

STATE OF RHODE ISLAND  
PROVIDENCE, SC

SUPERIOR COURT

CITY OF WARREN POLICE AND FIRE )  
RETIREMENT SYSTEM, Individually and on )  
Behalf of All Others Similarly Situated, )  
Plaintiff, )

v. )

CVS HEALTH CORPORATION, LARRY J. )  
MERLO, DAVID M. DENTON, MARK T. )  
BERTOLINI, SHAWN M. GUERTIN, EVA )  
C. BORATTO, DAVID W. DORMAN, )  
RICHARD M. BRACKEN, C. DAVID )  
BROWN II, ALECIA A. DECOUDREAUX, )  
NANCY-ANN M. DEPARLE, ANNE M. )  
FINUCANE, JEAN-PIERRE MILLON, )  
MARY L. SCHAPIRO, RICHARD J. SWIFT, )  
WILLIAM C. WELDON, AND TONY L. )  
WHITE, )  
Defendants. )

PC No.

CLASS ACTION

COMPLAINT FOR VIOLATIONS OF THE  
SECURITIES ACT OF 1933

## **INTRODUCTION**

1. Plaintiff City of Warren Police and Fire Retirement System (“City of Warren” or “Plaintiff”), individually and on behalf of all others similarly situated, by Plaintiff’s undersigned attorneys, alleges the following based upon personal knowledge as to Plaintiff and Plaintiff’s own acts, and upon information and belief as to all other matters based on the investigation conducted by and through Plaintiff’s attorneys, which included, among other things, a review of U.S. Securities and Exchange Commission (“SEC”) filings by CVS Health Corporation (“CVS” or the “Company”) and Aetna Inc. (“Aetna”), as well as media and analyst reports about the Company and Company press releases. Plaintiff believes that substantial additional evidentiary support will exist for the allegations set forth herein.

## **SUMMARY OF THE ACTION**

2. Plaintiff brings this securities class action on behalf of all persons who acquired CVS common stock pursuant or traceable to the S-4 registration statement and prospectus (collectively, the “Registration Statement”) issued in connection with CVS’s November 2018 merger with Aetna (the “Merger”).

3. The action asserts strict liability claims under §§11, 12, and 15 of the Securities Act of 1933 (“1933 Act”) against CVS, certain CVS officers and directors, and certain former Aetna officers and directors.

4. CVS is a pharmacy and healthcare company incorporated under the laws of Delaware and headquartered in Woonsocket, Rhode Island. CVS’s common stock trades on the New York Stock Exchange (“NYSE”) under the ticker symbol “CVS.”

5. In November 2018, in connection with the Merger, CVS issued approximately 274.4 million new shares of CVS common stock directly to former shareholders of Aetna common stock as follows: Each former share of Aetna common stock issued and outstanding immediately before the Merger was converted into the right to receive 0.8378 shares of newly issued CVS

common stock.<sup>1</sup> Each of these new shares of CVS common stock were issued pursuant to the Registration Statement.

6. The Registration Statement incorporated false and misleading financial results, trends, and metrics and omitted material facts rendering those financial results, trends, and metrics materially misleading. Principally, the Registration Statement was false and misleading because it touted the purported success and benefits of CVS's 2015 acquisition of Omnicare, Inc. (the "Omnicare Acquisition"), and a host of yearly and quarterly financial results, trends and metrics that were materially inflated thereby, while failing to disclose that, in truth, by the time of the Merger, CVS Health's financial condition and expected earnings were already severely deteriorating as a result of rising costs and poor results associated with the Omnicare Acquisition.

7. For example, the Registration Statement incorporated CVS's February 14, 2018 Annual Report on Form 10-K, which reported CVS's financial and operational results for the fiscal year ended December 31, 2017, for example, stating as follows:

	Number of securities to be issued upon exercise of outstanding options, warrants and rights <sup>(1)</sup>	Weighted average exercise price of outstanding options, warrants and rights	Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in first column) <sup>(1)</sup>
Equity compensation plans approved by stockholders	32,219	\$ 75.32	20,530
Equity compensation plans not approved by stockholders	—	—	—
<b>Total</b>	<b>32,219</b>	<b>\$ 75.32</b>	<b>20,530</b>

(1) Shares in thousands.

8. The Registration Statement described the Omnicare Acquisition as follows:

#### **Omnicare Acquisition**

On August 18, 2015, the Company acquired 100% of the outstanding common shares and voting interests of Omnicare, for \$98 per share for a total of \$9.6 billion and assumed long-term debt with a fair value of approximately \$3.1 billion. Omnicare is a leading health care services company that specializes in the management of complex pharmaceutical care. Omnicare's

<sup>1</sup> In addition to newly issued CVS common stock, former shareholders of Aetna common stock also received \$145 per share in cash.

LTC business is the nation's largest provider of pharmaceuticals, related pharmacy consulting and other ancillary services to chronic care facilities and other care settings. In addition, Omnicare has a specialty pharmacy business operating primarily under the name of ACS Pharmacy, and provides commercialization services under the name of RxCrossroads®. The Company includes LTC and the commercialization services business in the Retail/LTC Segment, and includes the specialty pharmacy business in its Pharmacy Services Segment. The Company acquired Omnicare to expand its operations in dispensing prescription drugs to assisted-living and long-term care facilities, and to broaden its presence in the specialty pharmacy business as the Company seeks to serve a greater percentage of the growing senior patient population in the United States.

9. The Registration Statement touted to purported benefits of the Omnicare Acquisition as follows:

Our acquisition of Omnicare broadened our base of pharmacy care to an additional dispensing channel, long-term care pharmacy. Omnicare's LTC operations include the distribution of pharmaceuticals, related pharmacy consulting and other ancillary services to chronic care facilities and other care settings. Omnicare also provided commercialization services under the name RxCrossroads until January 2, 2018, when we completed the sale of RxCrossroads. LTC is comprised of 145 spoke pharmacies that primarily handle new prescription orders, of which 30 are also hub pharmacies that use automation to support spoke pharmacies with refill prescriptions . . . . With the addition of the LTC operations, we are continuing to enhance our service offerings to further address the needs of an aging population throughout the continuum of senior care.

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*Long-term Care* - Through our Omnicare business, we provide the distribution of pharmaceuticals, related pharmacy consulting and other ancillary services to chronic care facilities and other care settings. Omnicare's customers consist of skilled nursing facilities, assisted living facilities, independent living communities, hospitals, correctional facilities, and other health care service providers. We provide pharmacy consulting, including monthly patient drug therapy evaluations, assist in compliance with state and federal regulations and provide proprietary clinical and health management programs. We also provide pharmaceutical case management services for retirees, employees and dependents who have drug benefits under corporate-sponsored health care programs.

10. The Registration Statement further reported the purported fair values of the assets acquired and liabilities assumed through the Omnicare Acquisition as follows (in millions):

Current Assets	\$1,657
Property and Equipment	\$313
<b>Goodwill</b>	<b>\$9,139</b>
<b>Intangible Assets</b>	<b>\$3,962</b>
Other noncurrent assets	\$63
Current liabilities	(\$773)
Long-term debt	(\$3,110)
Deferred income tax liabilities	(\$1,498)
Other noncurrent liabilities	(\$69)
Redeemable noncontrolling interest	(\$39)
<b>Total consideration</b>	<b>\$9,645</b>

[Emphasis added.]

11. As to the goodwill and other intangible assets associated with the Omnicare Acquisition, the Registration Statement further stated:

The goodwill represents future economic benefits expected to arise from the Company's expanded presence in the pharmaceutical care market, the assembled workforce acquired, expected purchasing and revenue synergies, as well as operating efficiencies and cost savings. Goodwill of \$8.7 billion was allocated to the Retail/LTC Segment and the remaining goodwill of \$0.4 billion was allocated to the Pharmacy Services Segment. Approximately \$0.4 billion of the goodwill is deductible for income tax purposes. Intangible assets acquired include customer relationships and trade names of \$3.9 billion and \$74 million, respectively, with estimated weighted average useful lives of 19.1 and 2.9 years, respectively, and 18.8 years in total.

During the year ended December 31, 2015, the Company incurred transaction costs of \$70 million associated with the acquisition of Omnicare that were recorded within operating expenses.

12. The Registration Statement also stated as follows:

*As of December 31, 2017, we had \$52.1 billion of goodwill and other intangible assets.* Goodwill and indefinitely-lived intangible assets are subject to annual impairment reviews, or more frequent reviews if events or circumstances

indicate that the carrying value may not be recoverable. When evaluating goodwill for potential impairment, we first compare the fair value of our reporting units to their respective carrying amounts. We estimate the fair value of our reporting units using a combination of a discounted cash flow model and a comparable market multiple model. If the estimated fair value of the reporting unit is less than its carrying amount, an impairment loss calculation is prepared. The impairment loss calculation compares the fair value of a reporting unit to its carrying amount. If the carrying amount of the reporting unit exceeds the fair value, a goodwill impairment loss is recognized in an amount equal to the excess to the extent of the goodwill balance. Estimated fair values could change if, for example, there are changes in the business climate, changes in the competitive environment, adverse legal or regulatory actions or developments, changes in capital structure, cost of debt, interest rates, capital expenditure levels, operating cash flows, or market capitalization. ***Because of the significance of our goodwill and intangible assets, any future impairment of these assets could require material noncash charges to our results of operations, which could have a material adverse effect on our financial condition and results of operations.***

[Emphasis added.]

13. The Registration Statement also purported to warn of numerous risks that “*if*” occurring “*may*” or “*could*” adversely affect the Company while failing to disclose that these very “risks” had already materialized at the time of the Merger. For example, the Registration Statement stated as follows:

Upon the closing of any acquisition we complete, we will need to successfully integrate the products, services and related assets, as well as internal controls into our business operations. ***If an acquisition*** is consummated, the integration of the acquired business, its products, services and related assets into our company may also be complex and time-consuming and, if the integration ***is not fully successful, we may not achieve the anticipated benefits, operating and cost synergies or growth opportunities of an acquisition . . .*** An inability to realize the full extent of the anticipated benefits, operating and cost synergies, innovations and operations efficiencies or growth opportunities of an acquisition, as well as any delays encountered in the integration process, ***could have a material adverse effect*** on our business and results of operation.

[Emphasis added.]

14. In truth, throughout 2018, the Omnicare Acquisition had already proven disastrous. The acquired business was rife with problems and deteriorating fast, as lower occupancy rates in skilled nursing facilities, significant decline in the financial health of numerous skilled nursing facility customers which resulted in a number of customer bankruptcies in 2018, and continued

facility reimbursement pressures all impacted CVS's financial condition. By the time of the Merger in late November 2018, the writing was on the wall: CVS would be forced to substantially write down its Omnicare business. Indeed, shortly after the Merger, that's exactly what happened. *See infra.*

15. Defendants were required to disclose this material information in the Registration Statement for at least four independent reasons. First, SEC Regulation S-K, 17 C.F.R. §229.303 ("Item 303"), required disclosure of any known events or uncertainties that had caused or were reasonably likely to cause CVS's disclosed financial information not to be indicative of future operating results. The severe and escalating problems already occurring in CVS's Omnicare business, the consequent negative impact on CVS's financial condition, and the impairment and consequent write-down CVS anticipated therefrom, were likely to (and, in fact, did) materially and adversely affect CVS's future results and prospects.

16. Second, SEC Regulation S-K, 17 C.F.R. §229.503 ("Item 503"), required, in the "Risk Factors" section of the Registration Statement, a discussion of the most significant factors that make the offering risky or speculative, and that each risk factor adequately describes the risk. CVS's discussions of risk factors did not mention, much less adequately describe, the risks posed by the severe and escalating problems already occurring in CVS's Omnicare business, nor the consequent negative impact on CVS's financial condition, nor the impairment and consequent write-down CVS anticipated therefrom, nor the likely and consequent material adverse effects on the Company's future results and prospects.

17. Third, Defendants incorporated financial results, trends, and metrics into the Registration Statement that, by the time of the Merger, were no longer accurate and had been rendered false and misleading. Defendants had a duty to update those incorporated financial results, trends, and metrics, to accurately account for the severe deterioration that was already occurring in CVS's Omnicare business.

18. Fourth, Defendants' failure to disclose rendered false and misleading the Registration Statement's many references to known risks that "*if*" occurring "*may*" or "*could*" affect the Company. These "risks" were already materializing at the time of the Merger.

19. With the benefit of these misrepresentations and omissions in the Registration Statement, Defendants were able to complete the Merger. But when the truth of Defendants' misrepresentations and omissions became known, the price of CVS shares suffered sharp declines.

20. On February 20, 2019, CVS announced severely disappointing financial and operational results for 4Q18 and FY18, dramatically lower-than-expected guidance for 2019, and revealed an additional **\$2.2 billion goodwill impairment** of its Omnicare business as follows:

The LTC business has continued to experience industry wide challenges that have impacted our ability to grow the business at the rate that was originally estimated when the Company acquired Omnicare, Inc. in 2015. These challenges include lower occupancy rates in skilled nursing facilities, significant deterioration in the financial health of numerous skilled nursing facility customers which resulted in a number of customer bankruptcies in 2018, and continued facility reimbursement pressures. As a result of these challenges, a goodwill impairment charge of \$3.9 billion was recorded during the second quarter of 2018. During the fourth quarter of 2018, the LTC reporting unit missed its forecast primarily due to operational issues and customer liquidity issues, including one significant customer bankruptcy. Additionally, LTC management submitted an updated final budget for 2019 which showed significant additional deterioration in the reporting unit's projected financial results for 2019 compared to the analysis performed in the second quarter of 2018, primarily due to continued industry and operational challenges, which also caused management to make further updates to their long term forecast beyond 2019. Based on these updated financial projections, management determined that there were indicators that the goodwill of the LTC business may be further impaired, and accordingly, an interim goodwill impairment test was performed as of December 31, 2018. The results of the impairment test showed that the fair value of the LTC business was lower than the carrying value resulting in **a \$2.2 billion goodwill impairment charge**. In addition to the lower financial projections, lower market multiples of the peer group companies contributed to the amount of the goodwill impairment charge.

[Emphasis added.]

21. Investors and market analysts expressed concern. For example, later that day, analysts with Fortune published an article *CVS Stock Plummets as 2019 Looks Like It Will Be a 'Major Disappointment' for Investors*, which stated:

The company announced a \$2.2 billion writedown on its 2015 takeover of Omnicare, a \$12.9 billion deal that was meant to build the company's business serving patients in nursing homes and long-term medical-care facilities.

But that business hasn't grown as expected. There are fewer patients in long-term care facilities, which caused a number of CVS's customers to go bankrupt last year.



The \$2.2 billion Omnicare charge follows an earlier, \$3.9 billion writedown CVS took on the business in the second quarter. Together, they add up to half of what the company paid for Omnicare three years ago. The unit is predicting more challenges in the future . . .

22. On this news, the price of CVS shares plummeted \$7.53 per share, from a close of \$69.88 on February 19, 2019, down to a close of \$62.35 on February 21, 2019. CVS shares continued to decline over the following days and weeks.

23. By the commencement of this action, CVS shares have traded as low as \$52.36 per share, a nearly *35% decline* from the approximately \$80 price per share on the exchange date for the Merger. As a result, investors suffered severe losses.

#### **JURISDICTION AND VENUE**

24. This Court has original subject matter jurisdiction under the Rhode Island Constitution and Rhode Island General Laws §8-2-14(a). Removal is barred by §22 of the 1933 Act.

25. This Court has personal jurisdiction and venue under Rhode Island General Laws §§9-4-3, 9-5-33, and 8-2-27 because certain Defendants are headquartered or otherwise dwell in Rhode Island, Defendants and their agents affirmatively solicited and sold the subject securities and Registration Statement to Plaintiff and other investors from Rhode Island and this county and those contacts have a substantial connection to the claims alleged herein.

#### **PARTIES**

26. Plaintiff acquired CVS common stock via the Merger pursuant to the Registration Statement and was damaged thereby.

27. CVS is a pharmacy and healthcare company incorporated under the laws of Delaware and headquartered in Woonsocket, Rhode Island. CVS's common stock trades on the NYSE under the ticker symbol "CVS." In November 2018, in connection with the Merger, CVS issued approximately 274.4 million new shares of CVS common stock directly to former shareholders of Aetna common stock, all pursuant to the Registration Statement.

28. Defendant Larry J. Merlo was, at all relevant times, President, Chief Executive Officer and a Director of CVS. Defendant Merlo reviewed, contributed to, and signed the Registration Statement.

29. Defendant David M. Denton was, at all relevant times, Executive Vice President and Chief Financial Officer of CVS. Defendant Denton reviewed, contributed to, and signed the Registration Statement.

30. Defendant Mark T. Bertolini was, at all relevant times, Chief Executive Officer of Aetna and Chairman of the Aetna Board of Directors. Defendant Bertolini reviewed, contributed to, and signed the Registration Statement.

31. Defendant Shawn M. Guertin was, at all relevant times, Executive Vice President, Chief Financial Officer, and Chief Enterprise Risk Officer of Aetna. Defendant Guertin reviewed, contributed to, and signed the Registration Statement.

32. Defendant Eva C. Boratto was, at all relevant times, an Executive Vice President, Controller, and Chief Accounting Officer of CVS. Defendant Boratto reviewed, contributed to, and signed the Registration Statement.

33. Defendant David W. Dorman was, at all relevant times, Chairman of the CVS Board of Directors. Defendant Dorman reviewed, contributed to, and signed the Registration Statement.

34. Defendant Richard M. Bracken was, at all relevant times, a Director on the CVS Board of Directors. Defendant Bracken reviewed, contributed to, and signed the Registration Statement.

35. Defendant C. David Brown II was, at all relevant times, a Director on the CVS Board of Directors. Defendant Brown reviewed, contributed to, and signed the Registration Statement.

36. Defendant Alecia A. DeCoudreaux was, at all relevant times, a Director on the CVS Board of Directors. Defendant DeCoudreaux reviewed, contributed to, and signed the Registration Statement.

37. Defendant Nancy-Ann M. DeParle was, at all relevant times, a Director on the CVS Board of Directors. Defendant DeParle reviewed, contributed to, and signed the Registration Statement.

38. Defendant Anne M. Finucane was, at all relevant times, a Director on the CVS Board of Directors. Defendant Finucane reviewed, contributed to, and signed the Registration Statement.

39. Defendant Jean-Pierre Millon was, at all relevant times, a Director on the CVS Board of Directors. Defendant Millon reviewed, contributed to, and signed the Registration Statement.

40. Defendant Mary L. Schapiro was, at all relevant times, a Director on the CVS Board of Directors. Defendant Schapiro reviewed, contributed to, and signed the Registration Statement.

41. Defendant Richard J. Swift was, at all relevant times, a Director on the CVS Board of Directors. Defendant Swift reviewed, contributed to, and signed the Registration Statement.

42. Defendant William C. Weldon was, at all relevant times, a Director on the CVS Board of Directors. Defendant Weldon reviewed, contributed to, and signed the Registration Statement.

43. Defendant Tony L. White was, at all relevant times, a Director on the CVS Board of Directors. Defendant White reviewed, contributed to, and signed the Registration Statement.

44. The defendants named in ¶¶28-43 are referred to herein as the “Individual Defendants.” The Individual Defendants each signed the Registration Statement, solicited the purchase securities issued pursuant thereto, planned and contributed to the Merger and Registration Statement, and attended promotions to meet with and present favorable information to CVS and Aetna investors, all motivated by their own and the Company’s financial interests.

**DEFENDANTS’ FALSE AND MISLEADING  
REGISTRATION STATEMENT AND PROSPECTUS**

45. On January 4, 2018, Defendants filed with the SEC on Form S-4, a draft Registration Statement which would register the CVS shares to be issued and exchanged in the Merger following a series of amendments in response to SEC comments, including comments from

the SEC emphasizing the importance of adequately disclosing material trends and risk factors, as required by Items 303 and 503.

46. On February 9, 2018, Defendants filed a final amendment to the Registration Statement, the SEC declared the Registration Statement effective, and Defendants filed a final prospectus on Form 424B3 for the CVS shares issued and exchanged in the Merger, which prospectus forms part of the Registration Statement.

47. On November 28, 2018, Defendants closed the Merger, issuing approximately 274.4 million new shares of CVS common stock directly to former shareholders of Aetna common stock as follows: Each former share of Aetna common stock issued and outstanding immediately before the Merger was converted into the right to receive 0.8378 shares of newly issued CVS common stock (plus cash consideration). Each of these new shares of CVS common stock issued pursuant to the Registration Statement. On November 28, 2018, the market price for CVS common stock closed at \$80.27 per share.

48. Defendants conducted the Merger with the Registration Statement containing untrue statements of material fact and omitting material facts both required by governing regulations and necessary to make the statements made not misleading.

49. The Registration Statement incorporated false and misleading financial results, trends, and metrics and omitted material facts rendering those financial results, trends, and metrics materially misleading. Principally, the Registration Statement was false and misleading because it touted the purported success and benefits of CVS's 2015 acquisition of Omnicare, Inc., and a host of yearly and quarterly financial results, trends and metrics that were materially inflated thereby, while failing to disclose that, in truth, by the time of the Merger, CVS Health's financial condition and expected earnings were already severely deteriorating as a result of rising costs and poor results associated with the Omnicare Acquisition.

50. For example, the Registration Statement incorporated CVS's February 14, 2018 Annual Report on Form 10-K, which reported CVS's financial and operational results for the fiscal year ended December 31, 2017, for example, stating as follows:

	Number of securities to be issued upon exercise of outstanding options, warrants and rights <sup>(1)</sup>	Weighted average exercise price of outstanding options, warrants and rights	Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in first column) <sup>(1)</sup>
Equity compensation plans approved by stockholders	32,219	\$ 75.32	20,530
Equity compensation plans not approved by stockholders	—	—	—
<b>Total</b>	<b>32,219</b>	<b>\$ 75.32</b>	<b>20,530</b>

(1) Shares in thousands.

51. The Registration Statement described the Omnicare Acquisition as follows:

### **Omnicare Acquisition**

On August 18, 2015, the Company acquired 100% of the outstanding common shares and voting interests of Omnicare, for \$98 per share for a total of \$9.6 billion and assumed long-term debt with a fair value of approximately \$3.1 billion. Omnicare is a leading health care services company that specializes in the management of complex pharmaceutical care. Omnicare's LTC business is the nation's largest provider of pharmaceuticals, related pharmacy consulting and other ancillary services to chronic care facilities and other care settings. In addition, Omnicare has a specialty pharmacy business operating primarily under the name of ACS Pharmacy, and provides commercialization services under the name of RxCrossroads®. The Company includes LTC and the commercialization services business in the Retail/LTC Segment, and includes the specialty pharmacy business in its Pharmacy Services Segment. The Company acquired Omnicare to expand its operations in dispensing prescription drugs to assisted-living and long-term care facilities, and to broaden its presence in the specialty pharmacy business as the Company seeks to serve a greater percentage of the growing senior patient population in the United States.

52. The Registration Statement touted to purported benefits of the Omnicare Acquisition as follows:

Our acquisition of Omnicare broadened our base of pharmacy care to an additional dispensing channel, long-term care pharmacy. Omnicare's LTC operations include the distribution of pharmaceuticals, related pharmacy consulting and other ancillary services to chronic care facilities and other care settings. Omnicare also provided commercialization services under the name RxCrossroads until January 2, 2018, when we completed the sale of RxCrossroads. LTC is comprised of 145 spoke pharmacies that primarily handle new prescription orders, of which 30 are also hub pharmacies that use automation to support spoke pharmacies with refill prescriptions . . . . With the addition of the LTC operations, we are continuing to enhance our service offerings to further address the needs of an aging population throughout the continuum of senior care.

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*Long-term Care* - Through our Omnicare business, we provide the distribution of pharmaceuticals, related pharmacy consulting and other ancillary services to chronic care facilities and other care settings. Omnicare's customers consist of skilled nursing facilities, assisted living facilities, independent living communities, hospitals, correctional facilities, and other health care service providers. We provide pharmacy consulting, including monthly patient drug therapy evaluations, assist in compliance with state and federal regulations and provide proprietary clinical and health management programs. We also provide pharmaceutical case management services for retirees, employees and dependents who have drug benefits under corporate-sponsored health care programs.

53. The Registration Statement further reported the purported fair values of the assets acquired and liabilities assumed through the Omnicare Acquisition as follows (in millions):

Current Assets	\$1,657
Property and Equipment	\$313
<b>Goodwill</b>	<b>\$9,139</b>
<b>Intangible Assets</b>	<b>\$3,962</b>
Other noncurrent assets	\$63
Current liabilities	(\$773)
Long-term debt	(\$3,110)
Deferred income tax liabilities	(\$1,498)
Other noncurrent liabilities	(\$69)
Redeemable noncontrolling interest	(\$39)
<b>Total consideration</b>	<b>\$9,645</b>

[Emphasis added.]

54. As to the goodwill and other intangible assets associated with the Omnicare Acquisition, the Registration Statement further stated:

The goodwill represents future economic benefits expected to arise from the Company's expanded presence in the pharmaceutical care market, the assembled workforce acquired, expected purchasing and revenue synergies, as well as operating efficiencies and cost savings. Goodwill of \$8.7 billion was

allocated to the Retail/LTC Segment and the remaining goodwill of \$0.4 billion was allocated to the Pharmacy Services Segment. Approximately \$0.4 billion of the goodwill is deductible for income tax purposes. Intangible assets acquired include customer relationships and trade names of \$3.9 billion and \$74 million, respectively, with estimated weighted average useful lives of 19.1 and 2.9 years, respectively, and 18.8 years in total.

During the year ended December 31, 2015, the Company incurred transaction costs of \$70 million associated with the acquisition of Omnicare that were recorded within operating expenses.

55. The Registration Statement also stated as follows:

*As of December 31, 2017, we had \$52.1 billion of goodwill and other intangible assets.* Goodwill and indefinitely-lived intangible assets are subject to annual impairment reviews, or more frequent reviews if events or circumstances indicate that the carrying value may not be recoverable. When evaluating goodwill for potential impairment, we first compare the fair value of our reporting units to their respective carrying amounts. We estimate the fair value of our reporting units using a combination of a discounted cash flow model and a comparable market multiple model. If the estimated fair value of the reporting unit is less than its carrying amount, an impairment loss calculation is prepared. The impairment loss calculation compares the fair value of a reporting unit to its carrying amount. If the carrying amount of the reporting unit exceeds the fair value, a goodwill impairment loss is recognized in an amount equal to the excess to the extent of the goodwill balance. Estimated fair values could change if, for example, there are changes in the business climate, changes in the competitive environment, adverse legal or regulatory actions or developments, changes in capital structure, cost of debt, interest rates, capital expenditure levels, operating cash flows, or market capitalization. *Because of the significance of our goodwill and intangible assets, any future impairment of these assets could require material noncash charges to our results of operations, which could have a material adverse effect on our financial condition and results of operations.*

[Emphasis added.]

56. The Registration Statement also purported to warn of numerous risks that “if” occurring “may” or “could” adversely affect the Company while failing to disclose that these very “risks” had already materialized at the time of the Merger. For example, the Registration Statement stated as follows:

Upon the closing of any acquisition we complete, we will need to successfully integrate the products, services and related assets, as well as internal controls into our business operations. *If an acquisition* is consummated, the integration of the acquired business, its products, services and related assets into our

company may also be complex and time-consuming and, if the integration *is not fully successful, we may not achieve the anticipated benefits, operating and cost synergies or growth opportunities of an acquisition* . . . . An inability to realize the full extent of the anticipated benefits, operating and cost synergies, innovations and operations efficiencies or growth opportunities of an acquisition, as well as any delays encountered in the integration process, *could have a material adverse effect* on our business and results of operation.

[Emphasis added.]

57. In truth, throughout 2018, the Omnicare Acquisition had already proven disastrous. The acquired business was rife with problems and deteriorating fast, as lower occupancy rates in skilled nursing facilities, significant decline in the financial health of numerous skilled nursing facility customers which resulted in a number of customer bankruptcies in 2018, and continued facility reimbursement pressures all impacted CVS's financial condition. By the time of the Merger in late November 2018, the writing was on the wall: CVS would be forced to substantially write-down its Omnicare business.

58. Defendants were required to disclose this material information in the Registration Statement for at least four independent reasons. First, SEC Regulation S-K, 17 C.F.R. §229.303 ("Item 303"), required disclosure of any known events or uncertainties that had caused or were reasonably likely to cause CVS's disclosed financial information not to be indicative of future operating results. The severe and escalating problems already occurring in CVS's Omnicare business, the consequent negative impact on CVS's financial condition, and the impairment and consequent write-down CVS anticipated therefrom, were likely to (and, in fact, did) materially and adversely affect CVS's future results and prospects.

59. Second, SEC Regulation S-K, 17 C.F.R. §229.503 ("Item 503"), required, in the "Risk Factors" section of the Registration Statement, a discussion of the most significant factors that make the offering risky or speculative, and that each risk factor adequately describe the risk. CVS's discussions of risk factors did not mention, much less adequately describes, the risks posed by the severe and escalating problems already occurring in CVS's Omnicare business, nor the consequent negative impact on CVS's financial condition, nor the impairment and consequent



write-down CVS anticipated therefrom, nor the likely and consequent material adverse effects on the Company's future results and prospects.

60. Third, Defendants incorporated financial results, trends, and metrics into the Registration Statement that, by the time of the Merger, were no longer accurate and had been rendered false and misleading. Defendants had a duty to update those incorporated financial results, trends, and metrics, to accurately account for the severe deterioration that was already occurring in CVS's Omnicare business.

61. Fourth, Defendants' failure to disclose rendered false and misleading the Registration Statement's many references to known risks that "*if*" occurring "*may*" or "*could*" affect the Company. These "risks" were already materializing at the time of the Merger.

62. With the benefit of these misrepresentations and omissions in the Registration Statement, Defendants were able to complete the Merger. But when the truth of Defendants' misrepresentations and omissions became known, the price of CVS shares suffered sharp declines.

63. On February 20, 2019, CVS announced severely disappointing financial and operational results for 4Q18 and FY18, dramatically lower-than-expected guidance for 2019, and revealed an additional **\$2.2 billion goodwill impairment** of its Omnicare business as follows:

The LTC business has continued to experience industry wide challenges that have impacted our ability to grow the business at the rate that was originally estimated when the Company acquired Omnicare, Inc. in 2015. These challenges include lower occupancy rates in skilled nursing facilities, significant deterioration in the financial health of numerous skilled nursing facility customers which resulted in a number of customer bankruptcies in 2018, and continued facility reimbursement pressures. As a result of these challenges, a goodwill impairment charge of \$3.9 billion was recorded during the second quarter of 2018. During the fourth quarter of 2018, the LTC reporting unit missed its forecast primarily due to operational issues and customer liquidity issues, including one significant customer bankruptcy. Additionally, LTC management submitted an updated final budget for 2019 which showed significant additional deterioration in the reporting unit's projected financial results for 2019 compared to the analysis performed in the second quarter of 2018, primarily due to continued industry and operational challenges, which also caused management to make further updates to their long term forecast beyond 2019. Based on these updated financial projections, management determined that there were indicators that the goodwill of the LTC business may be further impaired, and accordingly, an interim goodwill impairment test was performed as of December 31, 2018. The results of the impairment test showed that the fair value of the LTC business was lower than the carrying value resulting in a

***\$2.2 billion goodwill impairment charge.*** In addition to the lower financial projections, lower market multiples of the peer group companies contributed to the amount of the goodwill impairment charge.

64. Investors and market analysts expressed concern. For example, later that day, analysts with Fortune published an article *CVS Stock Plummets as 2019 Looks Like It Will Be a 'Major Disappointment' for Investors*, which stated:

The company announced a \$2.2 billion writedown on its 2015 takeover of Omnicare, a \$12.9 billion deal that was meant to build the company's business serving patients in nursing homes and long-term medical-care facilities.

But that business hasn't grown as expected. There are fewer patients in long-term care facilities, which caused a number of CVS's customers to go bankrupt last year.

The \$2.2 billion Omnicare charge follows an earlier, \$3.9 billion writedown CVS took on the business in the second quarter. Together, they add up to half of what the company paid for Omnicare three years ago. The unit is predicting more challenges in the future . . .

65. On this news, the price of CVS shares plummeted \$7.53 per share, from a close of \$69.88 on February 19, 2019, down to a close of \$62.35 on February 21, 2019. CVS shares continued to decline over the following days and weeks.

66. By the commencement of this action, CVS shares have traded as low as \$52.36 per share, a nearly 35% *decline* from the approximately \$80 price per share on the exchange date for the Merger. As a result, investors suffered severe losses.

### **CLASS ACTION ALLEGATIONS**

67. Plaintiff brings this action as a class action on behalf of all persons who acquired CVS common stock pursuant or traceable to the Registration Statement (the "Class"). Excluded from the Class are Defendants and their families, the officers and directors and affiliates of Defendants, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which Defendants have or had a controlling interest.

68. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff believes that there are hundreds of members in the proposed Class. Record owners and other members of the Class may be identified from records maintained by CVS, Aetna, or their transfer agents, and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

69. Plaintiff's claims are typical of the claims of the members of the Class, as all members of the Class are similarly affected by Defendants' wrongful conduct in violation of federal law that is complained of herein.

70. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation.

71. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

- (a) whether Defendants violated the 1933 Act;
- (b) whether the Registration Statement was negligently prepared and contained inaccurate statements of material fact and omitted material information required to be stated therein; and
- (c) to what extent the members of the Class have sustained damages and the proper measure of damages.

72. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

**FIRST CAUSE OF ACTION**

**For Violation of §11 of the 1933 Act  
Against All Defendants**

73. Plaintiff incorporates all of the foregoing paragraphs by reference.

74. This Cause of Action is brought pursuant to §11 of the 1933 Act, 15 U.S.C. §77k, on behalf of the Class, against all Defendants.

75. The Registration Statement contained untrue statements of material facts, omitted to state other facts necessary to make the statements made not misleading, and omitted to state material facts required to be stated therein.

76. Defendants are strictly liable to Plaintiff and the Class for the misstatements and omissions.

77. None of the Defendants named herein made a reasonable investigation or possessed reasonable grounds for the belief that the statements contained in the Registration Statement were true and without omissions of any material facts and were not misleading.

78. By reason of the conduct herein alleged, each Defendant violated, or controlled a person who violated, §11 of the 1933 Act.

79. Plaintiff acquired CVS shares pursuant to the Registration Statement.

80. Plaintiff and the Class have sustained damages. The value of CVS common stock has declined substantially subsequent to and due to Defendants' violations.

81. At the time of their acquisition of CVS shares, Plaintiff and other members of the Class were without knowledge of the facts concerning the wrongful conduct alleged herein and could not have reasonably discovered those facts prior to the disclosures herein. Less than one year has elapsed from the time that Plaintiff discovered or reasonably could have discovered the facts upon which this Complaint is based to the time that Plaintiff commenced this action. Less than three years has elapsed between the time that the securities upon which this Cause of Action is brought were offered to the public and the time Plaintiff commenced this action.

## **SECOND CAUSE OF ACTION**

### **For Violation of §12(a)(2) of the 1933 Act Against All Defendants**

82. Plaintiff incorporates all of the foregoing paragraphs by reference.

83. By means of the defective Prospectus, Defendants promoted and sold CVS shares to Plaintiff and other members of the Class.

84. The prospectus contained untrue statements of material fact, and concealed and failed to disclose material facts, as detailed above. Defendants owed Plaintiff and the other members of the Class who purchased CVS shares pursuant to the Prospectus the duty to make a reasonable and diligent investigation of the statements contained in the Prospectus to ensure that such statements were true and that there was no omission to state a material fact required to be stated in order to make the statements contained therein not misleading. Defendants, in the exercise of reasonable care, should have known of the misstatements and omissions contained in the prospectus as set forth above.

85. Plaintiff did not know, nor in the exercise of reasonable diligence could have known, of the untruths and omissions contained in the prospectus at the time Plaintiff acquired CVS shares.

86. By reason of the conduct alleged herein, Defendants violated §12(a)(2) of the 1933 Act. As a direct and proximate result of such violations, Plaintiff and the other members of the Class who purchased CVS shares pursuant to the Prospectus sustained substantial damages in connection with their purchases of the stock. Accordingly, Plaintiff and the other members of the Class who hold the common stock issued pursuant to the Prospectus have the right to rescind and recover the consideration paid for their shares, and hereby tender their common stock to Defendants sued herein. Class members who have sold their common stock seek damages to the extent permitted by law.

## **THIRD CAUSE OF ACTION**

### **For Violation of §15 of the 1933 Act Against All Defendants**

87. Plaintiff incorporates all of the foregoing paragraphs by reference.

88. This Cause of Action is brought pursuant to §15 of the 1933 Act against the Defendants.

89. The Individual Defendants were controlling persons of CVS by virtue of their positions as directors or senior officers of CVS and Aetna. The Individual Defendants each had a series of direct or indirect business or personal relationships with other directors or officers or major shareholders of CVS and Aetna. The Company controlled the Individual Defendants and all of CVS's and Aetna's employees.

90. CVS and the Individual Defendants were each a culpable participant in the violations of §§11 and 12(a)(2) of the 1933 Act alleged in the First and Second Causes of Action above, based on their having signed or authorized the signing of the Registration Statement and having otherwise participated in the process which allowed the Merger to be successfully completed.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

A. Certifying this class action, appointing Plaintiff as a Class representative, and appointing Plaintiff's counsel Class Counsel;

B. Awarding damages in favor of Plaintiff and the Class against all Defendants, jointly and severally, in an amount to be proven at trial, including interest thereon;

C. Awarding Plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees;

D. Awarding rescission, disgorgement, or such other equitable or injunctive relief as deemed appropriate by the Court.

Dated: May \_\_, 2019

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