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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

JOHN DOE ONE, RICHARD ROE, in his capacity as executor for JOHN DOE TWO, JOHN DOE SIX, and JOHN DOE SEVEN, on behalf of themselves and all others similarly situated and for the benefit of the general public,¹

Plaintiffs,

v.

CVS PHARMACY, INC.; CAREMARK, L.L.C.; CAREMARK CALIFORNIA SPECIALTY PHARMACY, L.L.C.; GARFIELD BEACH CVS, L.L.C.; CAREMARKPCS HEALTH, L.L.C.; and DOES 1–10, inclusive,

Defendants.

Case No. 3:18-CV-1031-EMC

THIRD AMENDED CLASS ACTION COMPLAINT FOR:

- (1) Violation of Anti-Discrimination Provisions of Affordable Care Act, 42 U.S.C. § 18116; and**
- (2) Violation of California Business & Professions Code § 17200, et seq.**

Jury Trial Demanded on All Claims So Triable

¹ On March 6, 2023 the parties filed a Stipulation dismissing Plaintiff John Doe Five without prejudice. The parties subsequently filed a Stipulation on May 25, 2023 dismissing Plaintiff John Doe Four without prejudice in his personal capacity and as the authorized representative of Plaintiff John Doe Three, also dismissed without prejudice.

1 Plaintiffs JOHN DOE ONE, RICHARD ROE, in his capacity as executor for JOHN DOE
 2 TWO, JOHN DOE SIX, and JOHN DOE SEVEN (referred to collectively herein as “Plaintiffs”),
 3 by and through the undersigned attorneys, bring this action on behalf of themselves and all others
 4 similarly situated and as applicable for the benefit of the general public against Defendants CVS
 5 Pharmacy, Inc.; Caremark, L.L.C.; Caremark California Specialty Pharmacy, L.L.C.;
 6 CaremarkPCS Health, L.L.C.; and Garfield Beach CVS, L.L.C. (hereafter collectively “CVS
 7 Caremark” or “Defendants”). Plaintiffs allege the following on information and belief, which
 8 allegations are likely to have evidentiary support after a reasonable opportunity for investigation
 9 and discovery, except as to those allegations that pertain to the named Plaintiffs, which are alleged
 10 on personal knowledge:

11 NATURE OF THE ACTION

12 1. Plaintiffs anonymously bring this action to challenge Defendants’ discriminatory
 13 business practices targeting those persons whose prescription drug benefit is administered by CVS
 14 Caremark and who are prescribed specialty medications for the treatment or prevention of
 15 HIV/AIDS (“HIV/AIDS Medications”).² Many enrollees in health plans where CVS Caremark
 16 controls and administers the pharmacy benefits are told they are required to obtain their HIV/AIDS
 17 Medications from Caremark Specialty Pharmacy d/b/a CVS/Specialty and/or Caremark California
 18 Specialty Pharmacy, L.L.C. (“CSP”), a wholly-owned subsidiary of CVS Health Corporation. CSP
 19 only delivers such medications by mail order or mails them to a CVS Pharmacy as a drop shipment
 20 location purely for pickup. This program threatens HIV/AIDS patients’ health and privacy. If
 21 HIV/AIDS patients in those plans do not obtain their HIV/AIDS Medications from CSP, then they
 22 must either pay more out-of-pocket or pay full price with no insurance benefits whatsoever—
 23 thousands of dollars or more each month—to purchase their medications at an in-network
 24 community pharmacy where they can receive counseling from a pharmacist and other services

25 _____
 26 ² Due to the sensitive nature of this action, Plaintiffs have chosen to file under fictitious names.
 27 *See, e.g., Doe v. Kaweah Delta Hosp.*, 2010 U.S. Dist. LEXIS 135808 (E.D. Cal., Dec. 22, 2010)
 28 (HIV/AIDS patient permitted to proceed anonymously); *Does I thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1068 (9th Cir. 2000) (holding that one of the grounds for proceeding anonymously was that anonymity was necessary “to preserve privacy in a matter of sensitive and highly personal nature”).

1 they may need to stay alive (hereafter, the “Program”). CVS Caremark has effectively denied and
2 continues to deny Class Members meaningful access to their prescription drug benefits as result
3 of the limitations it has imposed on access to in-network non-CVS pharmacies and pharmacists.

4 2. CVS Caremark has done this by, among other tactics, utilizing its discretion and
5 incentivizing employers to make those pharmacies and pharmacists “out-of-network” for
6 HIV/AIDS Medications, or not properly advising enrollees that they can elect not to use that
7 Program. CVS Caremark does not merely administer a prescription drug benefit plan design
8 directed by the sponsor of the plan such as, for example, an employer sponsor providing a health
9 plan that includes prescription drug benefits provided by CVS Caremark to Class Members. CVS
10 Caremark offers financial inducements to plan sponsors in order to incentivize plan sponsors to
11 enroll Class Members in prescription drug benefit plans subject to the Program with no ability for
12 Class Members to exclude themselves from the Program (“opt out”) and obtain their medications
13 at an in-network community pharmacy of their choice, or to claim they permit that ability to opt
14 out but not properly advise consumers of that option. CVS also utilizes its discretion to not
15 consistently accept rebates and discounts applicable to such medications, increasing the cost of
16 such medications to plan enrollees. As such, CVS Caremark effectively controls and directs the
17 pharmacy benefits of such plans. Furthermore, as a result of periodic plan renewals with plan
18 sponsors, CVS Caremark has an ongoing ability to alter plan terms and the prescription drug
19 benefits provided thereunder to Class Members, yet CVS Caremark has taken no corrective action
20 to ensure Plaintiffs have meaningful access to the prescription drug benefits offered.

21 3. CVS Caremark has implemented the Program and has not provided Class Members
22 a right to opt out of the Program, or if and when there is such an opt out process, has not provided
23 proper notice thereof. Each Plaintiff has been subjected to the Program. CVS Caremark also has
24 denied all of the Plaintiffs’ opt-out requests to obtain their medications at an in-network
25 community pharmacy of their choice based on a blanket uniform policy, practice, or protocol, in
26 disregard of Plaintiffs’ particular disabilities and needs. Each Plaintiff has been harmed or has
27 been threatened with imminent harm, and/or has been forced to expend additional monies as a
28 result of being forced to use the Program.

1 4. Plaintiffs seek an order of this Court declaring CVS Caremark’s conduct to be in
2 violation of federal and state law and enjoining such continued violations of law. Plaintiffs also
3 seek damages, restitution, and disgorgement based on out-of-pocket expenses Class Members
4 either have incurred or may incur as a result of the Program or the profits generated by Defendants’
5 conduct that violates the laws set forth below, as appropriate for the particular causes of action set
6 forth below.

7 **JURISDICTION AND VENUE**

8 5. This Court has jurisdiction over the parties to this action. Several named Plaintiffs
9 are residents of California, Defendants transact business in California, and the members of the
10 Class are resident citizens of California as well as other states where the Program has been
11 implemented.

12 6. Jurisdiction over Defendants is also proper because they have purposely availed
13 themselves of the privilege of conducting business activities in California and because they
14 currently maintain systematic and continuous business contacts with this State and/or are based
15 here and do business with thousands of affected enrollees who are residents of this State.

16 7. Venue is proper in this District 7 under 28 U.S.C. section 1391 because Defendants
17 maintain substantial operations in this District; at least one of the Plaintiffs and many Class
18 Members either reside or did business with Defendants in this District; Defendants engaged in
19 business in this District; a substantial part of the events or omissions giving rise to the claims at
20 issue occurred in this District; and Defendants entered into transactions and received substantial
21 profits from enrollees who reside in this District.

22 8. This Court has subject matter jurisdiction over this action. Federal question
23 jurisdiction exists based on the assertion of claims for violations of the Affordable Care Act
24 (“ACA”). Plaintiffs also allege subject matter jurisdiction for the state law claim based on the
25 Class Action Fairness Act (28 U.S.C. § 1332(d)), as the parties are from different states and the
26 amount in controversy may be in excess of \$5 million.

THE PARTIES

1
2 9. On personal knowledge, JOHN DOE ONE is a resident of Riverside County,
3 California. JOHN DOE ONE received his pharmacy benefits through CVS Caremark from 2004
4 until 2018. From 2004 until 2015, JOHN DOE ONE could purchase his HIV/AIDS Medications
5 from any in-network pharmacy, including from non-CVS pharmacies, with full insurance benefits.
6 For over six years, JOHN DOE ONE purchased his HIV/AIDS Medications from an in-network
7 non-CVS pharmacy located in Napa, California, and he developed a personal relationship with his
8 pharmacist. Beginning in January 2015, the HIV/AIDS Medication prescribed to JOHN DOE
9 ONE was subject to the Program. He was required to pay full price with no insurance benefits to
10 obtain his medication from the in-network pharmacy of his choice or use the Program he did not
11 wish to use. His requests to opt out of the Program were denied.

12 10. On personal knowledge, JOHN DOE TWO was a resident of Ventura County,
13 California. For 20 years, JOHN DOE TWO purchased his HIV/AIDS Medications from Eddie's
14 Pharmacy, a local specialty pharmacy located in Los Angeles, California that serves HIV/AIDS
15 patients. Since at least 2013, JOHN DOE TWO received his pharmacy benefits through CVS
16 Caremark, but until January 1, 2016, JOHN DOE TWO could purchase his HIV/AIDS
17 Medications from any in-network pharmacy, including from non-CVS pharmacies, with full
18 insurance benefits. Since January 2016, the HIV/AIDS Medications prescribed for JOHN DOE
19 TWO were subject to the Program. Beginning in January 2016, JOHN DOE TWO was required
20 to obtain his medications under the Program, putting his health and privacy at risk. JOHN DOE
21 TWO contacted CVS Caremark on numerous occasions to opt out of the Program, including by
22 making requests in writing to CVS Caremark's appeal department and, ultimately, the president
23 and CEO of CVS Health (CVS Caremark's parent company). However, JOHN DOE TWO's
24 requests to opt out of the Program were consistently denied. JOHN DOE TWO passed away on or
25 about May 25, 2021, and a Notice of Suggestion of Death was filed with the Court on or about
26 December 8, 2021. His claims are being presented and prosecuted by and through his Executor,
27 RICHARD ROE.

28 11. On personal knowledge, JOHN DOE SIX is a resident of Plantation, Florida. JOHN

1 DOE SIX has received his pharmacy benefits through CVS Caremark since approximately 2004.
2 Until 2014, JOHN DOE SIX could purchase his HIV/AIDS Medication from any in-network
3 pharmacy, including from non-CVS pharmacies, with full insurance benefits, and receive his
4 medication the same day. JOHN DOE SIX had established a longstanding relationship with the
5 pharmacists at the in-network pharmacy that he used before being enrolled in the Program.
6 Additionally, this pharmacy could accommodate his work and travel schedule, so JOHN DOE SIX
7 did not have any problems or concerns receiving his HIV/AIDS Medications when renewing his
8 prescription. JOHN DOE SIX's HIV/AIDS Medications have been subject to the Program since
9 2014, putting his health and privacy at risk. His prior requests for a reasonable accommodation, in
10 the form of being allowed to opt out of the Program, have been denied. While Defendants have
11 asserted that JOHN DOE SIX can obtain his medications at the in-network pharmacy of his choice,
12 on or about August 21, 2023 he received notification from Defendants that he cannot do so and
13 thus is presently subject to the Program. His calls to CVS Customer Service have not resolved this
14 situation. As a result, JOHN DOE SIX must, based on this most recent notice, use the Program
15 despite being denied meaningful access to the prescription drug benefit provided by Defendants
16 on account of HIV. JOHN DOE SIX therefore is precluded from obtaining his HIV/AIDS
17 Medication from the in-network pharmacy of his choice.

18 12. On personal knowledge, JOHN DOE SEVEN is a resident of Elizabeth, New
19 Jersey. He also spends substantial time in Manhattan, New York. JOHN DOE SEVEN has
20 received his pharmacy benefits through CVS Caremark since at least 2022. Throughout 2022,
21 JOHN DOE SEVEN was able to purchase his HIV/AIDS Medication from any in-network
22 pharmacy, including from non-CVS pharmacies, with full insurance benefits, and receive his
23 medication the same day. As of January 2023, JOHN DOE SEVEN's HIV/AIDS Medication is
24 subject to the Program, putting his health and privacy at risk. Beginning in January 2023, he has
25 attempted to opt-out of the Program multiple times in the manner set forth in his health care plan
26 documents. As of the filing of this Complaint his requests for a reasonable accommodation in the
27 form of being allowed to opt out of the Program have been either denied or ignored by Defendants.
28 JOHN DOE SEVEN must therefore currently use the Program despite being denied meaningful

1 access to the prescription drug benefit provided by Defendants on account of HIV, as JOHN DOE
2 SEVEN is currently precluded from obtaining his HIV/AIDS Medication from the in-network
3 pharmacy of his choice.

4 13. Defendants CVS Pharmacy, Inc.; Caremark, L.L.C.; Caremark California Specialty
5 Pharmacy, L.L.C.; CaremarkPCS Health, L.L.C.; and Garfield Beach CVS, L.L.C. are either
6 domestic or foreign corporations or limited liability companies organized under the laws of this
7 State or the States of Rhode Island, Delaware, or Arizona, with their principal places of business
8 and registered agents for service of process being located in at least those states, and/or are
9 registered to do business in this State or are transacting the business of administering pharmacy
10 benefits and filling specialty prescription requests made in and from this State.

11 14. Defendant Caremark, L.L.C is a pharmacy benefit manager (“PBM”) that owns and
12 exercises control over CSP. CSP fills the prescription and is the entity that actually ships out
13 medications.

14 15. Employer plan sponsors contract with defendant Caremark, L.L.C. as part of the
15 arrangement to use specialty pharmacy services. Caremark, L.L.C. is also the entity responsible
16 for establishing the Specialty Pharmacy Distribution Drug List (formulary) discussed *infra*.

17 16. The Garfield Beach CVS, L.L.C. defendant operates CVS retail pharmacies in
18 California.

19 17. The various CVS Caremark defendants act as agents of one another and operate as
20 a single entity for purposes of administering pharmacy benefits and providing prescription drugs
21 to health plans and health plan members.

22 18. The true names, roles, and/or capacities of Defendants named as DOES 1 through
23 10, inclusive, are currently unknown to Plaintiffs and, therefore, are named as Defendants under
24 fictitious names as permitted by the rules of this Court. Plaintiffs will identify their true identities
25 and their involvement in the wrongdoing at issue if and when they become known.

26 19. Defendants’ conduct described herein was undertaken or authorized by
27 Defendants’ officers or managing agents who were responsible for supervision and operations
28 decisions relating to the Program. The described conduct of said managing agents and individuals

1 was therefore undertaken on behalf of Defendants. Defendants had advance knowledge of the
2 actions and conduct of said individuals whose actions and conduct were ratified, authorized, and
3 approved by such managing agents. By engaging in the conduct described herein, Defendants have
4 reached agreements as to each Plaintiff's and Class Member's health plan requiring Class
5 Members to use the wholly owned CVS Health Corporation's specialty pharmacy subsidiary under
6 the Program, providing members with no realistic alternative or clear notice of their option not to
7 do so, to the exclusion of their trusted community pharmacies and/or specialty pharmacists. As a
8 result of such agreements, Defendants conspired and aided and abetted each other in violating the
9 laws set forth herein, which conduct is ongoing.

10 **PLAINTIFFS' FACTUAL ALLEGATIONS**

11 **JOHN DOE ONE**

12 20. On personal knowledge, JOHN DOE ONE has been HIV-positive since
13 approximately August 1998. JOHN DOE ONE received health insurance from his employer from
14 2004 until 2018. The pharmacy benefit for his health plan was administered by CVS Caremark.
15 At that time, JOHN DOE ONE took one HIV/AIDS Medication subject to the Program, Triumeq.
16 Triumeq is a combination of three separate antiretroviral drugs in one pill, taken once a day.

17 21. On January 19, 2015, JOHN DOE ONE received a phone call from his local
18 pharmacy. His pharmacist informed him that his prescriptions were no longer approved at the
19 pharmacy. JOHN DOE ONE called CVS Caremark through the manner identified on CVS
20 Caremark's website and spoke to a CVS Caremark representative, who informed him that he must
21 obtain his prescriptions under the Program or pay full price for his medications.

22 22. A month's supply of his HIV/AIDS Medication costs more than \$2,000. JOHN
23 DOE ONE explains, "I received no written notice to prepare for this impending policy change. I
24 had to scramble into action since I only had a seven-day supply remaining." Running low on his
25 HIV/AIDS Medication, JOHN DOE ONE had no choice but to enroll in the Program.

26 23. That same evening, on January 19, 2015, JOHN DOE ONE called CVS Caremark
27 through the manner identified on CVS Caremark's website and spoke to a representative. JOHN
28 DOE ONE demanded to get his medication from his local pharmacy (i.e., to be allowed to opt out

1 of the Program). The CVS Caremark representative reiterated that he had to get his prescriptions
2 through the Program if he wanted his medication, or else pay out-of-pocket. JOHN DOE ONE, on
3 several additional occasions, expressly requested to opt out of the Program. In response,
4 Defendants' representatives said that his medications must be filled by CVS Caremark's Specialty
5 Pharmacy Program.

6 24. At approximately 10 p.m. on January 19, 2015, JOHN DOE ONE contacted CVS
7 Caremark Customer Service by email through the manner identified on CVS Caremark's website
8 and requested an explanation for "why [his] HIV medications were halted at the [in-network] retail
9 pharmacy" where he previously obtained his HIV/AIDS Medication. In addition, JOHN DOE
10 ONE explicitly notified Defendants' representative by this email that he believed this limitation
11 on access to his HIV/AIDS Medications and the denial of his opt-out requests were unlawful.
12 JOHN DOE ONE's email was responded to on January 20, 2015 by an individual named
13 "Wayne D." from CVS Caremark's Web Support unit. Wayne D.'s response merely directed
14 JOHN DOE ONE to contact CVS Caremark's Specialty Pharmacy—the entity with whom JOHN
15 DOE ONE believed he had contacted about these issues accessing his HIV/AIDS Medications.

16 25. The next day, on January 21, 2015, JOHN DOE ONE received his first shipment
17 of Triumeq under the Program. When JOHN DOE ONE returned home, he found his 90-day
18 supply of HIV/AIDS Medication baking in the afternoon sun. Storage at high temperatures can
19 quickly degrade the potency and stability of many medications.

20 26. After the disastrous experience with his first mail-order shipment under the
21 Program, JOHN DOE ONE picked up his HIV/AIDS Medication at a CVS Pharmacy. CVS
22 Caremark mailed the medication to a CVS Pharmacy, but only as a drop shipment location purely
23 for pickup, with no advice provided by a pharmacist. JOHN DOE ONE never received or was
24 offered a consultation with a pharmacist regarding his HIV/AIDS Medication during his pickups.
25 Unlike JOHN DOE ONE's community pharmacy, which is now considered "out-of-network,"
26 CVS Caremark does not provide reminders when his prescription needs to be renewed.
27 Furthermore, CVS Caremark did not coordinate with the AIDS Drug Assistance Program
28 ("ADAP"), a government program that provides co-pay assistance for HIV/AIDS Medications. In

1 order to receive this subsidy assistance from ADAP, JOHN DOE ONE had to “pay the co-pay first
2 at CVS Pharmacy, wait for the invoice, and then submit the claim to ADAP for reimbursement.”
3 JOHN DOE ONE “never received the invoice for October 2015—despite calling and asking for
4 it—and missed ADAP’s 60-day period in which to file for reimbursement.” JOHN DOE ONE’s
5 out-of-pocket losses caused by Defendants are at least \$60.00, because CVS Caremark prevented
6 him from obtaining a co-pay reimbursement under the ADAP program for his purchase of
7 HIV/AIDS Medications in October 2015.

8 27. To make matters worse, JOHN DOE ONE’s HIV/AIDS Medication were filled by
9 CVS Caremark and his non-HIV/AIDS Medications, including bupropion, an antidepressant, were
10 filled by his local in-network pharmacy. JOHN DOE ONE had to manage his prescriptions and
11 spend time going between his local pharmacy and CVS Caremark. CVS Caremark did not have a
12 full and accurate record of all of the medications JOHN DOE ONE was taking and could not
13 anticipate or warn against potential adverse drug interactions, which are common with HIV/AIDS
14 Medications.

15 28. On March 30, 2016, in the manner set forth in his health care plan documents for
16 appealing adverse determinations concerning drug or benefit denials, JOHN DOE ONE submitted,
17 via certified mail, a letter to both his employer and CVS Caremark formally requesting that he be
18 allowed to opt out of the Program. JOHN DOE ONE received a letter dated April 4, 2016 from
19 CVS Caremark denying his request and directing him to file a second level appeal. On May 17,
20 2016, JOHN DOE ONE filed the second level appeal as directed. In a letter from CVS Caremark
21 dated May 20, 2016, CVS Caremark informed JOHN DOE ONE that CVS Caremark had made a
22 “final determination” denying his opt-out request. JOHN DOE ONE followed the appeal process
23 as set forth in his health care plan documents.

24 29. The Program raised both practical and privacy concerns for JOHN DOE ONE. At
25 the time he was enrolled in the Program, JOHN DOE ONE was away from home several days a
26 week for work. JOHN DOE ONE was required to pick up his medications before he left to ensure
27 that he did not run out of his medications while away. If his medications were delivered to his
28 home, they would be left on his doorstep.

1 30. JOHN DOE ONE had built a very close relationship with his local pharmacy.
2 JOHN DOE ONE's local pharmacy coordinated his ADAP payments and reminded him when his
3 medications were ready for pickup. JOHN DOE ONE's local pharmacy also provided essential
4 counseling services regarding his HIV/AIDS Medication. In comparison, when JOHN DOE ONE
5 called CVS Caremark for counseling services, he was transferred multiple times and told to call
6 back. Additionally, the pharmacists at CVS Pharmacy did not provide any counseling services
7 concerning drug interactions, side effects, or contraindications related to the HIV/AIDS
8 Medication and other medications he was also prescribed at the time.

9 31. JOHN DOE ONE's experience with CVS Caremark's Program dramatically
10 increased his stress. Stress plays a part in undermining the human immune system and is
11 detrimental to people with chronic illness. In the words of JOHN DOE ONE, the Program resulted
12 in a "fractured and splintered medication retrieval" system that serves only to add additional stress
13 to JOHN DOE ONE's life.

14 *JOHN DOE TWO*

15 32. On personal knowledge, until his passing in May 2021, JOHN DOE TWO was
16 HIV-positive since 1996. In addition, JOHN DOE TWO had several chronic health conditions,
17 including congestive heart failure and stage four kidney failure. JOHN DOE TWO received health
18 insurance through his husband's former employer, and the pharmacy benefit for his health plan
19 was administered by CVS Caremark. JOHN DOE TWO took three HIV/AIDS Medications
20 (Epivir, Selzentry, and Tivicay) that were subject to the Program. JOHN DOE TWO took these
21 medications daily.

22 33. For approximately four years prior to the implementation of the Program, CVS
23 Caremark administered JOHN DOE TWO's pharmacy benefits. Throughout this period, JOHN
24 DOE TWO was able to obtain his HIV/AIDS Medications from a retail specialty pharmacy that
25 specializes in serving HIV/AIDS patients. In October 2015, JOHN DOE TWO's husband received
26 a letter from CVS Caremark that stated that he was required to enroll in the Program beginning
27 January 1, 2016. The letter provided that "effective January 1 [2016]," members "taking a long-
28 term maintenance medication . . . must choose to receive [their] 90-day supply by mail or pick

1 them up at a retail CVS/pharmacy.” The letter also stated that the plan “will allow two 30-day fills
2 of a long-term medication” at a local pharmacy. JOHN DOE TWO did not receive the same
3 communication from CVS Caremark. The following month, in November 2015, JOHN DOE
4 TWO received a letter from CVS Caremark, which stated that he had “reached [his] plan limit for
5 filling 30-day supplies at a retail pharmacy” and would have to pay the full cost of his medications
6 if he did not receive 90-day supplies of his medications through the Program.

7 34. Beginning in January 2016, JOHN DOE TWO had to obtain his HIV/AIDS
8 Medications under the Program, but he did not want to pick up his medications from a CVS
9 pharmacy due to significant privacy concerns. At his local specialty pharmacy, JOHN DOE TWO
10 could enter a private screened section of the pharmacy to receive a consultation and ask questions.
11 In comparison, nearby CVS pharmacies do not have a private area for picking up medications and
12 consultations. JOHN DOE TWO explained: “At my retail specialty pharmacy, they have a little
13 alcove for privacy. I can take my medications out and match it with a list I have of all my drugs. I
14 can meet with my pharmacist and explain any changes I have felt and ask any questions I have. At
15 CVS, I am within hearing distance of everyone waiting in line, including many people who do not
16 have HIV/AIDS. I can hear other patients’ questions and the pharmacists’ answer. I am concerned
17 with other people finding out about my HIV-positive status.”

18 35. As a result, JOHN DOE TWO had no choice but to pick up his prescriptions from
19 the closest CVS retail pharmacy that offers a private consultation room, which was about 50 miles
20 from his home round-trip. JOHN DOE TWO suffered a loss of money or property of at least \$250
21 related to picking up his HIV/AIDS Medications from a CVS Pharmacy that offered a private
22 consultation room. As JOHN DOE TWO could not drive himself, his husband was required to
23 drive him to the pharmacy, as well as to assist in carrying out JOHN DOE TWO’s 21–24
24 prescriptions. Nearly every time JOHN DOE TWO attempted to pick up his prescriptions from
25 the retail CVS location, JOHN DOE TWO encountered problems that required a return to the
26 store, including missing and inadequate amounts of medication (e.g., only 60 days’ worth of
27 HIV/AIDS Medication for a 90-day prescription). In fact, JOHN DOE TWO was informed by the
28 retail pharmacist that he does not even open the specialty medication shipments when they come

1 in, let alone verify that the shipment is correct or whether there is any new information that should
2 be passed along to JOHN DOE TWO. According to JOHN DOE TWO, “every refill involves a
3 new surprise in trying to learn their system.”

4 36. JOHN DOE TWO requested to have a specific representative appointed as a contact
5 at the beginning of his experience being enrolled into the Program, but the “patient advocate”
6 system employed by CVS Caremark only added another layer of bureaucracy that has resulted in
7 more confusion and issues. On multiple occasions, JOHN DOE TWO’s patient advocate was
8 either too busy or was unavailable to assist him.

9 37. JOHN DOE TWO took many medications every day and wanted to obtain all those
10 medications from his local in-network community pharmacy so that his local pharmacist could
11 help coordinate his medications and monitor for adverse drug interactions and possible side
12 effects. JOHN DOE TWO came to rely on the watchful eye of his specialty pharmacist. For
13 example, following a hospital stay relating to JOHN DOE TWO’s kidney problems, the
14 discharging physician prescribed Bactrim DS. Because JOHN DOE TWO’s specialty pharmacist
15 was familiar with JOHN DOE TWO’s medical history, including his kidney failure, the pharmacist
16 advised JOHN DOE TWO that the dosage strength of the prescribed Bactrim DS was incorrect.
17 JOHN DOE TWO called his nephrologist, who agreed with the pharmacist’s conclusion.

18 38. JOHN DOE TWO was previously required to obtain his medications by mail order
19 when his prescription drug benefit was administered by Express Scripts, Inc. The experience was
20 disastrous. After multiple delivery and privacy problems, JOHN DOE TWO was allowed to opt
21 out of the mail-order program and return to his local in-network specialty pharmacy.

22 39. JOHN DOE TWO had built a very close relationship with his local specialty
23 pharmacy. JOHN DOE TWO explained: “My pharmacist knows me, my medical conditions and
24 history, and is immediately available for consultation. He coordinates my monthly refills so that
25 all my prescriptions, some of which require refrigeration, are available for pick-up at one time.”

26 40. In comparison, the CVS Caremark representatives JOHN DOE TWO dealt with
27 appeared to have no specialized knowledge about HIV/AIDS Medications or the concerns of HIV
28 patients, resulting in the reduction or effective elimination of such benefits. For example, the

1 pharmacists at CVS Pharmacy did not provide any counseling services concerning drug
2 interactions, side effects, or contraindications related to the HIV/AIDS Medications and other
3 medications JOHN DOE TWO was also prescribed at the time. The individuals who work in the
4 CVS Caremark mail-order call centers and interact with members who need these medications
5 have no specialized training as to HIV/AIDS Medications, and it is clear from JOHN DOE’S
6 interactions with staff members that both the specialty pharmacies and retail pharmacies are
7 woefully understaffed, overworked, and inexperienced. One of the retail pharmacists JOHN DOE
8 TWO was forced to receive his medications from said, “I studied HIV medicine in school but I
9 don’t have any current experience.”

10 41. JOHN DOE TWO expended substantial resources attempting to resolve the issues
11 raised herein, spending hours on the phone with CVS Caremark representatives. JOHN DOE TWO
12 had, on several occasions, expressly requested to opt out of the Program with CVS Caremark and
13 his husband’s former employer. Between October 2015 (when his husband received the first letter
14 referenced above) and March 2016, JOHN DOE TWO called CVS Caremark more than 20 times
15 in an attempt to address his health and privacy concerns with the Program and to opt out of the
16 Program.

17 42. In one attempt to address these issues with the Program and to opt out of the
18 Program, JOHN DOE TWO spoke with a CVS Caremark representative named “Lisa.” Lisa
19 informed him that she would try to appeal on his behalf. However, her supervisor denied the
20 appeal. Upon information and belief, Defendants maintain call log information for customer
21 interactions with CVS Caremark that would include, among other information, inbound call origin
22 phone number, call time and duration, and certain details concerning the interaction between
23 Defendants’ customer service representatives and individuals like JOHN DOE TWO whose
24 prescription drug benefit is administered by Defendants.

25 43. In addition, on February 17, 2016, JOHN DOE TWO was notified by his doctor
26 that his prescription medication Prolia had not arrived as representatives of CVS had previously
27 promised.³ JOHN DOE TWO telephoned a representative of Defendants at CVS Caremark and

28 ³ JOHN DOE TWO was prescribed Prolia to treat osteoporosis. Bone loss conditions, such as
osteoporosis, are more common among HIV-positive people, compared to HIV-negative

1 spoke to an individual who identified herself as “Laura” with the Adopt a Member section. Laura
2 connected JOHN DOE TWO with another customer service representative to assist with the
3 delayed delivery of his medication. That customer service representative transferred JOHN DOE
4 TWO’s call to a pharmacist. The third person JOHN DOE TWO was transferred to, “Barbara,”
5 identified herself as a licensed pharmacist and reviewed the notes in his file. She also confirmed
6 to JOHN DOE TWO that the order was placed February 11, 2016, and that the medication would
7 ship on February 15 for delivery to JOHN DOE TWO’s doctor on February 16.

8 44. Barbara subsequently informed JOHN DOE TWO that she was not a licensed
9 pharmacist, as she had previously represented, but a “patient advocate.” Barbara also informed
10 JOHN DOE TWO that she did not know why the prescription was not previously processed
11 properly. JOHN DOE TWO advised Barbara that he wanted to file a formal complaint with
12 Defendants about the issues accessing his medication under the Program. Barbara indicated that
13 she was unaware of a process for JOHN DOE TWO to file a complaint.

14 45. On February 25, 2016, an individual who identified himself as “Rich Peterman”
15 and a manager for CVS Specialty Pharmacy left a voicemail for JOHN DOE TWO stating that he
16 wanted to address the issues with his Prolia prescription and his health and privacy concerns with
17 the Program. JOHN DOE TWO attempted to reach Mr. Peterman on multiple occasions, leaving
18 two voicemails for Mr. Peterman stating when he was available to speak. Mr. Peterman never
19 contacted JOHN DOE TWO again.

20 46. In addition, on January 11, 2016, and February 28, 2016, JOHN DOE TWO
21 submitted letters to CVS Caremark requesting to opt out of the Program. Those requests were
22 either ignored or denied. Prior to filing this action, he also contacted his employer benefits
23 representative and CVS Caremark once again to opt out of the Program and was subjected to a 40-
24 minute call. The employer representative informed JOHN DOE TWO that only CVS Caremark
25 could decide whether to grant such requests. The CVS Caremark representative he then spoke with
26 stated there was no provision in JOHN DOE TWO’s health plan allowing him to opt out of the
27 Program, nor would there be for 2018, and confirmed this policy applied to specialty HIV/AIDS
28 individuals of the same sex and age. In addition, the risk of osteoporosis increases with the length
of time someone has been living with HIV.

1 Medications. Furthermore, the CVS Caremark representative stated that since JOHN DOE TWO
2 obtained HIV/AIDS Medications under the Program, all of his medications—including non-HIV
3 specialty medications and non-specialty medications not otherwise subject to the Program—must
4 also be obtained through the Program. After JOHN DOE TWO detailed his experience of obtaining
5 his prescriptions through the Program, the CVS Caremark representative stated she genuinely
6 wished that she could do something to help, but said there was nothing she could do. JOHN DOE
7 TWO summed up the conversation this way: “I have had so many conversations with CVS
8 Caremark personnel who recognize the limitations of the Program and are supportive about my
9 desire to go to the pharmacist who knows me and my medications. [The CVS representative]
10 actually said other employees ask her after nine years in her position, ‘how do you stand it?’”

11 47. Unable to resolve these issues with Defendants directly, on February 17, 2016,
12 JOHN DOE TWO’s husband emailed Shellie Tanori, a Human Resources Consultant at his former
13 employer, and provided her with a detailed summary of JOHN DOE TWO’s health- and privacy-
14 based concerns with the Program and requested an accommodation to opt-out of the Program.
15 According to Ms. Tanori, JOHN DOE TWO’s requests to opt out and problems with the Program
16 due to his disability were subsequently shared with the employer’s CVS Caremark account
17 manager.

18 48. On February 28, 2016, JOHN DOE TWO submitted a letter, via certified mail, to
19 Larry Merlo, the president and CEO of CVS Health at the time, explaining his health and privacy
20 concerns with the Program because of his disability. JOHN DOE TWO detailed for Mr. Merlo the
21 problems he faced in accessing his prescription drug benefit under the Program and his previous
22 requests to opt out of the Program. He also renewed his request for a reasonable accommodation
23 in the form of opting out of the Program. Defendants failed to take any corrective action
24 concerning JOHN DOE TWO’s problems accessing his prescription drug benefit following this
25 complaint.

26 49. On April 1, 2016, in the manner set forth in his health care plan documents for
27 appealing adverse determinations concerning drug or benefit denials, JOHN DOE TWO
28 submitted, via certified mail, a letter to both his husband’s former employer and CVS Caremark

1 requesting, once again, that he be allowed to opt out of the Program. JOHN DOE TWO received
2 a letter dated April 4, 2016 from CVS Caremark denying his request and directing him to file a
3 second level appeal. On May 3, 2016, JOHN DOE TWO received a letter dated May 3, 2016 from
4 his husband's former employer stating that it was in Defendants' discretionary authority whether
5 to grant the request to opt out of the Program. On May 11, 2016, JOHN DOE TWO filed the
6 second level appeal as directed. In a letter from CVS Caremark dated May 16, 2016, CVS
7 Caremark informed JOHN DOE TWO that it had made a "final determination" denying his opt-
8 out request. JOHN DOE TWO followed the appeal process as set forth in his plan documents.
9 Ultimately, CVS Caremark denied all of his opt-out requests and informed him that all HIV/AIDS
10 Medications must be obtained under the Program.

11 50. JOHN DOE TWO's experience with CVS Caremark's Program dramatically
12 increased his stress. Stress plays a part in undermining the human immune system and is
13 detrimental to people with chronic illnesses. JOHN DOE TWO's physician told him to do
14 everything he could to reduce stress in his life, especially as JOHN DOE TWO had multiple heart
15 attacks, strokes, and open-heart surgery, and had numerous cardiac stents placed to keep him alive.
16 As a result of the stress from the Program, JOHN DOE TWO received a prescription for
17 Wellbutrin, an antidepressant medication.

18 JOHN DOE SIX

19 51. On personal knowledge, JOHN DOE SIX has been HIV-positive since
20 approximately 1996. In addition to living with HIV, JOHN DOE SIX has several chronic health
21 conditions, such as diabetes, high blood pressure, and high uric acid syndrome. In addition to his
22 HIV/AIDS Medication, JOHN DOE SIX takes seven other medications daily related to these other
23 health conditions. He is also prescribed alprazolam as needed for anxiety.

24 52. Due to JOHN DOE SIX's strict adherence to his HIV/AIDS Medication regimen,
25 his HIV viral load became undetectable in approximately 2004 and has remained undetectable.
26 The significant practical effect of this is that JOHN DOE SIX's risk of transmission of HIV is
27 effectively zero. JOHN DOE SIX prides himself on responsibly taking his HIV/AIDS Medication.

28 53. JOHN DOE SIX receives health insurance from his former employer, Cisco

1 Systems, Inc. The pharmacy benefit for his health plan is administered by CVS Caremark.

2 54. JOHN DOE SIX is currently prescribed one HIV/AIDS Medication, Odefsey.
3 Odefsey is a combination of three separate antiretroviral drugs in one pill, taken once a day.

4 55. From approximately 2013 to February 2017, JOHN DOE SIX was prescribed a
5 different HIV/AIDS Medication (Atripla) which was also subject to the Program.

6 56. JOHN DOE SIX first learned that his HIV/AIDS Medication was subject to the
7 Program in March 2014, after he received letters from CVS Caremark that, as understood by JOHN
8 DOE SIX, “threaten[ed] to deny future refills for medications prescribed by [his] physician and
9 necessary to maintain [his] health.” He contacted Cisco’s human resources department on
10 March 11, 2014, to discuss his health and privacy concerns about being forced into the Program.
11 Two cases were opened by Cisco on that date. At this time, JOHN DOE SIX was told that his
12 HIV/AIDS Medication would be fully covered by his health plan only if he received it through the
13 Program.

14 57. As the realities of the limitations and risks under the Program began to set in for
15 JOHN DOE SIX, he filed a third case complaint with Cisco in August 2014 concerning his health
16 and privacy concerns with the Program. From August 2014 through February 2015,
17 representatives from Cisco’s HR department and JOHN DOE SIX exchanged messages through
18 Cisco’s internal messaging system about his concerns with the Program. Throughout that process,
19 JOHN DOE SIX was never offered or informed of an option to opt out of the Program. Cisco did,
20 however, reach out to CVS Caremark to determine if it could assist JOHN DOE SIX through some
21 sort of accommodation, but CVS Caremark informed Cisco that “[u]nfortunately, that is the way
22 the plan is set up.” Thus, JOHN DOE SIX was required to obtain his HIV/AIDS Medication
23 through the Program.

24 58. In August 2014, so that his HIV/AIDS Medication would be fully covered by his
25 health plan, JOHN DOE SIX attempted to transfer his HIV/AIDS Medication prescription to CVS
26 Caremark as required under the Program. JOHN DOE SIX encountered his first serious problems
27 obtaining his HIV/AIDS Medication around November 2014 with his first refill under the
28 Program. Over four days, from November 18 through November 22, 2014, JOHN DOE SIX had

1 to contact CVS Caremark by multiple phone calls and faxes in an unsuccessful effort to have his
2 HIV/AIDS Medication prescription transferred. By the time JOHN DOE SIX finally spoke with a
3 CVS representative on November 22 about transferring his prescription, his HIV/AIDS
4 Medication was due to run out that same day. This CVS representative, who identified herself as
5 Ashley Davis, told JOHN DOE SIX that he would not be able to receive a refill until November 25,
6 2014. As a result of limitations and restrictions under the Program, JOHN DOE SIX missed at
7 least one dose of his HIV/AIDS Medication.

8 59. Because of the Program, JOHN DOE SIX has significant and legitimate concerns
9 about risks to his health arising from his HIV/AIDS Medication being lost by CVS Caremark. On
10 at least one occasion shortly after being enrolled into the Program, JOHN DOE SIX was forced to
11 delay his work-related travel due to an error by CVS Caremark and the restrictions under the
12 Program. On that occasion, when JOHN DOE SIX went to pick up his medication at a CVS
13 Pharmacy, he was told his HIV/AIDS Medication had been lost and was therefore not available to
14 pick up at that time. His only option as a result, due to the limitations and requirements under the
15 Program, was to wait for CVS Caremark to ship his HIV/AIDS Medication to that CVS Pharmacy,
16 forcing him to delay his travel until the medication was delivered.

17 60. Despite these problems using CVS Pharmacy as a drop-shipment pick up for his
18 HIV/AIDS Medication, JOHN DOE SIX has never used the mail-order to home option under the
19 Program. This is because of his concerns that his prescriptions will be misdelivered to a neighbor,
20 resulting in his HIV status potentially being revealed without his consent. When he was first
21 enrolled into the Program, JOHN DOE SIX was living in a residential community where it was
22 typical for mail to be misdelivered. JOHN DOE SIX had serious and significant concerns about
23 how his neighbors might react if his HIV/AIDS Medication was mistakenly shipped to the wrong
24 address. While he has since moved to a different home in Florida, his privacy concerns about mis-
25 deliveries remain, as JOHN DOE SIX would be horrified if his neighbor received a misdelivered
26 shipment of his HIV/AIDS Medication.

27 61. Therefore, to protect his privacy and HIV/AIDS Medication adherence, JOHN
28 DOE SIX has always picked up this prescription at a CVS Pharmacy. CVS Caremark mails the

1 medication to a CVS Pharmacy, but only as a drop shipment location purely for pickup.

2 62. CVS Caremark routinely fails to notify JOHN DOE SIX that his medication has
3 arrived and is ready to be picked up.

4 63. Additionally, CVS Caremark only fills JOHN DOE SIX's prescriptions for his
5 HIV/AIDS Medications, which means that pharmacists at CVS Pharmacy are unable to provide
6 necessary counseling. JOHN DOE SIX estimates that around 70% of the time when picking up
7 his HIV/AIDS Medications at CVS Pharmacy, he is not offered a consultation with a pharmacist
8 regarding his HIV/AIDS Medication.

9 64. JOHN DOE SIX's non-HIV/AIDS Medications, including alprazolam, an anti-
10 anxiety medication, are all filled by a local Walgreens pharmacy—which is his preferred in-
11 network pharmacy. For the past 10 to 15 years, JOHN DOE SIX has picked up all his prescriptions
12 from that Walgreens, where he has a good relationship with the pharmacists. JOHN DOE SIX
13 does not know if Walgreens has access to his HIV/AIDS Medication prescription records from
14 CVS in order to check for drug contraindications, but he believes Walgreens does not have access.

15 65. As a small business owner, JOHN DOE SIX works long hours and spends about
16 80% of his time traveling both domestically and internationally. Because of his work schedule and
17 related travel, convenience and access to pharmacies are important for JOHN DOE SIX,
18 particularly with regard to remaining adherent to his HIV/AIDS Medications.

19 66. JOHN DOE SIX must ensure that he has an adequate supply of his HIV/AIDS
20 Medication before traveling to ensure that he does not run out while traveling and to avoid having
21 to delay travel obligations, as has happened before because of the Program. Since his HIV/AIDS
22 Medication is available only through the Program, JOHN DOE SIX is precluded from obtaining a
23 supply of the medication the same day if he were to forget or lose his medication while traveling,
24 as he can for his non-HIV/AIDS Medications that are not subject to the Program.

25 67. The risk of being unable to receive his HIV/AIDS Medication when needed is a
26 constant source of stress for JOHN DOE SIX. The Program has significantly reduced both
27 convenience and access to pharmacies for JOHN DOE SIX. Unlike his local in-network Walgreens
28 pharmacy, where prescriptions can be picked up or filled anytime, JOHN DOE SIX does not have

1 24-hour access to pick up or fill his HIV/AIDS Medication because of the requirements and
2 limitations under the Program. As JOHN DOE SIX frequently travels for work, he must
3 extensively plan around the limited opening hours of the CVS Pharmacy and restrictions on how
4 to access his HIV/AIDS Medication under the Program.

5 68. JOHN DOE SIX's present and ongoing experience with CVS Caremark's Program
6 has dramatically increased his stress and reduced his access to necessary counseling from
7 pharmacists and his ability to obtain his HIV/AIDS Medication. Stress plays a part in undermining
8 the human immune system and is detrimental to people with chronic illness. In the words of JOHN
9 DOE SIX, the Program has resulted in a "frustrating and unreliable retrieval" system that serves
10 only to add additional stress to JOHN DOE SIX's life.

11 69. On November 4, 2022, in the manner set forth in his health care plan documents
12 for appealing adverse determinations concerning drug or benefit denials, JOHN DOE SIX
13 submitted, via certified mail, a letter to both Cisco and CVS Caremark, formally requesting that
14 he be allowed to opt out of the Program. JOHN DOE SIX received a letter dated November 14,
15 2022 from CVS Caremark denying his request and directing him to file a second level appeal. On
16 December 2, 2022, JOHN DOE SIX filed the second level appeal as directed. In a letter from CVS
17 Caremark dated December 10, 2022, CVS Caremark informed JOHN DOE SIX that CVS
18 Caremark had made a "final adverse coverage determination" denying his opt-out request. While
19 unnecessary to assert these claims, JOHN DOE SIX followed the appeal process as set forth in his
20 plan documents.

21 70. CVS Caremark has represented to this Court that JOHN DOE SIX was no longer
22 subject to the Program because his Cisco had removed the requirement that HIV/AIDS
23 Medications be filled through the Program. JOHN DOE SIX subsequently tested CVS's assertion.
24 However, after receiving several prescription refills, JOHN DOE SIX received a letter from CVS
25 Caremark dated August 21, 2023, stating that he had met his limit of refills at a retail pharmacy
26 and that he had to obtain his medication through the Program. In response, on August 28, 2023,
27 JOHN DOE SIX called CVS Caremark in the manner set forth in CVS Caremark's August 21
28 letter and spoke to a representative, who confirmed that according to CVS's records he was limited

1 to two refills at a retail pharmacy and would have to use the Program from now on. Also on
2 August 28, 2023, JOHN DOE SIX opened a case with Cisco inquiring about his need to participate
3 in the Program, and specifically had to state (revealing his medical privacy information) that “HIV
4 Medications” were the subject of the inquiry. The Cisco representative who responded to his case
5 noted in response that they had contacted CVS Caremark, which informed the employer
6 representative that JOHN DOE SIX was limited to two refills at a retail pharmacy and otherwise
7 was required to participate in the Program. Thus, despite the representations of CVS to this Court,
8 as of the filing of this Complaint, CVS has taken the position directly with JOHN DOE SIX that
9 he continues to be required to obtain his HIV/AIDS Medications through the Program. He
10 currently is unable to rely on the previous representations made by CVS.

11 71. Thus, as of the filing of this Complaint, JOHN DOE SIX is subjected to the
12 Program and his requests for a reasonable accommodation have been denied and/or ignored.

13 JOHN DOE SEVEN

14 72. On personal knowledge, JOHN DOE SEVEN has been HIV-positive since
15 approximately 2016. He is currently prescribed one HIV/AIDS Medication, Biktarvy, which he
16 has taken for the last three to four years. Biktarvy is a combination of three separate antiretroviral
17 drugs in one pill, taken once a day. In addition to his HIV/AIDS Medication, JOHN DOE SEVEN
18 takes testosterone gel daily, and is also prescribed Valacyclovir and Vitamin D tablet to be taken
19 on an as-needed basis.

20 73. JOHN DOE SEVEN receives health insurance through his current employer. The
21 pharmacy benefit for his health plan is administered by CVS Caremark and has been since at least
22 2022.

23 74. As a flight attendant, JOHN DOE SEVEN flies both domestically and
24 internationally. He works 18 days per month on an on-call basis, which means that he may have
25 as little as three hours’ advance notice prior to working a flight.

26 75. JOHN DOE SEVEN first learned that his HIV/AIDS Medication was subject to the
27 Program in December 2022 after he received a letter dated November 21, 2022, from CVS
28 Caremark stating that “all specialty prescriptions must be filled through CVS Specialty” as of

1 January 2023. According to JOHN DOE SEVEN, this change was totally unexpected, a shock,
2 and out of nowhere, given that throughout 2022, when CVS also administered his prescription
3 drug benefit, his HIV/AIDS Medication was not subject to the Program and he could pick up his
4 HIV/AIDS Medication at local in-network pharmacies without issue. As far as JOHN DOE
5 SEVEN is aware, subjecting HIV/AIDS Medications and other “specialty” medications to the
6 Program was the only change made to his health plan in terms of the medications he personally
7 takes between 2022 and 2023.

8 76. JOHN DOE SEVEN immediately encountered problems with the Program. While
9 trying to get his first shipment set up for delivery to his home, JOHN DOE SEVEN had to call
10 CVS Caremark numerous times, because he had to be transferred to several customer service
11 representatives before reaching a person who was able to assist him with setting up the delivery,
12 a process he describes as “very frustrating.” Each time he was transferred to a new representative,
13 JOHN DOE SEVEN was required to again provide information about his doctors, despite
14 receiving the same medication from the same prescriber that was covered by CVS Caremark in
15 2022. This process to set up his first delivery under the Program spanned several phone calls over
16 the course of more than a week.

17 77. After ordering his first refill on January 19, 2023, JOHN DOE SEVEN continued
18 to encounter issues. First, the CVS Caremark representative who took JOHN DOE SEVEN’s
19 information during one of the phone calls incorrectly entered his copay card information when
20 trying to ship out the medication, which resulted in the prescription never shipping. JOHN DOE
21 SEVEN was not notified of this error, and only discovered there was a problem with the delivery
22 of his HIV/AIDS Medication on or about January 23, 2023, when he called CVS Caremark to
23 inquire why his prescription had never been delivered. JOHN DOE SEVEN had to relay all his
24 copay card information once again, in a call that took at least an hour. As a result of the delay in
25 receiving his HIV/AIDS Medication refill because of CVS’s erroneous inputting of his copay card
26 information, JOHN DOE SEVEN was very concerned about the risk that he would run out of his
27 HIV/AIDS Medication before he received his refill from Defendants, which would have caused
28 him to miss his daily dosage of medication.

1 78. To best ensure that he did not miss any days of taking his HIV/AIDS Medication,
2 JOHN DOE SEVEN arranged to have the prescription sent to his home in Elizabeth, New Jersey.
3 He scheduled the delivery for January 26, 2023, as he anticipated returning to New York City on
4 January 25 from a flight assignment in London, England. However, this January 25 flight was
5 cancelled. Because he was scheduled to depart early on January 27 for another work flight, JOHN
6 DOE SEVEN was unable to travel to his home in New Jersey to obtain his medication.
7 Consequently, his HIV/AIDS Medication remained outside on his apartment building front stoop
8 for approximately five days before he was able to pick it up. But for the restrictions and limitations
9 under the Program, JOHN DOE SEVEN could have simply transferred his prescription on
10 January 25 or 26 to one of the approximately 26 pharmacies in Manhattan that are open 24-hours,
11 and then obtained his medication from an in-network pharmacy before flying out again on
12 January 27.

13 79. JOHN DOE SEVEN has continued to deal with the discriminatory impacts of the
14 Program. On February 20, he placed his second refill order. JOHN DOE SEVEN did not receive
15 a shipment confirmation that provided any details about when he needed to pick up his prescription
16 by. As a result, on or about March 3, 2023, when JOHN DOE SEVEN went to pick up the
17 prescription at the CVS Pharmacy, his HIV/AIDS Medication was not available for pickup
18 because the medication had been sent back to CVS Specialty. JOHN DOE SEVEN was traveling
19 for work as a flight attendant and out of the country during the period between when the medication
20 was shipped to the local CVS Pharmacy and then shipped back to Defendants. At no time was
21 JOHN DOE SEVEN informed by Defendants that his HIV/AIDS Medication would be returned
22 if not picked up within a specific timeframe. On this occasion, JOHN DOE SEVEN was granted
23 a one-time exemption and was able to obtain his medication on March 4 at a Duane Reade
24 Pharmacy.

25 80. It appears Defendants have a policy or practice of only holding HIV/AIDS
26 Medications for pickup at CVS Pharmacy locations for a limited number of days before being sent
27 back to CVS Specialty. In addition, as part of this policy or practice, Defendants (a) do not notify
28 individuals in advance that their HIV/AIDS Medications must be picked up by a specific date or

1 will be returned to CVS Specialty, (b) do not provide reminders to individuals after their
2 HIV/AIDS Medications have arrived for pickup at a CVS Pharmacy or that there is a specific date
3 their medications must be picked up by or risk being returned to CVS Specialty, and (c) do not
4 notify individuals that their HIV/AIDS Medications have been returned to CVS Specialty and they
5 will therefore need to contact CVS Caremark to have their prescription order reprocessed.

6 81. In May 2023, after 45 minutes on the phone with CVS Specialty representatives to
7 order a refill of his HIV/AIDS Medication, JOHN DOE SEVEN was told the prescription would
8 be delivered to his local CVS Pharmacy on Saturday, May 6. By Tuesday, May 9, however, he
9 had not received any notification from Defendants that his medication was available for pickup.
10 Because of his experience in February/March 2023, when his HIV/AIDS Medication was shipped
11 back to Defendants before he picked it up from the local CVS Pharmacy, JOHN DOE SEVEN
12 was concerned he would not be able obtain his prescription refill.

13 82. Due to the restrictions and limitations under the Program, he had to go to the
14 pharmacy and simply hope it was there, which by happenstance this time it was. When picking up
15 this prescription, JOHN DOE SEVEN requested a consultation from the on-duty CVS pharmacist
16 concerning a medication interaction with his HIV/AIDS Medication. According to JOHN DOE
17 SEVEN, this brief conversation with the CVS pharmacist was “rushed” and fundamentally
18 different than his consultations with the other pharmacists he worked with at different in-network
19 non-CVS pharmacies.

20 83. On July 8, 2023, JOHN DOE SEVEN went to pick up his HIV/AIDS Medication
21 from a local CVS Pharmacy. It took pharmacy staff approximately 45 minutes to locate his
22 medication because his prescription had been delivered under the Program and, on information
23 and belief, was not logged into the pharmacy’s normal prescription tracking system. Because all
24 of his prescriptions are not tracked in the same system by Defendants, CVS Pharmacy staff are
25 unable to quickly determine any possible contraindications between his HIV/AIDS Medication
26 and his other prescriptions.

27 84. On July 26, 2023, JOHN DOE SEVEN placed a refill order for his HIV/AIDS
28 Medication through the CVS app, noting in the order that he had only three doses left before

1 running out. The prescription was due to be delivered two days later, on Friday, July 28. However,
2 on Saturday, July 29, JOHN DOE SEVEN received an email from UPS stating the delivery was
3 delayed due to inclement weather and would not arrive at his home until Monday, July 31. He did
4 not receive any further notification from CVS Caremark about (a) this delivery delay or (b) any
5 assistance Defendants could provide to ensure he did not miss any daily doses of his HIV/AIDS
6 Medication. At this point, JOHN DOE SEVEN took his last dose on Friday, July 28 and was out
7 of his medication. He called a CVS Caremark representative and explained that he needed his
8 medication the same day, July 29, because otherwise he would miss daily doses of his HIV/AIDS
9 Medication. He further explained that because of his job, he was leaving the country to fly to Rome
10 on Monday, July 31 and not returning until Wednesday, August 2. This representative transferred
11 JOHN DOE SEVEN to a different representative. The second representative JOHN DOE SEVEN
12 spoke to stated that nothing could be done and that Monday, July 31 was the earliest he could
13 receive his HIV/AIDS Medication. JOHN DOE SEVEN insisted that this was completely
14 unacceptable, because if his medication was delivered on Monday, July 31, he would not be able
15 to retrieve it until Wednesday, August 2 at the earliest, which meant that the medication would be
16 exposed to several days of summer heat as it would be outside on the front stoop of his apartment
17 building. During this time, the medication could also be stolen, as JOHN DOE SEVEN states
18 happens “frequently” in his neighborhood. Making matters worse, this would result in him missing
19 at least four doses of his HIV/AIDS Medication.

20 85. JOHN DOE SEVEN was then transferred to a third CVS representative, who
21 purported to be a pharmacist. The only solution offered by this representative was for JOHN DOE
22 SEVEN to drive to a UPS warehouse in New Jersey on Monday to pick up his medication before
23 leaving the country that same day for work. JOHN DOE SEVEN believed this would require him
24 to travel over 35 miles away—over 70 miles roundtrip—to pick up his prescription. JOHN DOE
25 SEVEN explained that this was logistically infeasible because of his work schedule, not to mention
26 the extra cost of tolls and gas. Finally, this representative stated CVS Caremark would try to have
27 the medication reordered and shipped on July 29 to a CVS Specialty Pharmacy where JOHN DOE
28 SEVEN could pick it up. However, there was no guarantee the medication would in fact be

1 delivered to the CVS Specialty Pharmacy on July 29, nor was there any assurance that he would
2 be notified if there was another problem delivering the medications.

3 86. Ultimately, JOHN DOE SEVEN's HIV/AIDS Medication was delivered to his
4 home on Sunday, July 30. He was not given any advance notification of this delivery or asked
5 where the medication should be delivered. In fact, JOHN DOE SEVEN was staying in Manhattan
6 on July 30, and only learned of the delivery because one of his neighbors in New Jersey called
7 him about it and was able to sign for the delivery. This resulted in JOHN DOE SEVEN having to
8 drive roundtrip approximately 32 miles and pay approximately \$43 in gas and tolls that he would
9 have not otherwise incurred. Had JOHN DOE SEVEN not been notified by his neighbor about the
10 delivery or not been able to travel to his home in New Jersey before having to be at the airport in
11 New York for work, the medication would have sat outside for several days until he returned from
12 work.

13 87. This experience was extremely stressful and frustrating for JOHN DOE SEVEN.
14 Only because JOHN DOE SEVEN was able to spend over 40 minutes on the phone with these
15 three CVS representatives, and was steadfast in refusing to accept a July 31 delivery date and the
16 consequences of missing daily doses of his HIV/AIDS Medication, did this solution materialize.

17 88. JOHN DOE SEVEN placed a refill order on August 21, 2023, which was supposed
18 to be delivered to his local CVS Pharmacy on August 23. On August 25, however, he received a
19 call from CVS Specialty that his medication refill could not be processed because his copay
20 assistance card had been exhausted, and that he owed a balance of \$251.90. JOHN DOE SEVEN
21 has used the same copay assistance card for the past six years, and never before had an issue with
22 the card running out. He called back and spoke with two CVS representatives and an employee of
23 Prudent RX, who one of the CVS representatives had contacted after being unable to find an
24 internal solution. The Prudent RX employee enrolled JOHN DOE SEVEN in the Prudent RX
25 copay program, but rather than resolving the issue, when the second representative reran the
26 prescription, the balance owed by JOHN DOE SEVEN had actually ballooned to \$700. The second
27 representative had to call account solutions to try to resolve the issue, with a promise that
28 "someone" would make sure JOHN DOE SEVEN's prescription was sent to the CVS Pharmacy

1 to be picked up in the next couple of days. Ultimately, JOHN DOE SEVEN spent over an hour
2 and a half on the phone trying to resolve the issue and was left to hope that CVS would figure
3 things out and ship out his medication as soon as possible. As of the filing of this Complaint, this
4 issue is unresolved.

5 89. Because of the restrictions and limitations under the Program, JOHN DOE SEVEN
6 worries about these exact situations recurring every month when he refills his medication. One of
7 the reasons that this is extremely frustrating to JOHN DOE SEVEN is because as recently as
8 December 2022 he could obtain his HIV/AIDS Medication without any concern for these issues,
9 even though CVS Caremark was the same pharmacy benefits manager for his prescription drug
10 benefit.

11 90. Because of the restrictions and limitations under the Program, JOHN DOE SEVEN
12 is now completely unable to do what he could easily accomplish just last year. For example, while
13 traveling for work in 2022, JOHN DOE SEVEN ran out of his HIV/AIDS Medication after being
14 unexpectedly delayed in Austin, Texas. Without the delay, he would have refilled his prescription
15 on time in New York. In contrast to the significant difficulties he has faced ordering and receiving
16 his HIV/AIDS Medication under the Program, all JOHN DOE SEVEN had to do prior to the
17 Program was ask to have his prescription transferred from the CVS Pharmacy in New York to a
18 CVS Pharmacy in Austin. JOHN DOE SEVEN walked into the CVS Pharmacy in Austin and
19 within about twenty minutes was able to pick up his HIV/AIDS Medication.

20 91. Now if JOHN DOE SEVEN ran out of his HIV/AIDS Medication while traveling
21 domestically for work, because of the restrictions and limitations under the Program he is not able
22 to visit a local in-network pharmacy to transfer his prescription and then pick it up that same day.
23 Rather, his experience would mirror the access issues he encountered in July 2023 when his refill
24 order was delayed because of inclement weather and the solutions being offered by Defendants
25 would have resulted in missed daily doses of his HIV/AIDS Medication. And if he was working
26 internationally and suffered a delay, the situation could be virtually impossible to solve.

27 92. For individuals like JOHN DOE SEVEN, flexibility in obtaining their HIV/AIDS
28 Medication is critical to having meaningful access to the prescription drug benefit administered

1 by Defendants. Additionally, as he can personally attest, flight delays or cancellations are very
2 common. JOHN DOE SEVEN estimates that at least twice a month a flight he works is delayed
3 or cancelled, making it difficult to plan in advance where he will be on a given day.

4 93. Despite this very fluid work schedule, before his HIV/AIDS Medication was
5 subject to the Program, JOHN DOE SEVEN had no problems obtaining his medication when
6 delays or cancellations occurred. Because of the limitations and restrictions under the Program,
7 JOHN DOE SEVEN must ensure that he has an adequate supply of his HIV/AIDS Medication
8 before flying for work to ensure that he does not run out. Since he is required to obtain his
9 medication in 30-day refills and must wait until a certain time of the month to submit a refill order,
10 it is difficult, if not impossible, for JOHN DOE SEVEN to be confident that when he leaves for
11 work to travel either domestically or internationally that he will have enough medication
12 notwithstanding any delays or cancellations.

13 94. Before his HIV/AIDS Medication was subject to the Program, JOHN DOE SEVEN
14 was also able to have his prescription automatically refilled every month, saving him time and
15 providing more certainty on when his prescription would be available for pick up. Under the
16 Program, JOHN DOE SEVEN is now required to manually refill every month. He originally called
17 in his refills, which would take on average about 30 minutes every month. After a frustrating May
18 phone call, he has since ordered his refills through the CVS mobile application (though as detailed
19 previously, he has not managed to avoid having to have lengthy phone calls with CVS
20 representatives to get his prescription delivered). Additionally, before the Program was
21 implemented, JOHN DOE SEVEN would receive notifications about his prescriptions through
22 both text messages and from the CVS app. However, since his HIV/AIDS Medication was
23 subjected to the Program, he no longer receives these types of notifications.

24 95. The risk of being unable to receive his HIV/AIDS Medication when needed is a
25 constant source of stress for JOHN DOE SEVEN. Stress plays a part in undermining the human
26 immune system and is detrimental to people with chronic illness. In the words of JOHN DOE
27 SEVEN, the Program has resulted in a frustrating, disappointing, and unreliable retrieval system
28 that serves only to add additional stress to JOHN DOE SEVEN's life. The Program has

1 significantly reduced for JOHN DOE SEVEN access to both pharmacists and his HIV/AIDS
2 Medications.

3 96. JOHN DOE SEVEN has made multiple attempts to opt out of the Program and
4 contact Defendants about his health and privacy concerns under the Program. On April 17, 2023,
5 he sent a letter to CVS Caremark in the manner set forth in his health care plan documents for
6 issues concerning “Mail Order Pharmacy Service” and “Filling Retail Prescription Claims.” On
7 May 10, 2023, the letter was returned as “not deliverable as addressed,” despite being mailed to
8 the CVS Caremark address listed in his health care plan documents. JOHN DOE SEVEN then
9 attempted to fax his opt-out request to a number provided in a health care plan document on his
10 employers’ website concerning appeals to CVS Caremark.⁴ He faxed the request on June 2, 2023,
11 but has not received any response from Defendants. He also has called his health insurance
12 company, who told him to contact CVS Specialty. CVS Specialty instructed him to contact his
13 health insurance company. Finally, on June 29, 2023, JOHN DOE SEVEN mailed his request to
14 a different CVS Caremark address listed in his health care plan documents. Two months later, he
15 has not received a response. Thus, as of the filing of this Complaint, JOHN DOE SEVEN is
16 subjected to the Program and his requests for a reasonable accommodation have been ignored.

17 **STATEMENT OF FACTS**

18 97. The Program results in a reduction in or elimination of health plans’ drug benefits,
19 effectuated by transforming drug purchases at community pharmacies from an “in-network”
20 covered benefit to an “out-of-network” payment. Under the Program, patients using a non-CVS
21 community pharmacy will be considered going “out-of-network” and will be subject to increased
22 “out-of-network” charges or may not have these medications covered at all. Class Members also
23 face a potential or actual increase in out-of-pocket expenses, as co-pays, discounts, or rebates that
24 were otherwise covered or recognized may not be consistently covered by or recognized under the
25 Program at the discretion of CVS Caremark to elect whether to do so, resulting in an overall
26 increased cost for the same benefits. As part of the prescription drug plans it offers, one of CVS
27 Caremark’s roles as a prescription drug benefit administrator for any plan sponsor or health plan

28 ⁴ CVS Caremark, Appeal Process, <https://my.aa.com/wp-content/uploads/2022/01/Caremark-Appeal-Process-.pdf>.

1 it contracts with is to establish and contractually control which, if any, non-CVS pharmacies are
2 “in-network,” thereby determining where Class Members may purchase their prescription drugs
3 with full insurance coverage.

4 98. As a result of Defendants’ discriminatory behavior, HIV/AIDS patients face a
5 potentially life-threatening decision that also threatens their privacy and reduces their current
6 health plan’s drug benefits. They must either: (i) forego essential counseling from an expert
7 pharmacist at a community pharmacy and face risks to their privacy that are inherent in the
8 Program, since even where CSP permits deliveries to CVS pharmacies, they are only for drop
9 shipment as compared to being filled there and subject to active consultation by a pharmacist; or
10 (ii) pay hundreds or thousands of dollars out-of-pocket monthly for their medications at their non-
11 CVS community pharmacy.

12 99. The community specialty pharmacist knows patients’ medical histories and,
13 working directly with patients in face-to-face interactions and with specific training in HIV/AIDS
14 Medications, is best positioned to: (i) detect potentially life-threatening adverse drug interactions
15 and dangerous side effects, some of which may only be detected visually; (ii) immediately provide
16 new drug regimens as their disease progresses; and (iii) provide essential advice and counseling
17 that help HIV/AIDS patients and their families navigate the challenges of living with a chronic
18 and sometimes debilitating condition. Defendants’ Program is further flawed because it does not
19 allow some subscribers to transfer all of their medications to a single provider. Instead, CVS
20 Caremark’s Program is in fact two distinct programs for many subscribers—one for regular
21 medications, and a separate program for specialty medications. This means that many patients,
22 including JOHN DOE SIX and JOHN DOE SEVEN must manage prescriptions between
23 community pharmacies and the Program. This “separate and unequal” splitting of prescription
24 providers also makes it difficult, if not impossible, for CVS Caremark to track potentially life-
25 threatening drug interactions, as discussed below.

26 100. To the extent applicable to them, Plaintiffs have exhausted available administrative
27 remedies with regard to opting out of the Program. In response, CVS Caremark or the plan
28 sponsors either did not formally respond to these opt out requests or refused to permit Plaintiffs to

1 opt out of the Program. Plaintiffs therefore bring this action on behalf of themselves and on behalf
2 of a class (defined herein) of residents in the United States who: (i) are or were enrolled in a health
3 care plan that includes a prescription drug benefit that is administered by CVS Caremark, and
4 (ii) have been prescribed specialty HIV/AIDS Medications subject to the Program.

5 101. For all but the wealthiest HIV/AIDS patients, the dramatic cost increases and/or
6 reductions in or elimination of benefits of coverage associated with the Program are untenable,
7 and thus many Class Members are left with no choice but to risk their health and privacy by
8 obtaining their life-sustaining medications through the Program.

9 102. This limitation is a material change to and reduction or elimination of benefits in
10 Class Members' pharmacy benefits and violates both federal and state law as described herein.
11 One harmful impact of this policy is that the Program does not allow for early refills; patients
12 cannot refill their HIV/AIDS Medication until the very end of their current prescription. As a
13 result, enrollees will be forced to call or fax CSP to re-order drugs during a very narrow period of
14 time each month, often requiring them to coordinate with their physicians, as further described
15 below. If there are: (i) circumstances that make it difficult for the patient to re-order drugs at the
16 designated time—such as with JOHN DOE SIX and JOHN DOE SEVEN, for example, who work
17 out of town for days at a time, or other workload and travel commitments or illness; or (ii) billing,
18 processing, or mail complications or delays (such as happened with JOHN DOE TWO and is
19 ongoing for JOHN DOE SEVEN), HIV/AIDS patients will likely miss doses and potentially
20 experience serious health problems as a result.

21 103. In addition to the potentially life-threatening health consequences of the Program
22 as discussed below, Class Members' fundamental and inalienable right to privacy is also
23 threatened. An improper disclosure of a person's HIV or AIDS status can often result in the denial
24 of proper health care, poor treatment in educational and work settings, and many other collateral
25 consequences. *See Activities Combating HIV Stigma and Discrimination*, HIV.gov,
26 [https://www.hiv.gov/federal-response/federal-activities-agencies/activities-combating-hiv-](https://www.hiv.gov/federal-response/federal-activities-agencies/activities-combating-hiv-stigma-and-discrimination)
27 [stigma-and-discrimination](https://www.hiv.gov/federal-response/federal-activities-agencies/activities-combating-hiv-stigma-and-discrimination) (last visited Sept. 6, 2023). Ninety percent of Americans recognize that
28 people living with HIV and AIDS face prejudice and discrimination, and roughly one in eight

1 people living with HIV is denied health services because of such stigma and discrimination
2 associated with the disease. *See* Henry J. Kaiser Family Foundation, *The Washington Post*/
3 Henry J. Kaiser Family Foundation 2012 Survey of Americans on HIV/AIDS (July 2012),
4 <https://www.kff.org/wp-content/uploads/2013/01/8334-f.pdf>; *see also HIV Stigma and*
5 *Discrimination*, Ctrs. for Disease Control & Prevention, [https://www.cdc.gov/hiv/basics/hiv-](https://www.cdc.gov/hiv/basics/hiv-stigma/index.html)
6 [stigma/index.html](https://www.cdc.gov/hiv/basics/hiv-stigma/index.html) (last visited Sept. 7, 2023). For the roughly one million Americans living with
7 HIV/AIDS, the “painful stigma and discrimination continue to permeate their daily lives.”
8 *Eradicating Discrimination Against People Living With HIV/AIDS*, U.S. Dep’t of Justice Archives
9 (Dec. 1, 2015), [https://www.justice.gov/archives/opa/blog/eradicating-discrimination-against-](https://www.justice.gov/archives/opa/blog/eradicating-discrimination-against-people-living-hiv-aids)
10 [people-living-hiv-aids](https://www.justice.gov/archives/opa/blog/eradicating-discrimination-against-people-living-hiv-aids).⁵ Class Members who live in apartment buildings or who will be required to
11 have medications delivered to their workplace have expressed alarm that neighbors and coworkers,
12 who do not know that the recipient has HIV/AIDS, will come to suspect that they are ill. Mail-
13 order shipments also present the risk of lost or stolen medications, as each shipment of medications
14 may be worth thousands of dollars. CVS Caremark claims Class Members bear the financial risk
15 of lost shipments left at their door or in their mailbox. Alternatively, the recipient may need to be
16 present when the package is delivered, thus forcing the patient to obtain needed medications on
17 the schedule of the delivery person, which raises further privacy and personal liberty concerns or
18 requires them to miss hours or days of work waiting for deliveries. Furthermore, if a Class Member
19 obtains his or her HIV/AIDS Medications from a CVS pharmacy, he or she must discuss those
20 medications with pharmacy personnel he or she does not know and who is likely not aware of his

21
22 ⁵ “HIV stigma and discrimination can pose complex barriers to prevention, testing, treatment, and
23 support for people living with or at risk for HIV. Some examples of stigma include being shunned
24 by family, peers, and the wider community; receiving poor treatment in health care and education
25 settings; and experiencing judgmental attitudes, insults, or harassment. Some individuals with HIV
26 have been denied or lost employment, housing, and other services; prevented from receiving health
27 care; denied access to educational and training programs; and have been victims of violence and
28 hate crimes. HIV-related stigma and discrimination prevents individuals from learning about their
HIV status, disclosing their status even to family members and sexual partners, and/or accessing
medical care and treatment, weakening their ability to protect themselves from getting or
transmitting HIV, and to stay healthy.” *Activities Combating HIV Stigma and Discrimination*,
HIV.gov, [https://www.hiv.gov/federal-response/federal-activities-agencies/activities-combating-](https://www.hiv.gov/federal-response/federal-activities-agencies/activities-combating-hiv-stigma-and-discrimination)
[hiv-stigma-and-discrimination](https://www.hiv.gov/federal-response/federal-activities-agencies/activities-combating-hiv-stigma-and-discrimination) (last visited Sept. 7, 2023).

1 or her disability or medical condition, in violation of his or her right to privacy. All Class Members
2 must discuss their HIV/AIDS status with CSP personnel over the phone.

3 104. Even if they elect to not use mail order but rather a regular CVS Pharmacy for pick-
4 up of their HIV/AIDS Medications under the Program, Class Members still face serious health
5 and privacy issues. The pharmacists at a CVS Pharmacy do not fill the HIV/AIDS Medication
6 prescriptions. Such pharmacists are generally unable to provide any counseling services related to
7 the HIV/AIDS Medications. Class Members may be forced to fill their HIV/AIDS Medication
8 prescriptions at full cost at their local pharmacies just so they can receive the personalized services
9 they need from their established community pharmacists. Class Members in such a situation run
10 the risk of having to manage their prescriptions between their local pharmacy and CVS Caremark
11 by themselves. CVS Caremark also may not have a full and accurate record of all of the
12 medications Class Members are taking and cannot anticipate or warn against potential adverse
13 drug interactions, which are common with HIV/AIDS Medications. Additionally, similar to mail-
14 order, Class Members must wait for their HIV/AIDS Medications to ship to a CVS Pharmacy, and
15 face delays and lost shipments.

16 105. Furthermore, CVS Pharmacy personnel do not have the same level of sensitivity as
17 Class Members' local pharmacy staff. For example, Class Members have reported that CVS
18 Caremark personnel have shouted the name of their HIV/AIDS Medications across the room in
19 front of other customers, raising severe privacy concerns and making it untenable to pick up their
20 medications at a CVS Pharmacy in the future.

21 106. Drop shipment to a CVS Pharmacy is simply not the same benefit as having access
22 to a local pharmacy where pharmacists are aware of Class Members' drug histories and regimens.
23 Even though Class Members are given a choice to have their HIV/AIDS Medications delivered to
24 their homes, CVS Caremark does not provide them a window of time within which the delivery
25 will take place. As a result, Class Members are forced to wait at home all day to sign for their
26 medications. If Class Members do not have a signature required for their HIV/AIDS Medications,
27 then they face the risk of having their drugs stolen because their HIV/AIDS Medications are left
28 sitting in front of their doors, as stated above. How such medications are delivered, the limited

1 options provided to Plaintiffs and Class Members, the mix-ups and delays occasioned by CVS
2 Caremark's flawed delivery process, the decision not to consistently apply rebates or discounts,
3 and/or the decisions to offer opt-out and non-opt-out options to plan sponsors and/or recognize
4 opt-out requests, are all matters within CVS Caremark's discretion and control.

5 107. The Program constitutes a material and discriminatory change in Class Members'
6 coverage, a significant reduction in or elimination of prescription drug benefits, and a violation of
7 the standards of good healthcare and clinically appropriate care for HIV/AIDS patients. By
8 implementing such practices, CVS Caremark effectively reduces the quality of prescription drug
9 care provided to Class Members, and thus imposes a reduction or elimination of benefits, by
10 forcing enrollees to only obtain such medications through their sister co-conspirator and wholly-
11 owned subsidiary CSP—allowing CVS Caremark to profit through this conduct by keeping
12 hundreds of thousands, if not millions, of dollars in prescription fill fees, possible rebates, and
13 other monies to themselves. As a result, many Class Members have already expended resources
14 in response to the Program and presently are threatened with substantial, imminent, and irreparable
15 harm. This harm includes a grave threat to their health and safety, as well as their right to privacy.

16 108. The decision to force Class Members to accept CSP as their exclusive provider
17 under the Program, not advise enrollees of opt-out rights in a meaningful way, not timely deliver
18 medications, not consistently apply or accept rebates or discounts offered by manufacturers and
19 provided to enrollees, and/or provide financial incentives to employers to enroll in the Program
20 are acts and decisions exclusively in the control and discretion of CVS Caremark. Such decisions
21 are ultimately motivated by profit, as shown by CVS Caremark providing financial incentives to
22 self-funded plans and other plan sponsors to select the Program over a prescription drug benefit
23 plan that allows enrollees to use the pharmacy of their choice. CVS Caremark profits if plan
24 sponsors select a prescription benefit plan that is subject to the Program. As a result of the Program,
25 CVS Caremark and CSP will likely continue to see a substantial increase in revenues and even
26 greater increases in profits as a result of the forced transition of its enrollees.

27 ***The Role of the Clinical Pharmacist and the Importance of Face-to-Face Interactions***

28 109. Many physicians specializing in HIV/AIDS treatment are unable to spend very long

1 with each patient. In fact, physician consultations are often limited to just 15 minutes in the era of
2 managed care. As a result, there is very limited time for the physician to elicit extensive
3 information about the patient's complete medical history, including which non-HIV/AIDS
4 Medications the patient is taking, and impart critical information about prescription drug regimens
5 and warnings about the high number of known adverse side effects and adverse drug interactions
6 associated with HIV/AIDS Medications that need to be monitored. For this reason and the reasons
7 that follow, it is vitally important for HIV/AIDS patients, even as compared to patients taking
8 other "specialty" medications, to have access to in-person consultations, where they can address
9 any and all of the numerous issues and concerns surrounding drug interactions, side effects, and
10 other problems that can arise while living with and managing HIV/AIDS.

11 110. HIV/AIDS patients are often prescribed both specialty and non-specialty
12 medications, including over-the-counter medications that do not require a prescription and
13 therefore are not tracked in the same manner as prescription medications. Many HIV/AIDS
14 patients have a history of cardiovascular disease, hypertension, anemia, diabetes, or psychiatric
15 issues, among other conditions. Medications that manage mental health issues, for example, such
16 as antidepressants, anti-psychotics, and sleep agents, among others, are often not prescribed by the
17 physician managing the patient's HIV/AIDS conditions. Since for many patients only specialty
18 medications are to be filled by CVS Caremark's wholly owned subsidiary CSP, and non-specialty
19 medications may be filled at the patient's community pharmacy, CSP may not always have a full
20 and accurate record of all the medications the patient is taking and therefore cannot anticipate or
21 warn against potential adverse drug interactions, which are common with HIV/AIDS Medications.
22 Even worse, CVS Caremark uses its discretion to require some enrollees to fulfill both specialty
23 and non-specialty medications using the Program, thereby denying them the benefit of any direct
24 pharmacist consultation.

25 111. But for the Program, a patient's in-network community pharmacist would be aware
26 of the patient's entire medical history, have a comprehensive view of the patient's complete
27 medication regimen (as compared to only certain specialty medications), and engage in ongoing
28 communications with physicians and patients regarding potential issues that may arise concerning

1 drug side effects, adverse drug interactions, and adherence to specialty medications.

2 112. The ability of community pharmacists to closely monitor HIV/AIDS patients in
3 face-to-face encounters is lifesaving in many instances. In the case of a patient with a history of
4 depression, for example, a community pharmacist can work with the patient through regular
5 “check-ins” as changes in mood, attitudes, or day-to-day function would occur if an HIV/AIDS
6 Medication such as Atripla (with documented central nervous system side effects) were
7 prescribed. Other side effects provide visual cues—changes in skin color, for example—that
8 cannot be detected over the phone. Additionally, community pharmacists, who serve patients
9 prescribed medications by numerous doctors, may have more up-to-date experience and
10 information about potential adverse drug interactions and changes in drug regimens than
11 physicians themselves.

12 113. HIV/AIDS patients, therefore, rely on their specialty community pharmacists to
13 remind them how and when drugs must be taken, to review potential side effects with many other
14 medications and develop strategies to avoid those side effects, and to provide other counseling,
15 including what to expect if a patient’s drug regimen changes.

16 114. Conversely, the CSP personnel with whom Class Members typically directly
17 interact with, particularly over the phone, are not pharmacists, nor do they have specific knowledge
18 about HIV/AIDS, but rather are general customer service representatives with little to no
19 specialized training around HIV/AIDS Medications. Thus, taking the local pharmacist, and the
20 community pharmacy where they provide their services, out of the treatment equation for
21 HIV/AIDS patients results in a loss and injury to Class Members, as it lessens the quality of care
22 and benefits they receive and are entitled to receive under their plans.

23 115. This harm is not conjectural or speculative, but real, imminent, and severe. “Putting
24 a label on the bottle—that’s the least of what we do,” Marva Brannum, a former clinical specialty
25 pharmacist at Edwin’s Prescription Pharmacy in North Hollywood, California, explains.
26 Ms. Brannum, who has worked with HIV and AIDS patients for 30 years, said working with
27 patients also includes knowing the psychological and social issues involved with their disease
28 states and providing a critical informed link between doctor and patient. Importantly, working with

1 patients directly allows pharmacists to monitor potential adverse drug interactions. “We are an
2 extension of the patient’s clinical team,” Brannum says.

3 116. The Program thus reduces the overall quality of care Class Members receive and
4 reduces or effectively eliminates their health plans’ pharmacy benefits, since providing an
5 effective pharmacy benefit for HIV/AIDS patients is not just a question of knowing the drugs the
6 patient uses, but also knowing the patient and all of their medical needs. “The most intricate part
7 that leads to quality outcomes and leads to decreased costs for us is knowing the patient in total,”
8 Brannum says.

9 117. Patients who need specialty medicines and suffer from complex diseases require
10 complex treatment. Community pharmacists that provide HIV/AIDS Medications build strong
11 personal and clinical relationships with their patients, making sure that they receive the drugs they
12 need when they need them and even providing them discounts for these expensive medications.
13 The community pharmacist is an essential member of the treatment team.

14 118. Furthermore, because there is presently no cure for HIV/AIDS, the virus
15 continually mutates around the medications prescribed to treat it, requiring constant monitoring
16 and immediate provision of new medication regimens to address changes in treatment. Periods of
17 medication changes are particularly sensitive times for HIV/AIDS patients. Doctors and
18 pharmacists must review the panoply of the patient’s medications for potential new adverse drug
19 interactions, and patients must be concerned about addressing new drug side effects in the short
20 term.

21 119. The limited options available to obtain HIV/AIDS Medications under the Program
22 also creates the very real risk of delayed, lost, or stolen shipments, resulting in dire consequences
23 for many patients who must strictly adhere to their medication regimens or face serious illness or
24 death, as well as potentially serious personal financial liability according to CVS Caremark, which
25 in its discretion claims these losses are the patient’s responsibility even though they are occasioned
26 by the mandated use of the Program. Yet, as detailed below, Defendants appear to have no realistic
27 fail-safe procedure in place to allow subscribers to purchase medications at local community
28 pharmacies (or as shown by the experiences of Plaintiffs, even at CVS pharmacies) in the event

1 that such shipments are delayed, lost, or stolen. Unfortunately, theft of HIV/AIDS Medications
2 appears to be more than an isolated event due to the high cost of some of the medications.

3 120. CVS Caremark has replaced the present, ongoing, close relationship between
4 community pharmacist and patient with a toll-free telephone number that does not and cannot
5 provide the same or similar level of service and benefits as detailed above. Class Members are not
6 provided regular access to a pharmacist with similar qualification levels, if at all. Furthermore, the
7 Program's requirement that Class Members must routinely call in during a limited time period to
8 renew their prescriptions as explained below—and work their way through automated robocalls,
9 messages, and multiple call center staff—increases stress and fatigue for patients, exacerbating
10 their conditions.

11 ***Defendants' Discriminatory Business Practices Specifically Target HIV/AIDS Patients***

12 121. Due to the complex nature of their disease and medications, HIV/AIDS patients are
13 particularly hard hit and discriminated against by requirements that they obtain their specialty
14 medications exclusively under the Program.

15 122. For the reasons stated herein, patients with HIV and AIDS are disproportionately
16 impacted by the Program compared to non-disabled patients, and even compared to patients
17 prescribed non-HIV/AIDS specialty medications.

18 123. Further, as the Program applies to HIV/AIDS Medications and medication for other
19 disabilities but permits Plaintiffs and Class Members to continue to use their pharmacists of choice
20 as an in-network benefit for other medications, including other medications prescribed to the same
21 individuals, the Program specifically targets and discriminates against individuals on the basis of
22 their disability. The Program denies HIV/AIDS patients full and equal access to utilize the in-
23 network pharmacies and method of delivery of their choice specifically because of the medications
24 attributable to their illness, while at the same time permitting other enrollees to enjoy full access
25 to the pharmacies of their choice. This is an arbitrary and harmful distinction, since the
26 pharmacist's role is even more important in caring for HIV/AIDS patients. While the Program
27 may be appropriate for some patients or some medications, it is not appropriate for all patients
28 with complex, chronic conditions, especially illnesses subject to social stigma where privacy is a

1 significant concern like HIV/AIDS, for which the pharmacist does much more than merely
2 dispense specialty medications. The decision to enroll in the Program should be a matter of
3 informed enrollee choice, not a mandate. CVS Caremark’s change in policy and corresponding
4 reduction in or elimination of benefits creates a particular health risk for HIV/AIDS patients that
5 require time-sensitive treatments. Even worse, CVS Caremark uses its discretion to require some
6 enrollees to fulfill both specialty and non-specialty medications using the Program, so that they
7 are directly discriminated against by being required to go to the lowest common denominator to
8 obtain all of their medications.

9 124. According to CSP, “[a] specialty medication[] is used to treat complex and chronic
10 conditions [They] tend to be high cost and those who take specialty medications may need
11 extra monitoring or support.”⁶ According to CSP’s Specialty Pharmacy Distribution Drug List for
12 April 2018,⁷ the following is a list of medications classified as “specialty” by CSP. Critically, all
13 of the HIV/AIDS Medications taken by Plaintiffs are classified as “specialty” by CSP, and are
14 thus subject to the Program. In fact, CSP’s “Value Formulary” categorically lists “HIV
15 Medications” as “specialty medications,” all subject to the mandatory requirements of the
16 Program.⁸ The specialty medications are listed below corresponding to the medical conditions they
17 treat, including HIV/AIDS. Only the specialty medications are subject to the Program, and these
18 drugs may only be obtained through the Program. The medications that Defendants classify as
19 “specialty medications” are subject to change at Defendants’ sole discretion and are updated
20 periodically, according to CVS Specialty’s and CVS Caremark’s websites.

21 125. The specialty medications listed below are used to treat illnesses that meet the
22 definition of “disability”⁹ (*see* 29 C.F.R. § 1630.2):

23 _____
24 ⁶ CVS Specialty Pharmacy, Patient Frequently Asked Questions, What is a specialty medication,
25 and how do I know if I can fill through CVS Specialty?,
https://www.cvsspecialty.com/faq.html#acc_link_content_section_box_copy_boxpar_accordion_copy_1 (last visited Sept. 7, 2023).

26 ⁷ CVS Specialty Pharmacy Distribution Drug List, April 2018,
27 <https://www.aseahealth.org/document-rx-cvs-caremark-specialty-pharmacy-drug-list/file> (last
visited Sept. 7, 2023.).

28 ⁸ CVS Caremark Value Formulary, Effective as of 07/01/2023,
https://www.caremark.com/portal/asset/Value_Formulary.pdf (last visited Sept. 7, 2023.)

⁹ Arguably, there are two drugs on CVS’s specialty formulary that may not treat a disability:

1 • **HIV/AIDS:** as set forth below, HIV and AIDS are disabilities. CVS Caremark requires
 2 modern, commonly prescribed drugs for HIV/AIDS and its related conditions to be obtained only
 3 through the Program:

4 ○ Aptivus; Atripla; Biktarvy; Combivir; Complera; Crixivan; Descovy; Edura;
 5 Egrifta; Emtriva; Epivir; Epzicom; Evotaz; Fuzeon; Genvoya; Intelence; Invirase; Isentress; Julua;
 6 Kaletra; Lexiva; Norvir; Odefsey; Prezcobix; Prezista; Rescriptor; Retrovir; Retrovir; Injectable;
 7 Reyataz; Selzentry; Stribild; Sustiva; Symfi Lo; Tivicay; Triumeq; Trizivir; Truvada; Tybost;
 8 Videx; Videx Ec; Videx Solution; Viracept; Viramune; Viramune Xr; Viread; Zerit; Ziagen;
 9 Ziagen Solution; Abacavir Tab; Abacavir/Lamivudine; Abacavir/Lamivudine/Zidovudine Tab;
 10 Atazanavir Sulfate; Didanosine; Efavirenz; Fosamprenavir; Lamivudine;
 11 Lamivudine/Zidovudine; Lopinavir/Ritonavir Soln; Nevirapine; Ritonavir; Stavudine; Tenofovir
 12 Disoproxil Fumarate; Zarxui; and Zidovudine.

13 • **Active Psoriatic Arthritis:** “is a form of arthritis that affects some people who have
 14 psoriasis — a [skin condition] . . . Joint pain, stiffness and swelling are the main signs and
 15 symptoms of psoriatic arthritis. They can affect any part of the body, including . . . fingertips and
 16 spine, and can range from relatively mild to severe. . . . Without treatment, psoriatic arthritis can
 17 be disabling.”¹⁰ Thus, Active Psoriatic Arthritis is a disability: a physical impairment that
 18 substantially limits the major life activities of, *inter alia*, performing manual tasks, walking,
 19 standing, sitting, reaching, lifting, bending, and the operation of special sense organs and skin and
 20 the musculoskeletal function, making it a disability. *See* 29 C.F.R. § 1630.2(j)(iii); *see also*
 21 *Carmona v. Southwest Airlines Co.*, 604 F. 3d 848, 859 (5th Cir. 2010) (holding that an individual
 22 who suffered from psoriatic arthritis was considered to have an impairment that substantially limits

23 Makena, designed to lower the risk of pre-term birth in women who have experienced pre-term
 24 birth in the past, and Synagis, designed to treat respiratory syncytial virus. However, the inclusion
 25 of one or even a handful of medications used to treat non-disabilities on the specialty pharmacy
 26 list does not allow CVS to avoid an Affordable Care Act violation. As alleged herein, the Program
 demonstrates discriminatory intent on behalf of CVS against HIV and AIDS patients. The effect
 of CVS Caremark’s Program is that HIV and AIDS patients are discouraged from enrolling in or
 remaining enrolled in a CVS Caremark health plan.

27 ¹⁰ Mayoclinic.org, Diseases and Conditions, Psoriatic Arthritis,
 28 <http://www.mayoclinic.org/diseases-conditions/psoriatic-arthritis/basics/definition/con-20015006> (last visited Sept. 7, 2023).

1 a major life activity because psoriatic arthritis limits one’s ability to walk). CVS Caremark requires
2 drugs for Active Psoriatic Arthritis to be obtained only through the Program:

3 ○ Cosentyx; Enbrel; Humira; Inflectra; Otezla; Otrexup; Rasuvo; Remicade;
4 Renflexis; Siliq; Stelara; Taltz; and Tremfya.

5 • **Atrial fibrillation:** “is an irregular and often very rapid heart rhythm. . . . The condition
6 . . . increases the risk of stroke, heart failure and other heart-related complications.”¹¹ At times,
7 atrial fibrillation only occurs on occasion, but it can also persist permanently, subjecting those who
8 suffer from atrial fibrillation to endure fatigue, dizziness, shortness of breath, chest pain, and
9 reduced ability to exercise.¹² Thus, atrial fibrillation is a physical impairment that substantially
10 limit the major life activities of, *inter alia*, breathing and regular mobility, making it a disability.
11 *See* 29 C.F.R. § 1630.2(j)(iii). CVS Caremark requires atrial fibrillation drugs to be obtained only
12 through the Program:

13 ○ Tikosyn; Dofetilide; and Ceprotin.

14 • **Allergic Rhinitis:** “is a reaction that happens in the eyes, nose, and throat. It occurs when
15 allergens in the air trigger the release of histamine and other chemicals in the body. . . . The
16 chemicals irritate . . . nasal tissue. This causes nasal allergy symptoms. When this happens in the
17 lungs’ breathing tubes, it can cause asthma symptoms such as coughing and wheezing.”¹³ Thus,
18 allergic rhinitis is a physical or mental impairment that substantially limits the major life activity
19 of, *inter alia*, properly functioning respiratory process, making it a disability. *See* 29 C.F.R.
20 § 1630.2(j)(iii); *see also* *Homeyer v. Stanley Tulchin Ass’n, Inc.*, 91 F. 3d 959, 963 (7th Cir. 1996)
21 (finding that, with adequate evidence, it is plausible a jury would conclude that allergic rhinitis
22 substantially limits one’s respiratory function thus rendering it a disability). CVS Caremark requires
23 drugs for allergic rhinitis and its related conditions to be obtained only through the Program:

24 ○ Oralair.

25 ¹¹ [https://www.mayoclinic.org/diseases-conditions/atrial-fibrillation/symptoms-causes/syc-](https://www.mayoclinic.org/diseases-conditions/atrial-fibrillation/symptoms-causes/syc-20350624)
26 [20350624](https://www.mayoclinic.org/diseases-conditions/atrial-fibrillation/symptoms-causes/syc-20350624) (last visited Sept. 7, 2023).

27 ¹² *Id.*

28 ¹³ [https://www.hopkinsmedicine.org/healthlibrary/conditions/pediatrics/allergic_rhinitis_in_childre](https://www.hopkinsmedicine.org/healthlibrary/conditions/pediatrics/allergic_rhinitis_in_childre_n_90,P01704)
[n_90,P01704](https://www.hopkinsmedicine.org/healthlibrary/conditions/pediatrics/allergic_rhinitis_in_childre_n_90,P01704) (last visited Sept. 7, 2023).

1 • **Alpha-1 Antitrypsin Deficiency (AAT):** “is a condition that raises [one’s] risk for lung
2 and other diseases.”¹⁴ AAT causes several symptoms, including wheezing, coughing, shortness of
3 breath, liver damage, and skin problems such as painful lumps or patches. Thus, AAT is a physical
4 or mental impairment that substantially limits the major life activity of, *inter alia*, everyday tasks,
5 making it a disability. *See* 29 C.F.R. § 1630.2(j)(iii). CVS Caremark requires drugs for AAT and
6 its related conditions to be obtained only through the Program:

7 ○ Aralast Np; Glassia; and Zemaira.

8 • **Anemia:** is a condition in which a person does not have the needed amount of “healthy red
9 blood cells or hemoglobin to carry oxygen to the body’s tissues.”¹⁵ If left untreated, anemia can
10 cause severe fatigue, pregnancy complications, heart problems, and death.¹⁶ Thus, anemia is a
11 physical or mental impairment that substantially limits the major life activity of, *inter alia*,
12 everyday tasks, making it a disability. *See* 29 C.F.R. § 1630.2(j)(iii). CVS Caremark requires drugs
13 for anemia and its related conditions to be obtained only through the Program:

14 ○ Aranesp; Epogen; and Procrit.

15 • **Asthma:** “is a chronic . . . condition that affects the airways in the lungs. The airways are
16 tubes that carry air into and out of [one’s] lungs.”¹⁷ With ongoing care and proper treatment, most
17 individuals with asthma experience few symptoms, but specific triggers, such as “pollen, exercise,
18 viral infections, or cold air”¹⁸ can cause one’s asthma to worsen, which can result in lowered
19 physical activity levels. Thus, asthma is a physical or mental impairment that substantially limits
20 the major life activity of, *inter alia*, everyday tasks, making it a disability. *See* 29 C.F.R.
21 § 1630.2(j)(iii). CVS Caremark requires drugs for asthma and its related conditions to be obtained
22 only through the Program:

23 _____
24 ¹⁴ Nhlbi.nih.gov, U.S. Department of Health and Human Services, National Heart, Lung, and
25 Blood Institute, Alpha-1 Antitrypsin Deficiency, <https://www.nhlbi.nih.gov/health-topics/alpha-1-antitrypsin-deficiency> (last visited Sept. 7, 2023).

26 ¹⁵ Mayoclinic.org, Diseases and Conditions, Anemia, <https://www.mayoclinic.org/diseases-conditions/anemia/symptoms-causes/syc-20351360> (last visited Sept. 7, 2023).

27 ¹⁶ *Id.*

28 ¹⁷ Nhlbi.nih.gov, U.S. Department of Health and Human Services, National Heart, Lung, and
Blood Institute, Asthma, <https://www.nhlbi.nih.gov/health-topics/asthma> (last visited Sept. 7,
2023).

¹⁸ *Id.*

1 ○ Cinqair; Fasenra; Nucala; Levoleucovorin Calcium; and Xolair.

2 • **Blood Clotting Disorders (Hypercoagulable States or Thrombophilia):** are conditions
3 “that make[] [one’s] body more likely than normal to make blood clots. [One] can inherit or
4 acquire one of these conditions.”¹⁹ People with these disorders have an increased risk for blood
5 clots developing in the arteries and veins and, therefore, and increased risk for stroke, heart attack,
6 severe leg pain, difficulty walking, or even the loss of a limb.²⁰ Thus, blood clotting disorders are
7 physical or mental impairments that substantially limit the major life activities of, *inter alia*, hemic
8 and circulatory functions, organ functions, limbs, and walking, making them disabilities. *See* 29
9 C.F.R. § 1630.2(j)(iii). CVS Caremark requires drugs for blood clotting disorders and related
10 conditions to be obtained only through the Program:

11 ○ Bebulin; Benefix; Mononine; Rixubis; and Stimat.

12 • **Cancer:** is “a disease in which some of the body’s cells grow uncontrollably and spread to
13 other parts of the body.”²¹ Thus, all cancers are a physical or mental impairment that substantially
14 limits the major life activity of, *inter alia*, the operation of normal cell growth, making it a
15 disability. *See* 29 C.F.R. § 1630.2(j)(iii). CVS Caremark requires drugs for cancer and its related
16 conditions to be obtained only through the Program:

17 ○ Afinitor; Alecensa; Alunbrig; Benlysta; Bosulif; Cabometyx; Cotellic; Erivedge;
18 Erleada; Farydak; Gleevec; Hycamtin; Ibrance; Inlyta; Iressa; Jakafi; Kisqali; Kisqali Femara Co-
19 Pack Lonsurf; Mekinist; Mozobil; Mitoxantrone²²; Mugardnerlynx; Neumega; Nexavar; Ninlaro;
20 Odomzo; Pomalyst; Purixan; Procrit; Revlimid; Rubraca; Soliris; Sprycel; Stivarga; Sutent;
21 Sylatron; Stelara; Tafinlar; Tagrisso; Tarceva; Targretin; Tasigna; Temodar; Temozolomide;
22 Thalomid; Tykerb; Verzenio; Votrient; Xalkori; Xeloda; Xtandi; Zelboraf; Zolanza; Zortress;
23 Zykadia; Zytiga; Neulasta; Neupogen; Lonsurf; Leuprolideacetate; Ibrance; Capecitabine;
24 Bexarotene; Promacta; Granix; Leukine; Neulasta; Neupogen; Eligard; Firmagon; Supprelin La;

25 ¹⁹ My.clevelandclinic.org, Disease and Conditions, Blood Clotting Disorders (Hypercoagulable
26 States), [https://my.clevelandclinic.org/health/diseases/16788-blood-clotting-disorders-
hypercoagulable-states](https://my.clevelandclinic.org/health/diseases/16788-blood-clotting-disorders-hypercoagulable-states) (last visited Sept. 7, 2023).

27 ²⁰ *Id.*

28 ²¹ Cancer.gov, What Is Cancer?, <http://www.cancer.gov/about-cancer/what-is-cancer> (last visited
Sept. 7, 2023).

²² Cancer medications are also used to treat other disabilities such as Crohn’s Disease.

1 Trelstar; Vantas; Zoladex Adcetris; Avastin; Bavencio; Beleodaq; Bendeka; Cyramza; Dacogen;
2 Darzalex; Empliciti; Erbitux; Evomela; Folutyn; Fusilev; Gazyva; Halaven; Herceptin; Imfinzi;
3 Istodax; Ixempra; Jevtana; Kadcyca; Keytruda; Kyprolis; Levoleucovorin Calcium; Opdivo;
4 Perjeta; Portrazza; Proleukin; Rituxan; Rituxan; Hycela; Romidepsin; Sylatron; Sylvant;
5 Tecentriq; Temodar; Tepadina; Thyrogen; Torisel; Treanda; Valstar; Vectibix; Velcade; Vidaza;
6 Xgeva; Yervoy; Yondelis; Zaltrap; Zometa; Azacitidine; Decitabine; Mitoxantrone; and
7 Zoledronic Acid.

8 • **Cervical Dystonia:** “is a painful condition in which [one’s] neck muscles contract
9 involuntarily, causing [one’s] head to twist or turn to one side. Cervical dystonia can also cause
10 [one’s] head to uncontrollably tilt forward or backward.”²³ Cervical dystonia can cause severe
11 neck pain and headaches, and in some cases, the pain can be “exhausting and disabling.”²⁴ Thus,
12 cervical dystonia is a physical impairment that substantially limits a major life activity of, *inter*
13 *alia*, physical mobility, making it a disability. *See* 29 C.F.R. § 1630.2(j)(iii). CVS Caremark
14 requires cervical dystonia drugs to be obtained only through the Program:

15 ○ Botox; Dysport; Myobloc; and Xeomin.

16 • **Chronic Kidney Disease or Chronic Renal Failure:** is the gradual loss of kidney
17 function. “Chronic kidney disease can progress to end-stage kidney failure, which is fatal without
18 artificial filtering (dialysis) or a kidney transplant.”²⁵ Thus, chronic kidney disease is a physical or
19 mental impairment that substantially limits the major life activity of, *inter alia*, the operation of
20 kidneys, making it a disability. *See* 29 C.F.R. § 1630.2(j)(iii). CVS Caremark requires drugs for
21 chronic kidney disease and its related conditions to be obtained only through the Program:

22 ○ Norditropin; Parsabiv; and Sensipar.

23 • **Crohn’s Disease:** “is a type of inflammatory bowel disease (IBD). It causes swelling of
24 the tissues (inflammation) in [the] digestive tract, which can lead to abdominal pain, severe

25 ²³ Mayoclinic.org, Diseases and Conditions, Cervical Dystonia,
26 <https://www.mayoclinic.org/diseases-conditions/cervical-dystonia/symptoms-causes/syc-20354123> (last visited Sept. 7, 2023).

27 ²⁴ *Id.*

28 ²⁵ Mayoclinic.org, Diseases and Conditions, Chronic Kidney Disease,
<https://www.mayoclinic.org/diseases-conditions/chronic-kidney-disease/symptoms-causes/syc-20354521> (last visited Sept. 7, 2023).

1 diarrhea, fatigue, weight loss and malnutrition.”²⁶ Thus, Crohn’s disease is a physical impairment
 2 that substantially limits the major life activities of, *inter alia*, the operation of digestive and bowel
 3 functions, making it a disability. *See, e.g., Crevier v. Town of Spencer*, 600 F.Supp.2d 242 (D.
 4 Mass. 2008) (employee’s Crohn’s disease, a chronic illness that causes inflammation and
 5 ulceration in the digestive tract, interfered with employee’s major life activity of working, and
 6 thus was a disability). CVS Caremark requires drugs for Crohn’s disease to be obtained only
 7 through the Program:

8 ○ Cimzia; Entyvio; and Humira.

9 • **Cryopyrin-associated autoinflammatory syndromes (CAPS):** “are rare diseases related
 10 to a defect in the cryopyrin protein. CAPS diseases usually start in very young children. CAPS
 11 include Neonatal Onset Multisystem Inflammatory Disease (NOMID), Muckle-Wells Syndrome
 12 (MWS) and Familial Cold Autoinflammatory Syndrome (FCAS).”²⁷ Symptoms of these diseases
 13 include, *inter alia*: “fever and inflammation in multiple organs . . . chronic meningitis, causing
 14 headaches, blindness, hearing loss and neurologic problems . . . pain and swelling in large joints
 15 such as the knee . . . [g]rowth delay . . . episodic fever, chills, rash, red eyes, joint pain and severe
 16 headaches with vomiting. . . . partial or total hearing loss . . . a hive-like rash”²⁸ Thus, CAPS
 17 is a physical impairment that substantially limits the major life activities of, *inter alia*, seeing,
 18 hearing, and the operation of the brain, neurological, and musculoskeletal functions, making it a
 19 disability. *See* 29 C.F.R. § 1630.2(j)(iii). CVS Caremark requires drugs for CAPS and related
 20 conditions to be obtained only through the Program:

21 ○ Arcalyst and Ilaris.

22 • **Cystic fibrosis:** “is an inherited disorder that causes severe damage to the lungs, digestive
 23 system and other organs in the body. [It] affects the cells that produce mucus, sweat and digestive
 24 juices. . . . [A] defective gene causes the[se] secretions to become sticky and thick. Instead of

25 _____
 26 ²⁶ MayoClinic.org, Diseases and Conditions, Crohn’s Disease,
<http://www.mayoclinic.org/diseases-conditions/crohns-disease/basics/definition/con-20032061>
 (last visited Sept. 7, 2023).

27 ²⁷ Rheumatology.org, Cryopyrin Associated Autoinflammatory Syndromes (CAPS),
<https://rheumatology.org/patients/cryopyrin-associated-autoinflammatory-syndromes-caps> (last
 28 visited Sept. 7, 2023).

²⁸ *Id.*

1 acting as a lubricants, the secretions plug up tubes, ducts and passageways, especially in the lungs
 2 and pancreas.”²⁹ Thus, cystic fibrosis is a physical impairment that substantially limits the major
 3 life activities of, *inter alia*, breathing and operation of the respiratory and digestive functions,
 4 making it a disability. *See, e.g., Save Our Summers v. Washington State Dep’t of Ecology*, 132 F.
 5 Supp. 2d 896 (E.D. Wash. 1999) (children suffering from severe respiratory problems as result of
 6 their severe asthma and allergies and cystic fibrosis had disabilities). CVS Caremark requires
 7 drugs for cystic fibrosis and its related conditions to be obtained only through the Program:

8 ○ Bethkis; Kitabis; Pak; Pulmozyme; Tobi; Tobi Podhaler; Obramycin; and
 9 Nebulizer.

10 • **Cystinosis, Homocystinuria, Phenylketonuria (PKU), and Tyrosinemia:** are rare
 11 genetic diseases where the body cannot metabolize certain amino acids, causing the amino acids
 12 to accumulate in various organs of the body. These diseases “lead[] to widespread tissue and organ
 13 damage[,]”³⁰ affect the “kidneys, eyes, muscles, pancreas and brain,”³¹ and the “connective tissue,
 14 muscles, central nervous system (CNS), and cardiovascular system”³² and cause “Intellectual
 15 disability; [d]elayed development; [b]ehavioral, emotional and social problems;” and “[m]ental
 16 health disorders.”³³ Thus, cystinosis, homocystinuria, PKU, and tyrosinemia are physical or
 17 mental impairments that substantially limit the major life activities of, *inter alia*, seeing and
 18 operation of the brain, neurological, and musculoskeletal functions, making them disabilities. *See*
 19 29 C.F.R. § 1630.2(j)(iii). CVS Caremark requires cystinosis, homocystinuria, PKU, and
 20 tyrosinemia drugs to be obtained only through the Program:

21 ○ Cystagon and Kuvan.

22 ²⁹ MayoClinic.org, Diseases and Conditions, Cystic Fibrosis,
 23 <http://www.mayoclinic.org/diseases-conditions/cystic-fibrosis/basics/definition/con-20013731>
 (last visited Sept. 7, 2023).

24 ³⁰ Medscape.com, Cystinosis, <http://emedicine.medscape.com/article/981650-overview> (last
 25 visited Sept. 7, 2023).

26 ³¹ Cystinosis.org, Welcome to the Cystinosis Research Network, <https://cystinosis.org/> (last
 27 visited Sept. 7, 2023).

28 ³² Wikipedia.org, Homocystinuria, <https://en.wikipedia.org/wiki/Homocystinuria> (last visited
 Sept. 7, 2023).

³³ MayoClinic.org, Diseases and Conditions, Phenylketonuria (PKU),
<http://www.mayoclinic.org/diseases-conditions/phenylketonuria/basics/symptoms/con-20026275>
 (last visited Sept. 7, 2023).

1 • **Endometriosis:** is “an often painful disorder in which tissue similar to the tissue that
2 normally lines the inside of [one’s] uterus . . . grows outside the uterus. Endometriosis most
3 commonly involves [the] ovaries, fallopian tubes and the tissues lining [the] pelvis. . . . [The
4 displaced tissue] thickens, breaks down and bleeds with each menstrual cycle. But because this
5 tissue has no way to exit [the] body, it becomes trapped. When endometriosis involves the ovaries,
6 cysts called endometriomas may form. Surrounding tissue can become irritated, eventually
7 developing scar tissue and adhesions[.]”³⁴ Complications and symptoms of endometriosis include
8 infertility; ovarian cancer; excessive bleeding; and painful menstruation, bowel movements, and
9 urination.³⁵ Thus, endometriosis is a physical or mental impairment that substantially limits the
10 major life activities of, *inter alia*, women’s reproductive functions, making it a disability. *See* 29
11 C.F.R. § 1630.2(j)(iii). CVS Caremark requires endometriosis drugs to be obtained only through
12 the Program:

13 ○ Lupaneta Pack; Lupron; and Lupron Depot.

14 • **Epilepsy (includes all “seizure disorders”):** is “a brain disorder that causes recurring,
15 unprovoked seizures. . . . Seizures are sudden surges of abnormal and excessive electrical activity
16 in [the] brain and can affect how [one] appear[s] or act[s].”³⁶ Thus, epilepsy is a physical
17 impairment that substantially limits the major life activities of, *inter alia*, the operation of the
18 musculoskeletal and neurological functions, making it a disability. *See, e.g., Smith v. Strayer Univ.*
19 *Corp.*, 79 F. Supp. 3d 591 (E.D. Va. 2015) (university employee who suffered from seizure
20 disorder was an individual with a disability since seizures were physical or mental impairment that
21 substantiality limited one or more of employee’s major life activities). CVS Caremark requires
22 drugs for epileptic seizure disorders to be obtained only through the Program:

23 ○ H. P. Acthar;³⁷ Sabril Pwd; and Sabril Tabs.

24
25 ³⁴ Mayoclinic.org, Diseases and Conditions, Endometriosis,
26 <https://www.mayoclinic.org/diseases-conditions/endometriosis/symptoms-causes/syc-20354656>
(last visited Sept. 7, 2023).

27 ³⁵ *Id.*

28 ³⁶ Epilepsy.com, Epilepsy Foundation, What Is Epilepsy?,
<http://www.epilepsy.com/learn/epilepsy-101/what-epilepsy> (last visited Sept. 7, 2023).

³⁷ Epilepsy medications are also used to treat other disabilities such as lupus.

1 • **Familial hypercholesterolemia:** is a rare genetic disorder that “causes LDL (bad)
2 cholesterol level to be very high. The condition begins at birth and can cause heart attacks at an
3 early age.”³⁸ Thus, familial hypercholesterolemia is a physical impairment that substantially limits
4 the major life activity of, *inter alia*, the operation of the circulatory function, making it a disability.
5 *See* 29 C.F.R. § 1630.2(j)(iii). CVS Caremark requires drugs for familial hypercholesterolemia to
6 be obtained only through the Program:

7 ○ Kynamro.

8 • **Gout:** is a complex form of arthritis that affects one’s joints.³⁹ Gout is characterized by
9 sudden sensations, which, at times, can limit one’s range of motion.⁴⁰ Thus, gout is a physical
10 impairment that substantially limits the major life activities of, *inter alia*, physical mobility,
11 making it a disability. *See* 29 C.F.R. § 1630.2(j)(iii). CVS Caremark requires gout drugs to be
12 obtained only through the Program:

13 ○ Krystexxa.

14 • **Growth hormone deficiency:** “means the pituitary gland does not make enough growth
15 hormone. . . . The pituitary gland is located at the base of the brain [and] controls the body’s
16 balance of hormones [and] makes growth hormone.”⁴¹ Thus, a growth hormone deficiency is a
17 physical impairment that substantially limits the major life activity of, *inter alia*, the operation of
18 the endocrine function, making it a disability. *See* 29 C.F.R. § 1630.2(j)(iii). CVS Caremark
19 requires drugs that treat growth hormone deficiencies and related conditions to be obtained only
20 through the Program:

21 ○ Increlex; Genotropin; Humatrope; Norditropin; Omnitrope; Octreotide Acetate;
22 Saizen; Sandostatin; Sandostatin Lar; Serostim; Somavert; Zomacton; and Zorbtive.

23
24 ³⁸ Medlineplus.gov, U.S. National Library of Medicine, Medline Plus, Medical Encyclopedia,
25 Familial Hypercholesterolemia, <https://medlineplus.gov/ency/article/000392.htm> (last visited
26 Sept. 7, 2023).

26 ³⁹ Mayoclinic.org, Diseases and Conditions, Gout, [https://www.mayoclinic.org/diseases-
27 conditions/gout/symptoms-causes/syc-20372897](https://www.mayoclinic.org/diseases-conditions/gout/symptoms-causes/syc-20372897) (last visited Sept. 7, 2023).

27 ⁴⁰ *Id.*

28 ⁴¹ Medlineplus.gov, U.S. National Library of Medicine, Medline Plus, Medical Encyclopedia,
Growth Hormone Deficiency – Children, <https://medlineplus.gov/ency/article/001176.htm> (last
visited Sept. 7, 2023).

1 • **Heart failure:** “is a condition that develops when [the] heart [cannot] pump enough blood
 2 for [the] body’s needs. This can happen if [the] heart cannot fill up with enough blood. It can also
 3 happen when [the] heart is too weak to pump properly. . . . [H]eart failure is a serious condition
 4 that needs medical care.”⁴² Thus, heart failure is a physical impairment that substantially limits the
 5 major life activity of the operation of, *inter alia*, the circulatory function, making it a disability.
 6 See 29 C.F.R. § 1630.2(j)(iii). CVS Caremark requires drugs for heart failure and its related
 7 conditions to be only obtained through the Program:

8 ○ Samsca.

9 • **Hepatitis:** Hepatitis B is “a serious liver infection caused by the hepatitis B virus (HBV).
 10 . . . [For some people,] [hepatitis B] infection becomes chronic, meaning it lasts more than six
 11 months. Having chronic hepatitis B increases [the] risk of developing liver failure, liver cancer or
 12 cirrhosis — a condition that permanently scars the liver.”⁴³ Similarly, hepatitis C is a serious liver
 13 infection caused by a virus. “Hepatitis C infection that continues over many years can cause
 14 serious complications, such as: Scarring of the liver, called cirrhosis . . . Liver cancer . . . Liver
 15 failure.”⁴⁴ Thus, hepatitis (B and C) is a physical impairment that substantially limits the major
 16 life activities of, *inter alia*, the operation of the digestive, hemic, and circulatory functions and an
 17 individual organ within a body system (liver), making it a disability. See, e.g., *Carter v. Pathfinder*
 18 *Energy Services, Inc.*, 662 F.3d 1134 (10th Cir. 2011) (employee who had diabetes and hepatitis
 19 C had physical impairment, as required to be considered disabled, since these diseases affected his
 20 digestive and circulatory systems); *Teeter v. Lofthouse Foods*, 691 F. Supp. 2d 1314 (D. Utah
 21 2010) (hepatitis C was a “physical impairment,” as it was a virus that infected the blood and
 22 affected the hemic system). CVS Caremark requires drugs for hepatitis B and C and related
 23 conditions to be obtained only through the Program:

24
 25 _____
 26 ⁴² Nhlbi.nih.gov, U.S. Department of Health and Human Services, National Heart, Lung, and
 Blood Institute, What Is Heart Failure?, <https://www.nhlbi.nih.gov/health/heart-failure> (last
 visited Sept. 7, 2023).

27 ⁴³ Mayoclinic.org, Diseases and Conditions, Hepatitis B, <http://www.mayoclinic.org/diseases-conditions/hepatitis-b/basics/definition/con-20022210> (last visited Sept. 7, 2023).

28 ⁴⁴ Mayoclinic.org, Diseases and Conditions, Hepatitis C, <https://www.mayoclinic.org/diseases-conditions/hepatitis-c/symptoms-causes/syc-20354278> (last visited Sept. 7, 2023).

1 ○ Baraclude; Daklinza Epclusa; Epivir Hbv; Epivir Hbv Solution; Gamastan S/D;
2 Harvoni; Hepsera; Intron-A; Mavyret; Moderiba; Olysio; Pegasys Peg; Intron; Rebetol; Rebetol
3 Solution; Ribasphere; Ribatab: Sovaldi: Technivie; Vemlidy; Viekira Pak; Viread; Vosevi;
4 Zepatier Nabi-Hb; Hyperhep B; and Hepagam B.

5 • **Hemophilia A:** is “a condition that keeps [one’s] blood from clotting the way it should.
6 That means [the] body has problems stopping bleeding, both outside and inside [the] body.”⁴⁵
7 Thus, Hemophilia A is a physical impairment that substantially limits the major life activity of,
8 *inter alia*, the operation of the hemic and circulatory functions, making it a disability. *See* 29
9 C.F.R. § 1630.2(j)(iii). CVS Caremark requires drugs for Hemophilia A and its related conditions
10 to be obtained through the Program:

11 ○ Advate; Alphanate; Adynovate; Afstyla; Elocate; Hemlibra; Kovaltry; Novoeight;
12 Nuwiq; Obizur; Riastap; Tretten; Vonvendi; Fibryga; Feiba Nf; Helixate Fs; Hemofil M; Humate-
13 P; Koate-Dvi; Kogenate Fs; Monoclate-P; Novoseven Rt; Recombinate; Stimate; Wilate; and
14 Xyntha.

15 • **Hemophilia B:** is a bleeding condition is which people bleed longer than normal. “Bleeds
16 can occur internally, into joints and muscles, or [] from minor cuts, dental procedures or trauma.”⁴⁶
17 Thus, Hemophilia B is a physical impairment that substantially limits the major life activities of,
18 *inter alia*, the operation of the hemic and circulatory functions, making it a disability. *See* 29
19 C.F.R. § 1630.2(j)(iii). CVS Caremark requires drugs for Hemophilia B and its related conditions
20 to be obtained only through the Program:

21 ○ Alphanine Sd; Alprolix; Bebulin; Benefix; Idelvion; Ixinity; Mononine; Profilnine
22 Sd; Rebinyn; and Rixubis.

23 • **Hereditary angioedema (HAE):** “is a disorder that results in recurrent attacks of severe
24 swelling. . . . People diagnosed with Hereditary Angioedema have recurrent swelling in the
25

26 ⁴⁵ Webmd.com, Children’s Health Guide, Hemophilia A,
27 <https://www.webmd.com/children/hemophilia-a> (last visited Sept. 7, 2023).

28 ⁴⁶ Hemophilia.org, National Bleeding Disorders Foundation, Hemophilia B,
<https://www.hemophilia.org/Bleeding-Disorders/Types-of-Bleeding-Disorders/Hemophilia-B>
(last visited Sept. 7, 2023).

1 extremities, genitals, face, lips, larynx or GI tract.”⁴⁷ Thus, HAE is a physical impairment that
2 substantially limits the major life activities of, *inter alia*, the operation of the hemic, genitourinary,
3 reproductive, digestive, and respiratory functions, making it a disability. *See* 29 C.F.R.
4 § 1630.2(j)(iii). CVS Caremark requires drugs for HAE and related conditions to be obtained only
5 through the Program:

6 ○ Berinert; Cinryze; Firazyr; Haegarda; Kalbitor; and Ruconest.

7 • **Hereditary Factor XIII Deficiency Disease:** “is a rare, genetic bleeding disorder
8 characterized by deficiency of clotting factor XIII . . . resulting in prolonged, uncontrolled bleeding
9 episodes.”⁴⁸ Thus, hereditary factor XIII deficiency disease is a physical impairment that
10 substantially limits the major life activities of, *inter alia*, the operation of the hemic and circulatory
11 functions, making it a disability. *See* 29 C.F.R. § 1630.2(j)(iii). CVS Caremark requires drugs for
12 hereditary factor XIII deficiency disease and its related conditions to be obtained only through
13 mail-order:

14 ○ Corifact.

15 • **Severe Cholesterol:** is a condition that causes fatty deposits in the blood vessels that make
16 it difficult for blood to flow through the arteries and can increase the risk of heart disease.⁴⁹ Thus,
17 high cholesterol is a physical impairment that substantially limits the major life activity of, *inter*
18 *alia*, the operation of the circulatory function, making it a disability. *See* 29 C.F.R. § 1630.2(j)(iii).
19 CVS Caremark requires drugs for high cholesterol and its related conditions to be obtained only
20 through the Program:

21 ○ Praluent and Repatha.

22 • **Huntington’s disease:** is an “inherited disease that causes the [degeneration] of nerve cells
23 in the brain... [and] has a wide impact on a person’s functional abilities and usually results in
24

25 ⁴⁷ Wikipedia.org, Hereditary angioedema, https://en.wikipedia.org/wiki/Hereditary_angioedema
26 (last visited Sept. 7, 2023).

27 ⁴⁸ Rare diseases.org, Rare Disease Information, Factor XIII Deficiency,
<https://rare diseases.org/rare-diseases/factor-xiii-deficiency/> (last visited Sept. 7, 2023).

28 ⁴⁹ Mayo clinic.org, Diseases and Conditions, High Cholesterol,
<https://www.mayoclinic.org/diseases-conditions/high-blood-cholesterol/symptoms-causes/syc-20350800> (last visited Sept. 7, 2023).

1 movement, thinking (cognitive) and psychiatric disorders.”⁵⁰ Thus, Huntington’s disease is a
 2 physical or mental impairment that substantially limits the major life activities of, *inter alia*,
 3 performing manual tasks, walking, standing, sitting, reaching, lifting, bending, speaking, learning,
 4 reading, concentrating, thinking, communicating, interacting with others, and working, and
 5 operating neurological, brain, and musculoskeletal functions, making it a disability. *See* 29 C.F.R.
 6 § 1630.2(j)(iii). CVS Caremark requires drugs for Huntington’s disease to be obtained only
 7 through the Program:

8 ○ Tetrabenazine and Xenazine.

9 • **Hyperparathyroidism:** is “when [one’s] parathyroid glands create high amounts of
 10 parathyroid hormone in the bloodstream.”⁵¹ If left untreated, complications include osteoporosis,
 11 kidney stones, cardiovascular disease, and neonatal hypoparathyroidism.⁵² Thus,
 12 hyperparathyroidism is a physical impairment that substantially limits the major life activity of,
 13 *inter alia*, the operation of the parathyroid glands, bone health, and circulatory function, making
 14 it a disability. *See* 29 C.F.R. § 1630.2(j)(iii). CVS Caremark requires drugs for
 15 hyperparathyroidism and its related conditions to be obtained only through the Program:

16 ○ Parsabiv and Sensipar.

17 • **Hypoparathyroidism:** is a condition in which the body produces abnormally low levels
 18 of parathyroid hormone, which is necessary to regulate and maintain a balance of calcium and
 19 phosphorus in the body.⁵³ If left untreated, complications include prolonged and painful spasms
 20 in the hands and fingers; tingling sensations in the lips, tongue, fingers, and toes; seizures;
 21 malformed teeth; kidney damage; heart failure; stunted growth; slow mental development in
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23 _____
 24 ⁵⁰ MayoClinic.org, Diseases and Conditions, Huntington’s disease,
[http://www.mayoclinic.org/diseases-conditions/huntingtons-disease/basics/definition/con-](http://www.mayoclinic.org/diseases-conditions/huntingtons-disease/basics/definition/con-20030685)
 25 20030685 (last visited Sept. 7, 2023).

26 ⁵¹ MayoClinic.org, Diseases and Conditions, Hyperparathyroidism,
[https://www.mayoclinic.org/diseases-conditions/hyperparathyroidism/symptoms-causes/syc-](https://www.mayoclinic.org/diseases-conditions/hyperparathyroidism/symptoms-causes/syc-20356194)
 27 20356194 (last visited Sept. 7, 2023).

28 ⁵² *Id.*

⁵³ MayoClinic.org, Diseases and Conditions, Hypoparathyroidism,
[https://www.mayoclinic.org/diseases-conditions/hypoparathyroidism/symptoms-causes/syc-](https://www.mayoclinic.org/diseases-conditions/hypoparathyroidism/symptoms-causes/syc-20355375)
 20355375 (last visited Sept. 7, 2023).

1 children; and cataracts.⁵⁴ Thus, hypoparathyroidism is a physical impairment that substantially
 2 limits the major life activity of, *inter alia*, the operation of the parathyroid glands and nerve, limb,
 3 digit, and circulatory functions, making it a disability. *See* 29 C.F.R. § 1630.2(j)(iii). CVS
 4 Caremark requires drugs for hypoparathyroidism and its related conditions to be obtained only
 5 through the Program:

6 ○ Natpara.

7 • **Idiopathic Pulmonary Fibrosis:** “is a serious chronic . . . disease that affects the tissue
 8 surrounding the air sacs, or alveoli, in the lungs. This condition develops when that lung tissue
 9 becomes thick and stiff for unknown reasons. Over time, these changes can cause permanent
 10 scarring in the lungs, called fibrosis, that makes it progressively more difficult to breathe.”⁵⁵ Thus,
 11 idiopathic pulmonary fibrosis is a physical impairment that substantially limits the major life
 12 activity of, *inter alia*, the respiratory and circulatory functions, making it a disability. *See* 29 C.F.R.
 13 § 1630.2(j)(iii). CVS Caremark requires drugs for idiopathic pulmonary fibrosis and its related
 14 conditions to be obtained only through the Program:

15 ○ Esbriet and Ofev.

16 • **Immune (Idiopathic) Thrombocytopenic Purpura (ITP):** is disorder that does not allow
 17 the body to produce adequate blood cell fragments called platelets.⁵⁶ “ITP can cause bleeding that
 18 is hard to stop. This bleeding can be inside [the] body, underneath [the] skin, or from [the] skin.”⁵⁷
 19 Thus, ITP is a physical impairment that substantially limits the major life activities of, *inter alia*,
 20 the body’s normal function of clotting blood, making it a disability. *See* 29 C.F.R. § 1630.2(j)(iii).
 21 CVS Caremark requires ITP drugs to be obtained only through the Program:

22 ○ Bivigam; Carimune Nf; Flebogamma Dif; Gamastan S/D; Gammagard Liquid
 23 Gammagard S/D; Gammaplex; Hyperrho S/D; Micrhogam; Octagam; Privigen; Rhogam;

24 ⁵⁴ *Id.*

25 ⁵⁵ Nhlbi.nih.gov, U.S. Department of Health and Human Services, National Heart, Lung, and
 26 Blood Institute, Idiopathic Pulmonary Fibrosis, <https://www.nhlbi.nih.gov/health-topics/idiopathic-pulmonary-fibrosis> (last visited Sept. 7, 2023).

27 ⁵⁶ Nhlbi.nih.gov, U.S. Department of Health and Human Services, National Heart, Lung, and
 28 Blood Institute, Immune Thrombocytopenia (ITP), <https://www.nhlbi.nih.gov/health-topics/immune-thrombocytopenia> (last visited Sept. 7, 2023).

⁵⁷ *Id.*

1 Rhophylac; Varizig; Nplate; and Promacta.

2 • **Increased Calcium in Blood (Hypercalcemia):** “is a condition in which the calcium level
3 in [the] blood is above normal . . . [which] can weaken [the] bones, create kidney stones, and
4 interfere with how [the] heart and brain work.”⁵⁸ Thus, increased calcium in the blood is a physical
5 impairment that substantially limits the major life activity of, *inter alia*, bone health, kidney
6 function, and the operation of the circulatory function, making it a disability. *See* 29 C.F.R.
7 § 1630.2(j)(iii). CVS Caremark requires drugs for increased calcium in the blood and its related
8 conditions to be obtained only through the Program:

9 ○ Sensipar.

10 • **Iron Overload:** is an excess of iron in the body resulting from either a genetic disease or
11 repeated blood transfusions to treat other debilitating conditions.⁵⁹ “Excess iron in vital organs . . .
12 increases the risk for liver disease (cirrhosis, cancer), heart failure, diabetes mellitus, osteoarthritis,
13 osteoporosis, metabolic syndrome, hypothyroidism, hypogonadism, numerous symptoms and in
14 some cases premature death. Iron . . . overload can accelerate such neurodegenerative diseases as
15 Alzheimer’s, early-onset Parkinson’s, Huntington’s, epilepsy, and multiple sclerosis.”⁶⁰ Thus, iron
16 overload is a physical or mental impairment that substantially limits the major life activities of,
17 *inter alia*, the operation of the brain, neurological, normal cell growth, endocrine, circulatory, and
18 musculoskeletal functions, making it a disability. *See* 29 C.F.R. § 1630.2(j)(iii). CVS Caremark
19 requires drugs for iron overload and related conditions to be obtained only through the Program:

20 ○ Desferal; Deferoxamine; Exjade; and Jadenu.

21 • **Leukemia:** “is cancer of the body’s blood-forming tissues, including the bone marrow and
22 the lymphatic system[,]” which causes the bone marrow to produce white blood cells that do not
23 function properly.⁶¹ Thus, leukemia is a physical or mental impairment that substantially limits

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25 ⁵⁸ Mayoclinic.org, Diseases and Conditions, Hypercalcemia, <https://www.mayoclinic.org/diseases-conditions/hypercalcemia/symptoms-causes/syc-20355523>
26 (last visited Sept. 7, 2023).

27 ⁵⁹ Irondisorders.org, About Iron Overload, <http://www.irondisorders.org/iron-overload> (last
28 visited Sept. 7, 2023).

⁶⁰ *Id.*

⁶¹ Mayoclinic.org, Diseases and Conditions, Leukemia, <https://www.mayoclinic.org/diseases-conditions/leukemia/symptoms-causes/syc-20374373> (last visited Sept. 7, 2023).

1 the major life activities of, *inter alia*, the operation of the immune and lymphatic functions, making
 2 it a disability. *See* 29 C.F.R. § 1630.2(j)(iii). CVS Caremark requires drugs for leukemia and
 3 related conditions to be obtained only through the Program:

4 ○ Imatinib Mesylate; Idhifa; Intron- A; Oncaspar; and Rydapt.

5 • **Medical Infertility:** “is when [one] cannot get pregnant after having unprotected, regular
 6 sex for six months to one year.”⁶² Studies show that “infertility in most cultures remains associated
 7 with social stigma and taboo just like the social model of disability.”⁶³ Thus, medical infertility is
 8 a physical and mental impairment that substantially limits the major life activity of, *inter alia*,
 9 reproduction and subjecting one to the social stigma associated with infertility, making it a
 10 disability. *See* 29 C.F.R. § 1630.2(j)(iii). *See also Erickson v. Board of Gov. of State Colleges*, 911
 11 F. Supp. 316, 321 (N.D. Ill. 1995) (holding that infertility is a physical impairment that
 12 substantially limits a major life activity). CVS Caremark requires drugs for medical infertility and
 13 its related conditions to be obtained only through the Program:

14 ○ Bravelle; Cetrotide; Follistim Aq; Gonal-F; Menopur; Novarel; Ovidrel; Pregnyl;
 15 Chorionic; Gonadotropin; and Ganirelix Acetate.

16 • **Menorrhagia:** is “menstrual bleeding that lasts more than 7 days. It can also be bleeding
 17 that is very heavy.”⁶⁴ An individual who suffers from Menorrhagia may “[h]ave a heavy menstrual
 18 flow that keeps [them] from doing the things [they] would do normally” or “[h]ave constant pain
 19 in the lower part of the stomach during [] periods” and be “tired, lack energy, or [be] short of
 20 breath.”⁶⁵ Thus, Menorrhagia is a physical or mental impairment that substantially limits the major
 21 life activities of, *inter alia*, continuing normal physical activities, making it a disability. *See* 29
 22 C.F.R. § 1630.2(j)(iii). CVS Caremark requires drugs that treat Menorrhagia to be obtained only
 23 through the Program:

24 ⁶² Webmd.com, Infertility and Reproduction, Understanding Infertility: Symptoms and Causes,
 25 <https://www.webmd.com/infertility-and-reproduction/guide/understanding-infertility-symptoms#1> (last visited Sept. 7, 2023).

26 ⁶³ Abha Khetarpal & Satendra Singh, *Infertility: Why Can't We Classify This Inability as*
Disability?, AMJ 2012, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3395292/>.

27 ⁶⁴ Cdc.gov, Centers for Disease Control & Prevention, Heavy Menstrual Bleeding,
 28 <https://www.cdc.gov/ncbddd/blooddisorders/women/menorrhagia.html> (last visited Sept. 7,
 2023).

⁶⁵ *Id.*

1 ○ Kyleena; Liletta; Mirena; Nexplanon; and Skyla.

2 • **Multiple Sclerosis (MS):** is “an unpredictable disease of the central nervous system that
3 disrupts the flow of information within the brain, and between the brain and body.”⁶⁶ Thus, MS is
4 a physical impairment that substantially limits the major life activity of, *inter alia*, the operation
5 of the neurological function, making it a disability. *See* 29 C.F.R. § 1630.2(j)(iii); *see, e.g.,*
6 *Gaylor v. Greenbriar of Dahlenega Shopping Center, Inc.*, 975 F. Supp. 2d 1374 (N.D. Ga. 2013)
7 (customer suffering from MS was disabled since MS is a condition that, at a minimum,
8 substantially limited the individual’s neurological functions, and as a result of his condition, he
9 lived in pain which made it difficult, although not impossible, for him to walk); *Feldman v. Law*
10 *Enforcement Associates Corp.*, 955 F. Supp. 2d 528 (E.D.N.C. 2013) (employee who suffered
11 from MS was disabled). CVS Caremark requires drugs for MS and its related conditions to be
12 obtained only through the Program:

13 ○ Ampyra; Aubagio; Avonex; Betaseron; Copaxone; Extavia; Gilenya; Glatopa; H.P.
14 Acthar; Lemtrada; Ocrevus; Plegridy; Rebif; Tecfidera; and Tysabri.

15 • **Opioid Dependency:** “is a primary, chronic disease of brain reward, motivation, memory
16 and related circuitry.”⁶⁷ Opioid dependency is a chronic disease, and without treatment or
17 participation in rehabilitation, addiction is debilitating “and can result in disability or premature
18 death.”⁶⁸ Thus, opioid dependency is a physical or mental impairment that substantially limits the
19 major life activity of, *inter alia*, consistently abstaining from opioids, control of one’s behavior,
20 and non-impaired decision execution,⁶⁹ making it a disability. *See* 29 C.F.R. § 1630.2(j)(iii). CVS
21 Caremark requires drugs for opioid dependency and its related conditions to be obtained only
22 through the Program:

23 ○ Vivitrol.

24 • **Osteoarthritis:** “occurs when the protective cartilage that cushions the ends of the bones

25 ⁶⁶ Nationalmssociety.org, National Multiple Sclerosis Society, What is MS?,
26 <http://www.nationalmssociety.org/What-is-MS> (last visited Sept. 7, 2023).

27 ⁶⁷ Asam.org, American Society of Addiction Medicine, Public Policy Statement: Definition of
28 Addiction, 2018, https://sitefinitystorage.blob.core.windows.net/sitefinity-production-blobs/b0209701-2099-441a-92c3-eb60c4a387cb?sfvrsn=a8f64512_0.

⁶⁸ *Id.*

⁶⁹ *Id.*

1 wears down over time. . . . Osteoarthritis is a degenerative disease that worsens over time, often
 2 resulting in chronic pain. Joint pain and stiffness can become severe enough to make daily tasks
 3 difficult.”⁷⁰ Thus, Osteoarthritis are physical impairments that substantially limit the major life
 4 activities of, *inter alia*, physical mobility, making it a disability. *See* 29 C.F.R. § 1630.2(j)(iii). *See*
 5 *Cody v. County of Nassau*, 577 F. Supp. 2d 623, 639 (E.D.N.Y. 2008) (claiming that osteoarthritis
 6 limited one’s major life activities). CVS Caremark requires Osteoarthritis drugs to be obtained
 7 only through the Program:

8 ○ Durolane; Euflexxa; Gel-One; Gelsyn-3; Genvisc 850; Hyalgan; Hymovis;
 9 Monovisc; Orthovisc; Supartz; Synvisc; Synvisc One; and Visco-3.

10 • **Osteoporosis:** “causes bones to become weak and brittle — so brittle that a fall or even
 11 mild stresses such as bending over or coughing can cause a break.”⁷¹ Thus, osteoporosis is a
 12 physical impairment that substantially limits the major life activity of, *inter alia*, the operation of
 13 the musculoskeletal function, making it a disability. *See* 29 C.F.R. § 1630.2(j)(iii). CVS Caremark
 14 requires drugs for osteoporosis to be obtained only through the Program:

15 ○ Actimmune; Prolia; Tymlos; Reclast; Zoledronic Acid; and Forteo.

16 • **Parkinson’s disease:** Parkinson’s disease is “a progressive disorder that affects the
 17 nervous system and the parts of the body controlled by the nerves. . . . Tremors are common, but
 18 the disorder may also cause stiffness or slowing of movement.”⁷² Thus, Parkinson’s disease is a
 19 physical or mental impairment that substantially limits the major life activities of, *inter alia*,
 20 performing manual tasks, walking, standing, sitting, reaching, lifting, bending, speaking, learning,
 21 reading, concentrating, thinking, communicating, interacting with others, and working, and
 22 operation of the neurological, brain, and musculoskeletal functions, making it a disability. *See* 29
 23 C.F.R. § 1630.2(j)(iii). CVS Caremark requires drugs for Parkinson’s disease and its related

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 25 ⁷⁰ Mayoclinic.org, Diseases and Conditions, Osteoarthritis, <https://www.mayoclinic.org/diseases-conditions/osteoarthritis/symptoms-causes/syc-20351925> (last visited Sept. 7, 2023).

26 ⁷¹ Mayoclinic.org, Diseases and Conditions, Osteoporosis, Definition,
 27 <http://www.mayoclinic.org/diseases-conditions/osteoporosis/basics/definition/con-20019924>
 (last visited Sept. 7, 2023).

28 ⁷² Mayoclinic.org, Diseases and Conditions, Parkinson’s disease,
<http://www.mayoclinic.org/diseases-conditions/parkinsons-disease/basics/definition/con-20028488> (last visited Sept. 7, 2023).

1 conditions to be obtained only through the Program:

2 ○ Apokyn; Northera; and Nuplazid.

3 • **Primary immunodeficiency diseases (PI):** “are a group of more than 450 rare, chronic
4 conditions in which part of the body’s immune system is missing or does not function correctly.
5 These conditions are caused by hereditary genetic defects, and can affect anyone, regardless of
6 age, gender, or ethnicity. While PIs differ, they all share one common feature: disruption of the
7 body’s immune system. Because the most important function of the immune system is to protect
8 against infection, people with PI commonly experience increased susceptibility to infection.”⁷³
9 Thus, PIs are physical impairments that substantially limit the major life activity of, *inter alia*,
10 operating immune function, making them disabilities. CVS Caremark requires drugs for PIs and
11 related conditions to be obtained only through the Program:

12 ○ Bivigam; Carimune Nf; Cuvitru; Flebogamma Dif; Gamastan S/D; Gammaked;
13 Gamunex C Hizentra; and Hyqvia.

14 • **Retinal Diseases:** “vary widely, but most of them cause visual symptoms. Retinal diseases
15 can affect any part of [the] retina, a thin layer of tissue on the inside back wall of [the] eye. [One’s]
16 retina sends [visual] information to [the] brain through [the] optic nerve, allowing [them] to see.”⁷⁴
17 Symptoms associated with Retinal Diseases include blurred or distorted vision, defective vision,
18 or lost vision.⁷⁵ Thus, Retinal Diseases are physical and mental impairments that substantially
19 limit the major life activities of, *inter alia*, enjoying clear vision, making them disabilities. *See* 29
20 C.F.R. § 1630.2(j)(iii). CVS Caremark requires Retinal Diseases drugs to be obtained only through
21 the Program:

22 ○ Eylea; Iluvien; Lucentis; Macugen; Ozurdex; Retisert; and Visudyne.

23 • **Rheumatoid Arthritis (RA):** “is a chronic inflammatory disorder that can affect more
24 than just . . . joints. In some people, the condition also can damage a wide variety of body systems,

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26 ⁷³ Primaryimmune.org, Immune Deficiency Foundation, About Primary Immunodeficiencies,
<http://primaryimmune.org/about-primary-immunodeficiencies/> (last visited Sept. 7, 2023).

27 ⁷⁴ Mayoclinic.org, Diseases and Conditions, Retinal Diseases,
<https://www.mayoclinic.org/diseases-conditions/retinal-diseases/symptoms-causes/syc-20355825> (last visited Sept. 7, 2023).

28 ⁷⁵ *Id.*

1 including the skin, eyes, lungs, heart and blood vessels. An autoimmune disorder, [RA] occurs
 2 when [one's] immune system mistakenly attacks [one's] own body's tissues. . . . [RA] affects the
 3 lining of [the] joints, causing a painful swelling that can eventually result in bone erosion and joint
 4 deformity. The inflammation associated with [RA] is what can damage other parts of the body as
 5 well. . . . [S]evere [RA] can still cause physical disabilities.”⁷⁶ Thus, RA is a physical impairment
 6 that substantially limits the major life activities of, *inter alia*, performing manual tasks and
 7 operation of the musculoskeletal functions, making it a disability. *See, e.g., Moore v. J.B. Hunt*
 8 *Transp., Inc.*, 221 F.3d 944, 951 (7th Cir. 2000) (court “believe[s] [RA] falls within the definition
 9 of impairment in the regulations”). CVS Caremark requires RA drugs to be obtained only through
 10 the Program:

11 ○ Acthar H.P.; Actemra; Cimzia; Enbrel; Humira; Inflectra; Kevzara; Orencia;
 12 Otrexup; Rasuvo; Remicade; Renflexis; Rituxan; Simponi; Simponi Aria; Xeljanz; and Neoral.

13 • **Severe Forms of Hypertension – Malignant Hypertension, Pulmonary Arterial**
 14 **Hypertension (PAH), Pulmonary Hypertension (PH):** Malignant hypertension is “extremely
 15 high blood pressure that develops rapidly and causes some type of organ damage.”⁷⁷ PAH or PH
 16 is “high blood pressure in the lungs. . . . In PH, the blood vessels specifically in the lungs . . . can
 17 become stiff, damaged or narrow, and the right side of the heart must work harder to pump blood
 18 through.”⁷⁸ Thus, malignant hypertension and PAH/PH are physical impairments that substantially
 19 limit the major life activities of, *inter alia*, breathing and operating organs and the respiratory and
 20 circulatory functions, making them disabilities. *See* 29 C.F.R. § 1630.2(j)(iii). CVS Caremark
 21 requires malignant hypertension and PAH/PH drugs to be obtained only through the Program:

22 ○ Adcirca; Adempas; Flolan; Letairis; Opsumit; Orenitram; Remodulin; Revatio;
 23 Tracleer; Tyvaso; Uptravi; Veletri; Ventavis; Epoprostenol Sodium; and Sildenafil Citrate.

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 25 ⁷⁶ MayoClinic.org, Diseases and Conditions, Rheumatoid arthritis,
 26 <http://www.mayoclinic.org/diseases-conditions/rheumatoid-arthritis/home/ovc-20197388> (last
 27 visited Sept. 7, 2023).

28 ⁷⁷ Webmd.com, Hypertension, High Blood Pressure Guide,
<https://www.webmd.com/hypertension-high-blood-pressure/diastolic-and-systolic-blood-pressure-know-your-numbers> (last visited Sept. 7, 2023).

⁷⁸ Phassociation.org, Pulmonary Hypertension Association, About Pulmonary Hypertension,
<http://www.phassociation.org/AboutPH> (last visited Sept. 7, 2023).

1 • **Short Bowel Syndrome:** “is a condition that develops when the small intestine . . . is
2 shortened or damaged and cannot absorb enough nutrients from the foods [one] eat[s] to maintain
3 health. . . . In people with short bowel syndrome, malabsorption causes symptoms such as diarrhea,
4 fatigue, and weight loss. Short bowel syndrome most often occurs in people who had surgery to
5 remove part of the small intestine, called small bowel resection.”⁷⁹ Thus, short bowel syndrome is
6 a physical impairment that substantially limits the major life activity of, *inter alia*, operation of
7 the digestive function, making it a disability. *See* 29 C.F.R. § 1630.2(j)(iii). CVS Caremark
8 requires drugs that treat short bowel syndrome to be obtained only through the Program:

9 ○ Gattex; Solesta; and Norditropin.

10 • **Transplant rejection:** “is a process in which a transplant recipient’s immune system
11 attacks the transplanted organ or tissue.”⁸⁰ Thus, transplant rejection is a physical condition that
12 substantially limits the major life activities of, *inter alia*, the operation of an individual organ
13 within a body system, making it a disability. *See* 29 C.F.R. § 1630.2(j)(iii). CVS Caremark requires
14 drugs for forms of transplant rejection and its related conditions to be obtained only through the
15 Program:

16 ○ Astagraf Xl; Cellcept; Cellcept Injectable; Cellcept Suspension; Envarsus Xr;
17 Gengraf; Myfortic; Neoral; Nulojix; Prograf; Prograf Injectable; Rapamune; Rapamune Solution;
18 Sandimmune; Zortress; Cyclosporine; Mycophenolate Mofetil; Mycophenolate Sodium Dr
19 Sirolimus Tab; and Tacrolimus.

20 • **Type 1 Gaucher disease:** is a condition that causes “enlargement of the liver and spleen
21 (hepatosplenomegaly), a low number of red blood cells (anemia), easy bruising caused by a
22 decrease in blood platelets (thrombocytopenia), bone abnormalities such as bone pain and
23 fractures, and joint conditions such as arthritis.”⁸¹ Thus, Type 1 Gaucher disease is a physical
24 impairment that substantially limits the major life activities of, *inter alia*, the operation of the

25 ⁷⁹ Niddk.nih.gov, National Institute of Health, National Institute of Diabetes and Digestive and
26 Kidney Diseases, Short Bowel Syndrome, <https://www.niddk.nih.gov/health-information/digestive-diseases/short-bowel-syndrome> (last visited Sept. 7, 2023).

27 ⁸⁰ Medlineplus.gov, U.S. National Library of Medicine, Medline Plus, Transplant rejection,
<https://medlineplus.gov/ency/article/000815.htm> (last visited Sept. 7, 2023).

28 ⁸¹ Medlineplus.gov, U.S. National Library of Medicine, Medline Plus, Gaucher Disease,
<https://medlineplus.gov/genetics/condition/gaucher-disease/> (last visited Sept. 7, 2023).

1 hemic and musculoskeletal functions and the operation of an individual organ (liver and spleen)
2 within a body system, making it a disability. *See* 29 C.F.R. § 1630.2(j)(iii). CVS Caremark requires
3 drugs for Type 1 Gaucher disease and related conditions to be obtained only through the Program:

4 ○ Aldurazyme; Cerdelga; Cerezyme; Elaprase; Elelyso; Fabrazyme; Kanuma;
5 Lumizyme; Naglazyme; Vimizim; and Vpriv.

6 • **Urea cycle disorders (UCDs):** are rare genetic disorders “caused by a mutation that results
7 in a deficiency of one of the six enzymes in the urea cycle . . . responsible for removing ammonia
8 from the blood stream. . . . In [UCDs], . . . ammonia, a highly toxic substance, [accumulates in
9 the blood] resulting in hyperammonemia (elevated blood ammonia). Ammonia then reaches the
10 brain through the blood, where it can cause irreversible brain damage, coma and/or death.”⁸² Thus,
11 UCDs are physical or mental impairments that substantially limit the major life activities of, *inter*
12 *alia*, operation of the hemic and brain functions, making them disabilities. *See* 29 C.F.R.
13 § 1630.2(j)(iii). CVS Caremark requires drugs that treat UCDs and their related conditions to be
14 obtained only through the Program:

15 ○ Buphenyl; Ravicti; and Sodium-Phenylbutyrate.

16 126. These formulary classifications demonstrate the hypocrisy engaged in by CSP and
17 CVS Caremark with regard to the specialty medications at issue here. On the one hand, CSP claims
18 that because people “who take specialty medications may need extra monitoring or support,” these
19 medications should be listed on the highest tier of medications in its formulary. On the other hand,
20 CSP and CVS Caremark requires delivery of such medications at the lowest level of service and
21 interaction with persons who are not specifically trained in the handling of such medications.

22 127. When Class Members inform CVS Caremark representatives they do not want to
23 participate in the Program, they are typically told they have no choice, satisfying any requirement
24 to exhaust administrative remedies.

25 128. The Affordable Care Act (“ACA”) and state laws outlaw deceptive acts or practices
26 and/or discrimination based on disability, medical condition, and other categories. HIV/AIDS is a

27
28 ⁸² Nucdf.org, National Urea Cycle Disorders Foundation, What is a Urea Cycle Disorder?,
<https://nucdf.org/about-ucd/what-is-a-ucd/> (last visited Sept. 7, 2023).

1 “disability” under the ACA.

2 129. CVS Caremark’s Program improperly reduces or eliminates benefits, breaching
3 CVS Caremark’s fiduciary duties to Class Members. CVS Caremark’s conduct is also unlawful
4 and unfair, and therefore violates California Business & Professions Code section 17200, *et seq.*,
5 as well as privacy rights provided by the California and U.S. Constitutions.

6 130. CVS Caremark exercises discretion over claims for prescription drug benefits for
7 those health benefit plans for which it administers prescription drug benefits. Among other things,
8 CSP and CVS Caremark exercise discretion in establishing drug formularies, which determine
9 whether a given drug is classified as a specialty drug, and, therefore, whether that drug is accessible
10 to Plaintiffs and class members at community retail pharmacies. As a document on CVS
11 Caremark’s own website states, “Development and management of drug formularies is an integral
12 component of the pharmacy benefit management (PBM) services CVS Caremark provides to
13 health plans and plan sponsors.”⁸³

14 131. CVS Caremark is specifically identified in the Summary Plan Descriptions of
15 certain employers’ health benefit plans as a fiduciary with respect to prescription drug benefits.

16 **DEFENDANTS’ CONDUCT VIOLATES FEDERAL AND STATE LAW**

17 132. A central tenet of the ACA is to end discrimination against patients based on their
18 health status, health history, or disability. For example, the “guaranteed issue” provision of the
19 ACA bars discrimination on the basis of health condition, barring companies from “impos[ing]
20 any preexisting condition exclusion.” 42 U.S.C. § 300gg-3. Those with HIV/AIDS and other
21 chronic illness stood the most to gain from the elimination of discrimination on the basis of
22 medical condition.

23 133. Section 1557 of the ACA provides that “an individual shall not . . . be excluded
24 from participation in, be denied the benefits of, or be subjected to discrimination under, any health
25 program or activity, any part of which is receiving Federal financial assistance.” 42 U.S.C.
26 § 18116.

27
28 ⁸³ CVS Caremark, Formulary Development and Management at CVS Caremark,
www.caremark.com/portal/asset/FormDevMgmt.pdf (last visited Sept. 7, 2023).

1 134. As noted below, CVS Health Corporation, the parent company of the CVS
2 Caremark defendants, is a health care entity that receives Federal financial assistance and is subject
3 to Section 1557.

4 135. Similarly, CVS Caremark’s Pharmacy Services Segment and Retail/LTC
5 Segment—which include all Defendants and all Defendants participate in the running of—are both
6 “health program[s] or activit[ies] . . . receiv[ing] Federal financial assistance” that are subject to
7 Section 1557, as they include retail and mail-order pharmacies, as well as PBMs, and are directly
8 responsible for the discriminatory conduct at issue in this Complaint. Under CVS Caremark’s
9 Pharmacy Services Segment and its Retail/LTC Segment, various aspects of pharmaceutical care
10 critical to Class Members’ health have been eliminated, including medically appropriate
11 dispensing of their medications and access to necessary counseling.

12 136. Section 1557 specifically delineates the design of plan benefits as a potentially
13 discriminatory practice. Section 1557 also provides that an individual shall not be subjected to
14 discrimination on grounds prohibited under section 504 of the Rehabilitation Act of 1973. The
15 Supreme Court has specified that the relevant inquiry under the Rehabilitation Act for determining
16 if discrimination has occurred is whether “meaningful access” has been provided to individuals
17 with disabilities. *Alexander v. Choate*, 469 U.S. 287 (1985). The meaningful access inquiry asks
18 “whether those with disabilities are as a practical matter able to access benefits to which they are
19 legally entitled.” *Henrietta D. v. Bloomberg*, 331 F.3d 261, 273 (2003). As detailed herein, the
20 Program does not provide meaningful access to HIV/AIDS medications. Rather, the Program
21 inflicts unique and significant harms upon individuals with HIV/AIDS because of their disability.

22 137. The Department of Health and Human Services (“HHS”), Office for Civil Rights
23 (“OCR”) made clear in its comments on regulations implementing the ACA that Section 1557 is
24 “not intended to apply lesser standards for the protection of individuals from discrimination than
25 the standards under Title VI, Title IX, Section 504, the Age Act, or the regulations issued pursuant
26 to those laws, all of which are incorporated into Section 1557 by reference.” 81 Fed. Reg. 31381
27 (2016) (discussing 45 C.F.R. § 92.3 as adopted). Section 504 of the Rehabilitation Act, expressly
28 incorporated into Section 1557, recognizes private rights of action for discrimination based on

1 disparate impact, which does not require a discriminatory motive. *See Alexander*, 469 U.S. at 299;
2 *Internat'l Broth. of Teamsters v. U.S.*, 431 U.S. 335, n.15 (1977). This was made explicit by the
3 Department of Health and Human Services: "OCR interprets Section 1557 as authorizing a private
4 right of action for claims of disparate impact discrimination on the basis of any of the criteria
5 enumerated in the legislation." 81 Fed. Reg. 31440 (2016).

6 138. As discussed more fully below, CSP and CVS Caremark's implementation of a
7 limited network of specialty pharmacies is only applicable to those enrollees who require specialty
8 medications. Enrollees with HIV/AIDS, who must always be conscious of privacy and other
9 concerns that accompany the condition, are significantly, adversely, and disproportionately
10 impacted by the Program.

11 139. The U.S. Supreme Court has recognized HIV/AIDS as a "disability." *Bragdon v.*
12 *Abbott*, 118 524 U.S. 624, 655 (1998).

13 140. Defendants' intentionally discriminatory actions have denied Plaintiffs and
14 members of the Class full and equal enjoyment of the benefits, services, facilities, privileges,
15 advantages, and accommodations under their health plans' prescription drug benefit. These
16 changes to Class Members' health plans' prescription drug benefit put Class Members' health and
17 privacy at risk and reduce or effectively eliminate their prescription drug benefit. For subscribers
18 prescribed HIV/AIDS Medications, Defendants force them to obtain those medications solely
19 using the limited options available under the Program, without an option to opt out and use the in-
20 network pharmacy and pharmacist of their choice, or without being properly informed that they
21 do not need to use the Program to obtain such medications. These changes have made, or will
22 make, HIV/AIDS Medications unaffordable and unavailable at in-network community pharmacies
23 where expert pharmacists provide life-saving advice and counseling on which Plaintiffs and Class
24 Members have come to rely. Therefore, based on their disability, Plaintiffs and Class Members
25 are subject to discriminatory treatment that threatens their health and their privacy.

1 *CVS was on notice of Plaintiffs' need for an accommodation to be afforded meaningful access*
2 *to the prescription drug benefit, yet they failed to investigate or take any corrective action.*

3 141. **Plaintiffs' Attempts to Contact Defendants.** Beginning when Defendants first
4 subjected HIV/AIDS Medications to the Program, Plaintiffs and other individuals have made
5 numerous and repeated complaints to Defendants about the harms they experienced under the
6 Program because of their disability. Defendants either did not respond to these complaints or
7 denied the requests for corrective action. Plaintiffs each sought accommodations in the form of
8 opt-out requests, seeking the ability to obtain the medication at any in-network pharmacy, but
9 Defendants, as a matter of policy and practice, rejected all such requests without conducting any
10 individualized, fact-specific inquiry into whether such accommodations were necessary for
11 Plaintiffs to enjoy meaningful access to their prescription drug benefit. *See Mark H. v. Hamamoto*,
12 620 F.3d 1090, 1099 (9th Cir. 2010); *see also Duvall v. Cty. of Kitsap*, 260 F.3d 1124, 1139 (9th
13 Cir. 2001).

14 142. As alleged in detail above, JOHN DOE ONE made these opt-out requests by calling
15 and emailing with customer service representatives of Defendants on several occasions in the
16 manner set forth on CVS Caremark's website for addressing issues related to specialty medications
17 under the Program. JOHN DOE ONE also submitted these opt-out requests to CVS in writing in
18 the manner set forth in his health care plan documents for appealing adverse determinations
19 concerning drug or benefit denials.

20 143. As alleged in detail above, JOHN DOE TWO made these opt-out requests by
21 speaking by phone on several occasions with customer service representatives of Defendants in
22 the manner set forth on CVS Caremark's website for addressing issues related to specialty
23 medications under the Program, as well as by emailing with CVS Health's Director of Pharmacy
24 Regulatory Affairs (Karen DiStefano, RPh). JOHN DOE TWO also submitted these opt-out
25 requests to CVS in writing in the manner set forth in his health care plan documents for appealing
26 adverse determinations concerning drug or benefit denials. JOHN DOE TWO submitted these opt-
27 out requests in writing directly to CVS Caremark and the CEO of Defendants' parent corporation.
28 JOHN DOE TWO also attempted to contact Defendants about his need for an accommodation by
contacting the benefits manager at his husband's former employer.

1 144. As alleged in detail above, JOHN DOE SIX made these opt-out requests by calling
2 and emailing with customer service representatives of Defendants on several occasions in the
3 manner set forth on CVS Caremark’s website for addressing issues related to specialty medications
4 under the Program. JOHN DOE SIX also submitted these opt-out requests to CVS in writing in
5 the manner set forth in his health care plan documents for appealing adverse determinations
6 concerning drug or benefit denials.

7 145. As alleged in detail above, JOHN DOE SEVEN made these opt-out requests by
8 calling and emailing customer service representatives of Defendants on several occasions in the
9 manner set forth on CVS Caremark’s website for addressing issues related to specialty medications
10 under the Program. JOHN DOE SEVEN also submitted these opt-out requests in writing in the
11 manner set forth in his health care plan documents for appealing adverse determinations
12 concerning drug or benefit denials.

13 146. Plaintiffs’ repeated requests were each denied on the basis that the Program, as
14 designed, does not permit reasonable accommodations that would have allowed Plaintiffs to enjoy
15 meaningful access to their prescription drug benefit. As demonstrated by how CVS Caremark
16 representatives have handled or mishandled Plaintiffs’ numerous opt-out requests, even assuring
17 this Court that at least one had the ability to use the pharmacy of their choice and then having CVS
18 directly inform them that was not the case, Defendants provided inadequate training to their
19 employees concerning the legal responsibility to provide reasonable accommodations for
20 individuals with disabilities.

21 147. **Complaints to Regulators.** After having his opt-out requests denied as a matter of
22 policy or practice without any individualized, fact-specific inquiry, JOHN DOE TWO filed
23 complaints with the California Attorney General’s Office on or about January 11, 2016 and the
24 U.S. Department of Justice on or about March 19, 2016, seeking assistance with accessing his
25 prescription drug benefit administered by CVS Caremark. In these complaints, JOHN DOE TWO
26 detailed his health and privacy concerns with the Program because of his disability.

27 148. JOHN DOE TWO also filed a complaint with the California State Board of
28 Pharmacy concerning his health- and privacy-based concerns with the Program. Between April 1,

1 2016 and April 5, 2016 JOHN DOE TWO discussed on several occasions by phone call and email
2 these issues with Lin Hokana, an inspector from the California State Board of Pharmacy. On
3 April 8, Mr. Hokana subsequently contacted by email CVS Health’s Director of Pharmacy
4 Regulatory Affairs (Karen DiStefano, RPh) concerning JOHN DOE TWO’s problems with
5 accessing his prescription drug benefit under the Program.

6 149. Between April 8 and April 15, 2016, Mr. Hokana, Ms. DiStefano, and JOHN DOE
7 TWO exchanged multiple emails concerning his problems with the Program and whether he would
8 be granted an opt-out from the Program. JOHN DOE TWO specifically notified Ms. DiStefano in
9 these emails of his previous letters to both CVS Caremark and to Defendants’ CEO (Larry Merlo)
10 requesting to opt out of the Program.

11 150. JOHN DOE TWO also raised in these emails with Ms. DiStefano his concerns
12 about the design of the Program and its impact on him because of his disability. Specifically, he
13 told her that his experience makes clear that the Program’s “one-size-fits-all assembly line does
14 not suit complex medical needs and individual patient circumstances,” like those living with HIV.
15 As a pharmacist herself, Ms. DiStefano said in her email that she “truly empathized” with JOHN
16 DOE TWO about his concerns with losing access to his local in-network specialty pharmacy.
17 According to Ms. DiStefano, however, it was the employer’s decision—not CVS’s—whether the
18 accommodation request to opt out of the Program would be granted. Defendants ultimately took
19 no corrective action concerning JOHN DOE TWO’s problems accessing his prescription drug
20 benefit following these complaints.

21 151. **Litigation Against Other Insurers.** Even absent these specific opt-out requests
22 and complaints to regulators, Plaintiffs’ and Class Members’ need for accommodations to
23 meaningfully access their prescription drug benefit was and is obvious to Defendants. Prior to the
24 filing of this action, most other major health insurance companies in the United States allowed
25 members to opt out of mandatory, mail-order-only delivery of HIV/AIDS Medications. Many of
26 these health insurance companies and pharmacy benefit managers made mail order delivery of
27 HIV/AIDS Medications optional because of widely publicized litigation alleging that prescription
28 drug benefit designs like the Program violate the civil rights of people living with HIV. In

1 particular:

- 2 • In May 2013, after the lawsuit *Doe v. Blue Cross of Cal.*, No. 37-2013-00031442 (S.D.
3 Cty. Super. Ct. June 24, 2013) was filed, Anthem Blue Cross agreed to allow enrollees
4 taking HIV/AIDS medication in California to opt-out of its mandatory mail-order
5 program.⁸⁴
- 6 • In July 2014, after the lawsuit *Doe One v. UnitedHealthcare Ins. Co.*, No. SACV-13-00864
7 (C.D. Cal. July 31, 2014) was filed, UnitedHealthcare agreed to a nationwide class action
8 settlement allowing enrollees receiving HIV/AIDS medication to opt-out of mail order.⁸⁵
- 9 • In October 2015, after the lawsuit *Doe v. Cigna Health & Life Ins. Co.*, No. 15-cv-6089
10 (S.D. Fla. Oct. 6, 2015) was filed, Cigna agreed to a nationwide settlement that exempted
11 HIV/AIDS medications from its mandatory mail-order program entirely.⁸⁶
- 12 • In June 2016, Anthem Inc. (representing numerous of its affiliates) agreed to a nationwide
13 settlement that, like Cigna's, entirely exempted HIV/AIDS medications from the mail-
14 order requirement.⁸⁷
- 15 • In February 2017, after the lawsuit *Doe v. Aetna, Inc.*, No. 14CV2986-LAB (DHB) (S.D.
16 Cal. Mar. 15, 2016) was filed, Aetna (which was subsequently acquired in 2018 by
17 Defendants' parent company CVS Health) ended its practice of requiring enrollees to
18 obtain HIV/AIDS medications through the mail-order program.⁸⁸

19 ⁸⁴ See, e.g., *Court settlement allows BC HIV/AIDS patients to opt-out of mail order pharmacy*
20 *program*, California Medical Association (June 6, 2013), <https://tinyurl.com/rwtgw345>; Rita
21 Rubin, *Mandating Mail-Order Pharmacies*, Poz.com (Aug. 6, 2013),
<https://tinyurl.com/57vteyky>; Michelle J. Sherman, *Anthem Blue Cross Settles Mandatory Mail*
Order Lawsuit on HIV Medications, TheBody (June 6, 2013), <https://tinyurl.com/erfaer12>.

22 ⁸⁵ See, e.g., *United Healthcare Allows Opt-Out of Mail-Order HIV Meds*, Poz.com (Sept. 11,
23 2014), <https://tinyurl.com/29nes6sw>; David Gorn, *Lawsuit Settlement Spells End of Insurers'*
HIV Drugs-by-Mail Mandate, California Healthline (Sep. 11, 2014),
<https://tinyurl.com/ihbiuh54>; Joanne Finnegan, *UnitedHealth to lift mail-order requirement for*
HIV/AIDS meds, Fierce Healthcare (Mar. 21, 2014), <https://tinyurl.com/jhvuy43>.

24 ⁸⁶ See, e.g., Brendan Pierson, *Cigna drops mail-order requirement for HIV drugs in settlement*,
25 Reuters (Oct. 9, 2015), <https://tinyurl.com/ytfoh43>; Daniel Chang, *Cigna agrees to change HIV*
mail-order med rule, Miami Herald (Oct. 9, 2015), <https://tinyurl.com/ioeurh54>; *Cigna Settles*
HIV/AIDS Drug Coverage Case, Bloomberg Law (Oct. 13, 2015), <https://tinyurl.com/wfww12>.

26 ⁸⁷ See, e.g., Jerry Flanagan, *Anthem, Inc. Health Plans Expand Access to HIV/AIDS Specialty*
27 *Medications*, Consumer Watchdog (June 22, 2016), <https://tinyurl.com/anr8pazc>; Mackenzie
28 Bean, *Anthem expands member access to HIV/AIDS medications*, Becker's Hospital Review
(June 22, 2016), <https://tinyurl.com/weqww32>.

⁸⁸ See, e.g., Jerry Flanagan, *Aetna/Coventry Members May Obtain HIV/AIDS Meds at Retail*
Pharmacies, To Protect Privacy, Consumer Watchdog (July 31, 2017),

- 1 • In February 2017, after the lawsuit *Doe v. Coventry Health Care Inc.*, No. 15-CIV-62685
2 (S.D. Fla. May 5, 2016) was filed, Aetna’s subsidiary Coventry Health ended its practice
3 of requiring enrollees to obtain HIV/AIDS medications through the mail-order program.⁸⁹

4 152. **Media Coverage.** The lawsuits listed above each alleged similar claims regarding
5 mail-order delivery of HIV Medications as those at issue in this lawsuit and received widespread
6 coverage in the national and regional news media before Plaintiffs filed this lawsuit against CVS.
7 This news coverage includes a December 22, 2014 *New York Times* article (cited below) against
8 CVS’s now-subsiary, Aetna, Inc., alleging similar allegations as those alleged in this lawsuit. A
9 sampling of the news coverage includes the following:

- 10 • David Lazarus, *Anthem’s mail-order policy may have crossed a legal line*, Los Angeles
11 Times (Jan. 10, 2013), <https://tinyurl.com/4mfke7td>
12 • Jeff Overlay, *HIV Patient Says Anthem Mail-Order Drug Plan Discriminatory*, Law 360
13 (Jan. 14, 2013), <https://tinyurl.com/2wpjws4h>
14 • *San Diego Lawsuit Says Blue Cross Illegally targeting HIV/AIDS Patients*, KPBS (Jan. 14,
15 2013), <https://tinyurl.com/muxnb3aw>
16 • Kenny Goldberg, *Anthem Blue Cross Sued Over New HIV/AIDS Drug Policy*, KPBS (Jan.
17 15, 2013), <https://tinyurl.com/bdh58dux>
18 • Lisa Aliferis, *Advocacy Group Says Anthem Blue Cross Pharmacy Program is*
19 *Discriminatory*, KQED (Jan. 15, 2013), <https://tinyurl.com/4jce9u4j>
20 • *HIV, AIDS Patients Upset Over Blue Cross’ New Drug Policy*, ABC TV-13 (Houston)
21 (Jan. 23, 2013), <https://tinyurl.com/jtx5aj8e>
22 • *HIV Patients Say New Insurance Program ‘Will Kill People,’* Fox TV-4 (Feb. 1, 2013),
23 <https://tinyurl.com/3jyeyh7z>
24 • *Blue Cross Suspends Mail Order Program for HIV/AIDS Patients*, NBC TV-7 (Feb. 19,
25 2013), <https://tinyurl.com/3kc2uhrk>
26 • David Lazarus, *Anthem Blue Cross backs off mail-order pharmacy requirement*, Los
27 Angeles Times (Feb. 19, 2013), <https://tinyurl.com/57bnbbt6>

28 <https://tinyurl.com/ereqr42>.

⁸⁹ *Id.*

- 1 • Kenny Goldberg, *United Healthcare Sued Over HIV/AIDS Mail Order Drug Service*,
2 KPBS (June 11, 2013), <https://tinyurl.com/mr3vfvn8>
- 3 • Rita Rubin, *Mandating Mail-Order Pharmacies*, Poz.com (Aug. 6, 2013),
4 <https://tinyurl.com/ypm6efxw>
- 5 • Joanne Finnegan, *UnitedHealth to lift mail-order requirement for HIV/AIDS meds*, Fierce
6 Healthcare (Mar. 21, 2014), <https://tinyurl.com/jhvuy43>
- 7 • *United Healthcare Allows Opt-Out of Mail-Order HIV Meds*, Poz.com (Sept. 11, 2014),
8 <https://tinyurl.com/29nes6sw>
- 9 • David Gorn, *Lawsuit Settlement Spells End of Insurers' HIV Drugs-by-Mail Mandate*,
10 California Healthline (Sep. 11, 2014), <https://tinyurl.com/ihbiuh54>
- 11 • Katie Thomas, *Group Sues Aetna, Claiming Discrimination Against HIV Patients*, New
12 York Times (Dec. 22, 2014), <https://tinyurl.com/4es7bwab>
- 13 • Jessica Corso, *Aetna's HIV Drugs Mail-Order Rule is Biased, Suit Says*, Law 360 (Dec.
14 22, 2014), <https://tinyurl.com/yc4y9n5b>
- 15 • Jamie Ross, *Class of Patients Fights Aetna Policy Change on Health Insurance*,
16 Courthouse News Service (Dec. 23, 2014), <https://tinyurl.com/5n85u7cs>
- 17 • *Aetna, other payers on hot seat for allegedly discriminating against HIV patients*, Fierce
18 Healthcare (Dec. 23, 2014), <https://tinyurl.com/3yz267f2>
- 19 • Brendan Pierson, *Cigna drops mail-order requirement for HIV drugs in settlement*, Reuters
20 (Oct. 9, 2015), <https://tinyurl.com/ytfoh43>
- 21 • Daniel Chang, *Cigna agrees to change HIV mail-order med rule*, Miami Herald (Oct. 9,
22 2015), <https://tinyurl.com/ioeurh54>
- 23 • *Cigna Settles HIV/AIDS Drug Coverage Case*, Bloomberg Law (Oct. 13, 2015),
24 <https://tinyurl.com/wfwvw12>

25 153. In addition to coverage in the national and regional news media, Consumer
26 Watchdog published 13 press releases before filing this lawsuit against CVS regarding the HIV
27 mail-order lawsuits listed above. These press releases were published on Consumer Watchdog's
28 high-visibility website; in addition, Consumer Watchdog's practice is to utilize the services of

1 Cision PR Newswire to distribute press releases to national and regional news outlets such as:
2 Atlanta Business Chronicle, Boston Business Journal, Chicago Business News, Dallas Business
3 Journal, El Paso Times, FDA Reg Watch, Jacksonville Business Journal, Kansas City Business
4 Journal, King-TV NBC-5 (Seattle, WA), Los Angeles Business, MarketWatch, Memphis Business
5 Journal, New York Business Journal, Orlando Business Journal, Puget Sound Business Journal,
6 San Francisco Business Times, Tampa Bay Business Journal, The Sacramento Bee, and Wichita
7 Business Journal.

8 154. **The Parties' Pre-Lawsuit Failed Negotiations.** For over a year prior to the filing
9 of this action, counsel for Plaintiffs engaged in significant efforts with counsel for CVS Pharmacy,
10 Inc., Caremark, L.L.C., Caremark California Specialty Pharmacy, and CaremarkPCS Health,
11 L.L.C. to reach an accord based on the numerous settlements with every other major health care
12 provider on this very issue. During the parties' negotiations over the course of 18 months,
13 Plaintiffs' counsel thoroughly raised with both Defendants' counsel and high-level members of
14 Defendants' entities the health and privacy issues that Plaintiffs and other individuals living with
15 HIV experienced under the Program. Ultimately despite being made aware of these concerns,
16 Defendants consciously and intentionally elected to continue with the Program unabated; if
17 anything, Defendants increased the number of HIV medications subject to the Program.

18 155. **Executives/Decisionmakers Were Aware of Access Issues.** Decisionmakers and
19 executives employed by Defendants were aware of the negative impacts the Program caused
20 individuals living with HIV but have declined to change the design of the Program. Defendants
21 have rejected such recommendations, presumably because it was inconsistent with CVS
22 Caremark's business model and generated less profit for Defendants.

23 156. Based on internal emails, presentations, and talking points, Defendants' executives
24 and decisionmakers were also aware that the design of the Program was suboptimal for HIV/AIDS
25 Medications and likely discriminatory against people living with HIV. For example, according to
26 internal emails from October 2015 between CVS Health's Director of Specialty Clinical
27 Innovation & Program Design (Christine Sawick, RPh) and CVS/caremark's head of Specialty
28 Product Development (Laura Tebbe), Defendants knew that approximately 80% of their health

1 plan clients—as opposed to their employer clients—refused to choose a prescription drug benefit
2 designed, offered, and administered by Defendants because that made HIV/AIDS Medications
3 subject to the Program. Other emails from April 2015 between Ms. Tebbe, CVS/caremark’s Senior
4 Advisor for Client Financial Analysis – Health Plans (Charles Weeden), CVS/caremark’s Product
5 Manager for Specialty Definition, Product Safety/Risk (Angela Breedlove), and CVS Health’s
6 Vice President for Analytic Consulting & Proposals (Colleen Cleveland)—as well as presentations
7 dated October 2015—demonstrate that Defendants’ executives and decisionmakers were aware
8 that “[c]lients often ask to carve out [HIV medications] because [the] condition is sensitive and
9 [the] community is vocal.” According to these CVS decisionmakers, health plans were concerned
10 that changing the prescription drug benefit design to make HIV/AIDS Medications subject to the
11 Program would “antagonize” people prescribed these medications. These health plans were
12 “pushing back on HIV retail block due to the noise it will cause”—a “theme” Defendants were
13 aware of.

14 157. Employees of CVS Caremark also have studied ways to increase adherence for
15 individuals enrolled in CVS-administered healthcare plans prescribed HIV/AIDS Medications,
16 ultimately concluding that mandatory mail-order-only approaches such as the Program do not
17 result in optimal adherence outcomes and that consumers should be provided a blended approach
18 as mail order only programs had a negative effect on the rate of individuals taking these
19 medications every day and exactly as prescribed.

20 158. By at least 2017, if not earlier, Defendants started to make available to their
21 employer clients a prescription drug benefit option that removed HIV/AIDS Medications from the
22 Program “in response to client and marketplace feedback.” Internal emails from August 2017
23 between Defendants’ decisionmakers and executives indicate that allowing their clients to remove
24 HIV/AIDS Medications from the Program was a “strategy [] being offered . . . to enable clients to
25 offer their members/employees better access” to their HIV/AIDS Medications and the prescription
26 drug benefit administered by CVS. This was a significant change from just two years earlier when
27 some of these same decisionmakers and executives were actively strategizing ways to convince
28 health plan and employer clients to choose CVS-administered prescription drug benefit plans that

1 made HIV/AIDS Medications subject to the Program.

2 159. Internal documents also make clear that in 2017 Defendants were aware that
3 removing HIV/AIDS Medications from the Program was beneficial to the members of health plans
4 administered by CVS. In internal documents titled “HIV Talking Points,” dated August 2017, and
5 “Exclusive Specialty: HIV Talking Points,” dated July 2017, Defendants’ described these changes
6 as “a member-friendly enhancement.”

7 160. These documents also indicate that Defendants believed that “[m]edia attention on
8 HIV medications and exclusive specialty may lead clients to inquire about excluding HIV from
9 [the Program].”

10 161. Defendants also had patient survey data, which was described in a presentation
11 titled “Member Satisfaction Improvement Initiative EES,” dated May 2017, that identified many
12 of the same access issues Plaintiffs have encountered as endemic to the Program—such as missed
13 dosages of HIV medications because of delivery delays; orders cancelled without notifying
14 members; and other shipping issues resulting in members not receiving their HIV/AIDS
15 Medications. In a CVS Health-branded document titled “Exclusive Specialty – HIV Job AID,”
16 dated October 21, 2021, it seems that years of increasing “member noise” (*i.e.*, members
17 prescribed HIV/AIDS Medications raising concerns about the limitations and restrictions under
18 the Program) led Defendants to allow more clients to choose a prescription drug benefit that did
19 not require HIV/AIDS Medications to be subject to the Program.

20 162. Nonetheless, CVS continues to maintain to this day that it is their health plan and
21 employer clients—not Defendants—who are solely responsible for HIV/AIDS Medications being
22 subject to the Program and who have the ultimate authority to determine whether a reasonable
23 accommodation in the form of opting out of the Program is granted to members. Defendants have
24 consciously ignored and/or rejected all this information and any suggestion to change the Program
25 to permit opt out requests or exclude HIV Medications from the Program altogether—a decision
26 exclusively made by Defendants, presumably because it was inconsistent with CVS Caremark’s
27 business model and since it would have generated less profit for Defendants.

28 163. In sum, throughout the process of designing, implementing, and operating the

1 Program, Defendants were aware that harm to Plaintiffs and Class Members was substantially
2 likely, but failed to ensure that Plaintiffs and Class Members have meaningful access to their
3 prescription drug benefit. *See Mark H.*, 620 F.3d at 1099. Despite their knowledge that individuals
4 living with HIV/AIDS were being denied meaningful access to their prescription drug benefit,
5 Defendants refused to take any corrective action.

6 ***Defendants have also engaged in proxy discrimination.***

7 164. In addition to this intentional discrimination because of Defendants' deliberate
8 indifference, Defendants have also engaged in proxy discrimination. Proxy discrimination is
9 shown where individuals are treated "differently on the basis of seemingly neutral criteria that are
10 so closely associated with [a] disfavored group that discrimination on the basis of such criteria is,
11 constructively, facial discrimination against the disfavored group." *Pac. Shores Properties, LLC v.*
12 *City of Newport Beach*, 730 F.3d 1142, 1160 n.23 (9th Cir. 2013); *see also Davis v. Guam*, 932
13 F.3d 822, 837–38 (9th Cir. 2019) (historical facts can support inference that "seemingly neutral
14 criteria" are a proxy for a protected class).

15 165. The Program denies Plaintiffs and Class Members full and equal access to utilize
16 the in-network pharmacies and method of delivery of their choice specifically because of their
17 HIV/AIDS Medications which is squarely attributable to their disability, while at the same time
18 permitting non-disabled enrollees to enjoy full access to the in-network pharmacies of their choice.
19 The Program prevents Plaintiffs and other enrollees living with HIV from getting the same
20 prescription drug benefit as non-disabled insureds—such as delivery of life-sustaining medications
21 in a timely and secure manner, and the ability to access knowledgeable pharmacists that is critical
22 to their ongoing care.

23 166. Of the approximately 400 specialty medications CVS has subjected to the Program,
24 approximately two treat a non-disabling condition. In other words, roughly 99.5% of the
25 medications subject to the Program treat a disability.

26 167. Simply put, the Program is another chapter in the long story of healthcare providers
27 in the United States isolating people with disabilities in order to exclude or restrict their healthcare
28 options. *See, e.g., Doe v. Mut. of Omaha Ins. Co.*, 179 F.3d 557, 588 (7th Cir. 1999) (pre-ACA

1 case finding that lifetime caps on coverage for AIDS did not discriminate based on disability). The
2 ACA was specifically designed to stop this conduct. *See* 155 CONG. REC. S12153-02 (Dec. 2,
3 2009) (Senator Ben Cardin: the ACA “will help achieve the goals outlined by the theme of this
4 year’s World AIDS Day campaign of ‘universal access and human rights.’ First and foremost, the
5 bill eliminates discrimination based on preexisting conditions. Individuals with HIV will no longer
6 be rejected from insurance coverage because of their disease”).

7 168. Despite the purposes of the ACA, individuals with HIV/AIDS have continued to
8 confront efforts to restrict or eliminate their ability to meaningfully access their prescription drug
9 benefit, such as the Program. In stark contrast to Plaintiffs here, non-disabled insureds who are not
10 subject to the Program are able to fully and effectively access their prescription drug benefit
11 offered by CVS Caremark. Unlike Plaintiffs and other enrollees with HIV/AIDS, non-disabled
12 insureds can access all their medications in a timely and secure manner, and have access to
13 knowledgeable pharmacists.

14 169. The “seemingly neutral criteri[on]” of subjecting all HIV/AIDS Medications to the
15 Program is nothing more than a proxy for discrimination against people with HIV/AIDS. *Pac.*
16 *Shores*, 730 F.3d at 1160 n.23. Segregating all HIV/AIDS Medications into the Program is
17 constructively equivalent to segregating all insureds with HIV/AIDS into the Program on the basis
18 of their disability—the fit here, far more than being “sufficiently close,” is essentially one-to-one.
19 *Id.* Defendants discriminate against Plaintiffs on the basis of a criterion that is “almost exclusively
20 [an] indicator[] of membership in the disfavored group.” Insureds receiving HIV/AIDS
21 Medications are “almost exclusively” insureds living with HIV/AIDS. *Id.* Because of that
22 criterion, insureds with HIV/AIDS are treated differently and have a lesser prescription drug
23 benefit than non-disabled insureds who are not subject to the Program.

24 170. That less than 1% of specialty medications subject to the Program treat non-
25 disabling conditions in no way precludes a finding of proxy discrimination. Rather, such evidence
26 demonstrates the extremely tight fit between the Program’s seemingly neutral criteria and the
27 disabled individuals it targets. *See Schmitt v. Kaiser Found. Health Plan of Washington*, 965 F.3d
28 945, 958 (9th Cir. 2020) (“That the hearing loss exclusion also affects some non-disabled

1 individuals does not doom” the plaintiffs’ “claim per se, since ‘overdiscrimination is prohibited.’”
2 (quoting *Pac. Shores*, 730 F.3d at 1160)).

3 171. Defendants are engaging in a series of illegal transactions that violate the ACA and
4 Unfair Competition Law claims asserted herein.

5 172. Article I, section 1 of the California Constitution guarantees “all people” the right
6 to privacy:

7 All people are by nature free and independent and have inalienable rights. Among
8 these are enjoying and defending life and liberty, acquiring, possessing, and
protecting property, and pursuing and obtaining safety, happiness, and privacy.

9 The U.S. Constitution impliedly also recognizes a fundamental right to privacy. As detailed above,
10 the Program violates Class Members’ inalienable right to privacy by eliminating their choice to
11 keep their medical condition private, by requiring public delivery of their medications by someone
12 they do not know and from CSP personnel who may not be sensitive to or have extensive
13 knowledge of their condition.

14 173. The Program targets individuals with specific disease states. Here, Defendants
15 specifically target certain “specialty medicines” that are used to treat serious and chronic health
16 conditions. In fact, due to the specialized nature of these targeted medications, this policy change
17 predominantly impacts subscribers with serious medical conditions, and specifically for purposes
18 of this Complaint, persons with HIV/AIDS. The Program denies equal use of and access to
19 community pharmacists and denies prescription drug benefits due for only these people.

20 174. The California Legislature has declared that the State of California has an interest
21 in ensuring that all people have ready and reasonably available access to HIV/AIDS Medications:

22 (a) State-of-art knowledge regarding treatment of people infected with
23 the human immunodeficiency virus (HIV) indicates that active HIV infection
24 (AIDS) can be a manageable, though chronic, condition with the use of drugs such
25 as zidovudine (AZT), aerosolized pentamidine, and ganciclovir. AIDS experts
across the nation agree that early intervention with these drugs can prolong life,
minimize the related occurrences of more serious illnesses, reduce more costly
treatments, and maximize the HIV-infected person’s vitality and productivity.

26 (b) For reasons of compassion and cost effectiveness, *the State of*
27 *California has a compelling interest in ensuring that its citizens infected with the*
HIV virus have access to these drugs.

28 California Health & Safety Code § 120950 (emphasis added).

1 175. In controlling and administering the plans, Defendants owe a duty to act solely for
2 the benefit of Plaintiffs, their plan members, and/or the Class, as applicable. However, Defendants
3 have put their own interests above their subscribers through their conduct of discrimination and
4 self-dealing by mandating the use of CSP and not providing an opt out right or notice thereof,
5 restricting choice of pharmacy to fulfill these specialty medications, refusing to consistently accept
6 manufacturer rebates or discounts, forcing consumers to accept the financial responsibility of lost
7 or stolen shipments, and/or keeping fees or rebates that would be paid to community specialty
8 pharmacies or consumers, all the time profiting as a result thereof. Defendants have also put their
9 own interests before subscribers' interests by seeking to increase their own profits at the expense
10 of their subscribers' health, as set forth above.

11 176. Defendants have failed to provide a reasonable procedure for subscribers who wish
12 to opt out of the Program and any information regarding appeal of any determinations to deny opt-
13 out requests.

14 177. Forcing affected enrollees to participate in the Program will cause severe detriment
15 and irreparable harm to Class Members, as well as the potential for financial loss, as actually
16 suffered by Plaintiffs. Such conduct is continuing. Class Members either have switched against
17 their will to the Program or are being threatened with the requirement to purchase their specialty
18 drugs through CSP in accordance with the Program. CSP must either agree not to continue to
19 implement the Program in its current form or, at a minimum, provide Class Members the right to
20 opt out of the Program.

21 **FEDERAL FINANCIAL ASSISTANCE**

22 **CVS Health Corporation**

23 178. CVS Health Corporation, the parent company of the CVS Caremark defendants, is
24 an entity principally engaged in the business of providing healthcare that receives Federal financial
25 assistance. As noted in its 2020 Form 10-K filing with the U.S. Securities and Exchange
26 Commission ("SEC"),⁹⁰ CVS Health Corporation is an entity principally engaged in the business

27 ⁹⁰ SEC.gov, Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of
28 1934, For the Fiscal Year Ended December 31, 2020,
<https://www.sec.gov/Archives/edgar/data/0000064803/000006480321000011/cvs-20201231.htm>
(last visited September 7, 2023).

1 of providing healthcare:

2 CVS Health Corporation (“CVS Health”), together with its subsidiaries
 3 (collectively, the “Company,” “we,” “our” or “us”), *is a diversified health services*
 4 *company united around a common purpose of helping people on their path to*
 5 *better health*. In an increasingly connected and digital world, we are meeting
 6 people wherever they are and changing health care to meet their needs. The
 7 Company has more than 9,900 retail locations, approximately 1,100 walk-in
 8 medical clinics, a leading pharmacy benefits manager with approximately 105
 9 million plan members, a dedicated senior pharmacy care business serving more
 10 than one million patients per year and expanding specialty pharmacy services. We
 11 also serve an estimated 34 million people through traditional, voluntary and
 12 consumer-directed health insurance products and related services, including
 13 expanding Medicare Advantage offerings and a leading standalone Medicare Part
 14 D prescription drug plan (“PDP”).

(emphasis added.)

15 179. CVS Health Corporation is, and holds itself and its network of subsidiaries out to
 16 the public as, an integrated health care company that provides a wide range of healthcare services.
 17 According to CVS Health Corporation’s fourth quarter 2020 Earnings Release:⁹¹

18 **About CVS Health**

19 CVS Health is a different kind of health care company. We are a diversified health
 20 services company with nearly 300,000 employees united around a common purpose
 21 of helping people on their path to better health. In an increasingly connected and
 22 digital world, we are meeting people wherever they are and changing health care to
 23 meet their needs. Built on a foundation of unmatched community presence, our
 24 diversified model engages one in three Americans each year. From our innovative
 25 new services at HealthHUB® locations, to transformative programs that help
 26 manage chronic conditions, we are making health care more accessible, more
 27 affordable and simply better.

28 180. According to CVS Health Corporation’s website:

About CVS Health

At CVS Health, we share a clear purpose: helping people on their path to better
 health. Through our health services, plans and community pharmacists, we’re
 pioneering a bold new approach to total health. Making quality care more
 affordable, accessible, simple and seamless, to not only help people get well, but
 help them stay well in body, mind and spirit.

...

⁹¹ CVS Health Reports Fourth Quarter and Full-Year 2020 Results and Provides 2021 Full Year
 Guidance, at 6, [https://s2.q4cdn.com/447711729/files/doc_financials/2020/q4/Q4-2020-
 Earnings-Release.pdf](https://s2.q4cdn.com/447711729/files/doc_financials/2020/q4/Q4-2020-Earnings-Release.pdf) (last visited September 7, 2023).

1 **The path to better health**

2 Every one of us at CVS Health shares a single, clear purpose: helping people on
3 their path to better health.

4 Whether in our pharmacies or through our health services and plans, we are
5 pioneering a bold new approach to total health. Making quality care more
6 affordable, accessible, simple and seamless. Creating innovations that not only help
7 people get well, but help them stay well in body, mind and spirit.

8 ...

9 **Our services**

10 Across CVS Health, from face-to-face, to at-home and virtual care, we offer a wide
11 range of services to meet you as a patient, customer or member at every step of
12 your health care journey.

13 ...

14 **Our suite of services**

15 CVS Health is a one-of-a-kind health care company that helps you get the care you
16 need through the channel that works best for you.

17 ...

18 **Improving health care**

19 By looking at the whole picture of care, we're working to make health care more
20 accessible, affordable and simply better

21 ...

22 **Care when and where you need it most**

23 No matter what your care needs may be, our goal is to make that care easily
24 accessible, through our many retail or clinical locations, through one of our digital
25 tools or through virtual care that puts care in the palm of your hand

26 ...

27 **A spectrum of health support**

28 We support you across the entire health ecosystem, from prevention to personalized
29 solutions. Our thousands of medical and behavioral professionals, as well as digital
30 tools and advanced data analytics that enable early intervention and treatment, help
31 us give you the best care possible.

32 ...

1 **Access to care**

2 One of our top priorities is to ensure that whatever your health needs may be, that
3 you can easily access the kind of care that keeps you on your path to better health.

4 ...

5 **Expertise and technology to support you**

6 Thousands of medical and behavioral professionals and more than 30,000 retail
7 pharmacists take care of our members, patients and customers daily. It's that
8 expertise combined with our technology-enabled solutions and network of more
9 than 7,900 health care organizations nationwide that allows us to put you at the
10 center of your health care and to support a sustainable health system for all.

11 ...

12 **Health with Heart**

13 We're working to improve the health care experience for all, through innovative
14 products and services and in communities nationwide.

15 ...

16 We have assembled the most comprehensive suite of assets in the industry. Our
17 unique integrated model increases access to quality care, delivers better health
18 outcomes, and lowers overall health care costs. We have one mission: to actively
19 support your efforts in offering the best care possible for your members.

20 ...

21 **Our vision: Human centered health care**

22 It's the focus of everything we do as a health services company. But what, or more
23 accurately who, we put at the center is what truly matters most. It's you. With health
24 care revolving around each person and their individual needs, we can be there
25 during every meaningful moment of health in your lifetime.

26 181. As an integrated health care company that provides a wide range of healthcare
27 services, CVS Health Corporation receives significant Federal financial assistance under the
28 Medicare Part D⁹² program and other government programs. CVS Health Corporation is an
intended recipient of that Federal financial assistance for purposes of providing Part D benefits
and other government-funded health benefits to eligible enrollees. For example, as noted in the

⁹² Medicare Part D is the prescription drug component of Medicare.
<https://www.medicare.gov/drug-coverage-part-d>.

1 CVS Health Corporation’s 2020 10-K filing with the SEC:

2 ***The Company is a national provider of drug benefits under the Medicare Part D***
3 ***prescription drug program.*** All Medicare eligible individuals are eligible to
4 participate in this voluntary prescription drug plan.

5 (emphasis added.)

6 ...

7 ***Programs funded in whole or in part by the U.S. federal government account for***
8 ***a significant portion of our revenues, and we expect that percentage to increase.***

9 (emphasis added.)

10 ...

11 The Health Care Benefits segment is one of the nation’s leading diversified health
12 care benefits providers, serving an estimated 34 million people as of December 31,
13 2020. The Health Care Benefits segment has the information and resources to help
14 members, in consultation with their health care professionals, make more informed
15 decisions about their health care. The Health Care Benefits segment offers a broad
16 range of traditional, voluntary and consumer-directed health insurance products and
17 related services, including medical, pharmacy, dental and behavioral health plans,
18 medical management capabilities, Medicare Advantage and Medicare Supplement
19 plans, PDPs, Medicaid health care management services and health information
20 technology (“HIT”) products and services.

21 ...

22 Government Medical: In select geographies, the Health Care Benefits segment
23 offers Medicare Advantage plans, Medicare Supplement plans and prescription
24 drug coverage for Medicare beneficiaries; participates in Medicaid and subsidized
25 Children’s Health Insurance Programs (“CHIP”); and participates in demonstration
26 projects for members who are eligible for both Medicare and Medicaid (“Duals”).

27 ***These Government Medical products are further described below:***

- 28 • Medicare Advantage: Through annual contracts with CMS, the Company offers HMO and PPO products for eligible individuals in certain geographic areas through the Medicare Advantage program.

...

- Medicare PDP: The Company is a national provider of drug benefits under the Medicare Part D prescription drug program. All Medicare eligible individuals are eligible to participate in this voluntary prescription drug plan.

- . . . The Company offered a wide selection of Medicare Supplement products in 49 states and Washington, D.C. in 2020.

- 1 • Medicaid and CHIP: The Company offers health care management services
2 to individuals eligible for Medicaid and CHIP under multi-year contracts
3 with government agencies in various states that are subject to annual
4 appropriations. CHIP are state-subsidized insurance programs that provide
5 benefits for families with uninsured children.

6 ...

- 7 • Duals: The Company provides health coverage to beneficiaries who are
8 dually eligible for both Medicare and Medicaid coverage

9 (emphasis added.)

10 ...

11 In both 2020 and 2019, Health Care Benefits segment revenues from the federal
12 government accounted for 13% of the Company's consolidated total revenues.
13 Contracts with CMS for coverage of Medicare-eligible individuals . . . accounted
14 for approximately 92% of the Company's consolidated revenues from the federal
15 government in both 2020 and 2019.

16 ...

17 Compared to Commercial Medical products, Medicare contracts generate higher
18 per member per month revenues and higher health care and other benefit costs.

19 ...

20 ***The Company has expanded its Medicare service area and products in 2021 and***
21 ***is seeking to substantially grow its Medicare membership, revenue and operating***
22 ***results over the next several years, including through growth in Medicare***
23 ***Supplement products. The anticipated organic expansion of the Medicare service***
24 ***area and Medicare products offered and the Medicare-related provisions of the***
25 ***ACA significantly increase the Company's exposure to funding and regulation of,***
26 ***and changes in government policy with respect to and/or funding or regulation of,***
27 ***the various Medicare programs in which the Company participates, including***
28 ***changes in the amounts payable to us under those programs and/or new reforms or***
 burcharges on existing programs.

 (emphasis added.)

 ...

Programs funded in whole or in part by the U.S. federal government account for
 a significant portion of our revenues, and we expect that percentage to increase.

 (emphasis added.)

 ...

1 Our revenues from government funded programs, including in Health Care
2 Benefits' Medicare, Medicaid, dual eligible and dual eligible special needs plan
3 businesses and from government customers in its Commercial business, are
4 dependent on annual funding by the federal government and/or applicable state or
5 local governments.

6 182. Whether measuring by the (i) total number of individuals linked to certain services,
7 (ii) total revenues of CVS Health Corporation's segments, or (iii) adjusted operating income of
8 those segments, it is clear that more than half of CVS Health Corporation's business constitutes
9 the provision of health care.

10 183. According to CVS Health Corporation's fourth quarter 2020 Earnings Release,⁹³
11 three segments make up the majority of its business: "Pharmacy Services Segment," "Retail/LTC
12 Segment," and "Health Care Benefits Segment."

13 184. CVS Health Corporation's 2020 Earnings Release describes each segment as
14 follows:

- 15 • Pharmacy Services Segment – "provides a full range of pharmacy benefit management
16 solutions to employers, health plans, government employee groups and government
17 sponsored programs."
- 18 • Retail/LTC Segment – "fulfills prescriptions for medications, provides patient care
19 programs, sells a wide assortment of health and wellness products and general
20 merchandise, provides health care services through walk-in medical clinics, provides
21 medical diagnostic testing and provides services to long-term care facilities."
- 22 • Health Care Benefits Segment – "offers a full range of insured and self-insured ("ASC")
23 medical, pharmacy, dental and behavioral health products and services."

24 185. According to CVS Health Corporation,⁹⁴ it has approximately 102 million PBM
25 members, 62 million ExtraCare members, and 23 million medical benefit members.

26 186. The 102 million PBM members are served under the Pharmacy Services Segment;
27 the 62 million ExtraCare members are served under the Retail/LTC Segment; and the 23 million
28 medical benefit members are served under the Health Care Benefits Segment.

187. Additionally, CVS Health Corporation has over 9,900 retail pharmacy locations,

⁹³ CVS Health Reports Fourth Quarter and Full-Year 2020 Results and Provides 2021 Full Year
Guidance, https://s2.q4cdn.com/447711729/files/doc_financials/2020/q4/Q4-2020-Earnings-Release.pdf.

⁹⁴ CVSHealth.com, Our company at a glance, <https://cvshealth.com/about-cvs-health/our-company-at-a-glance> (last visited March 28, 2021.)

1 1,100 MinuteClinic locations, and 26 retail specialty pharmacies. CVS Health Corporation
 2 advertises that it has 50 million visits to the MinuteClinics, manages or fills 2.5 billion
 3 prescriptions, serves 4.5 million people daily in its retail pharmacy locations, and serves 5 million
 4 people annually with long-term care services through Omnicare.

5 188. According to CVS Health Corporation's fourth quarter 2020 Earnings Report, CVS
 6 Health Corporation's four segments—Pharmacy Services, Retail/LTC, Health Care Benefits, and
 7 Corporate/Other—reported the following results (chart on next page):

8
 9
 10
 11
 12
 13 Company's underlying business performance as further described in endnote (1). The Company uses adjusted operating income
 14 as its principal measure of segment performance as it enhances the Company's ability to compare past financial performance
 with current performance and analyze underlying business performance and trends.

15 The following is a reconciliation of financial measures of the Company's segments to the consolidated totals:

<i>In millions</i>	Pharmacy Services ^(a)	Retail/ LTC	Health Care Benefits	Corporate/ Other	Intersegment Eliminations ^(b)	Consolidated Totals
Three Months Ended						
December 31, 2020						
Total revenues	\$ 36,355	\$ 24,062	\$ 19,103	\$ 134	\$ (10,100)	\$ 69,554
Operating income (loss)	1,505	1,644	56	(512)	(169)	2,524
Adjusted operating income (loss) ⁽¹⁾	1,561	1,775	153	(375)	(169)	2,945
December 31, 2019						
Total revenues	37,073	22,580	17,150	89	(10,003)	66,889
Operating income (loss)	1,348	1,909	386	(430)	(176)	3,037
Adjusted operating income (loss) ⁽¹⁾	1,447	2,031	779	(315)	(176)	3,766
Year Ended						
December 31, 2020						
Total revenues	\$ 141,938	\$ 91,198	\$ 75,467	\$ 426	\$ (40,323)	\$ 268,706
Operating income (loss)	5,454	5,640	5,166	(1,641)	(708)	13,911
Adjusted operating income (loss) ⁽¹⁾	5,688	6,146	6,188	(1,306)	(708)	16,008
December 31, 2019						
Total revenues	141,491	86,608	69,604	512	(41,439)	256,776
Operating income (loss)	4,735	5,793	3,639	(1,483)	(697)	11,987
Adjusted operating income (loss) ⁽¹⁾	5,129	6,705	5,202	(1,000)	(697)	15,339

16
 17
 18
 19
 20
 21
 22
 23
 24
 25
 26
 27
 28 (a) Total revenues of the Pharmacy Services segment include approximately \$2.4 billion and \$2.6 billion of retail co-payments for the three months ended December 31, 2020 and 2019, respectively, and \$10.9 billion and \$11.5 billion of retail co-payments for the years ended December 31, 2020 and 2019, respectively.

1
2
3
4
5
6 189. In 2020, the total revenue (in millions) from selling products was \$190,688,
7 compared to a total revenue of \$69,364 from insurance premiums.⁹⁵ Additionally, within the retail
8 pharmacy segment, out of a total revenue (in millions) of \$91,198, \$70,176 of that amount came
9 from “pharmacy” sales, as opposed to \$19,655 that came from “front store.”⁹⁶

10 **CVS Caremark’s Pharmacy Services and Retail/LTC Segments**

11 190. CVS Caremark’s Pharmacy Services Segment and Retail/LTC Segment are “health
12 program or activit[ies] ... receiv[ing] Federal financial assistance” subject to the requirements of
13 42 U.S.C. section 18116. CVS Caremark’s Pharmacy Services Segment and Retail/LTC Segment,
14 which are components of CVS Health Corporation’s vertically integrated pharmacy-PBM model,
15 include retail and mail-order pharmacies and PBM services. Under CVS Caremark’s Pharmacy
16 Services Segment and Retail/LTC Segment, various aspects of pharmaceutical care critical to
17 Class Members’ health have been eliminated, including medically appropriate dispensing of their
18 medications and access to necessary counseling.

19 191. CVS Caremark’s Pharmacy Services Segment and Retail/LTC Segment are
20 directly responsible for the discriminatory conduct at issue in the Complaint.

21 192. As noted in its 2020 10-K filing with the SEC:

22 The Pharmacy Services segment provides a full range of pharmacy benefit
23 management (“PBM”) solutions, including plan design offerings and
24 administration, formulary management, retail pharmacy network management
25 services, mail order pharmacy, specialty pharmacy and infusion services, clinical
26 services, disease management services and medical spend management. The
Pharmacy Services segment’s clients are primarily employers, insurance
companies, unions, government employee groups, health plans, PDPs, Medicaid

27 ⁹⁵ ICRM.indigotool.com, Interactive Analysis Center,
28 <https://icrm.indigotools.com/IR/IAC/?Ticker=CVS2&Exchange=NYSE> (“Annual – Income
Statement” tab) (last visited Sept. 7, 2023).

⁹⁶ *Id.* (See “Annual – Retail Pharmacy Segment” tab.)

1 managed care (“Managed Medicaid”) plans, plans offered on public health
insurance exchanges (“Public Exchanges”) and private health insurance exchanges.

2 ...

3 The Retail/LTC segment sells prescription drugs and a wide assortment of health
4 and wellness products and general merchandise, provides health care services
5 through its MinuteClinic® walk-in medical clinics, provides medical diagnostic
6 testing, administers vaccinations for illnesses such as influenza, COVID-19 and
7 shingles and conducts long-term care pharmacy (“LTC”) operations, which
8 distribute prescription drugs and provide related pharmacy consulting and other
9 ancillary services to chronic care facilities and other care settings. As of December
10 31, 2020, the Retail/LTC segment operated more than 9,900 retail locations,
11 approximately 1,100 MinuteClinic locations as well as online retail pharmacy
websites, LTC pharmacies and on-site pharmacies. During the year ended
December 31, 2020, the Retail/LTC segment filled 1.5 billion prescriptions on a
30-day equivalent basis. For the year ended December 31, 2020, the Company
dispensed approximately 27.1% of the total retail pharmacy prescriptions in the
United States.

12 193. CVS Caremark’s Pharmacy Services Segment and Retail/LTC Segment are, and
13 hold themselves out to the public as, “health program[s] or activit[ies].” For example, according
14 to its website:

15 **Pharmacy services**

16 We strive to understand the unique needs of individuals and help them get the care
17 they need conveniently. With over 9,900 retail stores, along with our easy-to-access
18 mail pharmacy, and our chronic care specialty pharmacy services, we are partners
in your health care needs at every step.

19 ...

20 **We support people on the path to better health**

21 Taking a new prescription, either for a new diagnosis or an existing condition, often
22 comes with many questions. At CVS Caremark, we don’t just manage insurance
23 claims. Our professionals — adhering to decisions made by your healthcare
24 provider — offer personalized support to each patient so that they can successfully
start and stay on their medications, leading to better health care outcomes and lower
costs.

25 ...

1 **Mail pharmacy**

2 Our members depend on their medications to keep them healthy. We work to ensure
3 that prescriptions are affordable at the lowest possible cost, and we also make it
4 easy for them to access their medicines in whatever way is most convenient.

5 ...

6 **Specialty pharmacy**

7 People with rare or chronic conditions often require complex treatments and
8 specialty medications that can be more costly for both payors and patients. Making
9 sure those medications are available at the lowest possible cost – and without a long
10 wait – is a top priority for us.

11 ...

12 CVS Health continues to play a leading role in the national response to COVID-19
13 through testing solutions and vaccine administration across the country.

14 194. In addition to the information provided above, as noted in the CVS Health
15 Corporation’s 2020 10-K filing with the SEC, CVS Caremark’s Pharmacy Services Segment and
16 Retail/LTC Segment receive Federal financial assistance:

17 *Pharmacy revenues represented approximately three-fourths of Retail/LTC*
18 *segment⁹⁷ revenues* in each of 2020, 2019 and 2018. The Company believes that
19 retail pharmacy operations will continue to represent a critical part of the
20 Company’s business due to industry demographics, e.g., an aging American
21 population consuming a greater number of prescription drugs, prescription drugs
22 being used more often as the first line of defense for managing illness, the
23 introduction of new pharmaceutical products, the need for vaccinations *and*
24 *Medicare Part D growth.*

25 (emphasis added.)

26 ...

27 The Company’s Pharmacy Services clients are primarily employers, insurance
28 companies, unions, government employee groups, health plans, *Medicare Part D*
 plans, Managed Medicaid plans and plans offered on Insurance Exchanges and
 other sponsors of health benefit plans and individuals located throughout the United
 States.

⁹⁷ “LTC” is a reference to CVS Caremark’s “long-term care pharmacy services” programs. CVSHealth, Long-term care, <https://cvshealth.com/our-services/health-and-wellness-services/long-term-care> (last visited Sept. 7, 2023).

(emphasis added.)

...

Substantially all of the Retail/LTC segment’s pharmacy revenues are derived from pharmacy benefit managers, managed care organizations (“MCOs”), **government funded health care programs**, commercial employers and other third-party payors.

(emphasis added.)

195. Defendant CVS Pharmacy, Inc., which is part of CVS Caremark’s Pharmacy Services Segment and/or Retail/LTC Segment, also constitutes a “health program or activity . . . receiv[ing] Federal financial assistance” subject to the requirements of 42 U.S.C. section 18116. CVS Pharmacy, Inc. receives “Federal financial assistance” as part of its participation in the Medicare Part D program. CVS Pharmacy, Inc. is the intended beneficiary of those funds. Defendant Caremark Rx, L.L.C. is a direct subsidiary of Defendant CVS Pharmacy, Inc., and Defendant CaremarkPCS, L.L.C. is a direct subsidiary of Defendant Caremark Rx, L.L.C.

196. The Garfield Beach CVS, L.L.C. defendant owns and operates CVS retail pharmacies in California and is a participant in the Medicaid 340B program, which subsidizes the cost of pharmaceuticals for low-income individuals.

CLASS ALLEGATIONS

197. This action is brought by Plaintiffs on behalf of themselves and all other similarly situated persons pursuant to Federal Rules of Civil Procedure Rule 23. Plaintiffs seek to represent the following class (the “Class”):

All persons currently or previously enrolled in or covered by a health plan since January 1, 2015 in which the prescription drug benefit is or was administered by CVS Caremark, and who: (i) obtained or may obtain HIV/AIDS Medications; and (ii) have been or may in the future be required to participate in the Program with no right to opt out or notice thereof, but not including individual claims for personal injury or bodily harm.

198. The precise number and identity of Class Members are unknown to Plaintiffs but can be obtained from Defendants’ records. Based on CVS Caremark’s presence nationwide, the Class numbers in thousands of persons.

1 200. Common questions of law and fact predominate over any questions affecting
2 individual members of the Class. Such common legal and factual questions include the following:

3 (a) Whether Defendants' implementation of the Program as described above
4 violates federal and state law detailed throughout this Complaint;

5 (b) Whether Defendants engaged in an unlawful, unfair, misleading, or
6 deceptive business act or practice in connection with the implementation of and statements relating
7 to the Program;

8 (c) Whether Plaintiffs and Class Members are entitled to damages, equitable
9 monetary relief, disgorgement of profits, and/or restitution; and

10 (d) Whether Plaintiffs and Class Members are entitled to an Order enjoining
11 Defendants from engaging in the conduct here at issue.

12 200. For the reasons set forth above, Plaintiffs' claims are typical of the claims of the
13 Class in that Plaintiffs have been subjected to the practices at issue. Additionally, as set forth
14 above, Plaintiffs have already expended personal resources or incurred out-of-pocket expenses as
15 a result of the acts and practices of Defendants in connection with the implementation and
16 operation of the Program.

17 201. Plaintiffs are willing and prepared to serve the Court and the proposed Class in a
18 representative capacity. Based on the facts detailed above, the interests of Plaintiffs are reasonably
19 co-extensive with and not antagonistic to those of absent Class Members. Plaintiffs will fairly and
20 adequately represent and protect the interests of the Class and have no interests adverse to or which
21 materially and irreconcilably conflict with the interests of the other members of the Class.

22 202. Plaintiffs have engaged the services of counsel who are experienced in complex
23 class litigation and the issues raised in this Complaint who will vigorously prosecute this action
24 and will assert and protect the rights of and otherwise adequately represent Plaintiffs and absent
25 Class Members.

26 203. To the extent applicable to certification of a class under these circumstances, a class
27 action is superior to other available means for the fair and efficient group-wide adjudication of this
28 controversy. To Plaintiffs' knowledge, no other litigation is pending addressing the issues raised

1 here as against Defendants. The injuries suffered by individual Class Members are, while
2 important to them, relatively small compared to the burden and expense of individual prosecution
3 of the complex issues and extensive litigation needed to address Defendants’ conduct.

4 204. Individualized litigation presents a potential for inconsistent or contradictory
5 judgments. By contrast, a class action presents far fewer management difficulties; allows the
6 hearing of claims that might otherwise go unaddressed; and provides the benefits of single
7 adjudication, economies of scale, and comprehensive supervision by a single court.

8 205. Defendants have acted or refused to act on grounds generally applicable to the
9 Class with regards to the implementation and terms of the Program, thereby making appropriate
10 provisional and final declaratory and injunctive relief with respect to Class Members as a whole.

11 **FIRST CAUSE OF ACTION**

12 **Claim for Violation of Anti-Discrimination Provisions of**
13 **Affordable Care Act (42 U.S.C. § 18116)**

14 206. Plaintiffs incorporate by reference each of the preceding paragraphs as though fully
15 set forth herein. This claim is brought against CVS Caremark.

16 207. Section 1557 of the ACA prohibits discrimination in “any health program or
17 activity, any part of which is receiving Federal financial assistance, including credits, subsidies,
18 or contracts of insurance.” (42 U.S.C. § 18116.)

19 208. CVS Health Corporation, the parent company of the CVS Caremark defendants, is
20 a health care entity that receives Federal financial assistance in the form of, *inter alia*, Medicare
21 and Medicaid funding. Similarly, CVS Caremark’s Pharmacy Services Segment and Retail/LTC
22 Segment—which include retail and mail-order pharmacies and are directly responsible for the
23 discriminatory conduct at issue in the Complaint—are “health program[s] or activit[ies] . . .
24 receiv[ing] Federal financial assistance” subject to the requirements of 42 U.S.C. section 18116.

25 209. CVS Caremark’s Pharmacy Services Segment Retail/LTC Segment receive
26 Federal financial assistance in the form of, *inter alia*, Medicare Part D payments. The Garfield
27 Beach CVS, L.L.C. Defendant owns and operates CVS retail pharmacies in California and
28 receives Federal financial assistance under the Medicaid 340B program.

1 210. CVS Health Corporation, CVS Caremark’s Pharmacy Segment, Retail/LTC
2 Segment, and Garfield Beach CVS, L.L.C. are the intended recipients of that government funding
3 for purposes of providing health care services on behalf of government agencies to qualified
4 individuals.

5 211. CVS Caremark’s Pharmacy Services Segment and Retail/LTC Segment are also
6 “health program[s] or activit[ies] . . . receiv[ing] Federal financial assistance” subject to the
7 requirements of 42 U.S.C. section 18116. As one example of CVS Caremark’s federal funding,
8 CVS’s specialty and retail pharmacies participate in and receive reimbursement from Medicare
9 Part D.

10 212. CVS Health Corporation explicitly acknowledges that Defendant CVS Pharmacy,
11 Inc. is subject to section 1557 of the ACA:

12 **Nondiscrimination and Accessibility Notice (ACA § 1557)**

13 CVS Pharmacy, Inc. complies with applicable Federal Civil rights laws and does
14 not discriminate on the basis of race, color, national origin, age, *disability*, or sex.
15 CVS Pharmacy, Inc. does not exclude people or treat them differently because of
16 race, color, national origin, age, *disability* or sex.

17 See https://www.cvs.com/bizcontent/general/CVS_Pharmacy_Nondiscrimination_Policy.pdf
(emphasis added).

18 213. HIV/AIDS has been deemed a “disability” under both federal and state laws. Solely
19 on the basis of their disability, Class Members have been excluded from participation in, have
20 been denied the full benefits of, or are being subjected to discrimination by being required to
21 participate in the Program and subject to the limitations and discriminatory conduct set forth
22 above. The discrimination includes is but not limited to being required to obtain specialty
23 medications solely from CSP that they could otherwise obtain at the in-network pharmacy of their
24 choice; being forced to use separate but unequal methods to obtain life-sustaining medications and
25 inadequate facilities to do so; being forced to pay more for such medications due to the refusal of
26 CVS to recognize manufacturer discounts and rebates for such medications; being forced to be
27 financially responsible for lost or stolen shipments, which is only an issue due to forced
28 participation in the Program; and/or having their privacy violated and social stigma exacerbated.

1 Class Members have not been provided meaningful access to their life-sustaining medications, and
2 are significantly, adversely, and disproportionately impacted by the Program. Participation in the
3 Program threatens their health and privacy.

4 214. As described in more detail herein, CSP and CVS Caremark's actions of requiring
5 subscribers to choose between risking their health and privacy by enrolling in the Program or
6 paying full price for their medications at a community pharmacy where they may receive the
7 consultations they need and that protect their privacy: (i) tend to exclude HIV/AIDS patients from
8 full participation in health care plans where the prescription benefit is administered by CVS
9 Caremark; (ii) denies HIV/AIDS patients the full benefits of their health care plans' drug benefit;
10 and (iii) subjects patients with HIV/AIDS to unjust discrimination based solely on the nature of
11 their health condition, all in violation of the ACA and in contradiction of Defendants'
12 representation that they comply with the ACA.

13 215. Defendants' actions have denied Plaintiffs and Class Members full and/or equal
14 enjoyment of the benefits, services, facilities, privileges, advantages, and accommodations
15 available under their health care plans' prescription drug benefit. The Program:

16 (a) Excludes HIV and AIDS patients from coverage. CVS Caremark has
17 avoided or is continuing to threaten to avoid providing patients appropriate coverage based on
18 their health status or medical condition requiring treatment with HIV/AIDS Medications, leaving
19 them to either bear the costs of insurance co-pays, treatment disruption, and loss of privacy, or pay
20 thousands of dollars out-of-pocket each month to purchase such medications at their in-network
21 community pharmacy of choice. By requiring such patients to access their life-sustaining
22 medications through the Program that threatens their health and privacy, the Program operates as
23 a constructive eviction from coverage and erodes Plaintiffs' ongoing ability to receive medications
24 from the pharmacist of their choice and with no right to opt out of the Program or clear notice
25 thereof. Therefore, enrollees with HIV/AIDS are impermissibly discouraged from enrolling in
26 health care plans for which pharmacy benefits are administered by CVS Caremark.

27 (b) Denies these patients the full benefit of their health care plans' drug benefit.
28 Patients who are forced into the Program bear additional costs in time spent navigating websites

1 or phone menus and long hold times, coordinating with multiple pharmacies and pharmacists for
2 specialty and non-specialty drugs, and experiencing disruptions in their treatment, even in
3 situations where prompt access to their medication is medically necessary. These patients also
4 suffer from the loss of privacy because their medications are either shipped to their workplace or
5 home, where they receive regular, conspicuous deliveries, or drop shipped to a CVS pharmacy,
6 which raises additional privacy problems as set forth above. Defendants' changes to Class
7 Members' health plans' drug benefit put Class Members' health and privacy at risk and reduce or
8 effectively eliminate their drug benefit by requiring subscribers prescribed HIV/AIDS
9 Medications to obtain those medications solely under the Program, without the option to opt out
10 or receiving clear (or any) notice of the ability to do so. This reduction or elimination of the drug
11 benefit is effectuated by way of CSP's and CVS Caremark's control over the Program, CVS
12 Caremark's control over whether community pharmacies are designated as "out-of-network," and
13 CVS Caremark's control over cost-sharing issues and control over CVS pharmacies that allow
14 Defendants to establish CVS pharmacies as drop shipment locations and limit or effectively bar
15 in-person consultations, advice, and monitoring by pharmacists knowledgeable about HIV/AIDS
16 Medications.

17 (c) Discriminates against these patients. Programs that do not provide
18 meaningful access to coverage for patients with HIV/AIDS from pharmacists of their choice are
19 prohibited as discriminatory. The need for this prohibition is clear. Allowing providers to provide
20 ineffective benefits for patients with a pre-existing condition through inconvenient and ineffective
21 requirements such as the Program that puts patients' health and privacy at risk undermines one of
22 the central tenets of the ACA: guaranteeing access to care for those with pre-existing conditions.
23 CVS Caremark's requirement that such patients receive their HIV/AIDS Medications under the
24 Program, rather than from the in-network community pharmacy and specialty pharmacist of their
25 choice, is a coverage rule based on the patients' health status and/or medical condition.

26 216. Plaintiffs fall within the zone of protected persons under the ACA and thus have
27 standing to seek all appropriate relief available from Defendants under this statute.

28 217. Plaintiffs request equitable and monetary relief to the fullest extent permissible

1 under the ACA, attorneys' fees, costs, and such other and further appropriate relief against the
2 CVS Caremark defendants as may be available under this claim.

3 **SECOND CAUSE OF ACTION**

4 **Violation of California Business & Professions**
5 **Code Section 17200, *et seq.***

6 218. Plaintiffs incorporate by reference each of the preceding paragraphs as though fully
7 set forth herein. This claim is brought on behalf of members of the Class who reside in California
8 or received shipments under the Program in California, as well as separately for the benefit of the
9 general public.

10 219. California Business & Professions Code section 17200, *et seq.*, prohibits acts of
11 "unfair competition," which is defined by California Business & Professions Code section 17200
12 as including "any unlawful, unfair or fraudulent business act or practice."

13 220. The acts and practices as described above violate California Business &
14 Professions Code section 17200's prohibition against engaging in "unlawful" business acts or
15 practices, by violating the above-stated provisions of the ACA. To the extent such claims apply
16 the same standards as the above-cited federal laws, these claims are properly asserted by all Class
17 Members who can assert such claims.

18 221. CVS Caremark's conduct does not benefit consumers or competition. Indeed, the
19 harm to consumers and competition is substantial for the reasons set forth above.

20 222. Plaintiffs and Class Members could not have reasonably avoided the injury each of
21 them suffered based on implementation of the Program, which injury is substantial, even though
22 Plaintiffs have attempted to do so.

23 223. The gravity of the consequences of the CVS Caremark's conduct as described
24 above outweighs any justification, motive, or reason therefor, and is immoral, unethical, and
25 unscrupulous, offends established public policy that is tethered to legislatively declared policies
26 as set forth in the laws detailed above, or is substantially injurious to Plaintiffs and other members
27 of the Class.

28 224. To the extent Class Members have a right to opt out of the Program but have not
been adequately informed of that right, and/or been told it does not exist when under the law it

1 must, CVS Caremark's conduct of not advising them of this right would have a tendency or
2 likelihood to mislead consumers to reasonably believe such an option does not exist when in reality
3 it does.

4 225. Plaintiffs have been injured in fact and suffered a loss of money or property as a
5 result of the CVS Caremark's unlawful business acts and practices by, *inter alia*, (i) spending
6 hours dealing with these issues; (ii) having benefits in which they have or had a vested interest
7 materially reduced or eliminated; (iii) paying or being told they will need to pay increased amounts
8 for such specialty medications, even if covered, if they continue to obtain such medications from
9 the in-network community pharmacy of their choice; and (iv) obtaining these medications through
10 the Program and thereby losing discounts, rebates, loyalty programs or other monies or programs
11 that if accepted by CVS Caremark would otherwise reduce their out-of-pocket costs.

12 226. As a result of Defendants' violations of the Unfair Competition Law, Plaintiffs and
13 Class Members are, to the extent permitted by law, and if such relief does not conflict with the
14 other causes of action set forth herein, entitled to equitable relief in the form of full restitution and
15 disgorgement of the unjust enrichment Defendants derived from these illegal business acts and
16 practices.

17 227. Pursuant to Business & Professions Code §§ 17203 and 17204, the Court may
18 enjoin such conduct both now and in the future on behalf of the Class and for the benefit of the
19 general public in the form of public injunctive relief for those who may be impacted by these
20 illegal practices. Plaintiffs thus also seek an order enjoining Defendants from continuing these
21 illegal business practices and from engaging in such conduct. Plaintiffs also seek payment of
22 attorneys' fees and costs pursuant to, *inter alia*, California Civil Code section 1021.5.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiffs, individually and on behalf of the Class and for the benefit of the
25 general public, as applicable, pray for relief as follows as applicable for the particular cause of
26 action:

27 1. An Order certifying this action to proceed on behalf of the Class, including any
28 appropriate sub-class, and appointing Plaintiffs and the counsel listed below to represent the Class;

1 2. An Order awarding Plaintiffs and the Class Members entitled to relief such
2 equitable monetary relief as the Court deems proper;

3 3. An Order enjoining Defendants from implementing or continuing the Program in
4 its current form, or such other appropriate injunctive relief;

5 4. An Order awarding Plaintiffs and the Class Members who might be entitled to such
6 relief actual, compensatory, and/or statutory damages to the extent permitted by the above claims;

7 6. An Order awarding Plaintiffs' attorneys' fees, litigation expenses, expert witness
8 fees, and other costs pursuant to, *inter alia*, California Civil Code section 1021.5 and the federal
9 and state statutory causes of action set forth above that permit such an award;

10 7. An Order awarding pre-judgment and post-judgment interest on the above
11 amounts; and

12 8. An Order awarding such other and further relief as may be just and proper.

13 **JURY DEMAND**

14 Plaintiffs demand a trial by jury on all issues and causes of action so triable.

15 DATED: September 11, 2023

CONSUMER WATCHDOG

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CERTIFICATE OF SERVICE

I hereby certify that on October 24, 2023, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the email addresses denoted on the attached Electronic Mail Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on October 24, 2023.

/s/ Jerry Flanagan

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