

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

**IN THE MATTER OF INSULIN:
CAREMARK RX, L.L.C., ET AL.**

Docket No. 9437

**ANSWER AND DEFENSES OF RESPONDENTS
CAREMARK RX, L.L.C. AND ZINC HEALTH SERVICES, LLC**

Respondents Caremark Rx, L.L.C. (“Caremark”) and Zinc Health Services, LLC (“Zinc”) (collectively, “CVS”)¹ hereby answer and assert defenses in response to the Administrative Complaint of the Federal Trade Commission (the “FTC” or the “Commission”).

The FTC’s biased, prejudged, and politicized crusade against pharmacy benefit managers (“PBMs”) continues with reckless disregard for the harmful impact its actions will have on American patients and businesses.² Undeterred by real-world data and facts, the FTC’s Complaint seeks to perpetuate the myth that insulin prices are “skyrocketing” due to PBMs. But the data show CVS’s negotiating tools have proven effective in reducing the costs of drugs, including insulin, for both employers and patients. Caremark clients and their members have seen the average net cost of insulin steadily decrease by about 60% from 2017 to 2023 despite rampant inflation elsewhere in the economy. In 2023, Caremark members paid less than \$25 on average per 30-day supply of insulin. Patients enrolled in employers’ high-deductible commercial health plans paid slightly less on average for insulin than other commercial patients due to a variety of

¹ “CVS” is used collectively for ease of reference only without waiving any rights or objections.

² See CVS Motion to Disqualify Commissioners L. Khan, A. Bedoya, and R. Slaughter (Oct. 8, 2024).

plan design options offered by Caremark, including preventive drug lists (which bypass patients' deductible phase for preventive drugs like insulin), point-of-sale or reinvested rebates (which pass rebates to patients at the point of sale), fixed or capped copayments (*e.g.*, \$10 insulin), and other member affordability programs. Data produced by Caremark during the FTC's investigation show Caremark's clients have overwhelmingly adopted these programs, contrary to the FTC's false assertions. And for the uninsured and underinsured, Caremark has provided access to \$25 insulin vials for several years at more than 67,000 pharmacies nationwide.

Given CVS's success in driving down net insulin costs (*i.e.*, the actual costs paid by employers and patients after all rebates and discounts) back to near-2000 levels for consumers, the FTC Complaint instead focuses on the "list prices" set solely by drug manufacturers, who are conspicuously absent from the Complaint despite its nearly 200 references to list prices. The list price of a drug is akin to the "sticker price" of a car in that it does not reflect any discounts, such as manufacturer rebates or other price concessions. To analogize, the FTC Complaint seeks nonsensically to force Caremark's PBM clients to buy cars based on the manufacturer's sticker price rather than the actual, negotiated sales price. Caremark's ordinary course of business calculations show that such action for insulin products would result in an enormous windfall to pharmaceutical manufacturers coming directly from the pockets of patients and employers in the form of higher healthcare premiums and out-of-pocket costs. This is because a formulary that prefers or co-prefers a low list price insulin product with a higher net cost charged by manufacturers would result in price and premium increases for consumers, converting their money into substantially higher manufacturer profits as even the FTC Complaint unwittingly concedes for at least one insulin manufacturer. If the FTC's relief were to be granted, the FTC Commissioners would gift higher profits to pharmaceutical manufacturers while slapping patients

and employers in the face. And manufacturers would be incentivized to continue to sell the low list price versions of drugs at a higher net cost, knowing that PBM Respondents' clients irrationally would be forced to shop based on sticker prices, not actual prices. Such relief would not only be absurd, but it would be affirmatively harmful to patients and employers.

The FTC's allegations are littered with statements that the FTC knows or should know are objectively false. For example, the FTC proclaimed to the public that "insulin list prices **started** rising in 2012 with the PBMs' creation of exclusionary drug formularies" in an attempt to erroneously connect list price increases to formulary exclusions.³ Yet the FTC's proclamation is refuted by an unexpected source: the FTC itself. The Complaint confirms that insulin list prices were rising sharply and consistently for more than a decade before Caremark's creation of new formulary options for plan sponsors in the rapid-acting insulin category, with Humalog's manufacturer increasing the list price by 583% between 1999 and 2012. Compl. ¶¶ 9, 92 (chart), 120. By comparison, Humalog's list price increased at a substantially slower pace after 2012. Compl. ¶¶ 92 (chart), 120. The FTC's entire Complaint crumbles in a world where facts matter. But instead the FTC's own facts did not stop the agency from unabashedly declaring that insulin list prices "started rising in 2012." This FTC deception is a dangerous disservice to the public and lawmakers who may rely on demonstrably false information to take actions that would make insulin less affordable for millions of Americans and increase plan premiums, leaving fewer Americans with health insurance coverage. This deception also continues a disturbing pattern by the current FTC majority commissioners of making repeated false statements about PBMs that reflect biases, prejudgments, and political interests rather than real-world facts.

³ FTC Insulin Press Release (Sept. 20, 2024), <https://www.ftc.gov/news-events/news/press-releases/2024/09/ftc-sues-prescription-drug-middlemen-artificially-inflating-insulin-drug-prices>; see Compl. ¶¶ 5-10, 99-103.

Contrary to the FTC’s attempt to rewrite history, the constant and substantial insulin manufacturer list price increases between 1996 and 2012 help explain why Caremark in 2012 escalated its fight against these manufacturers to help protect its clients and their members. That is when Caremark injected increased price competition between the few insulin manufacturers by creating new formulary options for plan sponsors in the rapid-acting insulin category. These new options enabled clients and their members to reduce insulin costs by giving preference to clinically interchangeable, rapid-acting insulin products with a lower net cost over competing products with a higher net cost. These substantial savings enable plans to reduce member premiums, reduce member out-of-pocket costs, reduce deductibles, reduce out-of-pocket maximums, and improve benefits for members. This initiative disrupted the insulin marketplace controlled by just three drugmakers and forced them to begin competing more aggressively on price to win adoption by plan sponsors on formularies, helping to drive down net costs for consumers and to lower health insurance premiums.

The data show CVS’s efforts to boost competition among insulin manufacturers have been successful. Since 2012, the net cost of insulin has decreased sharply for consumers. For example, Eli Lilly reports that Humalog’s net price is currently “about the same as when [Lilly] launched it in 1996, adjusting for inflation.” Sanofi reports that “since 2012, the net price of Sanofi insulins has declined by 54%.” Novo Nordisk reports net prices fell more than 50% between 2014-2019 to hit lows last seen in 2003. More broadly, data show PBMs have helped drive down net brand drug prices six years in a row.⁴ Given that Caremark passes more than 99% of all rebates, manufacturer administrative fees, and price protection payments through to its clients and their

⁴ A. Fein, Drug Channels Institute, *Tales of the Unsurprised: U.S. Brand-Name Drug Prices Fell for an Unprecedented Sixth Consecutive Year (And Will Fall Further in 2024)* (Jan. 3, 2024), <https://www.drugchannels.net/2024/01/tales-of-unsurprised-us-brand-name-drug.html>.

members, these net cost decreases have directly and substantially benefited consumers through reduced premiums, reduced member out-of-pocket costs, and improved healthcare benefits. Indeed, Caremark data show its members’ out-of-pocket costs have declined seven years in a row to an average of \$7.26 per 30-day supply in 2023—a reduction of 29.3% since 2016.

Far from seeking to “artificially inflate” manufacturer list prices as the FTC claims, CVS did the opposite. It explicitly negotiated price protection terms in rebate contracts with drug manufacturers to safeguard its clients against manufacturer list price increases. These price protection provisions disincentivize sharp list price increases by drug manufacturers. The FTC Complaint pretends these provisions do not exist because, as the U.S. House of Representatives Committee on Oversight and Reform’s Majority Staff Report concluded following a three-year review of confidential information from drug manufacturers, “[d]ocuments show that PBMs secured contractual provisions that disincentivized companies from raising list prices. Without those provisions secured by PBMs, drug companies likely would have raised list prices more.”⁵ Indeed, insulin list prices have largely remained flat or have even declined since many of these price protection terms were fully implemented in 2017—several years before the FTC began investigating insulin prices. Compl. ¶¶ 92 (chart). These provisions directly refute the FTC’s assertion that CVS seeks to “artificially inflate” list prices.

Similarly, the FTC’s empty claim that CVS favors drugs with high list prices over those with low list prices is contradicted by Caremark’s and its clients’ actions, which demonstrate a history of embracing lower list price products when those products also have lower net costs for consumers. For example, in 2017 when the first insulin biologic, Eli Lilly’s Basaglar, launched

⁵ *Drug Pricing Investigation – Majority Staff Report*, U.S. House of Rep. Comm. on Oversight and Reform (2021), <https://oversightdemocrats.house.gov/sites/evo-subsites/democrats-oversight.house.gov/files/DRUG%20PRICING%20REPORT%20WITH%20APPENDIX%20v3.pdf>.

with a lower list price than Sanofi’s Lantus, Caremark’s most popular formulary among clients began preferencing Basaglar over Lantus to generate cost savings for clients and their members. Basaglar not only had a lower list price but also a lower net cost after rebates and other price concessions. Yet when Sanofi cut the list price of Lantus by 78% in 2024, Lantus again became the preferred long-acting insulin on this Caremark template formulary over Basaglar, which as of 2024 had both a higher list price and higher net cost than Lantus. The FTC fails to reconcile these real-world actions with its fabricated assertions that Caremark “systematically” prefers high list price insulins.

Finally, the FTC Complaint omits key information about who decides the design of plan formularies and who decides how much patients pay for drugs in their drug plans. Caremark, as a service provider, does not make these decisions. Instead, Caremark’s clients, who are sophisticated employers, coalitions, and other entities, evaluate a wide variety of formulary options (often with the assistance of expert consultants) and decide whether to preference or exclude any insulin products based on modeling the costs of each option down to the penny. Caremark clients are not required to exclude or preference any insulin products on their formularies. As one example, the federal government’s Federal Employee Program—which offers drug benefits managed by Caremark—designs its own formularies and offers federal employees three different formulary options, some with and some without exclusions of certain “low list price” insulins. In addition, clients—not PBMs—decide how to structure their plan benefits, including the amounts of any premiums, copays, deductibles, out-of-pocket maximums, and other cost-sharing features. Here again, the Federal Employee Program is informative, as it offers federal employees the option to choose between three different benefit plan designs with varying copay structures based on the individual employee’s desired coverage and healthcare needs.

Given the ability of plan sponsor clients to customize plan benefits, Caremark administers thousands of different formulary and plan designs at the request of its clients.

CVS is proud of the work it has done to help reduce insulin costs and prescription drug premiums for businesses, unions, and patients. Any action that limits the use of these PBM negotiating tools would make insulin less affordable and likely lead to increases in premiums and drug costs, leaving businesses and patients at the mercy of the list prices set by insulin drugmakers. In turn, these higher premiums and higher drug costs would result in fewer Americans having healthcare coverage or access to affordable drugs. Thus, CVS will defend the use of these tools vigorously on behalf of its clients and their members to safeguard them from manufacturer price increases. CVS therefore denies the FTC's allegations, except as specified below.⁶

I. NATURE OF THE CASE

1. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1 and therefore denies them. To the extent allegations set forth in Paragraph 1 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies these allegations. CVS denies the remaining allegations of Paragraph 1.

2. The allegations set forth in Paragraph 2 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them, except CVS admits companies

⁶ The FTC Complaint repeatedly fails to identify the particular conduct of any individual Respondent and instead makes sweeping allegations with respect to all Respondents without discernment. In most instances, CVS lacks knowledge or information sufficient to form a belief as to the truth of these allegations with respect to other Respondents and therefore, except where noted otherwise, denies them without waiving any rights or objections.

may compete by lowering prices, among other factors. CVS denies the remaining allegations of Paragraph 2.

3. CVS denies the allegations of Paragraph 3.

4. The allegations set forth in Paragraph 4 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them except that CVS admits PBMs may create a variety of drug formulary options for clients to select and also enable clients to customize their own formularies, and CVS admits that PBM customers may include companies and organizations that sponsor commercial health plans that use formularies to manage their prescription drug spend. CVS denies the remaining allegations of Paragraph 4.

5. CVS lacks knowledge or information sufficient to form a belief as to the truth of allegations set forth in Paragraph 5 as to when the PBM Respondents began offering restrictive formulary options to plan sponsors who desired such offerings, the number of patients enrolled in employer plans that selected such formulary options, or the amounts collected by an unidentified PBM Respondent in an unidentified year from offering such formulary options, and therefore denies them. CVS admits that the possibility of exclusion from certain formulary design options may help fuel increased competition among manufacturers to the benefit of consumers, as the FTC's Bureau of Competition, Bureau of Economics, and Office of Policy Planning have unanimously recognized.⁷ CVS denies the remaining allegations of Paragraph 5.

6. The allegations set forth in Paragraph 6 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them, except CVS admits PBMs may

⁷ See Letter from FTC Bureau of Competition Director S. Creighton, Bureau of Economics Director L. Froeb, Office of Policy Planning Acting Director M. Ohlhausen, and Special Counsel D. Hyman to California Assembly Member G. Aghazarian (Sept. 7, 2004).

create drug formulary options for clients to select and also enable clients to customize their own formularies. CVS denies the remaining allegations of Paragraph 6.

7. The allegations set forth in Paragraph 7 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them.

8. The allegations set forth in Paragraph 8 state legal conclusions to which no response is required. To the extent a response is required, CVS lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 8 and therefore denies them. To the extent allegations set forth in Paragraph 8 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies these allegations. CVS denies the remaining allegations of Paragraph 8.

9. The allegations set forth in Paragraph 9 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them, except that CVS lacks knowledge or information sufficient to form a belief as to the truth of whether insulin medications were affordable 85 years ago, when PBM Respondents began offering formulary options to clients that potentially excluded certain insulin products, the exact average list price of Humalog by year, and the total spend on insulin in the United States, and therefore denies them.

10. The allegations set forth in Paragraph 10 state legal conclusions to which no response is required. To the extent any further response is required, CVS denies them, except that CVS lacks knowledge or information sufficient to form a belief as to the truth of estimates of the number of patients who ration insulin, and therefore denies this allegation. CVS denies the remaining allegations of Paragraph 10.

11. The allegations set forth in Paragraph 11 state legal conclusions to which no response is required. To the extent allegations set forth in Paragraph 11 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 11.

12. The allegations set forth in Paragraph 12 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them.

II. JURISDICTION

13. The allegations set forth in Paragraph 13 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them.

14. The allegations set forth in Paragraph 14 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them.

III. RESPONDENTS

15. Caremark admits it is a Delaware limited liability company and that Caremark Rx, L.L.C. is a wholly owned indirect subsidiary of CVS Health Corporation. Caremark denies the remaining allegations of Paragraph 15.

16. Caremark admits that certain of its subsidiaries offer PBM services and that it is a leading PBM. Caremark denies the remaining allegations of Paragraph 16.

17. Zinc admits it is a Delaware limited liability company established in 2020. Zinc denies the remaining allegations of Paragraph 17.

18. CVS admits Express Scripts offers PBM services. CVS lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 18 and therefore denies them.

19. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 19 and therefore denies them.

20. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 20 and therefore denies them.

21. The allegation set forth in Paragraph 21 does not require a response.

22. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 22 and therefore denies them.

23. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 23 and therefore denies them.

24. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 24 and therefore denies them.

25. The allegation set forth in Paragraph 25 does not require a response.

26. CVS admits that Optum offers PBM services. CVS lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 26 and therefore denies them.

27. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 27 and therefore denies them.

IV. BACKGROUND

28. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 28 with respect to all PBMs and therefore denies them.

29. CVS denies that Caremark Rx, LLC merged with Aetna, which contracted with Caremark to provide PBM services to Aetna and its clients several years prior to 2018. CVS admits ESI acquired Medco in 2012 and Optum acquired Catamaran in 2015. CVS lacks knowledge or

information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 29 and therefore denies them.

30. The allegations set forth in Paragraph 30 state legal conclusions to which no response is required. To the extent a response is required, CVS denies that vertical integration has enabled PBMs and their affiliates to “leverage their power along every link in the pharmaceutical supply chain,” and CVS lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 30 with respect to all PBMs and therefore denies them. CVS denies the remaining allegations of Paragraph 30.

31. The allegations set forth in Paragraph 31 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them.

32. The allegations set forth in Paragraph 32 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them, except that CVS admits a drug formulary is a list of prescription drugs covered by a health plan, that formularies may include tiers, and that preferred tiers may have lower out-of-pocket costs. CVS denies the remaining allegations of Paragraph 32.

33. CVS admits that clients use a variety of formulary options with different levels of coverage. CVS lacks knowledge or information sufficient to form a belief as to the truth of whether health plans reimburse any part of the cost of an excluded drug, how physicians make prescribing decision, or whether an unidentified drug formulary “dramatically impacts” an unidentified drug’s cost and utilization, and therefore denies them. CVS denies the remaining allegations of Paragraph 33.

34. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 34 for all PBM Respondents, and therefore denies them.

35. CVS admits that in 2021 it offered plan sponsors the option to use variations of the Standard Control and Basic Control formularies, among others, and that it also enabled clients to create custom formularies. To the extent allegations set forth in Paragraph 35 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 35.

36. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 36, and therefore denies them.

37. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 37, and therefore denies them.

38. The allegations set forth in Paragraph 38 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them.

39. The allegations set forth in Paragraph 39 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them.

40. CVS admits that drug manufacturers alone set list prices for pharmaceuticals. CVS admits that the Wholesale Acquisition Cost may be referred to as a drug's list price. CVS lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 40 across all drugs and manufacturers, and therefore denies them.

41. CVS denies the allegations set forth in Paragraph 41, except that the net price may also reflect other discounts and price concessions.

42. CVS admits that Zinc enters into commercial rebate contracts with certain drug manufacturers and that Caremark may utilize these rebate rates for its commercial clients to reduce

drug costs. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 42 with respect to other PBM Respondents, and therefore denies them. CVS denies the remaining allegations of Paragraph 42.

43. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 43 with respect to all PBM Respondents, all manufacturers, and all drugs, and therefore denies them. CVS denies the remaining allegations of Paragraph 43.

44. CVS denies the allegations set forth in Paragraph 44, except that CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations regarding Sanofi's contracts with Optum and therefore denies them.

45. CVS denies that Caremark "extract[s] administrative fees" from drugmakers "through" Zinc. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations with respect to other PBM Respondents and GPO Respondents and therefore denies them. CVS denies the remaining allegations of Paragraph 45.

46. CVS denies that a higher WAC for a drug results in PBMs or GPOs collecting higher fees than a drug with a lower WAC. CVS denies that each drug requires the same services. CVS lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 46 and therefore denies them.

47. CVS denies the allegations set forth in Paragraph 47 with respect to CVS. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations with respect to other Respondents and therefore denies them.

48. CVS denies the allegations set forth in Paragraph 48 with respect to CVS. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations with respect to other Respondents and therefore denies them.

49. CVS denies the allegations set forth in Paragraph 49 with respect to CVS. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations with respect to other Respondents and therefore denies them. To the extent allegations set forth in Paragraph 49 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 49.

50. CVS admits that it implements drug formularies chosen by its clients, that it offers a variety of formulary templates, and that it enables clients to customize their own drug formularies. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations regarding other PBM Respondents and therefore denies them. CVS denies the remaining allegations of Paragraph 50.

51. CVS admits that it passes through nearly all drug rebates and manufacturer administrative fees to its clients and their members. CVS admits that it assists in the flow of rebate payments. CVS denies the remaining allegations of Paragraph 51.

52. CVS admits that the May 2023 Congressional testimony stated CVS passes through more than 98% of rebates from drug manufacturers. CVS denies that the passthrough of more than 98% of rebates “may be exaggerated.” CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations with respect to other PBM Respondents and other “industry reporting and data” and therefore denies them. To the extent allegations set forth in Paragraph 52 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To

the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 52.

53. To the extent allegations set forth in Paragraph 53 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 53.

54. CVS denies the allegations set forth in Paragraph 54. To the extent allegations set forth in Paragraph 54 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 54.

55. CVS admits that rebates help reduce plans' and a patients' overall net costs of drugs. To the extent allegations set forth in Paragraph 55 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 55.

56. CVS admits that the amount a patient pays may differ depending on the plan design chosen by plan sponsors. CVS denies the remaining allegations of Paragraph 56.

57. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 57 as it does not determine a drug's list price, a pharmacy's U&C price, a pharmacy's discounted price, or the amount that an uninsured or cash-paying patient pays at the pharmacy counter and therefore denies them, except that CVS states it has made insulin available to uninsured and cash-paying patients at a flat rate of \$25 through the ReducedRx

prescription savings program at more than 67,000 pharmacies nationwide. To the extent allegations set forth in Paragraph 57 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 57.

58. CVS admits that most Americans have health insurance and that out-of-pocket costs vary depending on the benefit design determined by the plan sponsor. To the extent allegations set forth in Paragraph 58 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 58.

59. CVS admits that employers may be self-insured or fully insured. CVS admits self-insured employers assume risk and fully insured plans may shift the risk to health insurance companies. CVS admits that PBMs may provide certain PBM services to self-insured employers and health insurers. To the extent allegations set forth in Paragraph 59 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 59.

60. CVS admits that plan sponsors determine the amount a patient pays for prescription drugs in terms of out-of-pocket expenses and monthly premiums, which are also a form of an out-of-pocket expense. CVS admits that plan sponsors use a wide variety of different benefit designs and structures. To the extent allegations set forth in Paragraph 60 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to

those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 60.

61. CVS admits that out-of-pocket costs, if any, paid by patients depend on the plan's benefit design, which is determined by the plan sponsor. CVS lacks sufficient knowledge or information sufficient to form a belief as to the truth of the allegations with respect to the "simplified example" and therefore denies them. CVS denies the remaining allegations of Paragraph 61.

62. CVS lacks sufficient knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 62 with respect to how patients make decisions or how much they pay for drugs, which is determined by plan sponsors' chosen benefit design, and therefore denies them. CVS denies the remaining allegations of Paragraph 62.

63. CVS lacks sufficient knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 63 and therefore denies them. To the extent allegations set forth in Paragraph 63 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 63.

64. CVS lacks sufficient knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 64 and therefore denies them. To the extent allegations set forth in Paragraph 64 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 64.

65. CVS lacks sufficient knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 65 and therefore denies them. To the extent allegations set forth in Paragraph 65 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 65.

66. CVS admits that plan sponsors can design plan benefits with a variety of features, including with the application of point-of-sale rebates. CVS lacks sufficient knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 66 with respect to the amounts paid by patients without further information on the client's benefit design and therefore denies them.

67. The allegations set forth in Paragraph 67 state legal conclusions to which no response is required. To the extent allegations set forth in Paragraph 67 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 67.

68. The allegations set forth in Paragraph 68 state legal conclusions to which no response is required. To the extent a response is required, CVS lacks sufficient knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 68 and therefore denies them. CVS denies the remaining allegations of Paragraph 68.

69. CVS lacks sufficient knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 69 without additional information and therefore denies them.

70. The allegations set forth in Paragraph 70 state legal conclusions to which no response is required. To the extent a response is required, CVS lacks sufficient knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 70 without additional information and therefore denies them. CVS denies the remaining allegations of Paragraph 70.

71. CVS denies the allegations set forth in Paragraph 71.

72. The allegations set forth in Paragraph 72 state legal conclusions to which no response is required. To the extent a response is required, CVS denies that PBMs “play a critical role” in drug benefit design, denies that commercial payers “frequently outsource drug coverage decisions entirely to PBMs,” and denies that PBMs “heavily influence cost-sharing associated with formulary tiers” given that all of these decisions are made by clients, not PBMs. To the extent allegations set forth in Paragraph 72 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 72.

73. CVS admits that, if requested by a client, Caremark may assist the client in reviewing descriptions of certain plan benefit design features that were determined by the client. CVS denies the remaining allegations of Paragraph 73.

74. To the extent allegations set forth in Paragraph 74 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 74.

75. To the extent allegations set forth in Paragraph 75 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 75.

76. To the extent allegations set forth in Paragraph 76 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 76.

77. To the extent allegations set forth in Paragraph 77 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 77.

78. CVS admits that Lilly, Novo, Sanofi, and Viatris manufacture insulin for sale in the United States. CVS admits that Viatris is a relatively recent entrant. CVS lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 78 and therefore denies them.

79. To the extent allegations set forth in Paragraph 79 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 79.

80. To the extent allegations set forth in Paragraph 80 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves

and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 80.

81. CVS admits the allegations set forth in Paragraph 81.

82. CVS admits the allegations set forth in Paragraph 82.

83. CVS admits the allegations set forth in Paragraph 83.

84. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 84 and therefore denies them. To the extent allegations set forth in Paragraph 84 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 84.

85. To the extent allegations set forth in Paragraph 85 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 85.

86. CVS admits the allegations set forth in Paragraph 86.

87. CVS admits the allegations set forth in Paragraph 87, except that Levemir and Tresiba may be considered as part of different insulin categories.

88. CVS admits the allegations set forth in Paragraph 88, except that Lantus and Toujeo may be considered as part of different insulin categories.

89. CVS admits the allegations set forth in Paragraph 89.

90. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 90 and therefore denies them. To the extent allegations set

forth in Paragraph 90 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 90.

91. To the extent allegations set forth in Paragraph 91 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 91.

92. CVS admits that insulin list prices, which are set and adjusted solely by drug manufacturers, increased for certain insulin products during certain years between 1996 and 2022 but notes that the chart omits data for the full “past decade and a half,” including 2023 and 2024, and does not include specific price labels for each year for verification. CVS denies that the manufacturer’s list price for Humalog increased faster than inflation since 2017 but lacks knowledge sufficient to form a belief as to the truth of the allegations with respect to other insulin products and, in the case of Humalog, for any years prior to 2017, and therefore denies them. CVS denies that the “core drug” used in insulin products is the same. CVS lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 92 and therefore denies them. To the extent allegations set forth in Paragraph 92 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 92.

93. To the extent allegations set forth in Paragraph 93 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 93.

94. To the extent the allegations set forth in Paragraph 94 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent a response is required, CVS states that the overall Consumer Price Index (CPI) rose substantially faster than the Prescription Drug CPI between 2012 and 2024. CVS denies the remaining allegations of Paragraph 94.

95. The allegations set forth in Paragraph 95 state legal conclusions to which no response is required. To the extent the allegations set forth in Paragraph 95 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 95.

96. To the extent the allegations set forth in Paragraph 96 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 96.

97. To the extent the allegations set forth in Paragraph 97 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 97.

98. To the extent the allegations set forth in Paragraph 98 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 98.

V. RESPONDENTS' UNLAWFUL CONDUCT

99. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 99, including the design of formularies prior to 2012, the size of drug manufacturer rebates, and how manufacturers made pricing and rebate decisions, and therefore denies them. CVS denies the remaining allegations of Paragraph 99.

100. The allegations set forth in Paragraph 100 state legal conclusions to which no response is required. To the extent a response is required, CVS denies the allegations of Paragraph 100.

101. The allegations set forth in Paragraph 101 state legal conclusions to which no response is required. To the extent a response is required, CVS denies the allegations of Paragraph 101.

102. The allegations set forth in Paragraph 102 state legal conclusions to which no response is required. To the extent a response is required, CVS denies the allegations of Paragraph 102. To the extent the allegations set forth in Paragraph 102 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 102.

103. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 103 and therefore denies them. To the extent the allegations

set forth in Paragraph 103 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 103.

104. To the extent the allegations set forth in Paragraph 104 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 104.

105. To the extent the allegations set forth in Paragraph 105 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them, except that CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the first sentence and therefore denies them. CVS denies the remaining allegations of Paragraph 105.

106. To the extent the allegations set forth in Paragraph 106 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them, except that CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the first, second, and third sentences of Paragraph 106 and therefore denies them. CVS denies the remaining allegations of Paragraph 106.

107. To the extent the allegations set forth in Paragraph 107 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves

and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them, except that CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the first sentence of Paragraph 107 and therefore denies them. CVS denies the remaining allegations of Paragraph 107.

108. To the extent the allegations set forth in Paragraph 108 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 108.

109. CVS lacks knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 109 and therefore denies them, except that CVS admits there are multiple competing insulin manufacturers.

110. CVS denies that all insulin products within the rapid-acting class are clinically substitutable. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations regarding other Respondents and therefore denies them. To the extent the allegations set forth in Paragraph 110 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 110.

111. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the first sentence of Paragraph 111 without knowing which products the FTC considers to be within the long-acting class and therefore denies them. To the extent the allegations set forth in Paragraph 111 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their

complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 111.

112. CVS denies the allegation set forth in the first sentence of Paragraph 112. To the extent the allegations set forth in Paragraph 112 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 112.

113. The allegations set forth in Paragraph 113 state legal conclusions to which no response is required. To the extent a response is required, CVS denies the allegations of Paragraph 113. To the extent the allegations set forth in Paragraph 113 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 113.

114. To the extent the allegations set forth in Paragraph 114 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 114.

115. To the extent the allegations set forth in Paragraph 115 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 115.

116. To the extent the allegations set forth in Paragraph 116 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves

and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 116.

117. To the extent the allegations set forth in Paragraph 117 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 117.

118. To the extent the allegations set forth in Paragraph 118 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 118.

119. CVS denies the allegation set forth in the first sentence of Paragraph 119 with respect to CVS. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the first sentence of Paragraph 119 with respect to other Respondents and therefore denies them. To the extent the allegations set forth in Paragraph 119 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 119.

120. To the extent the allegations set forth in Paragraph 120 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them.

121. To the extent the allegations set forth in Paragraph 121 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them.

122. To the extent the allegations set forth in Paragraph 122 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them.

123. To the extent the allegations set forth in Paragraph 123 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 123.

124. To the extent the allegations set forth in Paragraph 124 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 124.

125. The allegations set forth in Paragraph 125 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them, except that CVS admits competition helps drive down prices. To the extent the allegations set forth in Paragraph 125 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 125.

126. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 126 and therefore denies them. To the extent the allegations set forth in Paragraph 126 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 126.

127. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 127 and therefore denies them. To the extent any further response is required, CVS denies them.

128. CVS denies the allegations set forth in Paragraph 128.

129. To the extent the allegations set forth in Paragraph 129 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 129.

130. To the extent the allegations set forth in Paragraph 130 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 130.

131. CVS lacks knowledge or information sufficient to form a belief as to truth of the allegations set forth in Paragraph 131 and therefore denies them. To the extent the allegations set forth in Paragraph 131 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and

accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 131.

132. To the extent the allegations set forth in Paragraph 132 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 132.

133. To the extent the allegations set forth in Paragraph 133 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 133.

134. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 134 and therefore denies them.

135. To the extent the allegations set forth in Paragraph 135 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 135.

136. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 136 and therefore denies them. To the extent the allegations set forth in Paragraph 136 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 136.

137. To the extent the allegations set forth in Paragraph 137 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 137.

138. The allegations set forth in Paragraph 138 state legal conclusions to which no response is required. To the extent any further response is required, CVS denies them.

139. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 139 and therefore denies them.

140. To the extent the allegations set forth in Paragraph 140 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them.

141. To the extent the allegations set forth in Paragraph 141 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them.

142. To the extent the allegations set forth in Paragraph 142 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them.

143. CVS denies that the insulin manufacturers “pric[ed] their low WAC insulin at roughly ‘net price parity’ with the branded versions” or that their offers “resulted in a net price roughly equivalent to . . . high WAC counterpart[s].” To the extent the allegations set forth in

Paragraph 143 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 143.

144. The allegations set forth in Paragraph 144 state legal conclusions to which no response is required. To the extent any further response is required, CVS denies them, except that CVS lacks knowledge or information as to the truth of the allegations set forth in Paragraph 144 with respect to other PBM Respondents and therefore denies them. CVS denies the remaining allegations of Paragraph 144.

145. To the extent the allegations set forth in Paragraph 145 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them, except that CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the first and last sentences of Paragraph 145 and therefore denies them. CVS denies the remaining allegations of Paragraph 145.

146. CVS admits that the Standard Control Formulary template preferred Novo's rapid-acting insulin products in 2020 and that Novolog launched an insulin aspart product in 2020. CVS denies the remaining allegations of Paragraph 146.

147. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 147 and therefore denies them.

148. CVS denies that "including the low WAC versions would expand access to insulin for a swath of patients without impacting the rebate rates PBMs received for the high WAC versions" with respect to CVS. CVS lacks knowledge or information sufficient to form a belief as

to the truth of the remaining allegations set forth in Paragraph 148 with respect to all PBM Respondents and all manufacturer contracts and therefore denies them. To the extent the allegations set forth in Paragraph 148 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 148.

149. To the extent the allegations set forth in Paragraph 149 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 149.

150. To the extent the allegations set forth in Paragraph 150 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 150.

151. The allegations set forth in Paragraph 151 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them. To the extent allegations set forth in Paragraph 151 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 151.

152. CVS lacks knowledge or information as to the truth of the allegations set forth in Paragraph 152 with respect to Viatrix's decisions and therefore denies them. To the extent allegations set forth in Paragraph 152 seek to quote from or characterize the contents of documents,

CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 152.

153. To the extent allegations set forth in Paragraph 153 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them, except that CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 153 with respect to Viatris's pricing, profitability, and decisions and therefore denies them. CVS denies the remaining allegations of Paragraph 153.

154. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the first sentence of Paragraph 154 and therefore denies them. To the extent allegations set forth in Paragraph 154 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 154.

155. The allegations set forth in Paragraph 155 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them. To the extent allegations set forth in Paragraph 155 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 155.

156. The allegations set forth in Paragraph 156 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them.

157. To the extent allegations set forth in Paragraph 157 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 157.

158. The allegations set forth in Paragraph 158 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them. To the extent allegations set forth in Paragraph 158 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 158.

159. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 159 and therefore denies them. To the extent allegations set forth in Paragraph 159 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 159.

160. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 160 and therefore denies them. To the extent allegations set forth in Paragraph 160 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and

accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 160.

161. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 161 and therefore denies them. To the extent allegations set forth in Paragraph 161 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 161.

162. The allegations set forth in Paragraph 162 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 162.

163. The allegations set forth in Paragraph 163 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them with respect to CVS and lacks knowledge or information as to the truth of the allegations set forth in Paragraph 163 with respect to other Respondents. To the extent allegations set forth in Paragraph 163 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 163.

164. The allegations set forth in Paragraph 164 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them.

165. To the extent allegations set forth in Paragraph 165 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves

and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them, except that CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations with respect to other Respondents and therefore denies them. CVS denies the remaining allegations of Paragraph 165.

166. The allegations set forth in Paragraph 166 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them. To the extent allegations set forth in Paragraph 166 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them, except that CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations with respect to other Respondents and therefore denies them. CVS denies the remaining allegations of Paragraph 166.

167. To the extent allegations set forth in Paragraph 167 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 167.

168. To the extent allegations set forth in Paragraph 168 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 168.

169. To the extent allegations set forth in Paragraph 169 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves

and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 169.

170. To the extent allegations set forth in Paragraph 170 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 170.

171. To the extent allegations set forth in Paragraph 171 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 171.

172. To the extent allegations set forth in Paragraph 172 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 172.

173. To the extent allegations set forth in Paragraph 173 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 173.

174. To the extent allegations set forth in Paragraph 174 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 174.

175. To the extent allegations set forth in Paragraph 175 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 175.

176. To the extent allegations set forth in Paragraph 176 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 176.

177. The allegations set forth in Paragraph 177 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them.

178. To the extent allegations set forth in Paragraph 178 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 178.

179. To the extent allegations set forth in Paragraph 179 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 179.

180. To the extent allegations set forth in Paragraph 180 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 180.

181. CVS denies the allegations set forth in the first sentence of Paragraph 181. To the extent allegations set forth in Paragraph 181 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 181.

182. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the first sentence of Paragraph 182 with regard to all PBM Respondents. To the extent allegations set forth in Paragraph 182 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 182.

183. The allegations set forth in Paragraph 183 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them.

184. The allegations set forth in Paragraph 184 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them, except that CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 184 with respect to actions, considerations, and decisions of commercial payers and therefore denies them. To the extent allegations set forth in Paragraph 184 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 184.

185. The allegations set forth in Paragraph 185 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them. To the extent

allegations set forth in Paragraph 185 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 185.

186. The allegations set forth in Paragraph 186 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them. To the extent allegations set forth in Paragraph 186 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 186.

187. The allegations set forth in Paragraph 187 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them. To the extent allegations set forth in Paragraph 187 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 187.

188. The allegations set forth in Paragraph 188 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them. To the extent allegations set forth in Paragraph 188 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 188.

189. The allegations set forth in Paragraph 189 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them. To the extent allegations set forth in Paragraph 189 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 189.

190. The allegations set forth in Paragraph 190 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them. To the extent a response is required, CVS denies them. To the extent allegations set forth in Paragraph 190 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 190.

191. The allegations set forth in Paragraph 191 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them. To the extent a response is required, CVS denies them. To the extent allegations set forth in Paragraph 191 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 191.

192. The allegations set forth in Paragraph 192 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them. To the extent a response is required, CVS denies them. To the extent allegations set forth in Paragraph 192 seek

to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 192.

193. The allegations set forth in Paragraph 193 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them. To the extent a response is required, CVS denies them. To the extent allegations set forth in Paragraph 193 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 193.

194. The allegations set forth in Paragraph 194 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them. To the extent a response is required, CVS denies them. To the extent allegations set forth in Paragraph 194 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 194.

195. The allegations set forth in Paragraph 195 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them, except that CVS admits it does not make plan benefit design or member cost sharing decisions for its clients. To the extent allegations set forth in Paragraph 195 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents

for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 195.

196. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the first sentence of Paragraph 196 and therefore denies them. To the extent allegations set forth in Paragraph 196 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 196.

197. To the extent allegations set forth in Paragraph 197 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 197.

198. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 198 and therefore denies them. To the extent allegations set forth in Paragraph 198 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 198.

199. To the extent allegations set forth in Paragraph 199 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 199.

200. The allegations set forth in Paragraph 200 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them. To the extent a response is required, CVS denies them. To the extent allegations set forth in Paragraph 200 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 200.

201. The allegations set forth in Paragraph 201 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them.

202. The allegations set forth in Paragraph 202 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them. To the extent a response is required, CVS denies them. To the extent allegations set forth in Paragraph 202 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 202.

203. To the extent allegations set forth in Paragraph 203 seek to quote from or characterize the contents of documents or statutes, CVS answers that those documents or statutes speak for themselves and refers to those documents or statutes for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 203.

204. To the extent allegations set forth in Paragraph 204 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves

and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 204.

205. To the extent allegations set forth in Paragraph 205 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 205.

206. To the extent allegations set forth in Paragraph 206 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 206.

207. To the extent allegations set forth in Paragraph 207 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 207.

208. The allegations set forth in Paragraph 208 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them. To the extent the allegations set forth in Paragraph 208 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 208.

209. To the extent allegations set forth in Paragraph 209 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves

and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 209.

210. The allegations set forth in Paragraph 210 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them. To the extent the allegations set forth in Paragraph 210 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 210.

211. The allegations set forth in Paragraph 211 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them. To the extent the allegations set forth in Paragraph 211 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 211.

212. To the extent the allegations set forth in Paragraph 212 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 212.

213. The allegations set forth in Paragraph 213 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them.

VI. RESPONDENTS' CONDUCT RESULTED IN HARM TO CONSUMERS AND COMPETITION

214. The allegations set forth in Paragraph 214 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them.

215. The allegations set forth in Paragraph 215 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them. To the extent the allegations set forth in Paragraph 215 seek to quote from or characterize the contents of transcripts, CVS answers that those transcripts speak for themselves and refers to those transcripts for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 215.

216. The allegations set forth in Paragraph 216 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them. To the extent the allegations set forth in Paragraph 216 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 216.

217. The allegations set forth in Paragraph 217 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them.

218. The allegations set forth in Paragraph 218 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them.

219. The allegations set forth in Paragraph 219 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them. To the extent the allegations set forth in Paragraph 219 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their

complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 219.

220. The allegations set forth in Paragraph 220 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them. To the extent the allegations set forth in Paragraph 220 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 220.

221. The allegations set forth in Paragraph 221 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them. To the extent the allegations set forth in Paragraph 221 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 221.

222. The allegations set forth in Paragraph 222 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them. To the extent the allegations set forth in Paragraph 222 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 222.

223. The allegations set forth in Paragraph 223 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them. To the extent the allegations set forth in Paragraph 223 seek to quote from or characterize the contents of documents,

CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 223.

224. The allegations set forth in Paragraph 224 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them.

225. The allegations set forth in Paragraph 225 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them. To the extent the allegations set forth in Paragraph 225 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 225.

226. The allegations set forth in Paragraph 226 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them.

227. The allegations set forth in Paragraph 227 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them. To the extent the allegations set forth in Paragraph 227 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 227.

228. The allegations set forth in Paragraph 228 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them. To the extent the allegations set forth in Paragraph 228 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their

complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 228.

229. To the extent the allegations set forth in Paragraph 229 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 229.

230. The allegations set forth in Paragraph 230 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them. To the extent the allegations set forth in Paragraph 230 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 230.

231. The allegations set forth in Paragraph 231 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them. To the extent the allegations set forth in Paragraph 231 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 231.

232. The allegations set forth in Paragraph 232 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them. To the extent the allegations set forth in Paragraph 232 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their

complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 232.

233. The allegations set forth in Paragraph 233 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them. To the extent the allegations set forth in Paragraph 233 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 233.

VII. RESPONDENTS' CONDUCT IS ONGOING OR LIKELY TO RECUR

234. The allegations set forth in Paragraph 234 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them.

235. The allegations set forth in Paragraph 235 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them. To the extent the allegations set forth in Paragraph 235 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 235.

236. The allegations set forth in Paragraph 236 state legal conclusions to which no response is required. To the extent a response is required, CVS denies the allegations of Paragraph 236.

237. The allegations set forth in Paragraph 237 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them. To the extent the allegations set forth in Paragraph 237 seek to quote from or characterize the contents of documents,

CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 237.

238. The allegations set forth in Paragraph 238 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them. To the extent the allegations set forth in Paragraph 238 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 238.

239. The allegations set forth in Paragraph 239 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them. To the extent the allegations set forth in Paragraph 239 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 239.

240. The allegations set forth in Paragraph 240 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them. To the extent the allegations set forth in Paragraph 240 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 240.

241. The allegations set forth in Paragraph 241 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them. To the extent the

allegations set forth in Paragraph 241 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 241.

242. The allegations set forth in Paragraph 242 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them. To the extent the allegations set forth in Paragraph 242 seek to quote from or characterize the contents of documents or statutes, CVS answers that those documents and statutes speak for themselves and refers to those documents or statutes for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 242.

243. The allegations set forth in Paragraph 243 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them.

244. The allegations set forth in Paragraph 244 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them.

245. The allegations set forth in Paragraph 245 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them. To the extent the allegations set forth in Paragraph 245 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 245.

246. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 246 and therefore denies them. To the extent the allegations set forth in Paragraph 246 seek to quote from or characterize the contents of documents, CVS

answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 246.

247. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 247 and therefore denies them. To the extent the allegations set forth in Paragraph 247 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 247.

248. CVS denies the allegations set forth in Paragraph 248.

249. The allegations set forth in Paragraph 249 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them. To the extent the allegations set forth in Paragraph 249 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies the allegations of Paragraph 249.

250. The allegations set forth in Paragraph 250 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them. To the extent the allegations set forth in Paragraph 250 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies the allegations of Paragraph 250.

251. The allegations set forth in Paragraph 251 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them.

252. The allegations set forth in Paragraph 252 state legal conclusions to which no response is required. To the extent a response is required, CVS denies them.

253. The allegations set forth in Paragraph 253 state legal conclusions to which no response is required. To the extent a response is required, CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 253 and therefore denies them. To the extent the allegations set forth in Paragraph 253 seek to quote from or characterize the contents of documents, CVS answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, CVS denies them. CVS denies the remaining allegations of Paragraph 253.

254. The allegations set forth in Paragraph 254 state legal conclusions to which no response is required. To the extent a response is required, CVS denies the allegations of Paragraph 254.

VIII. VIOLATIONS OF THE FTC ACT

COUNT I – Unfairly Competing by Rebate Preferencing

255. CVS incorporates its answers to the allegations of Paragraphs 1 through 254 as though fully set forth herein.

256. The allegations set forth in Paragraph 256 state legal conclusions to which no response is required. To the extent a response is required, CVS denies the allegations of Paragraph 256.

257. The allegations set forth in Paragraph 257 state legal conclusions to which no response is required. To the extent a response is required, CVS denies the allegations of Paragraph 257.

258. The allegations set forth in Paragraph 258 state legal conclusions to which no response is required. To the extent a response is required, CVS denies the allegations of Paragraph 258.

259. The allegations set forth in Paragraph 259 state legal conclusions to which no response is required. To the extent a response is required, CVS denies the allegations of Paragraph 259.

260. The allegations set forth in Paragraph 260 state legal conclusions to which no response is required. To the extent a response is required, CVS denies the allegations of Paragraph 260.

261. The allegations set forth in Paragraph 261 state legal conclusions to which no response is required. To the extent a response is required, CVS denies the allegations of Paragraph 261.

**COUNT II – Unfair Practice of Formulary Exclusion
of Low WAC Insulin Products**

262. CVS incorporates its answers to the allegations of Paragraphs 1 through 254 as though fully set forth herein.

263. The allegations set forth in Paragraph 263 state legal conclusions to which no response is required. To the extent a response is required, CVS denies the allegations of Paragraph 263.

264. The allegations set forth in Paragraph 264 state legal conclusions to which no response is required. To the extent a response is required, CVS denies the allegations of Paragraph 264.

265. The allegations set forth in Paragraph 265 state legal conclusions to which no response is required. To the extent a response is required, CVS denies the allegations of Paragraph 265.

266. The allegations set forth in Paragraph 266 state legal conclusions to which no response is required. To the extent a response is required, CVS denies the allegations of Paragraph 266.

267. The allegations set forth in Paragraph 267 state legal conclusions to which no response is required. To the extent a response is required, CVS denies the allegations of Paragraph 267.

COUNT III – Unfair Practice of Exploitative Cost-Shifting

268. CVS incorporates by reference its answers to the allegations of Paragraphs 1 through 254 as though fully set forth herein.

269. The allegations set forth in Paragraph 269 state legal conclusions to which no response is required. To the extent a response is required, CVS denies the allegations of Paragraph 269.

270. The allegations set forth in Paragraph 270 state legal conclusions to which no response is required. To the extent a response is required, CVS denies the allegations of Paragraph 270.

271. The allegations set forth in Paragraph 271 state legal conclusions to which no response is required. To the extent a response is required, CVS denies the allegations of Paragraph 271.

272. The allegations set forth in Paragraph 272 state legal conclusions to which no response is required. To the extent a response is required, CVS denies the allegations of Paragraph 272.

273. The allegations set forth in Paragraph 273 state legal conclusions to which no response is required. To the extent a response is required, CVS denies the allegations of Paragraph 273.

274. The allegations set forth in Paragraph 274 state legal conclusions to which no response is required. To the extent a response is required, CVS denies the allegations of Paragraph 274.

CVS'S AFFIRMATIVE AND OTHER DEFENSES

CVS asserts the following defenses without assuming the burden of proof on such defenses that would otherwise rest with the Commission:

FIRST DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

The relief sought is overbroad and contrary to the public interest.

THIRD DEFENSE

The alleged wrongful conduct is legal as a matter of law.

FOURTH DEFENSE

The relief sought is contrary to the balance of equities.

FIFTH DEFENSE

The Commission's use of these administrative proceedings to adjudicate private rights and dictate the content of private contracts violates Article III of the United States Constitution and the requirement that Article III courts must adjudicate private rights.

SIXTH DEFENSE

The Commission's use of these administrative proceedings violates the Seventh Amendment of the United States Constitution by seeking to adjudicate non-equitable remedies and seeking "relief appropriate to correct or remedy" the alleged violations.

SEVENTH DEFENSE

The FTC's administrative proceedings are invalid because of the structure of the Commission, which wields executive power while limiting the ability of the head of the executive branch to remove the Commissioners or Administrative Law Judges. This restriction on removal violates Article II of the United States Constitution and the doctrine of separation of powers.

EIGHTH DEFENSE

The Commission's procedures and its administrative proceedings violate CVS's rights to due process and equal protection under the Due Process clause of the Fifth Amendment.

NINTH DEFENSE

The Commission's procedures give unfettered discretion to the FTC to arbitrarily subject CVS to administrative proceedings in addition to, or in lieu of, proceedings before an Article III judge in violation of CVS's right to Equal Protection under the Fifth Amendment and the non-delegation doctrine. The proceedings are invalid because Section 5 of the Federal Trade Commission Act constitutes an unconstitutional delegation of legislative authority in violation of Article I of the U.S. Constitution.

TENTH DEFENSE

The FTC's administrative proceedings are invalid because adjudication of the Commission's Complaint by an Administrative Law Judge and the Commission itself violates Article II of the United States Constitution and the doctrine of separation of powers.

ELEVENTH DEFENSE

FTC Act Section 5 is unenforceable with respect to the claims alleged in the Complaint because the statute does not provide for an independent cause of action, sufficiently identify prohibited conduct, is unconstitutionally vague, violates the nondelegation doctrine, and fails to provide sufficient notice of prohibited conduct in violation of constitutional due process.

TWELFTH DEFENSE

The Commission's use of these administrative proceedings to create new rules through litigation rather than through a proper rulemaking process is invalid and violates the Administrative Procedure Act. The Complaint is a de facto rulemaking and exceeds the Commission's statutory rulemaking authority.

THIRTEENTH DEFENSE

The three Commissioners who did not recuse from this matter and voted to institute proceedings have all demonstrated through their own statements and otherwise that they have prejudged this matter and their participation in this proceeding violates CVS's due process rights, the Fifth Amendment; the FTC Act; the doctrines of unclean hands, estoppel, and other equitable doctrines; the Administrative Procedure Act; Federal Trade Commission regulations, and; federal ethics laws and regulations. No unbiased Commissioner voted to initiate this proceeding.

FOURTEENTH DEFENSE

The conduct challenged by the FTC is required to comply with applicable laws and regulations, including the Federal Employees Health Benefits Act and applicable Office of Personnel Management regulations and guidance.

FIFTEENTH DEFENSE

The Complaint fails to allege any harm to competition.

SIXTEENTH DEFENSE

The Complaint fails to allege any harm to overall consumer welfare.

SEVENTEENTH DEFENSE

The Complaint fails to allege any unfair method of competition or unfair act under 15 U.S.C. §§ 45(a), (n).

EIGHTEENTH DEFENSE

The Complaint fails to allege any substantial injury.

NINETEENTH DEFENSE

The Complaint fails to allege that CVS's conduct was the cause of any substantial injury.

TWENTIETH DEFENSE

The Complaint fails to allege that any alleged injury was unavoidable or proximately caused by CVS's alleged conduct.

TWENTY-FIRST DEFENSE

The Complaint is invalid because the full Commission did not vote in favor of the final Complaint.

TWENTY-SECOND DEFENSE

The claims and relief sought are untimely. The Complaint is barred in whole or part by laches and/or estoppel, based on the Commission's prior investigations of the same conduct alleged in the Complaint and its decisions not to take action.

TWENTY-THIRD DEFENSE

Decisions to include and/or prefer drugs on formularies based on net drug costs are procompetitive and result in significant cost savings for plan sponsors and their members. The Complaint fails to consider efficiencies and business justifications for this alleged conduct. The benefits greatly outweigh any and all proffered anticompetitive effects.

TWENTY-FOURTH DEFENSE

The Commission's action is moot because the formularies already prefer or co-prefer low list price versions of insulins.

TWENTY-FIFTH DEFENSE

The Commission's cause of action under Section 5 of the Federal Trade Commission Act is not cognizable to the extent the Commission purports to apply Section 5 beyond the metes and bounds of the Sherman and Clayton Acts.

TWENTY-SIXTH DEFENSE

The Commission is not entitled to relief because none of CVS's conduct identified in the Complaint is actionable—independently or in the aggregate—under the antitrust laws.

TWENTY-SEVENTH DEFENSE

The Commission's claims are too speculative to support the relief sought.

TWENTY-EIGHTH DEFENSE

The Complaint reflects improper selective enforcement of Section 5 of the Federal Trade Commission Act.

TWENTY-NINTH DEFENSE

The Commission's claims are preempted by the McCarran-Ferguson Act, 15 U.S.C. § 1011 *et seq.*

THIRTIETH DEFENSE

The structure of these administrative proceedings, in which the Commission both initiates and finally adjudicates the Complaint, violates CVS's Fifth Amendment Due Process right to adjudication before a neutral arbiter.

THIRTY-FIRST DEFENSE

CVS's actions were taken as part of a good-faith, reasonable attempt to comply with a regulatory scheme.

THIRTY-SECOND DEFENSE

The Complaint fails to plausibly allege that unfair acts or practices are ongoing or likely to recur.

THIRTY-THIRD DEFENSE

The Complaint fails to plausibly allege that CVS has market or monopoly power in a relevant market.

THIRTY-FOURTH DEFENSE

The FTC's joinder of other Respondents and joint proceeding against CVS and other Respondents in these circumstances violate CVS's due process rights.

THIRTY-FIFTH DEFENSE

The FTC is not entitled to relief as a matter of law.

DEFENSES INCORPORATED BY REFERENCE

CVS incorporates by reference the affirmative and other defenses put forth by Co-Respondents in their Answers to the Commission's Complaint as if asserted by CVS.

RESERVATION OF RIGHTS TO ASSERT ADDITIONAL DEFENSES

CVS has not knowingly or intentionally waived any applicable defenses. CVS reserves the right to assert and rely upon other applicable defenses as they become available or apparent to CVS throughout the course of this action. CVS reserves the right to amend, or seek to amend, its Answer or affirmative defenses.

NOTICE OF CONTEMPLATED RELIEF

WHEREFORE, CVS requests that the Commission enter judgment in its favor providing as follows:

- A. That the Complaint be dismissed in its entirety with prejudice.
- B. That the Commission deny the relief contemplated in the Complaint.
- D. That the costs incurred in defending this action be awarded to CVS, including experts' fees and reasonable attorneys' fees as may be allowed by law.
- E. For any and all further relief as the Commission may deem just and proper.

Dated: October 9, 2024

Respectfully Submitted,

/s/ Enu Mainigi

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CERTIFICATE OF SERVICE

I hereby certify that on October 9, 2024, I caused the foregoing document to be filed electronically using the FTC's E-Filing system, which will send notification of such filing to:

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I further certify that on October 9, 2024, I caused the foregoing document to be served via email to:

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