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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE: DIRECT PURCHASER
INSULIN PRICING LITIGATION

This Document Relates To:

All Actions

) Case No. 3:20-cv-3426
) (BRM)(LHG)
)
)

) **FIRST AMENDED CLASS**
) **ACTION COMPLAINT**
)

) Demand for Jury Trial
)
)

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FWK Holdings, LLC (“FWK”) and Professional Drug Company, Inc. (“PDC”) (collectively, “Plaintiffs”), individually and on behalf of all others similarly situated, allege the following based upon personal knowledge as to Plaintiffs, the investigation of counsel, and information and belief. Plaintiffs believe that substantial evidentiary support exists for the allegations set forth herein.

I. Summary of the Case

1. Defendants herein are the drug companies Eli Lilly and Company (“Eli Lilly”), Novo Nordisk Inc. (“Novo”) and Sanofi-Aventis U.S. LLC (“Sanofi”) (together, the “Manufacturer Defendants”), and pharmacy benefit managers (“PBMs”) CVS Health Corporation, CaremarkPCS Health, LLC, Caremark LLC, Caremark Rx LLC, Express Scripts Holding Company, Express Scripts, Inc., Medco Health Solutions, Inc., UnitedHealth Group Inc., United Healthcare Services, Inc., Optum, Inc., OptumRx Holdings, LLC, and OptumRx, Inc. (together, the “PBM Defendants”).¹

2. Plaintiffs bring this class action to recover for the injuries caused by Defendants’ unlawful practices in connection with the marketing, pricing, sale and distribution of the long-acting analog insulins, Lantus® (“Lantus”) and Levemir®

¹ The PBM Defendants and Manufacturer Defendants are jointly referred to herein as “Defendants.”

(“Levemir”) and the rapid-acting analog insulins, NovoLog® (“NovoLog”) and Humalog® (“Humalog”) that began in 2009 and have continued thereafter.

NovoLog, Humalog, Lantus and Levemir are collectively referred to herein as the “Insulin Drugs.”

3. *First*, the PBM Defendants solicited and the Manufacturer Defendants paid bribes and kickbacks not for services rendered, but to induce the PBMs to include the Insulin Drugs on health benefit providers’ “formularies” controlled by the PBMs – formularies that determine whether and to what extent the nation’s health benefit providers pay for their insureds to receive life sustaining insulins – in violation of Section 2(c) of the Robinson-Patman Act, 15 U.S.C. § 13(c).

4. *Second*, in order to pay for these kickbacks, Defendants contracted, combined or conspired to fix, maintain and stabilize the price of the Insulin Drugs at supra-competitive levels in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

5. *Third*, Defendants operated an enterprise that secured the sale of the Insulin Drugs at artificially inflated prices through a pattern of racketeering activity. Such unlawful conduct included, among other things: publishing artificially increased prices and systematically making false representations through the U.S. mail and interstate wires that the operation of the formulary system (controlled by the PBM Defendants) and the pricing mechanism for the

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