



1. I am a partner at Sanford Heisler Sharp, LLP (“Sanford Heisler” or “Class Counsel”) and class counsel for Plaintiffs in the above-captioned action. If called and sworn as a witness, I would testify competently as to the facts in this Declaration.

2. I submit this Declaration in support of Plaintiffs’ Motion for Final Approval of Class Action Settlement. I believe the proposed settlement is fair, reasonable, and adequate in light of the benefits of settlement, the risks of defeat, and taking into account the potential damages should Plaintiffs prevail at trial.

3. Along with this Declaration, I incorporate my declarations in support of Plaintiffs’ Motion for Entry of Preliminary Approval of Class Action Settlement (Doc. 99-2) and Plaintiffs’ Motion for Attorneys’ Fees, Reimbursement of Expenses, and Service Awards (Doc. 105-2).

4. Attached hereto as **Exhibit 1** is a Proposed Final Order Approving Class Action Settlement.

5. Attached hereto as **Exhibit 2** is the report of the independent fiduciary, Gallagher Fiduciary Advisors, LLC, who reviewed and approved of the Settlement on behalf of the Plan pursuant to ERISA Prohibited Transaction Class Exemption 2003-39.

**I. Brief Overview of the Pre-Suit Investigation, Litigation, and Settlement**

6. Sanford Heisler, and Local Counsel Barnow and Associates, P.C., have diligently worked to develop and advance the claims in this matter prior to filing the Complaint, throughout litigation, and in settlement.

7. As stated in my declarations at Doc. 99-2 at 7-8, and Doc. 105-2 at 5-6, Class Counsel undertook extensive and careful investigation to support the allegations in the Complaint and devoted a significant amount of time to the litigation.

8. Plaintiffs' pre-suit investigation included detailed examination and review of Walgreen Profit-Sharing Retirement Plan (the "Plan") disclosure documents, the Plan's public filings with the Department of Labor, SEC filings of the Plan's investment options, and investment data on comparator funds and benchmarks. The pre-suit investigation also included interviews with over 160 current and former Plan participants.

9. Plaintiffs filed their Complaint on August 9, 2019 (Doc. 1) and an Amended Complaint on October 21, 2019 (Doc. 35). Defendants filed a motion to dismiss on November 4, 2019 (Doc. 37), which Plaintiffs largely defeated (Doc. 46). Following the Court's Order on Defendants' Motion to Dismiss, *id.*, the Parties engaged in an unsuccessful mediation with a respected Judicial Arbitration and Mediation Services ("JAMS") mediator, Robert A. Meyer, *Esq.* Following the failed mediation, discovery continued apace. During discovery, Plaintiffs issued 85 document requests to Defendants and Third Parties Ellwood & Associates (consultants for the Plan) and Northern Trust Corporation (the investment adviser of the Challenged Northern Trust Focus Target Retirement Trusts (the "Challenged Funds")). Plaintiffs reviewed many thousands of pages of materials that Defendants and Third Parties produced in response to these requests, issued interrogatories to Defendants, and took the 30(b)(6) deposition of the Defendant Plan Committee's corporate designee. Plaintiffs also produced a substantial number of documents and responded to interrogatories. Following this discovery, the parties resumed their arms-length settlement negotiations over a period of approximately six months. The parties finalized their agreement on September 30, 2021.

## **II. The Relief Provided to the Class and the Plan of Allocation**

10. Under the terms of the Settlement Agreement, Defendants agreed to pay \$13,750,000 into a Settlement Fund. Defendants also agreed to provide Non-Monetary Relief,

including: (1) Defendants confirmed that the Challenged Funds have been removed from the Plan in connection with a Request for Proposal relating to the Plan's target date fund structure and providers; and (2) for three years from the Effective Date of the Settlement, Defendants will continue to use an investment advisor to provide ongoing investment monitoring services for the Plan and, in considering and reviewing Plan investment options, Defendants shall consider, among other things, the information provided by the investment advisor.

11. Under the Plan of Allocation, all Class Members will receive a pro rata share of the Settlement Fund based on their Settlement Allocation Score. The Settlement Allocation Score will be based on each Class Member's quarterly balance in each Challenged Fund and each Fund's quarterly performance relative to a benchmark (Doc. 99-3 at ¶ 6.4.2). No Class Members with less than \$5 of damages will receive an award (*Id.* at ¶ 6.4.3). Any portion of the Net Settlement Amount remaining after distributions, including costs and taxes, shall be paid to the Plan for the purpose of defraying administrative fees and expenses of the Plan (*Id.* at ¶6.16).

### **III. Preliminary Approval and Settlement Administration**

12. Plaintiffs filed their Unopposed Motion for Preliminary Approval of the Class Action Settlement on October 22, 2021 (Doc. 99), and the Court granted preliminary approval of the Settlement on November 1, 2021. Doc. 101.

13. The Settlement Administrator reports that it distributed the court-approved Class Notice—which includes relevant details regarding the Settlement, class membership, and allocation of the settlement fund—to nearly 195,000 Class Members by December 1, 2021. Pursuant to the Court's Order, the Settlement Website was also published on the web by December 1, 2021. The Website includes a copy of the Class Notice (Doc. 103-1), Former Participant Rollover Form (Doc. 99-4), and relevant docket filings, including Plaintiffs' Motion for

Preliminary Approval (Doc. 99); the Court's Order Granting Preliminary Approval (Doc. 101); the Court's Order Scheduling the Fairness Hearing (Doc. 102); Plaintiffs' Motion for Attorneys' Fees, Reimbursement of Expenses, and Service Awards (Doc. 105); and the Court's Order Granting Plaintiffs' Motion for Attorneys' Fees, Reimbursement of Expenses, and Service Awards. (Doc. 107).

14. Since December 1, 2021, Class Counsel have responded to questions from seven Class Members. Only one Class Member out of approximately 195,000 filed an objection. Plaintiffs are filing a response in opposition to this objection.

#### **IV. Attorneys' Fees, Expenses, and Service Awards**

15. On January 3, 2022, Plaintiffs filed their Motion for Attorneys' Fees, Reimbursement of Expenses, and Service Awards. (Doc. 105). This Motion was also posted on the settlement website. In the Motion, Class Counsel requested attorneys' fees and costs in the amount of \$4,583,333.33 and service awards of \$15,000 for each Class Representative. Defendants did not oppose the motion, and at the time of filing, no objections had been filed. The Court granted the motion on January 5, 2022 (Doc. 106-107).

16. As discussed, *infra*, the independent fiduciary, Gallagher Fiduciary Advisors, LLC, reviewed the settlement and Plaintiffs' Motion for Attorneys' Fees, Reimbursement of Expenses, and Service Awards and found the fee request to be reasonable.

##### **A. Counsel's Detailed Investigation and Extensive Prosecution of this Case.**

17. As detailed in the declarations I previously filed with the Court (Doc. 99-2 at ¶¶ 7-8 and Doc. 105-2 at ¶¶ 5-6), Class Counsel dedicated a significant amount of time and labor to this case, all on a contingency basis. Class Counsel's work on this matter included, *inter alia*: investigating the Plan and the Challenged Funds prior to filing the Complaint; drafting and

amending complaints; briefing (and largely prevailing on) a motion to dismiss; filing an unopposed motion for class certification; working with a damages expert; and engaging in substantial discovery, including serving and responding to interrogatories and requests for production, reviewing thousands of documents, taking the deposition of Defendant Plan Committee's 30(b)(6) witness, producing documents, and serving third-party subpoenas (*e.g.* Doc. 99-2, ¶¶7-8; Doc. 105-2 at ¶¶ 6-7). In total, as of December 20, 2021, Class Counsel had expended over 3,559 hours prosecuting this case, leading to a lodestar of approximately \$2,245,852.40. Doc. 105-2 at ¶¶ 40-41. Since December 20, 2021, Class Counsel has spent over 36 hours on this matter (excluding work on the Motions for Attorneys' Fees, Reimbursement of Expenses, and Service Awards), leading to over \$31,335.30 in additional lodestar. If the Court grants final approval, Class Counsel will continue overseeing the administration of the settlement and responding to any inquiries from Class Members.

**B. Class Representatives' Dedicated Efforts on Behalf of the Class and the Plan**

18. The Service Awards are designed to compensate the Class Representatives for their dedicated service in pursuing the class claims and achieving a recovery on behalf of the Plan. Each of the Class Representatives has undertaken substantial efforts and risks on behalf of the Class Members and the Plan, without which the Settlement could not have been achieved.

19. The Class Representatives spent significant time in service to the Class by consulting with Class Counsel on a variety of issues, reviewing and providing input on the Complaint, actively participating in discovery, and consulting with Class Counsel on the resolution of this case. During the pre-suit investigation, the Class Representatives gathered documents and spent hours speaking with Class Counsel to help them develop an understanding of the Plan. During litigation, among other efforts, they furnished numerous documents to Class Counsel and

to Defendants in response to document requests; they provided written interrogatory responses to Defendants; and they filed declarations in support of the Motion for Class Certification and in support of the Motion for Preliminary Approval (Docs. 69-5—69-18; 99-11—99-24). Throughout the investigation and litigation of the matter, Class Representatives have maintained regular contact with Class Counsel to stay apprised on the progress of the action and engage in each step of the settlement negotiations process. In sum, Class Representatives faithfully attended to their duties to act on behalf of other current and former Plan participants and pursued significant relief for the Plan.

**V. Class Members’ Overwhelmingly Favorable Response to the Settlement**

20. The Class Members received notice that fairly apprised them of the terms of the proposed settlement and the options that were open to them.

21. After the Court granted preliminary approval of the Settlement on November 1, 2021, (Doc. 101), Sanford Heisler supervised the efforts of the Settlement Administrator, Analytics Consulting LLC, to disseminate the Court-approved Class Notice pursuant to the Court’s Order.

22. The Court-approved Notice informed Class Members that Class Counsel would request \$15,000 in Service Awards for each Class Representative and \$4,583,333.33 for attorneys’ fees and costs. The Notice also included a settlement website ([www.walgreenserisa.com](http://www.walgreenserisa.com)) and a toll-free telephone support line (1-833-608-2386) so Class Members could learn more about the case.

23. Sanford Heisler also reviewed and approved the information made available to Class Members on the settlement website, including: (1) court filings; (2) the Notice; (3) the Former Participant Rollover Form; (4) a list of important deadlines; and (5) contact information to

find out more information. Class Counsel also responded to questions from Class Members who directly contacted Class Counsel.

24. Only one class member out of approximately 195,000 objected to the settlement. Plaintiffs are filing a response in opposition to that objection.

#### **VI. An Independent Fiduciary Found the Settlement Fair and Reasonable**

25. Pursuant to the terms of the Settlement, an independent fiduciary, Gallagher Fiduciary Advisors, LLC, evaluated the Settlement for compliance with ERISA Prohibited Transaction Class Exemption 2003-39. On January 13, 2022, Gallagher issued a report finding the settlement to be fair and reasonable and approving the settlement on behalf of the Plan. In connection with its report, Gallagher reviewed Plaintiffs' Motion for Attorneys' Fees, Reimbursement of Expenses, and Service Awards, and found the fee request to be reasonable. Gallagher also reviewed the objection filed on January 7, 2022. The objection did not prevent Gallagher from approving the settlement. The Report is attached hereto as **Exhibit 2**.

#### **VII. Class Counsel's Qualifications and Support for the Settlement**

26. As detailed in my prior declarations (Doc. 99-2 & Doc. 105-2), Sanford Heisler Sharp, LLP and the attorneys litigating this action have extensive experience in class action litigation, employment litigation, and financial services matters.

##### **A. Sanford Heisler Sharp, LLP Overview**

27. Sanford Heisler Sharp has been engaged in the practice of law for over 15 years and is devoted to representing the interests of employees, consumers, and investors. The firm has offices in New York, Washington, D.C, Baltimore, Nashville, San Diego, and San Francisco, and currently employs over 50 attorneys and a sizeable staff of legal assistants and information technology professionals.



28. Sanford Heisler Sharp has extensive class action experience, has been appointed lead counsel or co-counsel in scores of class actions, and has recovered hundreds of millions of dollars for its clients, including in: *Velez v. Novartis Pharmaceuticals Corp.*, No. 04-cv-9194 (S.D.N.Y.) (jury verdict of \$250 million in punitive damages awarded to more than 7,000 female sales representatives and \$3.6 million compensatory damages awarded to 12 class members.); *In re Novartis Wage and Hour Litigation*, No. 06-MD-1794 (S.D.N.Y.) (class action alleging overtime misclassification; settled for \$99 million); *Barrett et al. v. Forest Laboratories, Inc. et al.*, No. 1:12-cv-05224-RA (S.D.N.Y.) (\$4 million class settlement in gender discrimination class action for pay, promotion, and pregnancy discrimination claims); *Wellens et al. v. Daiichi Sankyo, Inc.*, No. C 13-00581 (N.D. Cal.) (\$8.2 million class settlement in gender discrimination case); *Smith et al. v. Merck & Co., Inc.*, No. 3:13-cv-02970 (D.N.J.) (\$6.2 million class settlement involving pay, promotion, and pregnancy discrimination claims); *Jane Doe 2 v. The Georgetown Synagogue et al.*, Civil Action No. 2014 CAB 8073 (D.C. Super. Ct. 2018) (\$14.25 million settlement on behalf of victims of secret videotaping); *Dickerson et al. v. Novartis Corp. et al.*, No. 15-CV-1980 (S.D.N.Y.) (\$8 million class settlement in gender discrimination class case); *Pan v. Qualcomm Incorporated et al.*, 3:16-cv-01885-JLS-DHB (S.D. Cal.) (\$19.5 million gender discrimination class settlement); *Rapuano v. Trustees of Dartmouth College*, No. 1:18-cv-01070-LM (D.N.H.) (Title IX action resulting in \$14,000,000 class settlement); *Price, et al. v. Eaton Vance Corp.*, Case No. 18-12098-WGY (D. Mass.) (\$3.45 million ERISA class settlement); and *Karg, et al. v. Transamerica Corporation, et al.*, Case No. 1:18-cv-00134-CJW-KEM (N.D. Iowa.) (certified class; settled for \$5.4 million).

29. Among the many accolades the Firm has received, Sanford Heisler Sharp has been recognized as an “AV” rated firm, the “Employment Group of the Year” by Law360 (2016, 2018,

2019, and 2021), the “Best Law Firm National Tier 1 Employment Firm” by U.S. News & World Report (2016 to 2021), “Elite Trial Lawyers” by the National Law Journal (2014, 2015, 2019, and 2021), and “Labor & Employment Employee-Side Firm of the Year” by Benchmark Litigation (2020 and 2021).

30. In addition, Sanford Heisler Sharp has received praise from numerous courts for its work. Sanford Heisler Sharp has been repeatedly recognized for its superb representation of its clients and high standing at the bar. For example, at the final fairness hearing in *Price v. Eaton Vance*, the court remarked “this is lawyers operating as lawyers should, representing their client, putting their client’s interest first, and having due regard for the uncertainties of litigation.”

31. At the November 19, 2021 fairness hearing in *Karg v. Transamerica*, the court noted that “the litigation has been very well done” and further remarked that “I deeply appreciate the quality of the work and the way in which counsel have worked together to resolve this important case.”

32. In *Velez et al. v. Novartis Pharmaceuticals Corp.*, the court observed that the firm had achieved an “extraordinary” result: “This was a well-prepared case. It was a brilliantly tried case by plaintiff’s counsel . . . and it yielded a one-of-a-kind result, and that has led to a one-of-a-kind settlement.”

33. In *Jane Doe 2 v. The Georgetown Synagogue et al.*, Civil Action No. 2014 CAB 8073 (D.C. Super. Ct. 2018), the court concluded the case by praising the work of counsel on the case, stating, “I commend you highly for the work that you’ve done, the skill that you’ve demonstrated, and for the significant outcome that has occurred as a result of those efforts.”

34. In addition, at the final fairness hearing in *Hernandez et al. v. C&S Wholesale Grocers, Inc.*, No. 7:06-CV-02675 (S.D.N.Y. 2008), the court described the firm as “exceptionally

able and experienced,” praised “the work that counsel have put in, not just in terms of the quantity, but what it was that counsel did, with obviously the tremendous amount of work,” and acknowledged that counsel achieved a highly favorable result in a very complex dispute.

**B. Sanford Heisler Sharp’s Experienced Attorneys Staffed on This Matter**

35. As co-lead Class Counsel in this matter, I worked with David Tracey and a team of other highly qualified attorneys and legal assistants.

**A. Charles H. Field**

36. I am licensed to practice law in the State of California. I am admitted to practice in the Southern District of California and have been admitted to practice *pro hac vice* in several federal district courts across the country. A list of jurisdictions and courts in which I have been admitted *pro hac vice* is set forth below:

- Southern District of New York
- District of Massachusetts
- Northern District of Georgia
- Northern District of Iowa
- Northern District of Illinois
- District of Minnesota
- Western District of Washington

I am in good standing in every jurisdiction in which I have been admitted to practice.

37. I have been actively engaged in the practice of law since 1987 and have substantial experience in dealing with fiduciary duty and investment management issues and complex

investment products. Since joining Sanford Heisler Sharp in April 2015, my practice has focused exclusively on financial services litigation.

38. As the Chair of the firm's Financial Services Litigation Practice Group, I have spearheaded a number of cases against financial services companies. In addition to this action, I have been appointed Co-Lead Counsel in the following ERISA class actions: *In Re GE ERISA Litigation*, (Case No. 1:17-cv-12123-IT) (D. Mass.) (pending); *Snyder et al. v. UnitedHealth Group, Inc. et al.*, Case No. 21-cv-01049 (D. Minn.) (pending); and *Karg, et al. v. Transamerica Corporation, et al.*, Case No. 1:18-cv-00134-CJW-KEM (N.D. Iowa.) (settled for \$5.4 million). In addition, I am counsel of record in the following pending certified and proposed class actions involving breach of fiduciary duty claims under ERISA: *Pizzaro et al. v. Home Depot et al.*, Case No. 1:18-cv-01566-WMR (N.D. Ga.); *Cutrone et al. v. The Allstate Corp. et al.*, Case No. 1:20-cv-06463 (N.D. Ill.); *Daly v. West Monroe Partners Inc. et al.*, Case No. 21-cv-06805 (N.D. Ill.); *Mattson v. Milliman, Inc, et al.*, Case No. 2:22-cv-00037 (W.D. Wash.). Finally, I was counsel of record in *Price, et al. v. Eaton Vance Corp.*, Case No. 18-12098-WGY (D. Mass.), an ERISA class action that settled for \$3.45 million.

39. Prior to joining Sanford Heisler Sharp, I served as the General Counsel, Managing Director, and Chief Legal Officer of an SEC registered investment management firm that furnished investment management services to ERISA retirement plans, cities and towns, endowments, and investment companies. The firm's assets under management are approximately \$50,000,000,000.

40. During my 17-year tenure there, I oversaw the firm's compliance with ERISA, as well as federal and state securities laws, including the federal fiduciary duty standards embodied in the Investment Advisers Act of 1940. I served on the firm's various investment and investment performance committees and securities valuation committees. I also served on the Boards of

Directors of various investment funds, similar to the types of funds at issue here, that invested billions of dollars in the global securities markets.

41. As an investments industry lawyer, I constructed hundreds of investment funds that are the very type at issue in this case and was responsible for overseeing their compliance with U.S. securities laws and, in some cases, the law of the jurisdiction of organization (e.g. Mauritius, Ireland, Cayman Islands). My responsibilities also included overseeing fund administration and operations, which included monitoring fund performance and the costs and adequacy of third-party service providers.

42. In 2021, I was named a National Law Journal Employment Trailblazer (2021) and to the Lawdragon 500 Leading Plaintiff Employment Lawyer list (2021). I have been interviewed by CNBC's Closing Bell, the Wall Street Journal, Barron's, Law 360, and several trade publications dealing with ERISA and investment issues.

43. I received my law degree from McGeorge Law School in 1986 and my B.A. from Indiana University in 1977.

#### **B. David Tracey**

44. David Tracey is Co-Chair of the Public Interest Litigation Practice Group and a Partner at Sanford Heisler Sharp, LLP ("Sanford Heisler Sharp"). He is counsel for the Plaintiffs in the above-captioned action.

45. He received his law degree *magna cum laude* from New York University School of Law in 2013 and his B.A. *magna cum laude* from Yale University in 2008. He served as a clerk for the Honorable Garland E. Burrell Jr., Senior Judge for the United States District Court, Eastern District of California from 2013 to 2014. He is licensed to practice law in New York and New Jersey. He has also been admitted to practice before the United States District Courts for the

Southern District of New York, Eastern District of New York, the District of New Jersey, and the United States Court of Appeals for the Second Circuit. He is admitted to this Court *pro hac vice* for this matter.

46. As co-chair of Sanford Heisler Sharp's Public Interest Litigation Practice Group, Mr. Tracey has been significantly involved the firm's ERISA matters. He served as counsel in *Price v. Eaton Vance*, Case No. 18-12098 (D. Mass.), an ERISA action concerning alleged 401(k) mismanagement that reached a class settlement, and was appointed Co-Lead Counsel in *Karg et al. v. Transamerica Corporation et al.*, Case No. 1:18-cv-00134-CJW-KEM (N.D. Iowa.), an ERISA class action that settled for \$5.4 million. He also currently serves as counsel in the ERISA class action *Pizzaro et al. v. The Home Depot, Inc. et al.*, 18-cv-01566 (N.D. Ga.). In the instant action, he has been intimately involved in all aspects of the litigation, including drafting the initial complaint, contributing to Plaintiffs' Motion for Class Certification, managing Plaintiffs' discovery efforts, engaging in negotiations with opposing counsel, and overseeing matters relating to settlement administration.

47. In addition to his ERISA practice, Mr. Tracey has been involved in numerous certified and proposed class and collective actions, asserting civil rights claims, worker's rights claims, and consumer protection claims. Among his involvement in employment discrimination actions, he served as counsel in *Barrett, et al., v. Forest Laboratories, Inc., et al.*, 12-cv-05224 (S.D.N.Y.), a nationwide gender discrimination action that resolved on a class basis for \$4 million. He also served as counsel in *Gruber v. Starion Energy, Inc.*, Case No. X03-HHD- CV17-6075408-S (Conn. Sup. Ct.), a consumer fraud action that resolved on a class basis for \$2.58 million.

### **C. Class Counsel Strongly Supports Final Approval of This Settlement**

48. Based on my experience in this type of litigation and my thorough familiarity with the factual and legal issues in this case, the risks of litigation and potential recoverable damages, and the significant recovery obtained for Class Members, and because only one Class Member out of approximately 195,000 has objected to the Settlement, I am confident that the Settlement is an excellent result for the Class and is in Class Members' best interest. I vehemently support the final approval of the Settlement.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 2nd day of February 2022 in San Diego, California.

A handwritten signature in cursive script, reading "Charles H. Field", is written over a horizontal line.

Charles H. Field

# EXHIBIT 1





Siobhan E. Fannin, Kristie Kolacny, Dianna J. Martin, Sherri Nelson, Becky S. Ray, Scott C. Read, Timothy M. Renaud, Lisa Smith, Susan Weeks, and Andro D. Youssef (“Class Representatives”), individually and on behalf of a class of participants in the Walgreen Profit-Sharing Retirement Plan (the “Plan”), and Defendants Walgreen Co., the Retirement Plan Committee of the Walgreen Profit-Sharing Retirement Plan, the Trustees of the Walgreen Profit-Sharing Retirement Trust, and the Board of Directors of Walgreen Co. (collectively, “Walgreens Defendants”), as set forth in the Settling Parties’ Settlement Agreement.<sup>1</sup> Having duly considered the papers and arguments of counsel, the Court hereby finds and orders as follows:

WHEREAS, Class Representatives in the Litigation on their own behalf and on behalf of the Class Members and the Plan, and the Walgreens Defendants, have entered into a Settlement Agreement dated September 30, 2021, that provides for a complete dismissal with prejudice of the Released Claims on the terms and conditions set forth in the Settlement Agreement, subject to the approval of this Court;

WHEREAS, by Order dated November 1, 2021, Dkt. No. 101 (the “Preliminary Approval Order”) this Court (1) preliminarily approved the Settlement Agreement; (2) reaffirmed its Order of February 11, 2021 (Dkt. No 73) certifying the class, as modified by Section 2.41 of the Settlement Agreement; (3) reaffirmed its Order of February 11, 2021 (Dkt. No. 73) appointing Class Counsel and Class Representatives; and (4) directed notice be given to the Class Members and approved the form and manner of the Class Notice;

WHEREAS, by Order dated November 3, 2021, the Court scheduled a telephonic Fairness Hearing for February 16, 2022;

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<sup>1</sup> The capitalized terms not defined in this Final Approval Order have the same meaning ascribed to them in the Settlement Agreement.

WHEREAS on November 15, 2021, the Court granted Plaintiffs' Motion to Amend the Class Notice (Dkt. No. 104);

WHEREAS, due and adequate notice has been given to the Class Members;

WHEREAS, the Court conducted a hearing on February 16, 2022 (the "Fairness Hearing") to consider, among other things, (1) whether the proposed Settlement Agreement is fair, reasonable, adequate, and in the best interests of the Class Members and should be finally approved by the Court; (2) Class Counsel's application for Attorneys' Fees and Costs; (3) the Class Representatives' requests for Class Representatives' Compensation; (4) whether this Final Approval Order should be entered dismissing with prejudice the Released Claims; and (5) whether Class Members had the opportunity to be heard on all issues regarding the resolution and release of their claims; and

WHEREAS, the Court having reviewed and considered the Settlement Agreement, all papers filed and proceedings held herein in the Litigation in connection with the Settlement, all oral and written comments received regarding the Settlement, and the record in the Litigation, and good cause appearing therefor;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. The Court has jurisdiction over the subject matter of the Litigation, and all matters relating to the Settlement Agreement, as well as personal jurisdiction over all the Settling Parties and each of the Class Members.

2. This Final Approval Order incorporates and makes a part hereof: (a) the Settlement Agreement filed with the Court on October 22, 2021, Dkt. No. 99-3—99-8; and (b) the Class Notice approved by the Court on November 15, 2021. Dkt. Nos. 103-104.

3. The Court finds that the dissemination of the Class Notice: (a) was implemented in accordance with the Preliminary Approval Order; (b) constituted the best notice reasonably practicable under the circumstances; (c) constituted notice that was reasonably calculated, under the circumstances, to apprise all Class Members of the pendency of the Litigation, of the effect of the Settlement Agreement (including the releases provided for therein), of their right to object to the Settlement and appear at the Fairness Hearing, of Class Counsel's application for Attorneys' Fees and Costs, and of the request for Class Representatives' Compensation; (d) constituted due, adequate, and sufficient notice to all persons or entities entitled to receive notice of the proposed Settlement Agreement; and (e) satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution, including the Due Process Clause, and all other applicable law and rules.

4. The Court overrules the sole objection filed in this matter. Dkt. No. 108. Only one class member out of approximately 195,000 filed an objection. The objector, Mr. Paul Adams, generally argues that the Settlement fund is too low and the attorneys' fees are too high. However, the objection is based on an incorrect estimate of the Class's damages; a misinterpretation of the Plan of Allocation; and an incorrect account of Class Counsel's efforts in this case. In light of the record as a whole, the objection does not alter this Court's conclusion that the Settlement and Plan of Allocation satisfy Rule 23 and that the Attorneys' Fees, Costs, and Class Representatives' Compensation ("Service Awards") are fair and reasonable.

5. The Settlement was reviewed by an independent fiduciary, which has approved the Settlement.

6. Having considered the factors set forth in Federal Rule of Civil Procedure 23(e)(2), the Court hereby fully and finally approves the Settlement Agreement in all respects including,

without limitation, the terms of the Settlement Agreement; the releases provided for therein; and the dismissal with prejudice of the claims asserted in the Action; and finds that the Settlement Agreement is, in all respects, fair, reasonable and adequate, and is in the best interests of the Class Members. Class Representatives and Class Counsel have adequately represented the class and negotiated the Settlement Agreement at arm's length. The Settlement Agreement provides fair, reasonable and adequate relief to the class given: (i) the costs, risk and delay of trial and appeal; (ii) the effectiveness of the proposed method for distributing relief, which ensures that qualified Class Members with greater than *de minimis* damages receive a portion of the settlement, in rough proportion to their alleged losses, without having to file a claim; (iii) the terms of the proposed award of Attorneys' Fees and Costs and the Class Representatives' Compensation Awards; and (iv) there are no known agreements to be identified by Rule 23(e)(3). Furthermore, the Settlement Agreement treats Class Members equitably relative to each other.

7. The Settling Parties are directed to implement, perform, and take the necessary steps to effectuate the terms of the Settlement Agreement.

8. All Settling Parties, Class Members, and the Plan shall be bound by the Settlement Agreement and by this Order.

9. As of the Settlement Effective Date, pursuant to Federal Rule of Civil Procedure 54(b), the Litigation and all Released Claims asserted therein – whether asserted by Class Representatives on their own behalf or on behalf of the Class Members, or derivatively to secure relief for the Plan – are hereby dismissed with prejudice, without costs to any of the Settling Parties other than as provided for in the Settlement Agreement. There is no just reason to delay entry of this Final Approval Order as a final judgment as of the Settlement Effective Date with respect to the claims asserted in the Litigation.

10. The Plan, the Class Representatives, and each Class Member (and their respective heirs, beneficiaries, executors, administrators, estates, past and present partners, officers, directors, agents, attorneys, predecessors, successors, and assigns) are: (i) conclusively deemed to have, and by operation of this Order have, fully, finally, and forever settled, released, relinquished, waived, and discharged the Released Parties from all Released Claims; and (ii) barred and enjoined from suing the Released Parties in any action or proceeding alleging any of the Released Claims, even if any Class Member may thereafter discover facts in addition to or different from those which the Class Members or Class Counsel now know or believe to be true with respect to the Litigation and the Released Claims, whether or not such Class Members have filed an objection to the Settlement or to any application by Class Counsel for an award of Attorneys' Fees and Costs, and whether or not the objections or claims for distribution of such Class Members have been approved or allowed.

11. Each Class Member shall release the Released Parties, Defense Counsel, Class Counsel, and the Plan for any claims, liabilities, and attorneys' fees and expenses arising from the allocation of the Gross Settlement Amount or Net Settlement Amount and for all tax liability and associated penalties and interest as well as related attorneys' fees and expenses.

12. Pursuant to the Class Action Fairness Act, 28 U.S.C. § 1711, *et seq.* ("CAFA"), notice was provided to the appropriate officials and all applicable CAFA requirements have been satisfied.

13. The Settlement Administrator shall have final authority to determine the share of the Net Settlement Amount to be allocated to each Current Participant and each Former Participant in accordance with the Plan of Allocation approved by the Court.

14. With respect to payments or distributions to Former Participants, all questions not resolved by the Settlement Agreement shall be resolved by the Settlement Administrator in its

sole and exclusive discretion, including whether a Former Participant Rollover Form should be accepted in the first instance.

15. With respect to any matters that arise concerning the implementation of distributions to Current Participants (after allocation decisions have been made by the Settlement Administrator in its sole discretion), all questions not resolved by the Settlement Agreement shall be resolved by the Plan administrator or other Plan fiduciaries in accordance with applicable law and governing terms of the Plan.

16. Within twenty-one (21) calendar days following the issuance of all settlement payments to Class Members as provided by the Plan of Allocation approved by the Court, the Settlement Administrator shall prepare and provide to Class Counsel and Defense Counsel a list of each person who received a settlement payment or contribution from the Qualified Settlement Fund and the amount of such payment or contribution.

17. If the Settlement Agreement does not go into effect or is terminated as provided for therein, then this Order (and any orders of the Court relating to the Settlement Agreement) shall be vacated, rendered null and void and be of no further force or effect, except as otherwise provided by the Settlement Agreement.

18. The Court has entered a separate Order on Class Counsel's application for Attorneys' Fees and Costs and the request for Class Representatives' Compensation. Dkt. No. 107 ("Fees Order"). Having considered the sole objection and the papers filed in connection with the Motion for Final Approval, the Court reaffirms the Fees Order. Such order shall in no way affect or delay the finality of this Final Approval Order and shall not affect or delay the Settlement Effective Date.

**IT IS SO ORDERED** this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

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Charles R. Norgle  
United States District Judge  
Northern District of Illinois



# EXHIBIT 2



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January 13, 2022

**VIA ELECTRONIC MAIL**

Michael Oettinger  
Walgreen Co.  
104 Wilmot Road, Mail Stop #144W  
Deerfield, IL 60015

**Re: Chandra V. Brown-Davis, et al. v. Walgreen Co., et al.**

Dear Mr. Oettinger:

Pursuant to the agreement between Walgreen Co. and Gallagher Fiduciary Advisors, LLC ("Gallagher"), Gallagher has been engaged to act as the independent fiduciary of the Walgreens Retirement Savings Plan (the "Plan") in connection with the Settlement Agreement (the "Settlement Agreement") in Chandra V. Brown-Davis, et al. v. Walgreen Co., et al., 1:19-cv-05392 (N.D. IL), executed on September 30, 2021.

This will confirm that, on behalf of the Plan, and in its capacity as independent fiduciary, Gallagher approves and authorizes the settlement of Released Claims, as defined in the Settlement Agreement. In making our determination, Gallagher, as the independent fiduciary, has determined that the Settlement Agreement meets the requirements of ERISA Prohibited Transaction Class Exemption 2003-39, as amended.

GALLAGHER FIDUCIARY ADVISORS, LLC

By:

Darin R. Hoffner  
Area Senior Vice President and  
Area Counsel

cc: David Tracey, Esq.  
Abbey Glenn, Esq.





**Gallagher**

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## **BROWN-DAVIS V. WALGREEN CO. SETTLEMENT OF ERISA LITIGATION**

**January 13, 2022**

### **I. Summary**

Gallagher Fiduciary Advisors, LLC (“Gallagher”) was appointed to act as an independent fiduciary for the Walgreens Retirement Savings Plan (the “Plan”) in connection with the proposed settlement dated September 30, 2021 of Chandra V. Brown-Davis, et al. v. Walgreen Co., et al., 1:19-cv-05392 (N.D. IL) (the “Litigation”) that resolves the ERISA class action claims brought in the Litigation. All terms not otherwise defined herein shall have the meanings set forth in the Settlement.

Gallagher’s responsibilities pursuant to its agreement and the Settlement are to (i) determine whether to approve and authorize the settlement of Released Claims on behalf of the Plan and (ii) determine whether the Settlement satisfies the requirements of the Prohibited Transaction Class Exemption 2003-39 (the “Class Exemption”).

Gallagher engaged in the following activities: (i) we reviewed documents filed with the Court, including the Complaint and the Amended Complaints, the motion to dismiss and the Court’s order dismissing certain claims, motion for Preliminary Approval of Class Action Settlement, the Settlement Agreement and Notice, the Order granting preliminary approval of the Settlement, and the Plaintiffs’ Motion for Attorneys’ Fees; (ii) we interviewed David Tracey, Charles Field and Sean Ouellette from Sanford Heisler Sharp, LLP, counsel for Plaintiffs; (iii) we interviewed Sari Alamuddin and Abbey Glenn, from Morgan Lewis & Bockius, LLP, counsel for Defendants, and (iv) we interviewed Robert Meyer, the mediator.

### **II. Requirements of the Class Exemption**

In order for the Class Exemption to apply, the following conditions must be met:

1. Where the litigation has not been certified as a class action by the court, and no federal or state agency is a plaintiff in the litigation, an attorney or



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attorneys retained to advise the plan on the claim, and having no relationship to any of the parties, other than the plan, determines that there is a genuine controversy involving the plan.

- This condition has been met because on February 11, 2021, the Court certified the Class as set forth in the Settlement Agreement.
2. The settlement is authorized by a fiduciary (the authorizing fiduciary) that has no relationship to, or interest in, any of the parties involved in the claims, other than the plan, that might affect the exercise of such person's best judgment as a fiduciary.
    - Gallagher has no relationship to, or interest in, any of the parties involved in the Litigation that could affect the exercise of its judgment.
  3. The settlement terms, including the scope of the release of claims; the amount of cash received by the plan; the non-monetary relief; the proposed attorney's fee award; and any other sums to be paid from the recoveries, are reasonable in light of the plan's likelihood of full recovery, the value of claims foregone and the risks and costs of litigation.
    - Plaintiffs, individually and as representatives of the Class of current and former participants of the Plan, filed this Class Action against Defendants on August 9, 2019. Plaintiffs alleged that Defendants breached their fiduciary duties under ERISA by imprudently selecting, retaining, and monitoring a suite of poorly performing funds - the Northern Trust Focus Funds - for the Plan's investment menu. Plaintiffs hired an expert who calculated potential damages of approximately \$34 million based on the investment performance of the Morningstar target date fund peer universe as of January 1, 2018.
    - Defendants moved to dismiss the Amended Complaint on November 4, 2019. On March 16, 2020, the Court denied Defendants' motions on all counts, except for Plaintiffs' standing to bring claims based on two funds in which they had not personally invested. On December 4, 2020, Plaintiffs filed an Unopposed Motion for Class Certification and Appointment of Class Counsel. The Court granted the motion on February 11, 2021, certifying a class of all participants who held assets in the challenged funds from January 1, 2014 through the date of judgement, and appointed Charles Field, Kevin Sharp, David Tracey, Danielle Fuschetti, and Sanford Heisler Sharp LLP as Class Counsel.



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During fact discovery, Plaintiffs produced and received documents, served and responded to interrogatories, and deposed Defendants' 30(b)(6) witness on the Plan's fiduciaries' investment and monitoring process.

The parties agreed to mediation and on August 3, 2020, the parties mediated before the mediator, Robert Meyer, Esq. After extensive negotiations that day, the parties failed to reach a resolution. After conducting further discovery, the parties resumed negotiations. As a result, the parties reached an agreement that included the \$13,750,000 cash settlement fund and non-monetary relief, including confirmation of the removal of the Northern Trust Focus Funds from the Plan and the engagement by the Plan of an investment advisor to provide ongoing investment monitoring services for the Plan.

- The settlement involves a cash payment to the Plan of \$13,750,000, arrived at after extremely hard fought negotiations by the parties. As noted above, the Defendants also agreed to provide non-monetary relief as part of the Settlement.
- Plaintiffs' counsel applied to the Court to approve its fee request of 1/3 of the settlement amount, or \$4,583,333. On an hourly basis, the lodestar multiplier is 2.0. The fee request includes the Plaintiffs' costs incurred in the Litigation. The Court has approved the fee request and the fee to be paid to each named plaintiff.
- One objection to the Settlement has been filed with the Court objecting to the amount of fees awarded to Plaintiffs' attorneys. We have reviewed the objection. It has not changed our approval of the Settlement.
- After a thorough review of the pleadings and interviews with the parties' counsel and the mediator, Gallagher has concluded that the Settlement was achieved at arms' length and is reasonable given the uncertainties of a larger recovery for the Class at trial and the value of claims foregone. The fee request is also reasonable in light of the effort expended by Plaintiffs' counsel in the Litigation and the fact that litigation costs are included in the requested fee .



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4. The terms and conditions of the transaction are no less favorable to the plan than comparable arms-length terms and conditions that would have been agreed to by unrelated parties under similar circumstances.
  - This condition has been met. The Settlement is at least as favorable as an arms-length transaction agreed to by unrelated parties would likely have been. Counsel for both sides and the mediator confirmed that the Settlement was the product of arms-length negotiations.
5. The transaction is not part of an agreement, arrangement, or understanding designed to benefit a party in interest.
  - Although the transaction will have the incidental effect of releasing the fiduciaries, the Settlement is not designed to benefit those fiduciaries, but rather to resolve claims that have not been fully adjudicated and to enable the Plan to recover a portion of its losses.
6. Any extension of credit by the plan to a party in interest in connection with the settlement of a legal or equitable claim against the party in interest is on terms that are reasonable, taking into consideration the creditworthiness of the party in interest and the time value of money.
  - The condition is not applicable in that the Settlement does not require the Plan to extend credit to any party in interest.
7. The transaction is not described in Prohibited Transaction Exemption (PTE) 76-1 (relating to delinquent employer contributions to multiemployer and multiple employer collectively bargained plans).
  - Neither the Settlement nor the underlying claims relate to delinquent employer contributions, and the Settlement is therefore not described in PTE 76-1.
8. All the terms of the settlement are specifically described in a written settlement agreement or consent decree.
  - The condition has been met.
9. Assets other than cash may be received by the plan from a party in interest in connection with a settlement in limited, specified circumstances. To the extent assets other than cash are received by the plan in exchange



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for the release of the plan's or the plan fiduciary's claims, such assets must be specifically described in the written settlement agreement and valued at their fair market value, as determined in accordance with section 5 of the Voluntary Fiduciary Correction (VFC) Program.

- The condition does not apply because the monetary portion of the Settlement is being paid in cash.
- 10.** The plan does not pay any commissions in connection with the acquisition of assets.
- This condition will be met in that the Settlement provides for a cash payment, and no commission is indicated under the terms of the Settlement.
- 11.** The authorizing fiduciary acting on behalf of the plan has acknowledged in writing that it is a fiduciary with respect to the settlement of the litigation on behalf of the plan.
- The condition has been met.
- 12.** The plan fiduciary maintains or causes to be maintained for a period of six years the records necessary to enable authorized persons to determine whether the conditions of this exemption have been met.
- This condition will be met.

In light of the above factors, it is fair to conclude that the Settlement on the terms described above meets the requirements of the Class Exemption.

Investment advisory, named and independent fiduciary services are offered through Gallagher Fiduciary Advisors, LLC, an SEC Registered Investment Adviser. Gallagher Fiduciary Advisors, LLC is a single-member, limited-liability company, with Gallagher Benefit Services, Inc. as its single member. Neither Arthur J. Gallagher & Co., Gallagher Fiduciary Advisors, LLC nor their affiliates provide accounting, legal or tax advice.