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December 26, 2024

**VIA ECF**

The Honorable Laura M. Provinzino  
District Court Judge  
United States District Court  
316 N. Robert Street  
St. Paul, MN 55101

Re: *Navarro, et al. v. Wells Fargo & Company, et al.*, No. 0:24-cv-03043-LMP-DTS

Dear Judge Provinzino,

Plaintiffs submit this letter in response to Defendants’ notice of supplemental authority regarding *Singh v. Deloitte LLP*, 2024 WL 5049345 (2d Cir. Dec. 10, 2024). *See* ECF 42.

The *Singh* decision offers little additional guidance (much less binding authority) regarding the issues before the Court. The allegations in *Singh* had nothing to do with prescription drug costs or other product costs; instead, *Singh* is simply the latest decision regarding an alleged failure to “manage the Plan’s recordkeeping and administrative fees.” *Singh*, 2024 WL 5049345, at \*1. As Plaintiffs have already explained, it is typical in that context to provide plan-wide comparisons. Hearing Tr. 40:5-8 (“Now, in that context, ... in the recordkeeping and administrative services context for just general services like that, it is typical in that situation to do Plan-base[d] comparisons.”). Thus, it is unremarkable that the Second Circuit focused on “cost comparisons to other plans,” *Singh*, 2024 WL 5049349, at \*5, and whether those plan-based cost comparisons supported an inference of a breach of fiduciary duty.

Consistent with *Singh*, Plaintiffs **do** offer plan-based cost comparisons to support their allegation that Express Scripts’ administrative fees for prescription drug management (“PBM”) services were too high. *See* Complaint, ECF 1, at ¶ 141. And, in contrast to *Singh*, Plaintiffs’ provide apples-to-apples comparisons. First, all of Plaintiffs’ comparator plans also used Express Scripts for PBM services. *Id.* Second, Plaintiffs specifically allege that “Express Scripts provided equivalent or substantially equivalent PBM services to each of [those] plans.” *Id.*; *see Singh*, 2024 WL 5049349, at \*6 (discussing *Hughes v. Northwestern Univ.*, 63 F.4th 615 (7th Cir. 2023), where a motion to dismiss was denied, noting that “[t]he plaintiffs contended that ‘the quality or type of recordkeeping services provided by competitor providers [was] comparable to that provided by Fidelity and TIAA,’ the recordkeepers at issue”). Third, Plaintiffs’ allegations regarding the similarity of services provided to the Wells Fargo Plan and the comparator plans is borne out by the service codes on the Form 5500s for those plans. *See* ECF 38 at 37-38. Fourth, with respect to expenses, all of the Plans (both the Wells Fargo Plan and the comparator plans) reported the amount of direct compensation paid for PBM services, and indicated that no additional “indirect” compensation was paid for such services. *See* ECF 38 at 37 n.24. Thus, this is not a situation like *Singh* where the plaintiffs “‘disingenuously’ compared the Plan’s combined direct and indirect costs for recordkeeping with only the direct costs of the comparator plans.” 2024 WL 5049345, at \*2. If anything, Plaintiffs’ comparisons to other plans that used Express Scripts were generous,

because pass-through PBMs like SmithRx charge a lower administrative fee without the drug markups that Express Scripts imposes. *See* ECF 1 at ¶ 142. Including those drug markups only renders the charges here even more unreasonable.<sup>1</sup>

To the extent that Defendants contend that *Singh* requires plan-wide comparisons for drug or other product charges, they are mistaken. As noted above, *Singh* involved charges for administrative *services*, not *products*. In the product context, the appropriate comparison is the cost between like products (same drug, same investment, etc.). Hearing Tr. 41:3-42:23. Indeed, even the Second Circuit has affirmed this principle. *See Sacerdote v. New York Univ.*, 9 F.4th 95, 108-110 (2d Cir. 2021) (holding that plaintiffs plausibly pled a breach of fiduciary duty claim based on “cost differentials” for “dozens of mutual funds” offered in the subject plans, and that the district court erred in requiring plaintiffs to plead “that the Plans were tainted in their entirety”). Accordingly, it was entirely appropriate for Plaintiffs to support their claim that Wells Fargo failed to prudently monitor prescription drug charges here with drug-based cost comparisons. In any event, Plaintiffs offer a corroborating plan-based comparison to the Pepsico plan, *see* ECF 1 at ¶ 183, and additionally support their breach of fiduciary duty claim with “concrete examples” of other plans that took steps to reduce prescription drug costs that Wells Fargo failed to take here. *See* ECF 1 at ¶¶ 184-95; *accord Singh*, 2024 WL 5049345, at \*6 (noting that the *Hughes* plaintiffs “provided concrete examples of other university plans ‘that successfully reduced recordkeeping fees by soliciting competitive bids, consolidating to a single recordkeeper, and negotiating rebates.’” These specific allegations, considered together, provided a plausible ‘basis upon which to infer that’ Northwestern paid excessive fees.”) (citations omitted).

Respectfully,

/s/ Kai Richter  
Kai Richter

cc: Defendants’ counsel of record (via ECF)

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<sup>1</sup> *Singh* is additionally distinguishable because the plan’s administrative fees in that case “declined or stayed stagnant” over time. 2024 WL 5049345, at \*5 n.11. Here, by contrast, the administrative fees that Express Scripts charged to the Wells Fargo Plan exploded from approximately \$9.2 million to \$25.6 million (nearly 2½ times as much) between 2019 and 2022, even while the number of participants in the Plan decreased. *See* ECF 38 at 36.