

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

Monique Bell, Tree Anderson, and Melissa  
Conklin, *individually and on behalf of all others  
similarly situated,*

Plaintiffs,

v.

CVS Pharmacy, Inc.,

Defendant,

CASE NO.: 21-cv-06850-PK

**DECLARATION OF  
SCOTT M. FENWICK OF KROLL  
SETTLEMENT ADMINISTRATION LLC  
IN CONNECTION WITH FINAL  
APPROVAL OF SETTLEMENT**

Date: February 16, 2024

Time: 11:30 a.m.

Hon. Peggy Kuo

I, Scott M. Fenwick, declare as follows:

### **INTRODUCTION**

1. I am a Senior Director of Kroll Settlement Administration LLC (“Kroll”),<sup>1</sup> the Settlement Administrator appointed in the above-captioned case, whose principal office is located at 2000 Market Street, Suite 2700, Philadelphia, Pennsylvania 19103. I am over 21 years of age and am authorized to make this declaration on behalf of Kroll and myself. The following statements are based on my personal knowledge and information provided by other experienced Kroll employees working under my general supervision. This declaration is being filed in connection with final approval of the Settlement, and is being filed contemporaneously with the *Declaration of Jeanne C. Finegan, APR in Connection with Implementation of Notice Plan*.

2. Kroll has extensive experience in class action matters, having provided services in class action settlements involving antitrust, securities fraud, labor and employment, consumer, and government enforcement matters. Kroll has provided notification and/or claims administration services in more than 3,000 cases.

### **BACKGROUND**

3. Kroll was appointed as the Settlement Administrator to provide notification and Claims administration services in connection with that certain Class Action Settlement Agreement (the “Settlement Agreement”) entered into in this Action. Kroll’s duties in connection with the Settlement have and will include: (a) preparing and sending notices in connection with the Class Action Fairness Act; (b) receiving and analyzing the Class List from Defendant; (c) creating a Settlement Website with online Claim filing capabilities; (d) establishing a toll-free telephone number; (e) establishing a post office box for the receipt of mail; (f) preparing and sending Direct Notice via email; (g) initiating a media campaign, including online banners; (h) receiving and processing Claim Forms; (i) receiving and processing opt outs and objections; and (j) such other tasks as counsel for the Parties or the Court request Kroll to perform.

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<sup>1</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Settlement Agreement (as defined below).

## NOTICE PROGRAM

### The CAFA Mailing

4. As noted above, on behalf of the Defendant, Kroll provided notice of the proposed Settlement pursuant to the Class Action Fairness Act, 28 U.S.C. §1715(b) (“the CAFA Notice”). At Defendant’s Counsel’s direction, on May 3, 2023, Kroll sent the CAFA Notice, a true and correct copy of which is attached hereto as **Exhibit A**, via first-class certified mail to (a) the Attorney General of the United States and (b) fifty-six (56) state and territory Attorneys General identified in the service list for the CAFA Notice, attached hereto as **Exhibit B**. The CAFA Notice directed the Attorneys General to the website [www.CAFANotice.com](http://www.CAFANotice.com), a site that contains all the documents relating to the Settlement referenced in the CAFA Notice.

### Data and Case Setup

5. On August 1, 2023, Kroll received two (2) Class List data files from the Defendant. The first file contained 3,996,275 total records, including first name, last name, and email address for Settlement Class Members. The second file contained 24,251 total records, including first name, last name, and email address for Settlement Class Members. Kroll undertook several steps to reconcile the two lists and compile the eventual Class List for the emailing of notices. Following a review for duplicates, as well as a review for any record with a “CVS” domain, Kroll identified 3,467,472 unique records.

6. On March 18, 2023, Kroll created a dedicated Settlement Website entitled [www.lidocainesettlement.com](http://www.lidocainesettlement.com). The Settlement Website became active on August 22, 2023, and contains details of the Settlement, key dates (i.e., Claims Deadline, Opt-Out/Objection Deadline, and Final Approval Hearing date), frequently asked questions, contact information for the Settlement Administrator, important documents related to the Settlement (including the First Amended Class Action Complaint, Settlement Agreement, Motion for Preliminary Approval of Settlement, Preliminary Approval Order, Publication Notice, Direct Notice, Long-Form Notice, and Claim Form), and allowed Settlement Class Members an opportunity to file a Claim Form

online. The Long-Form Notice and Claim Form are attached hereto as **Exhibits C and D**, respectively.

7. On March 31, 2023, Kroll established a toll-free telephone number, (833) 747-6949 for Settlement Class Members to call and obtain additional information regarding the Settlement through an Interactive Voice Response (“IVR”) system and/or by being connected to a live operator. As of January 25, 2024, the IVR system has received 534 calls, and 307 callers have been connected to live operators.

8. On March 31, 2023, Kroll designated a post office box with the mailing address *Bell v. CVS Pharmacy, Inc.*, c/o Kroll Settlement Administration LLC, PO Box 5324, New York, NY 10150-5324, in order to receive requests for exclusion, Claim Forms, objections, and correspondence from Settlement Class Members.

### **The Notice Program**

9. On August 22, 2023, Kroll sent the Direct Notice to the 3,467,472 email addresses on file for Settlement Class Members, as noted above. A true and correct copy of a complete exemplar Direct Notice (including the subject line) is attached hereto as **Exhibit E**. As of January 25, 2024, 1,118,064 emails were rejected/bounced back as undeliverable of the 3,467,472 emails attempted for delivery.

### **CLAIM ACTIVITY**

10. The Claims Deadline was November 20, 2023. As of January 25, 2024, Kroll has received 1,144 Claim Forms (inclusive of 35 late Claims Forms) submitted through the mail and 1,296,089 Claim Forms filed electronically through the Settlement Website, for a total of 1,297,233 Claim Forms

11. Any Settlement Class Member who received a Direct Notice was provided a unique “Class Member ID” on their respective notices. Any Settlement Class Member that did not receive a Direct Notice was able to register for a Class Member ID on the Settlement Website. The Class Member ID is required for Settlement Class Members to file a Claim online.

12. In consultation with counsel for the Parties, Kroll performed an extensive analysis of the Claims to determine validity and eligibility for a Benefit Payment. 586,478 Claims were rejected because the store(s) listed were not covered under the Settlement, or the product(s) purchased did not match up with the dates of sale. Kroll then removed 4,551 Claims that were duplicative of another filed Claim.

13. This, however, is only one part of the claims analysis. As advancements in technology have facilitated the administration of large and complex class action settlements, it has also provided the means by which bad faith actors, often operating out of foreign countries, are able to game the system and file thousands of fraudulent claims in any one settlement.

14. Such fraudulent claims are often submitted through the use of automated software applications that can perform repetitive tasks at rates far beyond human capability, commonly known as “bots.” Bots are capable of generating and submitting to a settlement website thousands of fake claims by creating false identities or using stolen identities obtained from the dark web or by other means, and by creating fake or single-use email addresses, all in a very short amount of time. One signal of malicious bot activity might be a sudden and significant spike in the amount of claims filed on a particular day or series of days, which is not consistent with the stream of online claims submissions typically seen in a settlement administration.

15. In addition to the foregoing, bad faith actors are further incentivized to submit fraudulent claims as the use of digital payment options have become increasingly popular amongst the general public, thus eliminating many of the historical traditional barriers to fraud inherent in paper checks or direct deposit into a traditional bank account. The use of these fraudulent tactics have become frequent and common occurrences in the world of class action settlements.

16. In order to address these concerns, Kroll routinely performs further analysis to identify and reject suspicious Claims where the Claim falls into one or more categories, including but not limited to:

- The Claim was filed from an international Internet Protocol (“IP”) addresses, had an international email domain, or provided a known international electronic

payment destination. These conditions are strong indicia of fraudulent activity and are typically denied from payment.

- The Claim filed contained a suspicious email domain or newly established email domain, along with a commonality of using certain types of electronic payment destinations. It is common to see large volume of claims filed by bots with newly established email addresses asking for payment via a virtual gift card rather than a payment method connected to a bank account. These conditions combined indicate fraudulent bot activity and are routinely denied.
- The Claim was filed on behalf of a known bad actor known to Kroll from the proprietary database it maintains.
- The Claim had indicia of a suspicious email address or is one of multiple variations of a similar email address. For example, in this matter, in addition to other indicia of suspicious activity, we saw approximately 200,000 claims filed using various combinations of the same email address suggesting fraudulent activity and therefore denied.
- The Claim had the same electronic payment account destination as three or more Claims on file.
- The Claim was filed using the same IP address as 35 or more other Claims.

17. In total, 1,113,365 Claims have been preliminarily marked for rejection, leaving a current count of approximately 183,868 Claims eligible for a Benefit Payment. Of these, the estimated average number of Products claimed is 2.63 per Claimant. Kroll and Counsel for the Parties continue to investigate Claims and the total count of Valid Claims could change.

#### **EXCLUSIONS AND OBJECTIONS**

18. The Opt-Out / Objection Deadline was October 6, 2023.
19. Kroll has received two (2) timely exclusion requests and no objections to the Settlement. A list of the exclusions received is attached hereto as **Exhibit F**.

**CERTIFICATION**

I declare under penalty of perjury under the laws of the United States that the above is true and correct to the best of my knowledge and that this declaration was executed on January 25, 2024, in Inver Grove Heights, Minnesota.

  
SCOTT M. FENWICK

# Exhibit A





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VIA U.S. MAIL

Date: May 3, 2023

To: All “Appropriate” Federal and State Officials Per 28 U.S.C. § 1715  
(see attached service list)

Re: CAFA Notice for the proposed Settlement in *Bell v. CVS Pharmacy, Inc.* Case No. 1:21-cv-06850-PK, pending in the United States District Court for the Eastern District of New York

Pursuant to Section 3 of the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1715, Defendant CVS Pharmacy, Inc. (“Defendant” or “CVS Pharmacy, Inc.”) hereby notifies you of the proposed settlement of the above-captioned action (the “Action”), currently pending in the United States District Court for the Eastern District of New York (the “Court”).

Eight items must be provided to you in connection with any proposed class action settlement pursuant to 28 U.S.C. § 1715(b). Each of these items is addressed below, and all exhibits are available for download at [www.CAFANotice.com](http://www.CAFANotice.com) under the folder entitled *Bell v. CVS Pharmacy, Inc.*:

1. 28 U.S.C. § 1715(b)(1) – a copy of the complaint and any materials filed with the complaint and any amended complaints.

The Class Action Complaint is available as **Exhibit A**. The First Amended Class Action Complaint is available as **Exhibit A1**.

2. 28 U.S.C. § 1715(b)(2) – notice of any scheduled judicial hearing in the class action.

On March 20, 2023, Plaintiff filed a motion for preliminary approval of the class action settlement, which was granted by Order dated April 25, 2023. The Court has not yet scheduled the Final Approval Hearing for this matter. The proposed Preliminary Approval Order is available as **Exhibit B**.

3. 28 U.S.C. § 1715(b)(3) – any proposed or final notification to class members.

Copies of the proposed Direct Notice, Long Form Notice, and Publication Notice will be provided to Class Members, in the manner and as proposed by the Settlement Agreement, and will be available on the Settlement Website created for the administration of this matter. These are available as **Exhibits C, D and E** respectively. The Direct and Long Form Notices describe, among other things, the

claim submission process, and the Class Members' rights to object or exclude themselves from the Class. The Publication Notice will refer consumers to the Settlement Website for appropriate information.

4. 28 U.S.C. § 1715(b)(4) – any proposed or final class action settlement.

The Settlement Agreement is available as **Exhibit F**.

5. 28 U.S.C. § 1715(b)(5) – any settlement or other agreement contemporaneously made between class counsel and counsel for defendants.

There are no other settlements or other agreements between Class Counsel and counsel for Defendant beyond what is set forth in the Settlement Agreement.

6. 28 U.S.C. § 1715(b)(6) – any final judgment or notice of dismissal.

The Court has not yet entered a final judgment or notice of dismissal. Accordingly, no such document is presently available.

7. 28 U.S.C. § 1715(b)(7) – (A) If feasible, the names of class members who reside in each State and the estimated proportionate share of the claims of such members to the entire settlement to that State's appropriate State official; or (B) if the provision of the information under subparagraph (A) is not feasible, a reasonable estimate of the number of class members residing in each State and the estimated proportionate share of the claims of such members to the entire settlement.

The definition of the Class in the proposed Settlement Agreement means all persons who purchased Products in the United States during the Class Period. Excluded from the Settlement Class are: (a) all persons who purchased or acquired the Products for resale; (b) Defendant and its employees, principals, affiliated entities, legal representatives, successors, and assigns; (c) any persons who make a valid, timely opt-out request; (d) federal, state, and local governments (including all agencies and subdivisions thereof, but excluding employees thereof), and (e) the judges to whom the Action is assigned and any members of his/her/their immediate family.

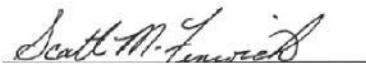
The complete list and counts by state of Class Members is not yet known. CVS is in the process of calculating estimated statewide purchase information relating to the Products within the Class, which will help provide a reasonable estimate of proportionate statewide Class Member information. Such information will be added as soon as feasible as **Exhibit G**.

8. 28 U.S.C. § 1715(b)(8) – any written judicial opinion relating to the materials described in 28 U.S.C. § 1715(b) subparagraphs (3) through (6).

There has been no written judicial opinion. Accordingly, no such document is presently available.

If you have any questions about this notice, the Action, or the materials available for download at [www.CAFANotice.com](http://www.CAFANotice.com) under the folder entitled *Bell v. CVS Pharmacy, Inc.*, please contact the undersigned below.

Respectfully submitted,

A handwritten signature in cursive script, reading "Scott M. Fenwick", is written over a horizontal line.

Scott M Fenwick

215.430.6036

[Scott.fenwick@kroll.com](mailto:Scott.fenwick@kroll.com)

# Exhibit B

## CAFA NOTICE SERVICE LIST

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# Exhibit C

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

*Bell v. CVS Pharmacy, Inc.,*  
Case No. 1:21-cv-06850-PK (E.D.N.Y.)

**If you purchased a CVS branded maximum strength lidocaine patch, cream, roll-on, or spray product between December 11, 2017, and July 18, 2023, you may be entitled to benefits from a class action settlement.**

*A federal court authorized this Long-Form Notice. This is not a solicitation from a lawyer.  
You are not being sued.*

- A settlement has been reached in a class action lawsuit. In the lawsuit, Plaintiffs Monique Bell, Tree Anderson, and Melissa Conklin (“Plaintiffs”) allege that packaging of Defendant’s Lidocaine Products (as defined below) was false and deceptive in that it led purchasers to believe that the Lidocaine Products delivered a “maximum strength” amount of lidocaine, and that the Products in patch form could reliably adhere to consumer bodies for up to 8 or 12 hours. Defendant does not concede the truth of any of the claims against it and denies that it did anything wrong. The Court has not decided who is right. Instead, the parties agreed to a compromise (“Settlement”).
- The Settlement offers payments to Settlement Class Members who file Valid Claims.
- Your legal rights will be affected even if you do not act. Your rights and options — and the deadlines to exercise them — are explained in this Long-Form Notice. Please read this Long-Form Notice carefully in its entirety. Defined terms have the meanings given to them in the Settlement Agreement.

<b>SETTLEMENT CLASS MEMBERS' LEGAL RIGHTS AND OPTIONS IN THE SETTLEMENT</b>		
<b>YOUR RIGHTS AND OPTIONS</b>	<b>WHAT THEY MEAN</b>	<b>DEADLINES</b>
<b>DO NOTHING</b>	If you are a Settlement Class Member and do not take any action, you will not receive any financial compensation under the Settlement. Further, if the Settlement is finally approved, you will be bound by the Court's final judgment and the release of claims explained in the Settlement Agreement.	None
<b>SUBMIT A CLAIM FORM</b>	If you are a member of the Settlement Class, you must submit a Valid Claim, choosing between the two claim options detailed in the Settlement and herein, to receive a payment. If the Court approves the Settlement and it becomes final and effective, and you remain in the Settlement Class, you will receive your payment by check or electronic payment. To find out how to submit a Claim Form, please read Question 11.	Submitted by (if submitted online) or postmarked by (if submitted by mail) the Claims Deadline of November 20, 2023
<b>EXCLUDE YOURSELF (OPT OUT)</b>	Get no benefits from the Settlement. Requesting exclusion from the Settlement (also called "opting out") would allow you to file or continue your own lawsuit against Defendant about the legal claims involved in the Settlement. To find out how to opt out, please read Question 13.	Postmarked on or before the Opt-Out / Objection Deadline of October 6, 2023
<b>OBJECT OR COMMENT</b>	Write to the Court about why you do or do not like the Settlement. To find out how to object or comment, please read Question 15.	Postmarked on or before the Opt-Out / Objection Deadline of October 6, 2023
<b>GO TO FINAL APPROVAL HEARING</b>	Ask to speak in court about the fairness of the Settlement. To find out how to do so, please read Question 18.	Submit a notice of intention to appear at the Final Approval Hearing by October 6, 2023

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## **BASIC INFORMATION**

### **1. Why did you receive this notice?**

This notice (“Long-Form Notice”) has been published because the Court has given its preliminary approval to the Settlement of the Action.

If you received an e-mail concerning the Settlement, that means that Defendant’s records indicate you may be a Settlement Class Member who is affected by the Settlement. You may still be a Settlement Class Member even if you did not receive an e-mail concerning the Settlement. You may also have received or seen a Publication Notice concerning this case.

### **2. What is this case about?**

Plaintiffs filed a lawsuit in which they allege that the packaging of Defendant’s Lidocaine Products was false and deceptive in that it led purchasers to believe that the Lidocaine Products delivered a “maximum strength” amount of lidocaine, and that the Products in patch form could reliably adhere to the body for up to 8 or 12 hours. Defendant denies that it did anything wrong. Accordingly, Defendant has vigorously defended Plaintiffs’ allegations. The Parties, however, have agreed to settle the Action to avoid the cost, delay, and uncertainty of continuing the Action.

### **3. Why is this a class action?**

In a class action, one or more Class Representatives or Named Plaintiffs sue on behalf of all those with the same types of claims arising from the same events. Here, the Class Representatives filed the Action as a proposed class action and asked to represent the class detailed at Question 5. They sue on behalf of people who have similar claims—called the “Settlement Class” or “Settlement Class Members”—which in this case may include you.

When this case settled, the Court had not yet decided whether the case could be a class action. Defendant disputes that a class is appropriate for trial purposes, but the Parties have agreed to the certification of the Settlement Class, as detailed at Question 5, for purposes of the Settlement, and the Court has certified a class action for settlement purposes only. More information about why this is a class action can be found in the Court’s Class Certification Order, which is available at [www.lidocainesettlement.com](http://www.lidocainesettlement.com).

### **4. Why is there a settlement?**

The Court has not decided which side is right or wrong in the Action. Instead, both sides agreed to a settlement to avoid the costs and risks of a lengthy trial and appeals process.

After extensive, arm’s-length negotiations overseen by a JAMS mediator, a former federal judge, the lawyers representing the Parties agreed to settle the Action. The Class Representatives and their lawyers think the Settlement is fair, reasonable, adequate, and in the best interests of all Settlement Class Members.

## **WHO DOES THE SETTLEMENT APPLY TO?**

### **5. Who is in the Settlement Class?**

The Settlement Class under the Settlement includes all persons who purchased Products in the United States during the Class Period, which is from December 11, 2017, through and including July 18, 2023.

“Products” means all CVS-branded “maximum strength” lidocaine patches, creams, roll-ons and spray products, including, but not limited to, the products listed in the First Amended Complaint. (ECF No. 53-1.) The Products include the following SKU numbers: 376649, 405343, 977934, 328522, 405623, 250483, 385037, 249024, 235554, 383998, 238921, 197229, 450467, 371271, 188721, 256563, 196728, 256518, 384034, 234274, 834344, 388642.

## **6. Are there exceptions to being included in the Settlement Class?**

The Settlement Class under the Settlement excludes: (a) anyone who purchased or acquired the Products for resale; (b) Defendant and its employees, principals, affiliated entities, legal representatives, successors and assigns; (c) any person who makes a valid, timely opt-out request; (d) federal, state, and local governments (including all agencies and subdivisions thereof, but excluding employees thereof); and (e) the judges to whom this Action is assigned and any members of their immediate families.

## **7. I'm still not sure if I am included.**

If you are not sure whether you are included in the Settlement Class, you can call toll-free (833) 747-6949 or visit [www.lidocainesettlement.com](http://www.lidocainesettlement.com) for more information.

### **THE SETTLEMENT BENEFITS AND OPTIONS**

If the Settlement is approved and becomes final, it will provide the benefits described below to Settlement Class Members. The benefit you may receive from the Settlement depends upon the particular claim option you choose.

## **8. What is the Settlement Sum?**

To resolve the Action, and in consideration for the Settlement and Releases agreed to therein, Defendant will make available the Settlement Sum, which is up to three million eight hundred thousand dollars and zero cents (\$3,800,000).

The Settlement Sum represents Defendant's all-inclusive, sole, exclusive, and full payment for all monetary consideration of any kind whatever to Plaintiffs, Class Representatives, Settlement Class Members, and Class Counsel, including the total amount of monetary relief available (a) to Settlement Class Members for payment of all Valid Claims, (b) for Class Representative Service Awards, and (c) for Class Counsel's Fee Award. The Settlement Sum does not include reasonable Administration Expenses, which Defendant is also paying for the benefit of the Plaintiffs, Class Representatives and Settlement Class Members.

## **9. What are the benefits of the Settlement for Settlement Class Members?**

Each Settlement Class Member will be able to choose between one of the two mutually exclusive Benefit options. One Claim is allowed per Settlement Class Member.

- (a) Settlement Class Members who fill out the Claim Form and do not provide valid Proof of Purchase(s) may recover four dollars and fifty cents (\$4.50) per Unit, limited to up to three (3) total Units (the "Simple Claim"); or
- (b) Settlement Class Members who fill out the Claim Form and provide valid Proof of Purchase(s) in the Class Period may recover four dollars and fifty cents (\$4.50) for each Unit included in the Proof of Purchase(s), without limitation on the number of Units (the "Proof Claim").

"Proof of Purchase" means a receipt or other documentation which reasonably establishes the fact of purchase of the Product during the Class Period in the United States.

A Settlement Class Member may file a Claim Form electing either option, but not both. If no proof or inadequate proof is submitted along with a Proof Claim, but the claim is otherwise a Valid Claim, it will be treated as a Simple Claim and subject to the Unit limitations therein.

The actual amount paid to each Settlement Class Member who makes a Valid Claim will depend upon the number of Valid Claims. If the total amount to be paid as a result of Valid Claims exceeds the amount of the Settlement Sum that remains after the payment of the Class Representative Service Awards and Class Counsel's Fee Award, then the Benefit payable to each Claimant shall be proportionately reduced, such that Defendant's maximum liability under this Agreement shall not exceed the Settlement Sum.

**10. Am I entitled to any other relief under the Settlement?**

As part of the consideration for this Agreement, and without admitting that the previous labels had any deceptive aspects to a reasonable consumer, Defendant has agreed to have changed the Labeling on the Products (a) to clearly identify that the Products contain the “maximum strength” of lidocaine available over the counter (“OTC”) without a prescription, and (b) to remove any language concerning the length of time the Products in patch form will adhere.

**11. What do I need to do to participate in the Settlement?**

In order to qualify for a Benefit, a Settlement Class Member must timely submit a completed and valid Claim Form before the deadline. This can be done on the Settlement Website [www.lidocainesettlement.com](http://www.lidocainesettlement.com) (submitted by the Claims Deadline of November 20, 2023) or by mail (postmarked by the Claims Deadline of November 20, 2023). Settlement Class Members must satisfy each of the Claim Form requirements.

To receive a cash payment, you must submit your Claim Form by the Claims Deadline – no later than November 20, 2023, by following the directions set forth at [www.lidocainesettlement.com](http://www.lidocainesettlement.com). Only Valid Claims will be paid.

**12. When will the Settlement go into effect?**

The Court will hold a Final Approval Hearing on December 19, 2023, to decide whether to approve the Settlement. Even if the Court approves the Settlement, there could be appeals. The time for an appeal varies and could be more than a year.

The Effective Date is the date one business day after the last of the following dates: (a) all Parties have executed the Settlement; (b) the Court has entered the Final Approval Order finally certifying the Settlement Class, finally approving the Agreement, and dismissing the Action with prejudice as to Named Plaintiffs’ and Settlement Class Members’ claims against Defendant; and (c) the date on which the time to appeal or to seek permission to appeal from the Court’s approval of the Settlement Agreement has expired or, if appealed, approval of the Settlement Agreement has been affirmed in its entirety by the Court of last resort to which such appeal has been taken and such affirmance is no longer subject to further appeal or review, or upon the denial of a writ of certiorari to review the order and final judgment from any court, thus making the Final Approval Order a final, non-appealable judgment.

You can visit the Settlement Website at [www.lidocainesettlement.com](http://www.lidocainesettlement.com) to check the progress of the Court approval process and the setting of the Effective Date. Please be patient.

Valid Claims will be paid within forty-nine (49) days of the Effective Date. The Court will have the power to enforce the terms of the Settlement Agreement.

**EXCLUDING YOURSELF FROM THE SETTLEMENT CLASS**

If you do not want to participate in the Settlement and instead you want to keep all of your rights to sue Defendant individually about the claims being resolved in the Settlement, then you must take steps to get out of the Settlement Class. This is called asking to be excluded from, or “opting out” of, the Settlement Class.

**13. If I do not want to participate in the Settlement, what must I do?**

In order to exercise the right to be excluded, a Settlement Class Member must send, postmarked by the Opt-Out/Objection Deadline of October 6, 2023, a written request for exclusion to the Settlement Administrator at the address provided in the Class Notice Program (also provided below), providing: (1) his/her/their name, address, and telephone number; (2) the name and number of this case; (3) documents or information sufficient to establish the person’s standing as a Settlement Class Member (including the Product purchased and date and location of purchase); (4) a statement that he/she/they wishes/wish to be excluded from the Settlement Class; and (5) a signature. No mass or class opt-outs will be permitted.

Your written request for exclusion from the Class should be mailed to:

Bell v. CVS Pharmacy, Inc.  
c/o Kroll Settlement Administration LLC  
PO Box 5324  
New York, NY 10150-5324

If your request is not postmarked by the Opt-Out/Objection Deadline of October 6, 2023, your right to opt out will be waived and you will be bound by all orders and judgments entered in connection with the Settlement. In that case, you will not be entitled to any benefits unless you have filed a Valid Claim.

#### **14. If I exclude myself, can I get anything from the Settlement?**

No. Any Settlement Class Member who validly opts out of the Settlement Class shall not: (a) be bound by any orders or judgments relating to the Settlement; (b) be entitled to relief under, or be affected by, this Agreement; (c) gain any rights by virtue of this Agreement; or (d) be entitled to object to any aspect of the Settlement. Except for those Settlement Class Members who timely and properly file a request for exclusion, all other Settlement Class Members will be deemed to be Settlement Class Members for all purposes under the Agreement, and upon the Effective Date, will be bound by its terms even if they file no Valid Claim. If you exclude yourself, you will receive no payment from the Settlement but will retain the ability to sue Defendant later, subject to the applicable statute of limitations or other defenses.

#### **15. How do I tell the Court if I do not like the Settlement?**

If you are a Settlement Class Member, you can object to the Settlement if you do not like any part of it. You can also object to Class Counsel's Application for Attorneys' Fees and Expenses, and the Class Representative Service Awards. You can give reasons why you think the Court should not approve the Settlement or Application. The Court will consider your views.

Anyone who objects to the Settlement, the Settlement Agreement, the Application for Attorneys' Fees and Expenses or the Class Representative Service Award, or the other matters to be considered at the Final Approval Hearing must, on or before the Opt-Out / Objection Deadline of October 6, 2023, serve a written objection. The written objection must include the following information:

- A caption or title that identifies it as "Objection to Class Settlement in Bell v. CVS Pharmacy, Inc.";
- Name, address, and telephone number for the objecting Settlement Class Member;
- Documents sufficient to establish the person's standing as a Settlement Class Member (including the Product purchased and date and location of purchase);
- The facts supporting the objection;
- The legal grounds on which the objection is based, including all citations to legal authority and evidence supporting the objection;
- The name and contact information of any and all attorneys representing, advising, or in any way assisting the objector in connection with the preparation or submission of the objection or who may profit from the pursuit of the objection (the "Objecting Attorneys"); and
- The objector's signature (an attorney signature is not sufficient).

If a Settlement Class Member or any of the Objecting Attorneys has objected to any class action settlement within the last five years, then the objection must include a statement identifying each such case by full case caption and the amount of any payment received. No mass or class objections will be permitted.



Any Settlement Class Member who fails to object to the Settlement in the manner described in this Section shall be deemed to have waived any such objection, shall not be permitted to object to any terms or approval of the Settlement at the Final Approval Hearing, and shall be foreclosed from seeking any review of the Settlement or the terms of this Agreement by appeal or other means.

If an objecting person chooses to appear at the Final Approval Hearing, a notice of intention to appear must be filed with the Court no later than the Opt-Out / Objection Deadline. The notice of intention to appear must identify: (i) whether the appearance will be through counsel, (ii) any witnesses the objecting person may call to testify at the Final Approval Hearing; and (iii) copies of all exhibits the objecting person intends to introduce into evidence at the Final Approval Hearing. Only Settlement Class Members who submit timely objections including notices of intention to appear may speak at the Final Approval Hearing. If a Settlement Class Member makes an objection through an attorney, the Settlement Class Member will be responsible for his/her/their personal attorney's fees and costs.

You must also serve the objection and notice of intention to appear (if any) on the Settlement Administrator, Class Counsel, and Defense Counsel, as follows:

*Upon the Settlement  
Administrator at:*

Bell v. CVS Pharmacy, Inc.  
c/o Kroll Settlement  
Administration LLC  
PO Box 5324  
New York, NY 10150-5324

*Upon Defendant's Counsel at:*

Mark S. Eisen  
Emily N. Dillingham  
Benesch Friedlander Coplan & Aronoff LLP  
71 S. Wacker Dr.  
16<sup>th</sup> Floor  
Chicago, IL 60606  
312-212-4949  
Fax: 312-767-9192  
meisen@beneschlaw.com  
edillingham@beneschlaw.com

*Upon Class Counsel at:*

Joseph I. Marchese  
Bursor & Fisher, P.A.  
1330 Avenue of the Americas  
New York, New York 10019  
jmarshese@bursor.com

*Upon Class Counsel at:*

Adrian Gucovschi, Esq.  
GUCOVSKI ROZENSHTEYN, PLLC  
140 Broadway, Suite 4667  
New York, NY 10005  
Telephone: (212) 884-4230  
E-Mail: adrian@gr-firm.com

**If you do not comply with the foregoing procedures and the Opt-Out/Objection Deadline for submitting written objections, you may lose substantial legal rights to contest the orders or judgments of the Court entered in connection with the Settlement, including the ability to object.**

**THE LAWYERS REPRESENTING YOU**

**16. Do I have a lawyer in this case?**

If you are a Settlement Class Member and do not opt out, you have a lawyer in this case. The Court has appointed the law firms of Bursor & Fisher, P.A. and Gucovschi Rozenshteyn, PLLC as Class Counsel to represent the Settlement Class Members. The only fees, costs, and expenses these lawyers will seek are those described in Question 17 below. If you want to be represented by your own lawyer in this case, you may hire one at your own expense.

### **17. How will the lawyers be paid?**

Class Counsel has worked without compensation on this case since it was filed. In connection with the Final Approval Hearing on the Settlement, Class Counsel will apply to the Court for an award of Attorneys' Fees and Expenses, with the total amount not to exceed \$1,140,000.00. This amount is being paid from the Settlement Sum.

Class Counsel will also apply to the Court for the Class Representative Service Awards in an amount not to exceed \$3,000 each. The Class Representative Service Awards compensates the Class Representatives for their efforts and commitment on behalf of the Settlement Class during the Action. This amount is being paid from the Settlement Sum.

## **THE COURT'S FINAL APPROVAL HEARING**

### **18. When and where will the Court decide whether to approve the Settlement?**

The Court will hold a Final Approval Hearing to decide whether to approve the Settlement and whether to grant Class Counsel's Application for Attorneys' Fees and Expenses and Class Representative Service Awards. You may attend and you may ask to speak if you have filed a timely and compliant notice of intention to appear, but you do not have to do either one.

The Final Approval Hearing will be held before the Honorable Peggy Kuo on December 19, 2023, at 11:30 a.m. **Eastern Time**, at United States District Court, Eastern District of New York 225 Cadman Plaza East Brooklyn, Room 11C South, New York 11201.

**Do not write or call the judge or the clerk concerning this Long-Form Notice or the Action.**

The purpose of the Final Approval Hearing will be for the Court to determine whether the Settlement should be finally approved as fair, reasonable, and adequate, and in the best interests of the Settlement Class, and to consider awarding the Fee Award to Class Counsel and the Class Representative Service Awards. At the hearing, the Court will hear any objections and arguments that have properly been submitted, as set forth above, concerning the fairness of the Settlement or the fees.

The date of the Final Approval Hearing may change without further notice to the Settlement Class. Settlement Class Members should be advised to check the Settlement Website at [www.lidocainesettlement.com](http://www.lidocainesettlement.com) to check on the date of the Final Approval Hearing, the Court-approval process, and the Effective Date.

### **19. Do I have to come to the Final Approval Hearing?**

No, you are not required to come to the Final Approval Hearing. Class Counsel will answer any questions the Court may have.

If you send an objection, you do not have to come to the Court to talk about it. As long as you served your written objection by the Opt-Out/Objection Deadline and complied with the other requirements for a proper objection, the Court will consider it.

### **20. May I speak at the Final Approval Hearing?**

You or your lawyer may ask the Court for permission to speak at the Final Approval Hearing if you have filed a timely and compliant notice of intention to appear.

**You may not be able to speak at the hearing if you do not comply with the procedures set out in this Long-Form Notice and the Settlement Agreement.**

**IF YOU DO NOTHING**

**21. What happens if I do nothing?**

If you are a Settlement Class Member, you must file a Valid Claim by the Claims Deadline, November 20, 2023, as described in response to Question 11, to receive a cash payment.

**IF YOU DO NOTHING OR YOUR CLAIM FORM IS INVALID AND THE SETTLEMENT IS FINALLY APPROVED, YOU WILL BE BOUND BY THE COURT'S FINAL JUDGMENT AND RELEASE OF CLAIMS EXPLAINED IN THE SETTLEMENT AGREEMENT, AND WILL NOT BE ENTITLED TO COMPENSATION.**

**GETTING MORE INFORMATION**

**22. How do I get more information?**

This Long-Form Notice is only a summary of the terms of the Settlement. More details about the Settlement, the Effective Date, the Opt-Out/Objection Deadline, the Claims Deadline, and your options are available in a longer document called the Settlement Agreement. This Settlement Agreement can be reviewed at [www.lidocainesettlement.com](http://www.lidocainesettlement.com).

The Settlement Website also contains answers to common questions about the Settlement, plus other information to help you determine whether you are a Settlement Class Member. In addition, some of the key documents in the case will be posted on the Settlement Website. If you would like this Long-Form Notice, the Claim Form, or the Settlement Agreement mailed to you, please call (833) 747-6949 or write to the Settlement Administrator at:

Bell v. CVS Pharmacy, Inc.  
c/o Kroll Settlement Administration LLC  
PO Box 5324  
New York, NY 10150-5324

Alternatively, all of the court documents in this case are on file and available for review during regular office hours at the Clerk of the Court, United States District Court for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York 11201.

**Please do not call the Court or the Court Clerk's Office to inquire about this Settlement or the Claims Process.**

# Exhibit D





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**CLAIM AND POTENTIAL CASH BENEFIT**

**You may select one option below. If you select Option 2 but do not provide a Proof of Purchase, your claim will be treated as though submitted under Option 1.**

**Option 1: I purchased one or more of the CVS store-brand maximum strength lidocaine patch, cream, roll-on, or spray Products, but I do not have proof of purchase.**

Please provide how many Units of each Product(s) you purchased, along with the name of the Product(s) purchased (descriptions of the Product(s) will not suffice), the store name and the year of the purchase(s) between December 11, 2017 through July 18, 2023.

**NOTE:** You will be paid for up to three (3) total Units (single containers) of the lidocaine Products without Proof of Purchase, up to a maximum of \$4.50 per Unit.

Product(s) Name	Number of product(s)	Store Name	Purchase Year

**Option 2: I purchased one or more of the CVS store-brand maximum strength lidocaine patch, cream, roll-on, or spray Products and I do have Proof of Purchase.**

Please provide how many units of each Product(s) you purchased, along with the name of the Product purchased, the store name and the year of the purchase between December 11, 2017 through July 18, 2023. You must include your Proof of Purchase, which can be any receipt, copies of receipts, paid invoice, or other similar types of documentation showing your purchase of the Lidocaine Products.

**NOTE:** If you select this option and provide valid Proof of Purchase, you will be paid up to a maximum of \$4.50 per Unit supported by your valid Proof of Purchase.

Product(s) Name	Number of product(s)	Store Name	Purchase Year

If additional space is needed, use the back of the Claim Form.



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Page 2 of 3



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**CERTIFICATION**

By submitting this Claim Form, I declare under penalty of perjury that: (i) I purchased one or more CVS store-brand Products (as defined in the Settlement Agreement), (ii) in the United States, (iii) between December 11, 2017 and July 18, 2023, (iv) and that such purchase(s) was not for purposes of resale. This Claim Form may be researched and verified by the Settlement Administrator.

Additional information regarding the Settlement can be found at [www.lidocainesettlement.com](http://www.lidocainesettlement.com).

Signature: \_\_\_\_\_ Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

**ACCURATE CLAIMS PROCESSING TAKES TIME. THANK YOU FOR YOUR PATIENCE**

Reminder Checklist:

1. Please sign the above Claim Form and complete all of the information requested above.
2. If filing under Option 2, enclose a copy of your Proof(s) of Purchase.
3. Keep a copy of your Claim Form and supporting documentation for your records.



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Page 3 of 3

# Exhibit E



Bell et.al. v. CVS Pharmacy Inc., CVS-brand Max Strength Lidocaine Class Settlement Notice

**Class Member ID: 68899erikabri**

**UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF NEW YORK**  
***Bell et. al. v. CVS Pharmacy, Inc., Case No. 1:21-cv-06850-PK***

*A federal court authorized this Direct Notice. This is not a solicitation from a lawyer.*

A Settlement has been reached in a class action lawsuit. In the lawsuit, Plaintiffs Monique Bell, Tree Anderson, and Melissa Conklin (“Named Plaintiffs”) allege that the packaging of Defendant’s Lidocaine Products was false and deceptive in that it led purchasers to believe that the Lidocaine Products delivered a “maximum strength” amount of lidocaine, and that the Products in patch form could reliably adhere to the body for up to 8 or 12 hours. Defendant does not concede the truth of any of the claims against it and denies that it did anything wrong. The Court has not decided who is right. Instead, the parties agreed to a compromise (“Settlement”). Defined terms have the meanings given to them in the Settlement Agreement.

**Who’s Included?** The Settlement Class is defined as all persons who purchased Products in the United States during the Class Period, which is from December 11, 2017, through and including July 18, 2023. You received this Direct Notice because records show that you may be a Settlement Class Member.

“Products” means all CVS-branded “maximum strength” lidocaine patches, creams, roll-ons, and spray products, including, but not limited to, the products listed in the First Amended Complaint. (ECF No. 53-1.) The Products include the following SKU numbers: 376649, 405343, 977934, 328522, 405623, 250483, 385037, 249024, 235554, 383998, 238921, 197229, 450467, 371271, 188721, 256563, 196728, 256518, 384034, 234274, 834344, 388642. If the product you bought was sold under the CVS brand and says “maximum strength” on the box, you may qualify as a Settlement Class Member.

**What Are the Settlement Terms?** In consideration for the Settlement and Releases agreed to as part of the Settlement and subject to the rights, terms, and conditions of the Settlement, Defendant will make available the Settlement Sum, which is the maximum of up to three million eight hundred thousand dollars and zero cents (\$3,800,000) that Defendant will make available to resolve the Action. The Settlement Sum represents Defendant’s all-inclusive, sole, exclusive, and full payment to constitute all monetary consideration of any kind whatsoever for Plaintiffs, Class Representatives, Settlement Class Members, and Class Counsel, including (a) the total amount of monetary relief available to Settlement Class Members for payment of all Valid Claims, (b) Class Representative Service Awards, and (c) Class Counsel’s Fee Award. The Settlement Sum does not include reasonable Administration Expenses, which are also being paid by Defendant.

Each Settlement Class Member who submits a timely and valid Claim Form by the Claims Deadline in the manner required by the Agreement, shall receive a payment as detailed below and in greater detail in the Settlement. Settlement Class Members will be able to choose between two Benefit options (but cannot choose both).

- (a) Settlement Class Members who fill out the Claim Form and do not provide valid Proof of Purchase(s) (as defined below), may recover four dollars and fifty cents (\$4.50) per Unit, limited to up to three (3) Units (the “Simple Claim”); or
- (b) Settlement Class Members who fill out the Claim Form and provide a valid Proof of Purchase(s) for each Unit dated in the Class Period may recover four dollars and fifty cents (\$4.50) for each Unit contained in the Proof of Purchase(s), for any number of documented Units (the “Proof Claim”).

“Proof of Purchase” means a receipt or other documentation which reasonably establishes the fact of purchase of the Product during the Class Period in the United States.

A Settlement Class Member may file a Claim Form electing a Simple Claim (up to three total Units) or a Proof Claim (unlimited Units for which the Proof(s) of Purchase supports), but not both. If no proof or inadequate proof

is submitted along with a Proof Claim, but the claim is otherwise a Valid Claim, it will be treated as a Simple Claim and subject to the limit of three total Units. The actual total amount paid to Settlement Class Members will depend upon the number of Valid Claims. If the total amount to be paid as a result of Valid Claims exceeds the amount of the Settlement Sum that remains after the payment of Class Representative Service Awards and the Class Counsel's Fee Award, then the payment payable to each Claimant shall be proportionately reduced, that Defendant's maximum liability under this Agreement shall not exceed the Settlement Sum plus the Administration Expenses.

Settlement Class Members who file a Valid Claim will be sent their payments to the address or electronic payment method they submit or select on their Claim Form within 49 days following the Effective Date.

**How Do I Submit a Claim Form?** To get a payment, you must submit a Claim Form by the deadline stated below. You may download and submit a Claim Form at the Settlement Website, [www.lidocainesettlement.com](http://www.lidocainesettlement.com), or request a Claim Form by calling the Settlement Administrator at the toll-free number below. To be valid, a Claim Form must be completed fully and accurately and submitted on time. You may submit a Claim Form by U.S. mail or file it online. If you send in a Claim Form by U.S. mail, it must be postmarked by the Claims Deadline of **November 20, 2023**. Claim Forms submitted online must be submitted by the Claims Deadline of **11:59 p.m. EST on November 20, 2023**.

**Exclude Yourself.** If you do not want to be legally bound by the Settlement, you must exclude yourself from the Settlement Class by the Opt-Out / Objection Deadline of **October 6, 2023**. If you do not exclude yourself, you will release any claims you may have, as more fully described in the Settlement Agreement, available at the Settlement Website. If you exclude yourself, you will receive no payment from the Settlement but will retain the ability to sue Defendant later, subject to the applicable statute of limitations or other defenses. The Settlement and the Long-Form Notice available on the Settlement Website explain the requirements for excluding yourself.

**Object.** If there is something about the Settlement you do not like, you may object to the Settlement by the Opt-Out / Objection Deadline of **October 6, 2023**. You may only object if you do not exclude yourself from the Settlement Class. Objections must be signed, provide the reasons for the objection, and comply with the other requirements set forth in the Settlement and by the Court in its order granting preliminary approval of the Settlement, a copy of which is accessible at [www.lidocainesettlement.com](http://www.lidocainesettlement.com). The Settlement and the Long-Form Notice available on the Settlement Website explain the requirements for objecting.

**Final Approval Hearing.** The Court will hold a Final Approval Hearing on **December 19, 2023**, before the Honorable Peggy Kuo, at **11:30 a.m. Eastern Time**, at United States District Court, Eastern District of New York 225 Cadman Plaza East Brooklyn, Room 11C South, New York 11201, to consider whether to approve the Settlement (including the Application for Attorneys' Fees and Expenses of up to \$1,140,000 of the Settlement Sum and Class Representative Service Awards of \$3,000 to each Named Plaintiff, all of which are to be paid from the Settlement Sum). You may appear at the hearing, either yourself or through an attorney you hire, but you don't have to. If you intend to appear, either yourself or through an attorney you hire, you must file and serve a notice of intention to appear satisfying the requirements set forth in the Settlement Agreement and detailed in the Long-Form Notice. For more information, call **(833) 747-6949** or visit the Settlement Website, [www.lidocainesettlement.com](http://www.lidocainesettlement.com).

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[Unsubscribe](#)

# Exhibit F

### **Exclusion List**

<b>Count</b>	<b>Record Identification Number</b>
1	68899D65CW6RH
2	68899NMS6HQ2C