

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO.

JOHN DOE, on behalf of himself and all
others similarly situated,

Plaintiffs,

v.

**CLASS ACTION COMPLAINT
Jury Trial Demanded On All Claims
So Triable**

CIGNA HEALTH AND LIFE
INSURANCE COMPANY; TEL-DRUG,
INC.; TEL-DRUG OF PENNSYLVANIA,
L.L.C.; and DOES 1-10, inclusive,

Defendants.

Plaintiff, by and through the undersigned attorneys, brings this action on behalf of himself and all others similarly situated against Defendants Cigna Health and Life Insurance Company, and Tel-Drug, Inc. and Tel-Drug of Pennsylvania, L.L.C. (collectively, “Tel-Drug”) and DOES 1-10, inclusive (hereafter collectively “Defendants” or “CIGNA”).¹ Plaintiff alleges the following on information and belief, which allegations are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery, except as to those allegations that pertain to the named Plaintiff, which are alleged on personal knowledge:

NATURE OF THE ACTION

1. Plaintiff anonymously² brings this action to challenge CIGNA’s discriminatory

¹ Coverage sold or administered by Cigna Health and Life Insurance Company and other Cigna subsidiaries is referred to herein as “employee health plan”, “health plan” or “plan.” “Enrollees” and “members” refer to individuals enrolled in Cigna or other Cigna subsidiary health plans.

² Due to the sensitive nature of this action, Plaintiff has chosen to file under a fictitious name. *See, e.g., Plaintiff B v. Francis*, 631 F.3d 1310, 1316 (11th Cir. 2011) (applying the “information of utmost intimacy” standard to anonymous plaintiff’s claim of a substantial privacy right); *S.G. v. Mears Transp. Grp., Inc.*, No. 6:14-cv-917-Orl-37, 2014 WL 4637319, at *1 (M.D. Fla. Aug. 12, 2014) (listing persuasive authority while finding that plaintiff’s HIV-related privacy interests

business practices targeting consumers enrolled in employee benefit or individual health plans offering health benefits administered or insured by CIGNA in the United States who are prescribed specialty medications for the prevention or treatment of HIV/AIDS. CIGNA enrollees are uniformly told they are required to obtain their specialty medications to treat HIV/AIDS and other serious illnesses from TEL-DRUG, a subsidiary of Cigna Health and Life Insurance Company that operates under the name “CIGNA Tel-Drug” or “CIGNA Specialty Pharmacy” (“Program”), in violation of ERISA and other laws.

2. TEL-DRUG only delivers medications by mail-order, which threatens HIV/AIDS patients’ health and privacy. If HIV/AIDS patients do not obtain their specialty medications from TEL-DRUG, then they must pay thousands of dollars or more each month to purchase their medications at their community pharmacy (hereafter, the “Program”). CIGNA has rendered such health plan benefits illusory by transforming HIV/AIDS drug purchases at community pharmacies from an “in-network” covered benefit to either an “out-of-network” payment subject to “non-Network Benefit” charges under the terms of their health plans or, as is the case for Plaintiff and others, providing no coverage at all if they do not participate in the Program, resulting in an outright denial of required health plan benefits. Enrollees purchasing prescription drugs that CIGNA does not consider “specialty medications” may continue to purchase their medications at a community pharmacy without penalty.

3. As a result of Defendants’ discriminatory behavior, HIV/AIDS patients face a potentially life-threatening decision that also threatens their privacy and renders their current health plan benefits illusory as to such medications. They must either: (1) forego essential counseling from an expert pharmacist at a community pharmacy and face risks to their privacy

outweighed the need for disclosure and granting HIV positive plaintiff’s motion to proceed anonymously); *Doe v. Kaweah Delta Hosp.*, 2010 U.S. Dist. LEXIS 135808 (E.D. Cal., Dec. 22, 2010) (AIDS/HIV patient permitted to proceed anonymously).

that are inherent in mail-order delivery; or (2) pay thousands of dollars out-of-pocket for their medications at their community pharmacy. The community pharmacist knows patients' medical history and, working directly with patients in face-to-face interactions, is best positioned to: (i) detect potentially life-threatening adverse drug interactions and dangerous side effects, some of which may only be visually detected, (ii) immediately provide new drug regimens as their disease progresses, and (iii) provide essential advice and counseling that help HIV/AIDS patients and families navigate the challenges of living with a chronic and often debilitating condition.

4. For all but the wealthiest HIV/AIDS patients, such dramatic cost increases and/or reductions in or elimination of benefits of coverage are untenable and thus many Class Members are left with no choice but to risk their health and privacy by obtaining their life-sustaining medications by mail.

5. Plaintiff has attempted to resolve this matter informally with CIGNA prior to bringing this action, but has exhausted all reasonable requirements, rendering any further attempts or requirements to do so futile. CIGNA has refused to honor any opt out requests from the Program. Plaintiff thus brings this action on behalf of himself and on behalf of a class (defined herein) of residents in the United States who: (i) are currently enrolled in a CIGNA health plan, including a plan provided by CIGNA, any CIGNA subsidiary, or a health plan or employee benefit plan in which CIGNA is the Plan Administrator, including an individual plan, government plan, church plan or group plan, that provides prescription drug benefits; and, (ii) have been prescribed specialty medications to treat or prevent HIV/AIDS that they must now obtain under the Program.

6. The limitations imposed by the Program has a material impact on Class Members' pharmacy benefits and violates federal law as described herein. One harmful impact of this policy

change is that the Program generally does not allow for early refills; patients cannot refill their medication until the very end of their current prescription. As a result, CIGNA enrollees may be forced to call or fax or order on-line through TEL-DRUG each month to re-order drugs, as further described below, during a very narrow period of time. If there are circumstances that make it difficult for the patient to re-order drugs at the time—for example, workload, travel, or illness—or if there are any processing or mail delays, HIV/AIDS patients will likely miss doses and potentially experience serious health problems as a result.

7. In addition to the potentially life threatening health consequences of the Program as discussed below, Class Members' fundamental and inalienable right to privacy is also threatened. Class Members who live in apartment buildings or who will be required to have medications delivered to their work place have expressed alarm that neighbors and co-workers, who do not know that the recipient has HIV/AIDS, will come to suspect that they are ill. And as set forth below, according to CIGNA representatives, requests for exclusion will only be considered if they come from an employer – meaning the employee or member will need to reveal their sensitive, private medical information to their employer, potentially in violation of other laws, in order to obtain any relief.

8. Mail-order shipments also present the risk of lost or stolen medications, as each shipment of medications may be worth thousands of dollars. Class Members bear the financial risk of lost shipments left at their door or in their mailbox. Alternatively, if the recipient must be present when the package is delivered, it forces the patient to obtain needed medications on the schedule of the delivery person, which raises further privacy and personal liberty concerns.

9. Defendants' mail-order program is further flawed because it does not allow subscribers to transfer all of their medications to the mail-order program even if a subscriber

wants to use mail-order for all prescriptions. Instead, the mail-order program is limited exclusively to specialty medications, requiring the patient to manage prescriptions between several locations and bounce between their community pharmacy and mail-order deliveries. This splitting of prescription providers also makes it impossible for CIGNA to track potentially life-threatening drug interactions as discussed below.

10. The Program constitutes a material and discriminatory change in Class Members' coverage, a significant reduction in or elimination of benefits, and a violation of the standards of good health care and clinically appropriate care for HIV/AIDS patients. By implementing such practices, CIGNA reduces the quality of prescription drug care provided to Class Members by forcing enrollees to only obtain such medications through their sister co-conspirator and Cigna's wholly-owned subsidiary TEL-DRUG – allowing CIGNA to profit through this conduct by keeping hundreds of thousands, if not millions of dollars, in prescription fill fees and other monies to themselves. As a result, many Class Members have already expended resources in response to the Program, and presently are threatened with substantial, imminent, and irreparable harm. This harm includes a grave threat to their health and safety as well as their right to privacy.

11. Defendants' decision to force Class Members to accept TEL-DRUG as their exclusive mail-order provider under the Program is primarily motivated by profit. As a result of the Program, CIGNA and TEL-DRUG will likely see a substantial 8-10% increase in revenues in 2015 as a result of the forced transition of its enrollees to mail-order.³ Cigna's 2014 Form 10-K states: "*Mail order pharmacy revenues. Increases in each of 2014 and 2013 compared with the prior year, primarily reflected higher prescription volume for specialty medications (injectibles)*

³ "Cigna Q4 Earnings Beat on Higher Revenues, Guides 2015 – Analyst Blog," NASDAQ.COM <http://www.nasdaq.com/article/cigna-q4-earnings-beat-on-higher-revenues-guides-2015-analyst-blog-cm44079>. (Last visited April 22, 2015).

and price increases to recover pharmacy cost trend.”⁴ As a result of CIGNA adopting TEL-DRUG as the exclusive provider of specialty medications:

- CIGNA profits grew 29% in the 2014 fourth quarter, due in part to forced use of its mail order pharmacy subsidiary;⁵
- CIGNA mail-order pharmacy revenues increased by 23% from 2013 to 2014;⁶
- CIGNA mail-order pharmacy revenues increased by 13% from 2012 to 2013.⁷

The Role of the Clinical Pharmacist and the Importance of Face-to-Face Interactions

12. Many physicians specializing in HIV/AIDS treatment are unable to spend very long with each patient. In fact, physician consultations are often limited to just 15 minutes in the era of managed care. As a result, there is very limited time for the physician to elicit extensive information about the patient’s complete medical history, including which non-HIV/AIDS medications the patient is taking, and impart critical information about prescription drug regimens and warnings about the high number of known adverse side effects and adverse drug interactions associated with HIV/AIDS medications.

13. For many Class Members, HIV/AIDS is not their only medical condition. Many patients have a history of cardiovascular disease, hypertension, anemia, diabetes, and psychiatric issues, among other conditions. Medications that manage mental health issues, for example, such as anti-depressants, anti-psychotics, and sleep agents, among others, are often not prescribed by the physician managing the patient’s HIV/AIDS condition.

14. A patient’s community pharmacist, however, is typically aware of the patient’s

⁴ Cigna’s 2014 Form 10-K, page 69.

⁵ “Cigna’s 4Q Profits Up 29%,” HARTFORDBUSINESS.COM, <http://www.hartfordbusiness.com/article/20150205/NEWS01/150209951/cignas-4q-profits-up-29%89> (last visited April 22, 2015).

⁶ Cigna’s 2014 Form 10-K, page 85.

⁷ *Id.*

entire medical history, has a comprehensive view of the patient's complete medication load (as compared to only certain specialty medications), and has on-going communications with physicians and patients regarding potential issues that may arise concerning drug side effects, adverse drug interactions, and adherence to specialty medications.

15. The ability of community pharmacists to closely monitor HIV/AIDS patients in face-to-face encounters is life-saving in many instances. In the case of a patient with a history of depression, for example, a community pharmacist can work with the patient through regular "check-ins" as changes in mood, attitudes or day-to-day function would change if an HIV/AIDS medication, such as Atripla (with documented central nervous system side effects), were prescribed. Other side-effects provide visual cues—for example, changes in skin color—that cannot be detected over the phone. Additionally, community pharmacists, who serve patients prescribed medications by numerous doctors, may have more experience and information about potential adverse drug interactions and changes in drug regimens than physicians themselves.

16. HIV/AIDS patients, therefore, rely on their community pharmacist to remind them how and when drugs must be taken, to review potential side effects with many other medications and to develop strategies to avoid those side effects, and to provide other counseling including what to expect if a patient's drug regimen changes.

17. Conversely, mail-order pharmacies providing only specialty medications as required under the Program lack the ability to fully monitor adverse drug interactions since most HIV/AIDS patients are prescribed both specialty and non-specialty medications, including over-the-counter medications that do not require a prescription and therefore are not tracked in the same manner as prescription medications.

18. Since only specialty medications are to be filled by Cigna's wholly owned

subsidiary TEL-DRUG, and non-specialty medications are to be filled at the patient's community pharmacy, TEL-DRUG will not always have a full and accurate record of all the medications the patient is taking and therefore cannot anticipate or warn against potential adverse drug interactions, which are common with HIV/AIDS medications.

19. Despite Defendants' claims that there are a team of professionals who exclusively serve and support this particular patient population, the TEL-DRUG personnel with whom Class Members typically directly interact are not pharmacists, and based on JOHN DOE's initial communications, do not have specific knowledge about HIV/AIDS, but are general customer service representatives with little to no specialized training. Thus, taking the local pharmacist, and the community pharmacy where they provide their services, out of the treatment equation for HIV/AIDS patients results in a loss and injury to Class Members and lessens the quality of care and benefits they receive.

20. This harm is not conjectural or speculative, but real, imminent and severe. "Putting a label on the bottle — that's the least of what we do," Marva Brannum, a clinical pharmacist at Edwin's Prescription Pharmacy in North Hollywood, California, has explained. Ms. Brannum, who has worked with HIV and AIDS patients for nearly 30 years, said working with patients also includes knowing the psychological and social issues involved with their disease states and providing a critical informed link between doctor and patient. Importantly, working with patients directly allows pharmacists to monitor potential adverse drug interactions. "We are an extension of the patient's clinical team," Brannum said.

21. The Program thus reduces the overall quality of care Class Members receive and reduces their health plan benefits, since providing an effective pharmacy benefit for HIV/AIDS patients is not just a question of knowing the drugs the patient uses, but also knowing the patient

and all of their medical needs. “The most intricate part that leads to quality outcomes and leads to decreased costs for us is knowing the patient in total,” Brannum said.

22. Patients who need specialty medicines and suffer from complex diseases require complex treatment. Community pharmacists that provide HIV/AIDS medications build strong personal and clinical relationships with their patients, making sure that they receive the drugs they need when they need them and even providing them discounts for these expensive medications. The community pharmacist is an essential member of the treatment team.

23. Furthermore, because there is no cure for HIV/AIDS, the virus continually mutates around the medications prescribed to treat it, requiring constant monitoring and immediate provision of new medication regimens to address changes in the disease. Periods of medication changes are particularly sensitive times for HIV/AIDS patients. Doctors and pharmacists must review the panoply of the patient’s medications for potential new adverse drug interactions, and patients must be concerned about addressing new drug side effects in the short term.

24. To avoid serious health consequences, in addition to counseling that can only be effectively provided in face-to-face interactions with community pharmacists, it is imperative to discontinue the previous regimen of HIV/AIDS medications before adding or dispensing new medications. In some instances, however, patients have reported new medication orders being submitted to the mail-order pharmacy by the patient’s physician but the mail-order pharmacy incorrectly dispensed *both* the new medication and the old medication or in the incorrect dosage, creating confusion and the potential for the patient to take both medications, resulting in serious health consequences.

25. The use of mail-order providers also creates the very real risk of delayed, lost or

stolen shipments, resulting in dire consequences for many patients who must strictly adhere to their medication regimes or face serious illness or death. Yet, as detailed below, Defendants appear to have no realistic fail-safe procedure in place to allow consumers to purchase medications at community pharmacies in the event that mail-order shipments are delayed, lost, or stolen. Unfortunately, theft of HIV medications appears to be prevalent due to the high cost of some of the medications.

26. CIGNA has replaced the present, on-going, close relationship between community pharmacist and patient with an 800 number that does not and cannot provide the same or similar level of service and benefits as detailed above. The mail-order provider, TEL-DRUG, is based in Pennsylvania, has no community location and Class Members are not provided regular access to a pharmacist with similar qualification levels, if at all. Furthermore, the Program's requirement that Class Members work their way through automated robocalls, messages, multiple call center staff or on-line processes increases stress and fatigue for patients who are sometimes literally fighting to stay alive, which can exacerbate their condition.

***Defendants' Discriminatory Business Practices Specifically Target
HIV/AIDS Patients***

27. Due to the complex nature of their disease and medications, HIV/AIDS patients are particularly hard hit and discriminated against by CIGNA's unilateral decision that these patients must buy their specialty medications exclusively from the mail-order pharmacy.

28. As the Program applies to certain high cost HIV specialty medications designed to treat very complicated disorders, but permits Plaintiff and Class Members to continue to use their pharmacist of choice as an in-network benefit for other medications, including other medications prescribed to the same individuals, the Program is specifically directed at Class Members on the basis of their HIV status.

29. The Program specifically targets and discriminates against individuals that are HIV-positive or have full-blown AIDS. The Program denies full and equal access to utilize the pharmacies and method of delivery of their choice specifically because of their illness, while at the same time permitting other non-HIV/AIDS enrollees to enjoy full access to the pharmacies of their choice. This is an arbitrary and harmful distinction, since the pharmacists' role is even more important in caring for HIV/AIDS patients.

30. While mail-order may be appropriate for some patients or some medications, it is not appropriate for all patients with complex, chronic conditions, especially illnesses subject to social stigma where privacy is a significant concern like HIV/AIDS, for whom the pharmacist does much more than merely dispense specialty medications. The decision to use a mail-order pharmacy should be a matter of informed enrollee choice, not an insurance company mandate. CIGNA's policy and corresponding actions described herein that render such benefits illusory creates a potential health risk for HIV/AIDS patients that require time-sensitive treatments.

31. When Class Members inform CIGNA representatives they do not want to participate in the Program, they are told they have no choice – or even worse, that they must tell their employer about their medical condition to get any relief.

32. The Affordable Care Act (“ACA”) and the Americans with Disabilities Act (“ADA”) specifically outlaw discrimination based on disability, medical condition, genetic information, and other categories. HIV/AIDS is a “disability” under the ADA.

33. CIGNA's Program improperly reduces benefits, breaches CIGNA's fiduciary duties to Class Members and violates numerous provisions of the Employee Retirement Income Security Act (“ERISA”). CIGNA's conduct is also unlawful, and therefore violates numerous federal laws detailed below, as well as privacy rights provided by the U.S. Constitution.

34. Plaintiff seeks an order of this Court enjoining CIGNA's continued violations of law. Plaintiff also seeks damages, restitution and disgorgement based on out-of-pocket expenses Class Members have incurred or may incur as a result of the Program or the profits generated by Defendants' conduct that violates the laws set forth below.

THE PARTIES

35. On personal knowledge, JOHN DOE is a resident of Ft. Lauderdale, Florida. Plaintiff JOHN DOE has been enrolled in a CIGNA PPO health plan since January 2015. Plaintiff JOHN DOE currently obtains his HIV/AIDS-related medications from a community pharmacy that specializes in serving HIV/AIDS patients. The HIV/AIDS-related medications prescribed for JOHN DOE are included in CIGNA's specialty mail-order Program. While CIGNA claims only to be the plan administrator for JOHN DOE's health plan, CIGNA is the entity that decides which medications are "specialty drugs" subject to its mandatory mail order requirement and designates the specialty pharmacy as TEL-DRUG.

36. After leaving his former employer (which used UnitedHealthcare and where he was provided a right to opt-out of the Program), JOHN DOE obtained new coverage, where he was unilaterally switched to CIGNA. JOHN DOE has expended substantial resources attempting to resolve the issues raised herein, spending hours on the phone with CIGNA representatives. He has on several occasions expressly requested to opt-out of the Program. Despite such requests, he was informed by Defendants' representatives in a letter dated April 7, 2015 that his participation in the Program is mandatory.

37. On or about March 6, 2015, JOHN DOE was told by a CIGNA representative that his only alternative was to reveal his personal medical condition to his employer (in potential violation of state and federal privacy and employment laws) and his employer could request that

he be excluded – with no indication if such a request would even be considered by CIGNA. When he explained the significant and obvious reasons why that was not a viable option, he was told there was nothing else that could be done, other than arrange for these specialty medications to be delivered to a different address.

38. On or about March 24, 2015, JOHN DOE’s pharmacist was informed his HIV prescriptions could now only be filled by mail order and that JOHN DOE would have to pay full price for the medication – approximately \$2,000 a month – if JOHN DOE continued to obtain his HIV medications from a community pharmacy.

39. As set forth below, in a letter dated April 7, 2015, his request for an exemption was denied. Thus, despite JOHN DOE’s significant efforts, he is now subject to the Program and forced to either pay full cost for his medications or enroll in the mandatory mail order Program. As JOHN DOE’s demands to opt-out of the Program have been denied, he has suffered injury in fact and is suffering and will continue to suffer irreparable harm under this mandatory Program.

40. Defendants Cigna Health and Life Insurance Company, Tel-Drug, Inc. and Tel-Drug of Pennsylvania, L.L.C. are foreign corporations or limited liability companies organized under the laws of the States of Connecticut, South Dakota and Pennsylvania, with their principal places of business in at least those states, and are transacting the business of providing health plans in this State and throughout the United States.

41. The true names, roles and/or capacities of Defendants named as DOES 1 through 10, inclusive, are currently unknown to Plaintiff and, therefore, are named as Defendants under fictitious names as permitted by the rules of this Court. Plaintiff will identify their true identities and their involvement in the wrongdoing at issue if and when they become known.

42. Defendants’ conduct described herein was undertaken or authorized by

Defendants' officers or managing agents who were responsible for the supervision and operations decisions relating to the Program. The described conduct of said managing agents and individuals was therefore undertaken on behalf of Defendants. Defendants had advance knowledge of the actions and conduct of said individuals whose actions and conduct were ratified, authorized, and approved by such managing agents. By engaging in the conduct described herein, Defendants agreed with each other to require Plaintiff and all Class Members to use TEL-DRUG as their captive mail-order pharmacy, providing them with no realistic alternative, to the exclusion of their trusted community pharmacist. As set forth below, Defendants unjustly and mutually profited as a result of this agreement in violation of the laws detailed herein. As a result of such agreements, Defendants conspired and aided and abetted each other in violating the laws set forth herein, and such conduct is ongoing.

JURISDICTION AND VENUE

43. This Court has jurisdiction over the parties to this action. The named Plaintiff is a resident of Florida, Defendants transact business in this State and through the United States, and the members of the Class are resident citizens of this State and all other states where the Program has been implemented.

44. Jurisdiction over Defendants is also proper because they have purposely availed themselves of the privilege of conducting business activities in this State and because they currently maintain systematic and continuous business contacts with this State, and have thousands of enrollees who are residents of this State and who do business with CIGNA.

45. Venue is proper in this District under 28 U.S.C. section 1391 because Defendants maintain substantial operations in this District; many Class Members either reside or did business with Defendants in this District; Defendants engaged in business in this District; a substantial part

of the events or omissions giving rise to the claims at issue occurred in this District; and Defendants entered into transactions and received substantial profits from enrollees who reside in this District.

46. Federal question jurisdiction exists based on the assertion of claims for violations of the ACA, ERISA, and the ADA, as set forth below. 28 U.S.C. § 1332.

STATUTORY SCHEME

47. A central tenet of the Affordable Care Act is to end discrimination against patients based on their health status, health history, or disability.

48. The U.S. Constitution recognizes a fundamental right to privacy.

49. The Americans with Disabilities Act, 42 U.S.C. section 12182, subdivision (a), provides:

No individual shall be discriminated against on the basis of *disability* in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any *place of public accommodation* by any person who owns, leases (or leases to), or *operates a place of public accommodation*.

(Emphasis added.)

50. For purposes of the ADA, “[t]he definition of disability in this chapter shall be construed in favor of broad coverage of individuals under this chapter, to the maximum extent permitted by the terms of this chapter.” 42 U.S.C. § 12102(4)(A).

51. The U.S. Supreme Court has recognized HIV/AIDS as a “disability” subject to the ADA. *Bragdon v. Abbott*, 524 U.S. 624, 655 (1998).

52. A pharmacy is a “public accommodation” recognized by the ADA. 42 U.S.C.A § 12181(7)(F).

53. A defendant “operates a place of public accommodation” if that defendant exerts “control” over a place of public accommodation, for example as a result of a financial or contractual relationship between the defendant and the place of public accommodation.

54. Under the relevant provisions of ERISA, benefits to plan subscribers must be distributed pursuant to the terms of their ERISA plan. 29 U.S.C. § 1132(a)(1)(B). ERISA further requires that fiduciaries not put their own interests above their beneficiaries. 29 U.S.C. § 1132(a)(2). In fulfilling fiduciary duties, an ERISA fiduciary must act with undivided loyalty and prudence in managing and administering the plans. 29 U.S.C. § 1104. In addition, ERISA mandates that benefit plans provide full and fair review of denied claims for patient grievances as required by 29 U.S.C. section 1133, and provide a reasonable claims procedure. Finally, ERISA requires that plan administrators furnish accurate and comprehensive EOC materials under 29 U.S.C. section 1022, and accurately convey the plan’s benefits in these materials. 29 U.S.C. § 1132(a)(3) and (c)(1); 29 U.S.C. § 1022.

PLAINTIFF’S FACTUAL ALLEGATIONS

JOHN DOE

55. Plaintiff JOHN DOE is HIV positive and enrolled in a Cigna health plan through his employer. JOHN DOE has been a member of this Cigna plan since approximately January 2015 when he joined his new employer. His previous employer provided similar coverage through UnitedHealthcare, and by virtue of a settlement of similar claims JOHN DOE was permitted to opt-out of UnitedHealthcare’s mandatory mail order program in September 2014.

56. Through January 2015, JOHN DOE had his HIV specialty medication (Atripla) filled at his local pharmacy. However, JOHN DOE then received a telephone call from a CIGNA customer service representative (and later a letter dated February 27, 2015) informing him that he

had to use the mail-order provider, Cigna Home Delivery Pharmacy (aka TEL-DRUG), for his HIV/AIDS medication despite being in the middle of a course of treatment. During January and February 2015, he had numerous telephone calls with CIGNA representatives, several lasting over 45 minutes, to discuss his options.

57. JOHN DOE has previously been required to use mail-order prior to the United settlement going into effect and found the situation to be disastrous. Each call to the mail-order provider required JOHN DOE to spend approximately 20 to 30 minutes to navigate each automated telephone menu tree and verify voluminous amounts of sensitive confidential private information (name, address, DOB, SSN, etc.), to then be told the call center representative needed to transfer him to another person who then asked the same voluminous amounts of information and then transferred him to yet another customer service representative. All told, JOHN DOE has expended significant effort each time he ordered his HIV/AIDS medications by mail.

58. JOHN DOE has requested that he be allowed to opt-out of the Program. On or about March 5, 2015, JOHN DOE received a letter stating that his initial request was denied. When he called for an explanation on or about March 6, 2015, the CIGNA representative told him he had no options other than share his personal, confidential medical condition with his employer and see if they would request an exemption for him. Due to the medically sensitive nature of his HIV status, he does not want to do so. The only other option made available was to have his medications sent to a different address. On or about March 24, 2015, JOHN DOE's pharmacist advised him his request for an override was denied and he would have to pay full price – over \$2,000 – for his HIV medications if he continued to obtain them from his local pharmacy.

59. On or about March 23, 2015, JOHN DOE sent a written request to CIGNA requesting that the Program be suspended for all affected consumers. CIGNA responded to

JOHN DOE's written demand with a phone call on or about April 6, 2015, and with a follow-up letter dated April 7, 2015. Defendants had exclusively decided that HIV/AIDS medications are "specialty drugs" available only through the Program, and just as easily could take them off the specialty drug list as they are not injectable or require special handling (thus making that decision within their control). Yet Jeff Nielsen, who claims to be the Chief Pharmacist from TEL-DRUG, asserted to JOHN DOE that because Defendants were only the Plan Administrator for a self-funded plan and are required to administer the plan according to plan requirements, CIGNA "is not able to suspend these requirements as you have requested", other than to provide JOHN DOE a one-month override while he transitioned to the Program. According to Mr. Nielson, "certain covered drugs, commonly referred to as high-cost" specialty drugs, are drugs that require special handling" and thus are only subject to the Program. However, JOHN DOE's HIV medication Atripla does not require refrigeration, injection or other "special handling." Furthermore, refrigerated medications are better dispensed at a community pharmacy rather than by mail-order where they are subject to potential over-heating and raise privacy concerns. Moreover, nothing in the plan documents compels CIGNA to designate its own subsidiary TEL-DRUG as the sole "specialty network pharmacy" from whom such medications must be obtained under the plan. Yet that is precisely what CIGNA has done according to the letter from Mr. Nielsen: "The designated specialty network pharmacy is Cigna Home Delivery Pharmacy." By unilaterally making that determination, Defendants have engaged in clear self-dealing.

60. JOHN DOE has been advised by his doctor to do everything possible to reduce stress in his life as stress plays a big part in undermining the human immune system.

61. While the medication at issue does not need to be refrigerated (the manufacturer recommends the medication be stored at 78 degrees Fahrenheit), storage at high temperatures can

quickly degrade the potency and stability of many medications. When CIGNA enrollees cannot be present when their medications are delivered, their only reasonable choice is to have the medications left on their doorstep. JOHN DOE's home is in Ft. Lauderdale, where a package left outside for even a short period of time can reach extremely high temperatures. He works full time and thus cannot be at his home when a delivery person may or may not be present. In his previous mail-order experience, when JOHN DOE returned home he found his package of medication baking in the afternoon sun. The only available option given to JOHN DOE is to have his HIV medication shipped to his physician, which (1) denies him interaction with his pharmacist and follow-up visits, (2) imposes additional annoyance and travel costs as JOHN DOE's doctor's office is neither close to his work nor his home, and (3) continues to subject JOHN DOE to the health risks associated with delivery delays and lost medications.

62. Furthermore, according to JOHN DOE, the level of education of the call center representatives JOHN DOE has dealt with appears to be that of a high school graduate. Contrast this with JOHN DOE's preferred pharmacy Quick Scripts, who has been his specialty pharmacy since November 2011 (except when he was required to use the United mail order program). The pharmacists at Quick Scripts are very knowledgeable so they understand the subtle nuances of HIV medications.

DEFENDANTS' UNLAWFUL CONDUCT

63. Defendants' practices violate numerous provisions of federal law.

64. As detailed above, the Program violates Class Members' inalienable right to privacy by eliminating their choice to keep their medical condition private by requiring public delivery of their medications by someone they do not know and who is not sensitive to their condition, or reveal their confidential medical condition to their employer.

65. The Program violates the ACA and ADA. As explained more fully below, Defendants' discriminatory actions have denied Plaintiff and members of the Class full and equal enjoyment of the benefits, services, facilities, privileges, advantages, and accommodations under their health plans. Defendants' financial arrangements with their subsidiaries and community pharmacies, and changes to Defendants' contractual relationships with those community pharmacies—specifically, changes to the “in-network” status of those pharmacies—effectively bar Class Members' access to community pharmacies providing specialty medications. These financial arrangements and contractual changes have made, or will make, HIV/AIDS specialty medications unaffordable at community pharmacies where expert pharmacists provide life-saving advice and counseling on which Plaintiff and Class Members have come to rely. Therefore, Plaintiff and Class Members are subject to discriminatory treatment based on their disability that threatens their health and their privacy.

66. Defendants' conduct also violates various provisions of ERISA. By forcing Class Members to participate in a mandatory mail-order prescription drug benefit, Defendants have failed to distribute benefits to plan subscribers pursuant to the terms of their ERISA plan, in violation of 29 U.S.C. section 1132(c). Defendants' unlawful requirement targeting HIV/AIDS subscribers to switch from the use of an in-network community pharmacy to a mandatory mail-order Program has caused a reduction in or elimination of Plaintiff's and Class Members' benefits without a change in actual coverage or appropriate notice.

67. Defendants have also breached their fiduciary duties under ERISA by failing to act with undivided loyalty and prudence in managing and administering the plans in violation of 29 U.S.C. section 1132(c). In controlling and administering the plans, Defendants owe a duty to act solely for the benefit of Plaintiff and the Class. However, Defendants have put their own

interests above their subscribers through their conduct of discrimination and self-dealing by mandating the use of Cigna's subsidiary mail-order pharmacy and keeping the fees that would be paid to community specialty pharmacies, as reflected by the financial results detailed above, profiting as a result thereof. Defendants have therefore put their own interests before subscribers by seeking to increase their own profits at the expense of their subscribers' health.

68. In addition, Defendants have failed to provide full and fair review, as required by 29 U.S.C. section 1133. Defendants have failed to provide a reasonable procedure for subscribers who wish to opt-out of the Program and any information regarding appeal of any determinations to deny opt-out requests.

69. Defendants' unlawful conduct also violates ERISA's requirement to furnish accurate and comprehensive Summary Plan Documents or EOCs under 29 U.S.C. section 1022, in violation of 29 U.S.C. section 1132(c)(1) and (a)(3). Defendants have misled Plaintiffs and the Class by obfuscating material facts and by misrepresenting information regarding its pharmacy benefits.

70. Forcing all affected enrollees to participate in the Program will cause severe detriment and irreparable harm to Class Members. Such conduct is continuing, as Class Members either have switched against their will to the Program or are presently deciding what actions they must take. Defendants must provide Class Members the right to opt-out of the Program and benefit from in-person counseling from a pharmacist of their choice in order to receive the benefits and services they are entitled to receive.

CLASS ALLEGATIONS

71. This action is brought by Plaintiff both individually and on behalf of all other similarly situated persons pursuant to Federal Rules of Civil Procedure Rule 23. Plaintiff seeks to

represent the following class (the “Class”):

All persons enrolled in or covered by any health plan or employee benefit plan offered and/or administered by Defendants or their affiliates that includes a prescription drug benefit, including but not limited to insured and self-funded ERISA plans, individual plans, governmental plans, and church or group plans, and who (i) are prescribed HIV/AIDS specialty medications, and (ii) are required to participate in the Program, but not including individual claims for personal injury or bodily harm.

72. The precise number and identity of Class Members are unknown to Plaintiff but can be obtained from Defendants’ records. According to CIGNA, it dispenses prescriptions for HIV/AIDS medication to over 7,000 persons across the United States.

73. Common questions of law and fact predominate over any questions affecting individual members of the Class. Such common legal and factual questions include the following:

- (a) Whether Defendants’ implementation of the Program as described above violates the numerous federal laws and regulations detailed throughout this Complaint;
- (b) Whether Plaintiff and Class Members are entitled to damages, equitable monetary relief, disgorgement of profits and/or restitution; and
- (c) Whether Plaintiff and Class Members are entitled to an Order enjoining Defendants from engaging in the conduct here at issue.

74. For the reasons set forth above, Plaintiff’s claims are typical of the claims of the Class in that he has been told he has no choice but to participate in the Program or pay thousands of dollars each month for the medications in question. Additionally, Plaintiff has already

expended personal resources as a result of the acts and practices of Defendants in connection with the implementation of the Program.

75. Plaintiff is willing and prepared to serve the Court and the proposed Class in a representative capacity. Plaintiff will fairly and adequately represent and protect the interests of the Class and has no interests adverse to or which materially and irreconcilably conflict with the interests of the other members of the Class. Based on the facts detailed above, the interests of Plaintiff are reasonably co-extensive with and not antagonistic to those of absent Class Members.

76. Plaintiff has engaged the services of counsel who are experienced in complex class litigation and the issues raised in this Complaint who will vigorously prosecute this action, and will assert and protect the rights of and otherwise adequately represent Plaintiff and absent Class Members.

77. A class action is superior to other available means for the fair and efficient group-wide adjudication of this controversy. The injuries suffered by individual Class Members are, while important to them, relatively small compared to the burden and expense of individual prosecution of the complex issues and extensive litigation needed to address Defendants' conduct.

78. Individualized litigation presents a potential for inconsistent or contradictory judgments. By contrast, a class action presents far fewer management difficulties; allows the hearing of claims that might otherwise go unaddressed; and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court.

79. Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate provisional and final declaratory and injunctive relief with respect to Class Members as a whole.

FIRST CAUSE OF ACTION

**Claim for Violation of Anti-Discrimination Provisions of
Affordable Care Act (42 U.S.C. § 300gg-4)**

80. Plaintiff incorporates by reference each of the preceding paragraphs as though fully set forth herein.

81. Section 2705 of the ACA, which applies to individual, group, self-insured and fully-insured health plans, states that a “health plan . . . *may not* establish rules for *eligibility (including continued eligibility) of any individual to enroll under the terms of the plan or coverage* based on any of the following health status-related factors in relation to the individual or a dependent of the individual:

- (1) Health status.
- (2) Medical condition.
- (3) Claims experience.
- (4) Receipt of health care.
- (5) Medical history.
- (6) Genetic information
- (7) Evidence of insurability.
- (8) Disability.
- (9) Any other health status-related factor determined appropriate by the Secretary.”

42 U.S.C. § 300gg-4 (emphasis added).

Section 2705 implicates a central goal of the ACA: to end discrimination against those with pre-existing conditions.

82. Section 2705 specifically prohibits coverage rules based on the listed health status-related factors in determining eligibility for coverage *and* the terms of coverage. Section

2705's non-discrimination requirement is not limited to eligibility, but includes terms of coverage. Benefit changes that provide qualitatively different coverage for patients with HIV/AIDS are thus doubly prohibited. The need for this prohibition is clear. Requiring health plans to offer coverage for patients with a pre-existing condition means little if the insurer can charge these patients exorbitant co-insurance or only cover care through inconvenient and ineffective mail-order requirements that put the patients' health and privacy at risk. CIGNA's practices attempt to do just this and are prohibited by Section 2705.

83. Patients with HIV/AIDS who are forced into the mail-order drug Program bear additional costs in time spent navigating on-line processes, phone menus and long hold times, coordinating with multiple pharmacies and pharmacists (for specialty and non-specialty drugs), and experience disruptions in their treatment. These patients also suffer from the loss of privacy at their workplace and neighborhoods where they may receive regular, conspicuous deliveries.

84. CIGNA, in violation of Section 2705, has avoided providing Class Members appropriate coverage based on their health status or medical condition requiring treatment with HIV/AIDS medications, leaving them to either bear these high costs of inconvenience, treatment disruption, and loss of privacy, or pay thousands of dollars out-of-pocket each month to purchase medications at their community pharmacy of choice.

85. The Program violates several aspects of Section 2705's prohibition on discrimination:

- a. (1) Health status, (2) Medical condition, or (5) Medical history.

CIGNA's requirement that HIV/AIDS patients receive medication from a mail-order pharmacy, rather than their community pharmacy, is a coverage rule based on the patients' health status and/or medical condition. A coverage rule that targets medications used exclusively by patients

with HIV/AIDS is no different than a rule that is directly based on those patients' medical conditions. By requiring HIV/AIDS patients to access their life-sustaining medications through a mail-order program that threatens their health and privacy, the mail-order requirement operates as a constructive eviction from coverage and thus erodes ongoing eligibility to receive medications. Furthermore, prospective enrollees with HIV/AIDS are impermissibly discouraged from enrolling in CIGNA plans.

b. (3) Claims experience. CIGNA adopted the Program because HIV/AIDS patients who utilize specialty medications are chronically ill, require on-going treatment, and therefore increase financial risk to CIGNA in the form of claims for medical treatment. CIGNA's decision to adopt the Program based on the actual and expected claims experience of individuals enrolled in CIGNA coverage is impermissible under Section 2705.

c. (8) Disability. Finally, the U.S. Supreme Court has determined that HIV/AIDS is a "disability." *Bragdon*, 524 U.S. at 655. Therefore, coverage and eligibility distinctions resulting from a patients' HIV/AIDS status are also prohibited. CIGNA violated this provision by imposing the Program on Class Members.

86. Plaintiff falls within the zone of protected persons under the ACA and thus has standing to seek all appropriate relief available under this statute.

87. Plaintiff requests damages, injunctive relief, attorneys' fees, costs, and such other and further appropriate relief against CIGNA as may be available under this claim.

SECOND CAUSE OF ACTION

Claim for Violation of Anti-Discrimination Provisions of Affordable Care Act (42 U.S.C. § 18116)

88. Plaintiff incorporates by reference each of the preceding paragraphs as though fully set forth herein.

89. Section 1557 of the ACA applies the Rehabilitation Act to all health plans “receiving Federal financial assistance, including credits, subsidies, or contracts of insurance.” 42 U.S.C. 18116. The Rehabilitation Act provides that “no otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be *excluded from the participation in, be denied the benefits of, or be subjected to discrimination* under any” health plan. 29 U.S.C. § 794(a) (emphasis added).

90. Defendants are subject to the provisions of the ACA and their conduct violates the Act.

91. Solely on the basis of their disability, Class Members have been excluded from participation in, have been denied the benefits of, or are being subjected to discrimination under their Cigna health plans.

92. CIGNA’s actions of requiring health plan members to choose between risking their health and privacy by enrolling in a mandatory mail-order delivery program and requiring patients to pay full price for their medications at their community pharmacy: (i) tends to *exclude* HIV/AIDS patients from participation in CIGNA’s health plans, (ii) *denies* HIV/AIDS patients the benefits of their health plans, and (iii) subjects patients with HIV/AIDS to unjust *discrimination*.

93. Defendants’ discriminatory actions have denied Plaintiff and Members of the Class full and equal enjoyment of the benefits, services, facilities, privileges, advantages, and accommodations available under their health plans. Furthermore, Defendants’ financial arrangements with their subsidiaries and community pharmacies, and changes to Class Members’ health plan and Defendants’ contractual relationships with those community pharmacies—specifically, changes to the “in-network” status of those pharmacies as to the specialty

medications in question—bar Class Members’ access to community pharmacies that have provided them such specialty medications for years. These health plan changes, financial arrangements and contractual changes have made, or will make, HIV/AIDS specialty medications unaffordable at those pharmacies where community pharmacists provide life-saving advice and counseling that Class Members have come to rely on. Therefore, Plaintiff and Class Members are subject to discriminatory treatment based on their disability that threatens their health and their privacy.

94. Plaintiff falls within the zone of protected persons under the ACA and thus has standing to seek all appropriate relief available under this statute.

95. Plaintiff requests damages, injunctive relief, attorneys’ fees, costs, and such other and further appropriate relief against CIGNA as may be available under this claim.

THIRD CAUSE OF ACTION

Claim for Benefits Due Under the Plans Governed by ERISA (29 U.S.C. § 1132(a)(1)(B))

96. Plaintiff incorporates by reference each of the preceding paragraphs as though fully set forth herein. This cause of action applies to all Class Members whose health plans are governed by ERISA.

97. Where a group benefits plan is insured by, funded by or administered by CIGNA, CIGNA must distribute benefits to plan subscribers pursuant to the terms of their ERISA plans.

98. CIGNA and its other subsidiaries violated their legal obligations under ERISA when they engaged in the conduct described in this Complaint. These violations include CIGNA’s implementation of a mandatory mail-order specialty pharmacy program targeting HIV and AIDS patients and the revocation of their valuable benefit and right to use community pharmacies on an in-network basis, causing an elimination in benefits without a change in actual

coverage.

99. Plaintiff's and Class Members' Certificates of Coverage and/or Evidences of Coverage provide for benefits available for prescription drug products at either a network pharmacy or a non-network pharmacy, subject to co-payments that vary depending on the tiered drug. CIGNA's unlawful practice requiring Class Members to switch from using an in-network community pharmacy to a mandatory mail-order requirement for obtaining specialty medications and the designation of the community pharmacy as now being out of network causes a reduction in or elimination of Plaintiff's and Class Members' benefits without any resultant change in coverage.

100. CIGNA further caused a reduction in or elimination of Plaintiff's and Class Members' benefits by exclusively requiring their use of a mail-order pharmacy to acquire these specialty medications, resulting in the violation of statutory laws or regulations set forth in this Complaint. Accordingly, CIGNA's requirement that Plaintiff and the Class use only Cigna's subsidiary—TEL-DRUG—violates the laws set forth in this Complaint and unlawfully reduces their benefits in a manner that is inconsistent with their stated coverage.

101. Plaintiff, on his own behalf and on behalf of the Class, seeks the benefit of continued access to community pharmacies as an "in-network" benefit due under Plaintiff's and Class Members' health plans and to enjoin CIGNA from continued implementation of the Program in its current form.

102. In addition, Plaintiff requests equitable and injunctive relief, attorneys' fees, costs, and such other and further appropriate relief against CIGNA as may be available under this claim.

FOURTH CAUSE OF ACTION

**Claim for Breach of Fiduciary Duties Under ERISA
(29 U.S.C. § 1109(a))**

103. Plaintiff incorporates by reference each of the preceding paragraphs as though fully set forth herein. This cause of action applies to all Class Members whose health plans are governed by ERISA.

104. Section 1109 of ERISA provides:

Any person who is a fiduciary with respect to a plan who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this subchapter shall be personally liable to make good to such plan any losses to the plan resulting from each such breach, and to restore to such plan any profits of such fiduciary which have been made through use of assets of the plan by the fiduciary, and shall be subject to such other equitable or remedial relief as the court may deem appropriate, including removal of the fiduciary.

105. CIGNA serves as a fiduciary under 29 U.S.C. section 1002(21)(A) for numerous plans covered by ERISA providing benefits to members of the Class because CIGNA exercises sole discretionary authority with respect to management of these plans. CIGNA is given exclusive discretion to interpret benefits, terms, conditions, limitations, and make factual determinations related to the health plan's benefits. As such, it owed the plans and plans' participants a duty to act with undivided loyalty and prudence in managing and administering the plans.

106. CIGNA breached its duties of loyalty and prudence under ERISA by engaging in the conduct described in this Complaint, specifically through their conduct of discrimination and self-dealing. Among other things, CIGNA breached its duty of loyalty and prudence by failing to

act in accordance with the ACA, ADA, and other applicable laws, and by failing to accurately represent the benefits due under the plan, by implementing a Program that does not satisfy minimum standards of care, and by not permitting enrollees to opt-out of the Program.

107. By requiring Plaintiff and the Class members to use the Program in order to receive their pharmacy benefits, CIGNA is not acting solely in the interest of the participant beneficiaries, causing a significant elimination or decrease in their benefits and higher costs to the plan participants by using the Program. CIGNA has eliminated or decreased plan benefits in order to increase its own profits by making their community pharmacists out of network for purposes of these specialty medications only but not for other medications.

108. CIGNA has put its own interests before the Class Members by increasing net out-of-pocket costs to affected enrollees for continuing to access their pharmacist of choice and decreasing consumer choice in an effort to increase its own profits by keeping all dispensing and other fees with its TEL-DRUG subsidiary.

109. CIGNA has further breached its duties by failing to meet the requisite standard of prudence under 29 U.S.C. section 1104, which requires CIGNA to discharge its duties “with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.” CIGNA is not new to the health insurance industry and is acutely aware of its obligations as a health care entity, yet it has engaged in conduct that risks violation of its participants’ health and privacy rights, and acted in direct contravention of ERISA’s prudent man standard.

110. Through these actions, CIGNA has eliminated or decreased Plaintiff’s and Class Members’ plan benefits. As a result of this wrongful conduct, the Class has or will suffer a

reduction in the quality and continuity of care they receive, and an overall elimination or decrease in benefits for the plans they pay for or are provided.

111. CIGNA's wrongful conduct has consequently caused Plaintiff and the Class to suffer injuries, in an amount to be determined at trial.

112. Section 502(a)(2) of ERISA authorizes a plan participant to bring a suit for appropriate relief under 29 U.S.C. section 1109. 29 U.S.C. § 1132(a)(1). Plaintiff, on his own behalf and on behalf of the Class, seeks the benefit of continued access to community pharmacies as an "in-network" benefit under their plans and to enjoin CIGNA from continued implementation of the Program in its proposed form.

113. In addition, Plaintiff requests equitable and injunctive relief, attorneys' fees, costs, and such other and further appropriate relief against CIGNA as may be available under this claim.

FIFTH CAUSE OF ACTION

Claim for Failure to Provide Full and Fair Review Required by ERISA (29 U.S.C. § 1132(a)(3))

114. Plaintiff incorporates by reference each of the preceding paragraphs as though fully set forth herein. This cause of action applies to all Class Members whose health plans are governed by ERISA.

115. ERISA provision 29 U.S.C. section 1133 requires that every employee benefit plan "(1) provide adequate notice in writing to any participant or beneficiary whose claim for benefits under the plan has been denied, setting forth the specific reasons for such denial, written in a manner calculated to be understood by the participant," and "(2) afford a reasonable opportunity to any participant whose claim for benefits has been denied for a full and fair review by the appropriate named fiduciary of the decision denying the claim."

116. CIGNA functions as a fiduciary for numerous plans covered by ERISA providing

benefits to members of the Class because CIGNA exercises sole discretionary authority with respect to management or administration of its plans. 29 U.S.C. § 1002(21)(A). CIGNA is given exclusive discretion to interpret benefits, terms, conditions, limitations, and make factual determinations related to the health plan's benefits. CIGNA has also functioned as the "Plan Administrator" within the meaning of such term under ERISA, as it made the decision to require Class Members to use the Program and TEL-DRUG as the exclusive provider.

117. Although CIGNA was obligated to do so, it failed to provide a "full and fair review" of denied claims pursuant to 29 U.S.C. section 1133 and the regulations promulgated thereunder by failing or denying persons who so requested the ability to do so, thus preventing Plaintiff and the Class from even reaching a point of appeal or review or by arbitrarily claiming they need to go through their employer to do so.

118. CIGNA has failed to provide a reasonable claims procedure for opting-out of the Program and failed to provide information regarding any opt-out right or any appeal of adverse opt-out determinations.

119. As a result, CIGNA failed to provide a "full and fair review," and failed to make necessary disclosures to plan members regarding any opt-out process from the Program or the ability to appeal any adverse determination.

120. Plaintiff and Class Members have been harmed by CIGNA's failure to provide a "full and fair review" of appeals under 29 U.S.C. section 1133, and by CIGNA's failure to disclose relevant information in violation of ERISA.

121. Plaintiff is entitled to assert a claim under 29 U.S.C. section 1132, subdivisions (a)(3) for CIGNA's failure to comply with the above requirements. Plaintiff, on his own behalf and on behalf of the Class, seeks the aforementioned benefit of continued access to community

pharmacies as an “in-network” benefit due under their plans and to enjoin CIGNA from continued implementation of the Program in its proposed form.

122. In addition, Plaintiff requests equitable and injunctive relief, attorneys’ fees, costs, and such other and further appropriate relief against CIGNA as may be available under this claim.

SIXTH CAUSE OF ACTION

Claim for Failure to Provide an Accurate EOC and SPD Required by ERISA (29 U.S.C. § 1132(a)(3) and (c))

123. Plaintiff incorporates by reference each of the preceding paragraphs as though fully set forth herein. This cause of action applies to all Class Members whose health plans are governed by ERISA.

124. CIGNA has functioned as the “Plan Administrator” within the meaning of such term under ERISA, as it made the decision to require Class Members to use the Program and TEL-DRUG as the exclusive provider. As the Plan Administrator, CIGNA was required to provide accurate EOC and SPD materials under 29 U.S.C. section 1022. CIGNA’s disclosure obligations under ERISA include furnishing accurate EOCs, SPDs and other required information. Under 29 U.S.C. section 1022, such a claim is privately actionable under 29 U.S.C. section 1132, subdivisions (a)(3) and (c).

125. Pursuant to 29 U.S.C. section 1022, subdivision (a), CIGNA was required to provide an SPD or EOC that was “written in a manner calculated to be understood by the average plan participant,” and that was “sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of their rights and obligations under the plan.” Further, the SPD or EOC must contain a description of the “circumstances which may result in disqualification, ineligibility, or denial or loss of benefits.” 29 U.S.C. § 1022(b).

126. CIGNA has misled Plaintiffs and the Class. As set forth above:

- CIGNA failed to timely and accurately convey that the Program was mandatory and that HIV/AIDS specialty medications were only available through the Program.

- There is no advance indication provided by CIGNA in the SPD as to which drugs are mandated by CIGNA to be “specialty drugs”, and there is no indication that enrollees will be required to receive their specialty medications by mail-order when they first enroll with CIGNA.
- Moreover, the discussion of mail order pharmacies in the SPD in no way implies that the use of mail-order for obtaining specialty medications is a mandate.

127. CIGNA has failed to timely disclose and misrepresented material information regarding pharmacy benefits. In addition, CIGNA has failed to disclose the procedures to be followed in presenting claims for benefits under the plans in connection with any applicable request to opt-out of the Program or any applicable waiver criteria. As a result, CIGNA has misrepresented Plaintiff’s and Class Members’ coverage regarding prescription drug benefits by not explaining any applicable opt-out process or the criteria therefor or any appeals procedure.

128. CIGNA’s failure to accurately disclose material information about the Program violates ERISA. As a result of CIGNA’s wrongful conduct, Plaintiff and the Class have suffered a loss of benefits without a change in actual coverage, resulting in CIGNA’s unjust enrichment. CIGNA has thus failed to provide a “full and fair review,” failed to provide reasonable claims procedures, and failed to make necessary disclosures to plan members regarding any applicable opt-out process from the Program.

129. By requiring Plaintiff and the Class to only use TEL-DRUG under the Program and failing to accurately convey material plan information regarding this requirement, CIGNA experienced increased profits and was unjustly enriched at the expense of Plaintiff and the Class.

130. Plaintiff and the Class have been harmed by CIGNA’s failure to comply with 29 U.S.C. section 1022, which caused a loss or elimination of benefits without actual change in coverage.

131. Plaintiff and Class Members have also been harmed by CIGNA’s failure to

provide a “full and fair review” of any appeals under 29 U.S.C. section 1133(2), and by CIGNA’s failure to disclose relevant information regarding any opt-out procedures, all in violation of ERISA.

132. CIGNA’s failure to supply accurate EOCs, Certificates of Coverage, SPDs and other required information is actionable under 29 U.S.C. section 1132(c).

133. Plaintiff, on his own behalf and on behalf of the Class, seeks the benefit of continued access to community pharmacies as an “in-network” benefit due under their plans and to enjoin CIGNA from continued implementation of the Program in its proposed form.

134. In addition, Plaintiff requests equitable and injunctive relief, attorneys’ fees, costs, and such other and further appropriate relief against CIGNA as may be available under this claim.

SEVENTH CAUSE OF ACTION

Violation of Americans with Disabilities Act (42 USCA § 12101, *et seq.*)

135. Plaintiff incorporates by reference each of the preceding paragraphs as though fully set forth herein.

136. The Americans with Disabilities Act, 42 U.S.C. section 12182, subdivision (a), provides:

No individual shall be discriminated against on the basis of *disability* in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any *place of public accommodation* by any person who owns, leases (or leases to), or *operates a place of public accommodation*.

137. By implementing the Program, which has or will effectively terminate community pharmacists from Plaintiff’s and Class Members’ network of services, Defendants have specifically targeted individuals on the basis of a particular disability and affirmatively

discriminated against such persons on the basis of their disability.

138. As the Program only applies to certain high cost specialty medications designed to treat very complicated disorders, but permits Plaintiff and Class Members to continue to use their pharmacist of choice as an in-network benefit for other medications, including other medications prescribed to the same individuals, the Program is directed at seriously ill enrollees with “disabilities” protected by the ADA.

139. For purposes of the ADA, “[t]he definition of disability in this chapter shall be construed in favor of broad coverage of individuals under this chapter, to the maximum extent permitted by the terms of this chapter.” (42 U.S.C. § 12102(4)(A).)

140. Under the ADA, the term “disability” means, with respect to an individual: “(A) a physical or mental impairment that substantially limits one or more major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment (as described in paragraph (3)).” 42 U.S.C. § 12102(1)(A)-(C). “Major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.” 42 U.S.C. § 12102(2)(A). A “major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.” 42 U.S.C. § 12102(2)(B).

141. The U.S. Supreme Court has recognized HIV/AIDS as a “disability” subject to the ADA. *Bragdon*, 524 U.S. at 655.

142. A pharmacy is a “public accommodation” recognized by the ADA. 42 U.S.C. § 12181(7)(F).

143. A defendant “operates a place of public accommodation” if that defendant exerts “control” over a place of public accommodation; for example, as a result of a financial or contractual relationship between the defendant and the place of public accommodation.

144. Defendants’ discriminatory actions have denied or will deny Plaintiff and members of the Class full and equal enjoyment of the benefits, services, facilities, privileges, advantages, and accommodations available under their health plans.

145. Defendants’ financial arrangements with their subsidiaries and the community pharmacies, and changes to Class Members’ health plans and Defendants’ contractual relationships with those community pharmacies—specifically, changes to the “in-network” status of those pharmacies as to the specialty medications in question—bar Class Members’ access to community pharmacies that have provided them such specialty medications for years. These financial arrangements and contractual changes have made, or will make, HIV/AIDS specialty medications unaffordable at those pharmacies where community pharmacists provide life-saving advice and counseling that Plaintiff and Class Members have come to rely on. Therefore, Plaintiff and Class Members are subject to discriminatory treatment based on their disability that threatens their health and their privacy.

146. In using their direct and on-going financial incentives and contractual control over local community pharmacies to discriminatorily deny Plaintiff and Class Members’ access to life-saving counseling and appropriate access to life-sustaining medications, Defendants have created a nexus between their health plans, the special medications at issue, and these community pharmacies. Therefore, there is a nexus and connection between a public accommodation and the disparity in benefits, services, facilities, privileges, advantages, and accommodations that CIGNA makes available to Class Members compared to other enrollees who are not currently prescribed

specialty medications.

147. Due to Defendants' significant direct control over access to community pharmacies, exercised through contractual agreements and financial arrangements, by making HIV medications an "out-of-network" event, Defendants effectively deny access to a place of accommodation to Class members for their life-sustaining medications.

148. A plaintiff proceeding under the "nexus" theory need not plead denial of physical access to a place of public accommodation. Intangible barriers equally restrict a disabled person's ability to enjoy goods, services and privileges.

149. Neither Defendants' conduct, nor the terms of the Program, reflects appropriate underwriting or classifying of risks, or administering such risks.

150. Under the ADA, any person who is subjected to discrimination on the basis of disability, or who has reasonable grounds for believing that such person is about to be subjected to discrimination, may seek appropriate remedies. 42 U.S.C. § 12188.

151. Plaintiff and Class Members have and will continue to be harmed by Defendants' actions through the loss of access to community pharmacies and pharmacists of their choice, the reduction in quality of continued care they received prior to initiation of the Program, and the interference and severing of their continuity of care.

152. Defendants' conduct has or will cause harm to Plaintiff and all other similarly situated Class Members, and is a substantial factor in causing such harm.

153. Plaintiff seeks an order enjoining Defendants from continuing to engage in such conduct.

154. As a proximate result of Defendants' conduct, Plaintiff was forced to seek legal representation. Plaintiff also seeks attorneys' fees and costs, and all other additional appropriate

relief as may be available under this cause of action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the Class, prays for relief as follows as applicable for the particular cause of action:

1. An Order certifying this action to proceed on behalf of the Class, and appointing Plaintiff and the counsel listed below to represent the Class;

2. An Order awarding Plaintiff and the Class Members disgorgement and restitution of the Defendants' revenues, profits and other benefits resulting from the acts and practices at issue herein;

3. An Order awarding Plaintiff and the Class Members such equitable relief as the Court deems proper;

4. An Order enjoining Defendants from implementing the Program in its current form in violation of applicable law or other appropriate injunctive relief;

5. An Order providing a declaration of rights as enumerated herein;

6. An Order awarding Plaintiff and the Class Members compensatory or statutory damages;

7. An Order awarding Plaintiff's counsel attorneys' fees, expert witness fees and other costs pursuant to, *inter alia*, the federal causes of action set forth above that permit such an award; and

8. An Order awarding such other and further relief as may be just and proper, including pre-judgment and post-judgment interest on the above amounts.

JURY DEMAND

Plaintiff demands a trial by jury on all issues and causes of action so triable.

DATED: April 27, 2015

PODHURST ORSECK, P.A.

By: /s/ Peter Prieto

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