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11 **UNITED STATES DISTRICT COURT**  
12 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

13 MSP RECOVERY CLAIMS, SERIES LLC, a )  
14 Delaware series limited liability company; MSPA )  
15 CLAIMS I, LLC, a Florida limited liability )  
16 company; MSP Recovery Claims Series 44, LLC, )  
17 a Delaware series limited liability company; MSP )  
18 Recovery Claims PROV, Series LLC, a Delaware )  
19 series limited liability company; and MSP )  
20 Recovery Claims CAID, Series, LLC, a Delaware )  
21 series limited liability company; on behalf of )  
22 themselves and all others similarly situated )

23 Plaintiffs, )

24 v. )

25 ACTELION PHARACEUTICALS US, INC., a )  
26 Delaware corporation; CARING VOICE )  
27 COALITION, INC. an Idaho non-profit )  
28 corporation; and ADIRA FOUNDATION, a )  
29 Virginia non-profit corporation, )

30 Defendant(s). )

Case No.: 3:22-cv-07604

**CLASS ACTION COMPLAINT**

DEMAND FOR JURY TRIAL

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APPENDIX..... I

1 Plaintiffs, MSP Recovery Claims, Series LLC (“MSPRC”); MSPA Claims 1, LLC  
 2 (“MSPA”); MSP Recovery Claims Series 44, LLC (“Series 44”); MSP Recovery Claims PROV,  
 3 Series LLC (“Claims PROV”); MSP Recovery Claims CAID, Series LLC (“Claims CAID”)  
 4 (hereinafter all plaintiffs collectively referred to as, “Plaintiffs”), on behalf of themselves and other  
 5 Medicare Advantage health plans<sup>1</sup> and Medicaid health plans<sup>2</sup> (collectively, “Class Members”),<sup>3</sup>  
 6 sue Actelion Pharmaceuticals US, Inc. (“Actelion”), Caring Voice Coalition, Inc. (“CVC”) and  
 7 Adira Foundation f/k/a Facilitating Patient Health (“Adira”) (hereinafter all defendants collectively  
 8 referred to as “Defendants”), allege:

9  
 10 **NATURE OF ACTION**

11 1. This case arises out of Actelion’s conspiratorial schemes to increase the unit price  
 12 and quantity dispensed of Tracleer, Opsumit, Veletri, and Ventavis (“Subject Drugs” or “Actelion  
 13 Drugs”) which is used to treat pulmonary arterial hypertension (“PAH”). As a result of these  
 14 schemes, Plaintiffs’ Assignors (“Assignors”) and the Class Members paid supra-competitive prices  
 15 for Actelion Drugs and for artificially inflated quantities of dispensed Actelion Drugs on behalf of  
 16 beneficiaries enrolled in their health plans (“Enrollees”).

17 2. RICO Defendants created a scheme to circumvent Congressionally mandated co-  
 18 payment requirements (referred to as “Co-Payment Scheme” or “Scheme”) designed to reduce  
 19 sensitivity to the ever-increasing drug prices and increased dispensing of Actelion Drugs.<sup>4</sup>

20  
 21 <sup>1</sup> “Medicare Advantage health plans” is defined as Medicare Advantage entities such as Medicare  
 22 Advantage organizations (“MAOs”), Independent Practice Associations (“IPAs”), Management  
 23 Service organizations (“MSOs”), Health Maintenance organizations (“HMOs”), Part D Sponsors,  
 and other Medicare first tier, downstream, and related entities. Throughout the Complaint, “MA  
 Plan” is used as a shorthand for all such Medicare Advantage health plan entities.

24 <sup>2</sup> “Medicaid health plans” is defined to include Medicaid Managed Care Organizations (“MCO”)  
 25 and other Medicaid first tier, downstream, and related entities. Throughout the Complaint,  
 “Medicaid Plans” is used as a shorthand for all such Medicaid health plan entities.

26 <sup>3</sup> The full class is defined *infra*, Section V.

27 <sup>4</sup> When Medicare beneficiaries, including those covered by Medicare Advantage health plans,  
 28 obtain a prescription drug, the beneficiaries need to make a co-payment. Congress included co-  
 payment requirements in the Medicare structure, in part, to encourage market forces to serve as a  
 check on health care costs, specifically including the prices that pharmaceutical companies can  
 demand for their drugs. Austin Frerick, A., *The Cloak of Social Responsibility: Pharmaceutical*

1           3. Defendants executed their Scheme, engaging in numerous overt acts that both  
2 effectively eliminated price sensitivity, allowing Actelion to raise their prices to supra-competitive  
3 levels, without concern of their product not being dispensed due to patient financial restrictions  
4 which caused the over-dispensing of supra-competitively priced drugs. This resulted in cognizable  
5 economic damages as Assignors and Class Members lost money or property they otherwise would  
6 still have but-for the Co-Payment Scheme.

7           4. Actelion and CVC colluded and agreed that CVC would act as an illegal conduit,  
8 disguised as an independent charity, by which Actelion could funnel kickbacks to pharmacies  
9 through CVC's disease funds. Actelion and CVC agreed that CVC would create a PAH Fund that  
10 would exclusively, or nearly so, cater to patients taking the Subject Actelion Drugs and that  
11 Actelion would be the sole donor to CVC's PAH Fund.

12           5. Actelion bribed CVC to serve as Actelion's conduit and funnel kickbacks to  
13 pharmacies.

14           6. As part of this Scheme, Actelion routinely obtained data from CVC detailing how  
15 many patients taking each Subject Drug CVC had assisted, how much CVC had spent on those  
16 patients, and how much CVC expected to spend on those patients in the future. This information  
17 was used to ensure that CVC used the purported "donations" for Actelion Drugs only, and allowed  
18 Actelion to perform return on investment calculations.

19           7. Actelion and CVC routinely exchanged information to ensure Actelion possessed  
20 sufficient data to maximize profits from its "donations" to CVC.

21           8. Defendants also funneled MA Plan and Medicaid Plan patients away from Actelion's  
22 free drug program. Defendants excluded individuals from participating in Actelion's free drug  
23 program because the individuals were eligible for participation in the federal health programs. In  
24 other words, Defendants treated customers differently based on eligibility for participation in the  
25 federal health programs.

26  
27  
28 *Corporate Charity*, TAX NOTES, Vol. 153, No. 9, Nov. 28, 2016. [hereinafter *Cloak of Social Responsibility*].

1           9.       Actelion’s bribes to CVC and Defendants’ illegal remunerations to federal healthcare  
2 program beneficiaries constituted violations of the federal Anti-Kickback Statute (“AKS”), thereby  
3 rendering each claim unpayable by federal healthcare programs and disqualifying Actelion from  
4 receiving any payment from such programs for the Subject Drugs during the course of the Scheme.

5           10.       Actelion ensured that the large sums of money continuously paid to CVC improperly  
6 influenced CVC’s practices. Likewise, Defendants ensured that the co-payment assistance grants—  
7 paid for and facilitated by Actelion, and distributed by CVC—improperly influenced patients  
8 receiving and/or pharmacies dispensing Actelion Drugs.

9           11.       In doing so, Defendants eliminated the effects of price sensitivity—because the  
10 patients (i.e., consumers) were no longer incurring any cost—thereby elimination price  
11 considerations, thus artificially increasing the quantity dispensed by pharmacies, and the amount of  
12 claims paid by Assignors and Class Members for Actelion Drugs. Accordingly, with price  
13 sensitivity eliminated, the Co-Payment Scheme allowed Actelion to circumvent congressional  
14 safeguards and artificially increase the price of Actelion Drugs for all prescriptions to supra-  
15 competitive levels.

16           12.       As a result, the Assignors and Class Members were forced to pay artificially  
17 increased prices for Actelion Drugs prescriptions and for an increased quantity of claims for  
18 Actelion Drugs. This resulted in cognizable economic damages as the Assignors and Class  
19 Members paid substantially more than they otherwise would have—but for the Co-Payment  
20 Scheme.

21           13.       Actelion, a sophisticated pharmaceutical manufacturer, knew that the intended  
22 victims of the Scheme were the health plans Plaintiffs seek to represent. Indeed, after a patient’s  
23 cost sharing obligation is paid, health plans such as the Assignors and Class Members must then pay  
24 for Actelion Drugs. To be clear, if a patient does not provide their cost sharing obligations (e.g., co-  
25 pay), a prescription will not be dispensed from a pharmacy.

26           14.       On December 5, 2018, Actelion paid \$360 million to settle the United States’ claims  
27 that Actelion violated the AKS and False Claims Act (“FCA”). Actelion entered into a Settlement  
28 Agreement with the United States of America (“Actelion Settlement”), with the United States

1 Department of Justice (“DOJ”) and on behalf of the Office of Inspector General (“OIG”) of the  
2 Department of Health and Human Services related to the general conduct at issue in this lawsuit.  
3 See Actelion Settlement Agreement, attached as **Exhibit A**; See also DOJ Settlement Agreement  
4 Press Release, attached as **Exhibit B**.

5 15. The Actelion Settlement did not address or settle damages sustained by the  
6 Assignors and Class Members. The terms of the Actelion Settlement did not address the claims  
7 Plaintiffs set forth in the action.

8 16. Additionally, CVC made several fraudulent and voidable transfers to Adira, in  
9 violation of Va. Code Ann. §§ 55.1-400 *et seq.*

10 17. Adira is the de facto successor of CVC. Adira was created by and has always been  
11 operated by the very same people who operated CVC—including, but not limited to Greg Smiley,  
12 James Rock, and Bruce Packett. Adira received the remainder of CVC’s assets, including cash,  
13 investments, and valuable personal property. Adira received and continues to maintain all of CVC’s  
14 data including taking ownership and control of what CVC described as its “home-grown patient  
15 portal for monitoring patient and grant data—known in shorthand by previous leadership as PAMS  
16 [which] was [CVC’s] largest and most significant of assets.” As CVC’s successor, Adira is liable  
17 for CVC’s debts and liabilities.

18 18. Additionally, and upon information and belief, after CVC allegedly ceased  
19 operations, CVC and Adira contacted Actelion and agreed to transfer millions of dollars of illicit  
20 funds to Adira, where both Adira and Actelion continued taking overt acts in furtherance of their  
21 scheme to defraud third-party payors. As a coconspirator to the scheme to defraud, Adira is jointly  
22 and severally liable for the harm caused by CVC’s and Actelion’s conduct.

23 19. Indeed, each Defendant is jointly and severally liable for the conduct of the others.

24 20. Plaintiffs bring this lawsuit to redress the damages sustained by Assignors and Class  
25 Members as a result of Defendants’ unlawful Scheme to increase the prices and dispensed quantities  
26 of Actelion Drugs.

27 21. The improper actions alleged here have allowed Actelion to maintain supra-  
28 competitive prices by eliminating price sensitivity that would have directly benefited consumers and

1 the public at large. Price sensitivity counterbalances Actelion’s desire to inflate prices for medically  
2 necessary drugs—which is why Congress relies on price sensitivity as a vital mechanism for  
3 combating supra-competitive pricing for Government payors. CVC’s co-payment assistance  
4 program allowed Actelion to increase the price of the Actelion Drugs regardless of the relevant  
5 market conditions by insulating Actelion from the realities of patients’ inability to afford high co-  
6 payment obligations—obligations that would have had to have been capped at a reasonable amount  
7 but-for the unlawful Scheme alleged herein. Not only did this allow Actelion to charge supra-  
8 competitive prices, but also resulted in the artificially increased volume of dispensed Actelion  
9 Drugs.

10 22. Defendants used mail and wires in furtherance of their racketeering Scheme.  
11 Actelion used the wires to transmit their “donations” to CVC, which, in reality, were bribes to CVC.  
12 CVC would then transmit data using the mail and wires, allowing Actelion to perform what  
13 amounted to return on investments (“ROI”) calculations on their “donations.” Defendants would  
14 also use the mail and wire to communicate with pharmacies regarding, among other things, co-  
15 payments for patients prescribed Actelion Drugs. This resulted in the further use of mail and wires  
16 by pharmacies submitting claims for payment to Plaintiffs and Assignors.

17 23. RICO Defendants’ conduct violated the AKS, 42 U.S.C. § 1320a-7b, the Travel Act,  
18 18 U.S.C. § 1952 (“Travel Act”), Mail Fraud, 18 U.S.C. § 1341, and Wire Fraud, 18 U.S.C. § 1343.

19 ***I. PARTIES, JURISDICTION, AND VENUE***

20 ***Plaintiffs***

21 24. Plaintiffs are companies that obtained assignments from their Assignors to recover  
22 reimbursement or payment from Defendants. The Assignors provide health insurance coverage,  
23 pursuant to Medicare Part C and Part D and Medicaid on behalf of their Enrollees. Specifically, the  
24 Assignors made payments on behalf of, or otherwise became financially responsible for the cost of  
25 the illegally inflated and excessively dispensed Actelion Drugs as a result of the Scheme.

26 25. Each and every cause of action identified in this Complaint was expressly assigned  
27 to the named Plaintiffs.  
28

1            MSPRC

2            26.      MSPRC is a Delaware series limited liability company with its principal place of  
3 business located in Coral Gables, Florida. MSPRC's limited liability company agreement provides  
4 for the establishment of one or more designated Series.

5            27.      MSPRC has established various designated series pursuant to Delaware law to  
6 maintain various claims recovery assignments separate from other Company assets, and to account  
7 for and associate certain assets with certain particular series. Pursuant to MSPRC's limited liability  
8 agreement, all designated series form a part of MSPRC. MSPRC may receive assignments in the  
9 name of MSPRC and further associate such assignments with a particular series or may have claims  
10 assigned directly to a particular series. In either event, MSPRC will maintain the right to sue on  
11 behalf of each series and pursue any and all rights, benefits, and causes of action arising from  
12 assignments to a series. Any claim or suit may be brought by MSPRC in its own name, or it may  
13 elect to bring suit in the name of its designated series, under its bylaws. MSPRC's limited liability  
14 agreement provides that any rights and benefits arising from assignments to its series shall belong to  
15 MSPRC. MSPRC's assignments, samples of which are alleged in detail in the Appendix to this  
16 Complaint, are valid and binding contracts.

17            28.      Each and every cause of action identified in this Complaint was expressly assigned  
18 to MSPRC.

19            MSPA

20            29.      MSPA is a limited liability company that is duly organized, validly existing, and in  
21 good standing under the laws of Florida, with its principal place of business in Coral Gables,  
22 Florida. One or more health plans irrevocably assigned to MSPA the right to assert the causes of  
23 action alleged in this Complaint. As a result of said assignments, MSPA is authorized and  
24 empowered to obtain the relief sought herein. MSPA's assignments, samples of which are alleged in  
25 detail in the Appendix to this Complaint, are valid and binding contracts.

26            30.      Each and every cause of action identified in this Complaint was expressly assigned  
27 to MSPA.

28            Series 44



1           31.     Series 44 is a duly organized and existing Delaware series limited liability company  
2 with its principal place of business located in Coral Gables, Florida. Series 44's limited liability  
3 company operating agreement provides for the establishment of one or more designated series as  
4 permitted by Delaware law. Del. Code Ann. Tit. 6, § 18-215(a). Accordingly, Series 44 established  
5 various designated series to serve as units of the company for the purpose of maintaining various  
6 claims recovery assignments separate from other company assets, and to account for and associate  
7 certain assets with certain particular series.

8           32.     Series 44 has enumerated rights relating to its designated series pursuant to its  
9 limited liability agreement and consistent with Delaware law. Del. Code Ann. Tit. 6, §§ 18-215(a)-  
10 (c). Specifically, all rights and benefits arising from assignments to its series shall belong to Series  
11 44. Series 44 may receive assignments in the name of Series 44 and further associate such  
12 assignments with a particular series or may have claims assigned directly to a particular series. In  
13 either event, Series 44 and the designated series are authorized to pursue or assert any claim or suit  
14 capable of being asserted by any designated series arising from, or by virtue of, an assignment to a  
15 designated series. Series 44 retains the legal right to sue on behalf of each designated series and  
16 pursue all rights, benefits, and causes of action arising from assignments to a series in its own name  
17 or in the name of the designated series. Series 44's assignments, samples of which are alleged in  
18 detail in the Appendix to this Complaint, are valid and binding contracts.

19           33.     Each and every cause of action identified in this Complaint was expressly assigned  
20 to Series 44.

21           Claims PROV

22           34.     Claims PROV is a duly organized and existing Delaware series limited liability  
23 company with its principal place of business located in Coral Gables, Florida. Claims PROV's  
24 limited liability company operating agreement provides for the establishment of one or more  
25 designated series as permitted by Delaware Law. Del. Code Ann. Tit. 6, § 18-215(a). Accordingly,  
26 Claims PROV established various designated series to serve as units of the company for the purpose  
27 of maintaining various claims recovery assignments separate from other company assets, and in  
28 order to account for and associate certain assets with certain particular series.

1           35.     Claims PROV has enumerated rights relating to its designated series pursuant to its  
2 limited liability agreement and consistent with Delaware law. Del. Code Ann. Tit. 6, §§ 18-215(a)-  
3 (c). Specifically, all rights and benefits arising from assignments to its series shall belong to Claims  
4 PROV. Claims PROV may receive assignments in the name of Claims PROV and further associate  
5 such assignments with a particular series or may have claims assigned directly to a particular series.  
6 In either event, Claims PROV and the designated series are authorized to pursue or assert any claim  
7 or suit capable of being asserted by any designated series arising from, or by virtue of, an  
8 assignment to a designated series. Claims PROV retains the legal right to sue on behalf of each  
9 designated series and pursue all rights, benefits, and causes of action arising from assignments to a  
10 series in its own name or in the name of the designated series. One or more Health Plans irrevocably  
11 assigned to certain series of Claims PROV the right to assert the causes of action alleged in this  
12 Complaint. As a result of said assignments, Claims PROV, through its operating agreement, is  
13 authorized and empowered to obtain the relief sought herein. Claims PROV's assignments, samples  
14 of which are alleged in detail in the Appendix to this Complaint, are valid and binding contracts.

15           36.     Each and every cause of action identified in this Complaint was expressly assigned  
16 to Claims PROV.

17           Claims CAID

18           37.     Claims CAID is a duly organized and existing Delaware series limited liability  
19 company with its principal place of business located in Coral Gables, Florida. Claims CAID's  
20 limited liability company operating agreement provides for the establishment of one or more  
21 designated series as permitted by Delaware law. Del. Code Ann. Tit. 6, § 18-215(a). Accordingly,  
22 Claims CAID established various designated series to serve as units of the company for the purpose  
23 of maintaining various assignments separate from other company assets, and in order to account for  
24 and associate certain assets with certain particular series.

25           38.     Claims CAID has enumerated rights relating to its designated series pursuant to its  
26 limited liability agreement and consistent with Delaware law. Del. Code Ann. Tit. 6, §§ 18-215(a)-  
27 (c). Specifically, all rights and benefits arising from assignments to its series shall belong to Claims  
28 CAID. Claims CAID may receive assignments in the name of Claims CAID and further associate

1 such assignments with a particular series or may have claims assigned directly to a particular series.  
2 In either event, Claims CAID and the designated series are authorized to pursue or assert any claim  
3 or suit capable of being asserted by any designated series arising from, or by virtue of, an  
4 assignment to a designated series. Claims CAID retains the legal right to sue on behalf of each  
5 designated series and pursue all rights, benefits, and causes of action arising from assignments to a  
6 series in its own name or in the name of the designated series. One or more Health Plan irrevocably  
7 assigned to certain series of Claims CAID the right to assert the causes of action alleged in this  
8 Complaint. As a result of said assignments, Claims CAID, through its operating agreement, is  
9 authorized and empowered to obtain the relief sought herein. Claims CAID's assignments, samples  
10 of which are alleged in detail in the Appendix to this Complaint, are valid and binding contracts.

11 39. Defendants' Co-Payment Scheme triggered payment obligations of the Assignors  
12 and Class Members. These actions caused the Assignors and Class Members to pay artificially  
13 inflated prices and purchase artificially inflated quantities of Actelion Drugs. This illegal conduct  
14 directly harmed Assignors and the Class Members.

15 40. Each and every cause of action identified in this Complaint was expressly assigned  
16 to Claims CAID.

17 ***Defendants***

18 *Actelion*

19 41. Actelion is a Delaware corporation with principal executive offices located in South  
20 San Francisco, California. Actelion manufactures and markets pharmaceutical products that are  
21 approved for pulmonary arterial hypertension. At all relative times, Actelion advertised, marketed,  
22 and sold pharmaceutical products, including the Subject Drugs, throughout all states and territories  
23 in the United States, including California. Actelion derived substantial revenue related to the  
24 Subject Drugs from its business throughout each of the states and territories of the United States,  
25 including California.<sup>5</sup>

26 \_\_\_\_\_  
27 <sup>5</sup> See, **Exhibit 3** – Actelion 1999 Financial Reports; **Exhibit 4** – Actelion 2000 Financial Reports;  
28 **Exhibit 5** – Actelion 2001 Financial Reports; **Exhibit 6** – Actelion 2002 Financial Reports; **Exhibit 7** – Actelion 2003 Financial Reports; **Exhibit 8** – Actelion 2004 Financial Reports; **Exhibit 9** – Actelion 2005 Financial Reports; **Exhibit 10** – Actelion 2006 Financial Reports; **Exhibit 11** –

1           42. This Court has personal jurisdiction over Actelion because Actelion’s principal  
2 executive offices are located within the state of California and therefore Actelion is at home in the  
3 state.

4           CVC

5           43. CVC is an Idaho corporation claiming 501(c)(3) status for tax purposes. CVC’s  
6 principal place of business during the duration of the Scheme was located at 6606 West Broad  
7 Street, Suite 403, Richmond, Virginia 23230, however, pursuant to a filing with the Commonwealth  
8 of Virginia, on July 31, 2019, CVC, changed their principal place of business to P.O. Box 28955,  
9 Henrico, VA 23228. CVC was established in 2003 and operates disease funds, including the PAH  
10 Fund, to pay the co-payments of certain patients, including Medicare and Medicaid patients.

11 **Exhibit 22** – CVC & Adira Business Records

12           44. This Court has personal jurisdiction over CVC because CVC’s conduct as a member  
13 of the Co-Payment Circumvention Enterprise (defined below) constitutes “certain minimum  
14 contacts with the forum such that the maintenance of the suit does not offend traditional conceptions  
15 of fair play and substantial justice” therefore satisfying California’s Long Arm Statute.  
16 *International Shoe Co. v. State of Washington*, 326 U.S. 310, (1945); Cal. Civ. Proc. Code § 410.10.  
17 CVC transacts its affairs in the State of California. CVC further engaged in the substantial and not  
18 isolated activity throughout the State of California. As a result of the Co-Payment Scheme, the  
19 Assignors and Class Members sustained financial and economic injuries in the State of California.  
20 CVC maintains systematic and continuous contacts in the State of California, and regularly  
21 transacts business in the State of California. CVC purposefully availed itself of the privilege of  
22 conducting activities in the State of California, thus benefiting from the protections and benefits of  
23 the law and conducting its affairs in the State of California. Furthermore, at all relevant times  
24 herein, CVC contracted with Actelion.

25  
26 Actelion 2007 Financial Reports; **Exhibit 12** – Actelion 2008 Financial Reports; **Exhibit 13** –  
27 Actelion 2009 Financial Reports; **Exhibit 14** – Actelion 2010 Financial Reports; **Exhibit 15** –  
28 Actelion 2011 Financial Reports; **Exhibit 16** – Actelion 2012 Financial Reports; **Exhibit 17** –  
Actelion 2013 Financial Reports; **Exhibit 18** – Actelion 2014 Financial Reports; **Exhibit 19** –  
Actelion 2015 Financial Reports; **Exhibit 20** – Actelion 2016 Financial Reports; **Exhibit 21** –  
Actelion 2017 Financial Reports

1            Adira

2            45.     Adira is a Virginia corporation claiming 501(c)(3) status for tax purposes. Adira's  
3 principal office is located at 7330 Staples Mill Road #288, Henrico, VA, 23228-4122. Adira,  
4 originally incorporated under the name Facilitating Patient Health, was established in 2019 and  
5 operates disease funds to pay the co-payments of certain patients, including Medicare and Medicaid  
6 patients. **Exhibit 22** – CVC & Adira Business Records.

7            46.     This Court has jurisdiction over Adira because Adira is a successor company of  
8 CVC, and as noted above, this Court has personal jurisdiction over CVC. *Successor Agency to*  
9 *Former Emeryville Redevelopment Agency v. Swagelok Co.*, 364 F. Supp. 3d 1061, 1074 (N.D. Cal.  
10 2019); *International Shoe Co.*, 326 U.S. at 316; Cal. Civ. Proc. Code § 410.10.

11           47.     This Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331. The causes  
12 of action alleged in this Complaint arise under federal law.

13           48.     This Court has subject matter jurisdiction under 28 U.S.C. § 1332(a), because  
14 Plaintiffs are completely diverse from Defendants and the amount in controversy exceeds  
15 \$75,000.00, exclusive of interest and costs.

16           49.     This Court has subject matter jurisdiction under 28 U.S.C. § 1332(d), because at least  
17 one member of the Class is a citizen of a state different from Defendants and the amount in  
18 controversy exceeds \$5,000,000.00, exclusive of interest and costs.

19           50.     This Court also has supplemental jurisdiction under to 28 U.S.C. § 1367, as the state  
20 law claims are so related to the federal claims as to form part of the same case or controversy.

21           51.     Venue is proper in this judicial district under 28 U.S.C. § 1391(b)(2) because a  
22 substantial part of the events that gave rise to this lawsuit occurred in California. Venue is also  
23 proper in this district under 18 U.S.C. § 1965(a) because Defendants transact their affairs in  
24 California.

25           DIVISIONAL ASSIGNMENT

26           52.     This action is properly assigned to the San Francisco/Oakland Division of this  
27 District pursuant to N.D. Cal. L.R. 3-2, because Defendant Actelion's principal place of business is  
28 in San Francisco County, which is served by the San Francisco Division. Moreover, Defendant

1 Actelion conducts substantial business in San Francisco County, which is served by this Division.  
2

3  
4 **II. STANDING**

5 53. The Assignors provide health care benefits to their Enrollees under either  
6 (i) contractual agreements, such as participation and network agreements with capitation and risk  
7 sharing arrangements; or (ii) state and federal laws that provide for the reimbursement of payments  
8 made by the assignor health plans.

9 54. The assignment agreements between Assignors and Plaintiffs are valid and binding  
10 contracts, expressly empowering Plaintiffs to bring and recover on the claims asserted in this  
11 lawsuit.

12 55. Plaintiffs seek recovery on behalf of each of their Assignors who paid for or  
13 reimbursed the cost of Actelion Drugs at supra-competitive prices and paid for inflated quantities of  
14 Actelion Drugs. An explanation of the representative assignment for each named Plaintiff is  
15 provided in the Appendix.

16 56. Plaintiffs seek recovery on behalf of each of their Assignors who paid for or  
17 reimbursed claims relating to Actelion Drugs tainted by Defendants' violations of the AKS.

18 57. At all material times hereto, one or more Assignor(s) provided Medicare benefits to  
19 MA Plan beneficiaries and one or more Assignor(s) provided Medicaid benefits to Medicaid Plan  
20 beneficiaries. The Assignors paid supra-competitive prices for Actelion Drugs and paid for  
21 artificially inflated dispensed quantities of Actelion Drugs as a result of Defendants' Scheme. The  
22 Assignors also paid claims for Actelion Drugs tainted by Defendants' AKS violations.

23 58. Defendants' Scheme triggered payment obligations for Actelion Drugs at inflated  
24 prices and induced the artificially increased dispensing of Actelion Drugs over cheaper and  
25 therapeutically equivalent generic or alternative treatments.

26 59. Assignors paid approximately \$31 million in claims on behalf of covered patients  
27 receiving the Actelion Drugs from at least January 1, 2014, through present.

28 60. Assignors provided payment for Actelion Drugs throughout the United States.

1 **III. REGULATORY BACKGROUND**

2 61. In 1965, Congress amended the Social Security Act to create the Medicare Act under  
3 Title XVIII of the U.S. Code. The Medicare Act created a federally funded health insurance  
4 program for the nation’s elderly and disabled. The Medicare Act consists of five parts—Parts A, B,  
5 C, D and E. Part A and Part B create, describe, and regulate traditional fee-for-service, government-  
6 administered Medicare. Part C outlines the Medicare Advantage program and provides that  
7 Medicare beneficiaries may elect for private insurers to deliver their Medicare benefits. Part D  
8 provides for prescription drug coverage to Medicare beneficiaries. Part E includes “Miscellaneous  
9 Provisions.” Plaintiffs’ Assignors provide Medicare benefits under Parts C and D.

10 62. Medicare Part D coverage is a voluntary prescription drug benefit program for  
11 Medicare beneficiaries established in 2003. Medicare Part D took full effect in 2006. A beneficiary  
12 may enroll in Part D if he or she lives in the service area of a Part D plan and is entitled to Medicare  
13 benefits under Part A or enrolled under Part B.

14 63. Unlike Parts A and B, yet much like Medicare Part C, Medicare Part D is based on a  
15 private-market model, where Medicare contracts with private entities, known as Part D “sponsors.”  
16 These sponsors administer prescription drug plans, and plan sponsors must provide qualified  
17 prescription drug coverage.

18 64. A Part D sponsor submits a bid the year before it is to deliver Part D benefits. The  
19 bid contains a per member, per month cost estimate for providing Part D benefits to an average  
20 Medicare beneficiary in the geographic area.

21 65. If the Part D plan sponsor’s bid exceeds the benchmark, the enrolled beneficiary may  
22 have to pay the difference as part of a monthly premium. Centers for Medicare and Medicaid  
23 Services (“CMS”) then provides each Part D plan sponsor with advance monthly payments equal to  
24 the Part D plan sponsor’s standardized bid. Part D plans are required to include some cost sharing  
25 obligations that the beneficiary must satisfy.

26 66. All providers and suppliers of medical services and items—including drug  
27 manufacturers who supply covered medications indirectly—must enroll with Medicare to be  
28 eligible to receive any payment under Medicare. 42 CFR § 424.505. To enroll in Medicare, all

1 providers and suppliers must submit an enrollment application to CMS and must “attests that the  
2 information submitted is accurate and that the provider or supplier is aware of, and abides by, all  
3 applicable statutes, regulations, and program instructions.” 42 CFR § 424.510(d)(3).

4 67. The application forms used by all providers and suppliers to enroll in Medicare  
5 includes the following attestation: “I agree to abide by the Medicare laws, regulations and program  
6 instructions that apply to me or to the organization listed in . . . this application. . . . I understand  
7 that payment of a claim by Medicare *is conditioned upon* the claim and the underlying transaction  
8 complying with such laws, regulations and program instructions (including, but not limited to, the  
9 Federal Anti-Kickback Statute, 42 U.S.C. section 1320a-7b(b)).”<sup>6</sup> (emphasis added).

10 68. In addition, “in order for coverage to be available under Medicare Part D for  
11 applicable drugs of a manufacturer, the manufacturer must,” among other things, enter “into and  
12 have in effect an agreement described in § 423.2315(b).” 42 CFR § 423.2310(a). This manufacturer  
13 agreement requires that “[e]ach manufacturer . . . must comply with the requirements imposed by  
14 CMS . . . for purposes of administering the program.” 42 CFR § 423.2315. Congress has  
15 unequivocally instructed that “compliance with federal health care laws, including the [AKS], is a  
16 condition of payment by the Medicare program.” *McNutt ex rel. U.S. v. Haleyville Med. Supplies,*  
17 *Inc.*, 423 F.3d 1256, 1260 (11th Cir. 2005).

18 69. Likewise, MA Plans are required to certify compliance with the AKS and are  
19 prohibited from paying for claims that are tainted by an AKS violation or are rendered unpayable  
20 due to disqualifying conduct by the underlying provider or supplier. 42 CFR § 422.504(h)(1). Every  
21 subcontract that the MA Plan enters into must also contain this certification of compliance. 42 CFR  
22 § 422.504(i).

23 70. MA Plans and other Part C entities play an important role in the American healthcare  
24 landscape. They provide thousands of Americans with not only health insurance, but with the  
25 freedom to go into the marketplace and select the health insurance that best meets their needs.

26  
27  
28 <sup>6</sup> Medicare Enrollment Application, CMS Form 855i, Available at:  
<https://www.cms.gov/Medicare/CMS-Forms/CMS-Forms/Downloads/cms855i.pdf>. See also  
<https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/Enrollment-Applications>



1 Indeed, “Congress’s goal in creating the Medicare Advantage program was to harness the power of  
2 private sector competition to stimulate experimentation and innovation.”<sup>7</sup> In 2017, 33% of  
3 Medicare-eligible individuals received their health insurance from MA Plans.

4 71. Similarly, while Medicaid is jointly funded by state and federal governments, it is  
5 largely administered by private MCOs. When administered directly by the state, Medicaid operates  
6 as a fee-for-service plan—similar to Medicare Parts A & B. As of 2016, over two-thirds of all  
7 Medicaid beneficiaries receive their care in risk-bearing MCO plans. A co-pay assistance grant can  
8 easily influence these beneficiaries—even if their cost sharing obligation is already low—because  
9 Medicaid is specifically designed for individuals and families near or below the poverty line.

10 **IV. FACTUAL ALLEGATIONS**

11 72. “Part D enrollees with high drug costs can have difficulty affording their medications  
12 when they are in the deductible phase [and] when they reach the coverage gap—the period in which  
13 they are required to pay a larger share of total drug costs.”<sup>8</sup> Legitimate patient assistance programs  
14 (“PAPs”) aim to help financially needy patients afford necessary medications during this difficult  
15 period.

16 73. There are two ways that pharmaceutical companies give to PAPs. First,  
17 manufacturers can establish their own PAPs. “Under this option, pharmaceutical companies give  
18 drugs directly to patients who cannot afford them or donate the drugs to a foundation that then gives  
19 them to patients. The second option is through independent charity PAPs (herein referred to as “co-  
20 payment charities”).” *See The Cloak of Social Responsibility*.

21 74. At all relevant times herein, CVC and Adira represented to government agencies,  
22 third-party payors, health care providers, and the public at large, that they operated legitimate  
23 independent charity PAPs, or co-payment charities.

24 75. Pharmaceutical companies donate money to the co-payment charities, purportedly to  
25  
26

27 <sup>7</sup> *In re Avandia Mktg. Sales Practices & Prods. Liab. Litig.*, 685 F.3d 353, 363 (3rd Cir. 2012).

28 <sup>8</sup> Congressional Research Service, *Prescription Drug Discount Coupons and Patient Assistance Programs (PAPs)*, June 15, 2017.

1 help patients who cannot afford their drugs. These patients often have health insurance (usually  
2 Medicare or Medicaid) but apply to these charities to help cover all, or a portion of, their co-  
3 payment obligations.

4 76. There are two key differences between these two giving options. “First, companies  
5 donate drugs in option 1 and money in option 2. Second, pharmaceutical companies receive no  
6 money besides a [tax] deduction in option 1, but under option 2 they receive a [tax] deduction and  
7 money from the insurer paying the other portion of the drug costs. Thus, assistance provided by  
8 option 2 reduces out-of-pocket costs to insured patients but do[es] not reduce the price of  
9 prescription drugs to the healthcare payer. These are one-sided discounts.” *Id.* (emphasis added).

10 77. Small donations to a co-payment charity may substantially increase revenue received  
11 by a given pharmaceutical company from MA Plans and Medicaid Plans, such as the Assignors.<sup>9</sup>

12 78. As pharmaceutical drug company “giving” to co-payment charities rises, the co-  
13 payment charity benefits as well. In fact, executives at co-payment charities are among some of the  
14 *highest paid executives* in the United States.

15 79. Thus, in this context, pharmaceutical companies and co-payment charities have a  
16 mutually beneficial purpose—to receive donations, establish additional disease funds to cover co-  
17 payments of the pharmaceutical company’s expensive specialty drugs, and ensure federal healthcare  
18 programs bear the cost of these drugs. Together, the co-payment charity can show “results” for the  
19 pharmaceutical company and justify increased donations.

20 80. Often these charities receive bribes from pharmaceutical companies to assist certain  
21

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22  
23 <sup>9</sup> See Michael Banigan, *A Guide to Patient Assistance Programs: What You Need to Know to*  
24 *Promote Patient Advocacy and Maximize Charitable Contributions.* Chronic Disease Fund Inc.  
25 (2016) (providing that pharmaceutical companies can calculate their profitability, or “charitable  
26 margin,” as a result of their donations to co-payment charities and can stand to earn 220 percent  
27 charitable margins); see also *Cloak of Social Responsibility* (explaining that example of “charitable  
28 margin” can yield a “charitable margin of 220 percent”); Citi Research, *The Straw that Could Break*  
*the Camel’s Back: DOJ/OIG Action on Foundation Funding Could Severely Impede Industry*  
*Returns*, May 16, 2017 [hereinafter *Citi Research*] (explaining that “[e]ach \$1m industry donation  
to a charitable foundation to enable Medicare patients Xtandi access or similar high priced drugs  
has the potential to generate up to \$21m for the sponsor company, **funded by the US Government**”)  
(emphasis added).

1 patients with enrolling in Medicare and Medicaid programs.

2 81. Given these shared economic incentives, it is no surprise that charitable assistance  
3 from co-payment charities increased from \$11 million in 2004 to nearly \$868 million in 2014. *See*  
4 *Cloak of Social Responsibility* (noting that from 2007 to 2009, during the Great Recession,  
5  
6 pharmaceutical giving increased by nearly \$1.5 billion, while overall corporate giving decreased by  
7 \$1.2 billion). The chart below details total giving for certain co-payment charities, including CVC,  
8 from 2001 to 2014.

9

10 **Table A-1. Total Giving in Dollars for Independent Charity Patient Assistance Programs (PAPs), 2001-2014**

	Patient Access Network Foundation <sup>a</sup>	Chronic Disease Fund/ Good Days <sup>b</sup>	Caring Voice Coalition <sup>c</sup>	Healthwell Foundation <sup>d</sup>	Patient Services	Subtotal: Independent Charity PAPs
2001	—	—	—	—	\$2,328,611	\$2,328,611
2002	—	—	—	—	\$3,296,181	\$3,296,181
2003	—	—	—	—	\$5,118,345	\$5,118,345
2004	—	—	\$80,383	—	\$6,932,842	\$11,301,748
2005	\$7,557,312	\$5,567,689	\$5,257,803	\$15,856,793	\$15,719,269	\$49,988,866
2006	\$18,652,884	\$66,279,917	\$9,850,206	\$47,289,619	\$15,333,700	\$157,406,276
2007	\$24,880,629	\$63,551,700	\$15,816,549	\$59,391,157	\$21,467,080	\$185,107,065
2008	\$32,825,596	\$82,133,885	\$27,943,050	\$57,521,456	\$35,269,942	\$235,693,929
2009	\$37,323,252	\$136,713,152	\$37,530,533	\$71,425,660	\$29,594,995	\$312,587,592
2010	\$37,562,665	\$172,488,043	\$38,166,963	\$84,233,714	\$37,440,434	\$369,891,819
2011	\$28,379,485	\$195,647,202	\$46,827,156	\$49,521,777	\$39,983,874	\$360,359,494
2012	\$108,460,641	\$182,365,638	\$58,221,721	\$36,995,288	\$50,332,148	\$436,375,436
2013	\$174,340,174	\$194,448,004	\$67,435,466	\$31,135,498	\$60,897,475	\$528,256,617
2014	\$496,427,781	\$170,628,203	\$98,027,589	\$29,039,150	\$73,735,080	\$867,857,753

11 Source: ProPublica's Nonprofit Explorer Database.  
12 Notes: These totals come from line 13 titled "Total Grants" on Form 990, although for some entities before 2008, the totals come  
13 from line 23, part II.  
14 <sup>a</sup>Excluded 2004 return because it was an initial return.  
15 <sup>b</sup>Excluded 2004 return because it was an initial return.  
16 <sup>c</sup>Excluded 2002 return because it was an initial return and their reporting years run July to June.  
17 <sup>d</sup>Excluded 2004 return because it was an initial return.

18  
19  
20

21 82. The rise of co-payment charities and pharmaceutical corporate giving to such  
22 charities (with the economic incentives detailed above) is tied to the enactment of public insurance  
23 programs expanding the number of Americans with prescription drug coverage, the growth of  
24 specialty drugs, and the federal anti-kickback law.

25 83. First, this increased giving to co-payment charities occurred during a period in which  
26 there was a surge in the number of Americans with prescription drug coverage as a result of the  
27 enactment of Medicare Part D and, subsequently, the passing of the Affordable Care Act in 2010  
28 ("ACA"), which expanded prescription drug benefits. "Before these public insurance expansions,

1 federal government spending on prescription drugs was 25 percent of total spending in 2005. In  
2 2014 it was 41 percent.” *See Cloak of Social Responsibility*.

3 84. Specialty drug prices are set by drug manufacturers with an intimate knowledge of  
4 the drug market. This knowledge enables manufacturers to set supra-competitive drug prices by  
5 using PAPs to circumvent beneficiary co-payment obligations, thus eliminating price sensitivity.

6 85. Second, along with these public insurance programs, specialty drugs (i.e., generally  
7 defined as expensive prescriptions requiring extra handling or administration in treating complex  
8 diseases) have contributed to the growth of co-payment charities. “In recent years, spending for  
9 specialty drugs has grown faster than spending for other pharmaceuticals. Although specialty  
10 medications account for only one percent of prescriptions, they account for almost a third of U.S.  
11 prescription spending. For Medicare Part D, specialty drugs accounted for a quarter of a percent of  
12 prescriptions in 2013 but eleven percent of total drug cost.” *Id.*

13 86. Co-payment charities allow pharmaceutical companies to manage price sensitivity  
14 for these more expensive specialty drugs. The OIG noted that PAPs “may steer patients toward and  
15 lock them into a particular manufacturer’s product, even when other equally effective and less  
16 costly alternatives are available.” *Id.*

17 87. Moreover, the rise of co-payment charities stemmed from federal anti-kickback law.  
18 The AKS made the receipt of kickbacks, bribes, or rebates in connection with items or services  
19 covered by the Medicare and Medicaid programs a crime. The AKS makes it a crime to knowingly  
20 and willfully offer, pay, solicit, or receive any remuneration to induce a person to purchase or  
21 recommend any good, service, or item covered under a federal health care program. *See* 42 U.S.C. §  
22 1320a-7b(b).

23 88. As it relates to PAPs, the OIG has stated that the AKS could be violated “if a  
24 donation is made to a PAP to induce the PAP to recommend or arrange for the purchase of the  
25 donor’s federally reimbursable items,” as well as if a PAP’s grant of financial assistance to a patient  
26 is made “to influence the patient to purchase (or induce the patient’s physician to prescribe) certain  
27 items.” *Supplemental Special Advisory Bulletin: Independent Charity Patient Assistance Programs*,  
28 79 Fed. Reg. 31120, 31121 (May 30, 2014), attached as **Exhibit 24**.

1 89. Congress has determined that any Medicare or Medicaid claim “that includes items  
2 or services resulting from a violation of [the AKS] constitutes a false or fraudulent claim” for  
3 purposes of the FCA. *See* 42 U.S.C. § 1320a-7b(g).

4  
5 **A. OIG Guidance for Co-Payment Charities**

6 90. The OIG has provided guidance to co-payment charities regarding compliance with  
7 applicable laws and regulations, including the AKS and FCA. In this guidance, the OIG made clear  
8 that such charities will violate those laws and regulations if they do not follow specified rules.  
9 Those rules ensure that a pharmaceutical manufacturer cannot control a co-payment charity, or  
10 receive information from such a charity, that would allow the manufacturer to link the amount it  
11 donates to additional profits from the sale of a particular drug.

12 91. In 2005, the OIG issued a special advisory bulletin on PAPs (“2005 Bulletin”). The  
13 2005 Bulletin provided that certain cost-sharing subsidies provided by bona fide, independent PAPs  
14 unaffiliated with drug manufacturers do not raise AKS concerns, even if the PAPs receive  
15 manufacturer contributions. *See OIG Special Advisory Bulletin on Patient Assistance Programs for*  
16 *Medicare Part D Enrollees*, 70 Fed. Reg. 70623 (Nov. 22, 2005), attached as **Exhibit 25**. The 2005  
17 Bulletin also set forth factors that the OIG considers to be “fundamental” to a properly structured,  
18 independent, bona fide PAP, including the following:

- 19 a. No drug manufacturer or donor exerts any direct or indirect influence or control over  
20 the PAP;
- 21 b. The PAP awards assistance in a truly independent manner that severs any link  
22 between the drug manufacturer donors funding and the beneficiary;
- 23 c. The PAP awards assistance without regard to the drug manufacturer’s interests, or  
24 the beneficiary’s choice of product, provider, practitioner, supplier, or Part D drug  
25 plan;
- 26 d. The PAP provides assistance based upon a reasonable verifiable, and uniform  
27 measure of financial need applied in a consistent manner; and
- 28 e. the drug manufacturer does not solicit or receive data from the PAP that would allow  
the manufacturer to substantiate the amount of its donations with the number of  
subsidized prescriptions for its products. *Id.* at 70626-27 (“Simply put, the  
independent charity PAP must not function as a conduit for payments by the  
pharmaceutical manufacturer to patients and must not impermissibly influence  
beneficiaries drug choices.”)

1 92. In 2014, the OIG issued an updated bulletin raising concerns about the conduct of  
2 co-payment charities and intensifying its scrutiny of arrangements between pharmaceutical  
3 companies and co-payment charities (“2014 Bulletin”). See *Supplemental Special Advisory Bulletin:  
4 Independent Charity Patient Assistance Programs*, 79 Fed. Reg. 31120 (May 30, 2014), attached as  
5 **Exhibit 24**. In the 2014 Bulletin, the OIG stated that although PAPs can provide an important  
6 safety net to financially needy patients, these programs also present a risk of fraud, waste, and abuse  
7 with respect to federal health care programs if they are not independent from donors. *Id.*

8 93. The OIG noted three more areas of concern related to disease funds, eligible  
9 recipients, and the conduct of donors, and required co-payment charities to certify to the OIG that:

- 10 a. The co-payment charity will not define its disease funds by reference to specific  
11 symptoms, severity of symptoms, method of administration of drugs, stages of a  
12 particular disease, type of drug treatment, or any other way of narrowing the  
13 definition of widely recognized disease states;
- 14 b. The co-payment charity will not maintain any disease fund that provides co-payment  
15 assistance for only one drug, or only the drugs made or marketed by one  
16 manufacturer or its affiliates; and
- 17 c. The co-payment charity will not limit its assistance to high-cost or specialty drugs.  
18 Instead, the co-payment charity will make assistance available for all products,  
19 including generic or bioequivalent drugs covered by Medicare or other insurers,  
20 when prescribed for the treatment of the disease state(s) covered by the fund. *Id.*

21 94. As for the “conduct of donors,” the 2014 Bulletin reiterated its prior focus (from the  
22 2005 Special Advisory Bulletin) on co-payment charities not giving a “donor any information that  
23 would enable a donor to correlate the amount or frequency of its donations with the number of aid  
24 recipients who use its products or services or the volume of those products supported by the PAP.”  
25 *Id.* Notably, the OIG warned that:

26 [t]he procedures described in these certifications are a critical safeguard and a  
27 material fact upon which we have relied in issuing favorable advisory opinions  
28 regarding Independent Charity PAPs. These opinions do not address actions by  
donors to correlate their funding of PAPs with support for their own products. Such  
actions may be indicative of a donor’s intent to channel its financial support to co-  
payments of its own products, which would implicate the antikickback statute.

*Id.*

## **B. CVC’s Growth and OIG’s Communications**

95. "In 2003 Congress passed the Medicare Prescription Drug, Improvement, and

1 Modernization Act of 2003, which created Medicare Part D, ‘an optional prescription drug benefit  
2 . . . which went into effect in 2006.’”<sup>10</sup>

3 96. With the enactment of Part D, Congress implemented co-pay requirements as a  
4 “safety-valve” against supra-competitive pricing.

5 97. That same year, in 2003, CVC registered for status as a national 501(c)(3) non-profit,  
6 charitable organization aimed at providing co-payment assistance for patients with certain chronic  
7 or life-threatening diseases. CVC established certain disease funds, including the PAH fund, which  
8 were funded by donors, including Actelion.

9 98. CVC grew from receiving \$80,383 from donors in 2004 to receiving over \$131  
10 million from donors in 2015.

11 99. With the increase in CVC donations, came corresponding increases in reported  
12 personal compensation and benefits for CVC’s executives. **Exhibit 26** – CVC’s Form 990 Filings.

13 100. The personal compensation and benefits reportedly received by CVC’s directors,  
14 executives, and managers, directly correlated with the amounts of donations CVC received from  
15 pharmaceutical manufacturers, including Actelion.

16 101. CVC violated one of the most basic rules that separates legitimate co-payment  
17 charities from illegal ones—it explicitly coordinated with Actelion to steer patients towards  
18 Actelion Drugs and provided information to Actelion so that Actelion could correlate its donations  
19 with its increased profits on the sale of Actelion Drugs—CVC then repeatedly and continuously lied  
20 about this conduct to the OIG.

21 102. In 2006, CVC certified to the OIG that it would comply with the requirements  
22 outlined above in the OIG’s 2005 Special Advisory Bulletin. CVC subsequently requested an  
23 advisory opinion from the OIG asking whether its “Proposed Arrangement” as a nonprofit, tax-  
24 exempt, charitable corporation’s proposal to provide financially needy Medicare beneficiaries with  
25 assistance and cost-sharing obligations under Medicare Part B, Medicare Part D, Medigap, and

26 \_\_\_\_\_  
27 <sup>10</sup> *Patient Servs., Inc. v. United States*, No. 3:18CV16, 2019 WL 267872, at \*4 (E.D. Va. Jan. 18,  
28 2019) (quoting Centers for Medicare & Medicaid Services, History, CMS.gov (last accessed Oct.  
17, 2018), <https://www.cms.gov/About-CMS/Agency-Information/History/index.html>).

1 Medicare Advantage would constitute grounds for sanctions under certain federal laws, including  
2 the AKS. In response, on April 20, 2006, the OIG issued an Advisory Opinion to CVC. See OIG,  
3 Adv. Op. 06-04 (April 20, 2006), attached as **Exhibit 27**. The 2006 CVC Advisory Opinion noted  
4 CVC’s certification that, among other requirements, no donor had exerted or will exert “any direct  
5 or indirect influence or control” over CVC. *Id.* (“[CVC] has certified that no donor or affiliate of  
6 any donor (including, without limitation, any employee, agent, officer shareholder, or contractor  
7 (including, without limitation, any wholesaler, distributor, or pharmacy benefits manager)) has  
8 exerted or will exert any direct or indirect influence or control over [CVC] or any of [CVC]’s  
9 programs.”).

10 103. The 2006 CVC Advisory Opinion provided that upon request and as a courtesy,  
11 donors will be informed monthly of the aggregate number of patients who qualify for assistance in a  
12 category, but highlighted CVC’s certification that “the monthly data will not contain any  
13 information that enable a donor to correlate the amount or frequency of its donation with the  
14 number of subsidized prescriptions or orders for its products or the volume or medical condition of  
15 patients choosing its services.” *Id.* (“No individual patient information will be conveyed to donor,  
16 nor will any data related to the identity, amount, or nature of products or services subsidized under  
17 the Proposed Arrangement.”).

18 104. The OIG concluded, in part, that “[b]ased on the facts certified in [CVC’s] request  
19 for an advisory opinion and supplemental submissions . . . [and subject to various limitations set  
20 forth by the OIG] while the Proposed Arrangement could potentially generate prohibited  
21 remuneration under the anti-kickback statute, if the requisite intent to induce or reward referrals of  
22 Federal health care program business were present, the OIG would not impose administrative  
23 sanctions on [CVC] under [federal laws regarding civil monetary penalties] in connection with the  
24 Proposed Arrangement.” *Id.*

25 105. In December 2015, the OIG published a Modified Advisory Opinion to CVC  
26 following the OIG’s request that CVC certify compliance with the other factors outlined in the 2014  
27 Bulletin (“2015 CVC Modified Advisory Opinion”), attached as **Exhibit 28**. See OIG, Adv. Op. 06-  
28 04 (Dec. 23, 2015). The 2015 CVC Modified Advisory Opinion stated that CVC had certified



1 compliance to each additional factor, and further that CVC had proposed additional modifications to  
2 its current operations. *Id.*

3 106. CVC was admittedly on notice of the OIG’s guidance, cautionary language, and the  
4 certification requirements set forth in the 2005 and 2014 Bulletins, as well as the Advisory Opinions  
5 OIG provided specifically to CVC. In fact, one of the tactics used by CVC to mislead the OIG (the  
6 public, third-party payors, patients, and healthcare providers) was through the creation of a fake  
7 “Compliance Program” “to assist CVC in preventing, detecting and responding to illegal, improper  
8 and unethical conduct . . . [and to] serve as a procedural framework for enhancing and monitoring  
9 compliance with applicable law, regulation, the CVC Code of Conduct and organizational policies  
10 and procedures. *The Compliance Program is based on . . . applicable [OIG] guidance.*” (*See*  
11 *Summary of the CVC Compliance Program*, attached at **Exhibit 29** (emphasis added). In turn,  
12 CVC’s “Code of Conduct” purports to “describe[] the commitment that [CVC] expects of itself . . .  
13 to maintain the highest ethical standards of honesty and integrity as well as to comply with all laws  
14 and legal requirements applicable to [CVC], including [OIG] guidance for charitable patient  
15 assistance programs and CVC’s OIG Advisory Opinion 06-04, as modified, and industry guidance,  
16 including the Independent Charitable Patient Assistance Program Code of Ethics (‘IPAP Code of  
17 Ethics’).” (*See* CVC’s Code of Conduct, attached at **Exhibit 30**).

18 107. CVC used the wire and mail to falsely represent to the OIG, the public, healthcare  
19 providers, and third-party payors, that it was “dedicated to the following values/ethical principles . .  
20 . [among others]”:

- 21 a. Act with honesty, integrity and objectivity, and in a manner that will merit the  
22 continued trust and confidence of patients and stakeholders.
- 23 b. Operate independently free from the influence of CVC donors.
- 24 c. Comply with all federal, state, and local laws, regulations, and legal requirements  
25 applicable to CVC, including OIG guidance for charitable patient assistance  
26 programs and CVC’s OIG Advisory Opinion 06-04, as modified.
- 27 d. Be vigilant in the detection and prevention of potential fraud, waste, or abuse.
- 28 e. Promptly investigate and address potential violations of applicable law, regulation,  
OIG guidance, CVC’s Advisory Opinion, IPAP Code of Ethics, this Code, or  
Company policies and procedures. *Id.*

1           108. The referenced IPAP Code of Ethics that CVC falsely represented that it would  
2 comply with similarly provides that co-payment charities “[o]perate under the auspices of an  
3 ongoing compliance with an organization-specific [OIG] Advisory Opinion,” and “[o]perate  
4 independently, free from the influence of donors,” which included “[r]efrain[ing] from providing  
5 donors or other entities with information that could permit the correlation of the amount or  
6 frequency of donations with the number of patients assisted by the [co-payment charity] who use a  
7 donor’s products or services or the volume of those products supported by the [co-payment  
8 charity].” (*See* IPAP Code of Ethics, attached as **Exhibit 31**).

9           109. CVC also publicly advertised its services to healthcare providers, patients, third-  
10 party payors, and the general public, representing that it operated a legitimate 501(c)(3),  
11 independent charity, when in reality, it was serving as a conduit to funnel kickbacks for Actelion.

12           110. CVC also publicly represented that it was comply with OIG regulations, when it was  
13 not, and it knew it was not.

14           111. Indeed, CVC shared with Actelion the very information it promised it wouldn’t share  
15 and steered patients in violation of the OIG’s general guidance, the OIG’s specific guidance to  
16 CVC, CVC’s certifications to the OIG, CVC’s internal “compliance” policies, the FCA, and the  
17 AKS.

18           112. CVC knew that its conduct violated OIG regulations.

19           113. In November 2017, the OIG rescinded its prior advisory opinions issued to CVC  
20 (“2017 CVC Rescission Letter”). *See* OIG, Adv. Op. 06-04 (Nov. 28, 2017), attached as **Exhibit 32**.  
21 The 2017 CVC Rescission Letter was based on CVC’s “failure to fully, completely, and accurately  
22 disclose all material facts to OIG,” and CVC’s failure to comply with certain factual certifications  
23 made to the OIG. *Id.*

24           114. The Recission Letter stated,

25                   Specifically, we have determined that, in contravention of the certifications  
26 [CVC] made, [CVC]: (i) provided patient-specific datato one or more donors that  
27 would enable the donor(s) to correlate the amount and frequency of their  
28 donations with the number of subsidized prescriptions or orders for their  
                          products, and (ii) allowed donors to directly or indirectly influence the  
                          identification or delineation of [CVC’s] disease categories.”

1 *Id.*

2 115. The 2017 CVC Rescission Letter concluded that:

3 [CVC]’s failure to comply with these certifications materially increased the risk  
4 that CVC served as a conduit for financial assistance from a drug manufacturer  
5 donor to a patient, and thus increased the risk that the patients who sought  
6 assistance from [CVC] would be steered to federally reimbursable drugs that the  
7 manufacturer donor sold. This type of steering can harm patients and the Federal  
8 health care programs, because, for example, patients may be urged to seek, and  
9 physicians may be more likely to prescribe, a more expensive drug if co-  
10 payment assistance is available for that drug but not for less expensive but  
11 therapeutically equivalent alternatives. **In these circumstances, manufacturers  
12 may have greater ability to raise the prices of their drugs while insulating  
13 patients from the immediate out-of-pocket effects of price increases, leaving  
14 Federal healthcare programs like Medicare (and the taxpayers who fund those  
15 programs) to bear the cost.**

11 *Id.* (emphasis added).

12 116. Shortly thereafter, CVC announced that in light of the 2017 CVC Rescission Letter it  
13 would not open financial assistance for any disease fund in 2018. **Exhibit 33** – CVC December  
14 2018 Announcement.<sup>11</sup>

15 117. Instead, in February of 2018, the President of CVC, Greg Smiley, incorporated a new  
16 501(c)(3) charity (Defendant Adira) where CVC began fraudulently conveying CVC’s assets and  
17 records, as well as Actelion’s funds, to the new charity, as further discussed below. **Exhibit 23** –  
18 Adira Business Records.

19  
20 **C. The Scheme Permitted Actelion to Charge Supra-Competitive Prices For and  
21 Artificially Inflate the Quantity of Actelion Drugs Dispensed**

22 118. As part of the Scheme, Defendants artificially increased the quantity of claims the  
23 Assignors and Class Members paid for Actelion Drugs by pushing patients away from Actelion’s  
24 free drug program “which was open to other financially needy patients, even if those Medicare  
25 patients could not afford their copays for Subject Actelion Drugs. Instead, in order to generate  
26 revenue from Medicare and to induce purchases of Subject Actelion Drugs, Actelion referred such  
27 Medicare patients to the foundation, which allowed the patients’ copays to be paid and resulted in

28  

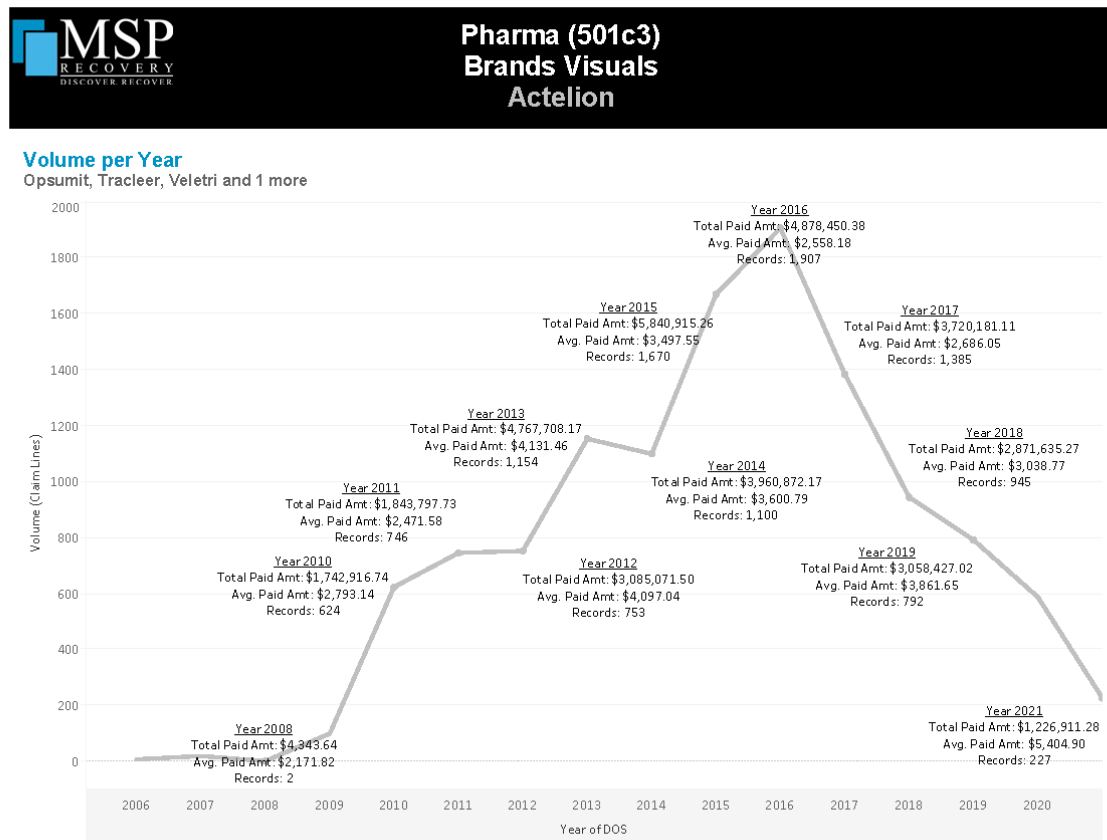
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<sup>11</sup> <http://www.caringvoice.org/decision-2018-financial-assistance>

1 claims to Medicare for the remaining cost.” See **Exhibit 2** DOJ Settlement Agreement Press  
 2 Release. These claims, and all claims for Actelion Drugs during the Scheme, forced the Assignors  
 3 and Class Members to pay for Actelion Drugs at artificially supra-competitive prices.

4 119. In and around 2016, the DOJ began issuing subpoenas to Defendants regarding their  
 5 business practices, donations, and co-payment programs.

6 120. At that same time, the volume (or quantity) of Actelion Drugs prescribed, dispensed,  
 7 and paid for by Assignors plummeted, as seen in the chart below.



24 121. As seen in the chart above, the Scheme allowed Defendants to artificially increase  
 25 the quantity of Actelion Drugs prescribed and dispensed, for which the Assignors were responsible  
 26 for payment.

27 122. Publicly available CMS data reveals a similar pattern.

1 123. For example, according to CMS data, in 2015, Medicare and Medicaid programs  
2 reportedly paid more than \$63.2 million for Ventavis. In 2016, Medicare and Medicaid programs  
3 reportedly paid \$49.3 million, and continued to decline year over year. By 2020, Medicare and  
4 Medicaid programs paid at least \$13.6 million for Ventavis, a substantial decline since the DOJ first  
5 began investigating Defendants' Scheme.

6 124. Similarly, for Tracleer, in 2015, Medicare and Medicaid programs reportedly paid  
7 more than \$402.1 million. In 2016, Medicare and Medicaid programs reportedly paid \$354 million,  
8 and continued to decline year over year. By 2020, Medicare and Medicaid programs paid at least  
9 \$61.9 million for Tracleer, a substantial decline since the DOJ first began investigating Defendants'  
10 Scheme.

11 125. As seen in Defendants' Financial Reports (*See, Exhibits 3 through 21*), during all  
12 relevant times, Medicare and Medicaid programs accounted for a substantial proportion of  
13 Actelion's total global sales.

14 126. Further, because Defendants' Scheme violated the AKS, *all claims* for the Subject  
15 Drugs generated or submitted during the Scheme were unpayable by the Assignors and Class  
16 Members pursuant to federal law.

17 Tracleer

18 127. Tracleer is used to treat high blood pressure in the lungs (pulmonary arterial  
19 hypertension).

20 128. During the period covered by the DOJ Settlement, Actelion raised the price of its  
21 main PAH drug, Tracleer, by nearly **30 times** the rate of overall inflation in the United States. This  
22 trend continued to increase year over year until at least 2020

23 129. Medicaid's spending per dosage unit of Tracleer increased approximately 53%  
24 between 2012 and 2016. This trend continued to increase year over year until at least 2020

25 130. The change in average spending by Medicaid per dosage unit of Tracleer increased  
26 by 12.4% from 2015-2016 with the annual growth rate in average spending per dosage unit from  
27 2012-2016 increasing by 11.2%. The average spending per dosage unit in 2012 was \$99.35, with an  
28 average spending per claim totaling \$5,578.92. By 2016, the average spending per dosage unit

1 jumped to \$152.02, with an average spending per claim totaling \$7,253.49. This trend continued to  
2 increase year over year until at least 2020

3 131. Tracleer Medicare Part D also witnessed a significant rise in cost. Between 2012 and  
4 2016, the average price per dose jumped approximately 37%, resulting in the average spending per  
5 beneficiary costing approximately 44% more. This trend continued to increase year over year until  
6 at least 2020.

7 132. Assignors' data for their covered beneficiaries yields similar findings.

8 Opsumit

9 133. Opsumit is used to treat high blood pressure in the lungs (pulmonary arterial  
10 hypertension).

11 134. Medicare Part D also witnessed a staggering jump in price during a mere four-year  
12 period. From 2013 to 2017, the average spending per beneficiary increased by over ten times. The  
13 average spending per beneficiary in 2013 was \$7,089 and in 2017, it was \$72,616. This trend  
14 continued to increase year over year until at least 2020

15 135. Assignors' data for their covered beneficiaries yields similar findings. Assignors'  
16 total amount paid for Opsumit increased from \$100,000 in 2013 to \$3 million in 2015.

17 Veletri

18 136. Veletri is used to treat high blood pressure in the lungs (pulmonary arterial  
19 hypertension).

20 137. Between the years 2016 and 2017, the average Medicare Part D spending per  
21 Beneficiary jumped nearly 22%. This trend continued to increase year over year until at least 2020.

22 138. Assignors' data for their covered beneficiaries yields similar findings. Assignors'  
23 total amount paid for Veletri increased from under \$100 in 2013 to \$74,000 in 2015.

24 Ventavis

25 139. Ventavis is used to treat high blood pressure in the lungs (pulmonary arterial  
26 hypertension).

27 140. Medicaid's spending per dosage unit of Ventavis increased by over 100% between  
28 2012 and 2016. Additionally, the average spending per claim increased by approximately 58%

1 during that same period. This trend continued to increase year over year until at least 2020

2 141. Medicaid spending per dosage unit of Ventavis was \$58.30 in 2012, and \$120.54 in  
3 2016. The average spending per claim of Ventavis was \$11,173 in 2012, and \$17,737 in 2016. This  
4 trend continued to increase year over year until at least 2020

5 142. Assignors' data for their covered beneficiaries yields similar findings. Assignors'  
6 total amount paid for Ventavis increased from approximately \$100,000 in 2013 to nearly \$250,000  
7 in 2015.

8 143. Actelion's ability to exponentially increase the prices and quantity dispensed of  
9 Actelion Drugs year over year would not have been possible but for the illegal Co-Payment  
10 Scheme.

#### 11 **D. The DOJ Settlement**

12  
13 144. The DOJ prosecuted Actelion and CVC for their roles in the Scheme, which also  
14 defrauded the federal government.

15 145. This resulted in a settlement in which Actelion agreed to pay \$360 million to the  
16 United States after the DOJ alleged that Actelion's use of CVC as a conduit violated the AKS and  
17 FCA.

18 146. The DOJ investigation into the Scheme represents one part of a much larger ongoing  
19 investigation by the DOJ and OIG, along with the U.S. Attorney's Office for the District of  
20 Massachusetts, into schemes by various drug manufacturers and co-payment charities that violated  
21 the AKS and FCA.<sup>12</sup> As recognized by pharmaceutical-industry financial analysts, these  
22  
23

---

24  
25 <sup>12</sup> Other recent results involving the resolution of AKS and FCA claims brought by the United  
26 States against drug manufacturers participating in improper schemes with co-payment charities  
27 include: (i) Jazz Pharmaceuticals PLC ("Jazz") agreeing in May 2018 to pay the United States \$57  
28 million related to claims involving Jazz's relationship with CVC to fund co-payment for Jazz's  
narcolepsy drug Xyrem; (ii) United Therapeutics agreed to pay the United States \$210 million to  
resolve the United States' AKS and FCA claims on behalf of Medicare based on United  
Therapeutics' relationship with CVC; and (iii) Lundbeck LLC agreeing in April 2019 to pay the  
United States \$52.6 million related to claims involving Lundbeck's relationship with CVC to fund  
co-payment for Lundbeck's Huntington Disease drug, Xenazine.

1 investigations “impede industry returns.”<sup>13</sup>

2 147. The Actelion Settlement with the United States was based on the DOJ’s claims that  
3 Actelion’s conduct violated the AKS and FCA, thereby leaving Federal healthcare programs (in that  
4 case, Medicare Parts A & B) “bear[ing] the cost.”

5 148. The DOJ found that from *at least* January 1, 2014, through *at least* August 2015,<sup>14</sup>  
6 Actelion used a foundation (CVC) as an illegal conduit to pay the copay obligations  
7 of thousands of Medicare patients taking the Subject Drugs and to induce those  
8 patients to purchase them, because they knew that the prices Actelion set for the  
9 Subject Drugs could otherwise pose a barrier to those purchases. Actelion made  
10 donations to the foundation, which, in turn, used those donations to pay copays of  
11 patients prescribed the Subject Drugs. Actelion routinely obtained data from the  
12 foundation detailing how much the foundation had spent for patients on each Subject  
13 Drug; it then used this information to decide how much to donate to the foundation  
and to confirm that its contributions were sufficient to cover the copays of only  
patients taking the Subject Drugs. Actelion had a policy of not permitting Medicare  
patients to participate in its free drug program, which was open to other financially  
needy patients, even if those Medicare patients could not afford their copays for the  
Subject Drugs.

14 (*See Exhibit 1*– Actelion Settlement)

15 149. The DOJ further found:

16 [A]ctelion routinely obtained data from CVC detailing how many patients on each  
17 Subject Drug CVC had assisted, how much CVC had spent on those patients, and  
18 how much CVC expected to spend on those patients in the future. Actelion received  
19 this information through funding requests, telephone calls, and written reports.  
20 Actelion used this information to budget for future payments to CVC on a drug-  
21 specific basis and to confirm that its contribution amount to CVC were sufficient to  
22 cover the copays of patients taking the Subject Drugs, but not of patients taking other  
23 manufacturer’s PAH drugs. Actelion had a policy of not permitting Medicare  
patients to participate in its free drug program, which was open to other financially  
needy patients, even if those Medicare patients could not afford their copays for  
Actelion drugs. Instead, in order to generate revenue from Medicare and to induce  
purchases of the Subject Drugs, Actelion referred Medicare patients prescribed the  
Subject Drugs to CVC, which resulted in claims to federal healthcare programs to

24 \_\_\_\_\_  
25 <sup>13</sup> *See Citi Research* (“[t]he ongoing multiple DOJ/OIG investigations into financial donations by  
26 pharmaceutical companies to independent foundations has the potential to severely limit future  
27 revenues for several high-priced blockbuster Medicare Part D drugs through (i) lowered overall  
funding for patient out-of-pocket assistance (ii) lesser ability for individual pharmaceutical donors  
to guide their funding towards specific drugs.”).

28 <sup>14</sup> Although the Actelion Settlement discussed conduct that occurred through August 2015, Plaintiffs  
have evidence suggesting that the Scheme continued up until, and after, the execution of the  
Actelion Settlement in December of 2018.



1 cover the cost of the drugs.

2

3 (See **Exhibit 2** – DOJ Settlement Agreement Press Release)

4

5

6 150. The Actelion Settlement did not redress the harm that Defendants’ Scheme caused to  
7 the Assignors and Class Members or settle any claims that the Assignors and Class Members have  
8 against Defendants.

9

10

11 151. The Actelion Settlement does not represent the full time span of Defendant’s  
12 Scheme.

13

14

15 152. Defendants’ misconduct caused economic injury to Assignors and the Class  
16 Members.

17

18

19 153. Actelion bribed CVC to act as a conduit to illegally pay the co-payment obligations  
20 of MA Plan and Medicaid patients taking Actelion Drugs.

21

22

23 154. Defendants’ conduct eliminated price sensitivity of patients allowing pharmacies to  
24 dispense Actelion Drugs, which in turn enabled Actelion to raise the price of Actelion Drugs to  
25 supra-competitive levels, quickly and outside of ordinary market conditions. Assignors and Class  
26 Members were left to bear the cost, while CVC was able to show “results” to Actelion Drugs—if  
27 Actelion “donated” money to CVC, it would make money, not only off the new “customers” but  
28 also by its ability to raise prices, and ensure that the drugs were still prescribed, dispensed, and  
reimbursed.

29

30

31 155. RICO Defendants’ conduct caused MA Plan and Medicaid Plan patients to purchase  
32 the Actelion Drugs;

33

34

35 a. Actelion routinely obtained data from CVC detailing how many patients, including  
36 MA Plan and Medicaid Plan patients, CVC had assisted and how much CVC had  
37 spent on those patients for Actelion Drugs;

38

39

40 b. In deciding whether and how much to donate to CVC, Actelion considered the  
41 revenue it would receive from prescriptions for MA Plan patients who received  
42 assistance from CVC to cover their co-payments for Actelion Drugs;

43

44

45 c. Actelion used data from CVC to confirm that Actelion’s revenue exceeded the  
46 amount of Actelion’s “donations” to CVC;

47

- 1 d. Actelion ensured that MA Plans and Medicaid Plans bore the cost of Actelion Drugs  
2 by employing a policy of not permitting MA Plan and Medicaid Plan patients to  
3 participate in Actelion’s free drug program (*i.e.*, where government funds are not  
4 implicated), which was open to other financially needy patients, even if those MA  
5 Plan and Medicaid Plan patients could not afford their co-payments for Actelion  
6 Drugs; and
- 7 e. Actelion funneled MA Plan and Medicaid Plan patients prescribed Subject Actelion  
8 Drugs to CVC, which upon CVC providing coverage of patients’ co-payments,  
9 triggered Assignors’ obligations reimburse for Actelion Drugs.

10 156. Defendants’ Scheme violated the AKS prohibitions on illegal remuneration by  
11 Actelion bribing CVC to both (a) illegally funnel funds to certain pharmacies to induce Government  
12 payors (such as Assignors and Class Members) to pay for over-priced Actelion Drugs; and (b) to  
13 illegally refer, recommend, and arrange for federal healthcare program beneficiaries to receive the  
14 Actelion Drugs. 42 U.S.C. § 1320a–7b(b)

15 157. Defendants also violated the AKS prohibitions on making and causing to be made  
16 false statements and representations by Actelion breaching its certifications to comply with the  
17 AKS, by causing the prescribing physicians and dispensing pharmacies to submit *per se* false claims  
18 to Assignors and Class Members, and by concealing and failing to disclose the illegal remunerations  
19 that rendered these claims false while also receiving payment for such claims. 42 U.S.C. § 1320a–  
20 7b(a)

21 158. Therefore, *all claims* for the Actelion Drugs generated or submitted during the  
22 course of the Scheme were disqualified from being paid for by Assignors and Class Members.

23 159. But-for Defendants’ conduct, Assignors and Class Members would not and could not  
24 have paid for any Actelion Drugs.

25 160. Because of Defendants’ Scheme, Assignors and Class Members paid for  
26 prescriptions they would not have otherwise paid and there was a direct relationship between the  
27 misconduct at issue here and the payments Assignors and Class Members made for Enrollees. Such  
28 payments involved reimbursement of illegal and unpayable claims, artificially increased quantities  
of prescribed and/or dispensed Actelion Drugs, and supra-competitive prices on all Actelion Drugs  
prescriptions.

1 161. RICO Defendants knew and intended that their Scheme would generate disqualified  
2 claims and artificially inflate the quantities of prescribed and/or dispensed Actelion Drugs and allow  
3 Actelion to raise the prices of Actelion Drugs to supra-competitive levels.

4 162. At relevant times herein, Defendants (their agents and conspirators) actively and  
5 falsely marketed to and misled health care providers, third-party payors, governmental agencies,  
6 and the public, regarding the legitimacy of their Co-Payment Scheme, tainting any and all claims  
7 for Actelion Drugs submitted during the course of the Scheme.

8 163. Assignors and Class Members were the primary and intended victims of Defendants'  
9 Scheme. The injury to the Assignors was a foreseeable and natural consequence of the Scheme  
10 because Actelion knew that third-party payers such as the MA Plans and the Medicaid Plans would  
11 pay for or reimburse the cost of Actelion Drugs.

12 164. Assignors and Class Members suffered direct economic injury as a direct and  
13 proximate cause of Defendants' Scheme and are therefore best suited to advance and pursue the  
14 recovery of the claims asserted in this Complaint.

15 165. In fact, Assignors and Class Members are likely the only entities harmed by  
16 Defendants' Scheme.

17 166. Indeed, wholesale distributors, specialty distributors, and/or pharmacies actually  
18 benefit from the scheme as their sales increase *because the rate of abandonment decreases*, their *co-*  
19 *payment revenue increases*, as well as revenue from service fees, some of which are based on a  
20 percentage of the Wholesale Acquisition Cost ("WAC").<sup>15, 16</sup>

21 \_\_\_\_\_  
22 <sup>15</sup> Prescription abandonment—when a prescription is transmitted to the pharmacy but never filled—  
23 is a major concern for both providers and drug manufacturers. Prescription abandonment is multi-  
24 faceted, but it is widely understood that high co-payments are a leading cause and lowering co-  
25 payments significantly reduces abandonment for highly effective chronic treatments. Dana P.  
26 Goldman et al., *Prescription Drug Cost Sharing: Associations with Medication and Medical*  
*Utilization and Spending and Health*. 298.1 *Jama* 61, 61-69 (2007). Available at  
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6375697/>

27 <sup>16</sup> Prescription abandonment causes an estimated 125,000 avoidable deaths in the U.S. annually.  
28 Regardless of whether patients and doctors are induced by PAP funds at the prescription stage, the  
data is clear that patients are induced by co-payment assistance at the dispensing stage. Hayden B.  
Bosworth et al., *Medication Adherence: A Call for Action*. 162.3 *Am Heart J.* 412 (2011). Available  
at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3947508/>

1 167. Actelion knows or has reason to know that prescription abandonment and low  
2 medication adherence (i.e., taking the prescription as prescribed) are serious issues in treating  
3 PAH.<sup>17, 18</sup> High co-pay costs for patients is a major contributing factor to both abandonment and  
4 low adherence.<sup>19</sup> Instead of lowering the cost of its PAH medication or allowing federal healthcare  
5 program beneficiaries to access its free drug program, Actelion chose to run an illegal and lucrative  
6 scheme to force Assignors and Class Members to shoulder the burden of its greed.

7 168. Defendants had the shared goal of, among other illicit objectives, maximizing the  
8 amount of sales for Actelion Drugs and growing Actelion's co-payment assistance fund, thereby  
9 enabling CVC's directors and officers to use the non-profit charities increased funds to justify a  
10 surge in their own compensation and luxurious lifestyle. The Co-payment Scheme increased the  
11 number of MA Plan and Medicaid Plan patients (among all healthcare programs) who were  
12 receiving co-payment assistance for Actelion Drugs from Actelion's co-payment fund, triggering  
13 the Assignors' and Class Members' coverage obligations for these Enrollees, eliminating price  
14 sensitivity to Actelion, and allowing Actelion to increase its revenues and profits related to Actelion  
15 Drugs sales.

16 169. For Defendants, this collusive bribery Scheme was a "win-win" arrangement.  
17 Actelion systematically blocked MA Plan and Medicaid Plan beneficiaries from accessing  
18 Actelion's free drug program. Instead, Actelion referred those beneficiaries to CVC. Actelion  
19 directed its bribes to CVC with the intent to increase MA Plan and Medicaid Plan reimbursements.  
20 Part of those bribes were made to CVC in order for CVC to enroll patients in state and federal

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21  
22  
23 <sup>17</sup> Stephen Mathai et al., *Low Utilization of Prostacyclin Therapy Prior to Death Among Medicare*  
24 *Patients with Pulmonary Arterial Hypertension*, Vol. 158 Chest J. 4 (2020). Available at  
[https://journal.chestnet.org/article/S0012-3692\(20\)34047-2/fulltext](https://journal.chestnet.org/article/S0012-3692(20)34047-2/fulltext)

25 <sup>18</sup> Duncan Grady et al. *Medication and patient factors associated with adherence to pulmonary*  
26 *hypertension targeted therapies*. 2018 Pulm Circ. 8(1), (2018). Available at  
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5731720/>. Over 6% of the study sample was below  
27 80% adherence over a two-year period, resulting in a significant increase in reported adverse events.  
28 Nisha B. Shah et al. *High rates of medication adherence in patients with pulmonary arterial*  
*hypertension: An integrated specialty pharmacy approach*, PLOS ONE 14(6): e0217798, (2019).  
Available at <https://doi.org/10.1371/journal.pone.0217798>

<sup>19</sup> See footnotes 16 and 17, *supra*.

1 health care plans, while other parts were made to CVC in order for CVC to provide quarterly  
2 reports to Actelion regarding the Actelion Drugs.

3 170. As CVC illegally provided data and information to Actelion related to the  
4 profitability of Actelion's "donations" to CVC, Actelion would couple their use of CVC with price  
5 increases of Actelion Drugs. Actelion's bribes to CVC resulted in more MA Plan and Medicaid  
6 Plan patients receiving co-payment assistance. This in turn eliminated price sensitivity for Actelion  
7 Drugs, resulting in supra-competitive pricing and artificially inflated quantities of dispensed  
8 Actelion Drugs, which together increased profits for all Defendants and their executives. And all  
9 along the way, as Actelion's drug prices increased and utilization of CVC increased to mask the  
10 effects of the price increases, donations to CVC continued to rise, and Defendants' executives  
11 continued to pocket more and more illicitly generated profits for themselves. *See, Exhibits 3*  
12 **through 21; Exhibit 26.**

13 171. Data from CMS and Assignors show how Defendants' Scheme eliminated price  
14 sensitivity of patients purchasing, physicians prescribing, and pharmacies dispensing Actelion  
15 Drugs and resulted in federal healthcare programs bearing the increased costs. This data reflects that  
16 Actelion charged supra-competitive prices and increased the quantity of Actelion Drugs paid for by  
17 federal programs while the Co-Payment Circumvention Enterprise pursued such goals through  
18 unlawful means, as described herein.

19 172. Assignors paid approximately \$31 million in claims for Actelion Drugs from January  
20 1, 2014, *until present*. Information in the exclusive control of Defendants will show that a  
21 significant portion of the co-payments paid on behalf of the beneficiaries of the Assignors and Class  
22 Members were made by CVC as a result of Defendants' Co-payment Scheme.

23 173. Assignors were not privy to which patients' co-payments were related to Actelion's  
24 bribes to CVC. Assignors' obligations to cover claims for Actelion Drugs only arose after CVC  
25 unlawfully funneled Actelion funds to certain pharmacies.

26 174. Evidence suggests that most, if not all, of the pharmacies that dispensed the Actelion  
27 Drugs during the relevant time period, were aware of, participated in, and/or recklessly disregarded  
28 the fact that Actelion used CVC as a conduit in violation of the AKS, resulting in millions of co-

1 payment revenue paid by Actelion through CVC to the pharmacies.

2 175. As a result of Defendants' fraudulent concealment of their Scheme, Assignors did  
3 not and could not have known that their reimbursement obligations, or the supra-competitively  
4 priced drugs, were caused by Defendants' misconduct.

5 176. Defendants' documents and disclosures clearly show that they possess information to  
6 show exactly which patients received co-payment assistance.

7 177. For example. CVC's Form 990 Tax Filings state in Supplemental Information to  
8 Schedule I, Part I, Line 2:

9 Financial grants are given when an individual specifies he/she has a disease supported  
10 by Caring Voice and he/she meets stated income guidelines. Individuals fill out an  
11 application for financial assistance which must be accompanied by a medical  
12 certification from their physician documenting their diagnosis. Grant funds are paid  
13 to third party pharmacies or insurance companies after proof is received that the  
14 patient has incurred therapy costs associated with the specific diagnosis. **Caring  
Voice monitors the use of grant funds for individuals using proprietary database  
software. The database maintains all records to substantiate the amount of an  
individual's grant, the grantee's eligibility and payments made on the grant.**<sup>[20]</sup>

15 178. CVC's Code of Conduct (adopted by CVC's Board of Directors on July 22, 2017)  
16 states that CVC will:

17 Maintain accurate and complete books and records, including accounting and  
18 financial data, and retain such books and records in accordance with applicable  
19 federal, state and local laws and regulations, Company's record retention policies  
20 and procedures and Company instructions.<sup>21</sup>

21 179. As noted above, RICO Defendants' Scheme benefited CVC and its executives.

22 180. In addition, Actelion intentionally concealed the Scheme, covering up the true nature  
23 of its payments and relationship with charities. The payments were in fact bribes and for the  
24 purpose of using the foundations as conduits to effectuate its goals of artificially and deceptively  
25 inflating the drug prices and increasing the use of the drugs to increase profits at the expense of  
26 healthcare payors like Assignors and Class Members. Actelion's concealment prevented Plaintiffs  
27 from reasonably discovering the facts underlying Defendants' Scheme which caused Assignors' and

28 <sup>20</sup> See CVC's Form 990 Tax Filings, attached as **Exhibit 26**.

<sup>21</sup> See CVC's Code of Conduct, attached as **Exhibit 30**.

1 the Class Members' injuries. In other words, Actelion's concealment lulled Plaintiffs into inaction,  
2 resulting in substantial damages to Plaintiffs' property and business over the course of the illegal  
3 scheme.

4 181. Defendants' Scheme caused pharmacies to seek reimbursement from federal health  
5 care programs for their purchases of Actelion Drugs. Not only are physicians and pharmacies  
6 required to explicitly certify compliance with the AKS, but the act of submitting claims for  
7 reimbursement carries with it an implied certification of compliance with governing federal rules  
8 that are a precondition of or material to payment. Pharmacies submitting claims for reimbursement  
9 therefore certified compliance with federal law, including the AKS. Defendants thus caused  
10 pharmacies to provide false certifications.

11 182. Upon information and belief, some pharmacies involved in the Scheme knowingly  
12 provided false certification to Assignors and Class Members.

13 183. Upon information and belief, discovery will likely reveal that certain pharmacies  
14 conspired with Defendants to achieve the objectives of the Co-Payment Scheme, thereby  
15 contributing to the billions of dollars in yearly "co-payment revenue" received by those pharmacies.

16 184. As Actelion used CVC as a conduit, CVC did not act as an independent charity.  
17 Instead, Defendants' conduct violated the AKS, OIG regulations, and state and federal laws,  
18 rendering any certification relating to the Actelion Drugs as false, and any claim for reimbursement  
19 unpayable by Medicare and Medicaid programs (such as Assignors and Class Members).

20 185. As a result of Actelion's collusion with and unlawful use of CVC as a conduit, the  
21 Assignors and Class Members were harmed by paying for claims that were unpayable, which they  
22 would not have paid but for RICO Defendants' concealment of their scheme.

23 186. As a direct result of the Co-payment Scheme, Assignors and Class Members also  
24 paid for an increased number of Actelion Drugs prescriptions throughout the United States.

25 187. As a direct result of the Co-Payment Scheme, Assignors and Class Members also  
26 paid supra-competitive prices for the Actelion Drugs. Such prices would not have been possible but-  
27 for Defendants' Scheme.

28 188. Following CVC's announcement in 2018 that it was discontinuing operations, CVC

1 contacted Actelion to transfer approximately \$10 million to Adira.

2 189. By then, Johnson and Johnson owned Actelion. **Exhibit 34** – J&J 2017 10-K;  
3 **Exhibit 35** – J&J 2018 10-K; **Exhibit 36** – J&J 2019 10-K; **Exhibit 37** – J&J 2020 10-K; **Exhibit**  
4 **38** – J&J 2021 10-K.

5 190. Upon information and believe, starting in 2019, Adira joined the Co-Payment  
6 Circumvention Enterprise, assumed the role of conduit from CVC, partnered with Actelion, and  
7 engaged in overt acts in furtherance of the scheme to defraud Assignors and Class Members

8  
9 **E. CVC’s Fraudulent Transfers to Adira**

10 191. As stated above, in or around November of 2017, the OIG issued the 2017 CVC  
11 Rescission Letter.

12 192. On February 20, 2018 (just months after the 2017 CVC Rescission Letter), CVC’s  
13 President and Chairman together incorporated a new 501(c)(3) charity—Facilitating Patient Health,  
14 which was later renamed to Adira—to continue using the same fraudulent funds in furtherance of  
15 the Scheme.

16 193. During this time, CVC was aware of, and involved in, several DOJ investigations  
17 and settlements for fraudulent and illegal acts at issue in this Complaint.

18 194. On December 6, 2018, the DOJ announced that it had entered into a settlement  
19 agreement with Actelion regarding its fraudulent conduct with CVC. **Exhibit 2**.

20 195. That same month, CVC publicly announced that it was discontinuing operations,  
21 which was false. **Exhibit 33**.

22 196. Instead, CVC’s management simply transferred millions in assets to themselves,  
23 through Adira, and then publicly claimed to be defunct. *See* **Exhibit 22** – CVC Articles of  
24 Dissolution.

25 197. In fact, between at least 2011 and 2017 Greg Smiley served as treasurer of CVC.  
26 Starting sometime in 2016 or 2017, Greg Smiley became the President and CEO of CVC and held  
27 that position until the end of CVC’s disillusionment. **Exhibit 22, 26** - CVC Form 990s.

28 198. Similarly, in 2014, James Rock became a director and member of the executive team



1 at CVC. Starting in 2016, James Rock was elevated to Chairman of CVC and held that position  
2 until the end of CVC’s disillusionment. **Exhibit 22, 26** - CVC Business Records & Form 990s.

3 199. On February 23, 2018, (just months after the 2017 CVC Rescission Letter), CVC’s  
4 President Greg Smiley and Chairman James Rock together incorporated a new purported 501(c)(3)  
5 charity—Facilitating Patient Health (“FPH”), which was later renamed to Adira—to continue  
6 operating some of the same disease funds that CVC was forced to close. James Rock and Greg  
7 Smiley were named as two of the three founding directors. *See Exhibit 22, 23* – Adira Business  
8 Records & Form 990s.

9 200. FPH’s 2019 Annual Report (submitted February 9, 2019) names James Rock as  
10 Director and Greg Smiley as Director and Chief Executive Officer.

11 201. On March 15, 2019, CVC entered into a Grant Agreement with FPH. (“CVC-FPH  
12 Agreement”). Greg Smiley—who was President of both CVC and FPH at the time—signed on  
13 behalf of CVC, while James Rock—who was Chairman of both CVC and FPH at the time—signed  
14 on behalf of FPH.

15 202. The CVC-FPH Agreement provided that CVC would provide \$3,000,000 to FPH.

16 203. On May 6, 2019, FPH amended its articles of incorporation (signed by Greg Smiley)  
17 to change the organization’s name to “Adira Foundation.”

18 204. On May 31, 2019, CVC entered into a “Records Transfer Agreement” with Adira,  
19 where CVC would “transfer title and custody of all electronic patient records . . . as well as certain  
20 other records” to CVC. The Records Transfer Agreement contains an attached “Bill of Sale” which  
21 purports that, in consideration of the agreement, Adira paid CVC \$10.

22 205. Greg Smiley signed the Records Transfer Agreement on behalf of *both CVC and*  
23 Adira. No other signatures appear on the Records Transfer Agreement. In addition to Greg Smiley  
24 and James Rock, several CVC employees—including other senior management personnel—began  
25 working for Adira at the same time as the transfers. For example, Lauren Ruiz was Director of  
26 Patient Services at CVC from November 2011, until joining Adira in April 2019 as a Programs  
27 Manager. Additionally, Bruce Packett, who served as a director at CVC for several years, including  
28 from 2017-2020, has now also served on Adira’s Board of Directors since 2018.

1 206. CVC and Adira even used the same accounting firm, Meadows Urquhart Acree &  
2 Cook LLP, to file their respective 2019 990 forms.

3 207. Plaintiffs are in possession of further evidence of CVC fraudulently conveying its  
4 assets to Adira, and Adira taking overt acts in furtherance of the Scheme.

5 208. In fact, in July of 2019, CVC continued communicating with Actelion, informing  
6 Actelion that it was continuing operations and Adira, and requesting Actelion's consent to transfer  
7 approximately \$10 million of Actelion's funds to Adira.

8 209. Adira then began using the mail and wires to correspond with Actelion, in  
9 furtherance of the Scheme.

10 210. Additionally, an internal CVC document titled "CVC Board Slides 202004" reveals  
11 that CVC transferred all non-restricted and unobligated funds to Adira, noting that "\$4.0 million  
12 Total Will be transferred to Adira on or before 6/30/2020." In addition, this same document  
13 instructs that CVC will transfer to Adira both cash and "safe assets earning 5+%."

14 211. Further, several additional internal CVC documents instruct that an extensive list of  
15 personal property was (or would be) given to Adira, including laptops, computer servers, software  
16 licensees, office equipment, etc.

17 212. Greg Smiley's salary from CVC in 2018 was \$190,309. In 2019, Greg Smiley's 2019  
18 CVC salary was \$256,066 and \$192,865 in 2020. *See Exhibit 26* - CVC Form 990. In addition to  
19 his CVC salary, Greg Smiley was paid, by Adira, \$192,865 in 2019 and \$234,248 in 2020. *See*  
20 **Exhibit 23** – Adira Form 990s.

21 ***V. CLASS ACTION ALLEGATIONS***

22 213. At all material times, Actelion Drugs—manufactured and sold by Actelion—were  
23 shipped across state lines and sold to customers located both within and outside its state of  
24 manufacture.

25 214. During the relevant time period, in connection with the purchase and sale of Actelion  
26 Drugs, monies, as well as contracts, bills, and other forms of business communication and  
27 transactions, were transmitted in continuous and uninterrupted flow across state lines.  
28

1           215. During the relevant time period, various methods of communication were used to  
2 effectuate the illegal acts alleged here, including the United States mail, interstate and foreign  
3 travel, and interstate and foreign telephone commerce. The activities of Defendants, as alleged in  
4 this Complaint, were within the flow of, and have substantially affected, interstate commerce.

5           216. Plaintiffs bring this action on behalf of themselves and the following Class  
6 Members:

7 Federal RICO / State RICO / State Consumer Protection Statute Class 1:

8 All Medicare Advantage Organizations, Medicaid Managed Care Organizations, and  
9 at-risk, first-tier, and downstream entities in the United States and its territories that  
10 from at least January 1, 2014 through present, pursuant to Medicare and/or Medicaid  
11 contracts offering Medicare and Medicaid benefits, provided services, purchased  
12 Subject Actelion Drugs, provided reimbursement, or possess the recovery rights to  
13 reimbursement for some or all of the purchase price of the Actelion Drugs resulting  
14 from CVC's or Adira's co-payment assistance. This class excludes: (a) RICO  
15 Defendants, their officers, directors, management, employees, subsidiaries, and  
16 affiliates; (b) the federal government; and (c) any judges or justices involved in this  
17 action and any members of their immediate families.

18 Federal RICO / State RICO / State Consumer Protection Statute Class 2:

19 All self-funded, third-party payors and related entities in the United States and its  
20 territories that from at least January 1, 2014 through present, provided services,  
21 purchased the subject pharmaceuticals, provided reimbursement, or possess the  
22 recovery rights to reimbursement for some or all of the purchase price of Actelion  
23 Drugs resulting from CVC's or Adira's co-payment assistance. This class excludes:  
24 (a) Defendants, their officers, directors, management, employees, subsidiaries, and  
25 affiliates; (b) the federal government; and (c) any judges or justices involved in this  
26 action and any members of their immediate families.

27           217. Plaintiffs bring this action pursuant to Federal Rule of Civil Procedure 23 both  
28 individually and on behalf of a national damages class.

          218. As discussed in this Complaint, Defendants' Scheme resulted in increased sales of  
the Actelion Drugs, the cost of which were borne by Assignors and Class Members. All members of  
the class are subject to the same AKS compliance requirements and are all prohibited from paying  
for or reimbursing claims that are unpayable due to AKS violations. The damages suffered by  
Plaintiffs apply to all individual Class Members (and Plaintiffs as the rightful assignees of those

1 organizations that assigned their rights to Plaintiffs). Class action law has long recognized that,  
2 when companies engage in conduct that has uniformly harmed a large number of claimants such as  
3 Plaintiffs and other third-party payers, class resolution is an effective tool to redress the harm.

4 219. Assignors and Class Members have been deprived of money as a result of their  
5 obligation to pay for prescribed the Actelion Drugs at artificially inflated quantities and supra-  
6 competitive prices, and because of RICO Defendants' improper shifting of patients from Actelion's  
7 free drug program to the co-payment charity. But for the Scheme, Assignors and Class Members  
8 would have paid far less for the Actelion Drugs.

9 220. The Classes, defined above, are properly brought and should be maintained as a  
10 nationwide class action under Rule 23(a), satisfying the class action prerequisites of numerosity,  
11 commonality, typicality, and adequacy:

12 Numerosity: The Class Members are so numerous that joinder is impracticable.  
13 Plaintiffs believe the Class includes thousands of third-party payors that paid for  
14 hundreds of thousands, if not millions, of prescriptions. There are thousands of  
15 entities (including the organizations that assigned their rights to Plaintiffs)  
16 throughout the United States that sustained damages as a result of their payment for  
17 the Actelion Drugs caused by Defendants' Scheme. Thus, the numerosity element for  
18 class certification is met.

19 Commonality: Defendants' misconduct was directed at all Class Members.  
20 Questions of law or fact are common to all Class Members. Defendants' co- payment  
21 assistance conspiracy Scheme and racketeering activity carried out by their  
22 enterprise have a common, adverse effect on all Class Members. Thus, common  
23 questions of law or fact are prevalent throughout the class, such as whether Defendants  
24 engaged in a pattern of racketeering activity and conspired to induce Class Members'  
25 payment for the Actelion Drugs prescriptions. Each Class Member shares the same  
26 needed remedy—namely reimbursement for unlawfully paid bills and lost money or  
27 disgorgement of Defendants' profits as a result of Defendants' Scheme and  
28 racketeering activity that caused Assignors and Class Members to pay supra-  
competitive prices for artificially inflated quantities of the Actelion Drugs.

24 Typicality: Plaintiffs' claims are typical of the claims of the Class Members because  
25 their claims arise from the same course of conduct by Defendants, namely  
26 Defendants' formation of their co-payment Scheme and racketeering activity  
27 unlawfully causing Class Members to reimburse pharmacies for the over-prescription  
28 and over-dispensing of the Actelion Drugs at supra- competitive prices and actual  
payment that would otherwise not have been made but for Defendants' conduct.  
Plaintiffs' claims are, therefore, typical of the Class Members.

Adequacy: Plaintiffs will fairly and adequately represent and protect the interests of

1 the Class Members. Plaintiffs' interests in vindicating these claims are shared with  
2 all of the Class Members. Plaintiffs are represented by counsel who are experienced  
3 and competent in the prosecution of class action litigation and have particular  
4 experience with class action consumer protection and RICO litigation in the  
5 pharmaceutical industry.

6 221. The Class is properly brought and should be maintained as a class action under Rule  
7 23(b) because a class action is the superior method for resolving these claims. Pursuant to Rule  
8 23(b)(3), common issues of law and fact predominate over any questions affecting only individual  
9 members of the Classes. Defendants deliberately conspired to cause Assignors to pay for the  
10 Actelion Drugs through the formation of the Scheme that subsequently resulted in the submission  
11 and payment of supra-competitive prices for the Actelion Drugs by Assignors and the Class  
12 Members that otherwise would not have been paid.

13 222. Assignors and Class Members paid for prescriptions of the Actelion Drugs that they  
14 otherwise would not have paid but for Defendants' Co-payment Scheme and racketeering activity.

15 223. Additional questions of law and fact common to some or all the Classes include, but  
16 are not limited to:

- 17 a. Whether Defendants engaged in a bribery and/or kickback scheme and  
18 thereby violated the AKS, the Travel Act, and/or mail and wire fraud statutes;
- 19 b. The effect of such bribery and/or kickback scheme on the quantities  
20 dispensed and prices of the Actelion Drugs; and
- 21 c. The quantum of overcharges paid by Assignors and Class Members in the  
22 aggregate.

23 224. Class action treatment is a superior method for the fair and efficient adjudication of  
24 the controversy in that, among other things, such treatment will permit a large number of similarly  
25 situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and  
26 without the unnecessary duplication of evidence, effort, and expense that numerous individual  
27 actions would engender. The benefits of proceeding through the class mechanism, including  
28 providing injured persons or entities with a method for obtaining redress on claims that might not be  
practicable to pursue individually, substantially outweigh any difficulties that may arise in  
management of this class action.

225. Plaintiffs know of no difficulty to be encountered in this action that would preclude

1 its maintenance as a class action.

2 **VI. TOLLING OF THE STATUTE OF LIMITATIONS**

3 Fraudulent Concealment Tolling

4  
5 226. The claims asserted in this Complaint have been tolled as a matter of law as  
6 Defendants took affirmative steps to conceal the wrongful conduct alleged herein including, *inter*  
7 *alia*, Actelion utilizing CVC as a conduit and concealing such use under the guise of “donations” to  
8 an “independent” co-payment assistance charity.

9 227. The claims asserted in this Complaint have been tolled as a matter of law as CVC  
10 took affirmative steps to conceal the wrongful conduct alleged herein by misleading the OIG, DOJ,  
11 health care providers, certain pharmacies, beneficiaries, third-party payors, and the general public,  
12 into believing it was operating a legitimate, legal, and independent 501(c)(3) charitable  
13 organization, when in reality, it was serving as an illegal conduit for certain manufacturers,  
14 including Actelion.

15 228. The claims asserted in this Complaint have been tolled as a matter of law as CVC  
16 and Adira took affirmative steps to conceal the wrongful conduct alleged herein including, *inter*  
17 *alia*, CVC’s fraudulent transfers to Adira and concealing such transfers as bona fide transactions.

18 Continuing Violation Doctrine

19 229. The Complaint alleges a continuing course of conduct, and Defendants’ unlawful  
20 conduct has inflicted continuing and accumulating harm. Defendants’ unlawful conduct and the  
21 accumulating harm to the Assignors did not end alongside the DOJ Settlement Agreements.  
22 Accordingly, Plaintiffs can recover for damages that they suffered during any applicable limitations  
23 period.

24 Discovery Rule Tolling

25 230. Assignors did not know, and had no reasonable way of discovering, Defendants’  
26 alleged Scheme until it became public knowledge.

27 231. Within the applicable statutes of limitation, Assignors could not have discovered  
28 through the exercise of reasonable diligence that Defendants were concealing the conduct alleged

1 herein.

2 232. Assignors did not discover, and did not know of, facts that would have caused a  
3 reasonable person to suspect that Defendants were engaged in the alleged Scheme, nor would a  
4 reasonable diligent investigation have disclosed the true facts.

5 233. Assignors did not know, and had no reasonable way of discovering, CVC's and  
6 Adira's fraudulent and/or voidable transfers.

7 234. Within the applicable statutes of limitation, Assignors could not have discovered  
8 through the exercise of reasonable diligence that CVC and Adira were concealing their conduct  
9 alleged herein. The Assignors did not discover, and did not know of, facts that would have caused a  
10 reasonable person to suspect that CVC and Adira were fraudulently transferring assets, nor would a  
11 reasonable diligent investigation have disclosed the true facts.

12 Equitable Tolling

13 235. Defendants were under a continuous duty to disclose to Assignors and Class  
14 Members the existence and true nature of the Co-payment Circumvention Enterprise, including the  
15 subsequent obligations for payment triggered by Defendant's misconduct.

16 236. The existence of Defendants' co-payment assistance scheme was a material fact, and  
17 Defendants concealed its existence and instead falsely represented that they were in compliance  
18 with federal regulations including the FCA and AKS. When Defendants made these  
19 misrepresentations and concealed their co-payment assistance conspiracy scheme, they had  
20 knowledge of the facts surrounding the scheme's existence. Defendants concealed the co-payment  
21 assistance conspiracy scheme and made misrepresentations about it with the intention that  
22 Assignors and Class Members would rely on said misrepresentations and would pay for the  
23 Actelion Drugs. Defendants' concealment induced Assignors and Class Members to reasonably rely  
24 and act upon these misrepresentations and were misled into paying for the Actelion Drugs Drugs.  
25 *See Safe Env't of Am., Inc. v. Emps. Ins. of Wausau*, 278 F. Supp. 2d 121, 126–27 (D. Mass. 2003).

26 237. Based on the foregoing, Defendants are estopped from relying on any statutes of  
27 limitations in defense of this action and all equitable principles of tolling should apply

28

1 **VII. CLAIMS FOR RELIEF**

2 **FIRST CLAIM FOR RELIEF**  
3 **Violations of Racketeering Influenced Corrupt Organization Act (“RICO”) 18 U.S.C. §**  
4 **1962(c) Through the Use of Co-Payment Charity Scheme**  
5 *Against All Defendants*

6 238. Plaintiffs re-allege and incorporate by reference paragraphs 1-237 of this Complaint  
7 as if fully set forth herein.

8 239. At all relevant times, RICO Defendants have been “persons” under 18 U.S.C.  
9 § 1961(3) who conducted the affairs of the enterprise through the pattern of racketeering activity  
10 detailed throughout this Complaint in violation of 18 U.S.C. § 1962(c).

11 240. Section 1962(c) makes it “unlawful for any person employed by or associated with  
12 any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to  
13 conduct or participate, directly or indirectly, in the conduct of such enterprise’s affairs through a  
14 pattern of racketeering activity.” 18 U.S.C. § 1962(c).

15 241. Section 1964(c) provides that “any person injured in his business or property by  
16 reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United  
17 States district court and shall recover threefold the damages he sustains and the cost of the suit,  
18 including a reasonable attorney’s fee.” The elements of a RICO claim under § 1964(c) pursuant to a  
19 violation of § 1962(c) are: (i) conduct; (ii) of an enterprise; (iii) through a pattern of; (iv)  
20 racketeering activity.

21 **Description of the Co-payment Circumvention Enterprise**

22 242. RICO defines an enterprise as “any individual, partnership, corporation, association,  
23 or other legal entity, and any union or group of individuals associated in fact although not a legal  
24 entity.” 18 U.S.C. § 1961(4).

25 243. Under 18 U.S.C. § 1961(4), a RICO “enterprise” may be an association-in-fact that,  
26 although it has no formal structure, has (i) a common purpose, (ii) relationships among those  
27 associated with the enterprise, and (iii) longevity sufficient to pursue the enterprises’ purpose.

28 244. The Co-payment Circumvention Enterprise is an association-in-fact enterprise within  
the meaning of 18 U.S.C. § 1961(4), consisting of RICO Defendants Actelion, CVC, and Adira,



1 including their employees and agents.

2       245. The Co-payment Circumvention Enterprise functioned as an ongoing and continuing  
3 unit. The Co-payment Circumvention Enterprise was created and/or used as a tool to effectuate a  
4 pattern of racketeering activity. Each of the Enterprise participants is a “person” distinct from the  
5 Enterprise.

6       246. The Co-Payment Circumvention Enterprise had a common purpose that united its  
7 members. One purpose was to steal funds from the Medicare Trust Fund. Another purpose was to  
8 generate personal profits for Defendants’ executives from unlawful bribes and kickbacks.

9       247. Defendants’ common purposes were accomplished by, among other things, (1)  
10 growing CVC’s fund and CVC’s executive compensation; (2) eliminating price sensitivity for  
11 patients and health care providers; (3) misleading government agencies, third-party payors, health  
12 care providers, and beneficiaries regarding the legitimacy of CVC’s operations and its conduct; (4)  
13 funneling patients towards and then away from Actelion’s free drug program; (5) applying to  
14 Medicare and Medicaid programs on behalf of beneficiaries; and (6) violating OIG regulations and  
15 providing data to allow Actelion to conduct continuous ROI calculations, all of which resulted in  
16 the unlawful depletion of state and federal dollars, increased the number of patients who had their  
17 drugs purchased by Assignors and Class Members, and increased the personal gains received by  
18 Defendants’ executives through the payment of AKS-tainted claims and drugs at supra-competitive  
19 prices.

20       248. By funneling and steering people into CVC’s fund, and applying for and obtaining  
21 state and federal coverage for individuals, the Co-payment Circumvention Enterprise increased  
22 Actelion’s number of covered “customers,” thereby triggering the Assignors’ and Class Members’  
23 coverage obligations for their Enrollees and eliminating price sensitivity to the Actelion Drugs.

24       249. Defendants each received substantial revenue from participating in the Co- Payment  
25 Scheme. Such revenue was exponentially greater than it would have been in the absence of such  
26 Scheme.

27       250. Each portion of the Co-payment Circumvention Enterprise benefitted from the  
28 existence of the other parts.

1           251. The Co-payment Circumvention Enterprise has a systemic linkage because there are  
2 contractual relationships, financial ties, and continuing coordination of activities between each  
3 Defendant.

4           252. There were interpersonal relationships between those associated with the Co-  
5 payment Circumvention Enterprise. This includes relationships: (1) among CVC’s officers, agent,  
6 and directors and relationships among Actelion’s officers, directors, principals, and agents; (2)  
7 among CVC and Actelion; (3) among CVC’s officers, agents, and directors and Adira’s officers,  
8 agents, and directors; and (4) among Actelion’s officers, directors, principals, and agents, and  
9 Adira’s officers, agents, and directors. This is evidenced by, among other things, the routine  
10 communications (through the U.S. Mail and Wire) between Defendants to enable execution of the  
11 Scheme. For example, by sharing data with Actelion (in exchange for bribes), CVC enabled  
12 Actelion to track and monitor its “donations” to ensure that its payments achieved their proper  
13 purpose of paying co-pays only for patients receiving the Actelion Drugs, thereby substantially  
14 depleting state and federal funds and increasing profits for Actelion.

15           253. The OIG explicitly warned CVC not to send pharmaceutical manufacturers this  
16 information because doing so would violate the AKS and FCA, and CVC certified its understanding  
17 and compliance with the OIG’s warnings. But Defendants participated in this conduct anyway.  
18 Actelion settled the DOJ’s AKS and FCA claims for \$360 million for them harm this Scheme  
19 caused the DOJ.

20           254. The Co-payment Circumvention Enterprise had the longevity sufficient to permit its  
21 associates to pursue the enterprise’s purpose. It lasted for years, during which time its purposes  
22 were pursued. CVC grew its fund for the Actelion Drugs as Actelion increased its annual  
23 “donations” to CVC. And Defendants’ officers and directors increased their annual compensation,  
24 year over year. **See Exhibits 15 through 23, 26.**

25           255. Actelion carried out its business activities both with and without CVC. Similarly,  
26 CVC operated other funds without Actelion. The Scheme thus did not involve parallel conduct  
27 because Defendants participate in transactions with co-payment charities that do not result in  
28 violations of the AKS, FCA, RICO, Consumer Protection Laws, OIG regulations, or other state and

1 federal laws.

2 **Conduct of the Enterprise's Affairs**

3 256. Each Defendant conducted or participated in, either directly or indirectly, the  
4 conduct of the Co-payment Circumvention Enterprise's affairs. Each Defendant was part of the Co-  
5 payment Circumvention Enterprise and each operated and managed the Co-payment Circumvention  
6 Enterprise. Such participation included, but is not limited to: (1) CVC managing, collecting, and  
7 sharing data (through the U.S. mail and wire facilities) with Actelion so that Actelion could  
8 effectively conduct ROI analyses on the amounts of "donations" to CVC's PAH Fund; (2) Actelion  
9 providing bribes and kickbacks, disguised as donations, to CVC so the payment obligations of the  
10 Assignors and Class Members would be triggered; (3) CVC and Actelion steered and funneled  
11 the Actelion Drugs patients to CVC's PAH Fund; and (4) Adira assuming CVC's role and enabling  
12 the continuation of the Scheme after CVC's fraudulent operations were covered by the DOJ,  
13 stripping CVC of its ability to continue operating as a 501(c)(3) charity.

14 257. At all relevant times, each Defendant was aware of the Co-Payment Circumvention  
15 Enterprise's conduct and was a knowing and willing participant in the racketeering conduct of the  
16 Enterprise.

17 **Defendants' Pattern of Racketeering Activity**

18 258. To carry out their illegal and collusive bribery Scheme Defendants knowingly  
19 conducted or participated, directly or indirectly, in the affairs of the Co-payment Circumvention  
20 Enterprise through a pattern of racketeering activity within the meaning of 18 U.S.C. §§ 1961(1),  
21 1961(5), and 1962(c), and employed the use of the mail and wire facilities, in interstate commerce,  
22 to promote, manage, establish, and carry out the Co-Payment Circumvention Enterprise in violation  
23 of 18 U.S.C. § 1952 (Travel Act), § 1341 (Mail Fraud), and § 1343 (Wire Fraud).

24 259. Defendants' pattern of racketeering likely involved thousands, if not hundreds of  
25 thousands, of separate instances of use of the U.S. mail or interstate wire facilities to further the Co-  
26 Payment Circumvention Enterprise. Each of these mailings and interstate wire transmissions  
27 constitutes an instance of "racketeering activity" under 18 U.S.C. § 1961(1)(B) by violating the  
28 underlying predicate acts of § 1952, § 1341, and § 1343. Collectively, these violations constitute a

1 “pattern of racketeering activity,” under 18 U.S.C. § 1961(5), to advance Defendants’ intentional  
2 and illegal Scheme.

3 260. Defendants engaged in a scheme to illegally profit at the direct expense of third-party  
4 payors, including the Assignors and Class Members. Defendants steered patients into CVC’s funds  
5 for the Actelion Drugs, knowing third-party payors such as Assignors and Class Members would  
6 ultimately bear the cost for the Actelion Drugs. Defendants knew their Scheme to funnel, steer, and  
7 refer patients and funds were violations of federal and state laws including, but not limited to, the  
8 AKS and the FCA and that they were transmitting false and illegal information through mail and  
9 wire communications.

10 261. Defendants’ use of the mails and wires to perpetuate their Scheme involved  
11 thousands of communications which included, among others, the following:

- 12 a. Communications from Actelion and CVC to patients, steering them to  
13 Actelion’s co-payment assistance program using CVC;
- 14 b. Transmittal of bribes, disguised as donations, by Actelion to CVC;
- 15 c. Transmittal of kickbacks, disguised as donations, by Actelion to CVC and  
16 pharmacies;
- 17 d. Submission of certifications by Actelion and CVC in which they claimed to  
18 be in compliance with federal law, including the AKS and FCA;
- 19 e. Submissions of data from CVC to Actelion so that Actelion could determine  
20 how much money it was making from its “donations” to CVC and how much  
21 more money it could make by increasing its “donations”;
- 22 f. Certifications by CVC that it would determine the eligibility according to a  
23 “uniform measure of financial need that is applied in a consistent manner”  
24 when in fact CVC emphasized patients taking the Actelion Drugs based on  
25 Actelion bribes, not financial need;<sup>22</sup>
- 26 g. Causing false claims, in violation of the FCA and AKS, to be submitted by  
27 complicit, and non-complicit, pharmacies to Assignors and Class Members;  
28 and
- h. Using the mail and wire to mislead the government agencies (i.e., the OIG,  
IRS, DOJ and state departments of record) through false certifications and  
misrepresentations; and
- i. Fraudulently conveying ill-gotten gains to Adira and then using the mail and  
wire to advertise and market Adira’s services; and
- j. Misleading third-party payors, health care providers, investors, government

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<sup>22</sup> See CVC’s Form 990 Filing, attached as **Exhibit 26**.

1 agencies, and the general public into believing the legitimacy of Defendants'  
2 Scheme.

3 262. Defendants violated the Travel Act by using the mail and wire facilities to commit,  
4 promote, manage, establish, and carry on their bribery and/or kickback scheme in violation of the  
5 laws of the United States, namely, the AKS. Defendants further used the mail and wire facilities to  
6 distribute the proceeds of their bribery and/or kickback scheme.

7 263. The predicate acts violating the Travel Act, as well as mail and wire fraud, had the  
8 same purpose: to make money by growing CVC's funds as large as possible so that CVC's officers  
9 and directors could pay themselves millions, and so that Actelion could get as many "customers" as  
10 possible for the Actelion Drugs at the expense of the Assignors and Class Members.

11 264. All of the predicate acts detailed above, including the certifications made by Actelion  
12 and CVC, as well as the wire communications in furtherance of their Scheme, were in done  
13 willingly, and in furtherance of the purpose of the Scheme.

14 265. If the certifications by Actelion to CMS had not been made, Assignors would not  
15 have purchased Actelion's products. If CVC's certifications had not been made, CVC would not  
16 have been permitted to administer its PAH Fund and the Assignors and Class Members would not  
17 have paid for the claims resulting from the unlawful conduct. If the Scheme did not exist,  
18 pharmacies would have received substantially less co-pay revenues, and the pharmacies would not  
19 have submitted AKS-tainted claims to Assignors and Class Members. If the Scheme did not exist,  
20 Actelion would not have been able to continuously increase the prices of Actelion Drugs and still  
21 remain profitable to the extent that it was.

22 266. These predicate acts allowed the continuance of the Scheme to increase the quantity  
23 of the Actelion Drugs and maintain supra-competitive prices. As a result of the Scheme, Assignors  
24 and Class Members paid supra-competitive prices for Subject Actelion Drugs at artificially inflated  
25 volumes.

26 267. Defendants, including officers, directors, agents, and principals of both  
27 organizations, participated in all of the predicate acts. These individuals sent or caused to be sent  
28 false certifications through the mail and wire facilities. These individuals repeatedly, and

1 continuously, used the mail and wires in furtherance of the Scheme.

2 268. The intended and direct victims of the Scheme were Assignors and Class Members.

3 269. The violations of the Travel Act and Mail and Wire Fraud included transmission of  
4 false claims and the unlawful transmission of data and communications to further the racketeering  
5 Scheme over a period of at least five years involving harm to multiple parties.

6 270. CVC was involved in similar fraudulent schemes with other drug manufacturers. It  
7 was engaged in similar schemes with Jazz, United Therapeutics, and Lundbeck, each of which  
8 resulted in settlements with the United States for violations of the AKS and FCA in 2018.  
9 Specifically, Jazz settled for \$57 million, United Therapeutics settled for \$230 million, and  
10 Lundbeck settled for \$52.6 million. CVC's multi-faceted fraud involved multiple victims and  
11 predicate acts and is the type of broad and persistent racketeering activity that RICO was intended  
12 to stop.

13 271. As CVC's successor, Adira is liable for CVC's conduct and is also independently  
14 liable for the conduct Adira engaged in that was in furtherance of the concealment and execution of  
15 the Scheme.

16 272. The Co-payment Circumvention Enterprise and the predicate acts proximately  
17 caused injury to Assignors' and Class Members' business and property by, among other ways,  
18 triggering the Assignors' and Class Members' duty to purchase the Actelion Drugs and by driving  
19 up the cost of the Actelion Drugs. Defendants' scheme rendered the claims for the Actelion Drugs  
20 unpayable and Assignors and Class Members would not have (and could not have) paid if  
21 Defendants had not concealed their Scheme.

22 273. Accordingly, Defendants' violations of 18 U.S.C. §1962(c) directly and proximately  
23 caused injuries and damages to Assignors and Class Members, entitling Plaintiffs to bring this  
24 action for three times their actual damages, as well as injunctive/equitable relief, costs, and  
25 reasonable attorneys' fees pursuant to 18 U.S.C. § 1964(c).

26  
27  
28

1 **SECOND CLAIM FOR RELIEF**  
2 **Violations of 18 U.S.C. § 1962(d) Through the Use of the Co-Payment Charity Scheme**  
3 *Against All Defendants*

4 274. Plaintiffs re-allege and incorporate by reference paragraphs 1-237 of this Complaint  
5 as if fully set forth herein.

6 275. Section 1962(d) makes it unlawful for “any person to conspire to violate” Section  
7 1962(c), among other provisions.

8 276. Defendants violated § 1962(d) by conspiring to violate § 1962(c). The object of this  
9 conspiracy was to conduct or participate in, directly or indirectly, the conduct of the affairs of the  
10 Co-payment Circumvention Enterprise described previously through a pattern of racketeering  
11 activity.

12 277. Defendants knowingly agreed that Actelion would perform services that would  
13 facilitate the illicit activities of the Co-payment Scheme. Actelion steered the Actelion Drugs  
14 patients away from its manufacturer-sponsored free-drug fund and into CVC’s PAH Fund. Actelion  
15 also provided CVC with “donations” so that CVC could pay the co-payments of Actelion’s  
16 “customers” in CVC’s funds. Actelion also sent certifications over the interstate mails and wires  
17 claiming it was in compliance with federal law, including the AKS and FCA. Actelion also used the  
18 data CVC sent it, in violation of the AKS and FCA, to determine how much money it was making  
19 from its “donations” to CVC and how much *more* money it could make by increasing its  
20 “donations.”

21 278. Indeed, Actelion and CVC were not engaged in parallel conduct but were working  
22 together and had a meeting of the minds that they could both profit from the Co-payment  
23 Circumvention Enterprise. The shared data showed how much money Actelion made the prior year  
24 before from its “donations” to CVC and how much more it could make by increasing its  
25 “donations.” It thus set out a roadmap of illegal activities and profits.

26 279. Further, Defendants knowingly agreed that CVC would perform services that would  
27 facilitate the activities of the Co-payment Circumvention Enterprise and those who were running it  
28 in an illegal manner. Some of the services that CVC performed were steering people into its funds,

1 and helping to enroll patients into Medicare and Medicaid Programs. Actelion would then pay CVC  
2 agreed-upon bribes for each patient CVC successfully enrolled in Medicare and Medicaid Programs  
3 for the Actelion Drugs.

4 280. CVC also sent certifications over the interstate mails and wires claiming it was in  
5 compliance with federal law, including the AKS and FCA. CVC also sent Actelion data, in  
6 violation of the AKS and FCA, so Actelion could see how much money it was making from its  
7 “donations” to CVC and how much *more* money it could make by increasing its “donations.”  
8 Indeed, this sharing of data shows that Actelion and CVC were not engaged in parallel conduct but  
9 were working together and had a meeting of the minds that they could both profit from the Co-  
10 payment Scheme. CVC knew that the more money it accepted in “donations” from Actelion, the  
11 more money would go into the pockets of CVC’s officers and directors. By illegally giving  
12 Actelion this data, CVC was soliciting greater contributions.

13 281. Further, Actelion and CVC knowingly agreed to perform services that would  
14 facilitate the activities of the Co-Payment Circumvention Enterprise and those who were running it  
15 in an illegal manner. Actelion steered people towards CVC’s co-payment assistance funds by using  
16 CVC data to ensure Actelion could verify that its “donations” provided co-pays for the Actelion  
17 Drugs. Actelion and CVC caused false certifications to be sent over the interstate mail and wire  
18 facilities claiming they were in compliance with federal law, including the AKS and FCA. CVC  
19 sent Actelion data, in violation of the AKS and FCA, so that Actelion could see how much money it  
20 was making from its “donations” to CVC, and how much more money it could make by increasing  
21 its “donations.” Indeed, this conduct shows that Defendants did not engage in parallel conduct but  
22 worked together and had a meeting of the minds that they could each profit from the Co-payment  
23 Scheme. Actelion knew that if it provided more “donations,” CVC would provide more co-pay  
24 assistance, thereby increasing Actelion’s profits. Thus, by illegally providing data to Actelion, CVC  
25 managed to increase its own profits—as well as Actelion’s profits.

26 282. Defendants knowingly agreed that one or all of them would commit at least two  
27 instances of Travel Act violations or mail and wire fraud (or cause an innocent third-party to send  
28 false statements over the mails and wires). Defendants had actual or constructive knowledge that



1 CVC had certified to HHS that it would not share data with manufacturers, allow manufactures to  
2 exert influence over it, steer people to particular drugs, or serve as a conduit for drug manufacturers.  
3 In short, Defendants knew that CVC had certified that it would abide by the AKS and FCA.  
4 Defendants knew that the Scheme they were engaged in or were going to engage in was going to  
5 make all these certifications false. They also knew that each time a pharmacy filled a prescription  
6 for someone in CVC’s funds, any certifications the pharmacist made that he or she would abide by  
7 federal law would be false. Actelion also knew that any certifications it made to HHS or the  
8 Government about its compliance with federal law would be false.

9 283. Defendants knew that any communications they had over the telephone, e-mail, or  
10 text message in furtherance of the Scheme would be predicate acts.

11 284. Defendants agreed to pursue the same objective of profiting illegally from the Co-  
12 payment Scheme. They agreed to divide the work of accomplishing this objective. Actelion would  
13 make the “donations”; CVC would provide data; and they would both steer clients and make false  
14 certifications. Defendants intended to further this endeavor, which, as described above, when  
15 completed, amounted to a violation of 18 U.S.C. § 1962(c) that proximately and directly caused  
16 injury to the Assignors and Class Members.

17 285. As CVC’s successor, Adira is liable for CVC’s conduct and is also independently  
18 liable for the conduct Adira engaged in that was in furtherance of the concealment and execution of  
19 the Scheme.

20 286. Plaintiffs bring this action for three times their actual damages, as well as  
21 injunctive/equitable relief, costs, and reasonable attorneys’ fees pursuant to 18 U.S.C. § 1964(c).

22 **THIRD CLAIM FOR RELIEF**  
23 **Violations of State Consumer Protection Laws**  
24 *Against All Defendants*

25 287. Plaintiffs re-allege and incorporate by reference paragraphs 1-237 of this Complaint  
26 as if fully set forth herein.

27 288. Defendants engaged in unfair, false, unconscionable, or deceptive acts or practices in  
28 violation of various state consumer protection laws, as set forth below.

1           289. Defendants directly misrepresented to Assignors and the Class Members that they  
2 were complying with federal and state laws, including laws against bribery, kickbacks, and false  
3 claims to the government.

4           290. Defendants utilized the Scheme to eliminate price sensitivity in order to raise prices  
5 for the Actelion Drugs to supra-competitive levels.

6           291. Defendants intended for payers such as Assignors and Class Members to rely on  
7 these certifications. The intention may be inferred by the very nature of the representation, whose  
8 sole purpose was to procure payment for the Actelion Drugs. These representations and  
9 certifications were made in an effort by Defendants to have the consuming public use the CVC fund  
10 and were addressed to the market generally by having improper and unnecessary prescriptions for  
11 the Actelion Drugs paid for by Medicare, Assignors, and the Class Members. The ultimate  
12 consequence of this conduct is a significant injury to the consuming public by, among other things,  
13 imposing additional costs on the taxpaying public for Medicare.

14           292. Assignors and the Class Members relied on these misrepresentations to their  
15 detriment, which were material to their decision to pay for the Actelion Drugs.

16           293. As CVC's successor, Adira is liable for CVC's conduct and is also independently  
17 liable for the conduct Adira engaged in that was in furtherance of the concealment and execution of  
18 the Scheme.

19           294. Assignors and the Class Members were directly and proximately injured by  
20 Defendants' conduct suffered an injury in fact, and suffered actual, ascertainable damages.

21           295. Assignors and the Class Members would not have reimbursed for nearly as much of  
22 the Actelion Drugs as they did, had Defendants refrained from engineering the false representations  
23 or otherwise disclosed its schemes. Likewise, Assignors and the Class Members would not have  
24 paid nearly as much for each prescription of the Actelion Drugs as they did, had Defendants not  
25 eliminated price sensitivity through the Co-payment Scheme.

26           296. Accordingly, Plaintiffs and the Class Members in each of the below jurisdictions,  
27 seek damages (including statutory damages where applicable), to be trebled or otherwise increased  
28 as permitted by a jurisdiction's consumer protection law, and cost of suit, including reasonable

1 attorneys' fees, to the extent permitted by the below state laws.

2 **California Unfair Competition Law (Cal. Bus. Code §§ 17000, et seq.)**

3 297. Defendants' conduct occurred in "trade" or "commerce" within the meaning of Cal.  
4 Bus. Code Article 2 §§ 17020-17031.

5 298. The California UCL provides that "Any person who engages, has engaged, or  
6 proposes to engage in unfair competition shall be liable for a civil penalty." Cal. Bus. Code  
7 §17206(a).

8 299. Defendants' conduct constitutes "unfair or deceptive" acts in violation of the  
9 California UCL.

10 300. Defendants' illegal conduct substantially affected California trade and consumers.

11 301. Assignors and the Class Members suffered injury-in-fact, ascertainable loss, and  
12 actual damages as a direct and proximate result of Defendants' unfair and deceptive practices and  
13 omissions and/or misrepresentations, at a minimum, in the form of increased payments for the  
14 Actelion Drugs here.

15 302. Defendants' conduct alleged in this Complaint occurred throughout the United  
16 States, including the State of California.

17 303. Plaintiffs' analysis of its Assignors' data identified one or more purchases of the  
18 Actelion Drugs in the State of California.

19 304. Plaintiffs are entitled to recover their actual damages.

20 305. Plaintiffs also seek punitive damages, attorney fees, and any other just and proper  
21 relief under the California UCL.

22 **Connecticut Unfair Trade Practices Act (Conn. Gen. Stat. §§ 42-110a et seq.)**

23 306. Defendants' conduct occurred in "trade" or "commerce" within the meaning of  
24 Conn. Gen. Stat. § 42-110a(4) ("Connecticut UTPA").

25 307. The Connecticut UTPA provides that "no person shall engage in unfair methods of  
26 competition and unfair or deceptive acts or practices in the conduct of any trade or commerce."  
27 Conn. Gen. Stat. § 42-110b(a).

28 308. Defendants' conduct constitutes "unfair or deceptive" acts in violation of the

1 Connecticut UTPA.

2 309. Defendants’ illegal conduct substantially affected Connecticut commerce and  
3 consumers.

4 310. Assignors and the Class Members suffered injury-in-fact, ascertainable loss, and  
5 actual damages as a direct and proximate result of Defendants’ unfair and deceptive practices and  
6 omissions and/or misrepresentations, at a minimum, in the form of increased payments for the  
7 Actelion Drugs herein.

8 311. Defendants’ conduct alleged in this Complaint occurred throughout the United  
9 States, including in the State of Connecticut.

10 312. Plaintiffs’ analysis of its Assignors’ data identified one or more purchases of the  
11 Actelion Drugs in the State of Connecticut.

12 313. Simultaneously with the filing of this Complaint, Plaintiffs served a copy on the  
13 Attorney General and Commissioner of Consumer Protection pursuant to Conn. Gen. Stat.  
14 § 42-110g.

15 314. Plaintiffs are entitled to recover their actual damages, punitive damages, and  
16 attorneys’ fees pursuant to Conn. Gen. Stat. § 42-110g.

17 **Florida Deceptive & Unfair Trade Practices Act (Fla. Stat. §§ 501.201 et seq.)**

18 315. Plaintiffs, Assignors, and the Class Members are “interested persons” and  
19 “consumers” within the meaning of the Florida Deceptive and Unfair Trade Practices Act  
20 (“FDUTPA”). Fla. Stat. § 501.203(6)-(7).

21 316. Defendants are engaged in “trade or commerce” within the meaning of Fla. Stat. §  
22 501.203(8).

23 317. FDUTPA prohibits “[u]nfair methods of competition, unconscionable acts or  
24 practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce[.]” Fla.  
25 Sta. § 501.204(1).

26 318. Defendants’ conduct constitutes “unconscionable acts or practices, and unfair or  
27 deceptive acts or practices” under FDUTPA.

28 319. Defendants knew or should have known that their conduct was in violation of

1 FDUTPA.

2 320. Defendants’ illegal conduct substantially affected Florida commerce and consumers.

3 321. Assignors and the Class Members suffered injury-in-fact, ascertainable loss, and  
4 actual damages as a direct and proximate result of Defendants’ unfair and deceptive practices and  
5 omissions and/or misrepresentations, at a minimum, in the form of increased number and size of  
6 payments for the Actelion Drugs described herein.

7 322. Defendants’ conduct alleged in this Complaint occurred throughout the United  
8 States, including in the State of Florida.

9 323. Plaintiffs’ analysis of its Assignors’ data identified one or more purchases of the  
10 Actelion Drugs in the State of Florida.

11 324. Plaintiffs seek to recover against each Defendant the amount of their actual damages,  
12 attorneys’ fees, and costs pursuant to Fla. Stat. §§ 501.211(2) and 501.2105(1).

13 **Illinois Consumer Fraud & Deceptive Business Practices Act**  
14 **(815 Ill. Comp. Stat. 505/1 et seq.)**

15 325. Defendants’ conduct occurred in “trade” or “commerce” within the meaning of the  
16 Illinois Consumer Fraud and Deceptive Business Practices Act (“Illinois CFDBPA”). 815 Ill.  
17 Comp. Stat 505/1(f).

18 326. Defendants are “persons” within the meaning of the Illinois CFDBPA. 815 Ill.  
19 Comp. Stat. 505/1(c).

20 327. Assignors and the Class Members are “consumers” within the meaning of the Illinois  
21 CFDBPA. 815 Ill. Comp. Stat. 505/1(e).

22 328. The Illinois CFDBPA provides that “Unfair methods of competition and unfair or  
23 deceptive acts or practices... are hereby declared unlawful whether any person has in fact been  
24 misled, deceived or damaged thereby.” 815 Ill. Comp. Stat. 505/2.

25 329. Defendants’ conduct constitutes “unfair or deceptive” acts or practices in violation of  
26 the Illinois CFDBPA.

27 330. Assignors and the Class Members suffered injury-in-fact, ascertainable loss, and  
28 actual damages as a direct and proximate result of RICO Defendants’ unfair and deceptive practices

1 and omissions and/or misrepresentations, at a minimum, in the form of increased payments for the  
2 Actelion Drugs herein.

3 331. Defendants' conduct alleged in this Complaint occurred throughout the United  
4 States, including the State of Illinois.

5 332. Plaintiffs' analysis of its Assignors' data identified one or more purchases of the  
6 Actelion Drugs in the State of Illinois.

7 333. Simultaneously with the filing of this Complaint, Plaintiffs served a copy on the  
8 Illinois Attorney General pursuant to 815 Ill. Comp. Stat. 505/10(d).

9 334. Plaintiffs are entitled to recover three (3) times the amount of actual damages  
10 resulting from Defendants' violation together with costs and reasonable attorney's fees. 815 Ill.  
11 Comp. Stat. 505/2W.

12 **Massachusetts Regulation of Business Practice & Consumer Protection Act**  
13 **(Mass. Gen. Laws ch. 93A, §§ 1 et seq.)**

14 335. Assignors, the Class Members, and Defendants are "persons" within the meaning of  
15 the Massachusetts Regulation of Business Practice & Consumer Protection Act ("Massachusetts  
16 CPA"). Mass. Gen. Laws ch. 93A, § 1(a).

17 336. Defendants are engaged in "trade or commerce" within the meaning of Mass. Gen.  
18 Laws ch. 93A, § 1(b).

19 337. Defendants' conduct, and Plaintiffs' injury occurred primarily and substantially  
20 which the Commonwealth of Massachusetts.

21 338. The Massachusetts CPA makes unfair methods of competition and unfair or  
22 deceptive acts or practices in the conduct of any trade or commerce unlawful. Mass. Gen. Laws ch.  
23 93A, § 2(a).

24 339. Defendants' conduct constitutes "unfair or deceptive acts or practices" under  
25 Massachusetts CPA.

26 340. Defendants knew or should have known that their conduct was in violation of  
27 Massachusetts CPA.

28 341. Defendants' illegal conduct substantially affected Massachusetts commerce and

1 consumers.

2 342. Assignors and the Class Members suffered injury-in-fact, ascertainable loss, and  
3 actual damages as a direct and proximate result of Defendants’ unfair and deceptive practices and  
4 omissions and/or misrepresentations, at a minimum, in the form of increased payments for the  
5 Actelion Drugs described herein.

6 343. Defendants’ conduct alleged in this Complaint occurred throughout the United  
7 States, including in the State of Massachusetts.

8 344. Plaintiffs’ analysis of its Assignors’ data identified one or more purchases of the  
9 Actelion Drugs in the State of Massachusetts.

10 345. Plaintiffs seek monetary relief against Defendants measured as the greater of (a)  
11 actual damages in an amount to be determined at trial and (b) statutory damages in the amount of  
12 \$25 for each Plaintiff. Because Defendants’ conduct was committed willfully and knowingly,  
13 Plaintiffs are entitled to recover up to three times actual damages, but no less than two times actual  
14 damages pursuant to Mass. Gen. Laws ch. 93A, §§ 9 and 11.

15 346. Plaintiffs also seek punitive damages, and attorneys’ fees, costs, and any other just  
16 and proper relief available under the Massachusetts CPA.

17 **Michigan Consumer Protection Act (Mich. Comp. Laws §§ 445.901 et seq.)**

18 347. Defendants’ conduct occurred in “trade” or “commerce” within the meaning of  
19 Michigan Consumer Protection Act (“Michigan CPA”). Mich. Comp. Laws § 445.902(g).

20 348. Defendants are “persons” within the meaning of Michigan CPA. Mich. Comp. Laws  
21 § 445.902(d).

22 349. The Michigan CPA provides that “Unfair, unconscionable, or deceptive methods,  
23 acts, or practices in conduct of trade or commerce are unlawful.” Mich. Comp. Laws § 445.903(1).

24 350. Defendants’ conduct constitutes “unfair, unconscionable, or deceptive” methods,  
25 acts, or practices under the Michigan CPA.

26 351. Defendants’ conduct includes, *but is not limited to*, several categories defined in the  
27 Michigan Consumer Protection Act. *See* Mich. Comp. Laws § 445.903(1)(a), (c), (s), (u), (w), and  
28 (z).

1 352. Defendants’ conduct substantially affected Michigan trade or commerce, and  
2 consumers.

3 353. Assignors and the Class Members suffered injury-in-fact, ascertainable loss, and  
4 actual damages as a direct and proximate result of Defendants’ unfair, unconscionable, or deceptive  
5 practices and omissions and/or misrepresentations, at a minimum, in the form of increased  
6 payments for the Actelion Drugs herein.

7 354. Defendants’ conduct alleged in this Complaint occurred throughout the United  
8 States, including the State of Michigan.

9 355. Plaintiffs’ analysis of its Assignors’ data identified one or more purchases of the  
10 Actelion Drugs in the State of Michigan.

11 356. Plaintiffs are entitled to recover their actual damages and reasonable attorney fees  
12 pursuant to Mich. Comp. Laws § 445.911(2)-(3).

13 **New York General Business Law (N.Y. Gen. Bus. Law §§ 349 et seq.)**

14  
15 357. The New York General Business Laws (“New York GBL”) makes unlawful  
16 “[d]eceptive acts or practices in the conduct of any business, trade or commerce.” N.Y. Gen. Bus.  
17 Law § 349.

18 358. Defendants’ conduct constitutes “deceptive acts” in violation of the New York GBL.

19 359. Defendants’ conduct was consumer oriented.

20 360. Defendants’ conduct eliminated price sensitivity and raised prices in the relevant  
21 markets for the Actelion Drugs, which necessarily impacted consumers at large.

22 361. Defendants’ conduct was consumer oriented since it was necessarily directed at  
23 Plaintiffs, consumers and/or other similarly situated entities.

24 362. Defendants’ illegal conduct substantially affected New York commerce and  
25 consumers.

26 363. Assignors and the Class Members suffered injury-in-fact, ascertainable loss, and  
27 actual damages as a direct and proximate result of Defendants’ unfair and deceptive practices and  
28 omissions and/or misrepresentations, at a minimum, in the form of increased payments for the



1 Actelion Drugs described herein.

2 364. Defendants' conduct alleged in this Complaint occurred throughout the United  
3 States, including in the State of New York.

4 365. Plaintiffs' analysis of its Assignors' data identified one or more purchases of the  
5 Actelion Drugs in the State of New York.

6 366. As a result of the foregoing willful, knowing, and wrongful conduct of Defendants,  
7 Plaintiffs have been damaged in an amount to be proven at trial, and seek all just and proper  
8 remedies, including but not limited to actual damages or \$50, whichever is greater, treble damages  
9 up to \$1,000, punitive damages to the extent available under the law, reasonable attorneys' fees and  
10 costs, an order enjoining Defendants' deceptive and unfair conduct, and all other just and  
11 appropriate relief available pursuant to N.Y. Gen. Bus. Law § 349.

12 **Ohio Consumer Protections Laws**  
13 **(Ohio Rev. Code Ann. §§ 1345 et seq.; §§ 4165 et seq.)**

14 367. Defendants, Assignors, and the Class Members are "persons" within the meaning of  
15 the Ohio Consumer Sales Practice Act Ohio Rev. Code Ann. §§ 1345.01 ("Ohio CSPA") and the  
16 Ohio Deceptive Trade Practices Act Ohio Rev. Code Ann. §§ 4165.01. ("Ohio DTPA").

17 368. Defendants are "suppliers" within the meaning of the Ohio CSPA. Ohio Rev. Code  
18 Ann. § 1345.01

19 369. Defendants engaged in trade or commerce within the meaning of the Ohio CSPA and  
20 Ohio DTPA.

21 370. The Ohio CSPA specifies "No supplier shall commit an unfair or deceptive act or  
22 practice." Ohio Rev. Code Ann. § 1345.02.

23 371. The Ohio DTPA declares it unlawful for any person to engage in a deceptive practice  
24 in the course of the person's business, vocation, or occupation. Ohio Rev. Code Ann. § 4165.02.

25 372. Defendants' conduct constituted "unfair, deceptive acts or practices" in violation of  
26 the Ohio CSPA and Ohio DTPA.

27 373. Defendants knew or should have known that their conduct was in violation of **both**  
28 the Ohio CSPA and Ohio DTPA.

1 374. Defendants’ illegal conduct substantially affected Ohio commerce and consumers.

2 375. Assignors and the Class Members relied upon Defendants’ material  
3 misrepresentations regarding the certifications, their compliance with federal and state laws,  
4 including laws against bribery, kickbacks, and false claims to the government.

5 376. Assignors and the Class Members suffered injury-in-fact, ascertainable loss, and  
6 actual damages as a direct and proximate result of Defendants’ unfair and deceptive practices and  
7 omissions and/or misrepresentations, at a minimum, in the form of increased payments for the  
8 Actelion Drugs described herein.

9 377. Defendants’ conduct alleged in this Complaint occurred throughout the United  
10 States, including in the State of Ohio.

11 378. Plaintiffs’ analysis of its Assignors’ data identified one or more purchases of the  
12 Actelion Drugs in the State of Ohio.

13 379. Plaintiffs seek actual economic losses, punitive damages, attorney's fees, and any  
14 other just and proper relief available pursuant to the Ohio CSPA and Ohio DTPA.

15 **Puerto Rico Regulation of Commerce (P.R. Laws Ann. tit. 10, §§ 251 et seq.;**  
16 **P.R. Laws Ann. Tit. 31, §§ 5141 et seq)**

17 380. Assignors, the Class Members, and Defendants are “persons” within the meaning of  
18 P.R. Laws Ann. tit. 10, §§ 251 et seq.

19 381. Defendants engaged in trade or commerce within the meaning of P.R. Laws Ann. tit.  
20 10, §§ 251 et seq.

21 382. The Puerto Rico Regulation of Commerce states “[u]nfair competition, and unfair or  
22 deceptive acts or practices in trade or commerce are hereby decaled unlawful.” P.R. Laws Ann. tit.  
23 10, §§ 251 et seq.

24 383. Defendants’ conduct constituted “unfair competition, and unfair or deceptive acts or  
25 practices” in violation of P.R. Laws Ann. tit. 10, §§ 251 et seq.

26 384. Defendants knew or should have known that their conduct was in violation of the  
27 P.R. Laws Ann. tit. 10, §§ 251 et seq.

28 385. Under P.R. Law Ann tit. 31, § 5141, “a person who by an act or omission causes

1 damage to another through fault or negligence shall be obliged to repair the damage so done.

2 386. Defendants' unfair, unconscionable, deceptive practices or acts violated P.R. Law  
3 Ann tit. 31, §§ 5141 *et seq.*

4 387. In an effort to conceal the Scheme, Defendants regularly omitted information and/or  
5 made false or misleading statements causing third parties to submit false certifications for payment  
6 of claims otherwise prohibited by federal law.

7 388. Defendants utilized the Scheme to raise prices of the Subject Actelion Drugs to  
8 supra-competitive prices, as explained above.

9 389. Plaintiffs suffered harm by paying and/or reimbursing AKS tainted claims at supra-  
10 competitive prices.

11 390. Defendants' illegal conduct substantially affected Puerto Rico commerce and  
12 consumers.

13 391. Assignors and the Class Members relied on Defendants' material misrepresentations  
14 about their certifications of compliance with federal and state laws, including laws against bribery,  
15 kickbacks, and false claims to the government.

16 392. Assignors and the Class Members suffered injury-in-fact, ascertainable loss, and  
17 actual damages as a direct and proximate result of Defendants' unfair and deceptive practices and  
18 omissions and misrepresentations, at a minimum, in the form of increased payments for the  
19 Actelion Drugs.

20 393. Defendants' conduct alleged in this Complaint occurred throughout the United  
21 States, including in Puerto Rico.

22 394. Plaintiffs' analysis of its Assignors' data identified one or more purchases the  
23 Actelion Drugs in Puerto Rico.

24 395. Plaintiffs seek damages, punitive damages, and attorneys' fees, costs, and any other  
25 just and proper relief available under P.R. Laws Ann. tit. 10, §§ 251 *et seq*; P.R. Laws Ann. tit. 31,  
26 §§5141 *et seq.*

27 **Rhode Island Deceptive Trade Practices Act (6 R.I. Gen. Laws §§ 6-13.1 et seq.)**

28 396. Assignors and Class members are "persons" as defined by the Rhode Island

1 Deceptive Trade Practices Act (“Rhode Island DTPA”).

2 397. Defendants engaged in an unfair or deceptive act or practice with the intent to injure  
3 consumers through supra-competitive profits.

4 398. Defendants’ conduct was unfair or deceptive within the conduct of commerce within  
5 the State of Rhode Island.

6 399. Defendants’ conduct amounted to an unfair or deceptive act or practice committed  
7 by a supplier in connection with a consumer transaction.

8 400. Defendants’ unlawful conduct substantially affected Rhode Island’s trade and  
9 commerce.

10 401. Defendants’ conduct was willful.

11 402. Defendants deliberately failed to disclose material facts to Assignors and Class  
12 Members concerning the Defendants’ unlawful activities, including the unlawful bribes Actelion  
13 provided to CVC as part of the Co-Payment Circumvention Enterprise.

14 403. Defendants’ deception, including their affirmative misrepresentations and/or  
15 omissions concerning the price of the Actelion Drugs, constitutes information necessary to  
16 Assignors and Class Members to the cost of the Actelion Drugs.

17 404. The Actelion Drugs were purchased primarily for personal, family or household  
18 purposes.

19 405. Plaintiffs seek damages, court costs, and attorneys’ fees under R.I. §§ 6-13.1, *et seq*,  
20 and any other just and proper relief available under the Rhode Island DTPA.

21 **Wisconsin Deceptive Trade Practices Act (Wis. Stat. §§ 100.18 et seq.)**

22 406. Assignors and the Class Members are part of “the public” under the Wisconsin  
23 Deceptive Trade Practices Act (“Wisconsin DTPA”). Wis. Stat. § 100.18(1).

24 407. Assignors and the Class Members are “persons” under Wis. Stat. § 100.18(1).

25 408. Defendants are each a “person, firm, corporation or association” under Wis. Stat. §  
26 100.18(1).

27 409. The Wisconsin DTPA makes unlawful any “representation or statement of fact,  
28 which is untrue, deceptive or misleading.” Wis. Stat. § 100.18(1).

1 410. Defendants' conduct constitutes "representation[s] or statement[s] of fact which  
2 [were] untrue, deceptive or misleading" in violation of the Wisconsin DTPA.

3 411. Defendants knew or should have known that their conduct violated the Wisconsin  
4 DTPA.

5 412. Defendants' illegal conduct substantially affected Wisconsin commerce and  
6 consumers.

7 413. Assignors and the Class Members suffered injury-in-fact, ascertainable loss, and  
8 actual damages as a direct and proximate result of Defendants' unfair and deceptive practices and  
9 omissions and misrepresentations, at a minimum, in the form of increased payments for the  
10 Actelion Drugs.

11 414. Defendants' conduct alleged in this Complaint occurred throughout the United  
12 States, including in the State of Wisconsin.

13 415. Plaintiffs' analysis of its Assignors' data identified one or more purchases of the  
14 Actelion Drugs in the State of Wisconsin.

15 416. No business relationship, contractual or otherwise, existed or exists between  
16 Assignors, the Class Members, and Defendants.

17 417. Plaintiffs seek damages, court costs, and attorneys' fees under Wis. Stat.  
18 §100.18(11)(b)(2), and any other just and proper relief available under the Wisconsin DTPA.

19  
20 **FOURTH CLAIM FOR RELIEF**  
21 **Unjust Enrichment Under State Law**  
*Against Defendants*

22 418. Plaintiffs re-allege and incorporate by reference paragraphs 1-237 of this Complaint  
23 as though set forth at length above.

24 419. Defendants have benefitted from artificially inflated profits on the sale of the  
25 Actelion Drugs resulting from the unlawful and inequitable acts alleged in this Complaint.

26 420. Defendants' financial benefit resulting from its unlawful and inequitable acts is  
27 traceable to overpayments for direct and indirect purchases of the Actelion Drugs by the Assignors  
28

1 and Class Members.

2 421. The Assignors and Class Members afforded Defendants an economic benefit in the  
3 form of profits, and other forms of compensation from unlawful overcharges and monopoly profits  
4 to the economic detriment of the Assignors and Class Members.

5 422. Plaintiffs' analysis of its Assignors' data identified one or more purchases of Subject  
6 Actelion Drugs in each of these States and Territories:

- 7 a. Connecticut;
- 8 b. Florida;
- 9 c. Illinois;
- 10 d. Massachusetts;
- 11 e. Michigan;
- 12 f. New York;
- 13 d. Ohio;
- 14 g. Puerto Rico;
- 15 h. Rhode Island; and
- 16 i. Wisconsin.

17 423. Defendants' conduct directly resulted in the unjust enrichment of the Defendants  
18 through the sale of the Actelion Drugs in each of the States and Territory mentioned above.

19 424. It would be futile for the Assignors and Class Members to seek a remedy from any  
20 party with whom they have privity of contract with for its direct or indirect purchases of the  
21 Actelion Drugs.

22 425. It would be futile for the Assignors and Class Members to seek to exhaust any  
23 remedy against the immediate intermediary in the chain of distribution from which the Assignors  
24 and Class Members purchased the Actelion Drugs, as they are not liable and would not compensate  
25 the Assignors and Class Members for unlawful conduct caused by Defendants.  
26  
27  
28

1 426. The economic benefit of overcharges and artificially inflated volumes of  
2 prescriptions derived by Defendants through charging supra-competitive and artificially inflated  
3 prices for the Actelion Drugs is a direct and proximate result of Defendants' unlawful conduct.

4 427. The economic benefits derived by Defendants rightfully belong to the Assignors and  
5 Class Members, as they paid anticompetitive and monopolistic prices beginning in at least January  
6 1, 2014, and continuing through the present, and they will continue to do so until the effects of  
7 Defendants' illegal conduct cease.

8 428. It would be inequitable under unjust enrichment principles under the law of the  
9 District of Columbia and the laws of all states and territories in the United States for Defendants to  
10 be permitted to retain any of the overcharges for the Actelion Drugs derived from Defendants'  
11 unfair and unconscionable methods, acts, and trade practices alleged in this Complaint.

12 429. Defendants are aware of and appreciates the benefits bestowed upon it by the  
13 Assignors and the Class Members.

14 430. Defendants should be compelled to disgorge all unlawful or inequitable proceeds  
15 received in a common fund for Plaintiffs' benefit.

16 431. A constructive trust should be imposed on all unlawful or inequitable sums received  
17 by Defendants traceable to the Assignors and Class Members.

18  
19  
20 **FIFTH CLAIM FOR RELIEF**  
21 **Violations of the Florida Civil Remedies for Criminal Practices Act**  
22 **(Fla. Stat. § 772.101 et seq.)**  
*Against All Defendants*

23 432. Plaintiffs re-allege and incorporate by reference paragraphs 1-237 of this Complaint  
24 as if fully set forth herein.

25 433. At all times, as set forth above, Defendants' actions were unlawful under Fla. Stat. §  
26 772.103(3), as they were all "employed by, or associated with, any enterprise through a pattern of  
27 criminal activity."

28 434. Defendants violated Fla. Stat. § 772.101 et seq., by participating in or conducting the

1 affairs of the Co-Payment Circumvention Enterprise (as described more fully above) through a  
2 pattern of racketeering activity.

3 435. Plaintiffs, Assignors, and the Class Members are “persons” as defined in Fla. Stat. §  
4 1.01, injured in their business or property, through Defendants’ racketeering violations.

5 **Description of the Co-Payment Circumvention Enterprise**

6 436. RICO Defendants are “persons” under Fla. Stat. § 1.01.

7 437. Actelion, CVC, and Adira, are members of and constitute an “association in-fact  
8 enterprise.”

9 438. The Co-Payment Circumvention Enterprise is an association-in-fact of individuals  
10 and corporate entities under Fla. Stat. § 772.101, and consists of “persons” associated for a common  
11 purpose.

12 439. The purpose of the Co-Payment Circumvention Enterprise was to maximize  
13 Actelion’s profits and CVC’s executive compensation.

14 440. The Co-Payment Circumvention Enterprise had an ongoing organization with an  
15 ascertainable structure and functioned as a continuing unit with separate roles and responsibilities.  
16 Actelion is the source of the schemes alleged, including providing kickbacks to subsidize payments  
17 for Actelion Drugs whose co-payments were provided by CVC.

18 441. For CVC’s part, CVC accepted Actelion’s bribes or kickbacks and provided  
19 unlawful payments for the Actelion Drugs.

20 442. Actelion and CVC, individually and collectively, fulfilled their roles in the Co-  
21 Payment Circumvention Enterprise.

22 443. Actelion and CVC were distinct legal entities with distinct purposes. Actelion is the  
23 architect of the Co-Payment Circumvention Enterprise, with the sole purpose to make as much  
24 money off the Actelion Drugs as possible before generic competition entered the market. For CVC,  
25 it was to raise the amount of money in the funds to justify paying higher salaries to their executives.

26 444. The Co-Payment Circumvention Enterprise had an existence that was distinct from  
27 the pattern of racketeering in which Actelion and CVC engaged. Actelion and CVC conspired with  
28 each other to minimize and/or conceal the amount of information Assignors received about the



1 claims for payment of the Actelion Drugs, materially resulting in Assignors' reimbursement of the  
2 purchase price of the Actelion Drugs that they would not have otherwise paid for. *See* Fla. Stat. §  
3 817.234 ("A person commits insurance fraud punishable as provided in subsection (11) if that  
4 person, with the intent to injure, defraud, or deceive any insurer: 1. Presents or causes to be  
5 presented any written or oral statement, as part of, or in support of, a claim for payment or other  
6 benefit pursuant to an insurance policy or a health maintenance organization subscriber or provider  
7 contract, knowing that such statement contains any false, incomplete, or misleading information  
8 concerning any fact or thing material to such claims[.]").

9 445. At all relevant times, Defendants operated, controlled, and managed the Co-Payment  
10 Circumvention Enterprise, through a variety of actions. First, CVC falsely represented the level of  
11 control that Actelion had over CVC in the PAP to the OIG on numerous occasions. Second,  
12 Defendants failed to disclose a material fact about the existence of the kickbacks and/or bribes in  
13 violation of Fla. Stat. § 817.234, (i.e., causing pharmacies to submit false submissions of payments  
14 to the Assignors and the Class Members.).

15 446. Defendants' participation in the Co-Payment Circumvention Enterprise was  
16 necessary for the successful operation of the schemes. The members of the Co-Payment  
17 Circumvention Enterprise all served a common purpose, which was to increase the fund to an  
18 enormous size while knowing each payment was a kickback, while minimizing the amount of  
19 information the Assignors, Class Members, and allegedly innocent third-party pharmacies, knew  
20 about the program. These affirmative acts and strategic omissions were material to the Assignors'  
21 and Class Members' decision to issue payment for the Actelion Drugs. The Co-Payment  
22 Circumvention Enterprise's actions maximized the revenue and profitability of the Enterprises'  
23 members by knowingly causing payments for the Actelion Drugs.

24 447. Fla. Stat. § 772.102 provides that criminal activity is any activity chargeable by  
25 indictment or information by among other statutes Fla. Stat. § 817.234. Section 817.234  
26 criminalizes situations where health care companies, such as the Assignors and Class Members, are  
27 provided incomplete or misleading information about any fact or thing material to a claim for  
28 payment. Actelion and CVC violated Fla. Stat. § 817.234 by providing incomplete or misleading

1 information material to the Assignors' and Class Members' decision to issue payment for the  
2 Actelion Drugs.

3 448. Defendants committed numerous acts of racketeering by providing incomplete or  
4 misleading information related to the Actelion Drugs. Actelion and CVC knew or had reason to  
5 know that they were providing incomplete or misleading information about these claims.

6 449. Defendants knew or had reason to know that they were not providing complete or  
7 non-misleading information under Fla. Stat. § 817.234. Despite knowledge of these facts, they  
8 induced the Assignors and Class Members to make payment for claims that they otherwise would  
9 not have paid. Instead, Defendants knowingly provided incomplete information to enrich their  
10 bottom line.

11 450. Based on these omissions, the Assignors and Class Members provided payments for  
12 the Actelion Drugs throughout the United States, including Florida, based on half-truths, inaccurate  
13 information, and deliberate omissions. Defendants' omissions were material to the payment of the  
14 Actelion Drugs that the Assignors and Class Members provided payment for. Had the Assignors  
15 and Class Members known of the Co-Payment Scheme, they would not have submitted payment for  
16 the Actelion Drugs.

17 451. The Assignors and Class Members were the primary and intended victims of  
18 Defendants' unlawful scheme. The Assignors paid for the Actelion Drugs throughout the United  
19 States, including Florida, based on Defendants' omissions of material information under pursuant  
20 under to Fla. Stat. § 817.234,.

21 452. As part of this Scheme, Defendants caused pharmacies to submit false certifications  
22 and misled the Assignors and Class Members into reimbursing prescriptions of the Actelion Drugs.  
23 Actelion, CVC, and Adira, conducted or participated, directly or indirectly, in the Co-Payment  
24 Circumvention Scheme through a pattern of unlawful activity.

25 453. As CVC's successor, Adira is liable for CVC's conduct and is also independently  
26 liable for the conduct Adira engaged in that was in furtherance of the concealment and execution of  
27 the Scheme.

28 454. By reason of and as a result of Defendants' conduct, the Assignors and Class

1 Members were injured in their business or property.

2 455. Defendants' violations have directly and proximately caused injuries and damages to  
3 Assignors, Plaintiffs, and the Class Members. The Assignors, Plaintiffs, and Class Members have a  
4 right to bring this action for these damages.

5 456. Under Fla. Stat. § 772.11, Plaintiffs, and the Class Members seek their reasonable  
6 attorneys' fees and costs associated with prosecution of this action.

7  
8 **SIXTH CLAIM FOR RELIEF**

9 **Violation of Va. Code Ann. § 55.1-400 *et seq.* (formerly § 55-80 *et seq.*)**

10 *Against CVC and Adira*

11 457. Plaintiffs re-allege and incorporate by reference paragraphs 1-237 of this Complaint  
12 as if fully set forth herein.

13 458. As detailed above, during CVC's dissolution process, all (or nearly all) of CVC's  
14 unrestricted and unobligated assets were given, assigned, and/or transferred to Adira—including  
15 some transfers when Adira was still known as FPH—including millions of dollars in cash, an  
16 unknown amount of investment assets, and a long list of office equipment and other valuable  
17 personal property.

18 459. During the Co-Payment Scheme, Plaintiffs became bona fide creditors under Va.  
19 Code Ann. § 55.1-400 *et seq.* as victims of the Co-Payment Scheme.

20 460. All or nearly all of CVC's gifts, transfers, conveyances, and assignments to Adira  
21 and FPH are voided as a matter of law as voluntary and/or fraudulent conveyances pursuant to Va.  
22 Code Ann. § 55.1-400. The millions of dollars, investment assets, and set of personal property that  
23 CVC transferred to Adira and FPH was not upon consideration deemed valuable in law.

24 461. When CVC completed these transfers, CVC was in the process of completing its  
25 disillusionment. As CVC's transferred all of its remaining unrestricted and unobligated assets to  
26 Adira, this transfer had the effect of rendering CVC insolvent.

27 462. At the time that CVC transferred its assets to Adira, Adira intended to continue  
28 CVC's business by using its assets for its gain and to the detriment of Plaintiffs and the Class

1 Members.

2 463. The aforementioned transfers were made with an actual intent to hinder, delay and  
3 defraud Plaintiffs.

4 464. The aforementioned transfers were made in reckless disregard for the Plaintiffs'  
5 rights and were made to leave CVC insolvent without the ability to pay its liabilities as they came  
6 due.

7 465. If any consideration was received by Adira in exchange for the asset transfers, such  
8 consideration was a sham, nominal consideration, inadequate and far less than a reasonably  
9 equivalent value for such assets.

10 466. At the time the transfers were made, Adira knew or should have known that the  
11 consideration for the transfers was nonexistent, a sham, nominal consideration, inadequate, and/or  
12 far less than a reasonably equivalent value for such assets.

13 467. Adira's transfers were not made in good faith. Because Adira had the knowledge  
14 aforesaid, it is not a bona fide purchaser.

15 468. The transfers discussed are fraudulent transfers under Va. Code Ann. § 55.1-400.

16 469. Plaintiffs and Class Members request that this Honorable Court enter an Order under  
17 Va. Code Ann § 55.1-400 *et seq.* to void, as voluntary and/or fraudulent, the transfers set forth here  
18 and that it order CVC and Adira, jointly and severally, to immediately turnover such assets, and that  
19 it enter a money judgment for the value of such assets in an amount to be determined at trial of this  
20 action.

21 **SEVENTH CLAIM FOR RELIEF**  
22 **Successor Liability as to Adira**

23 470. Plaintiffs re-allege and incorporate by reference paragraphs 1-237 of this Complaint  
24 as if fully set forth herein.

25 471. During CVC's wind-up in 2019, Greg Smiley was the controlling or de facto  
26 President of both CVC and Adira.

27 472. CVC and Adira were both co-payment assistance charities that operated out of  
28 Virginia, Adira and CVC shared board members, transferred data, monies, and office equipment—

1 all without any or adequate consideration, between the two charities while Smiley was acting as  
2 President of both charities and James Rock was chairman for both charities. Additionally, several  
3 CVC employees—including other senior management personal—began working for Adira at the  
4 same time as the transfers. For example, Lauren Ruiz was Director of Patient Services at CVC from  
5 November 2011, until joining Adira in April 2019 as a Programs Manager. Additionally, Bruce  
6 Packett, who served as a director at CVC for several years, including from 2017-2020, has now also  
7 served on Adira’s Board of Directors since 2018.

8 473. CVC and Adira even used the same accounting firm, Meadows Urquhart Acree &  
9 Cook LLP, to file their respective 2019 990 forms.

10 474. Adira is the successor corporation of CVC because, through the substantial contacts  
11 between Adira and CVC alleged herein, Adira impliedly agreed to assume the liabilities of CVC;  
12 the transactions and/or transfers between Adira and CVC resulted in a de facto merger; Adira is a  
13 mere continuation of CVC; and the transactions and/or transfers were fraudulent.

14 475. As a successor, Adira is jointly and severally liable to Plaintiffs and the class  
15 members for CVC’s involvement in the Co-Payment Scheme.

16 **DEMAND FOR JUDGMENT**

17 WHEREFORE, Plaintiffs and the Class Members demand judgment against RICO  
18 Defendants as follows:

19 1. Awarding Plaintiffs and the Class Members actual, consequential, compensatory,  
20 statutory, treble, punitive, and other damages, in an amount to be proven at trial, including pre- and  
21 post- judgment interest at the statutory rates;

22 2. Awarding Plaintiffs and the Class Members equitable relief in the nature of  
23 disgorgement, restitution, and the creation of a constructive trust to remedy Defendants’ unjust  
24 enrichment;

25 3. Declaring the alleged acts to be unlawful under the state statutes set forth above, and  
26 the common law of unjust enrichment of the states and territories set forth above;

27 4. Determining that this action is a proper class action, designating Plaintiffs as class  
28 representatives under Rule 23 of the Federal Rules of Civil Procedure and Plaintiffs’ counsel as

1 Class Counsel;

2 5. Awarding Plaintiffs and the Class Members their reasonable costs and expenses,  
3 including attorneys' fees; and

4 6. Awarding such other legal or equitable relief as the Court deems just and proper.  
5

6 **JURY DEMAND**

7 Plaintiffs and the Class Members demand a jury trial on all claims so triable under Federal  
8 Rule of Civil Procedure Rule 38.

9 Dated: December 2, 2022

10 Respectfully Submitted,

11 /s/ Alex R. Straus

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**APPENDIX**

**Plaintiff MSPRC's Assignment to Demonstrate Standing**

1  
2  
3 1. Certain series of MSPRC executed irrevocable assignments of any and all rights to  
4 recover payments made on behalf of their Assignors' Enrollees and health plan members. These  
5 assignments authorize the designated series, and in turn MSPRC through its LLC Agreement, to  
6 pursue and enforce all legal rights of recovery and reimbursement for health care services and  
7 benefits. MSPRC alleges the below assignment to demonstrate standing.

8 2. On May 12, 2017, **SummaCare, Inc. ("SMCR")** irrevocably assigned to MSP  
9 Recovery, LLC all its rights to recover against any liable third party (including RICO Defendants)  
10 for payments made on behalf of its Enrollees ("SMCR Assignment"). Specifically, the SMCR  
11 Assignment states the following:

12 [SMCR] hereby irrevocably assigns, transfers, conveys, sets over and delivers to  
13 MSP Recovery, and any of its successors and assigns, any and all of [SMCR]'s right,  
14 title, ownership and interests in and to all Claims existing on the date hereof, whether  
15 based in contract, tort, statutory right, and any and all rights (including, but not  
16 limited to, subrogation) to pursue and/or recover monies for [SMCR] that [SMCR]  
17 had, may have had, or has asserted against any party in connection with the Claims  
18 and all rights and claims against primary payers and/or third parties that may be  
19 liable to [SMCR] arising from or relating to the Claims, including claims under  
20 consumer protection statutes and laws, and all information relating thereto, all of  
21 which shall constitute the "Assigned Claims[.]"

22 3. On June 12, 2017, MSP Recovery, LLC irrevocably assigned all rights acquired  
23 under the SMCR Assignment to Series 16-11-509, a designated series of MSPRC ("Series 16-11-  
24 509 Assignment"):

25 Assignor ... irrevocably assigns, sells, transfers, conveys, sets over and delivers to  
26 Assignee and its successors and assigns, any and all of Assignor's right, title,  
27 ownership and interest in and to the [Assigned Claims] (and all proceeds and  
28 products thereof) as such terms are defined in the [SMCR Assignment.]

4. SummaCare, Inc. consented to, acknowledged, approved, and ratified the Series 16-  
11-509 Assignment, which is memorialized in a letter dated September 5, 2018.

5. Consideration was given between each party in executing the SMCR Assignment  
and the Series 16-11-509 Assignment.



1 **Plaintiff MSPA's Assignment Demonstrating Standing**

2 1. MSPA was irrevocably assigned any and all rights to recover payments made on  
3 behalf of its Assignors' Enrollees and health plan members. These assignments authorize MSPA to  
4 pursue and enforce all legal rights of recovery and reimbursement for health care services and  
5 benefits. MSPA alleges the below assignment to demonstrate standing.

6 2. On December 16, 2014, **Interamerican Medical Center Group, LLC ("IMC")**  
7 irrevocably assigned to MSP Recovery, LLC all of its rights to recover against any liable third party  
8 (including the Defendants) for payments made on behalf of its Enrollees ("IMC Assignment").  
9 Specifically, the IMC Assignment, states the following:

10 By way of this Agreement, [IMC] appoints, directs, and, otherwise, irrevocably  
11 assigns all of [IMC's] rights as it pertains to the rights pursuant to any plan, State or  
12 Federal statute(s) whatsoever directly and/or indirectly for any of its members and/or  
13 plan participants, and/or rights pursuant to any agreement[.]

13 3. On February 20, 2015, MSP Recovery, LLC irrevocably assigned all rights acquired  
14 under the IMC Assignment to MSPA ("MSPA Assignment 3"):

15 Assignor hereby irrevocably assigns, transfers, conveys, sets over, and delivers to  
16 Assignee or its assigns any and all of Assignor's right, title, ownership and interest in  
17 and all rights and entitlements, that Assignor has, may have had, or has asserted  
18 against third parties from or relating to the Claims [assigned pursuant to the IMC  
19 Assignment].

18 4. IMC consented to, acknowledged, approved, and ratified the MSPA Assignment 3.

19 5. Consideration was given between each party in executing the IMC Assignment and  
20 the MSPA Assignment.

21 **Plaintiff Series 44's Assignment Demonstrating Standing**

22 1. Certain series of Series 44 executed irrevocable assignments of any and all rights to  
23 recover payments made on behalf of their Assignors' Enrollees and health plan members. These  
24 assignments authorize the designated series, and in turn Series 44 through its LLC Operating  
25 Agreement, to pursue and enforce all legal rights of recovery and reimbursement for health care  
26 services and benefits. Series 44 alleges the assignments below to demonstrate standing.

27 2. Effective April 28, 2016, **Health First Health Plans, Inc. ("HFAP")** irrevocably  
28 assigned to MSP Recovery, LLC all rights under the to recover against any liable third party

1 (including the Defendants) for payments made on behalf of its Enrollees (“HFAP Assignment”).

2 The HFAP Assignment expressly provides in pertinent part:

3 Client hereby irrevocably assigns, transfers, conveys, sets over and delivers to MSP  
4 Recovery, and any of its successors and assigns, any and all of Client’s right, title,  
5 ownership and interest in and to all Claims existing on the date hereof, whether  
6 based in contract, tort, statutory right, and any and all rights (including, but not  
7 limited to, subrogation) to pursue and/or recover monies for Client that Client had,  
8 may have had, or has asserted against any party in connection with the Claims and  
9 all rights and claims against primary payers and/or third parties that may be liable to  
10 Client arising from or relating to the Claims, including claims under consumer  
11 protection statutes and laws, and all information relating thereto, all of which shall  
12 constitute the “Assigned Claims”.

13 ...  
14 The transfer, grant, right, or assignment of any and all of Client’s right, title,  
15 ownership, interest and entitlements in and to the Assigned Claims shall remain the  
16 confidential and exclusive property of MSP Recovery or its assigns. This assignment  
17 is irrevocable and absolute.

18 3. Effective June 12, 2017, MSP Recovery, LLC assigned all rights acquired under the  
19 HFAP Assignment to Series 16-05-456, a designated series of MSPRC (“Series 16-05-456  
20 Assignment”). The Series 16-05-456 Assignment states:

21 [T]he undersigned Assignor ... irrevocably assigns, sells, transfers, conveys, sets over and  
22 delivers to Assignee and its successors and assigns, any and all of Assignor’s right, title,  
23 ownership and interest in and to the Claims and Assigned Claims, (and all proceeds and  
24 products thereof, including any related assigned assets and assigned documents) as such  
25 terms are defined or contained in that certain (1) Assignment and (2) Addendum to the  
26 Recovery Agreement and Assignment Addendum, both given and effective April 28, 2016  
27 and executed on June 1, 2018, by and between Health First Health Plans, Inc., a Florida  
28 corporation and Medicare Advantage Organization and party to contract number H1099 with  
The Centers for Medicare & Medicaid Services, as the “Client” and health plan assignor,  
and [MSP Recovery], a Florida limited liability company (the “Assignment”); irrespective  
of when the claims were vested in Client, inclusive of any and all claim(s), causes of actions,  
proceeds, products and distributions of any kind, and proceeds of proceeds, in respect  
thereof, whether based in contract, tort, statutory right, and any and all rights (including, but  
not limited to, subrogation) to pursue and/or recover monies that Assignor had, may have  
had, or has asserted against any party pursuant to the Assignment from the Client, including  
claims under consumer protection statutes and laws, any and all rights and claims against  
primary payers and/or third parties that may be liable to Client arising from or relating to the  
Claims and all information relating thereto.

1 4. On October 22, 2020, Series 16-05-456 irrevocably assigned all the rights it acquired  
2 from MSP Recovery, LLC to Series 44-20-456, a designated series of Series 44 (“Series 44-20-456  
3 Assignment”):

4 Assignor . . . hereby irrevocably assigns, transfers, conveys, sets over, and delivers to  
5 [Series 44-20-456] and its successors and assigns, (i) any and all of Assignor’s right,  
6 title, ownership, and interest in and to the [claims], as well as (ii) the “Claims” and  
7 “Assigned Claims”, and all proceeds and products thereof (collectively the  
8 “Assigned Claims”) as such terms are defined in the Agreements.

9 5. Consideration was given between each in executing the HFAP Assignment, the  
10 Series 16-05-456 Assignment, and the Series 44-20-456 Assignment.

11 **Plaintiff Claims PROV’s Assignment Demonstrating Standing**

12 1. Certain series of Claims PROV executed irrevocable assignments of any and all  
13 rights to recover payments made on behalf of their Assignors’ Enrollees and health plan members.  
14 These assignments authorize the designated series, and in turn Claims PROV through its LLC  
15 Operating Agreement, to pursue and enforce all legal rights of recovery and reimbursement for  
16 health care services and benefits. Claims PROV alleges the assignments below to demonstrate  
17 standing.

18 2. On May 24, 2021, **Centro de Pediatria y Medicina de Familia de Villalba, C.S.P.**  
19 (“CPMF”) irrevocably assigned all its rights and claims to recovery against any liable entity  
20 (including the RICO Defendants) for payments made on behalf of its Enrollees pursuant to its  
21 Government Healthcare Program to Series 21-04-1561, a designated series of Plaintiff Series Prov  
22 (“CPMF Assignment”). Specifically, the CPMF Assignment, states the following:

23 Assignor irrevocably assigns, transfers, conveys, sets over and delivers to Assignee,  
24 and any of its successors and assigns, any and all of Assignor’s right, title, ownership  
25 and interest in and to all of Assignor’s Claims arising from and related to the Claims  
26 Data transferred, provided or sent to MSP Recovery, these Claims encompassing the  
27 “Assigned Claims.”

28 Such assignment of the Assigned Claims is irrevocable and absolute, and is broad  
with respect to recovery efforts and is not limited to any particular recovery strategy  
regarding reimbursement or recovery efforts.

CPMF Assignment, at 1.1.1, 1.1.2.

3. Consideration was given between the parties in executing this assignment.

**Plaintiff Claims CAID's Assignment Demonstrating Standing**

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1. Certain series of Claims CAID executed irrevocable assignments of any and all rights to recover payments made on behalf of their Assignors' Enrollees and health plan members. These assignments authorize the designated series, and in turn Claims CAID through its LLC Operating Agreement, to pursue and enforce all legal rights of recovery and reimbursement for health care services and benefits. Claims CAID alleges the assignments below to demonstrate standing.

2. On February 3, 2021, **Sal Health Group, LLC d/b/a Salubris** ("Salubris") irrevocably assigned all its rights and claims to recovery against any liable entity (including Defendants) for payments made on behalf of its Enrollees to Series 19-10-1128, a designated series of MSP Recovery Claims CAID, Series LLC ("Salubris Assignment"). Specifically, the Salubris Assignment, states the following:

[Assignor] irrevocably assigns, transfers, conveys, sets over and delivers to Assignee, and any of its designated series, successors and assigns, any and all of Assignor's right, title, ownership, and interest in and to all of Assignor's Claims and rights arising from and related to the claims data transferred to Assignee (or its affiliates or services providers, including MSP Recovery, LLC) for the period encompassing dates of services from June 1, 2014 and continuing up to, including and through June 30, 2020, these Claims encompassing the "Assigned Claims." The assignment of the Assigned Claims set forth herein is irrevocable and absolute and is broad with respect to recovery efforts and is not limited to any particular recovery strategy regarding reimbursement or recovery efforts.

3. Consideration was given between the parties in executing this assignment.

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