IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

LISA SMITH MAULDIN, Individually and On Behalf of All Others Similarly Situated, Plaintiff,	)	Case No. 1:01-CV-2755-JEC
v.	)	
WAL-MART STORES, INC., Defendant.	)	

PLAINTIFF'S UNOPPOSED MOTION
FOR VOLUNTARY DISMISSAL

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INTRODUCTION

Plaintiff Lisa Mauldin (joined by Le Ennis and Wendy Dermady, the proposed substitute Plaintiffs in recent motion practice) hereby moves this Court for an order dismissing this action without prejudice under Federal Rule of Civil Procedure 41(a)(2) and for Court approval of the dismissal under Federal Rule of Civil Procedure 23(e)(1)(A), without the assessment of any attorney fees or costs. Defendant does not oppose this motion. ((Exhibit A, Affidavit of Mark Casciari ("Casciari Aff.") at ¶ 6; Exhibit B, Affidavit of Janine L. Pollack ("Pollack Aff.") at ¶ 3).

The primary purpose of this class action was to obtain an injunction requiring Defendant, the nation's largest private employer, to cover prescription contraceptives under its employee benefits plan. On September 14, 2006, Defendant announced to its employees that it will begin covering prescription contraceptives under its employee benefits plan as of January 1, 2007. Therefore, the central purpose of this lawsuit has been achieved.

After reviewing Defendant's announcement and the related employee benefits plan, Plaintiff's counsel conferred with the proposed substitute Plaintiffs and determined that voluntary dismissal without prejudice and without the assessment of any attorney fees or costs was appropriate. This was communicated to Defendant, which agreed. As noted, Plaintiff's counsel will not seek any award

of attorney fees. All of this occurred before the Court issued its order denying Plaintiff's Motion to Withdraw and Substitute Named Plaintiffs and Proposed Class Representatives, on November 22, 2006 ("Plaintiff's Motion to Substitute").

The legal questions raised by this motion are: (a) should the Court approve the proposed voluntary dismissal under Rule 23(e)(1)(A); (b) are class members "bound" by the proposed dismissal under Rule 23(e)(1)(B), and if so, is publication notice sufficient; and (c) if the dismissal binds class members, is the dismissal "fair, reasonable, and adequate."

As described below, the proposed dismissal should be approved because the primary goal of the action has been achieved and because there has been no collusion or fraud between the parties in obtaining this result. As to whether notice is required, the fact that the proposed dismissal is without prejudice can support a finding that class members will not be "bound," in which case the notice requirement in Rule 23(e)(1)(B) would not apply. However, the voluntary dismissal, even though without prejudice, might as a practical matter preclude certain class members from pursuing individual claims for reimbursement of amounts paid for prescription contraceptives, in the form of back pay, because they will no longer be able to "piggy back" on Plaintiff's timely filed EEOC charge (should the Court ultimately find that the Mauldin charge is "valid" and may be the subject of a "piggy back" claim). There is no clear authority on whether this type

of consideration means that class members are "bound" for purposes of Rule 23(e)(1)(B), although in this case there are good reasons not to require notice, as discussed below. If the Court determines that notice of the proposed dismissal is warranted, publication notice would suffice. Similarly, the voluntary dismissal is certainly "fair, reasonable, and adequate" under Rule 23(e)(1)(C).[1]

STATEMENT OF FACTS

On October 16, 2001, Plaintiff Lisa Mauldin filed a class action complaint ("Compl.") under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e ("Title VII"), as amended by the Pregnancy Discrimination Act, 42 U.S.C. § 2000e(k), claiming that Defendant's failure to cover prescription contraceptives under its prescription drug plan was unlawful sex discrimination. (Compl. at ¶¶1-4, 19, 42-43, 46-47, Ex. C at D-13).

On August 23, 2002, this Court certified this action as a class action under Rule 23(b)(2) because "[p]laintiff [sought] declaratory and injunctive relief requiring the defendant to stop the practice of denying women health insurance

[1] Rule 23(e)(1)'s separation between whether a voluntary dismissal should be "approved" (in subdivision (A)) and is "fair, reasonable, and adequate" (in subdivision (C), applicable if the dismissal "would bind class members") is unnecessarily clumsy in the present circumstance, because it is clear on the merits here that the proposed dismissal both warrants Court approval and is fair, reasonable, and adequate to class members. The discussion below therefore often combines the two concepts.

coverage for prescription contraceptives, and any declaratory or injunctive relief would necessarily affect the class as a whole." *Mauldin v. Wal-Mart Stores*, No. 01-cv-2755, 2002 U.S. Dist. LEXIS 21024, at *46 (N.D. Ga. Aug. 23, 2002). The Court further explained that "[a]lthough the plaintiff [also] seeks individual monetary relief,…this action may still be maintained as a 'hybrid action' under Rule 23(b)(2),…" *Id.* at *47 (*citing Cox v. Am. Cast Iron Pipe Co.*, 784 F.2d 1546, 1554 (11th Cir. 1986)), because injunctive relief is the predominant remedy sought. *Id.; see also Murray v. Auslander*, 244 F.3d 807, 812 (11th Cir. 2001).

On September 30, 2003, this Court denied Defendant's motion to reconsider the order certifying the class with respect to claims for back pay, and also denied Plaintiff's motion to give notice to the class (so that class members could retain records needed to support any claims for back pay). *Mauldin v. Wal-Mart Stores, Inc*., No. 01-CV-2755 (N.D. Ga. Sept. 30, 2003) (the "2003 Order").

On the issue of certifying the back pay claim, the Court agreed with Defendant's position that this was unlike a typical back pay case but ultimately determined that there were no "negative ramifications to maintaining the class as certified -- at least until summary judgment motions concerning liability are determined.…" 2003 Order at 7. The Court stated that its denial of Defendant's reconsideration motion on the back pay claims was without prejudice, explaining that the claim was "novel"; that it was "far from certain that plaintiff [would]

survive a summary judgment motion"; and that determining a methodology for calculating back pay "could well turn out to be an unnecessary exercise." *Id.* 8.

With respect to Plaintiff's motion for notice, the 2003 Order held that, even though notice is not categorically required in Rule 23(b)(2) cases, when monetary relief is also sought (*i.e.*, the case is "hybrid") then under the case law notice will likely be required at some stage in the proceedings. *Id.* at 11 (*citing Johnson v. General Motors Corp.*, 598 F.2d 432 (5th Cir. 1979); *Penson v. Terminal Transp. Co.*, 634 F.2d 989, 994 (5th Cir. Unit B 1981)). If Plaintiff survived a summary judgment motion, the Court "reserved the right to revisit the part of its certification order granting class status on [']back pay['] claims." *Id.* at 13. Given that "the class definition could change before this Court render[ed] a final judgment on the merits of plaintiff's complaint" and that "it is not at all certain that plaintiff [would] prevail on her claim," the Court concluded that "it makes more sense for the plaintiff to wait until after there has been a final judgment on the merits to issue class notice." *Id.* at 13-14.

Following the motion practice and order in 2003, the case proceeded and the parties filed cross-motions for summary judgment. On March 21, 2006, this Court denied Defendant's motion to re-open discovery and decertify the class. In this ruling, the Court noted:

> The Milberg Weiss attorneys claim that they had no knowledge of the payments…. They have submitted Stein's Affidavit confirming that

> he did not inform anyone at Milberg Weiss of the payments…. Stein also stated in his Affidavit that the payments were not consideration for participating in the litigation, but loans for personal matters and a sponsorship for Mauldin's daughter to attend cheerleading camp.

Mauldin v. Wal-Mart Stores, Inc., No. 01-cv-02755, 2006 U.S. Dist. LEXIS 23091, at *2 (N.D. Ga. Mar. 21, 2006).

On September 14, 2006, Defendant announced to its employees that it had changed its Associates' Medical Plan to cover the prescription contraceptives, to take effect as of January 1, 2007. (Casciari Aff. at ¶¶ 2-4; Pollack Aff. at ¶ 2). This satisfied Plaintiff's central claim for injunctive relief.

Defendant informed Plaintiffs' counsel of the coverage decision on September 5, 2006 and provided them with a copy of the January 1, 2007 plan on September 27, 2006. Plaintiffs' counsel reviewed the new plan, consulted among themselves and with their clients,[2] and then proposed a voluntary dismissal because the main goal of the litigation had been achieved. Defendant agreed, subject to its review of the draft motion, and counsel decided to prepare the present motion. (Casciari Aff. at ¶ 6; Pollack Aff. at ¶ 3). All this occurred well before

[2] Given that Lisa Mauldin had indicated her intention to withdraw and was not active in the case during the pendency of the motion to substitute, the proposed plaintiffs were, in the first instance, consulted regarding the withdrawal prior to discussions with Wal-Mart. Given the Court's recent decision denying Mauldin's withdrawal, she has been consulted regarding, and consents to, this motion.

this Court issued its order on Plaintiff's Motion to Substitute on November 22, 2006. (Cascairi Aff. at ¶ 6; Pollack Aff. at ¶¶ 3-4).

ARGUMENT

I. BECAUSE DEFENDANT HAS CHANGED ITS BENEFITS PLAN TO COVER PRESCRIPTION CONTRACEPTIVES, THE CENTRAL PURPOSE OF THIS CLASS ACTION HAS BEEN ACHIEVED

The purpose of a Rule 23(b)(2) class action is to obtain declaratory or injunctive relief against a party who has acted "on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole…" Fed. R. Civ. P. 23(b)(2); *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 614 (1997). Monetary relief may be obtained in a class action under Rule 23(b)(2) only if injunctive or declaratory relief is the predominant remedy sought by the class. *See, e.g., Murray*, 244 F.3d at 812.

In this Circuit, Title VII claims for back pay are considered equitable, and are therefore allowed in injunction cases certified under Rule 23(b)(2). *Cooper v. Southern*, 390 F.3d 695, 720 (11th Cir. 2004), *cert. denied*, No. 05-88, 2005 U.S. LEXIS 7663 (U.S. Oct. 17, 2005) (*citing Pettway v. Am. Cast Iron Pipe Co.*, 494 F. 2d 211, 257 (5th Cir. 1974)). Courts have certified classes under Rule 23(b)(2) that included back pay claims "because the injunctive or declaratory relief

predominates *despite* the presence of a request for back pay." *Thorn v. Jefferson-Pilot Life Ins. Co.*, 445 F.3d 311, 332 (4th Cir. 2006).[3]

The main purpose of the present case, and the predominant remedy sought, was an injunction requiring Defendant to provide coverage for prescription contraceptives. In the ruling on class certification, this Court acknowledged the predominance of injunctive relief by finding that "this action falls squarely within the requirements of Rule 23(b)(2)," despite Defendant's arguments that "individualized issues related to the calculation of back pay and other damages for each individual class member will predominate over the…requested injunctive relief." *Mauldin*, 2002 U.S. Dist. LEXIS 21024, at *47. By adding prescription contraceptive coverage to its employee benefits plan, the primary and predominant relief sought by this class action has been fulfilled.

II. THE COURT SHOULD APPROVE THE PROPOSED VOLUNTARY DISMISSAL OF THIS ACTION, WHICH IS FAIR, REASONABLE, AND ADEQUATE TO CLASS MEMBERS

Rule 41(a)(1) provides that dismissals by notice or stipulation are subject to Rule 23(e), which requires court approval for any voluntary dismissal of a certified

[3] The Supreme Court has held that an award of back pay is discretionary, rather than mandatory, under Title VII. *See Ford Motor Co. v. EEOC*, 458 U.S. 219, 226 (1982) (*quoting Albermarle Paper Co. v. Moody*, 422 U.S. 405, 415-16 (1975))(explaining that "'back pay is not an automatic or mandatory remedy; . . . it is one which the courts 'may' invoke' in the exercise of their sound 'discretion [which] is equitable in nature.'").

class. *See* Fed. R. Civ. P. 23(e)(1)(A). Rule 23(e)(1)(C) allows a court to approve a voluntary dismissal "that would bind class members only after a hearing and on finding" that the voluntary dismissal is "fair, reasonable, and adequate."

The main reason that Court approval is warranted has already been stated: the main purpose of the action -- prospective injunctive relief -- has been achieved. Another important factor relevant to this subject is whether the parties or counsel have engaged in "fraud or collusion" in reaching the proposed resolution. *See, e.g., Leverso v. Southtrust Bank*, 18 F.3d 1527, 1530-31 n. 6 (11th Cir. 1994). No such thing has occurred here. Furthermore, Plaintiff's counsel have no possible ulterior motive for ending the action, because they will not seek attorney fees or reimbursement of costs in this case. This Court therefore has no reason to hesitate in finding that the proposed voluntary dismissal should be approved and is fair, reasonable, and adequate to class members.

III. POSSIBLE CLAIMS FOR BACK PAY DO NOT ALTER THE CONCLUSION THAT APPROVAL IS WARRANTED

While the goal of the claim for injunctive relief has been met, Defendant's new position extending coverage does not resolve any otherwise valid claims that class members may have to recover amounts expended for purchasing prescription contraceptives in the past (which Plaintiff contends should have been covered by Defendant's benefits plan) in the form of back pay.

As described above, the Court has previously discussed the back pay issue, neither accepting nor rejecting it. The Court has noted that there is a chance that the claim could fail on summary judgment; that since the claim is equitable it might be disallowed in the Court's discretion; and that the claim might be found unsuitable for class treatment under Rule 23(b)(2). (2003 Order at 12-13).

The proposed voluntary dismissal is without prejudice and therefore would not itself have any preclusive effect on any class members' claims for back pay. As has been true throughout this litigation, any affected person could have filed an EEOC charge and followed up by bringing a court action seeking back pay. As a practical matter, however, if such a person desisted from that course of action during the pendency of this action, in the expectation that her discrimination-based claim for back pay was already being prosecuted in the action, then the voluntary dismissal might defeat that "piggy-back" expectation, and for some persons it may now be too late to file a timely EEOC charge.

Plaintiff has several observations about that situation. First, as discussed above, back pay has always been secondary in this case, compared to the main objective of obtaining ongoing coverage. Second, current employees and many others may still file timely individual claims, should they wish to pursue a back pay remedy. Third, the Court has expressed some skepticism about the merits, in equity, of such a discrimination claim for back pay.

Fourth, the only way a person interested in back pay would have not pursued her claim in deference to the class action is if she had notice of the class action and of the fact that a back pay claim was being prosecuted in it. As described above, the Court determined that notice of the action was not to be given, and in fact it was not. This greatly reduces any possibility of reliance by an absent class member on the action, and prejudice to that person from the proposed voluntary dismissal.[4] Under these circumstances, the back pay issue should not give the Court pause in approving the proposed voluntary dismissal.

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[4] It is possible that some absent class members did become aware of the case. For example, to satisfy the Court's instruction to locate substitute class representatives after Plaintiff Lisa Mauldin had announced her intention to withdraw, Plaintiff's counsel worked with a non-profit organization to mail approximately 250 letters describing the action to women identified in the organization's database as living within the three states in this Circuit, who had contacted the organization about potential discrimination by Defendant. As for media coverage of this action, a Lexis-Nexis search (http://www.lexis.com/reserarch/retrieve?_ md11339ca2d92846cd790c 9d247852f37&doc….) revealed seven news articles, all published in 2002, reporting on the certification of the class. *See* (1) Nell Smith, *Paying for 'the pill' Wal-Mart faces a class-action suit because its employee prescription plan doesn't cover birth control*, Arkansas Democrat-Gazette (Oct. 6, 2002); (2) Bill Rankin, *Wal-Mart lawsuit advances*, Orlando Sentinel (Sept. 1, 2002); (3) Associated Press, *Birth-control suite ruled a class action*, The San Diego Union-Tribune (Sept. 1, 2002); (4) Bill Rankin, *Wal-Mart faces class-action lawsuit on birth control coverage*, Atlanta Journal-Constitution (Aug. 31, 2002); (5) *Wal-Mart dealing with contraceptive suit*, Atlanta Business Chronicle (Dec. 20, 2002); (6) New York Times News Service, *Birth-control coverage suit gains class-action status*, Deseret News (Sept. 2, 2002); (7) *Judge grants class-action to Wal-Mart contraceptive suit*, The Associated Press State and Local Wire (Aug. 31, 2002). The same search revealed four additional references mentioning the class certification. *See* (1) Dan Margolies, *Area women sue AT&T*

The same considerations concerning the back pay claim in the approval context also should inform the Court in assessing whether the proposed voluntary dismissal would "bind" class members. Both Rule 23(e)(1)(B) (requiring notice) and Rule 23(e)(1)(C) (requiring a hearing and application of the "fair, adequate, and reasonable" standard) apply only if the proposed voluntary dismissal will "bind" the class. Although as a matter of law, the inability to piggyback on Mauldin's original charge could result in some class members being unable to now bring an untimely backpay claim, as a practical matter in this case those people always had the ability to file an EEOC charge including for backpay during the entire pendency of this case. Therefore, there is no prejudice to those people merely from the inability to piggy back on Mauldin's charge. Plaintiff has not found any case precedent or other authority squarely addressing this type of

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over contraceptive coverage, Kansas City Star (Jan. 21, 2003); (2) Melissa Levy; Adrienne Baker; Staff Writers, *Wal-Mart sex-bias case wins class-action status, Growing legal troubles pose an image problem*, Star Tribune (June 23, 2004); (3) from News Services, *U.S. Digest*, St. Louis Post-Dispatch (Sept. 1, 2002); (4) Liza Featherstone, *Wal-Mart Values: selling women short; Articles; sex discrimination case brought against discount store*, The Nation, (Dec. 16, 2002). Additional mentions of this class action have also appeared in subscription-only services such as the Contraceptive Technology Update, Mealey's Managed Care and Litigation Reports, the Washington Drug Letter, Bestwire and Best's Insurance News. In addition, Plaintiff's counsel (Milberg Weiss) posted brief reports about the case on its website: an October 17, 2001 posting announcing the filing of the litigation, and a September 3, 2002 announcing the certification of the class. Accordingly, some class members (though likely a relatively small number) probably knew of the existence of the class action.

question,[5] but submits that the applicable factors discussed above suggest that the type of binding effect envisioned by the rule is not present here.

If the Court nevertheless concludes that the proposed voluntary dismissal should be found to "bind" class members, then the requirements of Rules 23(e)(1)(B) and (C) come into play. As stated above, Plaintiff is confident that the proposed voluntary dismissal is "fair, adequate, and reasonable" to class members, since the main purpose of the action has been fully achieved. With respect to notice, publication notice should suffice. This Court has acknowledged that in a hybrid case such as this one, even when the claim is alive, "it will not always be

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[5] A number of courts has found that notice is not required in situations "[w]hen the dismissal or settlement of a class action is without prejudice and will not prevent any class member from bringing a subsequent action…." *See Austin v. Pennsylvania Dep't of Corrections*, 876 F. Supp. 1437, 1455 (E.D. Pa 1995) (*citing Sheinberg v. Fluor Corp.*, 91 F.R.D. 74, 75 (S.D.N.Y. 1981) (none of the reasons which underlie Rule 23's notice requirements applies because "no one's rights are being cut off and no potential abuses are present"); 2 ALBA CONTE & HERBERT B. NEWBERG, NEWBERG ON CLASS ACTIONS §11.66 (2d ed. 1992) (notice not mandatory in all instances because Rule 23(e) is "sufficiently flexible to permit the court to determine that no class notice is required when the dismissal…will not result in any prejudice to class members); *see also Selby v. Principal Mut. Life Ins. Co.*, 98 Civ, 5283, 2003 U.S. Dist. LEXIS 21138, at *14 (S.D.N.Y. Nov. 21, 2003) (*citing* 7B CHARLES ALLAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1797, p. 365 (2d ed. 1986) (courts have allowed exception to notice under Rule 23(e) where "class members will not be prejudiced by a…dismissal without notice"); 3 Newberg §8.18, p. 222 (4th Ed. 2003) ("If the court determines that dismissal of the class action will not benefit the individual representative to the detriment of the class or prejudice the class by effectively foreclosing its members from commencing a similar action, the court may dispense with notice.").

necessary that the notice given be equivalent to that required in Rule 23(b)(3) class actions." (2003 Order at 12). Moreover, the facts that class members never received court-ordered notice and media coverage of this action was minor indicate that publication notice would be sufficient, if some notice is required. *See, e.g.*, *Sikes v. American Telephone and Telegraph Co. et al.*, 841 F. Supp. 1572, 1580-81 (S.D. Ga. 1993) (explaining that lack of publicity makes it unlikely that any absent proposed class members were relying on the proposed class action). If the Court orders publication notice, Plaintiff's counsel will of course submit a proposed form upon request.[6]

CONCLUSION

For all the foregoing reasons, this motion should be granted.

CERTIFICATION OF FONT AND POINT SELECTIONS

The undersigned attorney hereby certifies that this brief has been prepared in 14-point Times New Roman font pursuant to Local Rule 5.1(B).

Dated: This 8th day of December, 2006

By: /s/
Lisa F. Harper

[6] Defendant has advised Plaintiff's counsel: Defendant has no objection to dismissal of this action without prejudice and without the assessment of any attorney's fees or costs, but does object to any Court order requiring any notice to the class, given the Court's ruling on September 30, 2003 disallowing any class notice to date in this action.

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CERTIFICATE OF SERVICE

I hereby certify that on this, the 8th day of December 2006, true and correct copies of the foregoing were served by e-mail and U.S. Mail to:

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/s/
Janine L. Pollack

EXHIBIT A

AFFIDAVIT OF MARK CASCIARI

I, Mark Casciari, state as follows:

1. I am lead counsel for the defendant in the *Lisa Smith Mauldin v. Wal-Mart Stores, Inc.*, No. 1:01-CV-2755-JEC.

2. On September 5, 2006, I called lead class counsel Janine Pollack and advised her that, for reasons having nothing to do with this lawsuit, Wal-Mart has decided to cover prescription contraceptives and related medical services as it covered other drugs in its Associates' Medical Plan effective January 1, 2007, in accordance with a specific schedule.

3. I told Janine this change will be effective January 1, 2007.

4. On September 14, 2006, Wal-Mart told its employees of this change as part of the plan open enrollment process.

5. On September 27, 2006, I sent to Janine Pollack a copy of the new Associates' Medical Plan which contains the new change concerning prescription contraceptives. A copy of the page (45) from that plan that deals with prescription contraceptives is attached hereto.

6. On October 31, 2006, Janine Pollack called me and stated that the class would like to file a motion to dismiss the *Mauldin* case without prejudice and

without the assessment of any attorney's fees or costs. Shortly thereafter, on behalf of Wal-Mart, I agreed to the filing of a motion for voluntary dismissal, subject to Wal-Mart's review of a draft motion. Janine and I then began discussions about how to do so in the most effective and efficient manner, consistent with the law. On November 22, 2006, while these discussions were ongoing, the Court issued its Order and Opinion, denying plaintiff's motion to withdraw and substitute named plaintiffs and proposed class representatives.

I declare under penalty of perjury that the foregoing is true and correct.

Mark Casciari

Executed on December 8, 2006 in Chicago, Illinois

What services are covered by the AMP?

Most Medically Necessary medical services and supplies are covered by the AMP. Some services are excluded. These are described beginning on page 56. Some services are also subject to specific restrictions and limitations in addition to the deductibles and Coinsurance requirements.

If you have a question regarding whether a particular service is covered, please contact the Third Party Administrator serving you. Contact information is provided on your Benefits ID Card and on the inside back cover of this book.

What limitations apply?

While the AMP covers most Medically Necessary expenses, some expenses are subject to limitations or restrictions. Those are described below. The limitations and restrictions described are in addition to other AMP rules, including deductibles, Coinsurance, and exclusions.

Limited Benefits

Birth Control/ Contraceptives

Services and devices covered under the contraceptive benefit:

- Diaphragms: fitting and supply
- Cervical cap: fitting and supply
- Intrauterine device (IUD): fitting, supply, and removal
- Birth control pills
- Birth control patch
- Vaginal ring
- Injection (e.g. Depo Provera) given by a physician or nurse every 3 months
- Implantable contraception (e.g. Implanon)

Norplant is no longer available in the U.S. after 2003 due to adverse side effects and difficulty in removing the device. **The Plan will cover charges for removal of the device only.**

Services and/or devices that are not included in the contraceptive benefit are:

- Abortion
- Male or female sterilization
- Over-the-counter birth control, including but not limited to: male condoms, female condoms, vaginal sponge, ovulation predictor kits, basal thermometers, and spermicides
- Prescriptions for RU-486 and Plan B, or the "Morning After" pill

Cochlear Implants

The AMP coverage of cochlear implants is limited to $60,000 in lifetime maximum benefits paid. This includes pre-testing, implants, preoperative care, and one year of follow-up care.

Contact Lenses or Glasses

The AMP covers the initial placement of contact lenses or one pair of glasses, up to a maximum of $140 in paid benefits, following cataract surgery, diagnosis of keratoconus, or treatment of esotropia in children. In no other circumstance are contact lenses or glasses covered by the AMP.

Durable Medical Equipment (DME)

(Please call your Third Party Administrator for additional details.)

To be covered, a doctor must include a diagnosis, the type of equipment needed, and expected time of usage. Examples of DME include wheelchairs, hospital-type beds, and walkers.

- The maximum annual DME benefit is $5,000 in paid benefits. If equipment is rented, the total benefit may not exceed the purchase price at the time rental began.
- Oxygen equipment, supplies, and refills are limited to $2,500 per calendar year in paid benefits. This $2,500 is in addition to the $5,000 maximum for DME. While traveling, it is your responsibility to arrange for oxygen. Oxygen furnished by an airline to a participant is not covered.

In the event the equipment is no longer required and is sold, the Plan has the right to reimbursement up to the original benefit paid for the equipment.

DME Not Covered - Motor driven scooters, invasive implantable bone growth stimulators (except in the case of spinal surgeries), oscillatory devices for the treatment of lung disorders, sitz bath, seat lift, rolling chair, vaporizer, urinal, ultra-violet cabinet, whirlpool bath equipment, bed pan, portable paraffin bath, heating pad, heat lamp, steam/hot/cold packs, devices that measure or record blood pressure, safety roller walker, and such other medical equipment or items determined by the AMP.

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

LISA SMITH MAULDIN, Individually and On Behalf of All Others Similarly Situated, Plaintiff, v. WAL-MART STORES, INC., Defendant.	)	Case No. 1:01-CV-2755-JEC

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

AFFIDAVIT OF JANINE L. POLLACK

I, Janine L. Pollack, being first duly sworn, deposes and says:

1. I am a member of the law firm of Milberg Weiss Bershad & Schulman LLP, lead counsel for Plaintiff in the above-referenced action. I submit this Affidavit in support of Plaintiff's Unopposed Motion for Voluntary Dismissal. I have personal knowledge of the facts set forth herein.

2. On September 5, 2006, Mark Casciari, counsel for Defendant Wal-Mart, called to inform me that Wal-Mart was planning on changing its employee benefits plan to cover prescription contraceptives as of January 1, 2007 and that

this decision would be made public to Wal-Mart employees on or about September 14, 2006. Mr. Casciari further informed me that he would be producing, as part of a supplemental disclosure in this case, the new employee benefits plan which would contain the details of the coverage. On September 27, 2006, Wal-Mart produced the plan to me.

3. On October 31, 2006, after, *inter alia*, reviewing the new employee benefits plan and consulting with my clients (Lisa Mauldin had requested withdrawal from the case and was not active in the case at this time), I proposed to Mr. Casciari that this action be dismissed voluntarily because the main goal of the litigation had been achieved. Mr. Casciari, on behalf of Defendant, agreed, subject to a review of a draft of the motion for voluntary dismissal and Mr. Casciari and I had several discussions regarding the content of the motion, including issues of notice. Plaintiff's counsel began drafting the motion.

4. Thereafter, on November 22, 2006, this Court issued its ruling regarding Plaintiff's Motion to Withdraw and Substitute Named Plaintiffs and Proposed Class Representatives. On November 27, 2006, the Monday after the Thanksgiving holiday, I again spoke with Mr. Casciari who informed me that Defendant still agreed to the dismissal of the case. A draft of the motion for voluntary dismissal was submitted to Defendant shortly thereafter.

Janine L. Pollack

Janine L. Pollack

Sworn to before me this 8th
day of December, 2006

Notary Public

MELISSA A McCARTHY
Notary Public, State of New York
No. 01MC6115692
Qualified in Queens County
Commission Expires September 13, 2008