Elizabeth A. Fegan
Hagens Berman Sobol Shapiro LLP
1144 W. Lake Street, Suite 400
Oak Park, IL 60301
Telephone: (708) 628-4960

Co-Lead Counsel for Plaintiffs

Michael A. London
Douglas & London, P.C.
111 John Street, 14th Floor
New York, NY 10038
Telephone: (212) 566-7500

Co-Lead and Liaison Counsel for Plaintiffs

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

IN RE: BAYER CORP. COMBINATION ASPIRIN PRODUCTS MARKETING AND SALES PRACTICES LITIGATION	09-md-2023 (BMC)(JMA) **COGAN**, District Judge
THIS PLEADING RELATES TO: ALL CASES	

PLAINTIFFS' REPLY IN SUPPORT OF MOTION TO AMEND PLAN OF DISTRIBUTION

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

I. INTRODUCTION

Despite being given notice and the opportunity to be heard, only two of the six objectors filed any response to Plaintiffs' Motion to Amend the Plan of Distribution ("Motion"), and neither objector challenges the proposed distribution itself. *See* Dkt. # 224; 225. These two objectors' misconceptions and plain misstatements regarding the Amendment to the Settlement Agreement and Release ("Amendment") are easily addressed.

First, the Amendment is intended to increase the number of payments to known Settlement Class Members and is not intended to favor *cy pres*. Second, the Amendment provides for payments to all Settlement Class Members with valid addresses for all units purchased. Third, any attacks on the identities of the *cy pres* recipients are a red herring; ultimately it is the Court's decision on the appropriate *cy pres* recipient and this decision should not prevent final approval. Next, Plaintiffs' fee request is reasonable and this Court has a reasonable estimate of the claims and distribution data to consider, if it so chooses, in approving the fee. Finally, the Objectors are not entitled to any award because they did not create any benefit. Thus, Plaintiffs respectfully request that the Court enter final approval of this class action settlement.

II. BACKGROUND

During discovery, Plaintiffs issued subpoenas to ten national retailers requesting class member identification and purchase information. *See generally* Dkt. # 182 (describing Plaintiffs' subpoena efforts). As a result of these efforts, Plaintiffs obtained data from those retailers that tracked their customers' purchases, including from:

- CVS, which produced data reflecting 364,353 valid addresses of Settlement Class Members and purchases of 301,596 units of Bayer Women's and 319,222 units of Bayer Heart Advantage;

- Wal-Mart's Sam's Club Division, which produced data reflecting 89,683 valid addresses of Settlement Class Members and purchases of 150,280 units of Bayer Women's;
- BJ's Wholesale Club, which produced data reflecting 62,898 valid addresses of Settlement Class Members and purchases of 87,071 units of Bayer Heart Advantage; and
- Safeway, which produced data reflecting 49,686 valid addresses of Settlement Class Members and purchases of 64,324 units of Bayer Women's and 23,743 units of Bayer Heart Advantage.

Declaration of Tricia Solorzano Regarding Number of Claims (Dkt. #195), attached as Ex. 1. The claims administrator used this data to send direct notice to the valid addresses. *See* Solorzano Decl.

In addition, Costco agreed to provide direct notice to its customers that are Settlement Class Members. *See* Ross Decl., ¶ 4 (Dkt. # 196). As a result, Costco sent postcards to 129,474 class members addresses. *Id*. at ¶ 7. Based on their review of documents produced in the case, Plaintiffs believe that the Costco data reflects purchases of approximately 200,000 units of Bayer Heart Advantage and approximately 500 units of Bayer Women's.[1]

III. ARGUMENT

A. The Amendment is Intended to Increase the Number of Payments to Settlement Class Members

Objector Cermak's suggestion that Class Counsel favors *cy pres* recipients over compensation to Settlement Class Members should be rejected outright. First, this Settlement,

[1] Plaintiffs have requested that Costco provide member information to the Claims Administrator for purposes of sending checks to the Settlement Class Members if approved by the Court.

like other settlements, is a product of compromise. *See, e.g.*, *United States SEC v. Citigroup Global Mkts., Inc.*, 673 F.3d 158, 166 (2d Cir. 2012) ("A settlement is by definition a compromise."); *In re W. Union Money Transfer Litig.*, CV-01-0335 (CPS), 2004 WL 3709932, at *18 (E.D.N.Y. Oct. 19, 2004) ('"the essence of settlement is compromise'") (quoting *In re Union Carbide Corp. Consumer Prods. Bus. Sec. Litig.*, 718 F. Supp. 1099, 1103 (S.D.N.Y. 1989)). *See also Lane v. Facebook, Inc.*, 696 F.3d 811, 821 (9th Cir. 2012) ("As the offspring of compromise, settlement agreements will necessarily reflect the interests of both parties to the settlement, including those of the defendant.") (internal citation and quotation omitted). In conducting arm's-length negotiations under the supervision of two separate mediators, Plaintiffs originally negotiated an excellent result for the Class: a $15 million common fund, which amounted to nearly a full disgorgement of Defendant's profits for the two products at issue. The individual claims payments also equal approximately 100% of the estimated overcharge. And the claims process was a subject of negotiation. *See, e.g.*, *In re Processed Egg Prods. Antitrust Litig.*, 284 F.R.D. 278, 283 (E.D. Pa. 2012) (granting final approval in antitrust action where settling defendant "consistently maintained the position that it would not agree to a settlement that provided direct monetary compensation to the Class Members"); *Myers v. MedQuist, Inc.*, 2009 U.S. Dist. LEXIS 27908, at *37-38 (D.N.J. Mar. 31, 2009) (granting final approval of class settlement and stating: "Moreover, the Court notes that over the course of the parties' extensive arm's-length negotiations, Plaintiffs were unable to prevail upon MedQuist to consent to a settlement that provided for direct payments to class members, and that no settlement could have been reached if Plaintiffs insisted upon such terms. These two factors diminish the force of the vast majority of the objectors' response to the settlement.") (internal citation omitted).

Second, Class Counsel has never conducted any negotiation for the purpose of ensuring any *cy pres* distribution but instead to ensure that the Settlement is fair, adequate and reasonable for the Class. Nevertheless, because the parties have now agreed that direct payments will take place based on the purchase records, this issue is moot.

B. The Amendment Provides That Settlement Class Members for Which the Claims Administrator Possesses Data Will Receive Payments for Each Unit Purchased

Objector Cermak also claims that the Amendment is vague, because it "is unclear as to whether it is proposing, and class counsel have the information from retailers to carry out, compensation to the identified class members for every purchase they made to those retailers." Notably, Objector Cermak adds, "[i]f that is the case," and it is, "Cermak supports the amendment." Settlement Class Members will be paid for all purchases of the Combination Aspirin Products they made as recorded in data produced by the retailers and transmitted to the claims administrator. Thus, even Objector Cermak does not oppose the Amendment in this regard.

In any event, the Amendment is not vague. Under the plain language of the Amendment it is clear all purchases are covered:

> Each Authorized Claimant for which the Claims Administrator or its designee has Purchase Records shall be entitled to payment from the Settlement Class Amounts for $4.00 *for each purchase* of "Bayer Women's Low Dose Aspirin + Calcium" and/or $6.00 *for each purchase* of "Bayer Aspirin With Heart Advantage," subject to any pro rata reductions described below.

Amendment, § III.E.2.b (emphasis added). In short, if the Claims Administrator or its designee has an address for a Settlement Class Member along with purchase data for that Settlement Class Member, he or she will be sent a check for any and all purchases.

C. The Attacks on the *Cy Pres* Recipients Are a Red Herring

Next, even though the Amendment did not change the proposed *cy pres* recipients, Objector Frank uses his second objection to launch late attacks on one of the proposed recipients, the AARP Foundation ("Foundation"), while withdrawing his attack on the other.

Specifically, Frank now suggests that the American Heart Association ("AHA") would be acceptable to him as a *cy pres* recipient should funds remain, abandoning his earlier position objecting to the AHA. *See* Frank Second Obj. at 9 ("If *cy pres* cannot go solely to the AHA because of a need to address osteoporosis, there are other non-profits that deal directly with the problem of osteoporosis without the baggage of AARP."). *Compare id.* with Frank Obj. at 10-11. Frank's objections against the Foundation, which could have been timely raised but were not, should be rejected.

First, the objection that the Foundation would have to create a new program for using the funds has been considered and rejected by the Ninth Circuit. Frank Second Obj. at 6. In *Lane v. Facebook*, the Ninth Circuit stated:

> We also reject Objectors' claim that the settlement agreement's cy pres structure is impermissible because the parties elected to create a new grant-making entity, DTF [the Digital Trust Foundation], rather than give cy pres funds to an already-existing online privacy organization. Again citing Six Mexican Workers, Objectors argue that DTF has "no substantial record of service" and is therefore inherently disfavored as a cy pres recipient. But we have never held that cy pres funds must go to extant charities in order to survive fairness review, and a settlement agreement that provides for the formation of a new grant-making organization is not subject to a more stringent fairness standard.

Lane, 696 F.3d at 822. Here, the parties propose that the Foundation will use the *cy pres* distribution to fund education, consistent with health education it currently provides,[2] regarding the prevention and management of osteoporosis, high cholesterol and/or heart disease.

Second, Frank argues that the AARP's "legal projects have little to do with the interests or claims of the class," declaring that they "in many instances cut directly against the policy preferences of many class members." Frank Second Obj. at 7. Putting aside whether Frank's policy preferences are co-existent with the Class, whether class members subjectively approve of a *cy pres* beneficiary is irrelevant to the Court's determination of whether a settlement is fair, reasonable, and adequate. *See* Plaintiffs' Response to Objections at 24-25 (discussing how subjective approval of *cy pres* recipients is irrelevant).

In addition, Frank ignores the plain language of the Settlement. Thus, Frank does not argue against the proposed use of the *cy pres* funds by the Foundation, *i.e.*, education about how to prevent and manage osteoporosis, high cholesterol, and/or heart disease. *Id.* Instead, Frank objects to the Foundation as a recipient by characterizing its *legal* projects, though the Settlement is explicit that any *cy pres* funds be used for *educational* projects. Settlement, § III.G. Frank also argues that "it will be difficult to ensure that the distribution goes to funding osteoporosis education rather than simply going to the AARP Foundation Litigation, the Foundation's legal advocacy arm." Frank Second Obj. at 6-7. This argument is baseless: the Proposed Final Order and Judgment requires that any payment to the Foundation be conditioned on funding education

[2] *See, e.g.*, http://www.aarp.org/health/drugs-supplements/; http://www.aarp.org/health/conditions-treatments/ (last accessed Mar. 21, 2013).

about how to prevent and manage osteoporosis, high cholesterol, and/or heart disease.[3] Any failure to follow the Court's order carries with it the risk of being found in contempt.

Furthermore, his pronouncement that the selection of the Foundation would somehow constitute "supplementary attorneys' fees" has no basis in fact. Frank Second Obj. at 8. Hagens Berman has never represented AARP, has not shared attorneys' fees with or been paid by AARP, nor has volunteered at or for AARP.

Frank points to the fact that a few Hagens Berman partners and AARP Foundation Litigation are both members of the non-profit advocacy organization, the Prescription Access Litigation Project. *Id.* Yet, membership in the same organization is not a conflict of interest. Even the cases Frank cites do not support so tenuous a connection. *See, e.g., Weeks v. Kellogg Co.*, 2011 U.S. Dist. LEXIS 155472, at *69 n.102 (C.D. Cal. Nov. 23, 2011) (rejecting a proposed *cy pres* recipient where all of the attorneys at one of the Plaintiffs' firms involved in the case volunteered for the recipient); *In re Linerboard Antitrust Litig.*, 2008 U.S. Dist. LEXIS 77739, at *14-15 (E.D. Pa. Oct. 3, 2008) (one of the attorneys held a lead role in the legal aid organization proposed as the *cy pres* recipient), *aff'd*, 361 Fed. Appx. 392 (3d Cir. 2010).

Finally, and similar to the tact taken by Objector Cermak in his original objection, Frank points to the National Osteoporosis Foundation as a potential recipient of *cy pres* funds. Yet, had either party proposed the National Osteoporosis Foundation as a potential recipient, it is likely an objector would have disagreed with that selection too. Ultimately, whether the Court approves

[3] *See* Proposed Final Order and Judgment, ¶ 13 ("The Court also finds that if there are any Excess Amounts remaining after all payments contemplated by the Settlement, as amended, and ordered by the Court have been made ("Final Excess Amount"), the Final Excess Amount shall be distributed *cy pres* as follows: fifty (50) percent of the Final Excess Amount shall be distributed in a *cy pres* payment to the AARP Foundation *to fund education about how to prevent and manage osteoporosis, high cholesterol, and/or heart disease* and fifty (50) percent of the Final Excess Amount shall be distributed in a *cy pres* payment to the American Heart Association.") (emphasis added).

the proposed *cy pres* recipients, the result achieved for the Settlement Class Members should be approved as fair, adequate and reasonable.

D. Plaintiffs' Fee Request is Reasonable and Should be Approved

1. The Court need not wait to obtain final claims and distribution data to approve the fee because a reasonable estimate of actual payments has been provided.

As detailed in their Response to Objections, Plaintiffs explained how their fee request is approvable at this time. Nevertheless, relying on the *Baby Products* decision, Frank insists that the Court still lacks class claims and distribution data. Frank Second Obj. at 11 (citing *In re Baby Prods. Antitrust Litig.*, 2013 U.S. App. LEXIS 3379, at *21 (3d Cir. Feb. 19, 2013)). However, the Third Circuit in *Baby Products* merely counseled that a court's evaluation of a fee award "should begin by determining with reasonable accuracy the distribution of funds that will result from the claims process." *In re Baby Prods*, 2013 U.S. App. LEXIS 3379, at *37. Plaintiffs have provided a detailed estimate of the distribution resulting from the claims and Amendment.[4] *See* Mem. Supp. Mot. Amend Plan of Distribution at 4. Indeed, Plaintiffs estimated that payment for approximately 1.2 million bottles of the settlement products would take place, valued at approximately $6.1 million. Frank's own case citation does not require anything more than that which has been presented to the Court.

Frank also disparages the low lodestar sought by Plaintiffs here, which reflects 53% of counsel's reported lodestar. Frank Second Obj. at 11. However, Frank's second objection misses the point of Plaintiffs' argument regarding the use of the lodestar cross check analysis. Courts in the Second Circuit are permitted to use the lodestar cross check to determine whether a

[4] *See* Frank Second Obj. at 11 (noting Plaintiffs' $6.1 million estimate, then writing that Plaintiffs "then instantaneously disown that number"). How Plaintiffs "instantaneously disown" the $6.1 million figure is wholly unclear, even after a detailed review of the entirety of Frank's Second Objection.

percentage fee request is reasonable under the factors set forth in *Goldberger v. Integrated Res. Inc.*, 209 F.3d 43 (2d Cir. 2000).[5] Frank continues to ignore the *Goldberger* factors, and makes no attempt in his second objection to apply them to the facts here. Incredibly, while he attacks the reasonableness of Plaintiffs' requested fee award, he conceded in another case that an unenhanced lodestar reflects a reasonable fee. Notably, in *Lonardo v. Travelers Indem. Co.*, 706 F. Supp. 2d 766, 813 (N.D. Ohio 2010), "citing the recent Supreme Court case *Perdue v. Kenny A*," Frank conceded "that there is a strong presumption that an unenhanced lodestar is a reasonable fee" and "he state[ed] that a multiplier of 1.3…or even 1.0 may be more appropriate if the Court were to rely upon the lodestar, rather than the percentage of recovery, as grounds for the fee." *See also Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 130 S. Ct. 1662, 1673 (2010) (confirming the '"strong presumption' that the lodestar figure is [a] reasonable fee"). If the Supreme Court suggests that an unenhanced lodestar is a presumptively reasonable fee, Frank's position that a fee request reflecting approximately half of an unenhanced lodestar fee is unreasonable cannot be reconciled.

Frank also ignores the significant efforts undertaken by Plaintiffs' counsel in bringing this case to a fully briefed motion for class certification and then settlement. For this reason, Frank's citation to the decision in *In re Classmates.com Consol. Litig.*, 2012 U.S. Dist. LEXIS 83480, at *19 (W.D. Wash. June 15, 2012), is unavailing. By contrast, the *Classmates* litigation efforts appeared focused on working on settlement related issues. *See id.* at *19-20 ("Giving

[5] The percentage fee request is based on the entire settlement fund, not just a portion: "The entire Fund, and not some portion thereof, is created through the efforts of counsel at the instigation of the entire class. An allocation of fees by percentage should therefore be awarded on the basis of the total funds made available, whether claimed or not." *Masters v. Wilhelmina Model Agency, Inc.*, 473 F.3d 423, 437 (2d Cir. 2007). And, Plaintiffs seek a reasonable percentage of the fund in-line with other cases approved in this district, a fact unopposed by any objector. *See generally* Mem. Supp. at 3-4 (Dkt. # 201-1).

undue weight to class counsel's lodestar calculation would only encourage work that did not benefit the class. Nearly four years of litigation have resulted in no litigation on the merits, two versions of an initial settlement that the court could not approve, and a second settlement that the court approves only begrudgingly. One of the reasons that class counsel spent so much time litigating this case is that it spent so much time either negotiating or defending settlements that were either inadequate or barely adequate."). That is not the situation before the Court.

2. Frank offers nothing new in support of his Rule 23(h) argument.

Most of Frank's response here provides nothing new, but rather serves as a reply in support of his original objections. Because these original objections do not withstand scrutiny, and because Plaintiffs do not intend to burden the Court with a sur-reply where one is unnecessary, Plaintiffs incorporate their response as originally drafted.

E. The Objectors Are Not Entitled to a Fee Award

Lastly, Objector Frank seeks fees. Frank Second Obj. at 13-14. Because Frank has not filed a motion for fees and his arguments are thus premature, Plaintiffs reserve all arguments in response.

Nonetheless, the participation of the objectors did not "assist[] the court and enhance[] the recovery." *White v. Auerbach*, 500 F.2d 822, 828 (2d Cir. 1974). Rather, during the claims process, the parties monitored the claims rate in the case. Moreover, the parties were also aware of the *Baby Products* decision prior to Frank's filing. Thus, prior to final approval, the parties moved to increase the number of direct distributions to Settlement Class Members.

In one of Frank's principal cases, *Lonardo*, 706 F. Supp. 2d at 766, the court initially rejected Frank's request for fees finding "that they did not increase the tangible or intangible benefits available to this Settlement Class." *Id.* at 807 (emphasis in original). The *Lonardo* court pointed out that "Mr. Greenberg and his counsel, Mr. Frank, argue that they have provided

a benefit to the Settlement Class by at least encouraging the parties to re-visit the attorneys' fees provisions of the Settlement Agreement," but called him out on his lack of evidence supporting his position. *Id.* As the court explained:

> With the exception of pointing out that the amendment to the Settlement Agreement occurred after he filed his objection, however, Mr. Greenberg has not submitted any evidence to support the notion that his objections – as opposed to the objections of other Settlement Class Members, or even objections of the Court itself – actually provided a meaningful benefit to the class.

Id. While the *Lonardo* court ultimately awarded Frank attorneys' fees, it did so only after review of a declaration submitted by class counsel which stipulated that "Mr. Greenberg's objection played a role in the continuing negotiations that culminated in the First Amendment to the Settlement Agreement." *Id.* at 808. This Court should reject Frank's request here.

IV. CONCLUSION

Thus, for the reasons provided above and for good cause shown, Plaintiffs respectfully request that the Court grant final approval of the Settlement as amended, grant their requested award of reasonable attorneys' fees, and grant them all such other relief as the Court deems necessary and appropriate.

Dated: March 22, 2013

Respectfully submitted,

By: /s/ Elizabeth A. Fegan
Elizabeth A. Fegan
Daniel J. Kurowski
Hagens Berman Sobol Shapiro LLP
1144 W. Lake Street, Suite 400
Oak Park, IL 60301
Telephone: (708) 628-4960
Facsimile: (708) 628-4950
Email: beth@hbsslaw.com
E-mail: dank@hbsslaw.com

Steve W. Berman
Ivy Arai Tabbara
Hagens Berman Sobol Shapiro LLP
1918 Eighth Avenue, Suite 3300
Seattle, WA 91810
Telephone: (206) 623-7292
Facsimile: (206) 623-0594
Email: steve@hbsslaw.com
ivy@hbsslaw.com

Co-Lead Counsel for Plaintiffs

By: /s/ Michael A. London
Michael A. London
Virginia Anello
Douglas & London, P.C.
111 John Street, 14th Floor
New York, NY 10038
Telephone: (212) 566-7500
Facsimile: (212) 566-7501
Email: mlondon@douglasandlondon.com
Email: vanello@douglasandlondon.com

Co-Lead and Liaison Counsel for Plaintiffs

Andres F. Alonso
Alonso Krangle LLP
445 Broad Hollow Road, Suite 205
Melville, NY 11747
Telephone: (516) 350-5555

Jerrold S. Parker
Parker Waichman LLP
111 Great Neck Road, 1st Floor
Great Neck, NY 11021
Telephone: (516) 466-6500

D. Greg Blankinship
Meiselman, Packman, Nealon,
Scialabba & Baker P.C.
1311 Mamaroneck Avenue
White Plains, NY 10605
Telephone: (914) 517-5000

Daniel E. Becnel, Jr.
Becnel Law Offices
106 W 7th Street
Reserve, LA 70084
Telephone: (985) 536-1186

James G. Onder
Mark R. Niemeyer
Onder, Shelton, O'Leary & Peterson, LLC
110 East Lockwood
St. Louis, MO 63119
Telephone: (314) 963-9000

W. Lew Garrison
Gayle Douglas
William L. Bross, IV
Heninger Garrison Davis
2224 1st Avenue North
Birmingham, AL 35203
Telephone: (205) 326-3336

Daniel J. Mogin
The Mogin Law Firm P.C.
707 Broadway, Suite 1000
San Diego, CA 92101
Telephone: (619) 687-6611

Scott W. Weinstein
Morgan & Morgan, P.A.
12800 University Drive, Suite 600
Fort Myers, FL 33907
Telephone: (239) 433-6880

J. Barton Goplerud
Hudson Mallaney Shindler & Anderson, P.C.
5015 Grand Ridge Drive, Suite 100
West Des Moines, IA 50265
Telephone: (515) 223-4567

Daniel K. Touhy
Terrence Buehler
Touhy, Touhy, Buehler & Williams LLP
55 West Wacker, Suite 1400
Chicago, IL 60601
Telephone: (312) 372-2209

David J. Cohen, Esq.
Kolman Ely, P.C.
414 Hulmeville Avenue
Penndel, PA 19147
Telephone: (215) 750-3134

Matthew J. Herman
Robert Foote
Stephen William Fung
Kathleen Chavez
Foote, Mielke Chavez & O'Neil
10 W. State Street, Suite 200
Geneva, IL 60134
Telephone: (630) 232-7450

Additional counsel for Plaintiffs and the putative classes

Exhibit 1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

IN RE: BAYER CORP. COMBINATION ASPIRIN PRODUCTS MARKETING AND SALES PRACTICES LITIGATION THIS PLEADING RELATES TO: ALL CASES	09-md-2023 (BMC)(JMA) **COGAN**, District Judge

DECLARATION OF TRICIA M. SOLORZANO REGARDING PURCHASE RECORDS

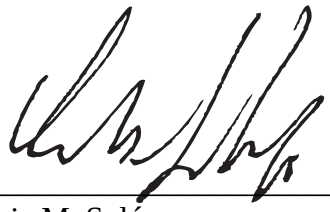
I, TRICIA M. SOLORZANO, declare:

1. I am employed as a case manager by Gilardi & Co. LLC ("Gilardi"), located at 3301 Kerner Blvd., San Rafael, California. Gilardi was retained as the Claims Administrator in this case, and as the case manager, I oversaw the administrative services provided. I have personal knowledge of the facts set forth herein and, if called as a witness, could and would testify competently thereto. I submit this Declaration at the request of Plaintiffs' Counsel regarding the *Bayer Corp. Combination Aspirin Products Marketing & Sales Practices Litigation.* Case No. 09-MD-2023, notice and administration program. Counsel has asked Gilardi to provide detail about the purchase records received by Gilardi in this case.

2. The following chart reflects Gilardi's analysis of the purchase records received by Class Counsel from CVS, Wal-Mart/Sam's Club, BJ's Wholesale, and Safeway.

Retailer	Number of Class Members with Valid Addresses	Number of Units of Bayer Women's Purchased by These Class Members	Number of Units of Bayer Heart Advantage Purchased by These Class Members
CVS	364,353	301,596	319,222
Wal-Mart/Sam's Club	89,683	150,280	0
BJ's Wholesale	62,898	0	87,071
Safeway	49,686	64,324	23,743

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed this 22nd day of March 2013, at San Rafael, California.



Tricia M. Solórzano