

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

CYNTHIA RUSSO, LISA BULLARD,
RICARDO GONZALES, INTERNATIONAL
BROTHERHOOD OF ELECTRICAL
WORKERS LOCAL 38 HEALTH AND
WELFARE FUND, INTERNATIONAL
UNION OF OPERATING ENGINEERS
LOCAL 295-295C WELFARE FUND, AND
STEAMFITTERS FUND LOCAL 439, on
Behalf of Themselves and All Others Similarly
Situated,

Plaintiffs,

v.

WALGREEN CO.,

Defendant.

Civil No. 1:17-cv-02246

Judge Edmond E. Chang

**DECLARATION OF JOSEPH P. GUGLIELMO IN SUPPORT OF PLAINTIFFS'
MOTION FOR FINAL APPROVAL OF PROPOSED SETTLEMENT**

Pursuant to 28 U.S.C. §1746, I, Joseph P. Guglielmo, declare as follows:

1. I am a partner at the law firm of Scott+Scott Attorneys at Law LLP (“Scott+Scott”).

This Court appointed Scott+Scott and Robbins Geller Rudman & Dowd LLP as Plaintiffs’ Interim Co-Lead Class Counsel in this Action. This Declaration is based upon my personal knowledge and experience, and if called on to do so, I could and would testify competently thereto.

2. I submit this Declaration in Support of Plaintiffs’ Motion for Final Approval of Proposed Settlement.¹

I. FACTUAL BACKGROUND AND OVERVIEW OF THE ACTION

3. Over the course of the past seven years, Class Counsel has engaged in extensive, hard-fought litigation. Plaintiffs filed their initial class action complaint on March 23, 2017. ECF No. 1. Plaintiffs’ central allegation is that Defendant improperly inflated its usual and customary (“U&C”) prices by not considering the prices it charged under its Prescription Savings Club (“PSC”) resulting in insured customers and third-party payors (“TPPs”) paying artificially high prices for prescription drugs. An Amended Complaint was filed on June 22, 2017. ECF No. 46. On October 17, 2017, IUOE filed its own complaint. *International Union of Operating Engineers Local 295-295C Welfare Fund v. Walgreen Co.*, Case No. 17-cv-07515 (N.D. Ill.), ECF No. 1. On March 9, 2018, the Court denied Walgreens’ Motion to Dismiss. ECF No. 91. On April 26, 2018, the Court appointed Scott+Scott Attorneys at Law LLP and Robbins Geller Rudman & Dowd LLP as Plaintiffs’ Interim Co-Lead Class Counsel. *See* ECF No. 95 (consolidating actions); Apr. 26, 2018 Status Hearing Tr. at 7:1-4. Plaintiffs filed a Second Amended Complaint on May 1, 2018, ECF No. 96, with Walgreens filing an Answer on June 13, 2018. ECF No. 111. Plaintiffs filed a Third Amended Complaint on June 3, 2020. ECF No. 269. Following additional briefing, on June

¹ All capitalized terms not defined herein have the meanings ascribed to them in the Stipulation of Class Action Settlement dated October 31, 2024 (“Stipulation” or “Stip.”) (ECF No. 683-1).

16, 2021, Plaintiffs filed a Fourth Amended Complaint, ECF No. 477, with Walgreens filing an Answer on July 15, 2021. ECF No. 485.

4. The parties engaged in extensive fact and expert discovery. Plaintiffs issued and Walgreens responded to 46 requests for production, 24 interrogatories, and 99 requests for admission. Walgreens issued and Plaintiffs responded to 54 requests for production, 18 interrogatories, and 90 requests for admission. Plaintiffs issued more than a dozen non-party subpoenas and obtained documents and deposition testimony. Plaintiffs reviewed approximately 80,000 documents totaling over 460,000 pages of party and non-party documents and took or defended 36 party and non-party depositions pursuant to Rule 30(b)(1), Rule 30(b)(6) and Rule 45, including depositions of the parties' seven experts, who issued opening, responsive, and reply reports relating to Plaintiffs' motion for class certification. Each Plaintiff also sat for a full-day deposition and produced thousands of documents, including, for some Plaintiffs, transaction data reflecting their payments for purchases of prescription drugs from Walgreens.

5. Plaintiffs filed their motion for class certification and expert reports on November 17, 2022, ECF Nos. 552-556; 553-44, 553-45; 556-55, 556-56, with Defendant filing its opposition and expert reports on March 17, 2023. ECF Nos. 586-589; 586-1, 586-2, 586-17, 586-48; 588-1. 588-2, 588-24, 588-61.² Class certification briefing concluded following the filing of Plaintiffs' reply papers and Defendant's sur-reply. ECF Nos. 602-603, 608-609, 645-646. The parties completed all briefing related to their respective Rule 702 motions on December 12, 2023. ECF Nos. 580-81, 583-84, 599-600, 604-607, 610-613, 621, 623-25, 627-628, 634, 636-638, 640-641, 648-650, 652-659, 661, 663.

² Walgreens also served on Plaintiffs at that time, but did not file on the docket until later, one additional expert report. ECF No. 624-1. Walgreens also served three amended expert reports on Plaintiffs on April 25, 2023, April, 27, 2023, and May 18, 2023, only one of which ultimately was filed on the docket. ECF No. 627-1.

II. SETTLEMENT NEGOTIATIONS

6. In approximately December 2023, while Plaintiffs' class certification motion was pending, the Parties began discussions regarding the possibility of settling the Action. Given that the factual record was substantially complete, the parties believed that they were fully informed as to the potential strengths and weaknesses of their claims and defenses as well as the risks associated with class certification. Thereafter, the parties retained Fouad Kurdi of Resolutions LLC as mediator. Mr. Kurdi is a nationally renowned and experienced mediator. I, along with my co-lead counsel at Robbins Geller, personally conducted settlement negotiations with counsel for Walgreens over the course of several months. The settlement negotiations were at arm's length and hard fought at all times. Through the mediation process, we comprehensively vetted the factual record, analyzed Defendants' arguments and their asserted contrary facts, and thoroughly considered the costs and risks of ongoing litigation. We were well informed of the strengths and weaknesses of the claims and defenses in this Action and conducted the settlement negotiations seeking to achieve the best possible result for the Settlement Class in light of the risks, costs, and delays of continued litigation.

7. In advance of mediation, the parties exchanged detailed mediation submissions, which included extensive evidence developed through fact discovery. The parties also participated in numerous pre-mediation video and telephonic conferences with Mr. Kurdi and on their own. The parties attended an in-person mediation on June 6, 2024, and engaged in additional negotiations thereafter, and ultimately agreed to settle the Action in exchange for a non-reversionary cash payment of \$100 million for the benefit of the Settlement Class, Walgreens' agreement to terminate the PSC program, and other terms as further described below. The parties memorialized their agreement in a Term Sheet executed on June 6, 2024.

8. Thereafter, the parties negotiated the remaining terms of the Settlement and Plaintiffs and Walgreens signed the Stipulation of Class Action Settlement dated October 31, 2024. In addition to the Term Sheet and Stipulation, the Parties have entered into a standard, confidential Side Agreement that gives Walgreens the option to terminate the Settlement in the event that requests for exclusion from the Settlement Class exceed certain agreed-upon conditions. A copy of the Side Agreement was submitted to the Court.

III. LITIGATION RISKS

9. Had the Action continued, Plaintiffs faced significant and ongoing risks to recovery. The core of Plaintiffs' claims concerned allegations that Walgreens inflated the U&C prices charged to insured customers and TPPs for prescription drugs by failing to report its PSC prices when determining the U&C prices it charged in connection with insured transactions for generic prescription drugs. One of Walgreens' primary defenses is that PSC prices are not "cash prices" and thus are excluded when reporting or otherwise determining an accurate U&C price. Further, Walgreens argued that its contracts with prescription benefit managers ("PBMs"), the companies that administer prescription drug benefits on behalf of TPPs, as well as PBM contracts with putative TPP class members, do not require Walgreens to report PSC prices as its U&C prices.

10. While Plaintiffs largely prevailed on Walgreen's motion to dismiss, there is no guarantee that Plaintiffs would prevail at class certification, summary judgment, or trial in the face of more rigorous burdens of proof. *See Washington v. CVS Pharmacy, Inc.*, 2022 WL 17430289, at *2 (9th Cir. Dec. 6, 2022) (affirming defense verdict on similar claims by insured drug buyers that pharmacy chain over charged them for generic drugs by failing to report prescription drug program prices as U&C prices). Indeed, the Court reserved decision on the most significant factual issues until after the completion of fact discovery. *See, e.g.*, ECF No. 91, at 11.

11. Not surprisingly, Walgreens pressed forward with this line of argument in opposition to class certification, contending, among other things, that: (i) the definition of U&C varied across PBM contracts, and (ii) a class member specific, contract-by-contract analysis would be required to determine liability. Further, Walgreens argued that it had the freedom to contract with PBMs and did contract with them to exclude PSC prices from its reported U&C prices. Plaintiffs responded that Walgreens' contracts with PBMs could not shield it from liability as Plaintiffs claimed that Walgreens allegedly deceived individuals and TPPs in failing to report lower PSC prices as its U&C prices, and that insured individuals and TPPs reasonably expected to pay no more than cash customers, making Walgreens' conduct fraudulent. Plaintiffs risked no recovery at all if they had continued to litigate and lost on this issue. Thus, the Settlement provides a substantial recovery for Settlement Class Members in light of the significant risks of continued litigation. Class Counsel believe this Settlement achieves an excellent result for the Settlement Class.

IV. CLASS COUNSEL HAS ADEQUATELY REPRESENTED THE CLASS

12. Class Counsel diligently litigated this highly complex and demanding case, vigorously confronting formidable challenges at every stage. As they demonstrated throughout the course of this Action, Class Counsel are qualified, experienced, and thoroughly familiar with consumer class action litigation and have adequately represented the interests of the Class in this litigation.

V. PROPOSED PLAN OF ALLOCATION

13. Class Counsel implemented measures to ensure that the Settlement does not unjustly favor any Class Member and that it will equitably distribute relief to the Settlement Class. The proposed Plan of Allocation (ECF. No. 683-2) offers a fair and efficient framework for

distributing Net Settlement Funds, developed through comprehensive analysis of Walgreens' claims data by economic experts. To further guarantee adequate class representation, Class Counsel designated Joseph S. Tusa, counsel for plaintiffs Ms. Russo and Ms. Bullard, as independent allocation counsel for individual Class Members. Working alongside Class Counsel and incorporating guidance from economic experts, Mr. Tusa reviewed and endorsed the proposed Plan of Allocation. The Plan of Allocation addresses the varying nature of Class Members' claims by dividing the Net Settlement Fund into two separate pools: 80% designated for entity Settlement Class Members (including TPPs and insurance companies) and 20% designated for individual consumer Settlement Class Members. This allocation structure stems from expert analysis and examination of Walgreens' claims data to calculate the proportion of total out-of-pocket expenses incurred by individuals versus TPPs. Expert analysis revealed that TPPs shouldered a greater portion of the financial impact from the alleged overcharges, as they covered more of the prescription drug costs allegedly inflated beyond the "usual and customary" prices charged by Walgreens. Individual consumers, according to transactional data review, generally paid standard insurance copayments that remained constant irrespective of Walgreens' underlying pricing structure. The decision to create distinct settlement pools resulted from Class Counsel's past experience in litigating claims involving individuals and TPPs as well as an extensive review of the information from this case by Class Counsel and individual Plaintiffs' counsel, who engaged experts to validate the appropriateness of these allocations. Consequently, the allocation directly reflects an approximate proportional economic harm that the alleged conduct imposed on each class segment. Additionally, the release terms apply consistently to all Settlement Class Members without affecting the distribution of relief.

14. To receive a distribution under the Plan of Allocation, Settlement Class members must submit a timely and valid Claim Form. Claims must be supported by Claim Documentation, as required by the Settlement Administrator. For example, large value claims and claims submitted from individuals or entities that do not receive direct notice of the Settlement will be subject to specific documentation requirements to prevent potential fraudulent claims. In addition, claims subject to the Settlement Administrator's audit program will be subject to additional documentation requirements to ensure the integrity of the claims process. Claims will be valued based on the estimated or actual dollars spent to purchase or pay for some or all of the purchase price of eligible prescription drugs from Walgreens during the Settlement Class Period. The Settlement Administrator will calculate a Recognized Loss amount for each claim pursuant to the Plan of Distribution. These amounts are not intended to be the estimate of the amounts that will be distributed; rather, the Recognized Loss Amount is a means to calculate the value of claims relative to one another for the purpose of allocating the Net Settlement Fund among Authorized Claimants. Claims will be weighted based on the estimated or actual dollars spent to pay for some or all of the purchase price of eligible prescription drugs from Walgreens during the Settlement Class Period and then allocated, depending on which pool the Settlement Class Member is participating in, on a *pro rata* basis based on the relative size of each claimant's Recognized Claim.

VI. OBJECTIONS TO THE SETTLEMENT

15. In response to nearly 87.5 million Notices disseminated to individuals and TPPs and robust digital and social media campaign, as well as 17 million claims filed, only three Settlement Class Members objected, excluding the Blue Cross Blue Shield ("BCBS") and Health Care Services Corporation's ("HCSC") objection to the opt-out procedures, which were addressed in Parties' prior briefing at ECF Nos. 722-729 and 757-758. Notably, the Settlement Class

includes sophisticated TPPs with substantial economic stakes that would strongly motivate objections if the Settlement terms were inadequate. Many of these entities possess the requisite expertise and financial resources to conduct comprehensive evaluations of the Settlement provisions. Yet despite having both the capability and incentive to mount rigorous challenges to unfavorable terms, none of these sophisticated parties have raised any objections to the proposed Settlement.

16. The objections were filed by: Donald Hodge, *pro se*, ECF No. 703; Steven David Bentley, *pro se*, ECF No. 708, and Kenneth J. Ries, *pro se*, ECF No. 709. Mr. Hodge's objection is to the attorneys' fees and is addressed in the accompanying Reply in further support of Motion for Award of Attorneys' Fees and Expenses, and Service Awards to Plaintiffs. Mr. Bentley's and Mr. Ries's objections are addressed in the accompanying Memorandum of Law in Support of Plaintiffs' Motion for Final Approval of Proposed Settlement. None of the objections present meritorious grounds for rejecting the Settlement.

17. Arthur L. Shingler, III of Robbins Gellar and I engaged in multiple communications with Mr. Ries prior to his filing of an objection. Initially, Mr. Ries contacted us stating he could not download Claim Forms for himself, his wife and his parents. To resolve this issue, we and the Settlement Administrator both provided Mr. Ries with multiple printed copies of the Claim Form via overnight delivery, enabling him to submit his claims. When Mr. Ries raised concerns about obtaining necessary records for his claim submission, Class Counsel provided detailed guidance on the filing process. We clarified that the claims procedure is designed to accommodate the practical reality that consumers typically do not retain prescription records for extended periods. Specifically, we explained to Mr. Ries that Known Consumer Claimants (those who received direct notice from the Settlement Administrator with a Notice ID) need only provide basic contact

information, an attestation of estimated payments, and payment distribution details, with no additional documentation required for claims under \$10,000. Unknown Consumer Claimants (those who did not receive direct notice) must provide the same information as Known Claimants plus supporting documentation such as receipts, bank statements, or credit card statements to verify they paid the minimum amount for their claimed category, regardless of claim amount. Based on receipt of the Notice and Notice ID, Mr. Ries qualified as a Known Claimant where filing a claim under \$10,000 would require no pharmacy records. His father also qualified as a Known Claimant, and we provided Mr. Ries with his father's unique Notice ID on March 12, 2025—again, no pharmacy records were required. Mr. Ries's mother was classified as an Unknown Claimant and thus required records which he ultimately obtained from Walgreens and submitted to the Settlement Administrator. Each claim Mr. Ries filed was under \$10,000. Regarding the objection to the filing process, we informed Mr. Ries that email submissions to the Court were not permitted, but that he could file his objection through the CM/ECF system or by mailing a letter to the Court. Despite this explanation, Mr. Ries objected on the basis that he was never provided the Court's email address and was therefore forced to mail his objection. This suggests Mr. Ries may not have fully understood the facts we provided. Finally, we explained to Mr. Ries that participants wishing to speak for or against final approval of the Settlement must appear in person at the Fairness Hearing, and we declined his request for payment or reimbursement of travel expenses related to his objection to the Settlement and also declined his request to appear via zoom. We recently informed Mr. Ries that his request to the Court to appear remotely had not been responded to by the Court.

I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct. Executed on the 6th day of August, 2025, in New York, New York.

/s Joseph P. Guglielmo
JOSEPH P. GUGLIELMO