

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Lina M. Khan, Chair**
 Rebecca Kelly Slaughter
 Alvaro M. Bedoya
 Melissa Holyoak
 Andrew Ferguson

In the Matter of

Caremark Rx, LLC;
Zinc Health Services, LLC;
Express Scripts, Inc.;
Evernorth Health, Inc.;
Medco Health Services, Inc.;
Ascent Health Services LLC;
OptumRx, Inc.;
OptumRx Holdings, LLC;
 and
Emisar Pharma Services LLC.

Docket No. 9437

**OPTUMRX, INC.’S, OPTUMRX HOLDINGS, LLC’S AND EMISAR PHARMA
SERVICES LLC’S ANSWER TO THE COMPLAINT**

Respondents OptumRx, Inc., OptumRx Holdings, LLC (collectively, “Optum Rx”), and Emisar Pharma Services LLC (“Emisar”) respond to the allegations of the Complaint as set forth below. Any allegation not specifically and expressly admitted is denied. To the extent any allegation states a legal conclusion, no response is required; to the extent a response may later be required, Optum Rx and Emisar deny those allegations. Unless otherwise stated, Optum Rx and Emisar respond to the allegations of the Complaint only on behalf of themselves and lack

knowledge sufficient to admit or deny any allegations insofar as they relate to any other company, including other Respondents.

INTRODUCTION

1. The FTC’s Complaint demonstrates a profound misunderstanding of how drug pricing works, ignores basic principles of economics, and far exceeds the bounds of the FTC’s statutory authority under the FTC Act. The FTC claims that its lawsuit will fix the prescription drug “affordability crisis,”¹ but in reality the relief sought by the FTC’s lawsuit would leave patients worse off. If the FTC succeeds in this suit, it will eliminate a key mechanism by which pharmacy benefit managers (“PBMs”) negotiate discounts from drug manufacturers—discounts PBMs then pass on to employers, health insurers, labor unions, employer coalitions, and government entities (*i.e.*, PBM plan sponsor clients). By limiting PBMs’ ability to reduce costs for plan sponsors, the FTC suit will cause drug prices and insurance premiums to *increase for all Americans*.

2. The FTC ignores that Optum Rx’s plan sponsor clients have freedom to design their pharmaceutical benefit plans however they think is best, and when they do so they must balance a range of considerations, including the trade-off between cost and optionality for their insured beneficiaries, called “members.” Today, due to those thoughtful choices, and the efficacy of Optum Rx’s discount negotiations, Optum Rx’s clients’ members pay on average *less than \$18 per month for insulin drugs*.² If successful, this lawsuit would eliminate that progress and cause grave harm to all American healthcare consumers, including the diabetic patients the

¹ Compl. ¶ 2.

² Optum Rx also offers low-cost insulin to uninsured patients for \$35 per month. *See* Optum Rx, Affordable Insulin, *available at* <https://insulin.optumrx.com/>.

FTC purports to protect. To the extent the FTC does not like the calculus that employers and other plan sponsors engage in, the choices they make when deciding how to optimally share costs with individual members in their plans, or how they spread costs across a member population, that is a quarrel with the fundamental policies underlying the American health benefit system, not with Optum Rx.

Background and PBM Competition

3. Employers, health insurers, labor unions, employer coalitions, and government entities often set up pharmacy benefit plans to pay for the cost of drugs utilized by their members. These plan sponsors use formularies (*i.e.*, lists of drugs) that have different levels (*i.e.*, tiers) of cost-sharing for their plan members, and drug manufacturers are willing to pay greater discounts when their drugs are the only option (or one of a few options) on a plan sponsor’s formulary. As the FTC readily admits, drug manufacturers will offer deeper discounts when their drugs must compete against other manufacturers’ drugs, and plan sponsors use exclusions from their formularies to bring that competition to bear.³ Contrary to the FTC’s claims, plan sponsors have excluded drugs from their formularies for decades—certainly well before 2012.

4. However, many plan sponsors lack the expertise or scale necessary to negotiate with drug manufacturers for discounts. In that case, plan sponsors can hire PBMs to provide pharmacy benefit management services. Optum Rx competes against other PBMs to use its scale—in the form of the population of its clients’ members (*i.e.*, “covered lives”)—to negotiate with drug manufacturers for discounts off the list prices of the manufacturer’s drugs. Manufacturers offer such discounts on a conditional basis: they will pay greater discounts when a drug is given exclusive or favorable formulary treatment on a plan sponsor’s formulary relative

³ Compl. ¶¶ 43–44.

to rivals in its therapeutic class, and lesser or no rebates when a drug is one of many. This competition among manufacturers, brought to bear by PBMs, benefits all plan sponsors and their members. In fact, a 2022 economic analysis from a University of Chicago Professor concluded that PBMs’ negotiations with manufacturers save the healthcare system \$145 billion each year by reducing the cost of drugs.⁴

5. PBMs also help collect the discount payments from manufacturers based on the utilization of drugs by the plan sponsors’ members. PBMs pass those savings on to their plan sponsor clients, which decide how to share those savings with their members.⁵ When PBMs help employers and other plan sponsors drive down pharmaceutical costs, those plan sponsors are, in turn, able to reduce the cost of their members’ insurance premiums or provide richer benefits to their members. And beyond negotiating with manufacturers, PBMs offer a host of other valuable services to their clients, including adjudicating pharmacy claims, assembling pharmacy networks, and facilitating clinical programs that promote medication adherence and improve outcomes for patients, including patients who take insulin.

The FTC’s Lawsuit Is Woefully Misguided

6. As the FTC admits, the role played by Optum Rx and other PBMs is a “game changer”⁶ for the employers, health insurer plans, labor unions, employer coalitions, and government entities that hire Optum Rx because it “gives them significant leverage to extract price concessions from drug manufacturers.”⁷ Optum Rx is able to negotiate price concessions

⁴ Casey Mulligan, *The Value of Pharmacy Benefit Management*, Becker Friedman Institute for Economics at University of Chicago (July 2022), available at https://bfi.uchicago.edu/wp-content/uploads/2022/07/BFI_WP_2022-93.pdf.

⁵ A plan sponsor may elect to allow its PBM to retain a small portion of the rebates as compensation for the PBMs’ services. The vast majority of rebates are passed through to the plan sponsors. Compl. ¶ 52.

⁶ Compl. ¶ 5.

⁷ Compl. ¶ 38.

from drug manufacturers in part by offering plan sponsors “standard” formulary options that exclude drugs that have higher net costs than other drugs that are therapeutically equivalent or, as the FTC puts it, by “play[ing] competing manufacturers off one another, [and] negotiating for higher rebates in exchange for more preferential coverage decisions.”⁸ This selective contracting is “competition on the merits” which results in “lower prices”⁹ for prescription drugs, which in turn leads to lower healthcare costs and insurance premiums for consumers.¹⁰ Indeed, the FTC *concedes* that PBMs’ use of selective contracting has reduced the net cost of insulin drugs.¹¹

7. Nonetheless, the FTC asks this tribunal to limit Optum Rx’s ability to utilize selective contracting. In particular, the FTC wants to prohibit Optum Rx from meeting plan sponsors’ demand for formulary options that favor the *lowest net cost* insulin drugs over “low WAC” equivalents that manufacturers have priced at a *higher net cost*.¹² WAC refers to wholesale acquisition cost, which is commonly understood to be the list price of a drug set by a manufacturer. WAC does not reflect any rebates negotiated by PBMs. Beginning in 2019, many of the insulin manufacturers began offering the exact same drug at “high WAC” and “low WAC” price points, while offering PBMs different rebates associated with each version of the drug. Accordingly, a “low WAC” insulin drug may have a higher net cost than the corresponding “high WAC” version when the manufacturer offers rebates on the “high WAC” version that

⁸ Dkt. 106 (FTC’s Mem. ISO Preliminary Injunction), *FTC v. Amgen Inc.*, No. 1:23-cv-03053 (N.D. Ill. Jul. 14, 2023) at 6.

⁹ *Id.* at 24.

¹⁰ Courts recognize that PBM rebate agreements are “a normal competitive tool...to stimulate price competition.” *In re EpiPen (Epinephrine Injection, USP) Mktg., Sales Pracs. & Antitrust Litig.*, 44 F.4th 959, 989 (10th Cir. 2022), *cert. denied*, 143 S. Ct. 1748 (2023).

¹¹ The FTC’s own data show that PBMs’ selective contracting has succeeded in reducing cost of prescription drugs, including insulins. The chart included in Compl. ¶ 129, for example, shows that the average net price of one insulin product was driven down from \$73.81 in 2010 to \$67.79 in 2016.

¹² Compl. at 44 (Notice of Contemplated Relief ¶ 1).

reduces its net cost to a level that is *below* the list price the manufacturer set for the “low WAC” version. As the FTC concedes, insulin manufacturers have always had complete control over setting WAC of their drugs, the rebates they offer to PBMs, and whether to reduce WAC or rebates when it suits their interests to do so.¹³

8. The FTC’s proposed remedy in this case—prohibiting Optum Rx from excluding a “low WAC” version of a drug from its standard formularies or assisting plan sponsors that wish to do so, even when that drug is higher net cost than the “high WAC” version—would have disastrous consequences for patients and plan sponsors, while delivering a windfall to drug manufacturers. The relief the FTC seeks would prevent Optum Rx from bringing competition to bear through formulary design and rebate negotiations, and it would give pharmaceutical manufacturers a free pass to *raise the prices* of “low WAC”/“high WAC” drug combinations. Drug manufacturers would be incentivized to raise the net cost on “low WAC” drugs, knowing that the FTC has mandated that PBMs include those drugs on formularies regardless of their net cost. Perverse consequences are inevitable: plan sponsors would be forced to spend more on those drugs, with the higher costs flowing through to all patients in the form of higher insurance premiums, diminished quality of benefits, and greater cost sharing.

9. Optum Rx agrees that Americans should not “pay too much for prescription drugs, including life-saving drugs like insulin.”¹⁴ That is why for many years, Optum Rx has been using all available means to help make insulin (and many other drugs) more affordable and accessible for its clients’ members. Within each class of insulin drugs, Optum Rx has aggressively *and successfully* negotiated with drug manufacturers to counteract their duopolies

¹³ Compl. ¶ 40; *see also* Compl. ¶¶ 205–07 (describing manufacturer decisions to set, and later reduce, list prices of insulin); ¶¶ 237–241 (similar).

¹⁴ Compl. ¶ 1.

and lower the net cost of insulin drugs when competitive conditions have provided a lever to do so. Beyond that, Optum Rx has developed a range of initiatives and tools to give its plan sponsors options for mitigating or eliminating their members' out-of-pocket costs for insulin.

10. As the FTC readily admits, Optum Rx does not dictate the benefit design that plan sponsors employ in any plan they offer to members.¹⁵ To the contrary, plan sponsors have full control and authority over designing benefits for their members. As the sole arbiters of benefit design, plan sponsors select the formularies for their health plans; they set the deductibles, co-insurance, and co-pays (if any) that govern a member's out-of-pocket costs; they decide whether to apply point-of-sale discounts; and they decide whether to opt into affordability initiatives offered by PBMs and other stakeholders that would mitigate or eliminate patient out-of-pocket costs for particular preventative or critical drugs.

11. Each Optum Rx client retains the sole authority to design and administer its own plan, including the contents of its formulary, and no formulary becomes part of a client's offered benefit design unless and until the client adopts it. Indeed, many plan sponsors that contract with Optum Rx to provide PBM services do so pursuant to formularies of their own design, created pursuant to their own policies and procedures. Optum Rx administers the drug benefit for those plans according to those client-devised formularies, but it does not advise on drug coverage or formulary placement for those plans unless a client specifically requests Optum Rx's input. Additionally, as part of the formulary management services Optum Rx offers to clients, Optum Rx makes available standard formulary offerings that are derived from clinical input driven by an independent Pharmacy & Therapeutic (P&T) Committee. Some clients choose to adopt one of Optum Rx's standard formulary offerings as their own. Whether a plan sponsor adopts a client-

¹⁵ Compl. ¶¶ 60–61, 66.

devised formulary, an Optum Rx formulary offering, or a custom formulary, Optum Rx never imposes formularies on plan sponsors or their members. Plan sponsors have always been free to include “low WAC” insulins on their formularies if they determine that doing so is in the best interest of their members.

12. The Complaint focuses exclusively on a single standard formulary offering that Optum Rx makes available to its plan sponsor clients, the so-called “flagship Premium Formulary.”¹⁶ The Premium formulary is used by plan sponsors that want to feature on formulary a narrower selection of drugs in a therapeutic class in order to secure greater discounts from drug manufacturers and thereby lower the cost of the benefit for their members. The majority of covered lives in Optum Rx plan sponsor client plans are not on the Premium formulary, let alone any of Optum Rx’s standard formulary offerings. What goes unmentioned by the FTC is that Optum Rx facilitates *more than 30,000 unique formularies* per year for its thousands of plan sponsor clients, each of which reflects diverse choices that those diverse plan sponsors made about the formulary design that renders their suite of plans most attractive to their members. The “low WAC” insulins that are the subject of this lawsuit have been included on many of Optum Rx’s plan sponsor clients’ formularies for years, demonstrating indisputably that Optum Rx has never prevented plan sponsors from covering “low WAC” insulin drugs if they choose to do so. The Complaint ignores this essential truth.

13. As mentioned, Optum Rx competes vigorously with rival PBMs for plan sponsor clients. The provision of flexible, varied, and effective formulary management services is an important dimension of this competition. Accordingly, Optum Rx offers *a variety* of formulary options from which plan sponsors can choose, as well as the ability for plan sponsors to develop

¹⁶ Compl. ¶ 108.

customized formularies. The Premium formulary is one option, but the majority of Optum Rx’s clients use customized versions of Optum Rx’s formulary offerings or create their own customized formularies.

14. When insulin manufacturers first launched “low WAC” insulins around 2019, the manufacturers sometimes priced them at a higher net cost than the “high WAC” versions of the same drugs. Optum Rx determined, accordingly, that including certain “low WAC” insulins on the Premium formulary would lead to *higher* net costs for plan sponsor clients using that option. Optum Rx’s decision to exclude those drugs from the Premium formulary offering at that time was, thus, reasonable and entirely consistent with the stated purpose of the Premium formulary offering.

15. Later, in 2024, when the manufacturers revamped the economics of their insulin drug pricing strategy in response to new government regulations that threatened their profits,¹⁷ Optum Rx was able to add a range of “low WAC” insulins to Tier 1 of the Premium formulary without significantly driving up net costs to plan sponsors choosing to use that formulary option.¹⁸ Optum Rx’s changes to the Premium formulary reflected *competition in action*: when market conditions allowed Optum Rx to expand access to insulin drugs within the Premium formulary offering at competitive net prices, it seized the opportunity to do so and, thus, remained competitive with the rival PBMs who vie for the same business day in and day out. To this day, Optum Rx’s Premium formulary offering covers the “low WAC” insulins.

16. At the same time, Optum Rx’s other major formulary offerings—versions of the Select formulary—are focused on helping plan sponsors broaden the availability of drug options

¹⁷ Compl. ¶ 203.

¹⁸ Compl. ¶ 247.

for their members, with the tradeoff being that greater access (*i.e.*, fewer exclusions) results in plan sponsors spending more on the drugs their members utilize. This is the case because, as the FTC readily admits, drug manufacturers will not offer deep discounts when their drugs are one of many therapeutic alternatives on a formulary tier.¹⁹ Crucially, in 2019 when the “low WAC” insulins launched, Optum Rx placed the “low WAC” insulins on Tier 2 of the Select formulary along with the “high WAC” versions, and Optum Rx offered plan sponsors using the Select formulary methods for ensuring their members had access to the “low WAC” insulins while managing plan costs. Offering plan sponsors a range of distinct formulary options like the Select and Premium formularies is a means by which Optum Rx competes for plan sponsors’ business.

17. All of these formulary management services that Optum Rx makes available to plan sponsors are focused on helping them manage their drug spend within the complex and varied plan design parameters they choose and the countless tradeoffs they make when designing their benefit plans. And all of this work inures to the benefit of their members. As the FTC has recognized time and time again in healthcare cases, when plan sponsors’ costs go down, they pass those cost-savings on to members, often in the form of lower premiums. On the other hand, when plan sponsors’ costs go up, they raise prices to members.²⁰ Ironically, the Complaint here concedes that the selective contracting practices being singled out in the PBM industry effectively lower the net cost of drugs and enable plan sponsors, in turn, to reduce premiums charged to plan members.²¹ Yet the Complaint inexplicably labels these legitimate and

¹⁹ Compl. ¶¶ 43–44.

²⁰ See, e.g., Compl., *FTC v. Hackensack Meridian Health, Inc.*, No. 2:20-cv-18140-JMV-JBC (Dec. 8, 2020) at ¶ 52 (“increased healthcare costs” to plan sponsors in the form of higher reimbursement rates to hospitals would result in “higher premiums” to their members); Compl., *FTC v. Novant Health, Inc.*, No. 5:24-cv-00028 (Jan. 25, 2024) at ¶ 5 (similar).

²¹ The FTC and DOJ have long recognized the importance of selective contracting to lower healthcare costs in the context of provider relationships with insurers. See, e.g., Compl., *FTC v. U.S. Anaesthesia Partners, Inc.*, No. 4:23-
(Cont’d on next page)

procompetitive business practices as “unfair” in the PBM context. This is nothing more than unprincipled *ipse dixit*, but more importantly, the Complaint stands to harm prescription drug consumers by driving up costs.

This Lawsuit Is Contrary to the Law

18. The FTC lacks statutory authority to bring this case. Longstanding judicial and Commission precedent confirm that “standalone” unfair methods of competition claims are limited to conduct that closely tracks the spirit of traditional antitrust laws. Courts have also emphasized that any claims of “unfairness” must be grounded in statute, judicial decisions, or the Constitution—not the FTC’s own subjective notions of right and wrong. Yet the Complaint does not invoke a single antitrust statute, or any other preexisting law or legal principle. It boldly forgoes any meaningful consideration of competition, markets, or impact on consumers from the allegedly “unfair” conduct. It does not allege that the conduct about which it complains has harmed competition between PBMs. It implicitly acknowledges that the PBM conduct at issue has *enhanced* competition between drug manufacturers. And most importantly, the FTC’s misguided lawsuit threatens to exacerbate prescription drug affordability concerns and cause harm to American healthcare consumers.

19. The FTC also ignores that Congress has instructed the federal agencies with primary responsibility to oversee pharmaceutical drugs to leave rebate and formulary practices to plan sponsors. *See, e.g.*, 42 U.S.C. § 1395w-111(i) (prohibiting Department of Health and

CV-03560-KH (S.D. Tex. Sep. 21, 2023) at ¶¶ 60–61 (“To control healthcare costs, insurers build networks....In exchange for being included in an insurer’s network, providers typically agree to give a discount off the total amount they charge.”); ¶ 68 (if provider rates are “too high,” “the insurer’s primary alternative to reaching an agreement is to take the group out of network....”); Dkt. 89 (Competitive Impact Statement), *U.S. v. Charlotte-Mecklenburg Hospital Authority*, No. 3:16-cv-00311-RJC-DCK (W.D.N.C. Dec. 4, 2018) at 7–8 (“Narrow and tiered networks can effectively reduce healthcare costs and make insurance more affordable,” because “[t]he likely increase in patient volume realized by providers in the narrow network can help the insurer to negotiate lower prices, and then to pass those savings along in the form of lower premiums.”).

Human Services from requiring a particular formulary or interfering with negotiations). Congress also has *approved* of PBMs' use of rebates in conjunction with designing formularies. *Id.* § 1395w-3a(c)(6)(B) (contemplating “discounts, rebates, or reductions in price” from list prices); 42 C.F.R. § 447.509 (requiring manufacturers to pay rebates based on WAC prices for certain drugs dispensed to Medicaid enrollees); Pub. Law No. 117-169, § 11301, 136 Stat. 1818, 1896 (2022) (requiring drug manufacturers to pay additional rebates to Medicare if manufacturers increase list prices faster than the rate of inflation). These fundamental flaws in the FTC's case are insurmountable. Because legislation and federal practice indicate that free-market rebates and PBMs' formulary design practices are consistent with public policy, not in violation of it, Optum Rx's rebating and formulary practices cannot be “unfair”—either as an unfair method of competition or as an unfair act or practice.

20. Perhaps because the FTC has no statutory authority and brought meritless claims, the Commission chose to bring this suit in administrative proceedings rather than in federal court. But that choice only creates more problems. Two Commissioners are recused, which alone puts this proceeding at odds with the statutory requirement of a balanced, bipartisan Commission. 15 U.S.C. § 41. The other three Commissioners, meanwhile, will impermissibly serve as judge, jury, and executioner in this case. Worse still, public statements from those three Commissioners calling PBMs “rotten” and “horrific” illustrate that they have prejudged this case's merits, creating an intolerably high risk of unfairness that violates due process. By suing three PBMs at once while seeking broad, prophylactic relief, the Commission has deprived Optum Rx of a fair chance to present its defenses and dispel the Commissioners' preconceptions. And there is no practical check on these abuses because the Commissioners are protected by for-cause removal restrictions, 15 U.S.C. § 41, rendering them politically unaccountable in violation

of Article II of the Constitution. This Complaint is shot through with factual misapprehensions and legal infirmities.

RESPONSES TO SPECIFIC ALLEGATIONS

1. Optum Rx²² denies the allegations in the first sentence insofar as they relate to Optum Rx's clients' members, nearly all of whom pay less than \$35 per month for insulin. Optum Rx lacks knowledge sufficient to admit or deny the remaining allegations in this paragraph.

2. Optum Rx admits that companies engage in price competition and that insurance systems provide multiple functions, including cost spreading. Optum Rx denies the remaining allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the remaining allegations in this paragraph insofar as they relate to any other company.

3. Optum Rx admits that pharmacy benefit managers ("PBMs") are hired by plan sponsors to provide services that help plan sponsors administer their prescription drug benefits. Optum Rx admits that PBMs negotiate with prescription drug manufacturers for discounts that reduce costs for plan sponsors and their members. Optum Rx denies that it oversees prescription drug coverage and reimbursement for health plans. Optum Rx denies the remaining allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to

²² Unless otherwise stated, Optum Rx denies the allegations and states its lack of relevant knowledge on behalf of Emisar. However, the vast majority of allegations in the FTC's complaint are not relevant to Emisar. Emisar was launched in late 2021, to focus on negotiating rebate agreements with pharmaceutical manufacturers and developing manufacturer-facing technology solutions. Emisar negotiates commercial rebate agreements with manufacturers and disburses all collected rebates and administrative fees to Optum Rx, which in turn disburses those amounts to its plan sponsor clients pursuant to each client's negotiated payment terms with Optum Rx. Emisar also offers innovative data analytics services to pharmaceutical manufacturers. The fees for these data services are unrelated to the rebates and administrative fees disbursed to clients and are for services the manufacturer would otherwise develop or purchase from another entity.

admit or deny the remaining allegations in this paragraph insofar as they relate to any other company.

4. Optum Rx admits that plan sponsors use formularies as part of the health plans they design as a way of providing coverage for a wide range of safe, effective and available medications at a reasonable cost. Optum Rx admits that it offers formulary options that plan sponsors may choose to adopt or customize for use in their pharmaceutical benefits plans. Optum Rx admits that plan sponsors also create and use their own custom formularies in their benefits plans. In fact, most of Optum Rx's clients use custom formularies and, therefore, Optum Rx administers *thirty thousand* different formularies for its clients. Optum Rx denies the remaining allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the remaining allegations in this paragraph insofar as they relate to any other company.

5. Optum Rx admits that formularies may exclude certain drugs from coverage and that this "selective contracting" can reduce costs for plan sponsors that choose to use such formularies as part of their pharmaceutical benefit plans. Optum Rx denies the remaining allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the remaining allegations in this paragraph insofar as they relate to any other company.

6. Optum Rx admits that manufacturers decide whether to raise (or reduce) list prices of their drugs. Optum Rx denies the remaining allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the remaining allegations in this paragraph insofar as they relate to any other company.

7. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the remaining allegations in this paragraph insofar as they relate to any other company.

8. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the remaining allegations in this paragraph insofar as they relate to any other company.

9. Optum Rx admits that it negotiates with insulin manufacturers for rebates that are passed through to Optum Rx's clients (and members) in accordance with the terms of its contracts with plan sponsor clients. Optum Rx denies the remaining allegations in this paragraph insofar as they relate to Optum Rx. In particular, nearly all of Optum Rx's clients' members have access to a wide array of insulins for less than \$35 per month. Optum Rx lacks knowledge sufficient to admit or deny the remaining allegations in this paragraph insofar as they relate to any other company.

10. Optum Rx admits that affordability of insulin is important. That is why Optum Rx offers its plan sponsor clients and their members a suite of products and services that help them reduce the cost of insulin drugs and promote patient adherence. It is also why Optum Rx partnered with an insulin manufacturer to create a savings program to reduce costs on select insulins to \$35 per month for those without insurance. Optum Rx denies the remaining allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the remaining allegations in this paragraph, including insofar as they relate to any other company.

11. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the remaining allegations in this paragraph insofar as they relate to any other company.

12. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the remaining allegations in this paragraph insofar as they relate to any other company.

13. Paragraph 13 sets forth legal conclusions to which no response is required. To the extent a response is required, Optum Rx denies the allegations.

14. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the remaining allegations in this paragraph insofar as they relate to any other company.

15. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph.

16. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph.

17. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph.

18. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph.

19. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph.

20. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph.

21. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph.

22. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph.

23. Optum Rx admits the allegations in this paragraph.

24. Optum Rx admits the allegations in this paragraph.

25. Optum Rx admits the allegations in this paragraph but uses “Optum Rx” to refer to Optum Rx, Inc. and OptumRx Holdings, LLC collectively in this Answer.

26. Optum Rx admits that it provides pharmacy benefit services to plan sponsors and recorded \$99.8 billion in revenue in 2022. Optum Rx lacks knowledge sufficient to admit or deny the remaining allegations in this paragraph.

27. Optum Rx and Emisar admit the allegations in this paragraph, except deny that Emisar’s “principal place of business” is in Ireland. Emisar is a Delaware limited liability company with operations in the U.S. and Ireland.

28. Optum Rx lacks knowledge sufficient to admit or deny the allegations in Paragraph 28 with respect to all PBMs, and therefore denies them.

29. Optum Rx admits that it acquired Catamaran in 2015. Optum Rx lacks knowledge sufficient to admit or deny the remaining allegations in this paragraph insofar as they relate to any other company.

30. Optum Rx admits that it has affiliated companies that provide a diversified range of healthcare services. Optum Rx denies any remaining allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the remaining allegations in this paragraph insofar as they relate to any other company.

31. Optum Rx admits that it contracts with drug manufacturers, health plan sponsors, and pharmacies. The remaining allegations in Paragraph 31 set forth legal conclusions to which no response is required. To the extent a response is required, Optum Rx denies the allegations.

32. Optum Rx admits that it negotiates with manufacturers to drive down net costs of drugs and develops formulary options that plan sponsors may use to influence drug utilization decisions. Optum Rx admits that a drug formulary is a list of prescription drugs covered by a health plan, and formularies may include tiers that have different cost implications. Most of Optum Rx's clients use client-devised or custom formularies and, therefore, Optum Rx administers *thirty thousand* different formularies for its clients. Optum Rx further admits the allegations in the second, third, and fourth sentences insofar as they relate to OptumRx. Optum Rx denies any remaining allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the remaining allegations in this paragraph insofar as they relate to any other company.

33. Optum Rx admits the allegations in the first two sentences and further states that plan sponsors determine which formularies to use based on the needs and demands of their members. Most of Optum Rx's clients use custom formularies and, therefore, Optum Rx administers more than *thirty thousand* different formularies for its clients. Coverage decisions are ultimately made by plan sponsors, and treatment decisions are made by physicians and their patients. Optum Rx denies any remaining allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the remaining allegations in this paragraph.

34. Optum Rx admits that it offers standard commercial formularies with different drug exclusion levels. Optum Rx lacks knowledge sufficient to admit or deny the allegations in

this paragraph insofar as they relate to any other company. Optum Rx further states that it offers formulary options to clients or designs formularies at its clients' directions, so the relative utilization of its commercial formularies reflects client demand.

35. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph.

36. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph.

37. Optum Rx admits that in 2023, its Premium Formulary option was used by plan sponsor clients whose members totaled more than the number of people referenced in this paragraph, and its Select Formulary option was used by plan sponsor clients whose members totaled more than the number of people referenced in this paragraph. Optum Rx denies the remaining allegations in this paragraph, including the allegation that Optum Rx's Premium formulary offering is its "flagship."

38. Optum Rx admits that its role in offering pharmacy benefit services to clients gives it leverage to negotiate with drug manufacturers for rebates based on plan sponsors' utilization of drugs. In this way, Optum Rx serves an important role as a counterweight to powerful drug manufacturers, thereby driving down the cost of pharmacy spend for plan sponsors, who can use those savings to reduce premiums or enrich the benefits they offer to their members. Optum Rx denies any remaining allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

39. Optum Rx admits that it fosters competition between rival drug manufacturers to encourage those manufacturers to offer deeper discounts, which Optum Rx passes through to

plan sponsors (or members) in accordance with the terms of applicable agreements. Optum Rx denies any remaining allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

40. Optum Rx admits that some drug manufacturers in certain circumstances pay rebates that are based on a percentage of the WAC of their drugs. Optum Rx further states that drug manufacturers set WAC, or list price, and PBMs do not set the list price for any drug.

41. Optum Rx admits that the price of a drug includes components such as the list price, rebates, discounts, and fees. Optum Rx denies any remaining allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

42. Optum Rx and Emisar admit that Optum Rx's affiliated group purchasing organization (GPO), Emisar, was formed in 2021 and since 2022 has performed certain commercial contracting functions and that rebates achieved by the GPO are passed through to Optum Rx's commercial clients in accordance with applicable agreements. Optum Rx denies any remaining allegations in this paragraph, including any implication that this structure is improper or deviant from market standards. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

43. Optum Rx admits that Emisar receives commercial bids from drug manufacturers that use rebate grids, and further states that manufacturers may include other conditional rebate offers on rebate grids. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

44. Optum Rx admits the allegations in the first sentence of this paragraph. Optum Rx admits that it uses formulary designs to foster competition between rival drug manufacturers so that they make deeper discount offers for the benefit of Optum Rx's clients, including discounts from Sanofi on Lantus. Optum Rx denies the remaining allegations in this paragraph, including that the referenced rebate structure is accurate.

45. Optum Rx admits that it may charge administrative fees to manufacturers for the reasons listed in this paragraph and others. Optum Rx lacks knowledge sufficient to admit or deny the allegations insofar as they relate to any other company.

46. Optum Rx and Emisar admit that the Emisar agreement referred to in the second sentence of this paragraph went into effect October 1, 2022. Optum Rx and Emisar further admit that the structure of administrative fees in rebate agreements between Optum Rx or Emisar and insulin manufacturers, which are agreed upon and bargained for by both parties, can be calculated as a percentage of a drug's WAC. Optum Rx denies any remaining allegations in this paragraph. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

47. Optum Rx and Emisar admit that Emisar offers various optional analytics services to manufacturers and that some manufacturers elect to purchase those services; manufacturers are not required to purchase any analytics services or pay any analytics fees. Optum Rx denies any remaining allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations insofar as they relate to any other company.

48. Optum Rx and Emisar admit that the analytics services fees charged by Emisar can be calculated as a percentage of a drug's WAC. Optum Rx denies any remaining allegations

in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the remaining allegations insofar as they relate to any other company.

49. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the remaining allegations insofar as they relate to any other company.

50. Optum Rx admits that it offers formulary options for plan sponsors to utilize or customize when they are designing their pharmacy benefit plans. Most of Optum Rx's clients use custom formularies and, therefore, Optum Rx administers more than *thirty thousand* unique formularies for its clients. Plan sponsors have the incentive and tools, whether through internal expertise or through consultants engaged to assist in development of plan designs, to select formularies that best suit the needs of their members. Optum Rx denies any remaining allegations in this paragraph as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the remaining allegations insofar as they relate to any other company.

51. Optum Rx admits that it often handles the flow of rebate payments from drug manufacturers to Optum Rx's commercial payer clients. Optum Rx denies the allegations in the second sentence insofar as they relate to Optum Rx. Optum Rx passes on the vast majority of drug rebates to plan sponsors in accordance with the contractual terms that individual plan sponsors have bargained for. How and when rebates are passed on to patients (plan sponsors' members) is a decision made by plan sponsors, not by Optum Rx. OptumRx facilitates a point-of-sale rebate program for plan sponsors who choose to pass on rebates directly to patients at the pharmacy counter. Plan sponsors may also choose to use rebate dollars to lower premiums across the board or to enrich the benefits offered to their members. Optum Rx lacks knowledge sufficient to admit or deny the remaining allegations insofar as they relate to any other company.

52. Optum Rx admits the allegations in the first sentence and denies the remaining allegations in this paragraph insofar as they relate to Optum Rx. Each client relationship is governed by an individually negotiated contract, under which clients elect to compensate Optum Rx for its service in diverse ways. Optum Rx retains some modest portion of rebates only when clients choose to compensate Optum Rx in that way, with many clients choosing to receive 100% passthrough of rebates. Optum Rx also notes that this paragraph, which describes aggregated reporting submitted by 15 PBMs, does not cite the more recent analysis from the Texas Department of Insurance, which reported PBM retention rates consistent with the rates PBM Respondents reported to Congress.²³ Optum Rx lacks knowledge sufficient to admit or deny the remaining allegations insofar as they relate to any other company.

53. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph. Optum Rx also notes that this paragraph, which describes aggregated reporting submitted by 15 PBMs, does not cite the more recent analysis from the Texas Department of Insurance.²⁴ Optum Rx further denies that the allegations in the last sentence of this paragraph are representative of its practices.

54. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx, including any implication that plan sponsors are unable to verify whether rebates are passed through. Optum Rx further denies the characterization in the former executive's quote, which is not an accurate statement about Emisar's purpose or the impetus for its formation. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

²³ See Texas Department of Insurance, 2023 Prescription drug cost transparency review: Pharmacy benefit managers, <https://www.tdi.texas.gov/reports/life/2023-pharmacy-benefit-managers.html>.

²⁴ *Id.*

55. Optum Rx admits that rebates passed on to plan sponsors reduce the plan's overall net cost of a drug; plan sponsors control how and to what extent those savings are passed on to their members, and pay them on in a range of ways, including through point-of-sale rebates, lower premiums, and/or greater benefits. Optum Rx lacks knowledge sufficient to admit or deny the allegations in the last sentence of this paragraph, as well as any allegations insofar as they relate to any other company.

56. Optum Rx admits that different patients may pay different amounts for drugs depending on a range of factors including, among other things, whether they have health insurance, if so, what plan they have selected, the benefit design that governs their selected plan, whether they have met any applicable deductible, whether they qualify for any type of patient assistance program, the list price set by the drug manufacturer, and so on. Optum Rx denies any remaining allegations in this paragraph.

57. Optum Rx denies the allegations in this paragraph insofar as they pertain to Optum Rx and states that Optum Rx negotiates with manufacturers to provide programs for uninsured patients designed to limit their costs and provide them with access to drugs. Optum Rx lacks knowledge sufficient to admit or deny the remaining allegations in this paragraph.

58. Optum Rx admits the allegations in this paragraph, except Optum Rx lacks knowledge sufficient to admit or deny the allegations relating to the statistics in the last sentence. Optum Rx further states that plan sponsors design benefits for their members, which govern out-of-pocket payment obligations for a drug through deductibles, copayments, and/or coinsurance. Members typically select their particular benefit package from a choice of several plans their plan sponsor (*i.e.*, union, employer, government) has made available to them.

59. Optum Rx admits the allegations in this paragraph, except Optum Rx lacks knowledge sufficient to admit or deny the allegations relating to the statistics in the last sentence.

60. Optum Rx admits plan sponsors design the drug benefits in their members' health plans, including the components of cost described in this paragraph, which affect the amount that members pay for prescriptions. Optum Rx denies any remaining allegations in this paragraph insofar as they pertain to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny any remaining allegations in this paragraph insofar as they pertain to any other company.

61. Optum Rx admits that typically an insured patient pays an out-of-pocket cost determined by the patient's benefit plan, as designed by the plan sponsor. Optum Rx denies any remaining allegations in this paragraph insofar as they pertain to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny any remaining allegations in this paragraph insofar as they pertain to any other company.

62. Optum Rx admits that a patient whose health benefit design involves no co-insurance and no deductible, and only copays may be indifferent to the list price of a particular drug when they fill a prescription. Optum Rx denies the remaining allegations and responds that Optum Rx makes a variety of tools available to plan sponsors to mitigate the out-of-pocket costs that their members may pay for insulin and other drugs during the deductible phase of a high-deductible health plan, as may be designed by each plan sponsor. Optum Rx does not dictate the benefits that plan sponsors ultimately choose to offer.

63. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph.

64. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph.

65. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph.

66. Optum Rx admits that plan sponsors have discretion to adopt point-of-sale discounts available to patients. Optum Rx further states that for years it has been actively working to encourage its plan sponsor clients to adopt point-of-sale discounts in their plan designs, including by making a point-of-sale discount program available to them. For example, starting in January 2020, for new UnitedHealthcare business proposals, OptumRx and UnitedHealthcare have only supported new employer clients that incorporate point-of-sale discounts to consumers as part of their plan design. Optum Rx denies any remaining allegations in this paragraph.

67. Optum Rx admits that plan sponsors have discretion to implement point-of-sale rebates. Optum Rx otherwise lacks knowledge sufficient to admit or deny the allegations in this paragraph.

68. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph. Optum Rx further states that plan sponsors, not Optum Rx, determine benefits for their members, including their out-of-pocket costs for drugs.

69. Optum Rx lacks knowledge sufficient to admit or deny the hypothetical example set forth in this paragraph.

70. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph.

71. Optum Rx admits that plan sponsors determine the components of an insured patient's drug benefit design, including formulary composition and cost-sharing, which bear on a

patient's out-of-pocket cost for a drug. Optum Rx denies the remaining allegations in this paragraph.

72. Optum Rx denies the allegations in this paragraph insofar as they relate to OptumRx and emphasizes that it is a service provider to plan sponsor clients. In its capacity as a service provider to plan sponsor clients, Optum Rx offers a range of formulary offerings and, in many cases, takes direction from plan sponsors to implement custom formularies that meet their specifications. Plan sponsors retain discretion as to which formulary designs will best meet their members' needs and budgets. Optum Rx denies that it provides benefit design services, but notes that it does, at the direction of plan sponsors, model the financial implications of their benefit design choices. Optum Rx denies the remaining allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company, including the allegations in the last sentence.

73. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

74. Optum Rx admits the allegations in this paragraph.

75. Paragraph 75 purports to describe the contents of a document, which speaks for itself. To the extent a response is required, Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph.

76. Paragraph 76 purports to describe the contents of a document, which speaks for itself. To the extent a response is required, Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph.

77. Paragraph 77 purports to describe the contents of a document, which speaks for itself. To the extent a response is required, Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph.

78. Optum Rx admits that Lilly, Novo, Sanofi, and Viartis manufacture insulin for sale in the United States. Optum Rx lacks knowledge sufficient to admit or deny the remaining allegations in this paragraph.

79. Optum Rx admits the allegations in this paragraph.

80. Optum Rx admits the allegations in this paragraph, except Optum Rx lacks knowledge sufficient to admit or deny the allegations relating to the referenced statistics.

81. Optum Rx admits the allegations in this paragraph.

82. Optum Rx admits the allegations in this paragraph.

83. Optum Rx admits the allegations in this paragraph.

84. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph.

85. Optum Rx admits the allegations in the first two sentences of this paragraph. Optum Rx lacks knowledge sufficient to admit or deny the allegations in the last sentence of this paragraph.

86. Optum Rx admits the allegations in this paragraph.

87. Optum Rx admits the allegations in this paragraph.

88. Optum Rx admits the allegations in this paragraph.

89. Optum Rx admits the allegations in this paragraph.

90. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph.

91. Optum Rx admits the allegations in this paragraph.

92. Optum Rx admits that the FTC's graph demonstrates that Eli Lilly raised Humalog list price by over 500% between 1996 and 2012, before any of the alleged misconduct in the Complaint occurred. Optum Rx denies any implication that insulin is not affordable today for Optum Rx's clients' members, nearly all of whom have access to a wide array of insulins for less than \$35 per month. Optum Rx lacks knowledge sufficient to admit or deny the remaining allegations in this paragraph.

93. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph.

94. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph.

95. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx's clients' members, nearly all of whom have access to a wide array of insulins for less than \$35 per month. Optum Rx lacks knowledge sufficient to admit or deny the remaining allegations in this paragraph.

96. Optum Rx admits that affordability of insulin is important. Optum Rx lacks knowledge sufficient to admit or deny the remaining allegations in this paragraph.

97. Optum Rx admits that affordability of insulin is important. Optum Rx lacks knowledge sufficient to admit or deny the remaining allegations in this paragraph.

98. Optum Rx admits the allegations in the first sentence. Optum Rx lacks knowledge sufficient to admit or deny the remaining allegations in this paragraph.

99. Optum Rx admits that it does today, and it has historically, offered a broad range of formulary options with different products on different tiers and different levels of openness,

but states that plan sponsors have, and have always had, full discretion to choose or design their formularies. Optum Rx further responds that it does, and has historically, to the best of its ability, sought to stoke competition between rival drug manufacturers in order to drive deeper discounts on drugs for its clients and, by extension, their members. Optum Rx denies any remaining allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

100. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

101. Optum Rx admits that it seeks to leverage selective contracting techniques to stoke competition between rival drugs in order to drive greater discounts on drugs for its clients. Optum Rx denies the remaining allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

102. Optum Rx admits that it uses formulary design to foster competition between rival drug manufacturers in order to achieve deeper discount offers for its clients. Optum Rx denies the remaining allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

103. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph.

104. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph.

105. Optum Rx admits that it uses selective contracting techniques to negotiate for the most aggressive drug discounts possible for its clients. Optum Rx denies the remaining allegations in this paragraph.

106. Optum Rx admits that it uses formulary design to foster competition between rival drug manufacturers so that they make deeper discount offers on drugs that benefit Optum Rx's clients. Optum Rx further states that it offers formulary options to clients, so the relative utilization of its commercial formularies reflects client demand. Optum Rx denies the remaining allegations in this paragraph insofar as they relate to Optum Rx, including any implication that Optum Rx does not focus on providing the lowest net cost for drugs to its clients. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company or the industry as a whole.

107. Optum Rx admits that as of 2023, its Premium formulary offering was used by plan sponsors whose members totaled more than the number of people referenced in this paragraph. Optum Rx further states that it offers a broad range of unique formulary options—indeed, Optum Rx administered more than thirty thousand unique formularies in 2024—which reflects plan sponsors' diverse formulary choices. Optum Rx further states that because plan sponsors choose their formularies, relative utilization of formulary offerings reflects client choice. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

108. Optum Rx lacks knowledge sufficient to admit or deny the first sentence of this paragraph. Optum Rx admits the remaining allegations in this paragraph.

109. Optum Rx admits that it uses formulary design to foster competition between rival drug manufacturers when competitive conditions within a therapeutic drug class allow for it, in order to elicit deeper discount offers that Optum Rx can make available to its clients. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

110. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph.

111. Optum Rx states that the placement of drugs on Optum Rx's formulary offerings is dynamic. In 2024, based on changes in market conditions, Optum Rx added numerous insulin drugs to Tier 1 of both its Premium and Select formularies. Optum Rx denies the remaining allegations in this paragraph. Optum Rx lacks knowledge sufficient to admit or deny the allegations in the last sentence of this paragraph.

112. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph.

113. Optum Rx admits that it seeks to foster competition between rival drug manufacturers, including through the use of selective contracting, to negotiate for the most aggressive drug discounts possible so that it can make those discounts available to its clients. Optum Rx further admits that these efforts have been effective in pushing insulin manufacturers to offer discounts that have lowered the net cost of insulin. Optum Rx denies any remaining allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations insofar as they relate to any other company.

114. Optum Rx admits that it seeks to foster competition between rival drug manufacturers, including through the use of selective contracting, to negotiate for the most

aggressive drug discounts possible so that it can make those discounts available to its clients.

Optum Rx denies any remaining allegations in this paragraph insofar as they relate to Optum Rx.

Optum Rx lacks knowledge sufficient to admit or deny the allegations insofar as they relate to any other company.

115. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

116. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph.

117. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph.

118. Optum Rx admits that the referenced rebate agreements contain certain rebate rates that apply under different scenarios. Optum Rx denies the remaining allegations in the paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the remaining allegations in this paragraph.

119. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the remaining allegations in this paragraph insofar as they relate to any other company.

120. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph.

121. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph.

122. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph.

123. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph.

124. Optum Rx denies the allegations in the last sentence of this paragraph. Optum Rx lacks knowledge sufficient to admit or deny the remaining allegations in this paragraph.

125. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx negotiates for rebates in order to deliver the lowest possible net prices for its clients, and manufacturers have sole discretion to increase or decrease list prices. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

126. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph.

127. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph.

128. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

129. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph.

130. Optum Rx admits that the net price of insulin products has been declining since around 2014-2015. Optum Rx lacks knowledge sufficient to admit or deny the remaining allegations in this paragraph insofar as they relate to any other company.

131. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx further states that plan sponsors, not PBMs, design benefits for their members

that govern the nature and extent of plan members' out-of-pocket costs. Optum Rx lacks knowledge sufficient to admit or deny the remaining allegations in this paragraph insofar as they relate to any other company.

132. Optum Rx admits that certain insulin manufacturers have chosen to reduce list prices of certain insulin drugs or introduce new low-WAC insulin drugs, which manufacturers have always had the discretion to do. Optum Rx lacks knowledge sufficient to admit or deny the remaining allegations in this paragraph insofar as they relate to any other company.

133. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph.

134. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

135. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph.

136. Optum Rx denies the allegations in this paragraph insofar as they pertain to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

137. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph.

138. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the remaining allegations in this paragraph insofar as they relate to any other company.

139. Optum Rx admits that Lilly, Novo, and Sanofi launched “low WAC” versions of insulin products. Optum Rx lacks knowledge sufficient to admit or deny the remaining allegations in this paragraph.

140. Optum Rx admits that Lilly launched a version of Humalog with a lower list price than other versions of Humalog.

141. Optum Rx admits that Novo Nordisk launched a version of Novolog with a lower list price than other versions of Novolog.

142. Optum Rx admits that Sanofi launched a version of Lantus with a lower list price than other versions of Lantus.

143. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

144. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

145. Optum Rx admits that in 2019, clients were free to customize their formularies to cover the “low WAC” Humalog if it suited their plan design and member interests; many clients chose to exclude the “low WAC” Humalog from their formularies. Optum Rx further admits that its Premium formulary offering presented a method for plan sponsors to reduce their net costs, and the Premium formulary offering placed “high WAC” Humalog in the preferred tier because it had the lowest net cost compared to the other insulin drugs in this class, including “low WAC” Humalog, based on the conditional discounts that insulin manufacturers were willing to offer at that time. Optum Rx made this decision in order to offer plan sponsor clients

the lowest net cost option available from drug manufacturers. Optum Rx denies the remaining allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

146. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph.

147. Optum Rx admits that in 2022, clients were free to customize their formularies to cover the “low WAC” Lantus if it suited their plan design and member interests; many clients chose to exclude the “low WAC” Lantus from their formularies. Optum Rx further admits that its Premium formulary offering presented a method for plan sponsors to reduce their net costs, and the Premium formulary offering placed “high WAC” Lantus in the preferred tier because it had the lowest net cost compared to the other insulin drugs in this class, including “low WAC” Lantus, based on the conditional discounts that insulin manufacturers were willing to offer at that time. Optum Rx made this decision in order to offer plan sponsor clients the lowest net cost option available from drug manufacturers.

148. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx chose to include “high WAC” versions of insulin drugs in the preferred tier of its Premium formulary offering because it made Optum Rx competitive among plan sponsors seeking to reduce their net costs of covering drugs utilized by their members. Optum Rx included “low WAC” versions of drugs on other formulary offerings that its plan sponsor clients had full discretion to adopt. And plan sponsors have always been free to customize their formulary offerings to cover any “low WAC” insulin that may suit the interests of the plan or its

members. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

149. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph.

150. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

151. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

152. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph.

153. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph.

154. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph.

155. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx and further denies the characterization of the Optum Rx employee's quote in the last sentence, which is not an accurate statement about Optum Rx's practices or reasons for including drugs in its formulary offerings. Optum Rx lacks knowledge sufficient to admit or deny the remaining allegations in this paragraph.

156. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

157. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

158. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

159. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph.

160. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph.

161. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph.

162. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

163. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

164. Optum Rx admits that it competes against other PBMs to win and retain clients, in part, by striving to deliver value in the form of low net costs. Optum Rx denies the remaining

allegations in this paragraph insofar as they relate to Optum Rx and further states that Optum Rx only retains small portions of rebates when clients choose to compensate Optum Rx in that way. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

165. Optum Rx admits that it may retain a small portion of rebates and/or fees when clients choose to compensate Optum Rx in that way. Optum Rx further admits that Emisar charges an optional fee to manufacturers that elect to purchase analytics services from Emisar and those fees are retained by Emisar. Optum Rx denies any remaining allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

166. Optum Rx admits that the structure of certain fees in rebate agreements between Optum Rx and insulin manufacturers, which are agreed upon and bargained for by both parties, can be calculated as a percentage of a drug's WAC. Optum Rx denies any remaining allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

167. Optum Rx admits that retention of rebates and fees from drug manufacturers, where clients choose to compensate Optum Rx for its services in that way, is a component of Optum Rx's revenue. Optum Rx denies any remaining allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

168. Optum Rx admits that it has negotiated deep discounts, *e.g.*, rebates, on certain insulin drugs. Optum Rx denies any remaining allegations in this paragraph insofar as they

relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

169. Optum Rx admits that the statistics in the first sentence are referred to in a document. Optum Rx otherwise denies the allegations in the first sentence. Optum Rx denies the allegation in the last sentence, which is not an accurate characterization of the Optum Rx employee's statement or an accurate statement about Optum Rx's reasons for negotiating rebates.

170. Optum Rx admits that it competes against other PBMs for clients in part by striving to negotiate from manufacturers the greatest discounts available. Optum Rx denies the remaining allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

171. Optum Rx admits that one of the many dimensions of competition on which it competes against other PBMs for clients is in offering guaranteed rebate values. Optum Rx denies any remaining allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

172. Optum Rx admits that one of the many dimensions of competition on which it competes against other PBMs for clients is in offering guaranteed rebate values. Optum Rx denies any remaining allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

173. Optum Rx admits that one of the many dimensions of competition on which it competes against other PBMs for clients is in offering guaranteed rebate values. Optum Rx admits that in 2020 it conducted an internal analysis to better understand the reason for its losses to rival PBMs. Optum Rx denies the remaining allegations in this paragraph insofar as they relate to Optum Rx, including any implication that high rebates alone drive the complex decisions behind Optum Rx's formulary offerings. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

174. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx further responds that it offers a range of formulary options to clients and implements custom formularies at its clients' direction, so the relative utilization of its commercial formularies reflects client choice. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

175. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

176. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx, including any implication that its clients are unaware of drugs' net costs. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

177. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

178. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

179. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph.

180. Optum Rx admits the allegations in the first sentence of this paragraph. Optum Rx denies the remaining allegations in this paragraph, including any implication that Optum Rx's financial modeling of the change in rebates was the only or most important component of Optum Rx's analysis of the impact of "low WAC" Humalog. Optum Rx further states that its decisions to include drugs in certain formulary offerings are based on a variety of factors, including which drugs will have the lowest net costs for its clients.

181. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx. In 2024, based on changes in market conditions, Optum Rx added numerous insulin drugs to Tier 1 of both its Premium and Select formularies. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

182. Optum Rx admits the allegations in this paragraph insofar as they relate to Optum Rx's commitment to delivering value to its clients and their members. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

183. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

184. Optum Rx admits that plan sponsors decide how to pass savings from rebates on to their members, including through point-of-sale discounts, lower premiums, richer benefits, among others. Optum Rx denies the remaining allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

185. Optum Rx admits that insurance systems provide multiple functions, including cost spreading. Optum Rx lacks knowledge sufficient to admit or deny the remaining allegations in this paragraph.

186. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

187. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

188. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

189. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph.

190. Optum Rx denies the allegations in this paragraph.

191. Optum Rx admits that it has modeled various financial analyses for positioning insulin drugs on formulary offerings, and it has excluded certain drugs from its Premium formulary offering where those drugs had higher net costs than other clinically equivalent drugs.

Optum Rx denies any remaining allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

192. Optum Rx admits that it may provide modeling services to its clients to test the value of various formulary and benefit design choices that plan sponsors may be considering. Optum Rx denies the remaining allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

193. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx further states that although each plan sponsor retains the sole authority to design and administer its own plan, Optum Rx encourages its clients to adopt point-of-sale discounts in their plan designs, including by making a point-of-sale discount program available to them. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

194. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph.

195. Optum Rx admits that it encourages, but cannot require, its clients to implement point-of-sale discounts because its clients retain the sole authority to design and administer their own plans, including discretion on how to pass savings from rebates to their members. Optum Rx denies the remaining allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

196. Optum Rx admits that the second sentence of this paragraph appears to reference a quote from an Optum Rx document but denies the characterization of this quote. Optum Rx lacks knowledge sufficient to admit or deny the remaining allegations in this paragraph.

197. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph.

198. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx, including any implication that Optum Rx is not transparent about drugs' net costs. Optum Rx lacks knowledge sufficient to admit or deny the remaining allegations in this paragraph.

199. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

200. Optum Rx admits the allegations in the last sentence of this paragraph. Optum Rx denies any remaining allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

201. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

202. Optum Rx admits that insulin manufacturers determine the list prices of insulins. Optum Rx lacks knowledge sufficient to admit or deny any remaining allegations in this paragraph.

203. Optum Rx admits the allegations in this paragraph.

204. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph.

205. Optum Rx admits the allegations in this paragraph.

206. Optum Rx admits the allegations in this paragraph.

207. Optum Rx admits the allegations in this paragraph.

208. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

209. Optum Rx denies the allegations in this paragraph.

210. Optum Rx admits that in May 2022, Lilly gave a presentation to Optum Rx. Optum Rx denies the remaining allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx further states that there was no change in placement on Optum Rx's Premium formulary offering of Humalog U-100 or Humalog U-200 pens between July 2017 and January 2023. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

211. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph.

212. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph.

213. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx. In 2024, based on changes in market conditions, Optum Rx added numerous insulin drugs to Tier 1 of both its Premium and Select formularies. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

214. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

215. Optum Rx admits that it negotiates with manufacturers to achieve the lowest net price possible. Optum Rx denies the remaining allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

216. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

217. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

218. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

219. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

220. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

221. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

222. Optum Rx admits that affordability of insulin is important. Optum Rx denies the remaining allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

223. Optum Rx admits that the last sentence of this paragraph references a statement in a document. Optum further admits that it does not contract directly with patients. Optum Rx denies the remaining allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

224. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

225. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph, noting that plan sponsors set the plan design that governs patient cost-sharing obligations.

226. Optum Rx admits that rebates may be used by plan sponsors to lower premiums across patients in a health plan. Optum Rx denies the remaining allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

227. Optum Rx admits that affordability of and access to insulin are important. Optum Rx denies the remaining allegations in this paragraph insofar as they relate to Optum Rx, including any implication that rebates shared with plan sponsors are responsible for any adverse medical effects. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

228. Optum Rx admits that it offers its plan sponsor clients drug affordability programs designed to mitigate out-of-pocket costs for patients, including its “Critical Drug Affordability” program that caps patients’ out-of-pocket costs at \$35 per month for insulin. Optum Rx denies the remaining allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

229. Optum Rx admits that the first sentence of this paragraph references a statement in a document. Optum Rx further states that, as of 2024, nearly all of its clients’ members have access to a variety of insulin for less than \$35 per month. Optum Rx lacks knowledge sufficient to admit or deny the remaining allegations in this paragraph.

230. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

231. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

232. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

233. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

234. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

235. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx's clients' members, who have access to affordable insulins. Optum Rx lacks knowledge sufficient to admit or deny the remaining allegations in this paragraph.

236. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph.

237. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph.

238. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph.

239. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph.

240. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph.

241. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph.

242. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

243. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

244. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

245. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph.

246. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph.

247. Optum Rx admits the allegations in this paragraph but denies the allegation that its updates to its Premium formulary offering in 2024 were a result of the FTC's investigation, and also denies the allegation that Optum Rx's Premium formulary offering is its "flagship." Optum Rx's placement of drugs on its formulary offerings is dynamic and reevaluated based on market conditions.

248. Optum Rx admits that its formulary offerings may change based on market conditions, including based on the net prices of drugs or the market entry of new products. Optum Rx denies the remaining allegations in this paragraph insofar as they relate to Optum Rx.

Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

249. Optum Rx admits that its 2024 Premium formulary offering does not include “low WAC” versions of Harvoni and Epclusa. Optum Rx further states that its decisions to include certain drugs in preferred placements on its formulary offerings are influenced by a complex set of factors, with a strong focus on the net cost of drugs rather than the list price. Optum Rx denies the remaining allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

250. Optum Rx admits that in January 2024, its Premium formulary offering placed the high WAC versions of Cyltezo and Amjevita in the preferred tier because they had lower net costs for Optum Rx’s clients at that time. Optum Rx further states that in May 2024, it placed the “low WAC” versions of Amjevita and Adalimuman-ADBIM on Tier 2 of its Premium formulary offering. Optum Rx denies the remaining allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

251. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

252. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

253. Optum Rx admits that certain drug manufacturers have unilaterally increased list prices for certain products, as they have full discretion to do. Optum Rx lacks knowledge sufficient to admit or deny the remaining allegations in this paragraph.

254. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx and further responds that approximately 90% of Optum Rx's member utilization is for generic drugs that involve no rebates. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

255. Optum Rx incorporates by reference its responses to the allegations in paragraphs 1-254.

256. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

257. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

258. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

259. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

260. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

261. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company. Optum Rx further responds that this paragraph asserts a conclusion of law to which no response is required.

262. Optum Rx incorporates by reference its responses to the allegations in paragraphs 1-254.

263. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

264. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

265. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

266. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

267. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph

insofar as they relate to any other company. Optum Rx further responds that this paragraph asserts a conclusion of law to which no response is required.

268. Optum Rx incorporates by reference its responses to the allegations in paragraphs 1-254.

269. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

270. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

271. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

272. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

273. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company.

274. Optum Rx denies the allegations in this paragraph insofar as they relate to Optum Rx. Optum Rx lacks knowledge sufficient to admit or deny the allegations in this paragraph insofar as they relate to any other company. Optum Rx further responds that this paragraph asserts a conclusion of law to which no response is required.

AFFIRMATIVE DEFENSES

Optum Rx asserts the following defenses²⁵ without assuming the burden of proof for any defense that it would not otherwise bear. Optum Rx has not knowingly or intentionally waived any applicable defense, including arguments about which issues fall within Complaint Counsel's burden of proof. Optum Rx incorporates by reference the affirmative and other defenses set forth by Co-Respondents in their Answers to the Commission's Complaint. Optum Rx reserves the right to rely upon any other applicable defense that may become available or apparent during the course of this action, and reserves the right to amend, or seek to amend, its Answer to assert such defenses.

1. The Complaint fails to state a claim upon which relief can be granted.
2. The FTC is not entitled to relief as a matter of law.
3. The claims and relief sought are contrary to the public interest and to the balance of equities; violate the Due Process Clause, U.S. Const. amend. V; and exceed the authority granted by the FTC Act, 5 U.S.C. § 41 et seq.
4. The claims and relief sought are untimely.
5. The Complaint is barred by the doctrine of laches.
6. The Complaint fails to allege any plausible unfair act or practice arising from Optum Rx's practice of negotiating rebates for drugs, which serve as an important counterweight to drug manufacturers' discretion to set list prices for critical drugs.
7. The Complaint fails to allege any plausible reason why the alleged unfair acts or practices are ongoing or likely to recur.
8. The Complaint fails to allege that Optum Rx has market or monopoly power.

²⁵ Optum Rx asserts all defenses on behalf of itself and Emisar.

9. The Complaint fails to take into account any associated cognizable efficiencies and business justifications for the conduct challenged by the FTC.

10. The Complaint fails to allege any harm to competition.

11. The Complaint fails to allege any harm to consumers or consumer welfare.

12. The Complaint fails to allege that Optum Rx has actually or proximately caused any harm to competition or consumers.

13. The plan sponsors and members at issue in the Complaint have tools and alternatives to ensure that they receive competitive pricing and terms for the products and services at issue in the Complaint.

14. The Complaint is moot because Optum Rx already prefers or co-prefers “low WAC” versions of insulin drugs on its formularies.

15. The conduct challenged by the FTC does not violate the antitrust laws and is otherwise permitted by law and consistent with public policy.

16. The conduct challenged by the FTC is required in order to comply with applicable laws and regulations.

17. Optum Rx lawfully has the freedom to exercise independent discretion as to parties with whom to deal.

18. The FTC Commissioners’ removal protections, 15 U.S.C. § 41, violate Article II of the U.S. Constitution.

19. The FTC Administrative Law Judge’s removal protections, *see* 15 U.S.C. § 41, 5 U.S.C. § 7521, violate Article II of the U.S. Constitution.

20. The FTC's discretionary authority to commence administrative proceedings or to bring suit in federal district court, *see* 15 U.S.C. §§ 45(b), 53(b), violates the non-delegation doctrine.

21. The FTC's enforcement action in an administrative tribunal and any adjudication of this case by the Commissioners violates the Fifth Amendment's Due Process Clause and Equal Protection Clause.

22. The FTC's enforcement action in an administrative tribunal and any adjudication of this case by the Commissioners violates Article III of the U.S. Constitution and the Fifth Amendment's Equal Protection Clause.

23. The FTC's enforcement action in an administrative tribunal and any adjudication of this case by the Commissioners violates the Seventh Amendment of the U.S. Constitution.

24. The FTC's enforcement action violates the Administrative Procedure Act, 5 U.S.C. § 1001 et seq.

25. The FTC's Policy Statement Regarding the Scope of Unfair Methods of Competition Under Section 5 of the Federal Trade Commission Act violates the Administrative Procedure Act, 5 U.S.C. § 1001 et seq.

26. The Complaint reflects improper selective enforcement of the FTC Act.

27. Because Chair Khan, Commissioner Bedoya, and Commissioner Slaughter have exhibited bias and prejudgment of the issues and therefore should be disqualified, the initiation and maintenance of this action violates the Due Process Clause, U.S. Const. amend. V; the FTC Act, 5 U.S.C. § 41 et seq.; the Administrative Procedure Act, 5 U.S.C. § 1001 et seq.; Federal Trade Commission regulations, 16 C.F.R. § 4.17; and federal ethics laws and regulations, 28 U.S.C. § 455; 5 C.F.R. § 2635.501(a); 5 C.F.R. § 2635.101(b)(14).

28. Because Chair Khan, Commissioner Bedoya, and Commissioner Slaughter have exhibited bias and prejudice of the issues, the FTC cannot seek, obtain, or enforce any equitable remedy under the doctrines of unclean hands, estoppel, or other equitable doctrines.

29. The recusal of Commissioner Ferguson and Commissioner Holyoak, without the recusal of other Commissioners, violates the Due Process Clause, U.S. Const. amend. V; the FTC Act, 5 U.S.C. § 41 et seq.; the Administrative Procedure Act, 5 U.S.C. § 1001 et seq.; Federal Trade Commission regulations, 16 C.F.R. § 4.17; and federal ethics laws and regulations, 28 U.S.C. § 455; 5 C.F.R. § 2635.501(a); 5 C.F.R. § 2635.101(b)(14).

30. Optum Rx's challenged conduct has implied immunity from the antitrust laws.

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

32. The FTC's joint proceeding in these circumstances against Optum Rx and other respondents violates due process.

33. This administrative proceeding is a rulemaking in violation of the Administrative Procedure Act. *See* 5 U.S.C. §§ 551–559.

34. The FTC's claims are preempted by the McCarran-Ferguson Act. *See* 15 U.S.C. § 1012(b).

35. Section 5 of the FTC Act violates the nondelegation doctrine, both on its face or as applied.

36. Section 5 of the FTC Act is unconstitutionally vague and thus void, on its face and as applied, because it fails to provide sufficient notice of prohibited conduct in violation of the Due Process Clause.

37. The FTC's enforcement action exceeds its authority under Section 5 of the FTC Act.
38. The FTC's claims violate the First Amendment of the U.S. Constitution.
39. The relief requested is overbroad and unrelated to the claims alleged.

NOTICE OF CONTEMPLATED RELIEF

Optum Rx requests that the Commission enter judgment in its favor as follows:

1. The Complaint be dismissed with prejudice;
2. None of the Complaint's contemplated relief issues;
3. Costs incurred in defending this action be awarded to Optum Rx;
4. Any and all other relief as the Commission may deem just and proper.

DATED: October 9, 2024

Respectfully submitted,

GIBSON, DUNN & CRUTCHER LLP

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CERTIFICATE OF SERVICE

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

April Tabor
Office of the Secretary Federal Trade
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Washington, DC 20580
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The Honorable Judge Michael Chappell
Chief Administrative Law Judge
600 Pennsylvania Ave., NW, Rm. H-110
Washington, DC 20580

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

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