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17 **IN THE UNITED STATES DISTRICT COURT**
 18 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

20 Christopher Corcoran, Robert Garber, Toni
 Odorisio, Robert Guarnieri, Onnolee Samuelson,
 21 Ron W. Coder, and Irma Pacheco, on behalf of
 themselves and all others similarly situated,

22 Plaintiffs,

23 v.

24 CVS Health Corporation,

26 Defendant.

Case No.

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

1 **I. INTRODUCTION**

2 1. Plaintiffs Christopher Corcoran, Robert Garber, Toni Odorisio, Robert Guarnieri,
3 Onnolee Samuelson, Ron W. Coder, and Irma Pacheco (collectively, “Plaintiffs”), on behalf of
4 themselves and all others similarly situated, bring this action against CVS Health Corporation
5 (“CVS”), to recover monetary damages, injunctive relief, and other remedies for violations of state
6 laws.

7 **II. NATURE OF THE ACTION**

8 2. Plaintiffs allege that CVS knowingly and intentionally overcharged pharmacy
9 customers for generic prescription drugs by submitting claims for payment to third-party payors at
10 fraudulently inflated prices. CVS’s false and deceptive pricing scheme caused CVS pharmacy
11 customers who purchased generic prescription drugs through third-party plans to pay significantly
12 more in copayments than CVS charges cash-paying customers to purchase the same drugs.

13 3. All class members are CVS customers who participate in third-party health care plans
14 (either private insurance or a federal or state funded health care program) and have filled prescriptions
15 for generic drugs at CVS pharmacies using coverage provided by their third-party health care plans.
16 When a plan participant fills a prescription under a third-party health care plan, a third-party payor
17 (generally a private, public or governmental entity) pays a portion of the participant’s prescription
18 drug costs. The remaining portion is paid directly by the plan participant in the form of a copayment
19 or “copay”, which may include, for example, co-insurance, flat fees, or deductibles. CVS collects the
20 copay from the plan participant at the time a covered prescription drug is dispensed. The amount of
21 the copay collected by CVS from the plan participant may not exceed CVS’s usual and customary
22 price, which is generally defined as the cash price to the general public for the same drug.

23 4. Defendant CVS is a nationwide retail pharmacy chain with over 7,866 stores
24 throughout the United States, the District of Columbia, and Puerto Rico. It is the nation’s largest
25 purchaser of drugs, counts one of every two Americans as a customer, and fills or manages more than
26 one billion prescriptions per year—nearly one in every three prescriptions in the nation. In 2014,
27 CVS’s net revenue was \$139.37 billion, and it generated approximately \$67 billion from its retail
28 pharmacy business.

1 5. CVS commonly submits electronic claims for payment to third-party payors when it
2 fills prescriptions. In submitting electronic claims for payment, CVS is required to state accurately its
3 usual and customary price for every dispensing event, in accordance with the National Council for
4 Prescription Drug Program (“NCPDP”) requirements. But for years, CVS has knowingly and
5 intentionally submitted false and artificially inflated usual and customary prices for generic drugs to
6 third-party payors. Beginning in 2008, CVS orchestrated and carried out a massive fraud that resulted
7 in substantial ill-gotten gains, and substantial harm to Plaintiffs and the members of the Classes they
8 represent. CVS created the “Health Savings Pass” (“HSP”) program—the centerpiece of its fraud—as
9 an integral vehicle for overcharging third-party payors and plan participants for covered drugs. The
10 HSP formulary includes long-term maintenance medications, which, in many instances, are prescribed
11 to elderly and disabled patients on a regular basis.

12 6. The HSP program served a twofold purpose for CVS. Not only was the HSP program a
13 means by which CVS could maintain and increase its market share by fending off discounted prices
14 from its competitors, but importantly, CVS also intended that the HSP program would serve as a
15 mechanism to hide CVS’s true usual and customary prices from third-party payors. By submitting
16 false and inflated usual and customary prices to third-party payors, CVS knowingly and wrongfully
17 overcharged plan participants copay amounts that often exceeded the HSP drug prices available to the
18 general public for the same drugs. In essence, the unlawful scheme that CVS designed allowed CVS
19 to have its cake and eat it too: CVS could maintain and increase its cash-paying customer base while
20 also maintaining higher reimbursement payments from third-party payors and higher copays from plan
21 participants who filled their prescriptions at CVS pharmacies.

22 7. As a result of CVS’s unlawful scheme, CVS overcharged Plaintiffs and the other class
23 members for generic prescription drugs (in many cases by more than three or four times the usual and
24 customary price) from November 2008 to the present. CVS’s misconduct has caused Plaintiffs and the
25 other class members to suffer significant damages.

26 **III. PARTIES**

27 **A. Plaintiffs.**

28 8. Plaintiff Christopher Corcoran is domiciled in the State of California. Mr. Corcoran

1 has purchased generic versions of four monthly maintenance medications from CVS between
2 November 2008 and the present. Mr. Corcoran carries private health insurance and carried private
3 health insurance during the time that he purchased generic medications from CVS. All four
4 medications prescribed to Mr. Corcoran are on the CVS HSP generic medication list (attached hereto
5 as Exhibit A). Cash-paying customers paid \$9.99 for a 90-day supply of the same prescriptions that
6 Mr. Corcoran purchased from 2008 to 2010, and \$11.99 from 2011 to the present. As a result of CVS'
7 fraudulent scheme, Mr. Corcoran has, during the class period, paid copays substantially higher than
8 \$9.99 from 2008 to 2010 and \$11.99 from 2011 to the present per 90-day supply each time he
9 purchased his generic prescriptions from CVS and has, thereby, been injured.

10 9. Plaintiff Robert Garber is domiciled in the Commonwealth of Massachusetts. Dr.
11 Garber has purchased generic versions of five monthly maintenance medications from CVS between
12 November 2008 and the present. Dr. Garber carries private health insurance through his employer and
13 carried private health insurance during the time that he purchased generic medications from CVS. All
14 five medications prescribed to Dr. Garber are on the CVS HSP generic medication list (attached hereto
15 as Exhibit A). Cash-paying customers paid \$9.99 for a 90-day supply of the same prescriptions that
16 Dr. Garber purchased from 2008 to 2010, and \$11.99 from 2011 to the present. As a result of CVS's
17 fraudulent scheme, Dr. Garber has, during the class period, paid copays substantially higher than \$9.99
18 from 2008 to 2010 and \$11.99 from 2011 to the present per 90-day supply each time he purchased his
19 generic prescriptions from CVS and has, thereby, been injured.

20 10. Plaintiff Toni Odorisio is domiciled in the State of New York. Ms. Odorisio has
21 purchased generic versions of two monthly maintenance medications from CVS between November
22 2008 and the present. Additionally, Ms. Odorisio carries private health insurance and carried private
23 health insurance during the time that she purchased generic medications from CVS. Both medications
24 prescribed to Ms. Odorisio are on the CVS HSP generic medication list (attached hereto as Exhibit
25 A). Cash-paying customers paid \$9.99 for a 90-day supply of the same prescriptions that Ms. Odorisio
26 purchased from 2008 to 2010, and \$11.99 from 2011 to the present. As a result of CVS's fraudulent
27 scheme, Ms. Odorisio has, during the class period, paid copays substantially higher than \$9.99 from
28 2008 to 2010 and \$11.99 from 2011 to the present per 90-day supply each time she purchased her

1 generic prescriptions from CVS and has, thereby, been injured.

2 11. Plaintiff Robert Guarnieri is domiciled in the State of New York. Mr. Guarnieri has
3 purchased generic versions of three monthly maintenance medications from CVS between November
4 2008 and the present. Mr. Guarnieri carries private health insurance and carried private health
5 insurance during the time that he purchased generic medications from CVS. All three medications
6 prescribed to Mr. Guarnieri are on the CVS HSP generic medication list (attached hereto as Exhibit
7 A). Cash-paying customers paid \$9.99 for a 90-day supply of the same prescriptions that Mr.
8 Guarnieri purchased from 2008 to 2010, and \$11.99 from 2011 to the present. As a result of CVS's
9 fraudulent scheme, Mr. Guarnieri has, during the class period, paid copays substantially higher than
10 \$9.99 from 2008 to 2010 and \$11.99 from 2011 to the present per 90-day supply each time he
11 purchased his generic prescriptions from CVS and has, thereby, been injured.

12 12. Plaintiff Onnolee Samuelson is domiciled in the State of New York. Ms. Samuelson
13 has purchased generic versions of two monthly maintenance medications from CVS between
14 November 2008 and the present. Ms. Samuelson carries private health insurance and carried private
15 health insurance during the time that she purchased generic medications from CVS. Both medications
16 prescribed to Ms. Samuelson are on the CVS HSP generic medication list (attached hereto as Exhibit
17 A). Cash-paying customers paid \$9.99 for a 90-day supply of the same prescriptions that Ms.
18 Samuelson purchased from 2008 to 2010, and \$11.99 from 2011 to the present. As a result of CVS's
19 fraudulent scheme, Ms. Samuelson has, during the class period, paid co-pays substantially higher than
20 \$9.99 from 2008 to 2010 and \$11.99 from 2011 to the present per 90-day supply each time she
21 purchased her generic prescriptions from CVS and has, thereby, been injured.

22 13. Plaintiff Ron W. Coder is domiciled in the Commonwealth of Pennsylvania. Mr. Coder
23 has purchased generic versions of three monthly maintenance medications from CVS between
24 November 2008 and the present. Mr. Coder carries private health insurance and carried private health
25 insurance during the time that he purchased generic medications from CVS. Numerous medications
26 prescribed to Mr. Coder are on the CVS HSP generic medication list (attached hereto as Exhibit A).
27 Cash-paying customers paid \$9.99 for a 90-day supply of the same prescriptions that Mr. Coder
28 purchased from 2008 to 2010, and \$11.99 from 2011 to the present. As a result of CVS's fraudulent

1 scheme, Mr. Coder has, during the class period, paid co-pays substantially higher than \$9.99 from
2 2008 to 2010 and \$11.99 from 2011 to the present per 90-day supply each time he purchased his
3 generic prescriptions from CVS and has, thereby, been injured.

4 14. Plaintiff Irma Pacheco is domiciled in the State of Texas. Ms. Pacheco has purchased
5 generic versions of at least one monthly maintenance medication from CVS between October 2014
6 and the present. Ms. Pacheco carries private health insurance and carried private health insurance
7 during the time that she purchased generic medications from CVS. Cash-paying customers paid
8 \$11.99 for a 90-day supply of the same prescription that Ms. Pacheco purchased from 2014 to the
9 present. As a result of CVS's fraudulent scheme, Ms. Pacheco has, during the class period, paid co-
10 pays substantially higher than \$11.99 from 2014 to the present per 90-day supply when she purchased
11 her generic prescriptions from CVS and has, thereby, been injured.

12 **B. Defendant.**

13 15. Defendant CVS Health Corporation, a/d/a CVS/Caremark, CVS/Pharmacy,
14 CVS/Minute Clinic and CVS/Specialty (hereinafter, "CVS") is a corporation organized under the laws
15 of Delaware. CVS is headquartered at One CVS Drive, Woonsocket, Rhode Island, 02895.

16 16. CVS is a nationwide retail pharmacy chain with more than 7,866 pharmacies operating
17 under the trade names CVS Pharmacy and Longs Drugs throughout the United States, the District of
18 Columbia, and Puerto Rico, including numerous locations in this District. As one of the nation's
19 leading pharmacy businesses, CVS "has relationships with over 150 million consumers, one of every
20 two Americans, and has access to data on 30 percent of all prescriptions in the United States." CVS
21 fills or manages more than 1 billion prescriptions per year, and, in 2014, earned net revenue of
22 \$139.37 billion. Significantly, CVS's retail prescription drug sales accounted for approximately \$67
23 billion in revenue in 2014.

24 **IV. JURISDICTION AND VENUE**

25 17. This Court has subject-matter jurisdiction pursuant to the Class Action Fairness Act of
26 2005, 28 U.S.C. § 1332(d)(2), because this is a class action, including claims asserted on behalf of a
27 nationwide class, filed under Rule 23 of the Federal Rules of Civil Procedure; there are hundreds of
28 thousands, and likely millions, of proposed Class members; the aggregate amount in controversy

1 exceeds the jurisdictional amount or \$5,000,000.00; and CVS is a citizen of a State different from that
2 of Plaintiffs and members of the Class. This Court also has subject matter jurisdiction over Plaintiffs'
3 and the proposed Class' claims pursuant to 28 U.S.C. § 1367(a).

4 18. This Court has jurisdiction over CVS because CVS intentionally avails itself of the
5 California consumer market through the promotion, sale, marketing, and distribution of their products
6 to California residents. As a result, jurisdiction in this Court is proper and necessary. Moreover,
7 CVS's wrongful conduct, as described herein, foreseeably affects consumers in California and
8 nationwide.

9 19. Venue is proper in this District under 28 U.S.C. § 1391 (a)–(d) because, *inter alia*,
10 substantial parts of the events or omissions giving rise to the claim occurred in the District and/or a
11 substantial part of property that is the subject of the action is situated in the District.

12 **V. FACTS**

13 **A. Third-party Plan Coverage and Claims Submission.**

14 20. The majority of patients in the United States have a health care plan (either private or
15 public) that covers all or a portion of their medical and pharmaceutical expenses. Few plans cover all
16 expenses, but, instead, require plan participants to pay a portion of their drug costs out-of-pocket.
17 These out-of-pocket expenses include copayments, co-insurance, and/or deductibles.

18 21. Even though plan participants cannot and do not negotiate the price charged by CVS
19 for prescription drugs and do not negotiate the copayment price for the drug in a given transaction,
20 they are required to pay to CVS a copayment amount in order to receive the prescription.

21 22. Plan participants pay premiums, either on their own or through their employer, to a
22 third-party payor for the purpose of insuring against healthcare costs, including prescriptions.

23 23. Plan participants (including Plaintiffs and the Class), at a minimum, expect to pay the
24 same prices as uninsured or cash-paying individuals for a prescription. Otherwise, they would not
25 only receive no benefit from their insurance, but would, in fact, be punished for having insurance.
26 Therefore, given the network of entities negotiating the prices of prescription drugs on their behalf and
27 the premiums paid for coverage, they reasonably expect to pay less than cash-paying customers who
28 do not have insurance coverage.

1 24. CVS uses a uniform process at its locations for each prescription drug transaction.
2 When a patient fills a prescription at a CVS pharmacy, the pharmacist or pharmacy tech enters the
3 prescription information and any applicable insurance or benefit information into CVS's computerized
4 claims processing system. Once this information is entered, CVS submits the claim for dispensing and
5 adjudication.

6 25. Adjudication is the automated process by which CVS submits prescription claims
7 electronically in real time to the third-party payor (or the third-party payor's agent). During
8 adjudication, the claim is verified and/or confirmed for patient eligibility for insurance or another
9 prescription drug benefit. Through this process, using the drug price information from CVS, the third-
10 party payor sets the reimbursement amount and any applicable copayment or coinsurance.

11 26. For all times relevant to the allegations in this Complaint, CVS used the industry
12 standard NCPDP reporting for the electronic transmission and adjudication of its pharmacy claims.

13 27. As a required component of the adjudication process, CVS reports to third-party payors
14 CVS's usual and customary ("U&C") price for the drug being dispensed. The U&C price is generally
15 defined as the cash price to the general public, which is the amount charged cash customers for the
16 prescription, exclusive of sales tax or other amounts claimed. Pursuant to the NCPDP reporting
17 standard, pharmacies are required to report the amount of its U&C price for each prescription
18 transaction using NCPDP's mandatory pricing segment code 426-DQ.

19 28. Based on the data reported by CVS, third-party payors identify the copayment amount
20 that the patient must pay to CVS in a specific transaction. The copayment amount is a portion of the
21 total drug price and cannot exceed the drug price. The remainder of the drug price is reimbursed to the
22 pharmacy by the third-party payor.

23 29. The out-of-pocket copayment that a plan participant is required to pay in order to
24 receive the prescription is calculated based on the U&C price reported by CVS. Not only must the
25 copayment be equal to or less than the drug price, the drug price cannot exceed the U&C price. As a
26 result, the copayment cannot exceed the U&C price.

27 30. In some situations, the copayment may only be charged as a percentage of the U&C
28 price. For instance, suppose a third-party payor's negotiated price for a specific drug is \$36 with a

1 beneficiary copayment of 25% for a 90-day supply of a generic prescription drug. If, however, CVS
2 reports to the third-party payor that the U&C price for the same 90-day supply of the same drug is \$20,
3 the third-party payor would consider the \$20 price to take the place of the \$36 negotiated price. In
4 such a scenario, the third-party payor would adjudicate CVS's claim for \$20, and the plan participant
5 would pay only a \$5 copay, rather than a \$9 copay.

6 **B. The HSP Program.**

7 31. In 2006, large "big-box" retailers with pharmacy departments began offering hundreds
8 of generic prescription drugs at significantly reduced prices.

9 32. For example, in September 2006, Wal-Mart began charging \$4 for a 30-day supply of
10 the most commonly prescribed generic drugs and \$10 for a 90-day supply. In November of that same
11 year, Target began charging \$4 for a 30-day supply of the most commonly prescribed generic drugs
12 and \$10 for a 90-day supply. Other retailers with pharmacy departments, which were able to absorb
13 lower margins on generic drug sales because pharmacy sales represented such a low percentage of
14 their total sales, followed suit. Wal-Mart and Target report to third-party payors, as their U&C prices,
15 the lower \$4 per 30-day prices for generic prescription drugs.

16 33. CVS was unwilling to match the deep discounts on generic drugs provided to customers
17 by big-box retailers. So, in response to lower prices and increased competition for cash customers,
18 CVS created a custom-branded loyalty program targeted at cash customers and other price-sensitive
19 customers.

20 34. In November 2008, CVS launched its custom branded generic prescription drug
21 program—the HSP program.

22 35. The HSP program is intended to offer competitive prices to cash customers while
23 maximizing third-party reimbursements and copayments through reporting artificially inflated U&C
24 prices to third-party payors.

25 36. Specifically, as designed, the HSP program is a non-networked discount prescription
26 drug program that offers savings on hundreds of generic medications. The HSP program is not a third-
27 party plan; it is not insurance or a substitute for insurance. Enrollment in the HSP program was and
28 continues to be open to cash-paying customers. From November 9, 2008 through 2010, such

1 customers could join the HSP for a \$10 fee. During this time, CVS charged HSP members \$9.99 for a
2 90-day supply of the most commonly prescribed generic drugs (“HSP Generics”). Moreover, CVS
3 pharmacists routinely prorated prescriptions written for less than 90-days. For example, CVS would
4 charge a HSP member roughly \$3.33 for a 30-day supply. In 2011, CVS raised its enrollment fee to
5 \$15 a year and the price of the over 400 HSP generics to \$11.99 for a 90-day supply (or a prorated
6 amount of approximately \$3.99 for a 30-day supply).

7 37. The 400 drugs included under the HSP program are among some of the most
8 commonly prescribed generic drugs for cardiovascular, allergy, diabetes, pain, and arthritis,
9 cholesterol, skin conditions, mental health, women’s health, viruses, thyroid conditions, glaucoma and
10 eye care, gastrointestinal disorders, and other common ailments.

11 38. CVS designed the HSP program to appeal to price sensitive customers, which, for the
12 most part, are customers who take long-term maintenance medications. Customers who take
13 maintenance medications, many of whom are elderly or disabled, are the most valuable to CVS.

14 **C. CVS’s Unlawful Conduct.**

15 39. Although CVS sought to retain and attract cash customers by implementing the HSP
16 program, it was unwilling to lower the price charged to third-party payors. The HSP program enabled
17 CVS to unlawfully report artificially inflated U&C prices to third-party payors, thereby allowing CVS
18 to collect from consumers artificially inflated copays.

19 40. CVS is on notice that third-party payors calculate the drug price to be paid to the
20 pharmacy based on whether the U&C submitted to the third-party payor is less than or greater than the
21 negotiated price. Where the U&C is less than the negotiated price, CVS may not charge a drug price
22 greater than the U&C. This is clear in contracts, network pharmacy manuals, payor sheets, and CVS’s
23 own transaction data, which contain reimbursements adjudicated under this formula.

24 41. Third-party payors state, in detail, how a beneficiary’s copay is determined in their
25 pharmacy agreements and manuals. CVS is in possession of these documents and is aware of their
26 contents. Many third-party payors specifically contemplate a situation where the U&C is less than the
27 copay. In these cases, the third-party payors forbid CVS from charging plan participants a copay in
28 excess of the U&C.

1 42. Through the HSP program, CVS implemented a scheme to create a new category of
2 cash customers, in order to avoid lowering prices charged to third-party payors and their plan
3 participants. CVS designed the HSP to split CVS's cash business, formerly consisting solely of people
4 who pay the cash price (the usual and customary price), into two segments: customers who pay the
5 retail price, and customers who pay the HSP price.

6 43. The customers who purchase prescriptions outside of the HSP program and pay the
7 retail price make up less than 50 percent of CVS's cash business and less than three percent of CVS's
8 total prescription business. In other words, most of CVS's cash-paying customers pay the HSP price.

9 44. As previously stated, the U&C price is the cash price offered to the general public for
10 specific drugs. CVS offers the HSP price as the cash price to the general public and the HSP price is
11 the most common price paid by CVS's cash-paying customers. The HSP price is CVS's U&C price.

12 45. Nonetheless, CVS continues deceptively to submit the retail price as its purported U&C
13 price to third-party payors. CVS can accomplish this because third-party payors are not privy to what
14 prices CVS charges its cash customers, including its HSP customers, and what percentage of CVS's
15 cash customers pay each price. Therefore, third-party payors and plan participants have no way of
16 determining on their own whether the price CVS submits as its U&C is, in fact, the most common
17 price offered to cash paying members of the general public.

18 46. In essence, the HSP program serves as a camouflage or ruse to avoid reporting the HSP
19 prices to third-party payors as CVS's U&C price.

20 47. Instead of reporting the more common HSP price as the U&C price, CVS reports a
21 significantly inflated price.

22 48. CVS falsely reports, and continues to report, to third-party payors U&C prices for HSP
23 Generics that are substantially higher than the HSP price it offers to the general public.

24 49. The inflated U&C reported by CVS to third-party payors does not take into account the
25 specifics of any particular third-party plan. In fact, for a given drug, strength, and quantity, CVS may
26 report the same U&C to all third-party payors despite any variations in their respective plans.

27 50. Beginning in November 2008 and continuing through the present, CVS has reported to
28 third-party payors artificially inflated U&C prices for the same prescription drugs that CVS offers for

1 lower prices under the HSP program. CVS has thereby caused (and continues to cause) plan
2 participants (including Plaintiffs and other class members) to pay inflated copays to CVS, because the
3 copays are calculated based on, and are not supposed to exceed, the U&C prices.

4 51. CVS directly competes for customers with other national retail pharmacies, such as
5 Wal-Mart, Target, Costco, and ShopRite. In contrast to other national retail pharmacies who report the
6 discounted price as the U&C price, CVS unlawfully reports a marked-up and baseless U&C price that
7 deceives and gouges plan participants who are forced to pay inflated copayments.

8 52. As part of its scheme, CVS has reported U&C prices for generic prescription drugs that
9 are up to eleven (11) times the U&C prices reported by some of its most significant competitors and its
10 own HSP prices. The chart below shows U&C prices submitted to Pennsylvania's Medicaid program
11 for the purposes of claims adjudication. The U&Cs submitted by CVS are unequivocally inflated.

Drug - 90- Day Supply	Shoprite Reported U&C	WalMart Reported U&C	Target Reported U&C	Costco Reported U&C	CVS Reported U&C	CVS HSP Price
Carvedilol 12.5 mg tab	\$9.99	\$10.00	\$10.00	\$9.99	\$120.99	\$11.99
Lisinopril 20 mg tab	\$9.99	\$10.00	\$10.00	n/a	\$42.19	\$11.99
Lisinopril- HCL 20- 12.5 mg tab	\$9.99	\$24.00	\$24.00	n/a	\$58.59	\$11.99
Metformin HCL 1000 mg tab	\$9.99	\$24.00	\$24.00	\$9.99	\$86.59	\$11.99
Metoprolol Tartrate 50 mg tab	\$9.99	\$10.00	\$10.00	\$9.99	\$48.99	\$11.99
Warfarin Sodium 5 mg tab	\$9.99	\$10.00	\$24.00	\$28.00	\$48.39	\$11.99
Meloxicam 15 mg tab	\$9.99	\$10.00	n/a	\$9.23	\$79.59	\$11.99
Alendronate Sodium 70 mg tab	\$29.99	\$24.00	n/a	\$17.61	\$134.99	\$11.99

27
28 53. For years, this pricing scheme has been a financial boon for CVS. Since 2008, CVS

1 has collected more than \$46 billion in copays from plan participants including Plaintiffs and other
2 class members. On information and belief, CVS's wrongful overcharges to Plaintiffs and the other
3 members of the Classes comprise a meaningful portion of CVS's generic prescription drug copay
4 revenue.

5 54. By reporting false U&C prices to third-party payors, CVS has caused Plaintiffs and
6 members of the Classes to pay, and continue to pay, to CVS, artificially high copayments for generic
7 prescription drugs. On information and belief, there have been millions of instances where CVS
8 intentionally submitted fraudulently-inflated U&C pricing information to third-party payors, relating
9 to Plaintiffs' and members of the Classes' purchases of the relevant generic prescription drugs from
10 CVS pharmacies during the class period, including the specific transactions by Plaintiffs described
11 herein.

12 55. On or about February 5, 2009, March 16, 2009, and April 17, 2009, Plaintiff
13 Christopher Corcoran filled a prescription for a 30-day supply of a prescription drug on the CVS HSP
14 generic medication list (attached hereto as Exhibit A) at the CVS pharmacy located at 738 Bancroft
15 Road, Walnut Creek, California. Mr. Corcoran purchased this prescription using insurance provided
16 through a third-party payor. For each of these sales, CVS submitted an inflated U&C to the third-party
17 payor and proceeded to charge Mr. Corcoran a copay of \$28.10 for the 30-day supply. CVS is not
18 permitted to charge Mr. Corcoran a copay that exceeds the U&C price. At the time of the purchase,
19 CVS's true U&C price for this drug and this strength was \$3.33 for a 30-day supply and \$9.99 for a
20 90-day supply.

21 56. On or about February 5, 2009, March 16, 2009, and April 17, 2009, Plaintiff
22 Christopher Corcoran filled a prescription for a 30-day supply of a prescription drug on the CVS HSP
23 generic medication list (attached hereto as Exhibit A) at the CVS pharmacy located at 738 Bancroft
24 Road, Walnut Creek, California. Mr. Corcoran purchased this prescription using insurance provided
25 through a third-party payor. For each of these sales, CVS submitted an inflated U&C to the third-party
26 payor and proceeded to charge Mr. Corcoran a copay of \$10.42 for the 30-day supply. CVS is not
27 permitted to charge Mr. Corcoran a copay that exceeds the U&C price. At the time of the purchase,
28 CVS's true U&C price for this drug and this strength was \$3.33 for a 30-day supply and \$9.99 for a

1 90-day supply.

2 57. On or about November 8, 2010, Plaintiff Christopher Corcoran filled a prescription for
3 a 30-day supply of a prescription drug on the CVS HSP generic medication list (attached hereto as
4 Exhibit A) at the CVS pharmacy located at 738 Bancroft Road, Walnut Creek, California. Mr.
5 Corcoran purchased this prescription using insurance provided through a third-party payor. CVS
6 submitted an inflated U&C to the third-party payor and proceeded to charge Mr. Corcoran a copay of
7 \$10.27 for the 30-day supply. At the time of the purchase, CVS's true U&C price for this drug and
8 this strength was \$3.33 for a 30-day supply and \$9.99 for a 90-day supply.

9 58. On or about February 5, 2011 and March 6, 2011, Plaintiff Christopher Corcoran filled
10 a prescription for a 30-day supply of a prescription drug on the CVS HSP generic medication list
11 (attached hereto as Exhibit A) at the CVS pharmacy located at 738 Bancroft Road, Walnut Creek,
12 California. Mr. Corcoran purchased this prescription using insurance provided through a third-party
13 payor. For each of these sales CVS submitted an inflated U&C to the third-party payor and proceeded
14 to charge Mr. Corcoran a copay of \$10.27 for the 30-day supply. CVS is not permitted to charge Mr.
15 Corcoran a copay that exceeds the U&C price. At the time of the purchase, CVS's true U&C price for
16 this drug and this strength was \$3.99 for a 30-day supply and \$11.99 for a 90-day supply.

17 59. On or about November 4, 2011, December 9, 2011, and January 6, 2012, Plaintiff
18 Christopher Corcoran filled a prescription for a 30-day supply of a prescription drug on the CVS HSP
19 generic medication list (attached hereto as Exhibit A) at the CVS pharmacy located at 738 Bancroft
20 Road, Walnut Creek, California. Mr. Corcoran purchased this prescription using insurance provided
21 through a third-party payor. For each of these sales CVS submitted an inflated U&C to the third-party
22 payor and proceeded to charge Mr. Corcoran a copay of \$8.45 for the 30-day supply. On or about
23 February 10, 2012, March 10, 2012, April 9, 2012, May 10, 2012, June 2, 2012, and June 28, 2012,
24 Mr. Corcoran again filled prescriptions for a 30-day supply of the same drug at the same strength at
25 the same pharmacy. For each of these sales, CVS also submitted an inflated U&C to the third-party
26 payor and proceeded to charge Mr. Corcoran a copay of \$8.09 for the 30-day supply at the same
27 pharmacy using the same insurance. CVS is not permitted to charge Mr. Corcoran a copay that
28 exceeds the U&C price. At the time of the purchase, CVS's true U&C price for this drug and this

1 strength was \$3.99 for a 30-day supply and \$11.99 for a 90-day supply.

2 60. On or about May 25, 2012 and June 20, 2012, Plaintiff Christopher Corcoran filled a
3 prescription for a 60-day supply of a prescription drug on the CVS HSP generic medication list
4 (attached hereto as Exhibit A) at the CVS pharmacy located at 738 Bancroft Road, Walnut Creek,
5 California. Mr. Corcoran purchased this prescription using insurance provided through a third-party
6 payor. For each of these sales, CVS submitted an inflated U&C to the third-party payor and proceeded
7 to charge Mr. Corcoran a copay of \$8.14 for the 60-day supply. CVS is not permitted to charge Mr.
8 Corcoran a copay that exceeds the U&C price. At the time of the purchase, CVS's true U&C price for
9 this drug and this strength was \$7.98 for a 60-day supply and \$11.99 for a 90-day supply.

10 61. On or about August 9, 2012, September 4, 2012, October 26, 2012, November 26,
11 2012, December 27, 2012, January 22, 2013, February 19, 2013, March 28, 2013, April 23, 2013, and
12 May 29, 2013, Plaintiff Christopher Corcoran filled a prescription for a prescription drug on the CVS
13 HSP generic medication list (attached hereto as Exhibit A) at the CVS pharmacy located at 738
14 Bancroft Road, Walnut Creek, California. Mr. Corcoran purchased this prescription using insurance
15 provided through a third-party payor. For each of these sales, CVS submitted an inflated U&C to the
16 third-party payor and proceeded to charge Mr. Corcoran a copay of \$10 for the 60-day supply. On or
17 about January 8, 2015 and February 11, 2015, Mr. Corcoran again filled a prescription for a 60-day
18 supply of the same drug at the same strength, at the same pharmacy. For each of these sales, CVS also
19 submitted an inflated U&C to the third-party payor and proceeded to charge Mr. Corcoran a copay of
20 \$8.99 for the 60-day supply at the same pharmacy using the same insurance. On or about April 2,
21 2015, CVS charged Mr. Corcoran a copay of \$9.15. CVS is not permitted to charge Mr. Corcoran a
22 copay that exceeds the U&C price. At the time of the purchase, CVS's true U&C price for this drug
23 and this strength was \$7.98 for a 60-day supply and \$11.99 for a 90-day supply.

24 62. On or about December 16, 2014, Plaintiff Christopher Corcoran filled a prescription for
25 a 30-day supply of a prescription drug on the CVS HSP generic medication list (attached hereto as
26 Exhibit A) at the CVS pharmacy located at 738 Bancroft Road, Walnut Creek, California. Mr.
27 Corcoran purchased this prescription using insurance provided through a third-party payor. CVS
28 submitted an inflated U&C to the third-party payor and proceeded to charge Mr. Corcoran a copay of

1 \$5.25 for the 30-day supply. On or about January 13, 2015 and February 10, 2015, Mr. Corcoran paid
2 a copay of \$5 for the 30-day supply of the same drug at the same strength, at the same pharmacy using
3 the same insurance. CVS is not permitted to charge Mr. Corcoran a copay that exceeds the U&C
4 price. At the time of the purchase, CVS's true U&C price for this drug and this strength was \$3.99 for
5 a 30-day supply and \$11.99 for a 90-day supply.

6 63. On or about July 29, 2012, September 1, 2012, September 29, 2012, October 31, 2012,
7 December 6, 2012, December 29, 2012, January 21, 2013, February 19, 2013, April 5, 2013, May 3,
8 2013, and May 29, 2013, Plaintiff Christopher Corcoran filled a prescription for a 30-day supply of a
9 prescription drug on the CVS HSP generic medication list (attached hereto as Exhibit A) at the CVS
10 pharmacy located at 738 Bancroft Road, Walnut Creek, California. Mr. Corcoran purchased this
11 prescription using insurance provided through a third-party payor. CVS submitted an inflated U&C to
12 the third-party payor and proceeded to charge Mr. Corcoran a copay of \$10 for the 30-day supply. On
13 or about June 27, 2013, July 28, 2013, August 27, 2013, October 1, 2013, November 3, 2013, and
14 December 8, 2013, CVS submitted an inflated U&C to the third-party payor and proceeded to charge
15 Mr. Corcoran a copay of \$5.65 for the 30-day supply at the same pharmacy using the same insurance.
16 On or about January 9, 2014, March 3, 2014, March 31, 2014, May 6, 2014, July 10, 2014, August 6,
17 2014, September 10, 2014, October 7, 2014, November 7, 2014, and April 9, 2015, CVS submitted an
18 inflated U&C to the third-party payor and proceeded to charge Mr. Corcoran a copay of \$5.40 for the
19 30-day supply, and on or about February 11, 2015, March 14, 2015, and May 9, 2015, CVS submitted
20 an inflated U&C to the third-party payor and proceeded to charge Mr. Corcoran a copay of \$5.25 for
21 the 30-day supply. CVS is not permitted to charge Mr. Corcoran a copay that exceeds the U&C price.
22 At the time of the purchase, CVS's true U&C price for this drug and this strength was \$3.99 for a 30-
23 day supply and \$11.99 for a 90-day supply.

24 64. CVS overcharged Mr. Corcoran at least \$275.93 between February 5, 2009 and May 9,
25 2015. Mr. Corcoran anticipates filling future prescriptions for these generic drugs at a CVS pharmacy,
26 and thus faces the prospect of paying additional inflated copays in the future if CVS continues its
27 wrongful conduct.

28 65. On or about February 5, 2009, Plaintiff Robert Garber filled a prescription for a 30-day

1 supply of a prescription drug on the CVS HSP generic medication list (attached hereto as Exhibit A) at
2 the CVS pharmacy located at 95 Washington Street, Canton, Massachusetts. Dr. Garber purchased
3 this prescription using insurance provided through a third-party payor. CVS submitted an inflated
4 U&C to the third-party payor and proceeded to charge Dr. Garber a copay of \$8.18 for the 30-day
5 supply. On or about March 6, 2009 and March 28, 2009, CVS submitted an inflated U&C to the third-
6 party payor and proceeded to charge Dr. Garber a copay of \$10 for the 30-day supply at the same
7 pharmacy using the same insurance. On or about May 1, 2009 and July 23, 2009, CVS submitted an
8 inflated U&C to the third-party payor and proceeded to charge Dr. Garber a copay of \$9.16 for the 30-
9 day supply, and on or about May 31, 2009, August 26, 2009, September 28, 2009, October 27, 2009,
10 November 25, 2009, and December 26, 2009, CVS submitted an inflated U&C to the third-party payor
11 and proceeded to charge Dr. Garber a copay of \$10.55. On or about June 28, 2009 January 28, 2010,
12 February 22, 2010, March 25, 2010, May 2, 2010, and May 31, 2010, CVS charged Dr. Garber a
13 copay of \$8.16 for the 30-day supply, and on or about June 29, 2010, CVS submitted an inflated U&C
14 to the third-party payor and proceeded to charge Dr. Garber a copay of \$8.15. Finally, on or about
15 July 22, 2010, August 31, 2010, September 22, 2010, October 23, 2010, November 25, 2010 and
16 December 21, 2010, CVS submitted an inflated U&C to the third-party payor and proceeded to charge
17 Dr. Garber a copay of \$7.50 for the 30-day supply. CVS is not permitted to charge Dr. Garber a copay
18 that exceeds the U&C price. At the time of the purchase, CVS's true U&C price for this drug and this
19 strength was \$3.33 for a 30-day supply and \$9.99 for a 90-day supply.

20 66. On or about February 9, 2009 and March 28, 2009, Plaintiff Robert Garber filled a
21 prescription for a 30-day supply of a prescription drug on the CVS HSP generic medication list
22 (attached hereto as Exhibit A) at the CVS pharmacy located at 95 Washington Street, Canton,
23 Massachusetts. Dr. Garber purchased this prescription using insurance provided through a third-party
24 payor. CVS submitted an inflated U&C to the third-party payor and proceeded to charge Dr. Garber a
25 copay of \$10 for the 30-day supply. CVS is not permitted to charge Dr. Garber a copay that exceeds
26 the U&C price. At the time of the purchase, CVS's true U&C price for this drug and this strength was
27 \$3.33 for a 30-day supply and \$9.99 for a 90-day supply.

28 67. On or about November 9, 2010, Plaintiff Robert Garber filled a prescription for a 30-

1 day supply of a prescription drug on the CVS HSP generic medication list (attached hereto as Exhibit
2 A) at the CVS pharmacy located at 95 Washington Street, Canton, Massachusetts. Dr. Garber
3 purchased this prescription using his insurance provided through a third-party payor. CVS submitted
4 an inflated U&C to the third-party payor and proceeded to charge Dr. Garber a copay of \$16.49 for the
5 30-day supply. CVS is not permitted to charge Dr. Garber a copay that exceeds the U&C price. At
6 the time of the purchase, CVS's true U&C price for this drug and this strength was \$3.33 for a 30-day
7 supply and \$9.99 for a 90-day supply.

8 68. On or about January 20, 2011, Plaintiff Robert Garber filled a prescription for a 30-day
9 supply of a prescription drug on the CVS HSP generic medication list (attached hereto as Exhibit A) at
10 the CVS pharmacy located at 95 Washington Street, Canton, Massachusetts. Dr. Garber purchased
11 this prescription using insurance provided through a third-party payor. CVS submitted an inflated
12 U&C to the third-party payor and proceeded to charge Dr. Garber a copay of \$7.51 for the 30-day
13 supply. On or about February 20, 2011, March 22, 2011, and April 26, 2011, CVS submitted an
14 inflated U&C to the third-party payor and proceeded to charge Dr. Garber a copay of \$7.36 for the 30-
15 day supply at the same pharmacy using the same insurance. On or about May 28, 2011 and June 26,
16 2011, CVS submitted an inflated U&C to the third-party payor and proceeded to charge Dr. Garber a
17 copay of \$7.30 for the 30-day supply. CVS is not permitted to charge Dr. Garber a copay that exceeds
18 the U&C price. At the time of the purchase, CVS's true U&C price for this drug and this strength was
19 \$3.99 for a 30-day supply and \$11.99 for a 90-day supply.

20 69. On or about March 23, 2012, May 21, 2012, July 22, 2012, and September 19, 2012,
21 Plaintiff Robert Garber filled a prescription for a 60-day supply of a prescription drug on the CVS
22 HSP generic medication list (attached hereto as Exhibit A) at the CVS pharmacy located at 95
23 Washington Street, Canton, Massachusetts. Dr. Garber purchased this prescription using insurance
24 provided through a third-party payor. CVS submitted an inflated U&C to the third-party payor and
25 proceeded to charge Dr. Garber a copay of \$11.27 for the 60-day supply. CVS is not permitted to
26 charge Dr. Garber a copay that exceeds the U&C price. At the time of the purchase, CVS's true U&C
27 price for this drug and this strength was \$3.99 for a 30-day supply, \$6.66 for a 60-day supply, and
28 \$11.99 for a 90-day supply.

1 70. On or about May 15, 2013, June 14, 2013, July 15, 2013, August 12, 2013, September
2 9, 2013, October 16, 2013, November 15, 2013, December 23, 2013, January 10, 2014, February 10,
3 2014, March 6, 2014, April 9, 2014, May 8, 2014, June 4, 2014, July 3, 2014, August 3, 2014, August
4 30, 2014, September 28, 2014, October 25, 2014, November 24, 2014, December 24, 2014, January
5 23, 2015, February 20, 2015, and March 24, 2015, Plaintiff Robert Garber filled a prescription for a
6 30-day supply of a prescription drug on the CVS HSP generic medication list (attached hereto as
7 Exhibit A) at the CVS pharmacy located at 95 Washington Street, Canton, Massachusetts. Dr. Garber
8 purchased this prescription using insurance provided through a third-party payor. CVS submitted an
9 inflated U&C to the third-party payor and proceeded to charge Dr. Garber a copay of \$5 for the 30-day
10 supply. CVS is not permitted to charge Dr. Garber a copay that exceeds the U&C price. At the time
11 of the purchase, CVS's true U&C price for this drug and this strength was \$3.99 for a 30-day supply
12 and \$11.99 for a 90-day supply.

13 71. On or about June 10, 2013, Plaintiff Robert Garber filled a prescription for a 30-day
14 supply of a prescription drug on the CVS HSP generic medication list (attached hereto as Exhibit A) at
15 the CVS pharmacy located at 95 Washington Street, Canton, Massachusetts. Dr. Garber purchased this
16 prescription using insurance provided through a third-party payor. Dr. Garber's insurance plan
17 mandates that his copay cannot exceed the U&C. CVS submitted an inflated U&C to the third-party
18 payor and proceeded to charge Dr. Garber a copay of \$5 for the 30-day supply. CVS is not permitted
19 to charge Dr. Garber a copay that exceeds the U&C price. At the time of the purchase, CVS's true
20 U&C price for this drug and this strength was \$3.99 for a 30-day supply and \$11.99 for a 90-day
21 supply.

22 72. On or about November 20, 2013, December 13, 2013, January 3, 2014, January 31,
23 2014, and March 3, 2014, Plaintiff Robert Garber filled a prescription for a 30-day supply of a
24 prescription drug on the CVS HSP generic medication list (attached hereto as Exhibit A) at the CVS
25 pharmacy located at 95 Washington Street, Canton, Massachusetts. Dr. Garber purchased this
26 prescription using insurance provided through a third-party payor. CVS submitted an inflated U&C to
27 the third-party payor and proceeded to charge Dr. Garber a copay of \$13.39 for the 30-day supply. On
28 or about April 10, 2014, May 8, 2014, June 3, 2014, July 2, 2014, August 2, 2014, August 29, 2014,

1 September 27, 2014, October 24, 2014, and December 28, 2014, CVS submitted an inflated U&C to
2 the third-party payor and proceeded to charge Dr. Garber a copay of \$15.99 for the 30-day supply at
3 the same pharmacy using the same insurance. On or about January 23, 2015, February 19, 2015, and
4 March 23, 2015, CVS submitted an inflated U&C to the third-party payor and proceeded to charge Dr.
5 Garber a copay of \$5 for the 30-day supply. CVS is not permitted to charge Dr. Garber a copay that
6 exceeds the U&C price. At the time of the purchase, CVS's true U&C price for this drug and this
7 strength was \$3.99 for a 30-day supply and \$11.99 for a 90-day supply.

8 73. CVS overcharged Dr. Garber at least \$358.45 between February 5, 2009 and March 24,
9 2015. Dr. Garber anticipates filling future prescriptions for these generic drugs at a CVS pharmacy,
10 and thus faces the prospect of paying additional inflated copays in the future if CVS's wrongful
11 conduct is not stopped.

12 74. On or about November 10, 2008, January 11, 2009, February 8, 2009, May 7, 2009,
13 June 25, 2009, July 18, 2009, September 8, 2009, October 7, 2009, November 3, 2009, December 3,
14 2009, January 1, 2010, January 31, 2010, March 4, 2010, April 1, 2010, and August 18, 2010, Plaintiff
15 Toni Odorisio filled a prescription for a 30-day supply of a prescription drug on the CVS HSP generic
16 medication list (attached hereto as Exhibit A) at the CVS pharmacy located at 19 S. Main Street,
17 Jamestown, New York. Ms. Odorisio purchased this prescription using insurance provided through a
18 third-party payor. CVS submitted an inflated U&C to the third-party payor and proceeded to charge
19 Ms. Odorisio a copay of \$5 for the 30-day supply. CVS is not permitted to charge Ms. Odorisio a
20 copay that exceeds the U&C price. At the time of the purchase, CVS's true U&C price for this drug
21 and this strength was \$3.33 for a 30-day supply and \$9.99 for a 90-day supply.

22 75. On or about March 13, 2009, Plaintiff Toni Odorisio filled a prescription for a 30-day
23 supply of a prescription drug on the CVS HSP generic medication list (attached hereto as Exhibit A) at
24 the CVS pharmacy located at 19 S. Main Street, Jamestown, New York. Ms. Odorisio purchased this
25 prescription using insurance provided through a third-party payor. CVS submitted an inflated U&C to
26 the third-party payor and proceeded to charge Ms. Odorisio a copay of \$5 for the 30-day supply. CVS
27 is not permitted to charge Ms. Odorisio a copay that exceeds the U&C price. At the time of the
28 purchase, CVS's true U&C price for this drug and this strength was \$3.33 for a 30-day supply and

1 \$9.99 for a 90-day supply.

2 76. On or about March 7, 2011, Plaintiff Toni Odorisio filled a prescription for a 30-day
3 supply of a prescription drug on the CVS HSP generic medication list (attached hereto as Exhibit A) at
4 the CVS pharmacy located at 19 S. Main Street, Jamestown, New York. Ms. Odorisio purchased this
5 prescription using insurance provided through a third-party payor. CVS submitted an inflated U&C to
6 the third-party payor and proceeded to charge Ms. Odorisio a copay of \$5 for the 30-day supply. CVS
7 is not permitted to charge Ms. Odorisio a copay that exceeds the U&C price. At the time of the
8 purchase, CVS's true U&C price for this drug and this strength was \$3.99 for a 30-day supply and
9 \$11.99 for a 90-day supply.

10 77. CVS overcharged Ms. Odorisio at least \$27.03 between November 10, 2008 and March
11 7, 2011. Ms. Odorisio anticipates filling future prescriptions for these generic drugs at a CVS
12 pharmacy, and thus faces the prospect of paying additional inflated copays in the future if CVS
13 continues its wrongful conduct.

14 78. On or about March 6, 2009, Plaintiff Robert Guarnieri filled a prescription for a 30-day
15 supply of a prescription drug on the CVS HSP generic medication list (attached hereto as Exhibit A) at
16 the CVS pharmacy located at 19 S. Main Street, Jamestown, New York. Mr. Guarnieri purchased this
17 prescription using insurance provided through a third-party payor. CVS submitted an inflated U&C to
18 the third-party payor and proceeded to charge Mr. Guarnieri a copay of \$5 for the 30-day supply.
19 CVS is not permitted to charge Mr. Guarnieri a copay that exceeds the U&C price. At the time of the
20 purchase, CVS's true U&C price for this drug and this strength was \$3.33 for a 30-day supply and
21 \$9.99 for a 90-day supply.

22 79. On or about April 2, 2009, June 24, 2009, September 20, 2009, December 21, 2009,
23 June 14, 2010, and November 3, 2010, Plaintiff Robert Guarnieri filled a prescription for a 90-day
24 supply of a prescription drug on the CVS HSP generic medication list (attached hereto as Exhibit A) at
25 the CVS pharmacy located at 19 S. Main Street, Jamestown, New York. Mr. Guarnieri purchased this
26 prescription using insurance provided through a third-party payor. CVS submitted an inflated U&C to
27 the third-party payor and proceeded to charge Mr. Guarnieri a copay of \$12.50 for the 90-day supply.
28 CVS is not permitted to charge Mr. Guarnieri a copay that exceeds the U&C price. At the time of the

1 purchase, CVS's true U&C price for this drug and this strength was \$9.99 for a 90-day supply.

2 80. On or about September 14, 2009, Plaintiff Robert Guarnieri filled a prescription for a
3 30-day supply of a prescription drug on the CVS HSP generic medication list (attached hereto as
4 Exhibit A) at the CVS pharmacy located at 19 S. Main Street, Jamestown, New York. Mr. Guarnieri
5 purchased this prescription using insurance provided through a third-party payor. CVS submitted an
6 inflated U&C to the third-party payor and proceeded to charge Mr. Guarnieri a copay of \$5 for the 30-
7 day supply. CVS is not permitted to charge Mr. Guarnieri a copay that exceeds the U&C price. At the
8 time of the purchase, CVS's true U&C price for this drug and this strength was \$3.33 for a 30-day
9 supply and \$9.99 for a 90-day supply.

10 81. On or about March 18, 2010, Plaintiff Robert Guarnieri filled a prescription for a 90-
11 day supply of a prescription drug on the CVS HSP generic medication list (attached hereto as Exhibit
12 A) at the CVS pharmacy located at 19 S. Main Street, Jamestown, New York. Mr. Guarnieri
13 purchased this prescription using insurance provided through a third-party payor. CVS submitted an
14 inflated U&C to the third-party payor and proceeded to charge Mr. Guarnieri a copay of \$12.50 for the
15 90-day supply. CVS is not permitted to charge Mr. Guarnieri a copay that exceeds the U&C. At the
16 time of the purchase, CVS's true U&C price for this drug and this strength was \$9.99 for a 90-day
17 supply.

18 82. On or about August 24, 2011, Plaintiff Robert Guarnieri filled a prescription for a 90-
19 day supply of a prescription drug on the CVS HSP generic medication list (attached hereto as Exhibit
20 A) at the CVS pharmacy located at 19 S. Main Street, Jamestown, New York. Mr. Guarnieri
21 purchased this prescription using insurance provided through a third-party payor. CVS submitted an
22 inflated U&C to the third-party payor and proceeded to charge Mr. Guarnieri a copay of \$24.12 for the
23 90-day supply. On or about November 9, 2011, CVS submitted an inflated U&C to the third-party
24 payor and proceeded to charge Mr. Guarnieri a copay of \$23.73 for the 90-day supply at the same
25 pharmacy using the same insurance. CVS is not permitted to charge Mr. Guarnieri a copay that
26 exceeds the U&C. At the time of the purchase, CVS's true U&C price for this drug and this strength
27 was \$11.99 for a 90-day supply.

28 83. CVS overcharged Mr. Guarnieri at least \$44.78 between March 6, 2009 and November

1 9, 2011. Mr. Guarnieri anticipates filling future prescriptions for these generic drugs at a CVS
2 pharmacy, and thus faces the prospect of paying additional inflated copays in the future if CVS
3 continues its wrongful conduct.

4 84. On or about November 14, 2008, December 22, 2008, January 29, 2009, March 5,
5 2009, April 16, 2009, May 19, 2009, and June 21, 2009, Plaintiff Onnolee Samuelson filled a
6 prescription for a 30-day supply of a prescription drug on the CVS HSP generic medication list
7 (attached hereto as Exhibit A) at the CVS pharmacy located at 19 S. Main Street, Jamestown, New
8 York. Ms. Samuelson purchased this prescription using insurance provided through a third-party
9 payor. CVS submitted an inflated U&C to the third-party payor and proceeded to charge Ms.
10 Samuelson a copay of \$10 for the 30-day supply. CVS is not permitted to charge Ms. Samuelson a
11 copay that exceeds the U&C. At the time of the purchase, CVS's true U&C price for this drug and
12 this strength was \$3.33 for a 30-day supply and \$9.99 for a 90-day supply.

13 85. On or about December 7, 2008, January 16, 2009, February 20, 2009, April 3, 2009,
14 May 19, 2009, and June 21, 2009, Plaintiff Onnolee Samuelson filled a prescription for a 30-day
15 supply of a prescription drug on the CVS HSP generic medication list (attached hereto as Exhibit A) at
16 the CVS pharmacy located at 19 S. Main Street, Jamestown, New York. Ms. Samuelson purchased
17 this prescription using insurance provided through a third-party payor. CVS submitted an inflated
18 U&C to the third-party payor and proceeded to charge Ms. Samuelson a copay of \$10 for the 30-day
19 supply. CVS is not permitted to charge Ms. Samuelson a copay that exceeds the U&C. At the time of
20 the purchase, CVS's true U&C price for this drug and this strength was \$3.33 for a 30-day supply and
21 \$9.99 for a 90-day supply.

22 86. On or about July 28, 2009, Plaintiff Onnolee Samuelson filled a prescription for a 30-
23 day supply of a prescription drug on the CVS HSP generic medication list (attached hereto as Exhibit
24 A) at the CVS pharmacy located at 19 S. Main Street, Jamestown, New York. Ms. Samuelson
25 purchased this prescription using insurance provided through a third-party payor. CVS submitted an
26 inflated U&C to the third-party payor and proceeded to charge Ms. Samuelson a copay of \$5 for the
27 30-day supply. CVS is not permitted to charge Ms. Samuelson a copay that exceeds the U&C. At the
28 time of the purchase, CVS's true U&C price for this drug and this strength was \$3.33 for a 30-day

1 supply and \$9.99 for a 90-day supply.

2 87. On or about July 28, 2009 and September 4, 2009, Plaintiff Onnolee Samuelson filled a
3 prescription for a 30-day supply of a prescription drug on the CVS HSP generic medication list
4 (attached hereto as Exhibit A) at the CVS pharmacy located at 19 S. Main Street, Jamestown, New
5 York. Ms. Samuelson purchased this prescription using insurance provided through a third-party
6 payor. CVS submitted an inflated U&C to the third-party payor and proceeded to charge Ms.
7 Samuelson a copay of \$5 for the 30-day supply. CVS is not permitted to charge Ms. Samuelson a
8 copay that exceeds the U&C. At the time of the purchase, CVS's true U&C price for this drug and
9 this strength was \$3.33 for a 30-day supply and \$9.99 for a 90-day supply.

10 88. On or about October 11, 2009, Plaintiff Onnolee Samuelson filled a prescription for a
11 30-day supply of a prescription drug on the CVS HSP generic medication list (attached hereto as
12 Exhibit A) at the CVS pharmacy located at 19 S. Main Street, Jamestown, New York. Ms. Samuelson
13 purchased this prescription using insurance provided through a third-party payor. CVS submitted an
14 inflated U&C to the third-party payor and proceeded to charge Ms. Samuelson a copay of \$5 for the
15 30-day supply. CVS is not permitted to charge Ms. Samuelson a copay that exceeds the U&C. At the
16 time of the purchase, CVS's true U&C price for this drug and this strength was \$3.33 for a 30-day
17 supply and \$9.99 for a 90-day supply.

18 89. On or about October 12, 2009, Plaintiff Onnolee Samuelson filled a prescription for a
19 30-day supply of a prescription drug on the CVS HSP generic medication list (attached hereto as
20 Exhibit A) at the CVS pharmacy located at 19 S. Main Street, Jamestown, New York. Ms. Samuelson
21 purchased this prescription using insurance provided through a third-party payor. CVS submitted an
22 inflated U&C to the third-party payor and proceeded to charge Ms. Samuelson a copay of \$5 for the
23 30-day supply. CVS is not permitted to charge Ms. Samuelson a copay that exceeds the U&C. At the
24 time of the purchase, CVS's true U&C price for this drug and this strength was \$3.33 for a 30-day
25 supply and \$9.99 for a 90-day supply.

26 90. On or about November 18, 2009 and December 18, 2009, Plaintiff Onnolee Samuelson
27 filled a prescription for a 30-day supply of a prescription drug on the CVS HSP generic medication list
28 (attached hereto as Exhibit A) at the CVS pharmacy located at 19 S. Main Street, Jamestown, New

1 York. Ms. Samuelson purchased this prescription using insurance provided through a third-party
2 payor. CVS submitted an inflated U&C to the third-party payor and proceeded to charge Ms.
3 Samuelson a copay of \$3.34 for the 30-day supply. On or about August 24, 2010, September 26, 2010,
4 October 30, 2010, and December 1, 2010, CVS submitted an inflated U&C to the third-party payor
5 and proceeded to charge Ms. Samuelson a copay of \$9.82 for the 30-day supply at the same pharmacy
6 using the same insurance. On or about March 27, 2010, April 25, 2010, June 10, 2010, and July 16,
7 2010, CVS submitted an inflated U&C to the third-party payor and proceeded to charge Ms.
8 Samuelson a copay of \$12.18 for the 30-day supply, and on or about January 9, 2010 and February 22,
9 2010 CVS submitted an inflated U&C to the third-party payor and proceeded to charge Ms.
10 Samuelson a copay of \$13.93. CVS is not permitted to charge Ms. Samuelson a copay that exceeds
11 the U&C. At the time of the purchase, CVS's true U&C price for this drug and this strength was \$3.33
12 for a 30-day supply and \$9.99 for a 90-day supply.

13 91. On or about January 9, 2010 and February 22, 2010, Plaintiff Onnolee Samuelson filled
14 a prescription for a 30-day supply of a prescription drug on the CVS HSP generic medication list
15 (attached hereto as Exhibit A) at the CVS pharmacy located at 19 S. Main Street, Jamestown, New
16 York. Ms. Samuelson purchased this prescription using insurance provided through a third-party
17 payor. CVS submitted an inflated U&C to the third-party payor and proceeded to charge Ms.
18 Samuelson a copay of \$13.93 for the 30-day supply. CVS is not permitted to charge Ms. Samuelson a
19 copay that exceeds the U&C. At the time of the purchase, CVS's true U&C price for this drug and
20 this strength was \$3.33 for a 30-day supply and \$9.99 for a 90-day supply.

21 92. On or about March 2, 2010, Plaintiff Onnolee Samuelson filled a prescription for a 30-
22 day supply of a prescription drug on the CVS HSP generic medication list (attached hereto as Exhibit
23 A) at the CVS pharmacy located at 19 S. Main Street, Jamestown, New York. Ms. Samuelson
24 purchased this prescription using insurance provided through a third-party payor. CVS submitted an
25 inflated U&C to the third-party payor and proceeded to charge Ms. Samuelson a copay of \$6.50 for the
26 30-day supply. CVS is not permitted to charge Ms. Samuelson a copay that exceeds the U&C. At the
27 time of the purchase, CVS's true U&C price for this drug and this strength was \$3.33 for a 30-day
28 supply and \$9.99 for a 90-day supply.

1 93. On or about March 27, 2010, April 25, 2010, June 10, 2010, and July 16, 2010, Plaintiff
2 Onnolee Samuelson filled a prescription for a 30-day supply of a prescription drug on the CVS HSP
3 generic medication list (attached hereto as Exhibit A) at the CVS pharmacy located at 19 S. Main
4 Street, Jamestown, New York. Ms. Samuelson purchased this prescription using insurance provided
5 through a third-party payor. CVS submitted an inflated U&C to the third-party payor and proceeded
6 to charge Ms. Samuelson a copay of \$12.18 for the 30-day supply. CVS is not permitted to charge
7 Ms. Samuelson a copay that exceeds the U&C. At the time of the purchase, CVS's true U&C price for
8 this drug and this strength was \$3.33 for a 30-day supply and \$9.99 for a 90-day supply.

9 94. On or about March 27, 2010, July 16, 2010, and October 14, 2010, Plaintiff Onnolee
10 Samuelson filled a prescription for a 90-day supply of a prescription drug on the CVS HSP generic
11 medication list (attached hereto as Exhibit A) at the CVS pharmacy located at 19 S. Main Street,
12 Jamestown, New York. Ms. Samuelson purchased this prescription using insurance provided through a
13 third-party payor. CVS submitted an inflated U&C to the third-party payor and proceeded to charge
14 Ms. Samuelson a copay of \$14 for the 90-day supply. CVS is not permitted to charge Ms. Samuelson
15 a copay that exceeds the U&C. At the time of the purchase, CVS's true U&C price for this drug and
16 this strength was \$9.99 for a 90-day supply.

17 95. On or about January 11, 2011 and February 16, 2011, Plaintiff Onnolee Samuelson
18 filled a prescription for a 30-day supply of a prescription drug on the CVS HSP generic medication list
19 (attached hereto as Exhibit A) at the CVS pharmacy located at 19 S. Main Street, Jamestown, New
20 York. Ms. Samuelson purchased this prescription using insurance provided through a third-party
21 payor. CVS submitted an inflated U&C to the third-party payor and proceeded to charge Ms.
22 Samuelson a copay of \$9.82 for the 30-day supply. On or about March 21, 2011 and April 23, 2011,
23 CVS submitted an inflated U&C to the third-party payor and proceeded to charge Ms. Samuelson a
24 copay of \$7.49 for the 30-day supply at the same pharmacy using the same insurance. CVS is not
25 permitted to charge Ms. Samuelson a copay that exceeds the U&C. At the time of the purchase,
26 CVS's true U&C price for this drug and this strength was \$3.99 for a 30-day supply and \$11.99 for a
27 90-day supply.

28 96. On or about May 17, 2011, June 28, 2011, August 1, 2011, September 5, 2011, October

1 11, 2011, and November 14, 2011, Plaintiff Onnolee Samuelson filled a prescription for a 30-day
2 supply of a prescription drug on the CVS HSP generic medication list (attached hereto as Exhibit A) at
3 the CVS pharmacy located at 19 S. Main Street, Jamestown, New York. Ms. Samuelson purchased
4 this prescription using insurance provided through a third-party payor. CVS submitted an inflated
5 U&C to the third-party payor and proceeded to charge Ms. Samuelson a copay of \$7.50 for the 30-day
6 supply. CVS is not permitted to charge Ms. Samuelson a copay that exceeds the U&C. At the time of
7 the purchase, CVS's true U&C price for this drug and this strength was \$3.99 for a 30-day supply and
8 \$11.99 for a 90-day supply.

9 97. On or about January 20, 2011, Plaintiff Onnolee Samuelson filled a prescription for a
10 90-day supply of a prescription drug on the CVS HSP generic medication list (attached hereto as
11 Exhibit A) at the CVS pharmacy located at 19 S. Main Street, Jamestown, New York. Ms. Samuelson
12 purchased this prescription using insurance provided through a third-party payor. CVS submitted an
13 inflated U&C to the third-party payor and proceeded to charge Ms. Samuelson a copay of \$14 for the
14 90-day supply. On or about August 8, 2011 and November 14, 2011, CVS submitted an inflated U&C
15 to the third-party payor and proceeded to charge Ms. Samuelson a copay of \$21.90 for the 90-day
16 supply at the same pharmacy using the same insurance. CVS is not permitted to charge Ms.
17 Samuelson a copay that exceeds the U&C. At the time of the purchase, CVS's true U&C price for this
18 drug and this strength was \$11.99 for a 90-day supply.

19 98. CVS overcharged Ms. Samuelson at least \$314.31 between November 14, 2008 and
20 November 14, 2011. Ms. Samuelson anticipates filling future prescriptions for these generic drugs at a
21 CVS pharmacy, and thus faces the prospect of paying additional inflated copays in the future if CVS
22 continues its wrongful conduct.

23 99. On or about January 17, 2011, Plaintiff Ronald Coder filled a prescription for a 30-day
24 supply of a prescription drug on the CVS HSP generic medication list (attached hereto as Exhibit A) at
25 the CVS pharmacy located at 355 Lincoln Avenue, Bellevue, Pennsylvania. Mr. Coder purchased this
26 prescription using insurance provided through a third-party payor. CVS submitted an inflated U&C to
27 the third-party payor and proceeded to charge Mr. Coder a copay of \$5 for the 30-day supply. CVS is
28 not permitted to charge Mr. Coder a copay that exceeds the U&C. At the time of the purchase, CVS's

1 true U&C price for this drug and this strength was \$11.99 for a 90-day supply.

2 100. CVS overcharged Mr. Coder at least \$1.01 on January 17, 2011. Mr. Coder anticipates
3 filling future prescriptions for these generic drugs at a CVS pharmacy, and thus faces the prospect of
4 paying additional inflated copays in the future if CVS continues its wrongful conduct.

5 101. On or about October 2, 2014 and December 30, 2014, Plaintiff Irma Pacheco filled a
6 prescription for a 180-day supply of a prescription drug on the CVS HSP generic medication list
7 (attached hereto as Exhibit A), at the CVS pharmacy located at 1800 Brown Boulevard, Arlington,
8 Texas. Ms. Pacheco purchased this prescription using insurance provided through a third-party payor.
9 CVS submitted an inflated U&C to the third-party payor and proceeded to charge Ms. Pacheco a
10 copay of \$30 for the 180-day supply. CVS is not permitted to charge Ms. Pacheco a copay that
11 exceeds the U&C. At the time of the purchase, CVS's true U&C price for this drug and this strength
12 was \$11.99 for a 90-day supply and \$23.98 for a 180-day supply. CVS overcharged Ms. Pacheco by
13 at least \$12.04.

14 102. CVS overcharged Ms. Pacheco at least \$12.04 between October 2, 2014 and December
15 30, 2014. Ms. Pacheco anticipates filling future prescriptions for these generic drugs at a CVS
16 pharmacy, and thus faces the prospect of paying additional inflated copays in the future if CVS
17 continues its wrongful conduct.

18 103. As a result of its fraudulent scheme, CVS has overcharged and continues to overcharge
19 hundreds of thousands, and likely millions, of plan participants (including Plaintiffs and the Classes)
20 who purchased some of the most commonly prescribed generic drugs from CVS Pharmacies around
21 the country. Class members were overcharged by at least the difference between their copays and the
22 U&C.

23 **VI. CLASS ALLEGATIONS**

24 104. Plaintiffs bring this action pursuant to Federal Rule of Civil Procedure 23(b)(3), on
25 behalf of themselves and the following national class and state subclasses:

26
27 All CVS customers in the United States who, between November 2008 and the
28 present (the "Class Period"), (1) purchased generic prescription drugs that are
listed on the CVS Health Savings Pass prescription drug list attached as Exhibit
A; (2) received prescription drug benefits from a third-party payor (i.e., an

1 insurance company, Medicare, Medicaid, or another payor); (3) paid CVS an out-
2 of-pocket copayment, including flat fee, coinsurance and deductible, when
3 purchasing the generic prescription drug; and (4) whose copay for the prescription
4 was: (a) more than \$9.99 for a 90-day supply or more than any multiple or
5 proportional pro-rated amount such as \$3.33 for a 30-day supply or \$19.98 for a
6 180-day supply from 2008 to 2011, or whose copay for the prescription was more
7 than \$11.99 for a 90-day supply or any multiple or proportional pro-rated amount
8 such as \$3.99 for a 30-day supply or \$23.98 for a 180-day supply from 2012 to
9 the present; or (b) in excess of the scheduled percentage of the drug price, where
10 the drug price is \$9.99 for a 90-day supply or any multiple or proportional pro-
11 rated amount such as \$3.33 for a 30-day supply or \$19.98 for a 180-day supply
12 from 2008 to 2011, or \$11.99 for a 90-day supply or any multiple proportional
13 pro-rated amount such as \$3.99 for a 30-day supply or \$23.98 for a 180-day
14 supply from 2012 to the present.

10 **STATE SUBCLASSES**

11 California Subclass:

12 CVS customers in the State of California who, between November 2008 and the
13 present (the “Class Period”), (1) purchased generic prescription drugs that are listed on
14 the CVS Health Savings Pass prescription drug list attached as Exhibit A; (2) received
15 prescription drug benefits from a third-party payor (i.e., an insurance company,
16 Medicare, Medicaid, or another payor); (3) paid CVS an out-of-pocket copayment,
17 including flat fee, coinsurance and deductible, when purchasing the generic
18 prescription drug; and (4) whose copay for the prescription was: (a) more than \$9.99
19 for a 90-day supply or more than any multiple or proportional pro-rated amount such
20 as \$3.33 for a 30-day supply or \$19.98 for a 180-day supply from 2008 to 2011, or
21 whose copay for the prescription was more than \$11.99 for a 90-day supply or any
22 multiple or proportional pro-rated amount such as \$3.99 for a 30-day supply or \$23.98
23 for a 180-day supply from 2012 to the present; or (b) in excess of the scheduled
24 percentage of the drug price, where the drug price is \$9.99 for a 90-day supply or any
25 multiple or proportional pro-rated amount such as \$3.33 for a 30-day supply or \$19.98
26 for a 180-day supply from 2008 to 2011, or \$11.99 for a 90-day supply or any multiple
27 proportional pro-rated amount such as \$3.99 for a 30-day supply or \$23.98 for a 180-
28 day supply from 2012 to the present.

23 Massachusetts Subclass:

24 CVS customers in the Commonwealth of Massachusetts who, between November
25 2008 and the present (the “Class Period”), (1) purchased generic prescription drugs
26 that are listed on the CVS Health Savings Pass prescription drug list attached as
27 Exhibit A; (2) received prescription drug benefits from a third-party payor (i.e., an
28 insurance company, Medicare, Medicaid, or another payor); (3) paid CVS an out-of-
pocket copayment, including flat fee, coinsurance and deductible, when purchasing the
generic prescription drug; and (4) whose copay for the prescription was: (a) more than
\$9.99 for a 90-day supply or more than any multiple or proportional pro-rated amount

1 such as \$3.33 for a 30-day supply or \$19.98 for a 180-day supply from 2008 to 2011,
2 or whose copay for the prescription was more than \$11.99 for a 90-day supply or any
3 multiple or proportional pro-rated amount such as \$3.99 for a 30-day supply or \$23.98
4 for a 180-day supply from 2012 to the present; or (b) in excess of the scheduled
5 percentage of the drug price, where the drug price is \$9.99 for a 90-day supply or any
6 multiple or proportional pro-rated amount such as \$3.33 for a 30-day supply or \$19.98
7 for a 180-day supply from 2008 to 2011, or \$11.99 for a 90-day supply or any multiple
8 proportional pro-rated amount such as \$3.99 for a 30-day supply or \$23.98 for a 180-
9 day supply from 2012 to the present.

10 New York Subclass:

11 CVS customers in the State of New York who, between November 2008 and the
12 present (the “Class Period”), (1) purchased generic prescription drugs that are listed on
13 the CVS Health Savings Pass prescription drug list attached as Exhibit A; (2) received
14 prescription drug benefits from a third-party payor (i.e., an insurance company,
15 Medicare, Medicaid, or another payor); (3) paid CVS an out-of-pocket copayment,
16 including flat fee, coinsurance and deductible, when purchasing the generic
17 prescription drug; and (4) whose copay for the prescription was: (a) more than \$9.99
18 for a 90-day supply or more than any multiple or proportional pro-rated amount such
19 as \$3.33 for a 30-day supply or \$19.98 for a 180-day supply from 2008 to 2011, or
20 whose copay for the prescription was more than \$11.99 for a 90-day supply or any
21 multiple or proportional pro-rated amount such as \$3.99 for a 30-day supply or \$23.98
22 for a 180-day supply from 2012 to the present; or (b) in excess of the scheduled
23 percentage of the drug price, where the drug price is \$9.99 for a 90-day supply or any
24 multiple or proportional pro-rated amount such as \$3.33 for a 30-day supply or \$19.98
25 for a 180-day supply from 2008 to 2011, or \$11.99 for a 90-day supply or any multiple
26 proportional pro-rated amount such as \$3.99 for a 30-day supply or \$23.98 for a 180-
27 day supply from 2012 to the present.

28 Michigan Subclass:

CVS customers in the State of Michigan who, between November 2008 and the
present (the “Class Period”), (1) purchased generic prescription drugs that are listed on
the CVS Health Savings Pass prescription drug list attached as Exhibit A; (2) received
prescription drug benefits from a third-party payor (i.e., an insurance company,
Medicare, Medicaid, or another payor); (3) paid CVS an out-of-pocket copayment,
including flat fee, coinsurance and deductible, when purchasing the generic
prescription drug; and (4) whose copay for the prescription was: (a) more than \$9.99
for a 90-day supply or more than any multiple or proportional pro-rated amount such
as \$3.33 for a 30-day supply or \$19.98 for a 180-day supply from 2008 to 2011, or
whose copay for the prescription was more than \$11.99 for a 90-day supply or any
multiple or proportional pro-rated amount such as \$3.99 for a 30-day supply or \$23.98
for a 180-day supply from 2012 to the present; or (b) in excess of the scheduled
percentage of the drug price, where the drug price is \$9.99 for a 90-day supply or any
multiple or proportional pro-rated amount such as \$3.33 for a 30-day supply or \$19.98
for a 180-day supply from 2008 to 2011, or \$11.99 for a 90-day supply or any multiple
proportional pro-rated amount such as \$3.99 for a 30-day supply or \$23.98 for a 180-

1 day supply from 2012 to the present.

2 Texas Subclass:

3 CVS customers in the State of Texas who, between November 2008 and the present
4 (the "Class Period"), (1) purchased generic prescription drugs that are listed on the
5 CVS Health Savings Pass prescription drug list attached as Exhibit A; (2) received
6 prescription drug benefits from a third-party payor (i.e., an insurance company,
7 Medicare, Medicaid, or another payor); (3) paid CVS an out-of-pocket copayment,
8 including flat fee, coinsurance and deductible, when purchasing the generic
9 prescription drug; and (4) whose copay for the prescription was: (a) more than \$9.99
10 for a 90-day supply or more than any multiple or proportional pro-rated amount such
11 as \$3.33 for a 30-day supply or \$19.98 for a 180-day supply from 2008 to 2011, or
12 whose copay for the prescription was more than \$11.99 for a 90-day supply or any
13 multiple or proportional pro-rated amount such as \$3.99 for a 30-day supply or \$23.98
14 for a 180-day supply from 2012 to the present; or (b) in excess of the scheduled
15 percentage of the drug price, where the drug price is \$9.99 for a 90-day supply or any
16 multiple or proportional pro-rated amount such as \$3.33 for a 30-day supply or \$19.98
17 for a 180-day supply from 2008 to 2011, or \$11.99 for a 90-day supply or any multiple
18 proportional pro-rated amount such as \$3.99 for a 30-day supply or \$23.98 for a 180-
19 day supply from 2012 to the present.

20 Florida Subclass:

21 CVS customers in the State of Florida who, between November 2008 and the present
22 (the "Class Period"), (1) purchased generic prescription drugs that are listed on the
23 CVS Health Savings Pass prescription drug list attached as Exhibit A; (2) received
24 prescription drug benefits from a third-party payor (i.e., an insurance company,
25 Medicare, Medicaid, or another payor); (3) paid CVS an out-of-pocket copayment,
26 including flat fee, coinsurance and deductible, when purchasing the generic
27 prescription drug; and (4) whose copay for the prescription was: (a) more than \$9.99
28 for a 90-day supply or more than any multiple or proportional pro-rated amount such
as \$3.33 for a 30-day supply or \$19.98 for a 180-day supply from 2008 to 2011, or
whose copay for the prescription was more than \$11.99 for a 90-day supply or any
multiple or proportional pro-rated amount such as \$3.99 for a 30-day supply or \$23.98
for a 180-day supply from 2012 to the present; or (b) in excess of the scheduled
percentage of the drug price, where the drug price is \$9.99 for a 90-day supply or any
multiple or proportional pro-rated amount such as \$3.33 for a 30-day supply or \$19.98
for a 180-day supply from 2008 to 2011, or \$11.99 for a 90-day supply or any multiple
proportional pro-rated amount such as \$3.99 for a 30-day supply or \$23.98 for a 180-
day supply from 2012 to the present.

29 Illinois Subclass:

30 CVS customers in the State of Illinois who, between November 2008 and the present
(the "Class Period"), (1) purchased generic prescription drugs that are listed on the
CVS Health Savings Pass prescription drug list attached as Exhibit A; (2) received
prescription drug benefits from a third-party payor (i.e., an insurance company,
Medicare, Medicaid, or another payor); (3) paid CVS an out-of-pocket copayment,

1 including flat fee, coinsurance and deductible, when purchasing the generic
2 prescription drug; and (4) whose copay for the prescription was: (a) more than \$9.99
3 for a 90-day supply or more than any multiple or proportional pro-rated amount such
4 as \$3.33 for a 30-day supply or \$19.98 for a 180-day supply from 2008 to 2011, or
5 whose copay for the prescription was more than \$11.99 for a 90-day supply or any
6 multiple or proportional pro-rated amount such as \$3.99 for a 30-day supply or \$23.98
7 for a 180-day supply from 2012 to the present; or (b) in excess of the scheduled
8 percentage of the drug price, where the drug price is \$9.99 for a 90-day supply or any
9 multiple or proportional pro-rated amount such as \$3.33 for a 30-day supply or \$19.98
10 for a 180-day supply from 2008 to 2011, or \$11.99 for a 90-day supply or any multiple
11 proportional pro-rated amount such as \$3.99 for a 30-day supply or \$23.98 for a 180-
12 day supply from 2012 to the present.

13 Pennsylvania Subclass:

14 CVS customers in the Commonwealth of Pennsylvania who, between November 2008
15 and the present (the “Class Period”), (1) purchased generic prescription drugs that are
16 listed on the CVS Health Savings Pass prescription drug list attached as Exhibit A; (2)
17 received prescription drug benefits from a third-party payor (i.e., an insurance
18 company, Medicare, Medicaid, or another payor); (3) paid CVS an out-of-pocket
19 copayment, including flat fee, coinsurance and deductible, when purchasing the
20 generic prescription drug; and (4) whose copay for the prescription was: (a) more than
21 \$9.99 for a 90-day supply or more than any multiple or proportional pro-rated amount
22 such as \$3.33 for a 30-day supply or \$19.98 for a 180-day supply from 2008 to 2011,
23 or whose copay for the prescription was more than \$11.99 for a 90-day supply or any
24 multiple or proportional pro-rated amount such as \$3.99 for a 30-day supply or \$23.98
25 for a 180-day supply from 2012 to the present; or (b) in excess of the scheduled
26 percentage of the drug price, where the drug price is \$9.99 for a 90-day supply or any
27 multiple or proportional pro-rated amount such as \$3.33 for a 30-day supply or \$19.98
28 for a 180-day supply from 2008 to 2011, or \$11.99 for a 90-day supply or any multiple
proportional pro-rated amount such as \$3.99 for a 30-day supply or \$23.98 for a 180-
day supply from 2012 to the present.

29 Virginia Subclass:

30 CVS customers in the Commonwealth of Virginia who, between November 2008 and
31 the present (the “Class Period”), (1) purchased generic prescription drugs that are
32 listed on the CVS Health Savings Pass prescription drug list attached as Exhibit A; (2)
33 received prescription drug benefits from a third-party payor (i.e., an insurance
34 company, Medicare, Medicaid, or another payor); (3) paid CVS an out-of-pocket
35 copayment, including flat fee, coinsurance and deductible, when purchasing the
36 generic prescription drug; and (4) whose copay for the prescription was: (a) more than
37 \$9.99 for a 90-day supply or more than any multiple or proportional pro-rated amount
38 such as \$3.33 for a 30-day supply or \$19.98 for a 180-day supply from 2008 to 2011,
or whose copay for the prescription was more than \$11.99 for a 90-day supply or any
multiple or proportional pro-rated amount such as \$3.99 for a 30-day supply or \$23.98
for a 180-day supply from 2012 to the present; or (b) in excess of the scheduled
percentage of the drug price, where the drug price is \$9.99 for a 90-day supply or any
multiple or proportional pro-rated amount such as \$3.33 for a 30-day supply or \$19.98
for a 180-day supply from 2008 to 2011, or \$11.99 for a 90-day supply or any multiple
proportional pro-rated amount such as \$3.99 for a 30-day supply or \$23.98 for a 180-
day supply from 2012 to the present.

1 multiple or proportional pro-rated amount such as \$3.33 for a 30-day supply or \$19.98
2 for a 180-day supply from 2008 to 2011, or \$11.99 for a 90-day supply or any multiple
3 proportional pro-rated amount such as \$3.99 for a 30-day supply or \$23.98 for a 180-
4 day supply from 2012 to the present.

5 105. Excluded from the foregoing Class and Subclasses are CVS, their officers and
6 directors.

7 106. The Class and Subclasses consist of at least hundreds of thousands, and likely millions,
8 of individual CVS customers, making joinder impractical, in satisfaction of FRCP 23(a)(1). The exact
9 size of the Class and Subclasses and the identities of the individual members thereof are ascertainable
10 through CVS's records, including but not limited to their billing and collection records.

11 107. The claims of Plaintiffs are typical of the Class and Subclasses. The claims of the
12 Plaintiffs and the respective classes are based on the same legal theories and arise from the same
13 unlawful and willful conduct, resulting in the same injury to the Plaintiffs and their respective classes.

14 108. The respective classes have a well-defined community of interest. CVS has acted and
15 failed to act on grounds generally applicable to the Plaintiffs and the Class and Subclasses, requiring
16 the Court's imposition of uniform relief to ensure compatible standards of conduct toward the
17 respective classes.

18 109. There are many questions of law and fact common to the claims of Plaintiffs and the
19 Class and Subclasses, and those questions predominate over any questions that may affect only
20 individual class members within the meaning of FRCP 23(a)(2) and 23(b)(2).

21 110. Common questions of fact and law affecting members of the Class and Subclasses
22 include, but are not limited to, the following:

- 23 a. Whether CVS artificially inflated the U&C prices that it reported pursuant to the
24 NCPDP reporting standard;
- 25 b. Whether CVS omitted and concealed material facts from its communications and
26 disclosures regarding its pricing scheme;
- 27 c. Whether CVS has overcharged and continues to overcharge copays to hundreds of
28 thousands, and likely millions, of plan participants (including Plaintiffs and the Class
and Subclasses) who purchased some of the most commonly prescribed generic drugs
from CVS Pharmacies around the country;

- 1 d. Whether CVS has engaged in fraud, unfair methods of competition, unconscionable
2 acts or practices, and unfair or deceptive acts or practices in connection with the pricing
3 and sale of generic prescription drugs;
- 4 e. Whether, as a result of CVS's conduct, Plaintiffs and the Class and Subclasses have
5 suffered damages, and, if so, the appropriate measure of damages to which they are
6 entitled; and
- 7 f. Whether, as a result of CVS's misconduct, Plaintiffs and the Class and Subclasses are
8 entitled to injunctive, equitable and/or other relief, and, if so, the nature of such relief.

9 111. Absent a class action, most of the members of the Class and Subclasses would find the
10 cost of litigating their claims to be prohibitive and will have no effective remedy. The class treatment
11 of common questions of law and fact is also superior to multiple individual actions or piecemeal
12 litigation in that it conserves the resources of the courts and the litigants and promotes consistency and
13 efficiency of adjudication.

14 112. Plaintiffs will fairly and adequately represent and protect the interests of the Class and
15 Subclasses. Plaintiffs have retained counsel with substantial experience in prosecuting complex
16 litigation and class actions. Plaintiffs and their counsel are committed to vigorously prosecuting this
17 action on behalf of the other respective class members, and have the financial resources to do so.
18 Neither Plaintiffs nor their counsel have any interests adverse to those of the other members of the
19 Class and Subclasses.

20 **VII. TOLLING OF THE STATUTE OF LIMITATIONS**

21 113. Plaintiffs and the Class and Subclasses had neither actual nor constructive knowledge
22 of the facts constituting their claims for relief until recently.

23 114. Plaintiffs and members of the Classes did not discover, and could not have discovered
24 through the exercise of reasonable diligence, the existence of the unlawful conduct alleged herein until
25 recently.

26 115. CVS engaged in a secret scheme that did not reveal facts that would have put Plaintiffs
27 or the Class or Subclasses on inquiry notice that CVS was charging inflated prices for generic
28 prescription drugs.

1 116. Because CVS's scheme was kept secret, Plaintiffs and the Class Subclasses were
2 unaware of CVS's unlawful conduct alleged herein and did not know that they were paying artificially
3 inflated prices for generic prescription drugs in the United States during the class period.

4 117. CVS actively misled the public about the HSP scheme by not disclosing to Plaintiffs
5 and the Class and Subclasses (or to third-party payors) that the U&C prices reported to third-party
6 payors for the generic drugs in the HSP program were far higher than the HSP prices. CVS charged
7 Plaintiffs and the Class and Subclasses copayments for the drugs they purchased that reflected CVS'
8 artificially inflated U&C prices. CVS also failed to post drug prices in a clear manner and in a way
9 that would alert Plaintiffs and the Class and Subclasses to the artificially inflated prices charged by
10 CVS. By so doing, CVS misled Plaintiffs and the Class and Subclasses into paying to CVS inflated
11 copays for these drugs.

12 118. CVS's affirmative acts alleged herein, including acts in furtherance of its unlawful
13 scheme, were wrongfully concealed and carried out in a manner that precluded detection.

14 119. CVS's unlawful pricing activities were inherently self-concealing because they
15 involved misrepresenting and falsely reporting the U&C price. If CVS had been open and notorious
16 about its fraudulent pricing scheme, it would never have succeeded.

17 120. Plaintiffs and the Class and Subclasses could not have discovered the alleged unlawful
18 activities at an earlier date by the exercise of reasonable diligence because CVS employed deceptive
19 practices and techniques of secrecy to avoid detection of their activities. CVS fraudulently concealed
20 their activities by various means and methods, including misrepresentations regarding the real U&C
21 prices of generic prescription drugs.

22 121. Because CVS affirmatively concealed its scheme, Plaintiffs and the Class and
23 Subclasses had no knowledge until recently of the alleged fraudulent activities or information which
24 would have caused a reasonably diligent person to investigate whether CVS committed the actionable
25 activities detailed herein.

26 122. As a result of CVS's fraudulent concealment, the running of any statute of limitations
27 has been tolled with respect to any claims that Plaintiffs and the Class and Subclasses have as a result
28 of the unlawful conduct alleged in this Complaint.

1 **COUNT I: FRAUD**

2 **Asserted by the National Class against CVS**

3 123. Plaintiffs repeat paragraphs 1 through 122 above.

4 124. CVS materially misrepresented and/or concealed the true U&C prices of generic
5 prescription drugs that are included in the HSP program. CVS made such misrepresentations and/or
6 omissions by reporting artificially inflated U&C prices for such drugs to third-party payors.

7 125. CVS made these misrepresentations and omissions knowingly, or at least with reckless
8 disregard of their falsity, given that CVS knew the prices that CVS reported to third-party payors were
9 substantially (and unjustifiably) higher than the prices CVS charged under its HSP program to cash-
10 paying customers.

11 126. CVS intended to induce Plaintiffs and Class Members to rely on its misrepresentations
12 and/or omissions. CVS knew that Plaintiffs and Class Members would rely on CVS's representation
13 and/or omissions regarding U&C prices, and, as a result, would pay copayments higher than the actual
14 U&C prices for those generic prescription drugs.

15 127. Plaintiffs and Class Members justifiably relied upon CVS's misrepresentations and/or
16 omissions in that Plaintiffs and Class Members would not have purchased generic prescription drugs
17 from CVS for more than the HSP prices but for CVS's misrepresentations and/or omissions.
18 Plaintiffs' and Class Members' reliance on CVS's misrepresentations and/or omissions was, thus, to
19 their detriment.

20 128. As a proximate result of CVS's conduct, Plaintiffs and Class Members have been
21 damaged because they paid copayments for generic prescription drugs that were far higher than the
22 prices they would have paid but for CVS's misconduct.

23 129. CVS is therefore liable to Plaintiffs and Class Members for the damages they sustained.

24 **COUNT II: CONSTRUCTIVE FRAUD**

25 **Asserted by the National Class against CVS**

26 130. Plaintiffs repeat paragraphs 1 through 122 above.

27 131. In the circumstances alleged above, Plaintiffs and the National Class Members had a
28 special relationship with CVS.

1 132. In particular, CVS had a duty to deal fairly with Plaintiffs and the Class Members
2 because (a) CVS claimed to possess and did possess specialized knowledge, experience and
3 qualifications regarding the prescription drugs it sold to its customers, including specifically the
4 pricing and scheme for insurance reimbursement of those prescription drugs; (b) such specialized
5 knowledge, experience and qualifications put CVS in a position of superiority over Plaintiffs and the
6 Class Members; (c) CVS knew that Plaintiffs and the Class Members needed to rely and did rely on
7 CVS's specialized knowledge, experience and qualifications, and on information supplied by CVS, in
8 making decisions on purchasing prescription drugs from CVS, because Plaintiffs and the Class
9 Members were not able to detect the falsity and incompleteness of the information supplied by CVS;
10 (d) Plaintiffs and the Class Members were uniquely vulnerable to injury if CVS did not supply truthful
11 and accurate information; and (e) CVS stood to gain at Plaintiffs and the Class Members' expense if
12 CVS did not supply truthful and accurate information.

13 133. CVS breached its duty to deal fairly with Plaintiffs and the Class Members by making
14 material misrepresentations and/or omissions regarding the true U&C prices of generic prescription
15 drugs that are included in the HSP program. CVS made such misrepresentations and/or omissions by
16 reporting artificially inflated U&C prices for such drugs to third-party payors.

17 134. CVS intended to induce Plaintiffs and Class Members to rely on its misrepresentations
18 and/or omissions. CVS knew that Plaintiffs and Class Members would rely on CVS's representation
19 and/or omissions regarding U&C prices, and, as a result, would pay copayments higher than the actual
20 U&C prices for those generic prescription drugs.

21 135. Plaintiffs and Class Members justifiably relied upon CVS's misrepresentations and/or
22 omissions in that Plaintiffs and Class Members would not have purchased generic prescription drugs
23 from CVS for more than the Health Savings Pass prices but for CVS's misrepresentations and/or
24 omissions. Plaintiffs' and Class Members' reliance on CVS's misrepresentations and/or omissions
25 was, thus, to their detriment.

26 136. CVS gained an advantage at Plaintiffs' and the Class Members' expense, as alleged
27 above, because, among other things, CVS obtained wrongfully inflated copayments from Plaintiffs and
28 the Class Members.

1 137. As a proximate result of CVS's conduct, Plaintiffs and the Class Members have been
2 damaged because they paid copayments for generic prescription drugs that were far higher than the
3 prices they would have paid but for CVS's misconduct.

4 138. CVS is therefore liable to Plaintiffs and Class Members for the damages they sustained.

5 **COUNT III: NEGLIGENT MISREPRESENTATION**

6 **Asserted by the National Class against CVS**

7 139. Plaintiffs repeat paragraphs 1 through 122 above.

8 140. Under the circumstances alleged, CVS owed a duty to Plaintiffs and members of the
9 Class to provide them with accurate information regarding the prices of their generic prescription
10 drugs.

11 141. CVS misrepresented and/or concealed the true U&C prices of generic prescription
12 drugs that are included in the HSP program. CVS made such misrepresentations by reporting
13 artificially inflated U&C prices for such drugs to third-party payors.

14 142. CVS had no reasonable grounds to believe that these misrepresentations and/or
15 omissions were true. The prices that CVS reported to third-party payors were substantially (and
16 unjustifiably) higher than the prices CVS charged under its HSP program to cash-paying customers.

17 143. CVS intended to induce Plaintiffs and Class Members to rely on its misrepresentations
18 and/or omissions. CVS knew that Plaintiffs and Class Members would rely on CVS's
19 misrepresentations and/or omissions regarding U&C prices and, as a result, would pay copayments
20 higher than the actual U&C prices for those generic prescription drugs.

21 144. Plaintiffs and Class Members justifiably relied upon CVS's misrepresentations and/or
22 omissions in that Plaintiffs and Class Members would not have purchased generic prescription drugs
23 from CVS for more than the Health Savings Pass prices but for CVS's misrepresentations and/or
24 omissions. Plaintiffs' and Class Members' reliance on CVS's misrepresentations and/or omissions
25 was, thus, to their detriment.

26 145. As a proximate result of CVS's negligent conduct, Plaintiffs and Class Members have
27 been damaged because they paid copayments for generic prescription drugs that were far higher than
28 the prices they would have paid but for CVS's misconduct.

1 146. CVS is therefore liable to Plaintiffs and members of the National Class for the damages
2 they sustained.

3 **COUNT IV: UNJUST ENRICHMENT**

4 **Asserted by the National Class against CVS**

5 147. Plaintiffs repeat paragraphs 1 through 122 above.

6 148. By means of CVS's wrongful conduct alleged herein, CVS knowingly charges plan
7 participants artificially high copayments for generic prescription drugs included in the HSP program in
8 a manner that is unfair and unconscionable.

9 149. CVS knowingly received and retained wrongful benefits and funds from Plaintiffs and
10 members of the National Class. In so doing, CVS acted with conscious disregard for the rights of
11 Plaintiffs and Class Members.

12 150. As a result of CVS's wrongful conduct as alleged herein, CVS has been unjustly
13 enriched at the expense of, and to the detriment of, Plaintiffs and members of the National Class.

14 151. CVS's unjust enrichment is traceable to, and resulted directly and proximately from,
15 the conduct alleged herein.

16 152. Under the common law doctrine of unjust enrichment, it is inequitable for CVS to be
17 permitted to retain the benefits it received, and is still receiving, without justification, from the
18 imposition of artificially inflated prices on Plaintiffs and members of the National Class in an unfair
19 and unconscionable manner. CVS's retention of such funds under circumstances making it inequitable
20 to do so constitutes unjust enrichment.

21 153. Plaintiffs and the other Class Members did not confer these benefits officiously or
22 gratuitously, and it would be inequitable and unjust for CVS to retain these wrongfully obtained
23 proceeds.

24 154. CVS is therefore liable to Plaintiffs and members of the National Class for restitution in
25 the amount of CVS wrongfully obtained profits.

26 **COUNT V: VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW**

27 **Asserted by the National Class and, alternatively, the California Subclass against CVS**

28 155. Plaintiffs repeat paragraphs 1 through 122 above.

1 156. Plaintiff Christopher Corcoran brings this claim individually and on behalf of the
2 National Class and/or California Subclass.

3 157. Mr. Corcoran and other members of the National Class and/or California Subclass are
4 “persons” within the meaning of Cal. Bus. Prof. Code § 17204.

5 158. CVS has unfairly obtained monies from Mr. Corcoran and the other members of the
6 National Class and/or California Subclass through CVS’s (i) unlawful business acts and/or practices;
7 (ii) unfair business acts and/or practices; (iii) fraudulent business acts and/or practices; and (iv) unfair,
8 deceptive, untrue and/or misleading advertising (including violations of Cal. Bus. & Prof. Code §
9 17500, *et seq.*), including, among other things:

10 (a) reporting to insurance companies, and state and federal health care entities fraudulent U&C
11 prices for hundreds of generic prescription drugs;

12 (b) misrepresenting to insurance companies and state and federal health care entities, Mr.
13 Corcoran, and the National Class and/or California Subclass that the U&C price was greater than their
14 copayments;

15 (c) concealing from Mr. Corcoran and the National Class and/or California Subclass the true
16 U&C prices of generic prescription drugs; and

17 (d) wrongfully obtaining monies from Mr. Corcoran and the National Class and/or California
18 Subclass as a result of its deception.

19 159. CVS willfully engaged in the unfair and/or deceptive acts and/or practices described
20 above and knew or should have known that those acts and/or practices were unfair and/or deceptive.

21 160. The facts which CVS misrepresented and/or concealed, as alleged in the preceding
22 paragraphs, were material to Mr. Corcoran’s and the National Class and/or California Subclass’
23 decisions about whether to purchase generic prescription drugs from CVS, in that Mr. Corcoran and
24 the National Class and/or California Subclass would not have purchased generic prescription drugs
25 from CVS for more than the HSP prices but for CVS’s unfair and/or deceptive acts and/or practices.

26 161. As a direct and proximate result of CVS’s unfair and deceptive acts and practices, Mr.
27 Corcoran and the National Class and/or California Subclass were deceived into paying falsely inflated
28 prices for generic prescription drugs and have been damaged thereby.

1 162. CVS is therefore liable to Mr. Corcoran and the National Class and/or California
2 Subclass for the damages they sustained, plus statutory damages, penalties, costs, and reasonable
3 attorneys' fees to the extent provided by law.

4 **COUNT VI: VIOLATION OF CALIFORNIA CONSUMER LEGAL REMEDIES ACT**

5 **Asserted by the National Class and, alternatively, the California Subclass against CVS**

6 163. Plaintiffs repeat paragraphs 1 through 122 above.

7 164. Plaintiff Christopher Corcoran brings this claim individually and on behalf of the
8 National Class and/or California Subclass.

9 165. Mr. Corcoran and other members of the National Class and/or California Subclass are
10 "consumers" within the meaning of Cal. Civ. Code § 1761(d).

11 166. The generic prescription drugs that Mr. Corcoran and other members of the National
12 Class and/or California Subclass purchased from CVS are "goods" within the meaning of Cal. Civ.
13 Code § 1761(a).

14 167. Mr. Corcoran's and other National Class and/or California Subclass members'
15 purchases were "transactions" within the meaning of Cal. Civ. Code § 1761(e).

16 168. CVS is a "person" within the meaning of Cal. Civ. Code § 1770(a).

17 169. Mr. Corcoran and other members of the National Class and/or California Subclass have
18 been damaged by CVS's unfair and/or deceptive practices in violation of Cal. Civ. Code § 1770(a), *et*
19 *seq.*, which occurred in connection with transactions which resulted in Class members' purchase of
20 goods. These unfair and/or deceptive practices included, among other things:

21 (a) reporting to insurance companies, and state and federal health care entities fraudulent U&C
22 prices for hundreds of generic prescription drugs;

23 (b) misrepresenting to insurance companies and state and federal health care entities, Mr.
24 Corcoran and the National Class and/or California Subclass that the U&C price was greater than their
25 copayments;

26 (c) concealing from Mr. Corcoran and the National Class and/or California Subclass the true
27 U&C prices of generic prescription drugs; and

28 (d) wrongfully obtaining monies from Mr. Corcoran and the National Class and/or California

1 Subclass as a result of its deception.

2 170. Pursuant to § 1782 of the California Consumer Legal Remedies Act, on the day that
3 this Complaint is filed, Mr. Corcoran will notify CVS in writing by certified mail of the particular
4 violations of § 1770 described above and request that that the CVS rectify its practices described
5 above and give notice to all affected consumers of its intent to so act.

6 171. CVS willfully engaged in the unfair and/or deceptive acts and/or practices described
7 above and knew or should have known that those acts and/or practices were unfair and/or deceptive.

8 172. The facts which CVS misrepresented and/or concealed, as alleged in the preceding
9 paragraphs, were material to Mr. Corcoran's and the National Class and/or California Subclass'
10 decisions about whether to purchase generic prescription drugs from CVS, in that Mr. Corcoran and
11 the National Class and/or California Subclass would not have purchased generic prescription drugs
12 from CVS for more than the HSP prices but for CVS's unfair and/or deceptive acts and/or practices.

13 173. As a direct and proximate result of CVS's acts described above, Mr. Corcoran and the
14 other Members of the National Class and/or California Subclass paid more for CVS's products than
15 they would have and/or purchased products they would not have purchased but for CVS's deceptive
16 conduct. However, Mr. Corcoran and the other Members of the National Class and/or California
17 Subclass reserve any claim for restitution or damages under the California Legal Remedies Act and by
18 this Complaint bring only an action for injunctive relief pursuant to § 1782(d) of the Act.

19 174. If CVS fails to rectify or agree to rectify the problems associated with the actions
20 described above and give notice to all affected consumers within 30 days of the date of written notice
21 pursuant to § 1782 of the Act, Mr. Corcoran and the National Class and/or California Subclass will
22 amend this complaint to add claims for actual, punitive, and statutory damages, as well as restitution,
23 as appropriate, pursuant to California Civil Code § 1782(d).

24 **COUNT VII: FRAUD**

25 **Asserted by the California Subclass against CVS**

26 175. Plaintiffs repeat paragraphs 1 through 122 above.

27 176. CVS materially misrepresented and/or concealed the true U&C prices of generic
28 prescription drugs that are included in the HSP program. CVS made such misrepresentations and/or

1 omissions by reporting artificially inflated U&C prices for such drugs to third-party payors.

2 177. CVS made these misrepresentations and omissions knowingly, or at least with reckless
3 disregard of their falsity, given that CVS knew the prices that CVS reported to third-party payors were
4 substantially (and unjustifiably) higher than the prices CVS charged under its HSP program to cash-
5 paying customers.

6 178. CVS intended to induce Mr. Corcoran and Subclass Members to rely on its
7 misrepresentations and/or omissions. CVS knew that Mr. Corcoran and Subclass Members would rely
8 on CVS's representation and/or omissions regarding U&C prices and, as a result, would pay
9 copayments higher than the actual U&C prices for those generic prescription drugs.

10 179. Mr. Corcoran and Subclass Members justifiably relied upon CVS's misrepresentations
11 and/or omissions in that Mr. Corcoran and Subclass Members would not have purchased generic
12 prescription drugs from CVS for more than the HSP prices but for CVS's misrepresentations and/or
13 omissions. Mr. Corcoran's and Subclass Members' reliance on CVS's misrepresentations and/or
14 omissions was, thus, to their detriment.

15 180. As a proximate result of CVS's conduct, Mr. Corcoran and Subclass Members have
16 been damaged because they paid copayments for generic prescription drugs that were far higher than
17 the prices they would have paid but for CVS's misconduct.

18 181. CVS is therefore liable to Mr. Corcoran and Subclass Members for the damages they
19 sustained.

20 **COUNT VIII: CONSTRUCTIVE FRAUD**

21 **Asserted by the California Subclass against CVS**

22 182. Plaintiffs repeat paragraphs 1 through 122 above.

23 183. In the circumstances alleged above, Plaintiff Christopher Corcoran and the California
24 Subclass Members had a special relationship with CVS.

25 184. In particular, CVS had a duty to deal fairly with Mr. Corcoran and the Subclass
26 Members because (a) CVS claimed to possess and did possess specialized knowledge, experience and
27 qualifications regarding the prescription drugs it sold to its customers, including specifically the
28 pricing and scheme for insurance reimbursement of those prescription drugs; (b) such specialized

1 knowledge, experience and qualifications put CVS in a position of superiority over Mr. Corcoran and
2 the Subclass Members; (c) CVS knew that Mr. Corcoran and the Subclass Members needed to rely and
3 did rely on CVS's specialized knowledge, experience and qualifications, and on information supplied
4 by CVS, in making decisions on purchasing prescription drugs from CVS, because Mr. Corcoran and
5 the Subclass Members were not able to detect the falsity and incompleteness of the information
6 supplied by CVS; (d) Mr. Corcoran and the Subclass Members were uniquely vulnerable to injury if
7 CVS did not supply truthful and accurate information; and (e) CVS stood to gain at Mr. Corcoran and
8 the Subclass Members' expense if CVS did not supply truthful and accurate information.

9 185. CVS breached its duty to deal fairly with Mr. Corcoran and the Subclass Members by
10 making material misrepresentations and/or omissions regarding the true U&C prices of generic
11 prescription drugs that are included in the HSP program. CVS made such misrepresentations and/or
12 omissions by reporting artificially inflated U&C prices for such drugs to third-party payors.

13 186. CVS intended to induce Mr. Corcoran and Subclass Members to rely on its
14 misrepresentations and/or omissions. CVS knew that Mr. Corcoran and Subclass Members would rely
15 on CVS's representation and/or omissions regarding U&C prices and, as a result, would pay
16 copayments higher than the actual U&C prices for those generic prescription drugs.

17 187. Mr. Corcoran and Subclass Members justifiably relied upon CVS's misrepresentations
18 and/or omissions in that Mr. Corcoran and Subclass Members would not have purchased generic
19 prescription drugs from CVS for more than the HSP prices but for CVS's misrepresentations and/or
20 omissions. Mr. Corcoran's and Subclass Members' reliance on CVS's misrepresentations and/or
21 omissions was, thus, to their detriment.

22 188. CVS gained an advantage at Mr. Corcoran's and Subclass Members' expense, as
23 alleged above, because, among other things, CVS obtained wrongfully inflated copayments from Mr.
24 Corcoran and the Subclass Members.

25 189. As a proximate result of CVS's conduct, Mr. Corcoran and Subclass Members have
26 been damaged because they paid copayments for generic prescription drugs that were far higher than
27 the prices they would have paid but for CVS's misconduct.

28 190. CVS is therefore liable to Mr. Corcoran and Subclass Members for the damages they

1 sustained.

2 **COUNT IX: NEGLIGENT MISREPRESENTATION**

3 **Asserted by the California Subclass against CVS**

4 191. Plaintiffs repeat paragraphs 1 through 122 above.

5 192. Under the circumstances alleged, CVS owed a duty to Plaintiff Christopher Corcoran
6 and Subclass Members to provide them with accurate information regarding the prices of their generic
7 prescription drugs.

8 193. CVS misrepresented and/or concealed the true U&C prices of generic prescription
9 drugs that are included in the HSP program. CVS made such misrepresentations by reporting
10 artificially inflated U&C prices for such drugs to third-party payors.

11 194. CVS had no reasonable grounds to believe that these misrepresentations and/or
12 omissions were true. The prices that CVS reported to third-party payors were substantially (and
13 unjustifiably) higher than the prices CVS charged under its HSP program to cash-paying customers.

14 195. CVS intended to induce Mr. Corcoran and Subclass Members to rely on its
15 misrepresentations. CVS knew that Mr. Corcoran and Subclass Members would rely on CVS's
16 misrepresentations regarding U&C prices and, as a result, would pay copayments higher than the
17 actual U&C prices for those generic prescription drugs.

18 196. Mr. Corcoran and Subclass Members justifiably relied upon CVS's misrepresentations
19 in that Mr. Corcoran and Subclass Members would not have purchased generic prescription drugs
20 from CVS for more than the HSP prices but for CVS's misrepresentations. Mr. Corcoran's and
21 Subclass Members' reliance on CVS's misrepresentations and/or omissions was, thus, to their
22 detriment.

23 197. As a proximate result of CVS's negligent conduct, Mr. Corcoran and Subclass
24 Members have been damaged because they paid copayments for generic prescription drugs that were
25 far higher than the prices they would have paid but for CVS's misconduct.

26 198. CVS is therefore liable to Mr. Corcoran and Subclass Members for the damages they
27 sustained.

COUNT X: UNJUST ENRICHMENT

Asserted by the California Subclass against CVS

199. Plaintiffs repeat paragraphs 1 through 122 above.

200. By means of CVS’s wrongful conduct alleged herein, CVS knowingly charges plan participants artificially high copayments for generic prescription drugs included in the HSP program in a manner that is unfair and unconscionable.

201. CVS knowingly received and retained wrongful benefits and funds from Plaintiff Christopher Corcoran and Subclass Members. In so doing, CVS acted with conscious disregard for the rights of Mr. Corcoran and Subclass Members.

202. As a result of CVS’s wrongful conduct as alleged herein, CVS has been unjustly enriched at the expense of, and to the detriment of, Mr. Corcoran and Subclass Members.

203. CVS’s unjust enrichment is traceable to, and resulted directly and proximately from, the conduct alleged herein.

204. Under the common law doctrine of unjust enrichment, it is inequitable for CVS to be permitted to retain the benefits they received, and are still receiving, without justification, from the imposition of artificially inflated prices on Mr. Corcoran and Subclass Members in an unfair and unconscionable manner. CVS’s retention of such funds under circumstances making it inequitable to do so constitutes unjust enrichment.

205. Mr. Corcoran and Subclass Members did not confer these benefits officiously or gratuitously, and it would be inequitable and unjust for CVS to retain these wrongfully obtained profits.

206. CVS is therefore liable to Mr. Corcoran and Subclass Members for restitution in the amount of CVS’s wrongfully obtained profits.

COUNT XI: FRAUD

Asserted by the Massachusetts Subclass against CVS

207. Plaintiffs repeat paragraphs 1 through 122 above.

208. CVS materially misrepresented and/or concealed the true U&C prices of generic prescription drugs that are included in the HSP program. CVS made such misrepresentations and/or

1 omissions by reporting artificially inflated U&C prices for such drugs to third-party payors.

2 209. CVS made these misrepresentations and omissions knowingly, or at least with reckless
3 disregard of their falsity, given that CVS knew the prices that CVS reported to third-party payors were
4 substantially (and unjustifiably) higher than the prices CVS charged under its HSP program to cash-
5 paying customers.

6 210. CVS intended to induce Dr. Garber and Subclass Members to rely on its
7 misrepresentations and/or omissions. CVS knew that Dr. Garber and Subclass Members would rely
8 on CVS's representation and/or omissions regarding U&C prices, and, as a result, would pay
9 copayments higher than the actual U&C prices for those generic prescription drugs.

10 211. Dr. Garber and Subclass Members justifiably relied upon CVS's misrepresentations
11 and/or omissions in that Dr. Garber and Subclass Members would not have purchased generic
12 prescription drugs from CVS for more than the HSP prices but for CVS's misrepresentations and/or
13 omissions. Dr. Garber and Subclass Members' reliance on CVS's misrepresentations and/or
14 omissions was, thus, to their detriment.

15 212. As a proximate result of CVS's conduct, Dr. Garber and Subclass Members have been
16 damaged because they paid copayments for generic prescription drugs that were far higher than the
17 prices they would have paid but for CVS's misconduct.

18 213. CVS is therefore liable to Dr. Garber and Subclass Members for the damages they
19 sustained.

20 **COUNT XII: CONSTRUCTIVE FRAUD**

21 **Asserted by the Massachusetts Subclass against CVS**

22 214. Plaintiffs repeat paragraphs 1 through 122 above.

23 215. In the circumstances alleged above, Dr. Garber and the Subclass Members had a special
24 relationship with CVS.

25 216. In particular, CVS had a duty to deal fairly with Dr. Garber and the Subclass Members
26 because (a) CVS claimed to possess and did possess specialized knowledge, experience, and
27 qualifications regarding the prescription drugs it sold to its customers, including specifically the
28 pricing and scheme for insurance reimbursement of those prescription drugs; (b) such specialized

1 knowledge, experience, and qualifications put CVS in a position of superiority over Dr. Garber and the
2 Subclass Members; (c) CVS knew that Dr. Garber and the Subclass Members needed to rely and did
3 rely on CVS's specialized knowledge, experience and qualifications, and on information supplied by
4 CVS, in making decisions on purchasing prescription drugs from CVS, because Dr. Garber and the
5 Subclass Members were not able to detect the falsity and incompleteness of the information supplied
6 by CVS; (d) Dr. Garber and the Subclass Members were uniquely vulnerable to injury if CVS did not
7 supply truthful and accurate information; and (e) CVS stood to gain at Dr. Garber and the Subclass
8 Members' expense if CVS did not supply truthful and accurate information.

9 217. CVS breached its duty to deal fairly with Dr. Garber and the Subclass Members by
10 making material misrepresentations and/or omissions regarding the true U&C prices of generic
11 prescription drugs that are included in the HSP program. CVS made such misrepresentations and/or
12 omissions by reporting artificially inflated U&C prices for such drugs to third-party payors.

13 218. CVS intended to induce Dr. Garber and Subclass Members to rely on its
14 misrepresentations and/or omissions. CVS knew that Dr. Garber and Subclass Members would rely
15 on CVS's representation and/or omissions regarding U&C prices and, as a result, would pay
16 copayments higher than the actual U&C prices for those generic prescription drugs.

17 219. Dr. Garber and Subclass Members justifiably relied upon CVS's misrepresentations
18 and/or omissions in that they would not have purchased generic prescription drugs from CVS for more
19 than the Health Savings Pass prices but for CVS's misrepresentations and/or omissions. Dr. Garber
20 and Subclass Members' reliance on CVS's misrepresentations and/or omissions was, thus, to their
21 detriment.

22 220. CVS gained an advantage at Dr. Garber and the Subclass Members' expense, as alleged
23 above, because, among other things, CVS obtained wrongfully inflated copayments from Dr. Garber
24 and the Subclass Members.

25 221. As a proximate result of CVS's conduct, Dr. Garber and the Subclass Members have
26 been damaged because they paid copayments for generic prescription drugs that were far higher than
27 the prices they would have paid but for CVS's misconduct.

28 222. CVS is therefore liable to Dr. Garber and Subclass Members for the damages they

1 sustained.

2 **COUNT XIII: NEGLIGENT MISREPRESENTATION**

3 **Asserted by the Massachusetts Subclass against CVS**

4 223. Plaintiffs repeat paragraphs 1 through 122 above.

5 224. Under the circumstances alleged, CVS owed a duty to Dr. Garber and Subclass
6 Members to provide them with accurate information regarding the prices of their generic prescription
7 drugs.

8 225. CVS misrepresented and/or concealed the true U&C prices of generic prescription
9 drugs that are included in the HSP program. CVS made such misrepresentations by reporting
10 artificially inflated U&C prices for such drugs to third-party payors.

11 226. CVS had no reasonable grounds to believe that these misrepresentations and/or
12 omissions were true. The prices that CVS reported to third-party payors were substantially (and
13 unjustifiably) higher than the prices CVS charged under its HSP program to cash-paying customers.

14 227. CVS intended to induce Dr. Garber and Subclass Members to rely on its
15 misrepresentations and/or omissions. CVS knew that Dr. Garber and Subclass Members would rely
16 on CVS's misrepresentations and/or omissions regarding U&C prices, and, as a result, would pay
17 copayments higher than the actual U&C prices for those generic prescription drugs.

18 228. Dr. Garber and Subclass Members justifiably relied upon CVS's misrepresentations
19 and/or omissions in that Dr. Garber and Subclass Members would not have purchased generic
20 prescription drugs from CVS for more than the HSP prices but for CVS's misrepresentations and/or
21 omissions. Dr. Garber and Subclass Members' reliance on CVS's misrepresentations and/or
22 omissions was, thus, to their detriment.

23 229. As a proximate result of CVS's negligent conduct, Dr. Garber and Subclass Members
24 have been damaged because they paid copayments for generic prescription drugs that were far higher
25 than the prices they would have paid but for CVS's misconduct.

26 230. CVS is therefore liable to Dr. Garber and Subclass Members for the damages they
27 sustained.

COUNT XIV: UNJUST ENRICHMENT

Asserted by the Massachusetts Subclass against CVS

231. Plaintiffs repeat paragraphs 1 through 122 above.

232. By means of CVS’s conduct alleged herein, CVS knowingly charges plan participants artificially high copayments for generic prescription drugs included in the HSP program in a manner that is unfair and unconscionable.

233. CVS knowingly received and retained wrongful benefits and funds from Dr. Garber and Subclass Members. In so doing, CVS acted with conscious disregard for the rights of Dr. Garber and Subclass Members.

234. As a result of CVS’s wrongful conduct as alleged herein, CVS has been unjustly enriched at the expense of, and to the detriment of, Dr. Garber and Subclass Members.

235. CVS’s unjust enrichment is traceable to, and resulted directly and proximately from, the conduct alleged herein.

236. Under the common law doctrine of unjust enrichment, it is inequitable for CVS to be permitted to retain the benefits they received, and are still receiving, without justification, from the imposition of artificially inflated prices on Dr. Garber and Subclass Members in an unfair and unconscionable manner. CVS’s retention of such funds under circumstances making it inequitable to do so constitutes unjust enrichment.

237. Dr. Garber and the Subclass Members did not confer these benefits officiously or gratuitously, and it would be inequitable and unjust for CVS to retain these wrongfully obtained profits.

238. CVS is therefore liable to Dr. Garber and Subclass Members for restitution in the amount of CVS’s wrongfully obtained profits.

COUNT XV: VIOLATION OF NEW YORK CONSUMER PROTECTION LAW

Asserted by the New York Subclass against CVS

239. Plaintiffs repeat paragraphs 1 through 122 above.

240. Plaintiffs Toni Odorisio, Robert Guarnieri, and Onnolee Samuelson bring this claim individually and on behalf of the other New York Subclass members against CVS.

1 241. Ms. Odorisio, Mr. Guarnieri, Ms. Samuelson, and other Subclass Members are
2 “persons” within the meaning of N.Y. Code § 349(h).

3 242. Ms. Odorisio, Mr. Guarnieri, Ms. Samuelson, and other Subclass Members were
4 injured by CVS’s employment in business, trade and/or commerce of deceptive acts or practices in
5 violation of N.Y. Code § 349 including, among other things among other things, (a) reporting to third-
6 party payors fraudulent U&C prices for hundreds of generic prescription drugs; (b) misrepresenting to
7 third-party payors, Ms. Odorisio, Mr. Guarnieri, Ms. Samuelson, and Subclass Members that the U&C
8 price was greater than Plaintiffs’ copayments; (c) concealing from Ms. Odorisio, Mr. Guarnieri, Ms.
9 Samuelson, and Subclass Members the true U&C prices of generic prescription drugs; and (d)
10 wrongfully obtaining monies from Ms. Odorisio, Mr. Guarnieri, Ms. Samuelson, and the other
11 Subclass Members as a result of its deception.

12 243. CVS willfully engaged in the deceptive acts and/or practices described above.

13 244. As a direct and proximate result of CVS’s unfair and deceptive acts and practices, Ms.
14 Odorisio, Mr. Guarnieri, Ms. Samuelson, and the Subclass members were deceived into paying falsely
15 inflated prices for generic prescription drugs and have been damaged thereby.

16 245. CVS is therefore liable to Ms. Odorisio, Mr. Guarnieri, Ms. Samuelson, and Subclass
17 Members for the damages they sustained, plus statutory damages, penalties, costs, and reasonable
18 attorneys’ fees to the extent provided by law.

19 **COUNT XVI: FRAUD**

20 **Asserted by the New York Subclass against CVS**

21 246. Plaintiffs repeat paragraphs 1 through 122 above.

22 247. CVS materially misrepresented and/or concealed the true U&C prices of generic
23 prescription drugs that are included in the HSP program. CVS made such misrepresentations and/or
24 omissions by reporting artificially inflated U&C prices for such drugs to third-party payors.

25 248. CVS made these misrepresentations and omissions knowingly, or at least with reckless
26 disregard of their falsity, given that CVS knew the prices that CVS reported to third-party payors were
27 substantially (and unjustifiably) higher than the prices CVS charged under its HSP program to general
28 public.

1 249. CVS intended to induce Ms. Odorisio, Mr. Guarnieri, and Ms. Samuelson, and Subclass
2 Members to rely on its misrepresentations and/or omissions. CVS knew that Mr. Odorisio, Mr.
3 Guarnieri, Ms. Samuelson, and Subclass Members would rely on CVS's representation and/or
4 omissions regarding U&C prices and, as a result, would pay copayments higher than the actual U&C
5 prices for those generic prescription drugs.

6 250. Ms. Odorisio, Mr. Guarnieri, Ms. Samuelson, and Subclass Members justifiably relied
7 upon CVS's misrepresentations and/or omissions in that they would not have purchased generic
8 prescription drugs from CVS for more than the HSP prices but for CVS's misrepresentations and/or
9 omissions. Ms. Odorisio, Mr. Guarnieri, Ms. Samuelson and Subclass Members' reliance on CVS's
10 misrepresentations and/or omissions was, thus, to their detriment.

11 251. As a proximate result of CVS's conduct, Ms. Odorisio, Mr. Guarnieri, Ms. Samuelson,
12 and Subclass Members have been damaged because they paid copayments for generic prescription
13 drugs that were far higher than the prices they would have paid but for CVS's misconduct.

14 252. CVS is therefore liable to Ms. Odorisio, Mr. Guarnieri, Ms. Samuelson, and Subclass
15 Members for the damages they sustained.

16 **COUNT XVII: CONSTRUCTIVE FRAUD**

17 **Asserted by the New York Subclass against CVS**

18 253. Plaintiffs repeat paragraphs 1 through 122 above.

19 254. In the circumstances alleged above, Ms. Odorisio, Mr. Guarnieri, Ms. Samuelson, and
20 the Subclass Members had a special relationship with CVS.

21 255. In particular, CVS had a duty to deal fairly with Ms. Odorisio, Mr. Guarnieri, Ms.
22 Samuelson, and the Subclass Members because (a) CVS claimed to possess and did possess
23 specialized knowledge, experience and qualifications regarding the prescription drugs it sold to its
24 customers, including specifically the pricing and scheme for insurance reimbursement of those
25 prescription drugs; (b) such specialized knowledge, experience and qualifications put CVS in a
26 position of superiority over Ms. Odorisio, Mr. Guarnieri, Ms. Samuelson, and the Subclass Members;
27 (c) CVS knew that Ms. Odorisio, Mr. Guarnieri, Ms. Samuelson, and the Subclass Members needed to
28 rely and did rely on CVS's specialized knowledge, experience and qualifications, and on information

1 supplied by CVS, in making decisions on purchasing prescription drugs from CVS, because Ms.
2 Odorisio, Mr. Guarnieri, Ms. Samuelson, and the Subclass Members were not able to detect the falsity
3 and incompleteness of the information supplied by CVS; (d) Ms. Odorisio, Mr. Guarnieri, Ms.
4 Samuelson, and the Subclass Members were uniquely vulnerable to injury if CVS did not supply
5 truthful and accurate information; and (e) CVS stood to gain at Ms. Odorisio, Mr. Guarnieri, Ms.
6 Samuelson, and the Subclass Members' expense if CVS did not supply truthful and accurate
7 information.

8 256. CVS breached its duty to deal fairly with Ms. Odorisio, Mr. Guarnieri, Ms. Samuelson,
9 and the Subclass Members by making material misrepresentations and/or omissions regarding the true
10 U&C prices of generic prescription drugs that are included in the HSP program. CVS made such
11 misrepresentations and/or omissions by reporting artificially inflated U&C prices for such drugs to
12 third-party payors.

13 257. CVS intended to induce Ms. Odorisio, Mr. Guarnieri, Ms. Samuelson, and Subclass
14 Members to rely on its misrepresentations and/or omissions. CVS knew that Ms. Odorisio, Mr.
15 Guarnieri, Ms. Samuelson, and Subclass Members would rely on CVS's representation and/or
16 omissions regarding U&C prices and, as a result, would pay copayments higher than the actual U&C
17 prices for those generic prescription drugs.

18 258. Ms. Odorisio, Mr. Guarnieri, Ms. Samuelson, and Subclass Members justifiably relied
19 upon CVS's misrepresentations and/or omissions in that they would not have purchased generic
20 prescription drugs from CVS for more than the HSP prices but for CVS's misrepresentations and/or
21 omissions. Ms. Odorisio, Mr. Guarnieri, Ms. Samuelson, and Subclass Members' reliance on CVS's
22 misrepresentations and/or omissions was, thus, to their detriment.

23 259. CVS gained an advantage at Plaintiffs' and Subclass Members' expense, as alleged
24 above, because, among other things, CVS obtained wrongfully inflated copayments from Mr.
25 Odorisio, Mr. Guarnieri, Ms. Samuelson, and the Subclass Members.

26 260. As a proximate result of CVS's conduct, Ms. Odorisio, Mr. Guarnieri, Ms. Samuelson,
27 and the Subclass Members have been damaged because they paid copayments for generic prescription
28 drugs that were far higher than the prices they would have paid but for CVS's misconduct.

1 261. CVS is therefore liable to Ms. Odorisio, Mr. Guarnieri, Mr. Samuelson, and Subclass
2 Members for the damages they sustained.

3 **COUNT XVIII: NEGLIGENT MISREPRESENTATION**

4 **Asserted by the New York Subclass against CVS**

5 262. Plaintiffs repeat paragraphs 1 through 122 above.

6 263. Under the circumstances alleged, CVS owed a duty to Ms. Odorisio, Mr. Guarnieri, Ms.
7 Samuelson, and Subclass Members to provide them with accurate information regarding the prices of
8 their generic prescription drugs.

9 264. CVS misrepresented and/or concealed that the U&C prices of generic prescription
10 drugs were higher than Subclass Members' copayments. CVS made such misrepresentations by
11 reporting artificially inflated U&C prices to third-party payors.

12 265. CVS had no reasonable grounds to believe that these misrepresentations and/or
13 omissions were true. The prices that CVS reported to third-party payors were substantially (and
14 unjustifiably) higher than the prices CVS charged under its HSP program to general public.

15 266. CVS intended to induce Ms. Odorisio, Mr. Guarnieri, Ms. Samuelson, and Subclass
16 Members to rely on its misrepresentations and/or omissions. CVS knew that Ms. Odorisio, Mr.
17 Guarnieri, Ms. Samuelson, and Subclass Members would rely on CVS's misrepresentations and/or
18 omissions regarding U&C prices and, as a result, would pay copayments higher than the actual U&C
19 prices for those generic prescription drugs.

20 267. Ms. Odorisio, Mr. Guarnieri, Ms. Samuelson, and Subclass Members justifiably relied
21 upon CVS's misrepresentations and/or omissions in that they would not have purchased generic
22 prescription drugs from CVS for more than the HSP prices but for CVS's misrepresentations and/or
23 omissions. Ms. Odorisio, Mr. Guarnieri, Ms. Samuelson, and Subclass Members' reliance on CVS's
24 misrepresentations and/or omissions was, thus, to their detriment.

25 268. As a proximate result of CVS's negligent conduct, Ms. Odorisio, Mr. Guarnieri, Ms.
26 Samuelson, and Subclass Members have been damaged because they paid copayments for generic
27 prescription drugs that were far higher than the prices they would have paid but for CVS's misconduct.

28 269. CVS is therefore liable to Ms. Odorisio, Mr. Guarnieri, Ms. Samuelson, and Subclass

1 Members for the damages they sustained.

2 **COUNT XIX: UNJUST ENRICHMENT**

3 **Asserted by the New York Subclass against CVS**

4 270. Plaintiffs repeat paragraphs 1 through 122 above.

5 271. By means of CVS's wrongful conduct alleged herein, CVS knowingly charges plan
6 participants artificially high copayments for generic prescription drugs included in the HSP program in
7 a manner that is unfair and unconscionable.

8 272. CVS knowingly received and retained wrongful benefits and funds from Ms. Odorisio,
9 Mr. Guarnieri, Ms. Samuelson, and Subclass Members. In so doing, CVS acted with conscious
10 disregard for the rights of Ms. Odorisio, Mr. Guarnieri, Ms. Samuelson, and Subclass Members.

11 273. As a result of CVS's wrongful conduct as alleged herein, CVS has been unjustly
12 enriched at the expense of, and to the detriment of, Ms. Odorisio, Mr. Guarnieri, Ms. Samuelson, and
13 Subclass Members.

14 274. CVS's unjust enrichment is traceable to, and resulted directly and proximately from,
15 the conduct alleged herein.

16 275. Under the common law doctrine of unjust enrichment, it is inequitable for CVS to be
17 permitted to retain the benefits they received, and are still receiving, without justification, from the
18 imposition of artificially inflated prices on Ms. Odorisio, Mr. Guarnieri, Ms. Samuelson, and Subclass
19 Members in an unfair and unconscionable manner. CVS's retention of such funds under
20 circumstances making it inequitable to do so constitutes unjust enrichment.

21 276. Ms. Odorisio, Mr. Guarnieri, Ms. Samuelson, and the other Subclass Members did not
22 confer these benefits officiously or gratuitously, and it would be inequitable and unjust for CVS to
23 retain these wrongfully obtained profits.

24 277. CVS is therefore liable to Ms. Odorisio, Mr. Guarnieri, Ms. Samuelson, and Subclass
25 Members for restitution in the amount of CVS's wrongfully obtained profits.

26 **COUNT XX: VIOLATION OF MICHIGAN CONSUMER PROTECTION ACT**

27 **Asserted by the Michigan Subclass against CVS**

28 278. Plaintiffs repeat paragraphs 1 through 122 above.

1 279. Members of the Michigan Subclass are “persons” within the meaning of M.C.L. §
2 445.911(3).

3 280. Members of the Michigan Subclass were injured by CVS’s willful and knowing
4 employment in trade and/or commerce of unfair, unconscionable and/or deceptive acts or practices in
5 violation of M.C.L. § 445.903 including, among other things, (a) reporting to third-party payors
6 fraudulent U&C prices for hundreds of generic prescription drugs; (b) misrepresenting to third-party
7 payors and Subclass Members that the U&C price was greater than Subclass Members’ copayments;
8 (c) concealing from Subclass Members the true U&C prices of generic prescription drugs; and (d)
9 wrongfully obtaining monies from Plaintiffs and the other Members of the Michigan subclass as a
10 result of its deception.

11 281. As a direct and proximate result of CVS’s unfair and deceptive acts and practices,
12 Subclass members were deceived into paying falsely inflated prices for generic prescription drugs and
13 have been damaged thereby.

14 282. CVS is therefore liable to Subclass Members for the damages they sustained, plus
15 statutory damages, penalties, costs, and reasonable attorneys’ fees to the extent provided by law.

16 **COUNT XXI: FRAUD**

17 **Asserted by the Michigan Subclass against CVS**

18 283. Plaintiffs repeat paragraphs 1 through 122 above.

19 284. CVS materially misrepresented and/or concealed the true U&C prices of generic
20 prescription drugs that are included in the HSP program. CVS made such misrepresentations and/or
21 omissions by reporting artificially inflated U&C prices for such drugs to third-party payors.

22 285. CVS made these misrepresentations and omissions knowingly, or at least with reckless
23 disregard of their falsity, given that CVS knew the prices that CVS reported to third-party payors were
24 substantially (and unjustifiably) higher than the prices CVS charged under its HSP program to cash-
25 paying customers.

26 286. CVS intended to induce Subclass Members to rely on its misrepresentations and/or
27 omissions. CVS knew that Subclass Members would rely on CVS’s representation and/or omissions
28 regarding U&C prices and, as a result, would pay copayments higher than the actual U&C prices for

1 those generic prescription drugs.

2 287. Subclass Members justifiably relied upon CVS's misrepresentations and/or omissions
3 in that Subclass Members would not have purchased generic prescription drugs from CVS for more
4 than the HSP prices but for CVS's misrepresentations and/or omissions. Subclass Members' reliance
5 on CVS's misrepresentations and/or omissions was, thus, to their detriment.

6 288. As a proximate result of CVS's conduct, Subclass Members have been damaged
7 because they paid copayments for generic prescription drugs that were far higher than the prices they
8 would have paid but for CVS's misconduct.

9 289. CVS is therefore liable to Subclass Members for the damages they sustained.

10 **COUNT XXII: CONSTRUCTIVE FRAUD**

11 **Asserted by the Michigan Subclass against CVS**

12 290. Plaintiffs repeat paragraphs 1 through 122 above.

13 291. In the circumstances alleged above, Subclass Members had a special relationship with
14 CVS.

15 292. In particular, CVS had a duty to deal fairly with Subclass Members because (a) CVS
16 claimed to possess and did possess specialized knowledge, experience, and qualifications regarding
17 the prescription drugs it sold to its customers, including specifically the pricing and scheme for
18 insurance reimbursement of those prescription drugs; (b) such specialized knowledge, experience, and
19 qualifications put CVS in a position of superiority over Subclass Members; (c) CVS knew that
20 Subclass Members needed to rely and did rely on CVS's specialized knowledge, experience and
21 qualifications, and on information supplied by CVS, in making decisions on purchasing prescription
22 drugs from CVS, because Subclass Members were not able to detect the falsity and incompleteness of
23 the information supplied by CVS; (d) Subclass Members were uniquely vulnerable to injury if CVS
24 did not supply truthful and accurate information; and (e) CVS stood to gain at Subclass Members'
25 expense if CVS did not supply truthful and accurate information.

26 293. CVS breached its duty to deal fairly with Subclass Members by making material
27 misrepresentations and/or omissions regarding the true U&C prices of generic prescription that are
28 included in the HSP program. CVS made such misrepresentations and/or omissions by reporting

1 artificially inflated U&C prices for such drugs to third-party payors.

2 294. CVS intended to induce Subclass Members to rely on its misrepresentations and/or
3 omissions. CVS knew that Subclass Members would rely on CVS's representation and/or omissions
4 regarding U&C prices and, as a result, would pay copayments higher than the actual U&C prices for
5 those generic prescription drugs.

6 295. Subclass Members justifiably relied upon CVS's misrepresentations and/or omissions
7 in that Subclass Members would not have purchased generic prescription drugs from CVS for more
8 than the HSP prices but for CVS's misrepresentations and/or omissions. Subclass Members' reliance
9 on CVS's misrepresentations and/or omissions was, thus, to their detriment.

10 296. CVS gained an advantage at Subclass Members' expense, as alleged above, because,
11 among other things, CVS obtained wrongfully inflated copayments from Subclass Members.

12 297. As a proximate result of CVS's conduct, Subclass Members have been damaged
13 because they paid copayments for generic prescription drugs that were far higher than the prices they
14 would have paid but for CVS's misconduct.

15 298. CVS is therefore liable to Subclass Members for the damages they sustained.

16 **COUNT XXIII: NEGLIGENT MISREPRESENTATION**

17 **Asserted by the Michigan Subclass against CVS**

18 299. Plaintiffs repeat paragraphs 1 through 122 above.

19 300. Under the circumstances alleged, CVS owed a duty to Subclass Members to provide
20 them with accurate information regarding the prices of their generic prescription drugs.

21 301. CVS misrepresented and/or concealed the true U&C prices of generic prescription
22 drugs that are included in the HSP program. CVS made such misrepresentations by reporting
23 artificially inflated U&C prices for such drugs to third-party payors.

24 302. CVS had no reasonable grounds to believe that these misrepresentations and/or
25 omissions were true. The prices that CVS reported to third-party payors were substantially (and
26 unjustifiably) higher than the prices CVS charged under its HSP program to cash-paying customers.

27 303. CVS intended to induce Subclass Members to rely on its misrepresentations and/or
28 omissions. CVS knew that Subclass Members would rely on CVS's misrepresentations and/or

1 omissions regarding U&C prices, and, as a result, would pay copayments higher than the actual U&C
2 prices for those generic prescription drugs.

3 304. Subclass Members justifiably relied upon CVS's misrepresentations and/or omissions
4 in that Subclass Members would not have purchased generic prescription drugs from CVS for more
5 than the HSP prices but for CVS's misrepresentations and/or omissions. Members' reliance on CVS's
6 misrepresentations and/or omissions was, thus, to their detriment.

7 305. As a proximate result of CVS's negligent conduct, Subclass Members have been
8 damaged because they paid copayments for generic prescription drugs that were far higher than the
9 prices they would have paid but for CVS's misconduct.

10 306. CVS is therefore liable to Subclass Members for the damages they sustained.

11 **COUNT XXIV: UNJUST ENRICHMENT**

12 **Asserted by the Michigan Subclass against CVS**

13 307. Plaintiffs repeat paragraphs 1 through 122 above.

14 308. By means of CVS's wrongful conduct alleged herein, CVS knowingly charges plan
15 participants artificially high copayments for generic prescription drugs included in the HSP program in
16 a manner that is unfair and unconscionable.

17 309. CVS knowingly received and retained wrongful benefits and funds from Subclass
18 Members. In so doing, CVS acted with conscious disregard for the rights of Subclass Members.

19 310. As a result of CVS's wrongful conduct as alleged herein, CVS has been unjustly
20 enriched at the expense of, and to the detriment of, Subclass Members.

21 311. CVS's unjust enrichment is traceable to, and resulted directly and proximately from,
22 the conduct alleged herein.

23 312. Under the common law doctrine of unjust enrichment, it is inequitable for CVS to be
24 permitted to retain the benefits they received, and are still receiving, without justification, from the
25 imposition of artificially inflated prices on Subclass Members in an unfair and unconscionable
26 manner. CVS's retention of such funds under circumstances making it inequitable to do so constitutes
27 unjust enrichment.

28 313. Subclass Members did not confer these benefits officiously or gratuitously, and it

1 would be inequitable and unjust for CVS to retain these wrongfully obtained profits.

2 314. CVS is therefore liable to Subclass Members for restitution in the amount of CVS's
3 wrongfully obtained profits.

4 **COUNT XXV: FRAUD**

5 **Asserted by the Texas Subclass against CVS**

6 315. Plaintiffs repeat paragraphs 1 through 122 above.

7 316. CVS materially misrepresented and/or concealed the true U&C prices of generic
8 prescription drugs that are included in the HSP program. CVS made such misrepresentations and/or
9 omissions by reporting artificially inflated U&C prices for such drugs to third-party payors.

10 317. CVS made these misrepresentations and omissions knowingly, or at least with reckless
11 disregard of their falsity, given that CVS knew the prices that CVS reported to third-party payors were
12 substantially (and unjustifiably) higher than the prices CVS charged under its HSP program to cash-
13 paying customers.

14 318. CVS intended to induce Ms. Pacheco and Subclass Members to rely on its
15 misrepresentations and/or omissions. CVS knew that Plaintiffs and Subclass Members would rely on
16 CVS's representation and/or omissions regarding U&C prices, and, as a result, would pay copayments
17 higher than the actual U&C prices for those generic prescription drugs.

18 319. Ms. Pacheco and Subclass Members justifiably relied upon CVS's misrepresentations
19 and/or omissions in that they and the Subclass Members would not have purchased generic
20 prescription drugs from CVS for more than the HSP prices but for CVS's misrepresentations and/or
21 omissions. Their reliance on CVS's misrepresentations and/or omissions was, thus, to their detriment.

22 320. As a proximate result of CVS's conduct, Ms. Pacheco and Subclass Members have
23 been damaged because they paid copayments for generic prescription drugs that were far higher than
24 the prices they would have paid but for CVS's misconduct.

25 321. CVS is therefore liable to Ms. Pacheco and Subclass Members for the damages they
26 sustained.

COUNT XXVI: CONSTRUCTIVE FRAUD

Asserted by the Texas Subclass against CVS

322. Plaintiffs repeat paragraphs 1 through 122 above.

323. In the circumstances alleged above, Ms. Pacheco and the Subclass Members had a special relationship with CVS.

324. In particular, CVS had a duty to deal fairly with Ms. Pacheco and the Subclass Members because (a) CVS claimed to possess and did possess specialized knowledge, experience, and qualifications regarding the prescription drugs it sold to its customers, including specifically the pricing and scheme for insurance reimbursement of those prescription drugs; (b) such specialized knowledge, experience, and qualifications put CVS in a position of superiority over Ms. Pacheco and the Subclass Members; (c) CVS knew that Ms. Pacheco and the Subclass Members needed to rely and did rely on CVS's specialized knowledge, experience and qualifications, and on information supplied by CVS, in making decisions on purchasing prescription drugs from CVS, because Ms. Pacheco and the Subclass Members were not able to detect the falsity and incompleteness of the information supplied by CVS; (d) Ms. Pacheco and the Subclass Members were uniquely vulnerable to injury if CVS did not supply truthful and accurate information; and (e) CVS stood to gain at Ms. Pacheco and the Subclass Members' expense if CVS did not supply truthful and accurate information.

325. CVS breached its duty to deal fairly with Ms. Pacheco and the Subclass Members by making material misrepresentations and/or omissions regarding the true U&C prices of generic prescription drugs that are included in the HSP program. CVS made such misrepresentations and/or omissions by reporting artificially inflated U&C prices for such drugs to third-party payors.

326. CVS intended to induce Ms. Pacheco and Subclass Members to rely on its misrepresentations and/or omissions. CVS knew that Ms. Pacheco and Subclass Members would rely on CVS's representation and/or omissions regarding U&C prices, and, as a result, would pay copayments higher than the actual U&C prices for those generic prescription drugs.

327. Ms. Pacheco and Subclass Members justifiably relied upon CVS's misrepresentations and/or omissions in that they and other Subclass Members would not have purchased generic prescription drugs from CVS for more than the Health Savings Pass prices but for CVS's

1 misrepresentations and/or omissions. Ms. Pacheco and Subclass Members' reliance on CVS's
2 misrepresentations and/or omissions was, thus, to their detriment.

3 328. CVS gained an advantage at Ms. Pacheco and the Subclass Members' expense, as
4 alleged above, because, among other things, CVS obtained wrongfully inflated copayments from Ms.
5 Pacheco and Subclass Members.

6 329. As a proximate result of CVS's conduct, Ms. Pacheco and the Subclass Members have
7 been damaged because they paid copayments for generic prescription drugs that were far higher than
8 the prices they would have paid but for CVS's misconduct.

9 330. CVS is therefore liable to Ms. Pacheco and Subclass Members for the damages they
10 sustained.

11 **COUNT XXVII: NEGLIGENT MISREPRESENTATION**

12 **Asserted by the Texas Subclass against CVS**

13 331. Plaintiffs repeat paragraphs 1 through 122 above.

14 332. Under the circumstances alleged, CVS owed a duty to Ms. Pacheco and Subclass
15 Members to provide them with accurate information regarding the prices of their generic prescription
16 drugs.

17 333. CVS misrepresented and/or concealed the true U&C prices of generic prescription
18 drugs that are included in the HSP program. CVS made such misrepresentations by reporting
19 artificially inflated U&C prices for such drugs to third-party payors.

20 334. CVS had no reasonable grounds to believe that these misrepresentations and/or
21 omissions were true. The prices that CVS reported to third-party payors were substantially (and
22 unjustifiably) higher than the prices CVS charged under its HSP program to cash-paying customers.

23 335. CVS intended to induce Ms. Pacheco and Subclass Members to rely on its
24 misrepresentations and/or omissions. CVS knew that Ms. Pacheco and Subclass Members would rely
25 on CVS's misrepresentations and/or omissions regarding U&C prices and, as a result, would pay
26 copayments higher than the actual U&C prices for those generic prescription drugs.

27 336. Ms. Pacheco and Subclass Members justifiably relied upon CVS's misrepresentations
28 and/or omissions in that they would not have purchased generic prescription drugs from CVS for more

1 than the Health Savings Pass prices but for CVS's misrepresentations and/or omissions. Ms. Pacheco
2 and Subclass Members' reliance on CVS's misrepresentations and/or omissions was, thus, to their
3 detriment.

4 337. As a proximate result of CVS's negligent conduct, Ms. Pacheco and Subclass Members
5 have been damaged because they paid copayments for generic prescription drugs that were far higher
6 than the prices they would have paid but for CVS's misconduct.

7 338. CVS is therefore liable to Ms. Pacheco and Subclass Members for the damages they
8 sustained.

9 **COUNT XXVIII: UNJUST ENRICHMENT**

10 **Asserted by the Texas Subclass against CVS**

11 339. Plaintiffs repeat paragraphs 1 through 122 above.

12 340. By means of CVS's wrongful conduct alleged herein, CVS knowingly charges plan
13 participants artificially high copayments for generic prescription drugs included in the HSP program in
14 a manner that is unfair and unconscionable.

15 341. CVS knowingly received and retained wrongful benefits and funds from Ms. Pacheco
16 and Subclass Members. In so doing, CVS acted with conscious disregard for the rights of Ms.
17 Pacheco and Subclass Members.

18 342. As a result of CVS's wrongful conduct as alleged herein, CVS has been unjustly
19 enriched at the expense of, and to the detriment of, Ms. Pacheco and Subclass Members.

20 343. CVS's unjust enrichment is traceable to, and resulted directly and proximately from,
21 the conduct alleged herein.

22 344. Under the common law doctrine of unjust enrichment, it is inequitable for CVS to be
23 permitted to retain the benefits they received, and are still receiving, without justification, from the
24 imposition of artificially inflated prices on Ms. Pacheco and Subclass Members in an unfair and
25 unconscionable manner. CVS's retention of such funds under circumstances making it inequitable to
26 do so constitutes unjust enrichment.

27 345. Ms. Pacheco and the other Subclass Members did not confer these benefits officiously
28 or gratuitously, and it would be inequitable and unjust for CVS to retain these wrongfully obtained

1 profits.

2 346. CVS are therefore liable to Ms. Pacheco and Subclass Members for restitution in the
3 amount of CVS's wrongfully obtained profits.

4 **COUNT XXIX: VIOLATION OF FLORIDA DECEPTIVE AND UNFAIR TRADE**

5 **PRACTICES ACT**

6 **Asserted by the Florida Subclass against CVS**

7 347. Plaintiffs repeat paragraphs 1 through 122 above.

8 348. Subclass Members of the Florida Subclass are "consumers" within the meaning of Fla.
9 Stat. § 501.203(7).

10 349. Subclass Members have suffered losses because of CVS's employment of
11 unconscionable acts or practices and unfair and/or deceptive acts or practices in the conduct of trade
12 and commerce, including, among other things, (a) reporting to third-party payors fraudulent U&C
13 prices for hundreds of generic prescription drugs; (b) misrepresenting to third-party payors and
14 Subclass Members that the U&C price was greater than Subclass Members' copayments; (c)
15 concealing from Subclass Members the true U&C prices of generic prescription drugs; and (d)
16 wrongfully obtaining monies from Subclass Members as a result of its deception.

17 350. CVS willfully engaged in the unfair and/or deceptive acts and/or practices described
18 above and knew or should have known that those acts and/or practices were unfair and/or deceptive
19 and in violation of Florida's Deceptive and Unfair Trade Practices Act, Fla. Stat. § 501.201, *et seq.*

20 351. As a direct and proximate result of CVS's unfair and deceptive acts and practices,
21 Subclass Members were deceived into paying artificially inflated prices for generic prescription drugs
22 and have been damaged thereby.

23 352. CVS is therefore liable to Subclass Members for the damages they sustained, plus
24 statutory damages, penalties, costs, and reasonable attorneys' fees to the extent provided by law.

25 **COUNT XXX: FRAUD**

26 **Asserted by the Florida Subclass against CVS**

27 353. Plaintiffs repeat paragraphs 1 through 122 above.

28 354. CVS materially misrepresented and/or concealed the true U&C prices of generic

1 prescription drugs that are included in the HSP program. CVS made such misrepresentations and/or
2 omissions by reporting artificially inflated U&C prices for such drugs to third-party payors.

3 355. CVS made these misrepresentations and omissions knowingly, or at least with reckless
4 disregard of their falsity, given that CVS knew the prices that CVS reported to third-party payors were
5 substantially (and unjustifiably) higher than the prices CVS charged under its HSP program to cash-
6 paying customers.

7 356. CVS intended to induce Subclass Members to rely on its misrepresentations and/or
8 omissions. CVS knew that Subclass Members would rely on CVS's representation and/or omissions
9 regarding U&C prices, and, as a result, would pay copayments higher than the actual U&C prices for
10 those generic prescription drugs.

11 357. Subclass Members justifiably relied upon CVS's misrepresentations and/or omissions
12 in that Subclass Members would not have purchased generic prescription drugs from CVS for more
13 than the HSP prices but for CVS's misrepresentations and/or omissions. Subclass Members' reliance
14 on CVS's misrepresentations and/or omissions was, thus, to their detriment.

15 358. As a proximate result of CVS's conduct, Subclass Members have been damaged
16 because they paid copayments for generic prescription drugs that were far higher than the prices they
17 would have paid but for CVS's misconduct.

18 359. CVS is therefore liable to Subclass Members for the damages they sustained.

19 **COUNT XXXI: CONSTRUCTIVE FRAUD**

20 **Asserted by the Florida Subclass against CVS**

21 360. Plaintiffs repeat paragraphs 1 through 122 above.

22 361. In the circumstances alleged above, Subclass Members had a special relationship with
23 CVS.

24 362. In particular, CVS had a duty to deal fairly with Subclass Members because (a) CVS
25 claimed to possess and did possess specialized knowledge, experience, and qualifications regarding
26 the prescription drugs it sold to its customers, including specifically the pricing and scheme for
27 insurance reimbursement of those prescription drugs; (b) such specialized knowledge, experience, and
28 qualifications put CVS in a position of superiority over Subclass Members; (c) CVS knew that

1 Subclass Members needed to rely and did rely on CVS's specialized knowledge, experience and
2 qualifications, and on information supplied by CVS, in making decisions on purchasing prescription
3 drugs from CVS, because Subclass Members were not able to detect the falsity and incompleteness of
4 the information supplied by CVS; (d) Subclass Members were uniquely vulnerable to injury if CVS
5 did not supply truthful and accurate information; and (e) CVS stood to gain at Subclass Members'
6 expense if CVS did not supply truthful and accurate information.

7 363. CVS breached its duty to deal fairly with Subclass Members by making material
8 misrepresentations and/or omissions regarding the true U&C prices of generic prescription drugs that
9 are included in the HSP program. CVS made such misrepresentations and/or omissions by reporting
10 artificially inflated U&C prices for such drugs to third-party payors.

11 364. CVS intended to induce Subclass Members to rely on its misrepresentations and/or
12 omissions. CVS knew that Subclass Members would rely on CVS's representation and/or omissions
13 regarding U&C prices and, as a result, would pay copayments higher than the actual U&C prices for
14 those generic prescription drugs.

15 365. Subclass Members justifiably relied upon CVS's misrepresentations and/or omissions
16 in that Subclass Members would not have purchased generic prescription drugs from CVS for more
17 than the Health Savings Pass prices but for CVS's misrepresentations and/or omissions. Subclass
18 Members' reliance on CVS's misrepresentations and/or omissions was, thus, to their detriment.

19 366. CVS gained an advantage at Subclass Members' expense, as alleged above, because,
20 among other things, CVS obtained wrongfully inflated copayments from Subclass Members.

21 367. As a proximate result of CVS's conduct, Subclass Members have been damaged
22 because they paid copayments for generic prescription drugs that were far higher than the prices they
23 would have paid but for CVS's misconduct.

24 368. CVS is therefore liable to Subclass Members for the damages they sustained.

25 **COUNT XXXII: NEGLIGENT MISREPRESENTATION**

26 **Asserted by the Florida Subclass against CVS**

27 369. Plaintiffs repeat paragraphs 1 through 122 above.

28 370. Under the circumstances alleged, CVS owed a duty to Subclass Members to provide

1 them with accurate information regarding the prices of their generic prescription drugs.

2 371. CVS misrepresented and/or concealed the true U&C prices of generic prescription
3 drugs that are included in the HSP program. CVS made such misrepresentations by reporting
4 artificially inflated U&C prices for such drugs to third-party payors.

5 372. CVS had no reasonable grounds to believe that these misrepresentations and/or
6 omissions were true. The prices that CVS reported to third-party payors were substantially (and
7 unjustifiably) higher than the prices CVS charged under its HSP program to cash-paying customers.

8 373. CVS intended to induce Subclass Members to rely on its misrepresentations and/or
9 omissions. CVS knew that Subclass Members would rely on CVS's misrepresentations and/or
10 omissions regarding U&C prices, and, as a result, would pay copayments higher than the actual U&C
11 prices for those generic prescription drugs.

12 374. Subclass Members justifiably relied upon CVS's misrepresentations and/or omissions
13 in that Subclass Members would not have purchased generic prescription drugs from CVS for more
14 than the Health Savings Pass prices but for CVS's misrepresentations and/or omissions. Subclass
15 Members' reliance on CVS's misrepresentations and/or omissions was, thus, to their detriment.

16 375. As a proximate result of CVS's negligent conduct, Subclass Members have been
17 damaged because they paid copayments for generic prescription drugs that were far higher than the
18 prices they would have paid but for CVS's misconduct.

19 376. CVS is therefore liable to Subclass Members for the damages they sustained.

20 **COUNT XXXIII: UNJUST ENRICHMENT**

21 **Asserted by the Florida Subclass against CVS**

22 377. Plaintiffs repeat paragraphs 1 through 122 above.

23 378. By means of CVS's wrongful conduct alleged herein, CVS knowingly charges plan
24 participants artificially high copayments for generic prescription drugs included in the HSP program in
25 a manner that is unfair and unconscionable.

26 379. CVS knowingly received and retained wrongful benefits and funds from Subclass
27 Members. In so doing, CVS acted with conscious disregard for the rights of Subclass Members.

28 380. As a result of CVS's wrongful conduct as alleged herein, CVS has been unjustly

1 enriched at the expense of, and to the detriment of, Subclass Members.

2 381. CVS's unjust enrichment is traceable to, and resulted directly and proximately from,
3 the conduct alleged herein.

4 382. Under the common law doctrine of unjust enrichment, it is inequitable for CVS to be
5 permitted to retain the benefits they received, and are still receiving, without justification, from the
6 imposition of artificially inflated prices on Subclass Members in an unfair and unconscionable
7 manner. CVS's retention of such funds under circumstances making it inequitable to do so constitutes
8 unjust enrichment.

9 383. Subclass Members did not confer these benefits officiously or gratuitously, and it
10 would be inequitable and unjust for CVS to retain these wrongfully obtained profits.

11 384. CVS is therefore liable to Subclass Members for restitution in the amount of CVS's
12 wrongfully obtained profits.

13 **COUNT XXXIV: VIOLATION OF ILLINOIS CONSUMER FRAUD AND DECEPTIVE**

14 **BUSINESS PRACTICES ACT**

15 **Asserted by the Illinois Subclass against CVS**

16 385. Plaintiffs repeat paragraphs 1 through 122 above.

17 386. At all relevant times, Subclass Members, CVS was a person within the meaning of 815
18 ILCS 505/1(c).

19 387. At all relevant times, Subclass Members were consumers within the meaning of 815
20 ILCS 505/1(e).

21 388. At all relevant and material times as described herein, CVS conducted trade and
22 commerce within the meaning of 815 ILCS 505/1(f).

23 389. Subclass Members have suffered losses because of CVS's employment of
24 unconscionable acts or practices and unfair and/or deceptive acts or practices in the conduct of trade
25 and commerce, including, among other things, (a) reporting to third-party payors fraudulent U&C
26 prices for hundreds of generic prescription drugs; (b) misrepresenting to third-party payors, Subclass
27 Members that the U&C price was greater than Subclass Members' copayments; (c) concealing from
28 Subclass Members the true U&C prices of generic prescription drugs; and (d) wrongfully obtaining

1 monies from Subclass Members as a result of its deception.

2 390. CVS willfully engaged in the unfair and/or deceptive acts and/or practices described
3 above and knew or should have known that those acts and/or practices were unfair and/or deceptive
4 and in violation of Illinois' Consumer Fraud and Deceptive Business Practices Act.

5 391. The facts which CVS misrepresented and/or concealed, as alleged in the preceding
6 paragraphs, were material to Subclass Members' decision about whether to purchase generic
7 prescription drugs from CVS, in that they would not have purchased generic prescription drugs from
8 CVS for more than the HSP prices but for CVS's unfair and/or deceptive acts and/or practices.

9 392. This deception alleged herein occurred in connection with CVS's conduct of trade and
10 commerce in Illinois.

11 393. CVS intended for Subclass Members to purchase generic prescription drugs from CVS
12 in reliance upon CVS's unfair and/or deceptive acts and/or practices.

13 394. As a direct and proximate result of CVS's unfair and deceptive acts and practices,
14 Subclass Members were deceived into paying artificially inflated prices for generic prescription drugs
15 and have been damaged thereby.

16 395. CVS is therefore liable to Subclass Members for the damages they sustained, plus
17 statutory damages, penalties, costs, and reasonable attorneys' fees to the extent provided by law.

18 **COUNT XXXV: FRAUD**

19 **Asserted by the Illinois Subclass against CVS**

20 396. Plaintiffs repeat paragraphs 1 through 122 above.

21 397. CVS materially misrepresented and/or concealed the true U&C prices of generic
22 prescription drugs that are included in the HSP program. CVS made such misrepresentations and/or
23 omissions by reporting artificially inflated U&C prices for such drugs to third-party payors.

24 398. CVS made these misrepresentations and omissions knowingly, or at least with reckless
25 disregard of their falsity, given that CVS knew the prices that CVS reported to third-party payors were
26 substantially (and unjustifiably) higher than the prices CVS charged under its HSP program to cash-
27 paying customers.

28 399. CVS intended to induce Subclass Members to rely on its misrepresentations and/or

1 omissions. CVS knew that Subclass Members would rely on CVS's representation and/or omissions
2 regarding U&C prices and, as a result, would pay copayments higher than the actual U&C prices for
3 those generic prescription drugs.

4 400. Subclass Members justifiably relied upon CVS's misrepresentations and/or omissions
5 in that they would not have purchased generic prescription drugs from CVS for more than the HSP
6 prices but for CVS's misrepresentations and/or omissions. Subclass Members' reliance on CVS's
7 misrepresentations and/or omissions was, thus, to their detriment.

8 401. As a proximate result of CVS's conduct, Subclass Members have been damaged
9 because they paid copayments for generic prescription drugs that were far higher than the prices they
10 would have paid but for CVS's misconduct.

11 402. CVS is therefore liable to Subclass Members for the damages they sustained.

12 **COUNT XXXVI: CONSTRUCTIVE FRAUD**

13 **Asserted by the Illinois Subclass against CVS**

14 403. Plaintiffs repeat paragraphs 1 through 122 above.

15 404. In the circumstances alleged above, Subclass Members had a special relationship with
16 CVS.

17 405. In particular, CVS had a duty to deal fairly with Subclass Members because (a) CVS
18 claimed to possess and did possess specialized knowledge, experience, and qualifications regarding
19 the prescription drugs it sold to its customers, including specifically the pricing and scheme for
20 insurance reimbursement of those prescription drugs; (b) such specialized knowledge, experience, and
21 qualifications put CVS in a position of superiority over Subclass Members; (c) CVS knew that
22 Subclass Members needed to rely and did rely on CVS's specialized knowledge, experience and
23 qualifications, and on information supplied by CVS, in making decisions on purchasing prescription
24 drugs from CVS, because Subclass Members were not able to detect the falsity and incompleteness of
25 the information supplied by CVS; (d) Subclass Members were uniquely vulnerable to injury if CVS
26 did not supply truthful and accurate information; and (e) CVS stood to gain at Subclass Members'
27 expense if CVS did not supply truthful and accurate information.

28 406. CVS breached its duty to deal fairly with Subclass Members by making material

1 misrepresentations and/or omissions regarding the true U&C prices of generic prescription drugs that
2 are included in the HSP program. CVS made such misrepresentations and/or omissions by reporting
3 artificially inflated U&C prices for such drugs to third-party payors.

4 407. CVS intended to induce Subclass Members to rely on its misrepresentations and/or
5 omissions. CVS knew that Subclass Members would rely on CVS's representation and/or omissions
6 regarding U&C prices and, as a result, would pay copayments higher than the actual U&C prices for
7 those generic prescription drugs.

8 408. Subclass Members justifiably relied upon CVS's misrepresentations and/or omissions
9 in that Subclass Members would not have purchased generic prescription drugs from CVS for more
10 than the Health Savings Pass prices but for CVS's misrepresentations and/or omissions. Subclass
11 Members' reliance on CVS's misrepresentations and/or omissions was, thus, to their detriment.

12 409. CVS gained an advantage at Subclass Members' expense, as alleged above, because,
13 among other things, CVS obtained wrongfully inflated copayments from Subclass Members.

14 410. As a proximate result of CVS's conduct, Subclass Members have been damaged
15 because they paid copayments for generic prescription drugs that were far higher than the prices they
16 would have paid but for CVS's misconduct.

17 411. CVS is therefore liable to Subclass Members for the damages they sustained.

18 **COUNT XXXVII: NEGLIGENT MISREPRESENTATION**

19 **Asserted by the Illinois Subclass against CVS**

20 412. Plaintiffs repeat paragraphs 1 through 122 above.

21 413. Under the circumstances alleged, CVS owed a duty to Subclass Members to provide
22 them with accurate information regarding the prices of their generic prescription drugs.

23 414. CVS misrepresented and/or concealed the true U&C prices of generic prescription
24 drugs that are included in the HSP program. CVS made such misrepresentations by reporting
25 artificially inflated U&C prices for such drugs to third-party payors.

26 415. CVS had no reasonable grounds to believe that these misrepresentations and/or
27 omissions were true. The prices that CVS reported to third-party payors were substantially (and
28 unjustifiably) higher than the prices CVS charged under its HSP program to cash-paying customers.

1 416. CVS intended to induce Subclass Members to rely on its misrepresentations and/or
2 omissions. CVS knew that Subclass Members would rely on CVS's misrepresentations and/or
3 omissions regarding U&C prices and, as a result, would pay copayments higher than the actual U&C
4 prices for those generic prescription drugs.

5 417. Subclass Members justifiably relied upon CVS's misrepresentations and/or omissions
6 in that they would not have purchased generic prescription drugs from CVS for more than the HSP
7 prices but for CVS's misrepresentations and/or omissions. Subclass Members' reliance on CVS's
8 misrepresentations and/or omissions was, thus, to their detriment.

9 418. As a proximate result of CVS's negligent conduct, Subclass Members have been
10 damaged because they paid copayments for generic prescription drugs that were far higher than the
11 prices they would have paid but for CVS's misconduct.

12 419. CVS is therefore liable to Subclass Members for the damages they sustained.

13 **COUNT XXXVIII: UNJUST ENRICHMENT**

14 **Asserted by the Illinois Subclass against CVS**

15 420. Plaintiffs repeat paragraphs 1 through 122 above.

16 421. By means of CVS's wrongful conduct alleged herein, CVS knowingly charges plan
17 participants artificially high copayments for generic prescription drugs included in the HSP program in
18 a manner that is unfair and unconscionable.

19 422. CVS knowingly received and retained wrongful benefits and funds from Subclass
20 Members. In so doing, CVS acted with conscious disregard for the rights of Subclass Members.

21 423. As a result of CVS's wrongful conduct as alleged herein, CVS has been unjustly
22 enriched at the expense of, and to the detriment of, Subclass Members.

23 424. CVS's unjust enrichment is traceable to, and resulted directly and proximately from,
24 the conduct alleged herein.

25 425. Under the common law doctrine of unjust enrichment, it is inequitable for CVS to be
26 permitted to retain the benefits they received, and are still receiving, without justification, from the
27 imposition of artificially inflated prices on Subclass Members in an unfair and unconscionable
28 manner. CVS's retention of such funds under circumstances making it inequitable to do so constitutes

1 unjust enrichment.

2 426. Subclass Members did not confer these benefits officiously or gratuitously, and it
3 would be inequitable and unjust for CVS to retain these wrongfully obtained profits.

4 427. CVS are therefore liable to Subclass Members for restitution in the amount of CVS's
5 wrongfully obtained profits.

6 **COUNT XXXIX: VIOLATION OF PENNSYLVANIA UNFAIR TRADE PRACTICES AND**

7 **CONSUMER PROTECTION LAW, § 201-1, ET SEQ.**

8 **Asserted by the Pennsylvania Subclass against CVS**

9 428. Plaintiffs repeat paragraphs 1 through 122 above.

10 429. Plaintiff Ron W. Coder brings this claim individually and on behalf of the Pennsylvania
11 Subclass.

12 430. CVS is a "person" within the meaning of § 201-2(2).

13 431. CVS engaged in "trade" and "commerce" within the meaning of § 201-2(3).

14 432. Mr. Coder and other members of the Pennsylvania Subclass have been injured by
15 CVS's deceptive practices in violation of § 201-2(4), including, among other things, (a) reporting to
16 insurance companies, and state and federal health care entities fraudulent U&C prices for hundreds of
17 generic prescription drugs; (b) misrepresenting to third-party payors, Mr. Coder, and Subclass
18 Members that the U&C price was greater than Mr. Coder's and Subclass Members' copayments; (c)
19 concealing from Mr. Coder and Subclass Members the true U&C prices of generic prescription drugs;
20 and (d) wrongfully obtaining monies from Mr. Coder and the other Members of the Pennsylvania
21 subclass as a result of its deception.

22 433. These misrepresentations and concealments specifically violated § 201-2(4)(ii), § 201-
23 2(4)(iii), § 201-2(4)(v), § 201-2(4)(vii), and § 201-2(4)(xxi).

24 434. CVS willfully, knowingly, and fraudulently engaged in the deceptive acts and/or
25 practices described above.

26 435. As a direct and proximate result of CVS's unfair and deceptive acts and practices, Mr.
27 Coder and the other Pennsylvania Subclass members were deceived into paying artificially inflated
28 prices for generic prescription drugs and have been damaged thereby.

1 436. CVS is therefore liable to Mr. Coder and Subclass Members for the damages they
2 sustained, plus statutory damages, penalties, costs and reasonable attorneys' fees to the extent
3 provided by law.

4 **COUNT XL: FRAUD**

5 **Asserted by the Pennsylvania Subclass against CVS**

6 437. Plaintiffs repeat paragraphs 1 through 122 above.

7 438. CVS materially misrepresented and/or concealed the true U&C prices of generic
8 prescription drugs that are included in the HSP program. CVS made such misrepresentations and/or
9 omissions by reporting artificially inflated U&C prices for such drugs to third-party payors.

10 439. CVS made these misrepresentations and omissions knowingly, or at least with reckless
11 disregard of their falsity, given that CVS knew the prices that CVS reported to third-party payors were
12 substantially (and unjustifiably) higher than the prices CVS charged under its HSP program to cash-
13 paying customers.

14 440. CVS intended to induce Mr. Coder and Subclass Members to rely on its
15 misrepresentations and/or omissions. CVS knew that Mr. Coder and Subclass Members would rely on
16 CVS's representation and/or omissions regarding U&C prices and, as a result, would pay copayments
17 higher than the actual U&C prices for those generic prescription drugs.

18 441. Mr. Coder and Subclass Members justifiably relied upon CVS's misrepresentations
19 and/or omissions in that Mr. Coder and Subclass Members would not have purchased generic
20 prescription drugs from CVS for more than the HSP prices but for CVS's misrepresentations and/or
21 omissions. Mr. Coder's and Subclass Members' reliance on CVS's misrepresentations and/or
22 omissions was, thus, to their detriment.

23 442. As a proximate result of CVS's conduct, Mr. Coder and Subclass Members have been
24 damaged because they paid copayments for generic prescription drugs that were far higher than the
25 prices they would have paid but for CVS's misconduct.

26 443. CVS is therefore liable to Mr. Coder and Subclass Members for the damages they
27 sustained.

COUNT XLI: CONSTRUCTIVE FRAUD

Asserted by the Pennsylvania Subclass against CVS

1
2
3 444. Plaintiffs repeat paragraphs 1 through 122 above.

4 445. In the circumstances alleged above, Mr. Coder and the Subclass Members had a special
5 relationship with CVS.

6 446. In particular, CVS had a duty to deal fairly with Mr. Coder and the Subclass Members
7 because (a) CVS claimed to possess and did possess specialized knowledge, experience, and
8 qualifications regarding the prescription drugs it sold to its customers, including specifically the
9 pricing and scheme for insurance reimbursement of those prescription drugs; (b) such specialized
10 knowledge, experience, and qualifications put CVS in a position of superiority over Mr. Coder and the
11 Subclass Members; (c) CVS knew that Mr. Coder and the Subclass Members needed to rely and did
12 rely on CVS's specialized knowledge, experience and qualifications, and on information supplied by
13 CVS, in making decisions on purchasing prescription drugs from CVS, because they were not able to
14 detect the falsity and incompleteness of the information supplied by CVS; (d) Mr. Coder and the
15 Subclass Members were uniquely vulnerable to injury if CVS did not supply truthful and accurate
16 information; and (e) CVS stood to gain at Mr. Coder and the Subclass Members' expense if CVS did
17 not supply truthful and accurate information.

18 447. CVS breached its duty to deal fairly with Mr. Coder and the Subclass Members by
19 making material misrepresentations and/or omissions regarding the true U&C prices of generic
20 prescription drugs that are included in the HSP program. CVS made such misrepresentations and/or
21 omissions by reporting artificially inflated U&C prices for such drugs to third-party payors.

22 448. CVS intended to induce Mr. Coder and Subclass Members to rely on its
23 misrepresentations and/or omissions. CVS knew that Mr. Coder and Subclass Members would rely on
24 CVS's representation and/or omissions regarding U&C prices and, as a result, would pay copayments
25 higher than the actual U&C prices for those generic prescription drugs.

26 449. Mr. Coder and Subclass Members justifiably relied upon CVS's misrepresentations
27 and/or omissions in that they would not have purchased generic prescription drugs from CVS for more
28 than the Health Savings Pass prices but for CVS's misrepresentations and/or omissions. Mr. Coder

1 and Subclass Members' reliance on CVS's misrepresentations and/or omissions was, thus, to their
2 detriment.

3 450. CVS gained an advantage at Mr. Coder and the Subclass Members' expense, as alleged
4 above, because, among other things, CVS obtained wrongfully inflated copayments from Mr. Coder
5 and the Subclass Members.

6 451. As a proximate result of CVS's conduct, Mr. Coder and the Subclass Members have
7 been damaged because they paid copayments for generic prescription drugs that were far higher than
8 the prices they would have paid but for CVS's misconduct.

9 452. CVS is therefore liable to Mr. Coder and Subclass Members for the damages they
10 sustained.

11 **COUNT XLII: NEGLIGENT MISREPRESENTATION**

12 **Asserted by the Pennsylvania Subclass against CVS**

13 453. Plaintiffs repeat paragraphs 1 through 122 above.

14 454. Under the circumstances alleged, CVS owed a duty to Mr. Coder and Subclass
15 Members to provide them with accurate information regarding the prices of their generic prescription
16 drugs.

17 455. CVS misrepresented and/or concealed the true U&C prices of generic prescription
18 drugs that are included in the HSP program. CVS made such misrepresentations and/or omissions by
19 reporting artificially inflated U&C prices for such drugs to third-party payors.

20 456. CVS had no reasonable grounds to believe that these misrepresentations and/or
21 omissions were true. The prices that CVS reported to third-party payors were substantially (and
22 unjustifiably) higher than the prices CVS charged under its HSP program to cash-paying customers.

23 457. CVS intended to induce Mr. Coder and Subclass Members to rely on its
24 misrepresentations and/or omissions. CVS knew that Mr. Coder and Subclass Members would rely on
25 CVS's representation and/or omissions regarding U&C prices and, as a result, would pay copayments
26 higher than the actual U&C prices for those generic prescription drugs.

27 458. Mr. Coder and Subclass Members justifiably relied upon CVS's misrepresentations
28 and/or omissions in that they would not have purchased generic prescription drugs from CVS for more

1 than the HSP prices but for CVS's misrepresentations and/or omissions. Mr. Coder and Subclass
2 Members' reliance on CVS's misrepresentations and/or omissions was, thus, to their detriment.

3 459. As a proximate result of CVS's negligent conduct, Mr. Coder and Subclass Members
4 have been damaged because they paid copayments for generic prescription drugs that were far higher
5 than the prices they would have paid but for CVS's misconduct.

6 460. CVS is therefore liable to Mr. Coder and Subclass Members for the damages they
7 sustained.

8 **COUNT XLIII: UNJUST ENRICHMENT**

9 **Asserted by the Pennsylvania Subclass against CVS**

10 461. Plaintiffs repeat paragraphs 1 through 122 above.

11 462. By means of CVS's wrongful conduct alleged herein, CVS knowingly charges plan
12 participants an artificially high copayment for generic prescription drugs included in the HSP program
13 in a manner that is unfair and unconscionable.

14 463. CVS knowingly received and retained wrongful benefits and funds from Mr. Coder and
15 Subclass Members. In so doing, CVS acted with conscious disregard for the rights of Mr. Coder and
16 Subclass Members.

17 464. As a result of CVS's wrongful conduct as alleged herein, CVS has been unjustly
18 enriched at the expense of, and to the detriment of, Mr. Coder and Subclass Members.

19 465. CVS's unjust enrichment is traceable to, and resulted directly and proximately from,
20 the conduct alleged herein.

21 466. Under the common law doctrine of unjust enrichment, it is inequitable for CVS to be
22 permitted to retain the benefits they received, and are still receiving, without justification, from the
23 imposition of artificially inflated prices on Mr. Coder and Subclass Members in an unfair and
24 unconscionable manner. CVS's retention of such funds under circumstances making it inequitable to
25 do so constitutes unjust enrichment.

26 467. Mr. Coder and the other Subclass Members did not confer these benefits officiously or
27 gratuitously, and it would be inequitable and unjust for CVS to retain these wrongfully obtained
28 profits.

1 468. CVS is therefore liable to Mr. Coders and Subclass Members for restitution in the
2 amount of CVS's wrongfully obtained profits.

3 **COUNT XLIV: VIOLATION OF VIRGINIA CONSUMER PROTECTION ACT**

4 **Asserted by the Virginia Subclass against CVS**

5 469. Plaintiffs repeat paragraphs 1 through 122 above.

6 470. CVS is a "supplier" within the meaning of the Virginia Consumer Protection Act (Va.
7 Code. 59.1-198).

8 471. CVS engaged in "consumer transactions" with Subclass Members within the meaning
9 of the Virginia Consumer Protection Act (Va. Code 59.1-198).

10 472. Subclass Members purchased prescription drugs from CVS which constitutes "goods"
11 within the meaning of the Virginia Consumer Protection Act (Va. Code 59.1-198).

12 473. CVS misrepresented and continues to engage in deception, fraud, false pretense, and/or
13 misrepresentation in connection with consumer transactions, by, among other things, (a) reporting to
14 third-party payors fraudulent U&C prices for hundreds of generic prescription drugs; (b)
15 misrepresenting to third-party payors and Subclass Members that the U&C price was greater than
16 Subclass Members' copayments; (c) concealing from Subclass Members the true U&C prices of
17 generic prescription drugs; and (d) wrongfully obtaining monies from Subclass Members as a result of
18 its deception.

19 474. CVS willfully engaged in deceptive and unfair acts and practices in that it knew or
20 should have known that the methods, acts or practices alleged herein were deceptive, unfair,
21 unconscionable, or prohibited by law and failed to disclose material information to Subclass Members.

22 475. The facts which CVS misrepresented and/or concealed, as alleged in the preceding
23 paragraphs, were material to Subclass Members' decisions about whether to purchase generic
24 prescription drugs from CVS, in that Subclass Members would not have purchased generic
25 prescription drugs from CVS for more than the Health Savings Pass prices but for CVS's unfair and/or
26 deceptive acts and/or practices.

27 476. As a direct and proximate result of CVS's unfair and deceptive acts and practices,
28 Subclass Members were deceived into paying artificially inflated prices for generic prescription drugs

1 and have been damaged thereby.

2 477. CVS is therefore liable to Subclass Members for the damages they sustained, plus
3 statutory damages, penalties, costs, and reasonable attorneys' fees to the extent provided by law.

4 **COUNT XLV: FRAUD**

5 **Asserted by the Virginia Subclass against CVS**

6 478. Plaintiffs repeat paragraphs 1 through 122 above.

7 479. CVS materially misrepresented and/or concealed the true U&C prices of generic
8 prescription drugs that are included in the HSP program. CVS made such misrepresentations and/or
9 omissions by reporting artificially inflated U&C prices for such drugs to third-party payors.

10 480. CVS made these misrepresentations and omissions knowingly, or at least with reckless
11 disregard of their falsity, given that CVS knew the prices that CVS reported to third-party payors were
12 substantially (and unjustifiably) higher than the prices CVS charged under its HSP program to cash-
13 paying customers.

14 481. CVS intended to induce Subclass Members to rely on its misrepresentations and/or
15 omissions. CVS knew that Subclass Members would rely on CVS's representation and/or omissions
16 regarding U&C prices and, as a result, would pay copayments higher than the actual U&C prices for
17 those generic prescription drugs.

18 482. Subclass Members justifiably relied upon CVS's misrepresentations and/or omissions
19 in that Subclass Members would not have purchased generic prescription drugs from CVS for more
20 than the HSP prices but for CVS's misrepresentations and/or omissions. Subclass Members' reliance
21 on CVS's misrepresentations and/or omissions was, thus, to their detriment.

22 483. As a proximate result of CVS's conduct, Subclass Members have been damaged
23 because they paid copayments for generic prescription drugs that were far higher than the prices they
24 would have paid but for CVS's misconduct.

25 484. CVS is therefore liable to Subclass Members for the damages they sustained.

26 **COUNT XLVI: CONSTRUCTIVE FRAUD**

27 **Asserted by the Virginia Subclass against CVS**

28 485. Plaintiffs repeat paragraphs 1 through 122 above.

1 486. In the circumstances alleged above, Subclass Members had a special relationship with
2 CVS.

3 487. In particular, CVS had a duty to deal fairly with Subclass Members because (a) CVS
4 claimed to possess and did possess specialized knowledge, experience, and qualifications regarding
5 the prescription drugs it sold to its customers, including specifically the pricing and scheme for
6 insurance reimbursement of those prescription drugs; (b) such specialized knowledge, experience, and
7 qualifications put CVS in a position of superiority over Subclass Members; (c) CVS knew that
8 Subclass Members needed to rely and did rely on CVS's specialized knowledge, experience and
9 qualifications, and on information supplied by CVS, in making decisions on purchasing prescription
10 drugs from CVS, because Subclass Members were not able to detect the falsity and incompleteness of
11 the information supplied by CVS; (d) Subclass Members were uniquely vulnerable to injury if CVS
12 did not supply truthful and accurate information; and (e) CVS stood to gain at Subclass Members'
13 expense if CVS did not supply truthful and accurate information.

14 488. CVS breached its duty to deal fairly with Subclass Members by making material
15 misrepresentations and/or omissions regarding the true U&C prices of generic prescription drugs that
16 are included in the HSP program. CVS made such misrepresentations and/or omissions by reporting
17 artificially inflated U&C prices for such drugs to third-party payors.

18 489. CVS intended to induce Subclass Members to rely on its misrepresentations and/or
19 omissions. CVS knew that Subclass Members would rely on CVS's representation and/or omissions
20 regarding U&C prices and, as a result, would pay copayments higher than the actual U&C prices for
21 those generic prescription drugs.

22 490. Subclass Members justifiably relied upon CVS's misrepresentations and/or omissions
23 in that Subclass Members would not have purchased generic prescription drugs from CVS for more
24 than the HSP prices but for CVS's misrepresentations and/or omissions. Subclass Members' reliance
25 on CVS's misrepresentations and/or omissions was, thus, to their detriment.

26 491. CVS gained an advantage at Subclass Members' expense, as alleged above, because,
27 among other things, CVS obtained wrongfully inflated copayments from Subclass Members.

28 492. As a proximate result of CVS's conduct, Subclass Members have been damaged

1 because they paid copayments for generic prescription drugs that were far higher than the prices they
2 would have paid but for CVS's misconduct.

3 493. CVS is therefore liable to Subclass Members for the damages they sustained.

4 **COUNT XLVII: NEGLIGENT MISREPRESENTATION**

5 **Asserted by the Virginia Subclass against CVS**

6 494. Plaintiffs repeat paragraphs 1 through 122 above.

7 495. Under the circumstances alleged, CVS owed a duty to Subclass Members to provide
8 them with accurate information regarding the prices of their generic prescription drugs.

9 496. CVS misrepresented and/or concealed the true U&C prices of generic prescription
10 drugs that are included in the HSP program. CVS made such misrepresentations and/or omissions by
11 reporting artificially inflated U&C prices for such drugs to third-party payors.

12 497. CVS had no reasonable grounds to believe that these misrepresentations were true. The
13 prices that CVS reported to third-party payors were substantially (and unjustifiably) higher than the
14 prices CVS charged under its HSP program to cash-paying customers.

15 498. CVS intended to induce Subclass Members to rely on its misrepresentations and/or
16 omissions. CVS knew that Subclass Members would rely on CVS's misrepresentations and/or
17 omissions regarding U&C prices and, as a result, would pay copayments higher than the actual U&C
18 prices for those generic prescription drugs.

19 499. Subclass Members justifiably relied upon CVS's misrepresentations and/or omissions
20 in that Subclass Members would not have purchased generic prescription drugs from CVS for more
21 than the HSP prices but for CVS's misrepresentations and/or omissions. Subclass Members' reliance
22 on CVS's misrepresentations and/or omissions was, thus, to their detriment.

23 500. As a proximate result of CVS's negligent conduct, Subclass Members have been
24 damaged because they paid copayments for generic prescription drugs that were far higher than the
25 prices they would have paid but for CVS's misconduct.

26 501. CVS is therefore liable to Subclass Members for the damages they sustained.
27
28

1 **COUNT XLVIII: UNJUST ENRICHMENT**

2 **Asserted by the Virginia Subclass against CVS**

3 502. Plaintiffs repeat paragraphs 1 through 122 above.

4 503. By means of CVS's wrongful conduct alleged herein, CVS knowingly charges plan
5 participants artificially high copayments for generic prescription drugs included in the HSP program in
6 a manner that is unfair and unconscionable.

7 504. CVS knowingly received and retained wrongful benefits and funds from Subclass
8 Members. In so doing, CVS acted with conscious disregard for the rights of Subclass Members.

9 505. As a result of CVS's wrongful conduct as alleged herein, CVS has been unjustly
10 enriched at the expense of, and to the detriment of, Subclass Members.

11 506. CVS's unjust enrichment is traceable to, and resulted directly and proximately from,
12 the conduct alleged herein.

13 507. Under the common law doctrine of unjust enrichment, it is inequitable for CVS to be
14 permitted to retain the benefits they received, and are still receiving, without justification, from the
15 imposition of artificially inflated prices on Subclass Members in an unfair and unconscionable
16 manner. CVS's retention of such funds under circumstances making it inequitable to do so constitutes
17 unjust enrichment.

18 508. Subclass Members did not confer these benefits officiously or gratuitously, and it
19 would be inequitable and unjust for CVS to retain these wrongfully obtained profits.

20 509. CVS are therefore liable to Subclass Members for restitution in the amount of CVS's
21 wrongfully obtained profits.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiffs pray for judgment against CVS, and request as follows:

24 A. That all class members are owed at least the difference between their paid copay and
25 the U&C offered to the general public for all prescriptions purchased during the life of the HSP
26 program;

27 B. That the Court certify this action as a class action, proper and maintainable pursuant to
28 Rule 23 of the Federal Rules of Civil Procedure, and declare that Plaintiffs are properly Class

1 representatives;

2 C. That the Court grant permanent injunctive relief to prohibit CVS from continuing to
3 engage in the unlawful acts, omissions, and practices described herein;

4 D. That the Court award compensatory, consequential, and general damages in an amount
5 to be determined at trial;

6 E. That the Court order disgorgement and restitution of all earnings, profits,
7 compensation, and benefits received by CVS as a result of its unlawful acts, omissions, and practices;

8 F. That the Court award statutory treble damages, and punitive or exemplary damages, to
9 the extent permitted by law;

10 G. That the unlawful acts alleged in this Complaint be adjudged and decreed to be a
11 violation of the unfair and deceptive business acts and practices in violation of the California Unfair
12 Competition Law, California Consumer Legal Remedies Act, New York Consumer Protection Law,
13 Michigan Consumer Protection Act, Florida Deceptive and Unfair Trade Practices Act, Illinois
14 Consumer Fraud and Deceptive Business Practices Act, Pennsylvania Unfair Trade Practices and
15 Consumer Protection Law and the Virginia Consumer Protection Act;

16 H. That the Court award to Plaintiffs the costs and disbursements of the action, along with
17 reasonable attorneys' fees;

18 I. That the Court award pre- and post-judgment interest at the maximum legal rate; and

19 J. That the Court grant all such other relief as it deems just and proper.

20 **DEMAND FOR JURY TRIAL**

21 Plaintiffs and the Class and Subclasses demand a jury trial on all claims.

22
23 Dated: July 30, 2015

Respectfully submitted,

24 By: /s/ Christopher L. Lebsock

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Christopher Corcoran, Robert Garber, Toni Odorisio, Robert Guarnieri, Onnolee Samuelson, Ron W. Coder, and Irma Pacheco, on behalf of themselves and all others similarly situated

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) See Attachment.

DEFENDANTS

CVS Health Corporation

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Motor Vehicle, Personal Injury, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. § 1332(d)(2)
Brief description of cause: Class action for false and deceptive pricing by Defendant CVS Health Corporation

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 07/30/2015 SIGNATURE OF ATTORNEY OF RECORD /s/ Christopher L. Lebsock

IX. DIVISIONAL ASSIGNMENT (Civil L.R. 3-2)

(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA

Attachment to Civil Cover Sheet

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