does not occur, this  
16 Final Order and Judgment shall be rendered null and void and shall be vacated, *nunc pro*  
17 *tunc*, as set forth in the Court's Preliminary Approval Order, except insofar as expressly  
18 provided to the contrary in the Walgreens Settlement Agreement, and without prejudice to  
19 the *status quo ante* rights of Plaintiffs, Class Members, and Walgreens.

20 18. This Final Order and Judgment, the Preliminary Approval Order, the  
21 Walgreens Settlement Agreement, and all negotiations, statements, agreements, and  
22 proceedings relating to the Walgreens Settlement Agreement, or any matters arising in  
23 connection with settlement negotiations, proceedings, or agreements shall not constitute, be  
24 described as, construed as, offered, or received against Walgreens or the other Released  
25 Persons as evidence or an admission: (a) of the truth of any fact alleged by Plaintiffs in the  
26 Action; (b) that any person suffered compensable harm or is entitled to any relief with  
27 respect to the matters asserted in this Action; (c) of any liability, negligence, fault, or  
28 wrongdoing by Walgreens or the Walgreens Released Parties, including any of their

1 affiliates, agents, representatives, vendors, or any other person or entity acting on its behalf;  
2 or (d) the enforceability of any applicable contractual or statutory limitations period to limit  
3 any relief.

4 19. The Court also GRANTS Class Counsel’s Attorneys’ Fee and Expense  
5 Application. Specifically, the Court awards Class Counsel attorneys’ fees in the amount of  
6 \$13.2 million. The Court also grants Class Counsel reimbursement of litigation expenses in  
7 the amount of \$1,160,911.20. The Court further awards each of the seven Plaintiffs service  
8 awards of \$10,000 each.

9 20. The fee awarded—which equals 30% of the Walgreens Settlement Fund, and  
10 29.1% of the combined common settlement fund—is reasonable under the percentage-of-  
11 the-fund approach. While the amount awarded exceeds the 25% “benchmark” that courts in  
12 this Circuit use as the starting point for percentage-based class fee awards, the Court finds  
13 that such amount is reasonable and justified under the unique and compelling circumstances  
14 of this litigation, including, *inter alia*:

15 a. the excellent results achieved for the Class (which includes  
16 reimbursement of more than two times the amount of Class Members’ unreimbursed  
17 Theranos testing costs, and substantial additional compensation for the Walgreens Edison  
18 Subclass Members);

19 b. the extraordinary effort required of Class Counsel in achieving such  
20 results (which included multiple rounds of motions to dismiss, obtaining class certification,  
21 defending class certification on an interlocutory appeal to the Ninth Circuit, overcoming  
22 Walgreens’ effort to decertify the Walgreens Edison Subclass on remand, overcoming a  
23 motion for summary judgment, conducting extensive deposition, document, and third-party  
24 discovery, and extensive expert practice);

25 c. the high quality of work that Class Counsel has performed, including  
26 as demonstrated by: obtaining class certification of novel battery and medical battery claims  
27 and a civil RICO claim; identifying through diligent efforts and extensive data analysis the  
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1 affected consumers and pertinent details about their tests; and litigating this case through  
2 the precipice of trial);

3 d. the substantial risk that Class Counsel undertook in taking on this case  
4 and litigating it on a fully contingent basis over seven years, including for several years  
5 after a primary defendant, Theranos, ceased to exist; and

6 e. upon consideration of awards made in comparable cases.

7 *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002).

8 21. The fee awarded is also reasonable under the lodestar-multiplier approach.  
9 Counsel reasonably incurred more than \$25.6 million in lodestar (as of October 31, 2023)  
10 in investigating, prosecuting, and resolving this litigation over the past seven years. The fee  
11 awarded represents a “negative multiplier,” on that amount, of approximately 0.52, which  
12 the Court finds to be reasonable under the circumstances of this case, including, *inter alia*:

13 a. the extent of the work reasonably performed by Class Counsel in  
14 relation to the benefit provided by the Settlement Agreements;

15 b. the excellent result obtained for the Class;

16 c. the skill demonstrated by Class Counsel;

17 d. the novel and complex nature of the issues involved; and

18 e. the contingent nature of the fee.

19 *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998); *Sonoma Sol LLLP v.*  
20 *Truck Ins. Exch.*, No. 20-00069, 2021 WL 5238711, at \*6 (D. Ariz. Nov. 9, 2021).

21 22. The Court further finds that the reimbursement of Class Counsel’s litigation  
22 expenses in the amount of \$1,160,911.20 is fair and reasonable. The costs for which  
23 reimbursement is being provided—primarily, expert costs, the costs of disseminating  
24 litigation class notice, deposition costs, and document database costs—are reasonable in  
25 amount and were reasonably incurred in litigating this case. *See Harris v. Wells Fargo*  
26 *Bank, N.A.*, No. 17-01146, 2019 WL 13254887, at \*9 (D. Ariz. May 13, 2019).

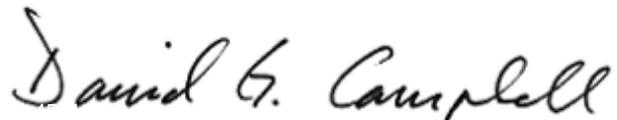
27 23. The Court finds, finally, that the service awards of \$10,000 each for the seven  
28 Plaintiffs are within the range of service awards regularly awarded in this Circuit, and well

1 justified under the circumstances of this case to compensate the Plaintiffs for their  
2 commitment on behalf of the Class. The Plaintiffs put their personal medical information  
3 at issue in a high-profile litigation, had their depositions taken by counsel for Defendants,  
4 prepared for their depositions, assisted with discovery, provided information about their  
5 experiences, reviewed pleadings, and staying abreast of proceedings that continued over  
6 seven years. *See Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009); *In*  
7 *re Apple Inc. Device Performance Litig.*, 50 F.4th 769, 785 (9th Cir. 2022); *Saliba v. KS*  
8 *Statebank Corp.*, No. 20-00503, 2021 WL 4775105, at \*7 (D. Ariz. Oct. 13, 2021) (\$10,000  
9 service award); *In re Nat'l Collegiate Athletic Ass'n Athletic Grant-in-Aid Cap Antitrust*  
10 *Litig.*, No. 14-md-2541, 2017 WL 6040065, at \*11 (N.D. Cal. Dec. 6, 2017) (awarding  
11 \$20,000 service awards, and collecting cases), *aff'd*, 768 F. App'x 651 (9th Cir. 2019).

12 24. All attorneys' fees, expenses, and service awards awarded herein shall be paid  
13 from the common settlement fund, pursuant to the terms of the Settlement Agreements.

14 **IT IS SO ORDERED.**

15 Dated this 6th day of February, 2024.

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David G. Campbell  
20 Senior United States District Judge  
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