

<b>CIVIL ACTION COVER SHEET</b>		<b>DOCKET NUMBER</b> <div style="font-size: 1.2em; margin-top: 5px;">2384CV01108</div>	<b>Trial Court of Massachusetts The Superior Court</b>									
		<b>COUNTY</b> Suffolk Superior Court (Boston)										
<b>Plaintiff</b> Commonwealth of Massachusetts	<b>Defendant:</b> CVS Pharmacy, Inc.											
<b>ADDRESS:</b> Attorney General's Office One Ashburton Place, 18th Floor Boston, MA 02108	<b>ADDRESS:</b> One CVS Drive Woonsocket, Rhode Island 02895											
<b>Plaintiff Attorney:</b> Glenn Kaplan	<b>Defendant Attorney:</b> Kevin McGinty											
<b>ADDRESS:</b> Attorney General's Office One Ashburton Place, 18th Floor Boston, MA 02108	<b>ADDRESS:</b> Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. One Financial Center Boston, MA 02111											
<b>BBO:</b> 567308	<b>BBO:</b> 556780											
<b>TYPE OF ACTION AND TRACK DESIGNATION (see instructions section on next page)</b>												
<b>CODE NO.</b> E99	<b>TYPE OF ACTION (specify)</b> Other Administrative Action	<b>TRACK</b> X	<b>HAS A JURY CLAIM BEEN MADE?</b> <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO									
<b>*If "Other" please describe:</b> Assurance of Discontinuance pursuant to M.G.L. c. 93A, section 5												
<div style="display: flex; justify-content: space-between;"><div><b>Is there a claim under G.L. c. 93A?</b> <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO</div><div><b>Is there a class action under Mass. R. Civ. P. 23?</b> <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO</div></div> <p style="text-align: center; margin-top: 5px;"><b>STATEMENT OF DAMAGES REQUIRED BY G.L. c. 212, § 3A</b></p> <p>The following is a full, itemized and detailed statement of the facts on which the undersigned plaintiff or plaintiff's counsel relies to determine money damages. (Note to plaintiff: for this form, do not state double or treble damages; indicate single damages only.)</p> <p style="text-align: center;"><b>TORT CLAIMS</b></p> <p>A. Documented medical expenses to date</p> <div style="margin-left: 20px;"><div>1. Total hospital expenses</div><div>2. Total doctor expenses</div><div>3. Total chiropractic expenses</div><div>4. Total physical therapy expenses</div><div>5. Total other expenses (describe below)</div></div> <div style="margin-left: 600px; margin-top: 10px;">Subtotal (1-5): n/a</div> <p>B. Documented lost wages and compensation to date</p> <p>C. Documented property damages to date</p> <p>D. Reasonably anticipated future medical and hospital expenses</p> <p>E. Reasonably anticipated lost wages</p> <p>F. Other documented items of damages (describe below)</p> <div style="margin-left: 600px; margin-top: 10px;">TOTAL (A-F): n/a</div> <p>G. Briefly describe plaintiff's injury, including the nature and extent of the injury:</p> <div style="border: 1px solid black; height: 20px; margin-top: 5px;">n/a</div> <p style="text-align: center; margin-top: 10px;"><b>CONTRACT CLAIMS</b></p> <p><input type="checkbox"/> This action includes a claim involving collection of a debt incurred pursuant to a revolving credit agreement. Mass. R. Civ. P. 8.1(a).</p> <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 5px;"><thead><tr><th style="width: 10%;">Item #</th><th style="width: 70%;">Detailed Description of Each Claim</th><th style="width: 20%;">Amount</th></tr></thead><tbody><tr><td>1.</td><td>n/a</td><td></td></tr><tr><td colspan="2" style="text-align: right;">Total</td><td></td></tr></tbody></table> <div style="display: flex; justify-content: space-between; margin-top: 10px;"><div style="width: 70%; padding: 5px;"><b>Signature of Attorney/Self-Represented Plaintiff:</b> X <i>Glenn Kaplan</i></div><div style="width: 25%; padding: 5px;"><b>Date:</b> 5/15/2023</div></div> <p><b>RELATED ACTIONS:</b> Please provide the case number, case name, and county of any related actions pending in the Superior Court.</p> <div style="border: 1px solid black; height: 20px; margin-top: 5px;"></div> <p style="text-align: center; margin-top: 10px;"><b>CERTIFICATION UNDER S.J.C. RULE 1:18(5)</b></p> <p>I hereby certify that I have complied with requirements of Rule 5 of Supreme Judicial Court Rule 1:18: Uniform Rules on Dispute Resolution, requiring that I inform my clients about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods of dispute resolution.</p> <div style="display: flex; justify-content: space-between; margin-top: 5px;"><div style="width: 70%; padding: 5px;"><b>Signature of Attorney:</b> X <i>Glenn Kaplan</i></div><div style="width: 25%; padding: 5px;"><b>Date:</b> 5/15/2023</div></div>				Item #	Detailed Description of Each Claim	Amount	1.	n/a		Total		
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Total												

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT

**In the Matter of CVS Pharmacy, Inc.**

**Civil Action No. 2384CV01108**

**ASSURANCE OF DISCONTINUANCE  
PURSUANT TO M.G.L. CHAPTER 93A, § 5**

**I. Recitals**

WHEREAS, the Office of Attorney General Andrea Joy Campbell (“AGO”), has been conducting an investigation pursuant to M.G.L. c. 93A into the sale of prescription drugs at prices in excess of those allowable under Massachusetts workers’ compensation laws and regulations (“the Investigation”); and

WHEREAS, as part of the Investigation, the AGO has reviewed transactions involving CVS Pharmacy, Inc. (“CVS”); and

WHEREAS, based on that review, the AGO alleges that CVS billed and obtained payment for prescription drugs from payors of workers’ compensation claims in excess of amounts permitted by Massachusetts laws and regulations (the “Alleged Conduct”); and

WHEREAS, the Alleged Conduct occurred with respect to claims for prescription drugs provided by CVS to workers’ compensation insurance beneficiaries in various Massachusetts locations such as: Springfield, New Bedford, Boston, and Worcester, and include workers’ compensation claims payable by or on behalf of the Commonwealth of Massachusetts (the “Commonwealth,” and such claims to be the “Commonwealth Claims”); and

WHEREAS, with respect to the Commonwealth Claims, the AGO seeks on behalf of the Commonwealth to recover compensatory restitution and remediation (within the meaning of 26 U.S.C. § 162(f)(2)(A) and 26 C.F.R. § 1.162-21(e)(4)(i) (ii)); and

WHEREAS, the AGO and CVS concur that, in connection with the resolution of the claims being investigated here, it would be beneficial to engage in a process to explore options for regulators to facilitate compliance with statutes and regulations governing the reimbursement of workers' compensation prescriptions in Massachusetts;

NOW THEREFORE, in light of these recitals, and in recognition of CVS's cooperation with the Investigation, the AGO agrees to accept this Assurance of Discontinuance ("Assurance") on the terms and conditions contained herein. CVS, without admitting any facts, liability or any wrongdoing, in the interest of resolution of this matter and for settlement purposes only, agrees to accept this Assurance on the terms and conditions contained herein. This Assurance is made without trial or adjudication of any issue of fact or of law.

II. Terms of Assurance of Discontinuance

1. CVS shall make a payment totaling Six Million One Hundred Fifty Thousand Dollars (\$6,150,000.00) (the "Total Payment"), which may be used by the AGO in its sole discretion for education, consumer outreach, amelioration of consumer harm, and/or support for public interest programs and efforts regarding workers' compensation insurance, work-place injury prevention, rehabilitation, and prescription choices and management. A portion of the Total Payment will be allocable to the Commonwealth Claims (such amount to be the "Commonwealth Payment"). The Commonwealth Payment will constitute, and is paid for, compensatory restitution and remediation (within the meaning of 26 U.S.C. § 162(f)(2)(A) and 26 C.F.R. § 1.162-21(e)(4)(i),(ii)) for alleged damage or harm allegedly caused by CVS in order to restore the Commonwealth, in whole or in part, to the same position or condition that it would be in had the



Alleged Conduct not occurred, and constitutes compensatory restitution and remediation for alleged damage or harm allegedly caused by the Alleged Conduct and/or is an amount paid to come into compliance with the law. As part of the implementation of this Assurance, the parties agree that, (i) pursuant to a tax reporting protocol, the AGO shall determine, in its sole discretion, the amount of the Commonwealth Payment when finalized; (ii) after such determination, the AGO shall execute an acknowledgement of the amount determined by the AGO and CVS shall send a copy of the countersigned acknowledgment to the AGO; and (iii) the AGO shall complete a federal tax Form 1098-F, and the AGO shall provide to CVS a copy of the Form 1098-F after it has been finalized and processed by relevant state officials.

2. A portion of the Total Payment not allocable to the Commonwealth Payment may also be allocated by the AGO, in its sole discretion, as attorneys' fees and investigative costs (the "Investigative Costs"), and such allocated funds shall be directed to the Treasury's General Fund. Within ten (10) business days of receiving check or wiring instructions from the AGO, CVS shall make the Total Payment to the AGO in the manner that the AGO specifies. In the event that the AGO requests payment by wire, the AGO must provide written banking instructions on bank letterhead (including current bank contact information) that are dated within twelve (12) months preceding the date on which they are provided to CVS (banking instructions provided in the body of an email or transmitted to CVS in any other form will not be accepted).

3. CVS and the AGO agree to convene a meeting, offering participation to stakeholders and market participants, at which to discuss ways to facilitate compliance and/or further improve existing standards for workers' compensation prescription pricing protocols, with the goal of making a joint submission to the Division of Industrial Accidents ("DIA") regarding any suggestions on which there is agreement among CVS, the AGO, and any stakeholders who

elect to participate in such discussions. In the event that any participant, including CVS and the AGO, disagrees with or differs as to any matters discussed at such meeting, nothing in this Assurance shall preclude such participant from presenting its position to DIA in a separate submission. The notice to the stakeholders will note that the meeting is limited to discussing prospective changes to standards and ways to facilitate compliance, does not include any exchange of confidential or technical pricing or business information, will not be seeking or facilitating agreement between competitors on market practices, and is not serving as an application of state action doctrine to protect conversations that would otherwise violate antitrust law. If the process contemplated by this Paragraph 3 results in the adoption or issuance by DIA of a notice, order, regulation, advisory opinion, or other statutorily authorized regulatory act, enactment, guidance, or pronouncement establishing a standard for compliance with the laws governing reimbursement of workers' compensation prescription drug claims in Massachusetts (a "Workers' Compensation Pricing Standard," or "WCP Standard"), the AGO and CVS retain the right to challenge such WCP Standard and seek confirmation as to whether it is in accordance with the law and/or the agency's promulgation authority. If the WCP Standard is overturned or altered via such a review, the AGO will only seek from CVS return of overpayments (and not penalties or attorneys' fees) relating to transactions previously processed under the WCP Standard, and CVS reserves the right to contest any claim, action or demand by the AGO seeking a return of overpayments with respect to prescription drug claims that were priced and reimbursed in accordance with any WCP Standard in effect on the date on which such claims were billed. Absent a successful challenge to a WCP Standard under this Paragraph 3, the AGO agrees that any workers' compensation prescription drug transactions in Massachusetts to which the WCP Standard applies, which is priced in accordance with any such WCP Standard, shall be considered substantially in compliance with the



requirements of this Assurance, and the AGO shall not bring an action against CVS for its pricing/payment conduct regarding such transactions.

4. In the event that (a) the process set forth in Paragraph 3 does not result in the adoption of a WCP Standard by DIA, within six (6) months of the execution of this Assurance, or such longer time as shall be agreed to by the parties, or (b) as the result of a challenge pursuant to Paragraph 3, a WCP Standard is overturned without either establishment of a modified WCP Standard or remand to conduct proceedings to modify or revise the WCP Standard as may be directed by the reviewing tribunal, CVS and the AGO agree to engage promptly in good faith discussions regarding the potential creation of a Compliance Pricing Protocol (a "Protocol") between the AGO and CVS, with procedures to facilitate regulatory compliance and application of regulatory requirements relating to the pricing of CVS workers' compensation pharmacy transactions. Under such a Protocol, if the parties execute one, CVS will not be liable for penalties or attorneys' fees in any action by the AGO relating to workers' compensation prescription overcharges so long as CVS has followed the Protocol and has, or, upon a directive by the AGO, does, return to the payor or the AGO any overcharge under relevant workers' compensation prescription regulations (including, without limitation, any overcharges that may have accrued between the date of this Assurance and the effective date of the Protocol).

5. In the event that either (a) a Protocol is completed pursuant to Paragraph 4; or (b) a WCP Standard is adopted, the Protocol or WCP Standard (as applicable) will, subject to paragraph 3, above, govern all workers' compensation prescriptions filled by CVS in Massachusetts, and the compliance protocol applicable to workers' compensation prescription drug claims of public employees (the "Public Workers' Comp. Protocol") pursuant to an Assurance of Discontinuance agreed to by CVS and the AGO in In the Matter of CVS Pharmacy,

Inc., Civil Action No. 10-3386 (Mass. Super. Ct. Aug. 26, 2010) (the “2010 Assurance”), shall cease to be in effect.

6. Unless a Protocol or WCP Standard is adopted within six (6) months of the execution of this Assurance or such longer period as is agreed between the parties, nothing herein shall limit the rights of the AGO to bring any and all enforcement actions or seek any or all remedies available by law relating to CVS’s actions after the date of this Assurance; provided, however, that if a Protocol or WCP Standard is adopted in that time period, CVS shall not be liable for any penalties with respect to any workers’ compensation prescription drug transactions at CVS pharmacies in Massachusetts processed before the enactment of the Protocol or WCP Standard so long as CVS, when the AGO identifies an overcharge under Massachusetts law, disgorges the overcharge on that transaction.

7. It is CVS’s view that materials and information provided to the AGO as part of this Investigation and during the implementation of this Assurance constitute confidential commercial and trade secret information and have been or are provided pursuant to M.G.L. c. 93A, § 6, and thus are subject to the provision of M.G.L. c. 93A, § 6(6). By providing such information to the AGO (or its authorized auditor) in connection with the Investigation and/or with the Assurance and Protocol, CVS has not waived and will not waive any rights that CVS may have to protect against improper use or disclosure of its information.

8. This Assurance is not intended to impair any right of action that CVS may have against any other person or entity, or any right of action that any person or entity other than the AGO might have against CVS. Neither the terms of this Assurance nor the payment of any money hereunder is, nor shall either be construed to be, an admission of any wrongdoing, nor an admission



to the allegations in this Assurance. CVS expressly denies any liability or wrongdoing related to this matter.

9. Any funds or portion of funds paid under this Assurance may, at the discretion of the AGO, if not otherwise obligated, encumbered, or expended by June 15, 2023, be directed to the Treasurer for deposit in the General Fund.

10. This Assurance may be modified or supplemented only by a written document signed by both parties.

11. By signing below, CVS agrees to comply with all of the terms of this Assurance. By signing below, the AGO agrees that this Assurance shall be in lieu of any AGO civil action or AGO proceeding against CVS, including, without limitation, any AGO action or AGO proceeding against CVS alleging violations of M.G.L. c. 93A § 2, M.G.L. c. 12, or § 5B, and the 2010 Assurance for any acts or practices prior to the date of this Assurance related to the Investigation and the Investigation allegations. The terms of this Assurance may be enforced by the AGO in a civil action or proceeding pursuant to M.G.L. c. 93A, § 5.

Respectfully Submitted:

**FOR:** CVS Pharmacy, Inc.

By: 

Thomas S. Moffatt  
Vice President, Secretary & Senior Legal  
Counsel – Corporate Services  
CVS Pharmacy, Inc.  
One CVS Drive  
Woonsocket, RI 02895

Date: May 3, 2023

**FOR:** Attorney General, Andrea Joy  
Campbell

By: 

Glenn Kaplan  
Assistant Attorney General  
Massachusetts Attorney General's Office  
Insurance & Financial Services Division  
One Ashburton Place, 18<sup>th</sup> Floor  
Boston, MA 02108  
617-727-2200

Date: May 11, 2023