IN THE COURT OF THE CHANCERY OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

LOUISIANA MUNICIPAL POLICE EMPLOYEES' RETIREMENT SYSTEM, and THE R.W. GRAND LODGE OF FREE & ACCEPTED MASONS OF PENNSYLVANIA on behalf of themselves and all other similarly situated shareholders of Caremark RX, Inc. Plaintiffs, -v.- EDWIN M. CRAWFORD; C.A.LANCE PICCOLO, EDWIN M. BANKS; C. DAVID BROWN, II; COLLEEN CONWAY-WELCH; HARRIS DIAMOND; EDWARD L. HARDIN, JR.; KRISTEN E. GIBNEY-WILLIAMS; ROGER L. HEADRICK; JUAN-PIERRE MILLON; MICHAEL D. WARE; CAREMARK RX, INC and CVS CORPORATION, Defendants.	C.A. No. 2635-N

AMENDED CLASS ACTION COMPLAINT

Plaintiffs Louisiana Municipal Police Employees' Retirement System ("LAMPERS") and The R.W. Grand Lodge of Free & Accepted Masons of Pennsylvania ("Masons") (collectively, "Plaintiffs"), on behalf of themselves and all other similarly situated public shareholders (the "Class") of Caremark Rx, Inc.) (hereafter, "Caremark" or "the Company"), bring the following Complaint against Caremark, individual members of the Board of Directors of Caremark, and CVS Corporation ("CVS"), for their conduct in the sale of control of Caremark. The allegations of the Complaint are based on the personal knowledge of Plaintiffs as to themselves and on information and belief (including the investigation of counsel and review of publicly available information) as to all other matters.

NATURE AND SUMMARY OF THE ACTION

1. This action, brought by Plaintiffs on behalf of a class of similarly situated Caremark shareholders, seeks to hold the directors of Caremark accountable for the blatant breaches of their fiduciary duties to the Class by putting their own personal interests ahead of those of the Class in the sale of control of Caremark, and failing to maximize shareholder value in that sale.

2. As a result of the breaches of duty, Caremark has agreed to be acquired by CVS for slightly over $20 billion – a price offering *no premium at all* to Caremark's shareholders. In response, a competing bidder has publicly indicated its willingness to buy Caremark for more than *$5 billion* more than that offered by CVS. The Caremark Board is either hiding behind, or has improperly constrained its negotiating position by accepting, numerous "deal protection" provisions in the CVS transaction.

3. The process began in the fall of 2005, when E. Mac Crawford ("Crawford") engaged in discussions with CVS's CEO Thomas Ryan ("Ryan") about a possible business combination between their respective companies. Ryan made it clear however, that he was only interested in the acquisition of Caremark by CVS. Thus, it became clear that any resulting transaction would involve a sale of control of Caremark, effectively putting the Company in play. The Board, uninterested in fulfilling its fiduciary duties in this change of control context, allowed Crawford to continue negotiating the transaction.

4. Crawford took this authority and used it to his best advantage. He was careful to ensure that both he and the other Caremark Directors could retain lucrative positions with any surviving company, and could use the sale of Caremark to free themselves from significant personal liability in pending litigation alleging that they had backdated stock options awarded in the Company's compensation program. By the Fall of 2006, Crawford's discussions with CVS contemplated the acquisition of Caremark by CVS in an all-stock transaction that guaranteed Crawford the role of Chairman of the surviving corporation and many (if not all) of the other Caremark Directors directorships with the surviving corporation.

5. Crawford apparently had discussions with "other pharmaceutical benefits managers" about possible business combinations while negotiations with CVS were ongoing. These potential business combinations went nowhere fast, however, because they neither assured Crawford or the other Caremark Directors positions with the surviving company nor assured that Crawford or the other Caremark Directors would be released from personal liability on outstanding claims.

6. On November 1, 2006, CVS and Caremark announced that their respective boards of directors had entered into an agreement to merge the two companies. Under the terms of the transaction disclosed at that time, Caremark stockholders would receive 1.67 shares of CVS for every Caremark share they owned, representing a value of approximately $48.50 per Caremark share. Not only would the contemplated transaction offer *no control premium* to Caremark shareholders, but it substantially undervalued Caremark shares, which had closed above $55 per share only a month before the announcement of the sale to CVS. Indeed, although touted by the two companies as a "merger of equals," it was nothing of the sort. Caremark stockholders end up under the CVS deal not only with an inadequate price for their shares, but also with only 45.5

percent of a wholly-owned subsidiary of CVS. Consequently, the CVS deal, as contemplated, would cause the Caremark shareholders to cede control over the Company to CVS without the payment of *any* control premium whatsoever. But the transaction *did* provide substantial benefits to Crawford and the other Caremark Directors. For his part, Crawford is guaranteed the position of Chairman of the Board of the surviving company, and each of the other Caremark Directors could well become directors of the surviving corporation. Perhaps just as importantly, the merger agreement specifically releases each of the Caremark Directors, including Crawford, from significant personal liability for the backdating of options currently being pursued against them in other litigation.

7. Later, as the details of competing bids made their way into the marketplace, it became clear that Caremark had been up for sale. On November 8, 2006, for instance, *The Wall Street Journal* reported that Medco Health Solutions, Inc. ("Medco") had approached Caremark in the days leading up to the announcement of the CVS sale to propose its own transaction with Caremark, but that Medco was summarily rebuffed.

8. On December 18, 2006, another bidder, Express Scripts, Inc. ("E-Scripts"), announced an unsolicited bid for Caremark under which Caremark shareholders would receive the equivalent of $58.50 per Caremark share, approximately $10.50 per share *higher* than in the CVS transaction. This price represents an approximate 22% premium over the average closing price of Caremark stock since the November 1, 2006 announcement of the CVS deal. Moreover, the E-Scripts offer values Caremark at approximately $26 billion -- ***over $5 billion more than the value under the CVS transaction.***

9. Within hours of receiving E-Scripts' proposal, the Caremark Board publicly represented that it would review the terms of E-Scripts' offer. However, its true intentions

became clear on December 19, 2006, when, less than 24 hours later, Caremark and CVS issued a preliminary joint proxy statement announcing that the Caremark directors unanimously recommended to the Caremark stockholders the adoption of the merger agreement and the approval of the merger with CVS, pursuant to the terms as announced on November 1.

10. The true story is that Caremark has pressed full-speed ahead with the CVS deal, rather than pursuing alternatives that could offer shareholders higher returns, because Caremark Officers and Directors stand to gain substantial personal economic benefits from the CVS deal which either would not be available to them, or would not be available to them to the same lavish extent, under any of the alternative proposals. The Defendants have thus crafted the merger agreement between CVS and Caremark to include several defensive provisions – including a $675 million breakup fee – to deter competing bids and prevent the Caremark directors from exercising their fiduciary duties to obtain the best available price for Caremark's shareholders. These provisions increase the likelihood that the sale to CVS will be consummated and that Caremark's shareholders will receive no premium for their shares.

11. As discussed below, the Caremark Directors breached their fiduciary duties to Caremark's public shareholders by elevating their personal interests over those of the shareholders, and by failing to negotiate a sale of the Company that maximizes shareholder value. CVS, with full knowledge of the fiduciary obligations of the Caremark Directors, induced those directors to breach their fiduciary duties by offering them personal benefits in the form of lucrative and prestigious director positions and financial relief from liability on outstanding claims in exchange for foisting upon the Caremark shareholders a transaction that significantly undervalues their financial interests. Caremark is a signatory to the CVS Merger Agreement (defined below), which is challenged herein.

JURISDICTION

12. This Court has jurisdiction over this action pursuant to 10 Del. C. § 341.

PARTIES

13. Plaintiff Louisiana Municipal Police Employees' Retirement System ("LAMPERS") is a retirement system created in 1973 by State of Louisiana enabling legislation for the purpose of investing and providing retirement allowances and other benefits for full-time municipal police officers and employees in the State of Louisiana, secretaries to chiefs of police and employees of LAMPERS. LAMPERS is a stockholder of Caremark, has been a stockholder of Caremark at all material times alleged in this Complaint, and will continue to be a stockholder of Caremark through the conclusion of this litigation.

14. Plaintiff The R.W. Grand Lodge of Free & Accepted Masons of Pennsylvania ("Masons"), part of the oldest and largest fraternity of freemasons in the world, is headquarters in Philadelphia, Pennsylvania, with approximately $500 million in assets. Masons is a stockholder of Caremark, has been a stockholder of Caremark at all material times alleged in this Complaint, and will continue to be stockholder of Caremark through the conclusion of this litigation.

15. Defendant Caremark Rx, Inc. ("Caremark") is a Delaware Corporation that was founded in 1993. Caremark is headquartered in Nashville, Tennessee and is a leading provider of prescription benefit services in the United States, serving millions of plan participants, including participants in corporate health plans, managed care organizations, insurance companies, union, government agencies and other funded benefit plans. Caremark is a party to the Agreement and Plan of Merger, dated November 1, 2006, between Caremark and CVS Corporation and Twain MergerSub Corp. (an entity created for purposes of the transaction) (the "CVS Merger Agreement").

16. Crawford is Chairman of the Board of Directors of Caremark, a position he has held since December 1998. Crawford has served as Chief Executive Officer and as a director of the Company since March 1998. He also served as President of the Company from March 1998 until May 2000, and, effective March 24, 2004, he re-assumed the role of President. Crawford is a defendant in *In re Caremark, Rx, Inc. Deriv. Litig.*, Master Docket No. 3:06-cv-00535 (M.D. Tenn.) (hereafter, the "*Caremark Backdating Case*") where it is alleged that he breached his fiduciary duties to Caremark by knowingly approving stock option backdating practices at Caremark. As a result, it is alleged in the backdating case that he received at least 4,625,000 improperly backdated stock options which he exercised and sold for over $262 million in proceeds. The complaint seeks the return of those proceeds less the exercise price.

17. Edwin M. Banks ("Banks") is a member of the Board of Directors of Caremark, a position he has held since May 2000. Banks is a defendant in the *Caremark Backdating Case* where it is alleged that he breached his fiduciary duties by knowingly approving and personally benefiting from the stock option backdating practices at Caremark.

18. C. David Brown, II ("Brown") is a member of the Board of Directors of Caremark, a position he has held since March 2001. Brown is a defendant in the *Caremark Backdating Case* where it is alleged that he breached his fiduciary duties by knowingly approving the stock option backdating practices at Caremark.

19. Colleen Conway-Welch ("Conway-Welch") is a member of the Board of Directors of Caremark, a position she has held since May 2001. Conway-Welch is a defendant in the *Caremark Backdating Case* where it is alleged that she breached her fiduciary duties by knowingly approving the stock option backdating practices at Caremark.

20. Harris Diamond ("Diamond") is a member of the Board of Directors of Caremark, a position he has held since May 2000. Diamond is a defendant in the *Caremark Backdating Case* where it is alleged that he breached his fiduciary duties by knowingly approving and personally benefiting from the stock option backdating practices at Caremark.

21. Edward L. Hardin, Jr. ("Hardin") is a member of the Board of Directors of Caremark, a position he has held since May 2000. He has been Executive Vice President and General Counsel of the Company since June 1998. Hardin is a defendant in the *Caremark Backdating Case* where it is alleged that he breached his fiduciary duties by knowingly approving and personally benefiting from the stock option backdating practices at Caremark.

22. Kristen E. Gibney Williams ("Williams") is a member of the Board of Directors of Caremark, a position she has held since February 1999. Williams served in the capacity of President of the Prescription Benefits Management Division of Caremark International, Inc. until June 1993 and as Corporate Vice President of the Prescription Benefits Management Division of Caremark International, Inc. from June 1993 to January 1997. Caremark acquired Caremark International, Inc. in September 1996. Williams is a defendant in the *Caremark Backdating*

Case where it is alleged that she breached her fiduciary duties by knowingly approving and personally benefiting from the stock option backdating practices at Caremark.

23. Roger L. Headrick ("Headrick") is a member of the Board of Directors of Caremark, a position he has held since September 1996. He was named "lead director" in February 2004. Headrick is a defendant in the *Caremark Backdating Case* where it is alleged that he breached his fiduciary duties by knowingly approving and personally benefiting from the stock option backdating practices at Caremark.

24. Jean-Pierre Millon ("Millon") is a member of the Board of Directors of Caremark, a position he has held since March 2004. Millon is a defendant in the *Caremark Backdating Case* where it is alleged that he breached his fiduciary duties by knowingly approving and personally benefiting from the stock option backdating practices at Caremark.

25. C.A. Lance Piccolo ("Piccolo") is Vice Chairman of the Board of Directors of Caremark, and has been a member of the Caremark Board since September 1996. Piccolo is a former executive of Caremark International, Inc., which was acquired by Caremark in September 1996. In connection with that acquisition, Piccolo received over $2.8 million in severance payments from Caremark and a 10-year "consulting" contract that paid him an additional $5.4 million as well as providing him with numerous Company perquisites. Piccolo is also a defendant in the *Caremark Backdating Case* where it is alleged that he breached his fiduciary duties by knowingly approving and personally benefiting from the stock option backdating practices at Caremark.

26. Michael D. Ware ("Ware") is a member of the Board of Directors of Caremark, a position he has held since March 2004. Ware is a defendant in the *Caremark Backdating Case*

where it is alleged that he breached his fiduciary duties by knowingly approving and personally benefiting from the stock option backdating practices at Caremark.

27. The defendants named above in paragraphs 15 to 25 are sometimes referred to herein as the "Caremark Directors." Each of the Caremark Directors was a member of the Board of Caremark and participated in the decisions challenged below.

28. By reason of their positions, the Caremark Directors owed fiduciary duties to Caremark and its shareholders, including the obligations of loyalty, good faith, fair dealing, and due care. They were required to discharge their duties in a manner they reasonably believed to be in the best interests of Caremark and all its shareholders, and not in furtherance of their own personal interests or to benefit themselves.

29. Defendant CVS Corporation ("CVS") is a Delaware Corporation with its principal place of business at One CVS Drive, Woonsocket, Rhode Island. CVS is a leader in the retail drugstore industry in the United States with net sales of $37 billion in 2005. CVS is a party to the CVS Merger Agreement.

FACTUAL ALLEGATIONS

Caremark Negotiates a No-Premium Deal to be Acquired by CVS

30. On November 1, 2006, Caremark announced that it had entered into a "definitive merger agreement" with CVS (the "CVS Transaction"). Under the terms of the CVS Merger Agreement, Caremark shareholders would receive 1.67 shares of CVS for every Caremark share they own, representing an implied value of approximately $48.50 per Caremark share, based on the closing price for CVS stock on the last full day of trading before the deal was announced. In total, the proposed stock-for-stock transaction values Caremark at approximately $20.8 billion.

31. The CVS Transaction was the product of personal discussions between Caremark's CEO and Chairman Crawford and CVS's CEO and Chairman Thomas M. Ryan ("Ryan"), and ultimately not only guarantees Crawford a huge financial windfall that goes along with a "change in control" transaction, but also provides him with the added power and prestige that goes along with being the Chairman of a $75 billion-per-year pharmaceutical behemoth.

32. The discussions between CVS and Caremark began in October 2005 when Defendant Crawford of Caremark and CVS's Ryan met to discuss a potential "strategic transaction." Crawford and Ryan again met on November 22, 2005 to continue discussing a possible business combination. From December 2005 through March 2006, additional meetings were held, and third party consultants were retained to assess the strategic potential for a CVS / Caremark business combination. However, while there is some suggestion that CVS's Board of Directors were apprised and kept informed of these discussions, *there is no reference to any involvement by the Board of Directors of Caremark.* Thus, for all intents and purposes, the Caremark Board allowed itself to be left out of this process while Defendant Crawford drove the deal.

33. On March 14, 2006, Crawford and Ryan met again – this time discussing, among other things, the governance of the combined company, and its board composition.

34. Based on the Joint Proxy (as defined below), it appears that the first time that the Caremark Board was apprised of the potential business combination with CVS was in April 2006, when Crawford "met telephonically" with the Board and provided them with an "update" on his discussions with CVS and "other strategic opportunities." In April 2006 and August 2006, the Caremark Board met and received presentations from "senior management" regarding

potential strategic opportunities, including a potential transaction with a retail pharmacy chain, but not specifically referencing the CVS discussions.

35. After these two Board meetings, Crawford and Ryan met again over the course of two days in late August 2006. During these discussions, which again apparently included discussions of corporate governance and organizational matters, Crawford and Ryan agreed to move forward with the transaction.

36. On September 25, 2006, Crawford met with the Caremark Board, again by telephone, and provided the Board with an update of his discussions with CVS. During or after that call, the Caremark Board discussed the potential business combination with CVS that Crawford had presented. But by then, the general structure of the deal – including the board composition and Crawford's position with the new company – had already been negotiated and set without the Caremark Board's participation.

37. By early October 2006, Crawford and Ryan had dispatched third party representatives (*i.e.*, attorneys, accountants, and financial advisors) to their respective Boards to give legal, accounting and financial presentations. Both Boards authorized the commencement of due diligence reviews of their respective business operations. By October 9, the merger agreement was being drafted.

38. Also on October 9, Crawford "met with the chief executive officer of a pharmacy benefits management company to discuss, among other things, the possibility of a business combination." There is no indication that Crawford discussed this communication with the Caremark Board. These preliminary discussions with this "pharmacy benefits management company" demonstrated to Crawford that he and the other Caremark Directors would not be part of the surviving company. Those talks abruptly ended.

39. On October 12, 2006, CVS and Caremark representatives and each of their respective legal counsel met to discuss "current and pending litigation, regulatory and investigation matters facing the companies." Again, there is no indication that the Caremark Board was involved in or apprised of these negotiations. Instead, the next time the Caremark Board was apprised of anything was on October 20, 2006, when they were informed by telephone by "Caremark's senior management, legal counsel and financial advisors" that the negotiations with CVS had resulted in a draft merger agreement for their review.

40. On October 25, 2006, the Caremark Board met by telephone to discuss the draft merger agreement with CVS. The Caremark Board discussed the exchange ratio for the shares to be tendered for the potential transaction.

41. Five days later, on October 30, 2006, the Caremark Board met again by telephone with Defendant Crawford and senior management's third party legal and financial representatives to discuss the CVS Transaction. The Joint Proxy (as defined below) contends that the Caremark Board received numerous presentations from unidentified members of senior management and from unidentified third-party advisors. At the conclusion of this meeting, the Caremark Board authorized senior management to move forward on the deal.

42. Two days later, on November 1, 2006, the CVS Merger Agreement was finalized by senior management of CVS and Caremark and their respective representatives, and the CVS Merger Agreement was presented to and approved by the respective Boards of Caremark and CVS.

The Terms of the CVS Transaction Provide No Control Premium

43. The CVS Transaction offers ***no premium*** to Caremark shareholders. Indeed, at $48.50, the CVS Transaction substantially undervalues Caremark shares, which closed above

$55 per share approximately one month before the November 1 announcement of the deal and above $59 per share as recently as late-September 2006. Further, as one securities analyst noted, Caremark "purchased 1.8 M shares at an average price of $56.67 in Q306, illustrating that at least at that time management believed the shares were worth more."

44. As justification for this inadequate price, Caremark and CVS characterized the transaction as a "merger of equals" that did not warrant any premium to Caremark's shareholders. For example, the following appeared in a "CVS/Caremark Merger Q&A," included in an SEC Form 425 filing on November 3, 2006:

> [Q:] Why no premium?
>
> [A:] This is a merger of equals, combining two leaders in their respective industries, to create the premier integrated pharmaceutical services provider.

45. This is not a merger of equals. It is a merger that divests the Caremark shareholders of control and puts it in the hands of CVS and its shareholders. On a pro forma basis, CVS stockholders will own a controlling 54.5% of the combined company while Caremark stockholders will own only 45.5%. Likewise, the CVS Transaction would leave the surviving Caremark corporation as a wholly-owned subsidiary of CVS, with much of Caremark's current executive management continuing to serve as officers of that subsidiary entity. As noted in a November 8, 2006 article in *The Wall Street Journal* discussing the CVS Transaction, the term "merger of equals" is "[t]oo often . . . just a phrase to paper over the fact that the proposed price is cheap." In fact, the CVS Transaction sells control of Caremark to CVS without the Caremark shareholders receiving any premium for giving up control of their Company.

46. The fact that the CVS Transaction *is* a "change-in-control" transaction – and not the "merger of equals" that CVS and Caremark claim – is proven by the Merger Agreement itself, where it details the payout of over $71.6 million to Caremark's named executive officers "Resulting from the Change in Control." Thus, regardless of what CVS or Caremark would like to call the purported CVS Transaction now, Caremark and Caremark's shareholders know exactly what to call it – it is a "change-in-control" transaction because that is how they defined this type of transaction for themselves in, among other places, the employment agreements for the named executives officers.

47. Moreover, the nature of the investment that Caremark shareholders own will be fundamentally changed and their only alternative will be to liquidate their position. Prior to the CVS Transaction, Caremark shareholders held an investment in one of the world's premier prescription benefits management companies. As a result of the transaction, Caremark shareholders will become investors in a fundamentally different business – a retail pharmacy with a prescription benefits management subsidiary. Thus, the Caremark in which shareholders invested will effectively come to an end. Accordingly, the CVS Transaction cannot be properly characterized as a merger of equals.

48. Securities analysts quickly criticized the value offered in the CVS Transaction as inadequate. For example, on November 1, 2006, a Wachovia analyst explained that "[t]he merger values CMX shares at a significant discount to the levels they traded at several weeks ago and we struggle to see why Caremark investors should be excited about this price." Similarly, on November 2, 2006, an AG Edwards analyst wrote that the "proposed buyout price (approximately $48) for CMX shares was below our expectation, leading us to wonder why

CMX could not secure a premium." This analyst noted further that the proposed price was "a far cry from our previous expectation of a $55-$60 per share possible buyout price."

49. The market's reaction was in accord with these analysts' negative views of the deal. The first reports of the likelihood of a Caremark/CVS merger occurred on October 31, 2006, after the market had already closed. Caremark's stock price increased on this news, opening on the following day—November 1, 2006—at $53.65 per share. Nevertheless, after the specific terms of the CVS Transaction were made public later that day, Caremark shares dropped precipitously, closing at $48.17.

50. The fallout from the announcement of the deal was swift and severe. In the two days subsequent to the announcement, Caremark stock was downgraded by analysts from First Albany, Wachovia, JMP Securities, Sun Trust Robinson Humphrey, and Susquehanna Financial. On November 3, 2006, this deal was listed as No. 1 of "The Five Dumbest Things on Wall Street This Week" by *TheStreet.com.*

51. Notably, in the months leading up to the announcement of the CVS Transaction, CVS was not the only entity to approach Caremark to discuss the possibility of a business combination. Rather, at least one other suitor appears to have sought such a merger or acquisition. According to an article published on November 8, 2006 in *The Wall Street Journal*, "Medco Health Solutions Inc. tried to strike a deal with rival pharmacy-benefits manager Caremark Rx Inc. in the days prior to Caremark reaching its $21 billion merger with drug chain CVS Corp."— an effort ultimately rebuffed by Caremark. By this point, the Caremark Board was obligated to follow a process that fully explored all alternatives that could lead to a higher price for Caremark.

The CVS Transaction and Merger Agreement Prevent the Caremark Directors from Fulfilling Their Fiduciary Duties to Caremark Shareholders.

52. The terms of the CVS Merger Agreement deter competing bids and prevent the Caremark Directors from exercising their fiduciary duties to obtain the best available price for Caremark's shareholders. The defensive provisions erect barriers to competing offers and function to substantially increase the likelihood that the CVS Transaction will be consummated, leaving Caremark's shareholders with no control premium. When viewed collectively, these provisions, which are detailed below, further the personal interests of the Caremark Directors and cannot be justified as an appropriate and proportionate response to any reasonable threat posed to Caremark's shareholders.

53. <u>$675 Million Termination Fee</u>: The Merger Agreement requires Caremark to pay to CVS the sum of $675 million in cash if Caremark terminates the CVS Merger Agreement, even if the agreement is terminated as a result of the Caremark Directors' recommendation in favor of a superior offer for Caremark shares. Thus, this $675 million termination fee deters the Caremark Directors from freely and effectively exercising their fiduciary judgment in the interests of Caremark shareholders and also discourages other potential bidders from emerging. Specifically, the Merger Agreement provides:

> If a Caremark Payment Event (as hereinafter defined) occurs, Caremark shall pay CVS (by wire transfer of immediately available funds), within two (2) Business Days following such Payment Event, a fee of $675,000,000.00. "Caremark Payment Event" means the termination of this Agreement pursuant to (x) Section 10.01(c)(i) or (y) Section 10.01(b)(i) or Section 10.01(b)(iii)(B) but (in the case of this clause (y)) only if (A) prior to Caremark Stockholder Meeting an Acquisition Proposal shall have been made to Caremark or shall have been made directly to the stockholders of Caremark generally or shall have otherwise become publicly known or any Person shall have publicly announced an intention (whether or not conditional and whether or not withdrawn) to make an Acquisition Proposal and (B) within 12 months following the date of such termination: (1) Caremark merges with or into, or is acquired, directly or indirectly, by merger or otherwise by, a Third Party; (2) a Third Party, directly or

> indirectly, acquires more than 50% of the total assets of Caremark and its Subsidiaries, taken as a whole; (3) a Third Party, directly or indirectly, acquires more than 50% of the outstanding shares of Caremark Stock or (4) Caremark or any Caremark Subsidiary(ies) shall have entered into any contract or agreement providing for any of the actions described in any of the immediately preceding clauses (1) through (3).

54. In turn, Section 10 of the Merger Agreement (referred to in the immediately preceding quotation) states, in relevant part:

> Termination. This Agreement may be terminated and the Merger may be abandoned at any time prior to the Effective Time (notwithstanding Caremark Stockholder Approval or CVS Stockholder Approval):
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> . . .
>
> (b) by either Caremark or CVS, if:
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> (i) the Merger has not been consummated on or before November 1, 2007 (the "End Date"); provided that, if on the End Date the condition to Closing set forth in Section 9.01(c) shall not have been satisfied but all other conditions to Closing shall be satisfied or waived, or shall be capable of being timely satisfied, then the End Date shall be extended to May 1, 2008; provided that the right to terminate this Agreement pursuant to this Section 10.01(b)(i) shall not be available to any party whose breach of any provision of this Agreement results in the failure of the Merger to be consummated by such time;
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> . . .
>
> (iii) (A) at the CVS Stockholder Meeting (including any adjournment or postponement thereof), the CVS Stockholder Approval shall not have been obtained, or (B) at the Caremark Stockholder Meeting (including any adjournment or postponement thereof), the Caremark Stockholder Approval shall not have been obtained; or
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> . . . .
>
> (c) by CVS, if:
>
> (i) if (A) Caremark's Board of Directors shall have made an Adverse Recommendation Change or (B) a willful and material breach by Caremark (directly or indirectly, through any director, officer, banker or counsel of Caremark) of Section 8.07 or by Caremark of the first sentence of Section 8.04(a) shall have occurred[.]

55. No-Shop Provision: The Merger Agreement prevents Caremark from soliciting alternative bids for the Company, thus preventing the Caremark Directors from seeking an

adequate bid in the best interests of Caremark shareholders. Specifically, the Merger Agreement provides:

> General Prohibitions. Subject to the remainder of this Section 8.07, neither Caremark or CVS (either, a "No-Shop Party") nor any of its Subsidiaries shall, nor shall a No-Shop Party or any of its Subsidiaries authorize or permit any of its or their officers, directors, employees, investment bankers, attorneys, accountants, consultants or other agents or advisors to, directly or indirectly, (i) solicit, initiate or take any action to knowingly facilitate or encourage the submission of any Acquisition Proposal, (ii) enter into or participate in any discussions or negotiations with, furnish any information relating to that No-Shop Party or any of its Subsidiaries or afford access to the business, properties, assets, books or records of that No-Shop Party or any of its Subsidiaries to, otherwise cooperate in any way with, or knowingly assist, participate in, knowingly facilitate or encourage any effort by any Third Party that is seeking to make, or has made, an Acquisition Proposal, (iii) make an Adverse Recommendation Change, (iv) grant any waiver or release under any standstill or similar agreement with respect to any class of equity securities of that No-Shop Party or any of its Subsidiaries, (v) enter into any agreement in principle, letter of intent, term sheet or other similar instrument relating to an Acquisition Proposal (other than a confidentiality agreement of the sort and in the circumstances described in Section 8.07(b)) or (vi) propose publicly or agree to do any of the foregoing related to any Acquisition Proposal.

56. The Merger Agreement provides a limited exception under which the Caremark Directors may consider only an *unsolicited* bid that the Caremark Board has formally determined constitutes a "*bona fide* Superior Proposal." Specifically, the Merger Agreement provides that "[a] 'superior proposal' is a bona fide, unsolicited written acquisition proposal … for at least a majority of the outstanding shares of common stock of Caremark … on terms that the board of directors of [Caremark] determines in good faith by a majority vote … are more favorable from a financial point of view to the stockholders …" Thus, even when the Caremark Directors are facing an intervening bid that appears on its face to be "superior" to the CVS Transaction, the individual Caremark Directors may be prevented from even considering the proposal unless the Caremark Board first makes a determination that the proposal is, in fact, "superior."

Consequently, this provision prevents the Caremark Directors from exercising their fiduciary duties individually and precludes even an investigation into competing proposals unless, as a prerequisite, the majority of the Caremark Board first determines (without such an inquiry) that the proposal is superior.

57. "Last Look" Provision: The Merger Agreement requires Caremark to offer CVS a "last look"—*i.e.*, should another offer emerge and the Caremark Directors conclude that the other offer is superior to the CVS Transaction, Caremark is nonetheless required to offer CVS the opportunity to make "such adjustments to the terms and conditions of this [Merger] Agreement as would enable the [Caremark] Board of Directors to proceed with its recommendation to its stockholders…." This provision of the Merger Agreement prevents the Caremark Directors from the unhindered exercise of their fiduciary judgment in the best interests of Caremark shareholders. Any potential third-party bidders will be loath to invest the time and resources necessary to pursue a superior bid while knowing full well that CVS retains control of the bidding. For the same reason, the "last look" provision prevents the Caremark Directors from freely negotiating the highest possible price that CVS is willing to pay. Specifically, the Merger Agreement provides:

> Ability to Change Recommendation Subject to a "Last Look". Notwithstanding anything in this Agreement to the contrary (but subject to the next sentence), a No-Shop Party and its Board of Directors shall be permitted to effect an Adverse Recommendation Change if (i) such No-Shop Party shall not have received the Caremark Stockholder Approval (in the case of Caremark) or the CVS Stockholder Approval (in the case of CVS), (ii) it has received an unsolicited bona fide written Acquisition Proposal from a third party, (iii) its Board of Directors has determined in good faith (after consultation with its outside legal counsel and financial advisors) that such Acquisition Proposal constitutes a Superior Proposal and (iv) its Board of Directors, after consultation with its outside legal counsel, determines in good faith that the failure to take such action would be inconsistent with its fiduciary duties under Applicable Law. However, the Board of Directors of a No-Shop Party shall nevertheless not make such an Adverse Recommendation Change, unless, (x) such No-Shop Party promptly

> notifies the other party, in writing at least five Business Days before taking that action, of its intention to make an Adverse Recommendation Change and attaching the most current version of any proposed agreement or a detailed summary of all material terms of any such proposal and the identity of the offeror, and (y) the other party does not propose, within five Business Days after its receipt of that written notification, such adjustments to the terms and conditions of this Agreement as would enable the No-Shop Party's Board of Directors to proceed with its recommendation to its stockholders without an Adverse Recommendation Change. Any material amendment to any Acquisition Proposal will be deemed to be a new Acquisition Proposal for purposes of re-starting the five Business Day clock described in the immediately preceding sentence.

58. <u>Personal Benefits and Compensation to Crawford</u>: The Merger Agreement requires that Defendant Crawford—the current President, Chairman and Chief Executive Officer of Caremark—become the Chairman of the newly merged company.

59. In addition, the CVS Transaction promises to be a windfall for Crawford and other Caremark executives. Under certain pre-existing employment agreements, certain executives of Caremark will be entitled to certain payments upon a change-in-control of the Company. The CVS Transaction would effect a "change-in-control" of Caremark under the terms of these agreements. If the CVS Transaction is completed, that would entitle the following executives to the payments listed below:

Name and Principal Position	Number of Options that will Vest and Become Exercisable as a Result of the Merger (#)(1)	Value Realized ($)(2)	Cash Severance Payments ($)(3)	Other Payments and Benefits ($)(6)	Estimated Aggregate Dollar Value of CVS Term Sheet Deferral Account ($)(9)	Estimated Aggregate Dollar Value ($)
E. Mac Crawford Chief Executive Officer, President and Chairman of the Board	1,410,000	$14,005,200	$26,400,000(4)	$7,617,210(7)	N/A	$48,022,410
Edward L. Hardin, Jr. Executive Vice President and General Counsel	140,000	$2,086,600	$1,327,500(5)	$8,679(8)	N/A	$3,422,779
Howard A. McLure Senior Executive Vice President and Chief Operating Officer	516,200	$4,923,800	N/A	N/A	$3,091,038(10)	$8,014,838
Rudy Mladenovic Executive Vice President of Industry Relations	430,000	$4,173,200	N/A	N/A	$2,468,711	$6,641,911
William R. Spalding Executive Vice President of Strategic Initiatives	525,000	$2,468,000	N/A	N/A	$3,051,238	$5,519,238

60. However, each of these executives, except Mr. Hardin, has also been guaranteed employment with the new company that will be formed as a result of the CVS Transaction, and Crawford will be guaranteed the position of Chairman of the Board of that combined company. Mr. Hardin, though not technically employed by, will serve as a "litigation consultant" to, the combined company. And Crawford's son, Andrew Crawford, will also be employed by the surviving corporation. As the primary negotiator of the deal, therefore, Crawford arranged for a transaction that will guarantee himself personal payments totaling in excess of $48 million, a job for his son, *and* for himself the position of Chairman of the new company. This was a combination of personal benefits that he likely could not extract from the "other pharmaceutical benefits managers" with whom he purportedly discussed a possible deal with Caremark.

61. Caremark's Directors are Guaranteed Positions on the Board: The Merger Agreement also guarantees Caremark's Directors positions with the new company as well. Specifically, the Merger Agreement requires that half of the Board of Directors of the newly merged company be composed of current Caremark Directors. Further, under the Merger Agreement, the size of the Board of Directors of the new company is as yet undetermined and will be jointly set by CVS and Caremark only *after* the certificate of merger is filed with the Delaware Secretary of State. Accordingly, every single one of the Caremark Directors is a potential member of the Board of Directors of the newly formed corporation. In his discussions with "other pharmaceutical benefits managers," Crawford was unable to secure for his fellow Caremark Directors guaranteed positions with any company that would survive a merger with or acquisition of Caremark. As a consequence, the Caremark Directors have strong personal motives to favor the entrenching CVS Transaction and cannot, therefore, exercise their fiduciary duties solely in the interests of Caremark shareholders.

62. Indemnification and Termination of Outstanding Options Backdating Liability: The Merger Agreement would also eliminate any potential personal liability to which the Caremark Directors are exposed by virtue of their alleged approval and receipt of unlawfully backdated stock options. The severity of the situation is revealed by the fact that the backdating of options awarded to the Caremark Directors and others at the Company is being investigated by the Office of the United States Attorney for the Southern District of New York and the United States Securities & Exchange Commission.

63. The Caremark Directors are presently defendants in *In re Caremark RX, Inc. Derivative Litigation*, No. 3:06-CV-00535 (M.D. Tenn.) (the "Caremark Backdating Case"), a derivative lawsuit on behalf of Caremark arising from the unlawful backdating of stock options.

The CVS Merger Agreement would serve to eliminate this potential liability. The CVS Merger Agreement provides the Caremark Directors with a broadly-worded indemnity that would, on its face, likely cause the newly merged corporation to indemnify the Caremark Directors for any potential liability arising from the Caremark Backdating Case and would ensure that any ill-gotten compensation would not need to be returned to the Company or to Caremark's shareholders. Specifically, the Merger Agreement provides:

> CVS shall, and shall cause the Surviving Corporation to, indemnify and hold harmless the present and former officers and directors of Caremark (or its Subsidiaries) (each an "Indemnified Person") in respect of acts or omissions occurring at or prior to the Effective Time to the fullest extent permitted by Delaware Law or any other Applicable Law or provided under Caremark's certificate of incorporation and bylaws in effect on the date hereof; provided that such indemnification shall be subject to any limitation imposed from time to time under Applicable Law.

64. This indemnity provision is virtually unlimited and likely would result in the elimination of any personal liability by the Caremark Directors in connection with the Caremark Backdating Case or in connection with their alleged improper conduct that underlies the Caremark Backdating Case. This benefit alone is potentially worth several hundred million dollars to Crawford and the other Director Defendants.

65. This appears not only to be true for the shareholder derivative suit that has been filed, but also for any enforcement proceeding that may be brought by governmental agencies. In light of the serious nature of stock-option backdating, the Caremark Directors are unlikely to obtain such a broad indemnity from an alternative offeror. Indeed, it is unlikely that any bidder paying a fair price for Caremark shares would willingly assume the costs, burdens, and potential liability associated with these government investigations. In all likelihood, CVS is only willing to subject itself and its shareholders to these problems because, under the CVS Merger Agreement, it stands to acquire Caremark shares at such a bargain.

66. Moreover, any alternative bidder for Caremark could well seek to provide Caremark's shareholders with the highest possible value by making its superior bid for Caremark's shares contingent on the Caremark Directors returning to the Company any ill-gotten compensation. Accordingly, the Caremark Directors are powerfully motivated to carry out the CVS Transaction and cannot reasonably be expected to exercise their fiduciary obligation fairly and in the best interests of Caremark shareholders.

67. <u>"Force The Vote" Provision</u>: Finally, the Merger Agreement contains a provision requiring that the CVS Transaction be submitted to a shareholder vote *even if* the Caremark Directors reject the CVS Transaction in favor of a superior offer.

68. Specifically, the Merger Agreement provides:

> In connection with the Caremark Stockholder Meeting, Caremark shall (i) mail the Joint Proxy Statement and all other proxy materials for such meeting to its stockholders as promptly as practicable after the Registration Statement is declared effective under the 1933 Act, (ii) use all commercially reasonable efforts to obtain Caremark Stockholder Approval and (iii) otherwise comply with all legal requirements applicable to such meeting. Without limiting the generality of the foregoing, this Agreement and the Merger ***shall be submitted to Caremark's stockholders at the Caremark Stockholder Meeting whether or not (x) Caremark's Board of Directors shall have effected an Adverse Recommendation Change or (y) any Acquisition Proposal shall have been publicly proposed or announced or otherwise submitted to Caremark or any of its advisors***.

(emphasis added).

69. This provision serves to deter the success of a superior alternative offer by creating needless expense and delay for Caremark, its shareholders, and a competing bidder, even if the Caremark Board withdraws its support for the CVS Transaction in favor of that superior bid.

70. Taken together, these various provisions render it unreasonable to expect that the Caremark Directors will fulfill, or are even capable of fulfilling, their fiduciary obligations to

Caremark shareholders. For example, even if it was appropriate when taken alone (and in this case it is not), the $675 Termination Fee is more than sufficient "deal protection" to secure CVS's investment in negotiating and pursuing the CVS Transaction. Having agreed to provide a $675 million windfall to CVS should an intervenor bid emerge, any further limitation on the Caremark Directors' ability to freely pursue alternative transactions is disproportionate, unfair and should be rejected as an unlawful abandonment of the Board's fiduciary obligations. As seen below, the Caremark Directors' quick rejection of a superior alternative proposal strongly bears out this conclusion.

71. The timing of the CVS Transaction is also highly suspect because it takes unfair advantage of a recent dip in the Caremark share price, thereby facilitating CVS's ability to acquire Caremark at an inadequate price. In late-September, Wal-Mart announced that it would be slashing prices on almost 300 generic prescription drugs, a development regarded as a potential threat to Caremark. Likewise, a settlement in a lawsuit challenging average wholesale pricing ("AWP") practices by an entity that provides drug-price benchmarking data to Caremark was regarded as a threat to Caremark because the settlement requires that important drug-price references be lowered. Despite Caremark's assurances that it could withstand these difficulties, the developments caused a decline in the Company's stock price over the weeks leading up to the merger announcement. As one securities analyst explained in connection with the announcement of the CVS Transaction:

> Caremark shares traded as high as $59 several weeks ago until the Wal-Mart $4 generic announcement and the AWP lawsuit settlement drove the shares down significantly. Last night, Caremark CEO Mac Crawford addressed both of these issues by saying that the company can manage through them. He said that 90% of CMX contracts protect them from a change in AWP. If these issues are truly manageable than the argument can be made that CMX shares should recover much of the gains they lost, ***leaving shareholders with less than the optimal price for their shares***.

(emphasis added). Moreover, as was revealed in the Joint Proxy (as further described and defined below), CVS and Caremark had been considering the CVS Transaction since at least October 2005, rendering the sudden need to conclude the CVS Transaction at the very moment when it would be cheapest for CVS to acquire Caremark all the more suspicious. The timing of the CVS Transaction thus lays bare the Caremark Directors' complicity in CVS's efforts to pay the cheapest possible price, rather than the undivided loyalty to Caremark shareholders that the law requires.

Express Scripts Announces Its Superior Bid for Caremark Shares and Urges Caremark's Board to Negotiate

72. On December 18, 2006, Express Scripts, Inc. ("E-Scripts") made public an alternative offer to acquire Caremark (the "E-Scripts Proposal"). The E-Scripts Proposal provides substantially greater value to Caremark shareholders. Under the E-Scripts Proposal, Caremark shareholders will receive the equivalent of $58.50 per Caremark share, approximately $10.50 per share higher than the CVS Transaction and representing a 15% premium over the CVS Transaction. Unlike the CVS Transaction, which is structured as a pure stock-for-stock exchange, the E-Scripts Proposal is a combined cash and stock offer, composed of $29.85 in cash and 0.426 E-Scripts shares per Caremark share. In total, the E-Scripts Proposal values Caremark at approximately $26 billion—***over $5 billion higher than the CVS Transaction***.

73. In a December 18, 2006 letter to the Caremark Directors, the Chief Executive

Officer of E-Scripts, Mr. George Paz ("Paz"), explained the E-Scripts Proposal as follows:

> Based on our closing stock price on Friday, the offer has a value of $58.50 per share for each share of Caremark stock. The offer is structured so that the receipt of stock by your stockholders would be tax free. Upon consummation of our proposed transaction, which we expect would be completed in the third quarter of 2007, Caremark stockholders would own approximately 57% of the combined company.
>
> Our offer represents a 15% premium over the all-stock purchase price to be paid to your stockholders pursuant to the proposed acquisition of Caremark by CVS Corporation ("CVS") based on Friday's closing price of CVS and our common stock. Furthermore, our offer represents a 22% premium over $47.99, the average closing price of Caremark since the announcement of the proposed acquisition of Caremark by CVS on November 1, 2006.

74. The letter from Mr. Paz also explained why the E-Scripts Proposal is superior to the CVS Transaction:

> We are aware that Caremark is currently a party to a merger agreement with CVS. We believe that our offer constitutes a "Superior Proposal" under the terms of that merger agreement for the following compelling reasons. Our offer:
>
> -Delivers a significant premium and a significantly higher absolute value for each Caremark share than the CVS transaction
>
> -Delivers greater certainty of value because it includes a significant cash payment to your stockholders
>
> -Delivers upside potential to Caremark stockholders through an increase in the value of the combined company's stock driven by enhanced cost containment solutions to plan sponsors and patients, anticipated cost synergies of $500 million and strong EPS growth
>
> -Will be neutral to GAAP earnings per share in the first full year following closing, and significantly accretive thereafter; excluding transaction-related amortization, the transaction is significantly accretive to earnings per share beginning the first full year following closing.

75. Significantly, in contrast to the CVS Transaction, under the E-Scripts offer Caremark shareholders can receive a premium *and* still own majority control of the surviving company. Securities analysts agree that the E-Scripts offer is superior. For example, Wachovia's analyst opined that it "would be hard to argue that the CVS deal provides a better

value for shareholders." Another analyst explained that "[t]he projected price significantly trumps a previous offer by drug store chain CVS Corp."

The Joint Proxy Statement – Filed Just One Day After Receipt of the E-Scripts Offer - Makes Clear That the Caremark Board Continues To Support the Inferior CVS Deal

76. On the same day that the E-Scripts Proposal was announced, Caremark issued a press release stating that "Caremark's Board of Directors will review the terms of the proposal submitted by Express Scripts in a manner consistent with its obligations under the CVS merger agreement and applicable Delaware law." Nevertheless, in the same release, Caremark also announced that it "executed a merger agreement with CVS Corporation which provides for the combination of the two companies in a transaction structured as a merger of equals" and that "Caremark continues to be bound by the terms of the merger agreement and the parties anticipate filing a joint proxy statement with the [SEC] shortly."

77. Notwithstanding their supposed willingness to review the E-Scripts Proposal, on the very next day—December 19, 2006—Caremark and CVS issued a preliminary joint proxy statement (the "Joint Proxy"), stating the Caremark Directors' recommendation in favor of the CVS Transaction. As set forth in the Joint Proxy, "[t]he Caremark board of directors unanimously recommends that Caremark stockholders vote 'FOR' the adoption of the merger agreement and the approval of the merger."

78. Significantly, although the CVS Transaction was announced on November 1, 2006, CVS and Caremark were in no apparent rush to issue the Joint Proxy, allowing over six weeks to elapse without any proxy disclosure to Caremark shareholders. As soon as the E-Scripts Proposal was announced on December 18, however, CVS and Caremark hurriedly filed the Joint Proxy announcing the Caremark Directors' unanimous recommendation in favor of the CVS Transaction. Thus, although professing to consider the E-Scripts Proposal, the Caremark

Directors have clearly signaled their intention to go forward with the CVS Transaction.

79. Further, the Joint Proxy does not even provide sufficient detail for Caremark shareholders to assess the adequacy of the process through which the CVS Transaction was reached. As discussed above, *The Wall Street Journal* has reported that, in the period leading up to the announcement of the CVS Transaction, Caremark entered into discussions with Medco Health Solutions Inc. concerning a potential merger. Nevertheless, the Joint Proxy makes only the following obscure reference to these discussions:

> On October 9, 2006, Mr. Crawford met with the chief executive officer of a pharmacy benefits management company to discuss, among other things, the possibility of a business combination. The parties subsequently entered into a confidentiality agreement with each other dated October 23, 2006 and on October 26, 2006 representatives of the parties held a telephonic conference to further discuss a possible business combination and regulatory approvals that would be required to proceed.

80. The Joint Proxy is thus woefully lacking in necessary and material factual detail and prevents Caremark shareholders from evaluating aspects of the Caremark Directors' conduct in connection with the CVS Transaction. Not only does the Joint Proxy fail to set forth a single term of the proposed business combination discussed on October 9 and 26, but it also fails to provide any explanation for the Caremark Directors' basis for pursuing the CVS Transaction instead of this alternative with the other party to the discussions—thereby leaving shareholders to piece the puzzle together for themselves.

81. During the evening of Wednesday, December 20, 2006, CVS and Caremark announced that the CVS Transaction had cleared a key regulatory hurdle, and CVS said that the parties expected the transaction to close as early as the first quarter of 2007. "With this step, we are much closer to creating the largest and best positioned integrated pharmacy services provider," said CVS's CEO Tom Ryan.

82. On January 4, 2007, E-Scripts issued a press release announcing that it had sent a

letter to Caremark shareholders. In the letter E-Scripts' CEO Paz urged Caremark shareholders to vote against the CVS deal in favor of E-Scripts' "superior proposal":

> Express Scripts believes that the proposed acquisition of Caremark by CVS will have a lasting negative impact on your investment in Caremark. In the face of our superior offer, we expect Caremark's Board of Directors to negotiate a transaction with Express Scripts. Before voting your shares, carefully consider whether a combination of CVS and Caremark is really in your best near- and long-term financial interests as a Caremark stockholder.

In the letter, Paz also advised that, on January 3, 2007, E-Scripts filed the premerger notification and report form with the Federal Trade Commission and the Department of Justice under the Hart-Scott-Rodino Act "and anticipate[s] obtaining regulatory clearance in a timely manner." Paz concluded his letter by urging Caremark shareholders to reject the CVS offer of "little to no premium for their shares" in return for shares from a company "with a long history of underperformance when compared to Express Scripts."

83. CVS and Caremark apparently remain undeterred by the superior financial benefits of the E-Scripts Proposal to Caremark shareholders. In a rejoinder that same day to the letter from Paz, CVS stated that it "intends to proceed as planned to close its transaction during the first quarter of 2007." In a separate statement that day, Caremark simply reiterated its mantra from December that it is bound by the terms of its merger agreement with CVS and "is reviewing the terms of the proposal submitted by Express Scripts on December 18, 2006, in a manner consistent with its obligations under the CVS merger agreement and applicable Delaware law."

CLASS ACTION ALLEGATIONS

84. Plaintiffs bring this action pursuant to Rule 23 of the Rules of the Court of Chancery, individually and on behalf of all other holders of Caremark's common stock (except defendants herein and any persons, firm, trust, corporation or other entity related to or affiliated

with them and their successors in interest) who are or will be threatened with injury arising from defendants' wrongful actions, as more fully described herein (the "Class").

85. This action is properly maintainable as a class action for the following reasons:

a. The Class is so numerous that joinder of all members is impractical. As of October 1, 2006, and at all relevant times herein, Caremark had outstanding over 426 million shares of its common stock, held by individuals and entities too numerous to bring separate actions. It is reasonable to assume that holders of the Caremark common stock are geographically dispersed throughout the United States.

b. There are questions of law and fact which are common to the Class and which predominate over questions affecting any individual class member. The common questions include, inter alia,

- whether the Caremark Directors breached their fiduciary duties and other common law duties by failing to review the E-Scripts Proposal, an offer which is clearly superior to the CVS Transaction;

- whether the Caremark Directors breached their fiduciary duties by failing to engage in any good faith negotiation with E-Scripts, Inc. to become fully informed of the terms of its E-Scripts Proposal;

- whether the Caremark Directors breached their fiduciary duties by agreeing to the $675 million break up fee and other improper deal protection provisions with CVS, while at the same time seeking to entrench themselves as Directors in the combined company by negotiating into the CVS merger agreement provisions that would ensure the Board of the combined company was (a) Chaired by Caremark's current Chairman and CEO; and (b) significantly and equally comprised of Caremark Directors, thereby advancing a majority of the Caremark Directors' own personal interests over those of Caremark and its shareholders;

- whether CVS aided and abetted the Caremark Directors' breaches of fiduciary duty by enticing them to agree to a merger in exchange for lucrative board seats and the Chairmanship of the combined company;

- whether the Caremark Directors breached their fiduciary duties of disclosure by failing to inform shareholders of the details and terms of prior offers with potential acquirors and instead foisting upon shareholders a single proposed merger agreement that provided Caremark shareholders with no premium for tendering their shares.

c. Plaintiffs are committed to prosecuting this action and have retained competent counsel experienced in litigation of this nature. Plaintiffs are members of the Class, and Plaintiffs' claims are typical of the claims of the other members of the Class. Accordingly, Plaintiffs are adequate representatives and will adequately protect the interests of the Class.

d. Plaintiffs anticipate that there will be no difficulty in the management of this litigation as a class action.

e. The Caremark Directors have acted on grounds generally applicable to the Class with respect to the matters complained of herein, thereby making appropriate the relief sought herein with respect to the Class as a whole.

f. Plaintiffs have suffered damages and will continue to suffer additional damages as a result of the acts and conduct of the Caremark Directors alleged herein, including but not limited to (a) damages representing the negative market reaction to the CVS Transaction, (b) the lost opportunity to assess or accept the E-Scripts Proposal or to receive a control premium for their shares and (c) damages representing any fees and costs resulting from the defensive measures the Caremark Directors permitted in the CVS Transaction, the payment of which would lower the per share consideration received by the shareholders.

g. Plaintiffs and the Class have also suffered damages resulting from the Caremark Directors' breaches of their fiduciary duties to disclose material information, because such breaches have improperly interfered with and denied Plaintiff and the Class their voting franchise.

h. The prosecution of separate actions would create the risk of:

- inconsistent or varying adjudications which would establish incompatible standards of conduct for the Defendants, and/or
- adjudications which would as a practical matter be dispositive of the interests of other members of the Class.

CLAIMS FOR RELIEF

COUNT I

(Class Action Claim For Breach of Fiduciary Duty Against the Individual Defendants)

86. Plaintiffs repeat and reallege each and every allegation above as if set forth in full herein.

87. The individual defendants, as Caremark directors, owe the Class the utmost fiduciary duties of due care, good faith, and loyalty. Because at the time of the negotiation of the CVS/Caremark merger Caremark was "up for sale" and because the CVS/Caremark merger represents a "change-in-control" transaction, the individual defendants are required, under the doctrine set forth in the *Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc.*, 506 A.2d 173 (Del. 1986), to focus on one primary objective – to secure the transaction offering the best value reasonably available for the Caremark shareholders – and they are required to exercise their fiduciary duties to further that end. They are required to employ all measures necessary to fully inform themselves about competing offers for the Company and to choose the offer that best maximizes shareholder value.

88. The individual defendants have failed to fulfill their fiduciary duties in the sale of control of Caremark. They have failed to fully inform themselves about the competing E-Scripts Proposal, and other competing proposals, and have instead rejected them out of hand without fully and reasonably considering whether an alternative transaction provides greater value to the Caremark shareholders than the CVS/Caremark merger. The individual defendants rejected the

E-Scripts and Medco offers without even engaging E-Scripts or Medco in a meaningful dialogue to learn more about the offer or in any type of negotiation.

89. The individual defendants also breached their fiduciary duty by favoring their own interests over those of the Caremark shareholders. They caused the Company to enter into the Merger Agreement in order to perpetuate their own personal interests, and the interests of Crawford, because the CVS Transaction guaranteed them lucrative positions with the surviving company. Further, the CVS Transaction indemnifies the individual defendants from personal liability arising from their participation in the illegal backdating of stock options which are at issue in the *Caremark Backdating Case*.

90. The individual defendants' rejection of the E-Scripts Proposal means that they did not find it to be a "*bona fide* Superior Proposal" under the terms of the CVS Merger Agreement. It was impossible for them to have reached that decision in keeping with their fiduciary duties, however, because they did nothing to inform themselves about the terms and conditions of the E-Scripts offer before rejecting it less than one day after it was made.

91. Plaintiffs and the Class have been harmed by these breaches of fiduciary duty, as this transaction is their only chance to capture a control premium. The individual defendants have squandered that chance.

92. Plaintiffs and the Class have no adequate remedy at law.

COUNT II

(Class Claim For Breach of Fiduciary Duty Against the Individual Defendants)

93. Plaintiffs repeat and reallege each and every allegation above as if set forth in full herein.

94. The Caremark Directors owe the Class the utmost fiduciary duties of due care, good faith, and loyalty. Defendants breached those fiduciary duties by favoring their own

interests over those of the Class by erecting defensive measures to protect the inferior CVS Transaction.

95. The Caremark Directors agreed to the inclusion of, among other things, a whopping $675 million termination fee, a No-Shop Clause, a Last Look Provision, and a Force the Vote Provision in the CVS Merger Agreement to erect barriers to the success of unsolicited competing offers for the Company. They did so in order to secure the benefits the CVS/Caremark deal provides to them personally – namely the board positions with the new, merged company and the extensive indemnification provision which relieves them of the substantial personal liability they could incur in the Caremark Backdating Litigation. There was no threat to Caremark shareholders at the time the individual defendants agreed to these defensive measures, making their adoption per se disproportionate.

96. As a result of the Caremark Directors' breaches of fiduciary duty in erecting these defensive measures, the Class will be harmed by receiving the inferior consideration of the CVS/Caremark merger – consideration which does not include a control premium. The E-Scripts offer is a superior offer which will give the Class a control premium and will maximize shareholder value. The defensive measures erected by the Caremark Directors in the CVS Merger Agreement, however, impose excessive and disproportionate impediments to the E-Scripts Proposal and any other potential superior alternative offer.

97. Plaintiffs and the Class have no adequate remedy at law.

COUNT III

(Class Claim for Breach of Fiduciary Duty of Disclosure Against the Individual Defendants)

98. Plaintiffs repeat and reallege each and every allegation above as if set forth in full herein.

99. The Caremark Directors are bound by their fiduciary duties to the Class to provide the Class with all information material to the Class members' decision on whether to vote to accept the CVS/Caremark merger or not.

100. The Caremark Directors have breached those fiduciary duties by failing to disclose the processes, terms and negotiations with other potential bidders for the Company. The Caremark Directors disclosed in the Joint Proxy only that Caremark was approached by other, unnamed potential acquirors in October 2006 shortly before Caremark and CVS executed the Merger Agreement. The Joint Proxy also does not disclose the terms of the December 18, 2006 E-Scripts offer, nor does it disclose what, if any, measures the individual defendants took to evaluate that offer. Finally, the Joint Proxy does not disclose the bases of the individual defendants' decision that the CVS/Caremark merger is superior to the E-Scripts offer. These are all material facts which the Class must have in order to cast a fully informed vote on the CVS/Caremark merger proposal.

101. Plaintiffs and the Class have no adequate remedy at law.

COUNT IV

(Class Action Claim for Aiding and Abetting Breaches of Fiduciary Duties Against CVS)

102. Plaintiffs repeat and reallege each and every allegation above as if set forth in full herein.

103. The Caremark Directors owe the Class the fiduciary duties of care, good faith and unflinching loyalty. That the Caremark Directors owe the Class these fiduciary duties is well known to CVS.

104. As is detailed in the preceding paragraphs, the Caremark Directors have breached their fiduciary duties to the Class.

105. CVS aided and abetted the Caremark Directors' breaches of fiduciary duty. CVS actively and knowingly induced Defendant Crawford to breach his fiduciary duties with the lucrative, powerful and prestigious Chairmanship of the combined company that would result from the Merger/Acquisition and the guarantee of employment for his son. This inducement allowed Defendant Crawford to both receive the substantial benefits of his "Change in Control" agreement while at the same time giving him the substantial benefits and power of the chairmanship of the combined company.

106. The CVS Defendants also induced the Caremark Directors other than Crawford to breach their fiduciary duties to Caremark by plying them with the promises of reappointment to the board of the combined company and also the extinguishment of their personal liability to Caremark and it public shareholders for the breaches of their fiduciary duties in connection with the *Caremark Backdating Case*.

107. The Class has been harmed by CVS's aiding and abetting the Caremark Directors' breaches of fiduciary duty.

108. Plaintiffs and the Class have no adequate remedy at law.

RELIEF REQUESTED

WHEREFORE, Plaintiffs demand judgment follows:

(a) Preliminarily and permanently enjoining Caremark and any of the Caremark Directors and any and all other employees, agents, or representatives of the Company and persons acting in concert with any one or more of any of the foregoing, during the pendency of this action, from taking any action to consummate the CVS/Caremark Merger until such time as the Caremark Directors have fully complied with their *Revlon* duties to fully and fairly consider all offers for the Company and to maximize shareholder value;

(b) Awarding the Class compensatory damages, together with pre- and post-judgment interest;

(c) Finding the Caremark Directors liable for breaching their fiduciary duties to the Class;

(d) Finding CVS liable for aiding and abetting the breaches of fiduciary duty by the Caremark Directors;

(e) Awarding Plaintiffs the costs and disbursements of this action, including attorneys', accountants', and experts' fees; and

(f) Awarding such other and further relief as is just and equitable.

Dated: January 5, 2007

Respectfully submitted,

GRANT & EISENHOFER P.A.

By:/s/ Michael J. Barry

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