IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

RXSTRATEGIES, INC.,

Plaintiff,

v. CASE NO.

CVS PHARMACY, INC. and WELLPARTNER, LLC.

JURY TRIAL DEMANDED

Defendants.
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COMPLAINT

RxStrategies, Inc. sues CVS Pharmacy, Inc. and Wellpartner, LLC and alleges as follows:

Nature of the action

1. RxStrategies is a leader and innovator in the 340B Drug Pricing Program, a crucial federal program created to expand access to health care to often-neglected and vulnerable patient populations. CVS approached RxStrategies to develop a technology solution that would allow RxStrategies' customers—healthcare providers—to gain access to CVS's pharmacies. Numbering nearly 10,000 nationwide, these pharmacies are an essential component for many health care providers that participate in the 340B program. Just as RxStrategies was on the cusp of implementing this solution, and after it shared hordes of valuable, proprietary, confidential, and trade secret information, CVS shockingly dispensed with RxStrategies and instead acquired Wellpartner, RxStrategies' competitor, to provide the solution. In a blatant antitrust violation, CVS and Wellpartner announced that to gain access

to CVS's pharmacies, healthcare providers in the 340B program must use services from Wellpartner. And CVS and Wellpartner have since initiated a campaign of contacting 340B program healthcare providers, including RxStrategies' customers, to attempt to force them to switch to using Wellpartner. To perpetrate this campaign, CVS and Wellpartner have misappropriated RxStrategies' trade secrets, tortiously interfered with RxStrategies' customers, and engaged in other actionable misconduct at RxStrategies' expense.

The parties

2. RxStrategies, Inc. is a Delaware corporation with its principal place of business in Boca Raton, Florida.

3. CVS Pharmacy, Inc. is a Rhode Island corporation with its principal place of business in Woonsocket, Rhode Island.

4. Wellpartner, LLC, is a Delaware limited liability company with its principal place of business in Tualatin, Oregon.

5. CVS acquired Wellpartner[1] in 2017, but Wellpartner continues to operate as a legally separate and distinct entity from CVS.

Standing, jurisdiction, and venue

6. RxStrategies brings this action against CVS and Wellpartner for their violations of Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1 and the Defend Trade Secrets Act of 2016, 18 U.S.C. § 1836, et seq.

[1] CVS acquired Wellpartner, Inc., but Wellpartner, LLC is the proper defendant because on December 1, 2017, Wellpartner, Inc. was converted from a Delaware corporation to a Delaware limited liability company: Wellpartner, LLC.

7. The Court has subject matter jurisdiction over RxStrategies' federal claims under 28 U.S.C. § 1331 (federal question) and 28 U.S.C. 1337 (commerce and antitrust regulation).

8. RxStrategies has standing to bring this action under Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15, 26.

9. The Court has subject matter jurisdiction over RxStrategies' pendant state law claims under 28 U.S.C. § 1367 because RxStrategies' state law claims arise out of a common nucleus of operative facts as RxStrategies' federal law claims.

10. The Court has personal jurisdiction over CVS and Wellpartner under Section 12 of the Clayton Act, 15 U.S.C. § 22, and section 48.193 of the Florida Statutes because, among other things, they may be found and operate, conduct, transact, engage in, or carry on business or a business venture in Florida; they engaged and are engaging in improper and tortious acts in Florida; and they caused and are causing injury to RxStrategies and third parties in Florida. The Court also has personal jurisdiction over CVS because it breached a contract in Florida.

11. Venue is proper under Section 12 of the Clayton Act, 15 U.S.C. § 22, because CVS and Wellpartner may be found or transact business in the Middle District of Florida; and under 28 U.S.C. § 1391, a substantial part of the events or omissions giving rise to the claims occurred in the Middle District of Florida.

General allegations

I. The 340B Drug Pricing Program

12. Named for section 340B of the Veterans Health Care Act of 1992, the 340B Drug Pricing Program is codified as part of the Public Health Service Act, 42 U.S.C. § 256b. The 340B program requires drug manufacturers that participate in Medicaid to provide outpatient drugs at a significant discount to eligible health care providers known as covered entities.

13. Covered entities encompass several different types of health care providers, including hospitals and community health centers that serve a significantly disproportionate share of low-income patients (knowns as DSHs), children's and cancer hospitals, and Ryan White Comprehensive AIDS Resources Emergency (CARE) Act clinics. In total, six types of hospitals and ten types of clinics are eligible to participate in the 340 program. A covered entity may have multiple participating sites, provided that they form an integral part of the entity. On the other hand, if a single organization owns multiple and distinct hospitals, for example, each must participate as its own covered entity. In total, nearly 8,000 covered entities participate in the 340B program.

14. Congress intended for the savings realized by covered entities from participation in the 340B program "to enable these entities to stretch scarce Federal resources as far as possible, reaching more eligible patients and providing more comprehensive services." H.R. REP. NO. 102-384, pt. 2 at 12 (1992).

15. Because the 340B program relies on drug discounts instead of federal funding, covered entities are empowered to choose the best way to use the savings they realize to

serve their communities, including: providing charitable medical care, caring for more patients, and offsetting losses incurred from treating underinsured, uninsured, and indigent patients.

16. To participate in the 340B program, covered entities must register with the Health Resources and Services Administration (HRSA), the agency responsible for administering the program through the Office of Pharmacy Affairs. HRSA maintains a database of participating covered entities who, to remain in the program, must annually recertify their eligibility.

17. Once approved, covered entities may purchase outpatient drugs through the 340B program from participating drug manufacturers at or below the 340B ceiling price. Covered entities report that the ceiling price is often well below the average wholesale price, often 20 to 50 percent lower.

18. In 2017, covered entities purchased over $16 billion of discounted drugs through the 340B program.

19. The flow of funds and drugs through the 340B program is complex.

20. In general, covered entities purchase drugs at or below the 340B ceiling price and dispense them, directly or through third-party contract pharmacies, at a negotiated contract price with third-party payers (including insurance companies, Medicare, and Medicaid). The difference between the drug purchase price and the dispensing price, less any fees for third-party program administrators or contract pharmacies, is the savings captured by the covered entity by participating in the 340B program.

21. Covered entities may dispense drugs under the 340B program directly to their patients or through third-party contract pharmacies. A covered entity's in-house pharmacy may not always be the most convenient option for patients to fill prescriptions, because of—among other reasons—location, limited hours, and the ability to serve only a small segment of the covered entities' patient mix. By engaging with third-party contract pharmacies, a covered entity is able to provide greater convenience to its patients through increased pharmacy locations and hours, while serving a larger percentage of its patient population. So contract pharmacies often allow covered entities to provide a continuum of care while maximizing the savings realized through the 340B program.

22. Covered entities must comply with the 340B statutory and regulatory regime, including HRSA guidance, and are responsible for ensuring the compliance of the contract pharmacies they engage.

23. Covered entities may dispense 340B drugs only to eligible patients, who must: a) have an established relationship with covered entity; and b) receive care from a professional employed by the covered entity or affiliated with the covered entity in a relationship where the covered entity remains responsible for the care.

24. Dispensing 340B drugs to anyone other than eligible patients is illegal and a known as diversion.

25. To prevent diversion, covered entities identify the prescriptions filled by their contract pharmacies that are eligible for the 340B program. Although covered entities and their contract pharmacies may dispense 340B drugs only to eligible patients, those patients may fill <u>any</u> of their prescriptions at a covered entity's contract pharmacy—not just the

prescriptions that originate from the covered entity. So the covered entity must determine and monitor 340B eligibility at the prescription level.

26. Subjecting drug manufacturers to duplicate discounts on drugs they sell under the 340B program is also illegal. A duplicate discount occurs when a drug manufacturer pays a state Medicaid agency a rebate under the Medicaid Drug Rebate Program on a drug it sold at the already-discounted 340B price. To avoid duplicate discounts with their contract pharmacies, covered entities must make arrangements with state Medicaid agencies to prevent duplicate discounts (known as carve-in) or not dispense 340B drugs to Medicaid patients through contract pharmacies (known as carve-out).

27. HRSA guidelines require covered entities to oversee their contract pharmacy arrangements: covered entities must periodically compare their prescribing records with the contract pharmacy's dispensing records, and retain independent auditors to perform annual audits, to detect irregularities such as diversion or duplicate discounts. HRSA itself also audits covered entities to ensure compliance with 340B program requirements.

28. To facilitate the implementation, operation, and compliance of their participation in the highly complex 340B program, covered entities often contract with third parties known as 340B program administrators.

29. Although arrangements vary between covered entities, their contract pharmacies, and their 340B program administrators, a sample 340B workflow is as follows:

a. A covered entity's patient fills a prescription at a contract pharmacy.

b. If the patient is insured, the contract pharmacy sends a payment request to the third-party payer.

c. The third-party payer reimburses the contract pharmacy for the prescribed 340B drugs at a contracted price that is usually higher than the 340B price.

d. On an arranged schedule, the contract pharmacy sends the 340B program administrator records of all drugs dispensed.

e. With sophisticated tracking software, the 340B program administrator matches data from the covered entity and the contract pharmacy to determine which dispensed drugs are eligible for 340B pricing.

f. The 340B program administrator sends a report, often called an accumulation report, of the eligible dispensed drugs to the covered entity.

g. The covered entity uses the accumulation report to order or replenish the 340B drugs dispensed by its contract pharmacy. The 340B program administrator usually performs this ordering or replenishment.

h. The covered entity, the contract pharmacy, or the 340B solutions provider purchases the replenishment drugs at 340B prices using the covered entity's 340B purchasing account.

i. The covered entity receives an invoice and the replenishment drugs are shipped directly to the contract pharmacy.

j. At an arranged schedule, the contract pharmacy reports to the 340B program administrator the payments it has received for the 340B drugs sold.

k. After deducting a negotiated fee, the contract pharmacy remits the payments to the covered entity.

l. The covered entity uses the payments received to pay the 340B invoices.

m. The remaining balance is the 340B program savings that the covered entity uses to provide services to its patients.

II. Contract pharmacies

30. Contract pharmacies receive a fee for their services from covered entities, known as an enhanced dispensing fee. The contract between a covered entity and a contract pharmacy is known as a pharmacy services agreement.

31. Almost 21,000 pharmacy locations participate as contract pharmacies in the 340B program. Likewise, there are nearly 8,000 covered entities with approximately 53,000 contract pharmacy relationships.

32. From the perspective of a covered entity, not all contract pharmacies are created equal. Because of contract pharmacy relationships' substantial implementation and administration costs, covered entities are incentivized to contract with pharmacies that provide the most convenient (and often the most) locations for their patients with the broadest access to 340B program drugs.

33. Six retail pharmacy chains—Walgreens, CVS, Walmart, Rite Aid, Kroger, and Albertsons—account for two out of three 340B contract pharmacy locations. Although Walgreens is the largest contract pharmacy, it is by far one of the slowest growing. Since 2013, it has increased its number of locations by just 19 percent. During the same four-year period, CVS, the second-largest contract pharmacy, has increased its locations the fastest: by 281 percent.

34. As a result, many—if not most—covered entities view CVS and Walgreens as essential 340B contract pharmacies. In 2017, each of the top ten disproportionate share

hospitals with the largest 340B contract pharmacy networks included CVS in their networks. The only other retail pharmacy that these top ten disproportionate share hospitals included in their networks was Walgreens.

35. Covered entities view CVS as an essential contract pharmacy because of its market share. In the overall retail pharmacy market, CVS dominates. In its 2018 Securities and Exchange Commission Form 10-K annual report, CVS stated that as of December 31, 2017, it "held approximately 23.6% of the United States retail pharmacy market." CVS operates the most pharmacy locations (over 9,800) and generates the highest prescription revenues ($96.4 billion). 71 percent of the United States' population lives within five miles of a CVS; 82 percent lives within ten miles. In its 2015 Securities and Exchange Commission Form 10-K annual report, CVS stated that it operated in "98 of the top 100 United States drugstore markets" and held "the number one or number two market share in 88 of these markets." In Florida alone, CVS operates 754 pharmacy locations (compared to Walgreens' 824). Adjusting the list of the top 15 retail pharmacies—the target for 340B covered entities—to exclude the captive insurers' pharmacies (where 340B program participation is minimal), CVS's dominance is even more pronounced: CVS controls 51.1 percent of this adjusted top 15 market. In a distant second place, Walgreens represents just 29.6 percent of this adjusted top 15 market.

36. CVS's looming $69 billion merger with Aetna, if approved, would combine the nation's biggest retail pharmacy with the third-largest health insurer, and would further cement CVS as an essential contract pharmacy for covered entities. Because insurers can and do steer covered entities' patients toward specific pharmacies, including 340B contract

pharmacies, a viable 340B contract pharmacy network would almost certainly need CVS/Aetna to remain viable post-merger.

37. Covered entities also view CVS as an essential contract pharmacy because of CVS's growing dominance in dispensing specialty drugs or specialty pharmaceuticals, which are classified as high-cost, high-complexity, or high-touch. Specialty drugs are used to treat complex or rare chronic conditions such as cancer, rheumatoid arthritis, hemophilia, HIV, and hepatitis C. According to CVS, it is "the nation's largest specialty pharmacy." In 2016, CVS received $32 billion from specialty drugs, or 28 percent of all specialty drug prescription revenues. For specialty drugs covered by the 340B program, CVS's dominance is even greater. In 2016, the next biggest dispenser of specialty drugs behind CVS was Walgreens, with 10 percent of all specialty drug prescription revenues, followed by Kroger and Walmart, with just 1 percent each. The other major dispensers of specialty drugs, including pharmacy benefit managers, health plans, wholesalers, hospital systems, and specialty physician practices are often not located near a significant portion of a covered entity's patient population, so they are ill-equipped to serve as 340B contract pharmacies. Upon information and belief, CVS's market share of specialty drugs sold through the 340B program is a dominant 60 percent.

38. CVS's dominant position in dispensing specialty pharmaceuticals under the 340B program is protected by substantial barriers to entry that confront new competitors. Manufacturers restrict and closely manage the specialty pharmacies eligible to dispense many specialty drugs. According to CVS, it offers covered entities unrivaled access to specialty drugs: 99 percent of specialty drugs are available through CVS. What's more,

pharmacy benefit managers and health plans usually require their patients to use the specialty pharmacy owned and operated by the manager or plan. As the second-largest pharmacy benefit manager—through its Caremark subsidiary—CVS requires patients and third-party payers to use CVS as their specialty pharmacy. This requirement is evidenced by the more than one thousand exclusive or preferred arrangements that CVS has with third-party payers.

39. The access to specialty drugs is an increasingly important criterion for selecting contract pharmacies in 340B plans. In 2017, Wellpartner informed covered entities that "the recent and anticipated growth of specialty pharmacy necessitates adding specialty pharmacy to your existing pharmacy services." Wellpartner stated that specialty drug spending "had doubled in the last five years, contributing to 70% of overall medicine spending growth between 2010 and 2015." Wellpartner observed that specialty drug spending had reached $121 billion in 2015, up more than 15% from 2014, and projected specialty drug spending to reach over $400 billion by 2010 and $1.7 trillion by 2030. Based on these trends, Wellpartner indicated that although "Health systems want to develop specialty pharmacy services" and "Understand the potential for 340B impact," "Most" covered entities "lack product access" and "payer contracts" to develop their own specialty drug program. So covered entities must rely on contract pharmacies, including the market dominator, CVS, for access to specialty drugs in their 340B programs.

III. 340B program administrators, including RxStrategies

40. Covered entities remain responsible for ensuring that the contract pharmacies they engage comply with the 340B statutory and regulatory regime, including HRSA guidance. Navigating this regime is an extremely complicated and data-driven undertaking:

the information required to track and monitor eligible dispensations and to prevent duplicate discounts often resides in different databases within a covered entity, so manually attempting to gather and reconcile this information can prove very costly and significantly increase the risk of 340B program non-compliance. So for most covered entities that participate in the 340B program and utilize contract pharmacies, the solutions offered by 340B program administrators are essential, particularly for ensuring compliance. Among other things, these solutions enable covered entities to monitor 340B eligibility, inventory reconciliation and replenishment, invoicing, and auditing. 340B administrators also support covered entities in identifying contract pharmacies to include in the covered entities' networks, negotiating dispensing agreements, including fee structures, and helping to manage contract pharmacy relationships. For these services, many 340B program administrators charge covered entities a fee through various models, typically on a fixed fee schedule.

41. RxStrategies is a leading and innovative 340B program administrator. Since 2003, RxStrategies has provided accountability, transparency, and value-based solutions for participants in the 340B drug pricing program, including hospitals, community health centers, and contract pharmacies. RxStrategies is well-known for providing outstanding 340B program integrity, compliance, and personalized customer service.

42. In 2017, RxStrategies served more than 1,200 covered entities and their contract pharmacies. With its different solution offerings, RxStrategies helped those covered entities to realize over $113 million in 340B program savings on roughly 2.2 million prescriptions, enabling them to deliver 340B program benefits to nearly 227,000 patients.

43. With its 340BPlus Split Billing Solution, RxStrategies provides end-to-end 340B program management with a focus on program compliance. Key elements of the 340B Split Billing Solution include data integrity assurance, errors and omissions identification, and prescription eligibility monitoring.

44. With its 340B Compliance*Plus* Solution, RxStrategies assists covered entities to efficiently and transparently succeed in each critical HRSA compliance area, including registration, duplicate discount avoidance, and audit support.

45. With its 340BPlus Contract Pharmacy Solution, RxStrategies helps retail pharmacies navigate the complexities of 340B program participation, from identifying potential covered entity partners and performing feasibility studies, to contracting and recurring management of the contract pharmacy relationship. What's more, RxStrategies brought the single fee concept to the 340B contract pharmacy market. While the dispensing fee negotiation—and contract—is between the covered entity and the contract pharmacy, RxStrategies plays an important role in the relationship: it is responsible for eligibility, program compliance, and drug replenishment to the contract pharmacy. The single fee provides a simple barometer for the contract pharmacy to determine the value of its 340B activity and gives the covered entity predictability for this cost component of the 340B program. Most importantly, the single fee constitutes a fair fee comprised of: 1) the pharmacy cost and 2) RxStrategies' margin. RxStrategies' fixed fee concept allows covered entities to negotiate fair and reasonable contracts with their pharmacies, which in turn are able to realize fair profit margins. As a result, the mission of the 340B program has been realized: contract pharmacy networks have expanded, resulting in expanded patient care and

services have expanded. In sum, RxStrategies has brought transparency and discipline to the 340B program. This discipline delivers fair margins to the program's participants, while ensuring that they remain in compliance with the program's complicated rules and regulations.

46. With its Specialty Contract Pharmacy Solution, RxStrategies provides covered entities with access to all specialty drug providers, analyses to help covered entities determine which specialty drug networks will maximize capture rates and savings under the 340B program, and can handle the end-to-end administration of contracting, implementation, formulary development, replenishment, reporting, accounting, and continued network optimization via quarterly stewardship reviews.

47. Finally, with its Enterprise Backbone, RxStrategies standardizes all of a customer's (covered entity or pharmacy) 340B business relationships onto one platform to maximize compliance, visibility, operational efficiency, capture rate, inventory reconciliation, and replenishment.

48. Each of RxStrategies' solutions is provided under multi-year exclusive contracts.

49. RxStrategies devotes substantial resources and investment—including time, effort, business intelligence, and expense—to prospecting, identifying, and developing covered entities interested in participating in the 340B program. Consistent with its reputation for outstanding and personalized customer service, RxStrategies deploys its professionals to study a covered entity and the patient community it serves in order to understand the covered entity's needs and goals for participation in the 340B program, and to

develop meaningful relationships with various individuals within the covered entity. RxStrategies views the very detailed information it gathers from its covered entity customers and prospective customers as valuable, proprietary, confidential, and trade secret information, and takes appropriate measures to protect its confidentiality and to prevent its disclosure. These measures include restricting access to authorized users only via password-protected portals.

IV. Wellpartner

50. As of 2017, Wellpartner was an independent 340B program administrator and a competitor with RxStrategies.

51. Since around 2002, Wellpartner has operated with a fairly small market share, and has been disfavored by many covered entities because it charges fees significantly above the industry standard.

52. Notably, in a post in the "thought leadership" section of its website's resource center, Wellpartner described the state of the 340B program industry:

> In 2017, <u>pharmacy chains will support administration through all the major TPAs</u>, providing an opportunity for Covered Entities to consolidate vendors, thereby simplifying their oversight process. This will allow Covered Entities to gain greater control and reduce risks related to both eligibility determination and 340B inventory reconciliation.
>
> <u>No longer will Covered Entities have to select a TPA based on exclusive access to a particular pharmacy chain.</u> Since all the major pharmacy chains are now available through a standardized process and fee schedule, what was once a primary TPA selection criterion (pharmacy access) is now moot. Covered Entities can focus on narrowing down their 340B administrative relationships and evaluate which solution offers the best transparency and oversight for 340B Program compliance.

A copy of the Wellpartner post, *Third Party Administration, Opportunities for Covered Entities to Improve Oversight*, is available at https://www.wellpartner.com/thought-leadership/third-party-administration-opportunities-for-covered-entities-to-improve-oversight/, and is attached as Exhibit 1.

V. The project with CVS

53. In 2016, CVS approached RxStrategies about a project: for RxStrategies to serve as a 340B program administrator for CVS, including the design, build, implementation, and management of a software backbone solution for RxStrategies' covered entity customers to use CVS as a contract pharmacy.

54. Because RxStrategies' covered entity customers viewed CVS as an essential contract pharmacy for the continued viability of their 340B programs, they were eager to participate in and support the project and the development and implementation of the backbone.

55. On May 5, 2016, RxStrategies and CVS entered into a mutual nondisclosure agreement to facilitate the project. A copy of the mutual non-disclosure agreement is attached as Exhibit 2.

56. Over the course of the next year and a half, RxStrategies designed, built, tested, and cooperated in lengthy and onerous third-party audits of the backbone that took significant time and imposed considerable expense—and in the process—shared with CVS protected, sensitive, confidential, proprietary information, and trade secret information, including proprietary data configurations and specifications, and detailed and valuable customer identities and information. RxStrategies also conducted multiple telephone

conferences with its current and prospective covered entity customers and CVS. During these telephone conferences, CVS obtained very detailed information about the covered entities: information developed and acquired only through RxStrategies' relationship with the covered entities, and including but not limited to, the covered entity's needs and goals for participation in the 340B program as well as very technical information specific to each covered entities' 340B program. This information provided CVS with invaluable insight into the software needs of each covered entity as well as the depth and breadth of the services RxStrategies provided or was negotiating to provide to the covered entity. With this information, CVS acquired a virtual tour of RxStrategies' system, including its proprietary and highly valuable processes, as well as RxStrategies existing and prospective customer base. RxStrategies would never have shared this information with CVS without the protections and prohibitions afforded by the mutual non-disclosure agreement. And RxStrategies would never have participated in the project without assurances from CVS to RxStrategies and RxStrategies' covered entity customers that the backbone developed under the project would be implemented and activated.

VI. CVS and Wellpartner's anticompetitive, tortious, and unfair conduct

57. As 2018 approached, CVS again assured RxStrategies and its covered entity customers that an activation date for the backbone was imminent.

58. But on December 18, 2017, CVS shocked RxStrategies and its covered entity customers and announced that instead of activating the backbone built by RxStrategies, CVS instead had acquired Wellpartner to serve as "the exclusive 340B program administrator for

all CVS retail and specialty pharmacies." A copy of one version of the announcement is attached as Exhibit 3.

59. What's more, CVS announced it would "transition all covered entities to Wellpartner by December 31, 2018." A copy of a version of the announcement containing the mandatory transition deadline is attached as Exhibit 4.

60. In other words, with its shocking announcement, CVS unexpectedly terminated the backbone project with RxStrategies (and RxStrategies' covered entity customers), and CVS did exactly what Wellpartner had previously posted was no longer the 340B norm: force covered entities to select a 340B program administrator based on exclusive access to a particular pharmacy chain: CVS.

61. Because this shocking announcement signaled the demise of the backbone project, it caused RxStrategies significant loss of goodwill with its covered entity customers that were expecting to access CVS through the backbone.

62. CVS's mandate that covered entities use Wellpartner as their 340B program administrator to gain access to CVS as a contract pharmacy is a gross deviation from prevailing 340B industry practice, CVS's previous practice, and a flagrant rejection of the backbone project that CVS initiated with RxStrategies. No other major contract pharmacy chain forces covered entities to purchase 340B administration services from it in order to purchase contract pharmacy services, and CVS hasn't in the past, either. Instead, like its major competitors, CVS previously worked with several different 340B administrators. Indeed, Walgreens, arguably CVS's single biggest competitor, does not force covered entities to abandon their 340B administrators to gain access to its pharmacies. Nor does Walmart.

RxStrategies' covered entity customers view CVS's mandate as unwelcome, alarming, and highly inefficient, and a nothing more than a way to force an inferior product upon otherwise unwilling customers.

63. RxStrategies has since learned that—in violation of the nondisclosure agreement—CVS has shared with Wellpartner RxStrategies' valuable, proprietary, confidential, and trade secret information, including detailed customer information. CVS and Wellpartner are, in turn, using that customer information to contact RxStrategies' customers. The purpose of the contact is clear: to interfere with RxStrategies' exclusive and contractual relationships with its customers, to interference with RxStrategies' relationships with its prospective customers, to unfairly compete with RxStrategies, and ultimately, to eliminate competition in the 340B administrator marketplace.

64. Immediately following the shocking December 18, 2017 announcement, Wellpartner salespeople wasted no time and privately contacted many covered entities, including RxStrategies' customers and prospective customers. These salespeople confirmed that the covered entities must use Wellpartner as their exclusive 340B program administrator to gain access to CVS as a contract pharmacy, and that if the covered entities already had CVS as a contract pharmacy within their 340B network, the failure to switch quickly to Wellpartner would result in the cancellation of their pharmacy contracts with CVS. To effectuate the switch, Wellpartner provided RxStrategies' covered entity customers with mandatory and non-negotiable pharmacy contract amendments. A copy of one of the amendments is attached as Exhibit 5. To promote Wellpartner's capabilities to the detriment of RxStrategies, Wellpartner salespeople falsely claimed that RxStrategies would never have

been able to administer their 340B program with CVS through the backbone RxStrategies built. And Wellpartner salespeople also promoted replacing RxStrategies with Wellpartner as the 340B program administrator for RxStrategies' covered entity customers' entire 340B programs, and implied that in the future, this replacement would be necessary to maintain continued access to CVS as a contract pharmacy.

65. RxStrategies' detailed, protected, confidential, and valuable customer information is far from the only information that CVS improperly shared with Wellpartner. Rather, in violation of its mutual nondisclosure agreement with RxStrategies, CVS shared with Wellpartner, among other things, proprietary configurations and data specifications of RxStrategies' 340B software platform. CVS and Wellpartner know that they obtained and are using this information improperly. Without this information, it's implausible that Wellpartner salespeople would be able to pressure RxStrategies' covered entity customers to switch—much less to actually effectuate the switch—from RxStrategies to Wellpartner for 340B administration services on such an accelerated schedule.

66. So CVS has left RxStrategies' covered entity customers with a Hobson's choice: use Wellpartner as their exclusive 340B program administrator (which they would never otherwise do), or not have CVS—<u>the</u> essential contract pharmacy—in their 340B networks. There also is no true choice because it's not financially feasible for most covered entities to engage with multiple 340B program administrators, and because the risk of non-compliance grows with every additional 340B program administrator due to the scattered location of data and the lack of a single data portal or dashboard. For these reasons, covered entities prefer to use a single 340B program administrator: before CVS forced them to use

Wellpartner, none of RxStrategies' over 1,200 covered entity customers used any 340B program administrator except for RxStrategies.

67. CVS and Wellpartner knew that RxStrategies provided 340B solutions to its covered entity customers under written agreements, and knew that many of the covered entities that Wellpartner contacted and attempted to switch from RxStrategies to Wellpartner for 340B program administration services were under contract, and enjoyed a business relationship, with RxStrategies. But to add insult to injury, and upon information and belief, Wellpartner salespeople are pressuring covered entities to switch to Wellpartner by misleadingly and incorrectly informing them that making the switch will not constitute a breach of their agreements with their existing 340B program administrators, including RxStrategies. On December 27, 2017, RxStrategies contacted CVS and Wellpartner in writing and demanded that they cease and desist their improper conduct, including interfering with RxStrategies' covered entity customers. To date, upon information and belief, Wellpartner continues to contact RxStrategies' covered entity customers.

68. Many of RxStrategies' customers have expressed that they see no choice but to use Wellpartner as their 340B program administrator to be able to include CVS as a contract pharmacy in their 340B program. Using Wellpartner will constitute a breach of their contracts with RxStrategies. One covered entity has informed RxStrategies that Wellpartner's above-market fees will negatively impact the covered entity's 340B program, and that the covered entity has grave concerns about Wellpartner's service levels. Because of its history of providing outstanding 340B program integrity, compliance, and personalized customer service, several covered entities have expressed a desire to retain RxStrategies to

administer the non-CVS portion of their 340B programs, but don't know whether doing so is financially feasible. Many—if not most—of RxStrategies' covered entity customers chose it as their 340B program administrator after an extensive vetting processes. After years of RxStrategies providing them with critical and valuable data at a single point of access, along with maintaining compliance, they have developed a very high comfort level with RxStrategies. Absent CVS's mandate, RxStrategies' covered entity customers would not even consider using Wellpartner and would have no reason to do so.

69. Among others, two of RxStrategies' largest covered entity customers have succumbed to CVS's mandate and have begun working with Wellpartner to gain access to CVS for specialty drugs. Upon information and belief, other covered entities have also succumbed and agreed to use Wellpartner as their 340B program administrator to gain access to CVS as a contract pharmacy in their 340B network. And several of RxStrategies' potential covered entity customers have postponed or declined executing agreements with RxStrategies because of CVS's mandate. In addition, at least one of RxStrategies' contract pharmacy customers has terminated its contract with RxStrategies because of CVS's conduct.

70. In addition to the impact on RxStrategies and its covered entity customers, CVS's activities with Wellpartner promote anticompetitive practices and violate the notion of the public good. The 340B program was established to provide covered entities with savings to allow them to provide expanded care and services to the community. Unlike RxStrategies (and other 340B administrators), upon information and belief, Wellpartner charges a fixed fee plus a percentage of margin. This fee concept saps a disproportionate share of the potential savings from the intended target of the 340B program—the covered entities—and

diverts it to the coffers of the contract pharmacy (CVS) and its administrator (Wellpartner). Given CVS's significant—if not dominant—market position, covered entities will likely be forced to accept these unreasonably high fees just to have access to some incremental cash flow. But this cash flow is just a fraction of what it would be in a competitive 340B administrator and contract pharmacy market with a single, fixed fee structure.

71. The proposed CVS-Aetna merger, if approved, would further exacerbate these anticompetitive practices to the detriment of the 340B program's intended beneficiaries: covered entities and their patients. Post-merger, Aetna would exist as CVS's captive in-network insurer, so the combined company would have every incentive to apply downward pressure on 340B drug purchase prices, as close to the 340B ceiling prices as possible. But they would have no incentive to reduce their dispensing and administrative fees. So the net result would be reduced or eliminated 340B savings available to covered entities to put toward patient services.

72. In sum, CVS and Wellpartner's actions and communications leave no doubt about their intent: to unfairly exclude and eliminate competition in the 340B marketplace. The result will be to maximize their profits at the expense of the intended beneficiaries of the 340B program: the covered entities and the communities they serve.

Count One
Illegal Tying under the Sherman Act

73. RxStrategies alleges and incorporates by reference the allegations in paragraphs 1 through 72.

74. This is an action, under the Sherman Act, 15 U.S.C. § 1, for illegal tying.

75. 340B contract pharmacy services and 340B program administration services are separate products. Historically, covered entities have purchased the separate products from different providers: 340B contract pharmacies and 340B program administrators. Covered entities view purchasing these products separately as ideal and efficient, partially because purchasing 340B contract pharmacy services and 340B program administration services from different providers contributes to the formation of large and diverse networks of competing contract pharmacies.

76. 340B contract pharmacy services are the "tying" product and 340B program administration services the "tied" product.

77. That covered entities have succumbed to CVS's mandate, and agreed to use Wellpartner as their 340B program administrator to gain access to CVS as a contract pharmacy in their 340B network, is evidence of CVS's actual coercion. That other covered entities believe switching to Wellpartner as their exclusive 340B program administrator to gain access to CVS as a contract pharmacy is inevitable to preserve the viability of their 340B networks is further evidence of CVS's actual coercion. CVS's mandate that covered entities use Wellpartner as their 340B program administrator coerces covered entities to purchase 340B program administration services from Wellpartner not because they want to, but only because they must to access CVS as a contract pharmacy.

78. CVS wields substantial—and often dominant—market power over the tying product, as demonstrated by CVS's ability to impose the burdensome tie of contract pharmacy services and 340B program administration services upon covered entities, forcing covered entities to purchase 340B program administration services from Wellpartner, which

they would otherwise not in a competitive market. 340B contract pharmacies compete based on factors that include dispensing fees, location, drug availability, and dispensing volume. Covered entities value 340B contract pharmacies located nearby, since proximity generally provides greater convenience to the covered entities' patients. Because 71 percent of the United States' population lives within five miles of a CVS and 82 percent lives within ten miles, CVS possesses tremendous market power based on location alone to provide 340B contract pharmacy services to covered entities' patients. And the market for 340B contract pharmacy services imposes several barriers to entry upon new competitors, including the invaluable access to specialty drugs and the significant expense of obtaining and maintaining physical locations proximate to covered entities and their patients. CVS's ability to force covered entities to purchase 340B administration services from Wellpartner is evidence of CVS's market power over the tying product.

79. CVS's mandate that covered entities use Wellpartner as their 340B program administrator to gain access to CVS as a contract pharmacy has anticompetitive effects in the tied market. Forcing covered entities to purchase 340B program administration services from Wellpartner will substantially foreclose competing 340B program administrators, harming competition on the merits in the 340B program administration market. Covered entities forced to use Wellpartner as their 340B program administrator to gain access to CVS as a contract pharmacy will pay higher fees for program administration services than they would in an unrestrained market. Foreclosing competing 340B program administrators from providing services to covered entities will deprive the 340B program administrators, including RxStrategies, of economies of scale, experiential innovation, and commercial

validation. It will also reduce or deprive competing 340B program administrators, including RxStrategies, of the ability to impose competitive disciplines on the price and terms of service imposed upon covered entities by CVS and Wellpartner. And because covered entities prefer to use a single program administrator, forcing covered entities to use Wellpartner as their 340B program administrator to gain access to CVS as a contract pharmacy will also force many covered entities to use Wellpartner for all the covered entities' 340B program administration services, not just the CVS component of their 340B networks.

80. In 2017, covered entities purchased over $16 billion of discounted drugs through the 340B program in which CVS is a dominant contract pharmacy and the dominant specialty pharmacy. Under any calculation, a not insubstantial volume of commerce is impacted by CVS's tie of contract pharmacy services with 340B program administration services.

Count Two
Breach of Contract

81. RxStrategies alleges and incorporates by reference the allegations in paragraphs 1 through 72.

82. This is an action for breach of contract.

83. To facilitate the project with CVS for RxStrategies to design, build, implement, and manage a backbone for RxStrategies' covered entity customers to use CVS as a contract pharmacy, on May 5, 2016, RxStrategies and CVS entered into a contract: a mutual nondisclosure agreement. A copy of the mutual non-disclosure agreement is attached as Exhibit 2.

84. Under the mutual nondisclosure agreement, CVS agreed to keep the information it received from RxStrategies confidential and agreed not to disclose the information, except with the prior written consent of RxStrategies. *See* Exhibit 2 ¶ 4.

85. At no point did RxStrategies provide consent, written or otherwise, for CVS to disclose the information to Wellpartner.

86. CVS materially breached the mutual nondisclosure agreement when it failed to keep confidential and disclosed information it received from RxStrategies to Wellpartner.

87. Under the mutual nondisclosure agreement, CVS agreed that RxStrategies is entitled to seek injunctive or other equitable relief for CVS's breach.

88. As a result of CVS's breach, RxStrategies has suffered damages.

Count Three
Tortious Interference with a Contractual Relationship

89. RxStrategies alleges and incorporates by reference the allegations in paragraphs 1 through 72.

90. This is an action for tortious interference with a contractual relationship.

91. RxStrategies has had contractual relationships with its covered entity customers. These relationships are formalized with multi-year contracts that identify RxStrategies as the exclusive 340B program administrator for the covered entities.

92. CVS and Wellpartner have had knowledge of RxStrategies' contractual relationships with its covered entity customers.

93. CVS and Wellpartner have engaged in intentional and unjustified interference with RxStrategies' contractual relationships with its covered entity customers. Despite the existence of RxStrategies' contracts with its covered entity customers that identify

RxStrategies as the exclusive 340B program administrator for the covered entities, CVS and Wellpartner have contacted RxStrategies' covered entity customers and demanded that they use Wellpartner as their exclusive 340B program administrator to gain access to CVS, or if the covered entities already had CVS as a contract pharmacy within their 340B network, the failure to switch quickly to Wellpartner would result in the cancellation of their pharmacy contracts with CVS.

94. CVS and Wellpartner's interference with RxStrategies' contractual relationships with its covered entity customers has caused and will continue to cause RxStrategies damage.

95. There is no plain, speedy, or adequate remedy at law, and unless CVS and Wellpartner are enjoined from further tortious interference with RxStrategies' contractual relationships, RxStrategies will be irreparably injured.

Count Four
Tortious Interference with a Business Relationship

96. RxStrategies alleges and incorporates by reference the allegations in paragraphs 1 through 72.

97. This is an action for tortious interference with a business relationship.

98. RxStrategies has had business relationships with its covered entity customers and prospective customers.

99. CVS and Wellpartner have had knowledge of RxStrategies' business relationships with its covered entity customers and prospective customers.

100. CVS and Wellpartner have engaged in intentional and unjustified interference with RxStrategies' business relationships with its covered entity customers and prospective

customers. CVS and Wellpartner have contacted RxStrategies' covered entity customers and prospective customers and demanded that they use Wellpartner as their exclusive 340B program administrator to gain access to CVS, or if the covered entities already had CVS as a contract pharmacy within their 340B network, the failure to switch quickly to Wellpartner would result in the cancellation of their pharmacy contracts with CVS.

101. CVS and Wellpartner's interference with RxStrategies' business relationships with its covered entity customers and prospective customers has caused and will continue to cause RxStrategies damage.

102. There is no plain, speedy, or adequate remedy at law, and unless CVS and Wellpartner are enjoined from further tortious interference with RxStrategies' business relationships, RxStrategies will be irreparably injured.

Count Five
Misappropriation of Trade Secrets under 18 U.S.C. § 1836

103. RxStrategies alleges and incorporates by reference the allegations in paragraphs 1 through 72.

104. This is an action for misappropriation of trade secrets under 18 U.S.C. § 1836.

105. CVS and Wellpartner misappropriated RxStrategies' trade secrets, including but not limited to, proprietary data configurations and specifications and detailed and valuable customer information, when RxStrategies shared them with CVS, reasonably believing that CVS was prohibited—and RxStrategies was protected—by the mutual nondisclosure agreement from the unauthorized acquisition, use, or disclosure of its trade secrets.

106. RxStrategies' trade secrets derive independent economic value, both actual and potential, from not being generally known to, and not being readily ascertainable by proper means by, third parties, including competitors, who can obtain economic value from their disclosure or use.

107. At the time CVS and Wellpartner misappropriated RxStrategies' trade secrets, CVS was bound by the mutual nondisclosure agreement and therefore knew or had reason to know that its knowledge of RxStrategies' trade secrets was acquired under circumstances giving rise to a duty to maintain their secrecy or limit their use.

108. At no point did RxStrategies provide consent, written or otherwise, for CVS to disclose RxStrategies' trade secrets to Wellpartner.

109. CVS knew or had reason to know that when it acquired RxStrategies' trade secrets, it intended to disclose them to Wellpartner through improper means. CVS willfully and maliciously acquired, used, and disclosed RxStrategies' trade secrets to Wellpartner through improper means, including through interstate commerce.

110. Wellpartner knew or had reason to know that it acquired RxStrategies' trade secrets through improper means. Wellpartner willfully and maliciously acquired and used RxStrategies' trade secrets.

111. As a result of CVS and Wellpartner's misappropriation of RxStrategies' trade secrets, RxStrategies has suffered actual damages in the form of the actual loss caused by the misappropriation, and the unjust enrichment caused by the misappropriation that is not taken into account in computing the actual loss.

Count Six
Misappropriation of Trade Secrets under Chapter 688 of the Florida Statutes

112. RxStrategies alleges and incorporates by reference the allegations in paragraphs 1 through 72.

113. This is an action for misappropriation of trade secrets under section 688.001, et seq., of the Florida Statutes.

114. CVS and Wellpartner misappropriated RxStrategies' trade secrets, including but not limited to, proprietary data configurations and specifications and detailed and valuable customer information, when RxStrategies shared them with CVS, reasonably believing that CVS was prohibited—and RxStrategies was protected—by the mutual nondisclosure agreement from the unauthorized acquisition, use, or disclosure of its trade secrets.

115. RxStrategies' trade secrets derive independent economic value, both actual and potential, from not being generally known to, and not being readily ascertainable by proper means by, third parties, including competitors, who can obtain economic value from their disclosure or use.

116. At the time CVS and Wellpartner misappropriated RxStrategies' trade secrets, CVS was bound by the mutual nondisclosure agreement and therefore knew or had reason to know that its knowledge of RxStrategies' trade secrets was acquired under circumstances giving rise to a duty to maintain their secrecy or limit their use.

117. At no point did RxStrategies provide consent, written or otherwise, for CVS to disclose RxStrategies' trade secrets to Wellpartner.

118. CVS knew or had reason to know that when it acquired RxStrategies' trade secrets, it intended to disclose them to Wellpartner through improper means. CVS willfully and maliciously acquired, used, and disclosed RxStrategies' trade secrets to Wellpartner through improper means.

119. Wellpartner knew or had reason to know that it acquired RxStrategies' trade secrets through improper means. Wellpartner willfully and maliciously acquired and used RxStrategies' trade secrets.

120. As a result of CVS and Wellpartner's misappropriation of RxStrategies' trade secrets, RxStrategies has suffered actual damages in the form of the actual loss caused by the misappropriation, and the unjust enrichment caused by the misappropriation that is not taken into account in computing the actual loss.

Count Seven
Violations of the Florida Deceptive and Unfair Trade Practices Act

121. RxStrategies alleges and incorporates by reference the allegations in paragraphs 1 through 72.

122. This is an action for deceptive and unfair trade practices under the Florida Deceptive and Unfair Trade Practices Act, section 501.201, et seq., Florida Statutes.

123. CVS and Wellpartner have engaged in unfair or deceptive trade acts or practices by using RxStrategies' trade secrets and other protected, confidential, and valuable information, including detailed customer information, for commercial gain without permission from or compensation to RxStrategies.

124. CVS and Wellpartner's improper conduct also constitutes prohibited antitrust tying under the Sherman Act, 15 U.S.C. § 1.

125. As a result of CVS and Wellpartner's unfair and deceptive trade acts or practices, RxStrategies has suffered actual damages.

Request for Attorney's Fees

126. RxStrategies alleges and incorporates by reference the allegations in paragraphs 1 through 72.

127. Due to CVS and Wellpartner's unlawful conduct described above, RxStrategies retained the undersigned law firm to institute and prosecute this lawsuit, and RxStrategies is obligated to pay a reasonable fee for the firm's services.

128. RxStrategies is entitled to recovery of its reasonable attorneys' fees and costs under 15 U.S.C. § 15, 18 U.S.C. § 1836, and sections 501.211 and 688.005 of the Florida Statutes.

Prayer for Relief

129. RxStrategies requests the Court to:

a. Enjoin CVS and Wellpartner from engaging in the unlawful conduct described above;

b. For CVS and Wellpartner's antitrust violations, award RxStrategies:

i. Actual damages;

ii. Compensatory damages;

iii. Treble damages;

iv. Punitive damages;

v. Attorney's fees;

vi. Costs; and

vii. Interest;

c. For CVS and Wellpartner's tortious interference, award RxStrategies:

i. Actual damages;

ii. Compensatory damages;

iii. Consequential damages, including lost profits;

iv. Punitive damages;

v. Attorney's fees;

vi. Costs; and

vii. Interest;

d. For CVS and Wellpartner's misappropriation of trade secrets, award RxStrategies:

i. Actual damages;

ii. Compensatory damages;

iii. Consequential damages;

iv. Unjust enrichment;

v. A reasonable royalty;

vi. Exemplary damages in an amount of twice the total of the actual loss, the unjust enrichment, and the reasonable royalty including lost profits; and

vii. Attorneys' fees;

viii. Costs; and

ix. Interest;

e. For CVS and Wellpartner's deceptive and unfair trade practices, award RxStrategies:

i. Actual damages;

ii. Attorneys' fees;

iii. Costs; and

iv. Interest.

f. Enter judgment against CVS and Wellpartner and in favor of RxStrategies;

g. Award RxStrategies all further relief the Court finds just and proper.

Jury Trial Demand

RxStrategies demands a jury trial on all issues so triable.

Dated: May 3, 2018

Hill Ward Henderson

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