

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION

<p>J.R, individually and on behalf of her minor children A.R. and H.K., J.H., B.Y., and J.S., individually, and on behalf of all others similarly situated,</p> <p style="text-align: center;">Plaintiffs,</p> <p>v.</p> <p>WALGREENS BOOTS ALLIANCE, INC. and WALGREEN CO.,</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: center;">Civil Action File No.:</p> <p style="text-align: center;"><u>2:19-cv-00446-DCN</u></p> <p style="text-align: center;">COMPLAINT FOR INJUNCTIVE RELIEF</p> <p style="text-align: center;">AND</p> <p style="text-align: center;">PETITION FOR CLASS ACTION</p> <p style="text-align: center;"><b>JURY TRIAL DEMANDED</b></p>
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**COMPLAINT FOR INJUNCTIVE RELIEF AND  
PETITION FOR CLASS ACTION**

J.R., individually and on behalf of her minor children A.R. and H.K., J.H., B.Y., and J.S. (collectively “Plaintiffs”)<sup>1</sup>, individually, and on behalf of all others similarly situated, bring this Complaint for Injunctive Relief and Petition for Class Action against Walgreens Boots Alliance, Inc. and Walgreen Co. (collectively “Walgreens” or “Defendants”) pursuant to Federal Rules of Civil Procedure (“Fed. R. Civ. P.”) 23 and 65, alleging as follows:

**INTRODUCTION**

1. Plaintiffs bring this action to stop Walgreens’ unauthorized and illegal use of its pharmacy customers’ most personal and private information for its own financial gain.
2. Privacy is a sacred common law right afforded to all residents of the State of South Carolina.
3. Walgreens has violated, and continues to violate, its pharmacy customers’

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<sup>1</sup> Plaintiffs contemporaneously file a Motion to Proceed Pseudonymously.

fundamental privacy rights by covertly exploiting their personal data in a manner that shocks the conscience.

4. Residents of the State of South Carolina who patronize Walgreens' pharmacies do so without explicitly or impliedly agreeing to sacrifice their well-established common law privacy rights "at the corner of happy and healthy,"<sup>2</sup> and Plaintiffs come now to plead with this Court to stop Walgreens from surreptitiously invading its pharmacy customers' privacy for its own financial benefit.

5. Because the State of South Carolina affords greater privacy protections and privacy rights than the Health Insurance Portability and Accountability Act (commonly known as "HIPAA"), this action is to be governed by common law.

6. Plaintiffs bring this action on behalf of themselves and all other similarly situated consumers and customers of Walgreens' retail, mail-order, and/or specialty pharmacies who, during any time within the applicable statutory period, (1) resided in the State of South Carolina; (2) obtained or sought to obtain prescription drugs and/or prescription drug-related services from a Walgreens pharmacy located in the State of South Carolina; and (3) had their full name and/or personally identifiable information, including, but not limited to, their gender; date of birth; address; electronic mail address; telephone number; prescription information; prescribing physician; insurance information; payment information; medical history, including mental or physical condition(s); diagnosis and treatment history; health information; and/or other nonpublic information (collectively referred to herein as "Personally Identifiable Information" or "PII") unlawfully, negligently, or unjustly used, disseminated, and/or disclosed without de-identification, authorization, consent, or permission by Walgreens for its commercial benefit

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<sup>2</sup> "At the Corner of Happy and Healthy" was Walgreens' longtime advertising slogan, which was strategically replaced with "Trusted since 1901" in December 2017.

and/or financial gain (referred to throughout as the “Class” or “Class Members”).

7. Plaintiffs and Class Members seek a preliminary and permanent injunction from this Court to enjoin Walgreens from using, for its own commercial benefit and/or financial gain, Plaintiffs’ and Class Members’ PII without first obtaining explicit consent for such use.

8. Plaintiffs and Class Members also seek from this Court class certification and monetary damages from Walgreens for unlawfully using their PII for Walgreens’ commercial benefit and/or financial gain.

### **PARTIES**

9. Plaintiff J.R. and her minor children, A.R. and H.K., were, and remain, residents of Charleston, South Carolina. From May 6, 2014, and multiple times thereafter until December 5, 2018, Plaintiff J.R. provided her PII, and from August 19, 2013, and multiple times thereafter until October 28, 2017, the PII of her minor children, A.R. and H.K., to Walgreens in order to fill prescriptions at a Walgreens pharmacy located at 907 Folly Road, Charleston, South Carolina 29412. Walgreens used Plaintiff J.R.’s PII and the PII of her minor children, A.R. and H.K., without their consent for Walgreens’ own commercial benefit and/or financial gain.

10. Plaintiff J.H. was, and remains, a resident of Charleston, South Carolina and on or about February 15, 2017, and multiple times thereafter until January 29, 2019, provided his PII to Walgreens in order to fill a prescription at a Walgreens pharmacy located at 334 East Bay Street, Suite D, Charleston, South Carolina 29401. Walgreens used Plaintiff J.H.’s PII without his consent for Walgreens’ own commercial benefit and/or financial gain.

11. Plaintiff B.Y. was, and remains, a resident of Charleston, South Carolina and on or about February 13, 2018, provided his PII to Walgreens in order to fill a prescription at a Walgreens pharmacy located at 907 Folly Road, Charleston, South Carolina 29412. Walgreens

used Plaintiff B.Y.'s PII without his consent for Walgreens' own commercial benefit and/or financial gain.

12. Plaintiff J.S. was, and remains, a resident of Charleston, South Carolina and on or about July 8, 2015, and multiple times thereafter until November 7, 2018, provided his PII to Walgreens in order to fill a prescription at a Walgreens pharmacy located at 1925 Ashley River Road, Charleston, South Carolina 29407. Walgreens used Plaintiff J.S.'s PII without his consent for Walgreens' own commercial benefit and/or financial gain.

13. European-based Defendant Walgreens Boots Alliance, Inc. ("WBA") is incorporated under the laws of the State of Delaware, with its principal place of business located at 108 Wilmot Road, Deerfield, Illinois 60015. As of December 31, 2014, Defendant WBA holds: (a) the stock of Defendant Walgreen Co.; (b) the stock of Alliance Boots GmbH; (c) approximately 26% of the stock of AmerisourceBergen Corporation (the principal supplier of branded and generic drugs to Defendant Walgreen Co.'s retail pharmacy operations in the United States); (d) significant membership units in AllianceRx Walgreens Prime, a joint venture entity formed by Defendant WBA and Prime Therapeutics, LLC (a pharmacy benefits management company, specialty pharmacy owner, and mail-order pharmacy owner, all of which are owned by 14 Blue Cross Blue Shield health insurance plans); and (e) other assets including, but not limited to, drug manufacturing operations in China and other countries. Defendant WBA may be served with process through its designated agent for service, Corporation Service Company, at 251 Little Falls Drive, Wilmington, Delaware 19808.

14. Defendant WBA utilizes three divisions to conduct its operations: Retail Pharmacy USA, Retail Pharmacy International, and Pharmaceutical Wholesale.

15. Defendant Walgreen Co. is incorporated under the laws of the State of Illinois,

with its principal place of business located at 108 Wilmot Road, Deerfield, Illinois 60015. On December 31, 2014, Defendant Walgreen Co. became a wholly-owned subsidiary of Defendant WBA. Defendant Walgreen Co. conducts the Retail Pharmacy USA division of Defendant WBA's operations through approximately 10,492 licensed pharmacies in the United States, including South Carolina, and its territories. These pharmacies are located in retail stores operated under the brands Walgreens, Duane Reade, and more recently, Rite Aid. Defendant Walgreen Co. may be served with process through its designated agent for service, Prentice Hall Corp., at 1703 Laurel Street, Columbia, South Carolina 29201.

16. Defendant WBA owns and operates approximately 18,500 pharmacy departments in its retail stores across the United States, including South Carolina, and Europe and distributes pharmaceutical products to more than 230,000 pharmacies, physicians, health centers, hospitals, and other healthcare providers each year. Defendant WBA's largest shareholder and Vice-Chairman of the Board of Directors is a resident of Monte Carlo, Monaco.

17. Defendant Walgreen Co. administers programs for hospitals and clinics nationwide, which are eligible to participate in the 340B Drug Discount Program (codified at 42 U.S.C. § 256b) (commonly known, and referred to herein, as the "340B Program"), through a separate department or division within its corporate structure, which is known as 340B Complete.

18. All references made in this Complaint to Defendant WBA and/or Defendant Walgreen Co. shall include all predecessors, successors, agents, and/or representatives.

#### **JURISDICTION AND VENUE**

19. The Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332(a), or alternatively under 28 U.S.C. § 1332(d), because the aggregated amount in

controversy exceeds the sum of \$5,000,000.00, exclusive of interests and costs; the action involves more than 100 members in the Class; and at least one member of the Class is a citizen of a state different from Walgreens.

20. The Court has supplemental jurisdiction over related claims forming part of the same controversy in this action pursuant to 28 U.S.C. § 1367.

21. Walgreens is subject to personal jurisdiction in this District because it operates over 150 retail pharmacies within the State of South Carolina and received substantial compensation and profits from the sale of its respective products and services in this District.

22. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because a substantial part of the events or occurrences giving rise to this claim occurred in this District and at least one Plaintiff resides in this District. Plaintiffs and numerous Class Members obtained or sought to obtain prescriptions and/or prescription drug-related services from Walgreens' pharmacies located in this District and, in doing so, their PII was collected in this District.

23. In accordance with Local Rule 3.01 for the United States District Court for the District of South Carolina, this case is assignable to the Charleston Division because a substantial part of the events or omissions giving rise to this claim occurred therein and Walgreens does business relating to the events or omissions alleged in this Complaint in the Charleston Division.

### **CLASS ACTION ALLEGATIONS**

24. Plaintiffs bring this action on behalf of themselves and all other similarly situated persons pursuant to Fed. R. Civ. P. 23(a) and (b)(3), and/or (b)(1), (b)(2), and/or (c)(4). This action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of those provisions.

**A. The South Carolina Class**

25. Plaintiff J.R., individually and on behalf of her minor children A.R. and H.K., Plaintiff J.H., Plaintiff B.Y., and Plaintiff J.S. seek to represent a statewide class of all South Carolina residents who (1) obtained or sought to obtain prescription drugs and/or prescription drug-related services from Walgreens; and (2) had their PII unlawfully, negligently, or unjustly used, disseminated, and/or disclosed, without de-identification, authorization, consent, or permission, for Walgreens' commercial benefit and/or financial gain during any time within the applicable statutory period and continuing (the "Class").

**B. The Class satisfies Fed. R. Civ. P. 23 requirements**

26. The Class satisfies the requirements of Fed. R. Civ. P. 23. Members of the Class are so numerous that joinder of all members is impracticable. While the exact number of members in the Class is currently unknown and can only be ascertained through appropriate discovery, the Class Members are likely to number in at least the thousands, and the disposition of the Class Members' claims in a single action will provide substantial benefits to all parties and to the Court. Class Members are readily identifiable from information and records in the possession, custody, or control of Walgreens.

27. 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. Questions of law and fact common to members of the Class include, but are not limited to, the following:

- a. Whether Walgreens collected and unlawfully, negligently, or unjustly used, disseminated, and/or disclosed Plaintiffs' and Class Members' PII, without authorization or consent, for Walgreens' commercial benefit and/or financial gain;

- b. Whether Plaintiffs and Class Members are entitled to equitable relief, including, but not limited to, a preliminary and/or permanent injunction;
- c. Whether Walgreens should be required to make restitution, disgorge profits, or pay damages and the amount of such damages; and
- d. Whether Plaintiffs and Class Members are entitled to punitive or exemplary damages, costs, and/or attorneys' fees and the amount of such damages, costs, and/or attorneys' fees as a result of Walgreens' acts and omissions described herein.

28. Other common questions that predominate over any questions affecting only individual Class Members include:

- a. The amount of profits, commercial benefit, and/or financial gain acquired by Walgreens as a result of its improper use of Plaintiffs' and Class Members' PII; and
- b. Whether Walgreens' use, dissemination, and/or disclosure of Plaintiffs' and Class Members' PII, through the acts alleged herein, violates South Carolina's common laws related to invasion of privacy, negligence, and unjust enrichment and/or the South Carolina Prescription Information Privacy Act, South Carolina Code Annotated ("S.C. Code Ann.") §§ 44-117-10 *et seq.*, referenced herein.

29. Plaintiffs' claims are typical of the claims of putative Class Members because Plaintiffs and each member of the Class obtained or sought to obtain prescription drugs and/or prescription drug-related services from a Walgreens pharmacy located in the State of South Carolina and suffered the misappropriation of their PII as a result. Further, the basis of

Walgreens' conduct, described in the Factual Allegations herein, is common to all members of the Class and represents a common thread of misconduct resulting in injury common to all Class Members.

30. Plaintiffs are adequate representatives of the Class because their interests do not conflict with the interests of the Class Members they seek to represent, they have retained competent counsel experienced in prosecuting class actions, and they intend to prosecute this action vigorously. The interests of all Class Members will be fairly and adequately protected by Plaintiffs and their counsel.

31. Class certification and class-wide litigation and relief are appropriate because a class action is superior to all other available methods for the fair and efficient adjudication of this controversy. Joinder of all members is impracticable. Furthermore, while the aggregate damages which may be awarded to the Class are likely to be substantial, the nominal damages recovered by individual members of the Class may be relatively small. As a result, the expense and burden of individual litigation make it economically infeasible and procedurally impracticable for each Class Member to seek individual redress for the wrongs done to them. Absent a class action, Class Members' damages will go uncompensated, and Walgreens' misconduct and unjust gain will continue without remedy. Class treatment of common questions of law and fact will also be superior to multiple individual actions or piecemeal litigation so as to conserve the resources of the courts and the litigants and to promote consistency and efficiency of adjudication.

32. Walgreens has acted in a uniform manner with respect to Plaintiffs and all Class Members.

33. Class-wide monetary, equitable, and injunctive relief is appropriate under Fed. R. Civ. P. 23(b)(1) and/or (b)(2) because Walgreens acted on grounds that apply generally to the

Class, and inconsistent adjudications with respect to Walgreens' liability would establish incompatible standards and would substantially impair or impede the ability of Class Members to protect their interests. A single, class-wide injunction will protect the interests of all Class Members. Alternatively, class-wide relief is appropriate under Fed. R. Civ. P. 23(b)(3) because common questions of law and fact exist as to all Class Members, which predominate over any questions affecting only individual Class Members, and a class action is superior to other available methods for fairly adjudicating the controversy. Class-wide relief assures fair, consistent, and equitable treatment and protection of all Class Members and uniformity and consistency in Walgreens' discharge of its duties to perform corrective action.

### **FACTUAL ALLEGATIONS**

#### **A. The Walgreens Conglomerate**

34. Walgreens is a worldwide company that provides to its customers a wide array of retail products and services, including non-prescription drugs, toiletries, general merchandise, and its own brand of private label products, as well as pharmacy care services, including prescription drugs and specialty and mail-order pharmacy services.

35. Founded in the early 1900's, Walgreens touts itself as "America's most trusted pharmacy" and "trusted since 1901."

36. According to its media press release, Walgreens became the "first global pharmacy-led, health and wellbeing enterprise" on December 31, 2014, when Illinois-based Defendant Walgreen Co., the largest drugstore chain in the United States at the time, became a wholly-owned subsidiary of European-based Defendant WBA.

37. During its 2018 fiscal year, Walgreens' domestic retail pharmacy filled 989.7 million prescriptions nationwide, and its domestic retail and pharmacy sales totaled \$98.4 billion.

38. Walgreens operates and accounts for its pharmacies separate from, yet located within, its retail stores.

39. Walgreens understands the deep-seated relationship of trust between its customers and its pharmacists; as succinctly and publicly stated by its co-chief operating officer of Defendant WBA, Alex Gourlay: “Customers trust the men and women in the white coats.”

40. Upon every customer’s transaction with a Walgreens pharmacy, Walgreens collects, maintains, and retains its customer’s PII, which holds great economic and intangible value to Walgreens.

41. Despite its customers’ confidence in the privacy of their PII, Walgreens uses and monetizes its pharmacy customers’ PII for various profitable purposes.

**B. Walgreens Pharmacy Operations in the State of South Carolina**

42. In order to provide pharmacy care services in the State of South Carolina, each Walgreens pharmacy is required to comply with the South Carolina Pharmacy Practice Act and the American Pharmaceutical Association Code of Ethics. S.C. Code Ann. §§ 40-43-10 *et seq.*

43. All Walgreens pharmacies in the State of South Carolina are subject to the rules, limitations, and privileges incident to the pharmacy-patient relationship.

**C. The 340B Drug Discount Program**

44. In 1992, Congress enacted the 340B Drug Discount Program, which requires drug manufacturers to provide covered outpatient drugs at significantly reduced prices to eligible safety-net healthcare entities (known as “covered entities”) that serve a disproportionate share of low-income patients.

45. In order to comply with the conditions of the 340B Program, covered entities may only dispense 340B drugs to patients who access outpatient healthcare services from a covered

entity. The “covered entity shall not resell or otherwise transfer the drug to a person who is not a patient of the entity.” 42 U.S.C. § 256b(a)(5)(B).

46. Although originally intended for covered outpatient drugs dispensed by the covered entity, the 340B Program grew to facilitate program participation for covered entities that did not have access to, or wished to supplement, in-house pharmacy services. In 2010, covered entities began voluntarily contracting with outside pharmacies (hereinafter “contract pharmacies”) to dispense drugs purchased through the 340B Program on their behalf.

47. When opting to enter contract pharmacy arrangements, covered entities retain the responsibility to comply with the requirements of the 340B Program, as contract pharmacies are not participants in, and have no rights pursuant to, the 340B Program.

48. The terms and activities of each contract pharmacy arrangement must conform to the requirements of all applicable federal, state, and local laws and regulations.

**D. Walgreens Becomes a Contract Pharmacy**

49. In approximately 2010, Walgreens entered multiple contract pharmacy arrangements with 340B covered entities throughout the State of South Carolina.

50. Walgreens’ involvement as a contract pharmacy did not confer any rights as a participant in, or pursuant to, the 340B Program.

51. Unlike covered entities, Walgreens, a for-profit pharmaceutical leader operating over 150 retail pharmacies within the State of South Carolina, does not receive financial incentives from the federal government for serving a disproportionate share of low-income patients, and its agreement to act as a contract pharmacy is by no means philanthropic.

52. As of July 2017, Walgreens has contracted with over 1,200 distinct 340B covered entities and currently dominates the industry. *See* Walgreens’ July 24, 2017 Press Release,

attached and incorporated herein as Exhibit A.

**E. Walgreens' 340B Complete®**

53. Beginning around 2010, Walgreens created a separate department or division within its corporate structure, known as “340B Complete,” and began marketing in earnest its services as an administrator of the 340B Program to those covered entities eligible to participate in the 340B Program. Walgreens’ 340B Complete department or division, which has captured a significant amount of the market in the United States for administering the 340B Program for covered entities, also marketed, through its sales staff, a commercial product registered and trademarked as “340B Complete®.”

54. Walgreens operates its 340B Complete department or division as a separate organizational unit from its retail stores and pharmacies.

55. Walgreens promotes its 340B Complete® product as a “prescription eligibility verification solution” with “comprehensive” and “advanced online reporting and data-capture tools,” providing a single vendor “end-to-end contract pharmacy solution.”

56. The objectives and processes of Walgreens’ 340B Complete® product are unrelated to any pharmacy activities involving an individual’s treatment or claims adjudication (i.e., the determination of payment, through an individual’s insurance benefits or otherwise, for any drug dispensed).

57. Walgreens realizes substantial profits through its 340B Complete department or division and its 340B Complete® product.

58. Covered entities agree to compensate Walgreens for its services in administering the 340B Program on their behalf.

59. For example, Walgreens and Medical University Hospital Authority (“MUHA”),

a covered entity located in Charleston, South Carolina, entered into an agreement on January 11, 2013, for Walgreens to administer MUHA's 340B Program. *See* 340B Contract Pharmacy Services Agreement between Walgreens and MUHA, attached and incorporated herein as Exhibit B.

60. As a function of its 340B administration services agreements with covered entities, Walgreens retains a specified percentage of the large net difference between the retail amount for which a drug is sold by Walgreens and the discounted 340B price for which the drug is purchased.

61. Walgreens utilizes an electronic data interchange through its 340B Complete® product, which compares Walgreens' entire database of its pharmacy customers' PII, collected from every customer seeking to obtain prescription drugs and/or prescription drug-related services from Walgreens, with a patient database originating from the covered entity.

62. By comparing every pharmacy customer's PII with a patient database originating from the covered entity through its 340B Complete® process(es), Walgreens matches its customers' prescriptions with patients of covered entities to determine a drug's eligibility for 340B pricing, then selectively manages that data to manipulate the most advantageous profit spread based upon multiple factors, such as whether the customer is insured, whether the drug is generic or brand-name, and other financially favorable determinants.

63. One reason Walgreens' 340B Complete® process(es) requires its pharmacy customers' PII is to ascertain the amount of a third-party payor's reimbursement and, thus, the amount of profit to be gained, which is a factor determinant of whether a purchase order is ultimately generated for a 340B priced drug.

64. Walgreens' 340B Complete® product is programmed to identify and select

certain matches that are the most profitable for Walgreens; if it is more lucrative, as a result of the profit analysis within 340B Complete®, to purchase a drug based on other financially favorable determinants, Walgreens will not create a purchase order utilizing the 340B discount, even if the drugs are eligible for 340B pricing.

65. The matching process is just one component of a myriad of processes through which Walgreens administers the 340B Program for covered entities through its 340B Complete® product.

66. This matching process within Walgreens' 340B Complete® product, however, is completely unnecessary to identify patients with prescriptions containing drugs eligible for 340B pricing because Walgreens can identify, at the point of sale, those patients with prescriptions containing drugs eligible for 340B pricing.

67. In fact, as explicitly expressed in the terms drafted by Walgreens in its agreement with MUHA, patients (i.e., customers of Walgreens' pharmacies) authorized to receive drugs eligible for 340B pricing can be identified by marking their prescriptions with a barcode provided by Walgreens or other unique identifier. *See* Exhibit B, Section 3.1.

**F. Walgreens Pharmacy Customer Transaction**

68. Walgreens utilizes its pharmacy customers' PII in the dispensing and payment processing of their prescriptions. Use of its pharmacy customers' PII is required to ensure proper standard of care in dispensing pharmaceuticals to its customers and to facilitate third-party payment to Walgreens.

69. However, through its 340B Complete® process(es), Walgreens uses, disseminates, and/or discloses its pharmacy customers' PII in a secondary financial transaction that is wholly unrelated to either the dispensing or payment of its pharmacy customer's

individual prescription. This financial transaction is performed after Walgreens has dispensed the prescription to its customer and has collected all third-party payments and is to the unique benefit of Walgreens.

70. Pharmacy customers seeking to obtain prescription drugs and/or prescription drug-related services from Walgreens provide their PII to Walgreens for the intended purposes of obtaining, and allowing Walgreens to seek third-party payment for, their individual prescriptions.

71. Walgreens pharmacy customers do not consent to, are unaware of, and have no reason to expect Walgreens' surreptitious use of their PII following the completion of their retail pharmacy transaction.

72. Walgreens does not disclose to its pharmacy customers that it obtains their PII with the purpose of profiting from its use, dissemination, or disclosure within or through its 340B Complete® process(es).

73. Walgreens does not seek or obtain explicit consent from its pharmacy customers to use their PII with the purpose of profiting from its use, dissemination, or disclosure within or through its 340B Complete® process(es).

74. Walgreens does not completely or sufficiently de-identify its pharmacy customers' PII before using it within, or disclosing or disseminating it through, its 340B Complete® process(es).

75. Walgreens violated, and continues to violate, its pharmacy customers' privacy rights by using, disseminating, and/or disclosing, without authorization, its customers' PII for profit, commercial benefit, and/or financial gain.

76. Walgreens exploits its known relationship of trust between its customers and its pharmacists by covertly commoditizing its pharmacy customers' PII in exchange for commercial

profits, making money off of, and at the expense of, its unsuspecting and nonconsenting customers.

**G. Irreparable Harm to Plaintiffs and Class Members**

77. Each Plaintiff and Class Member suffered, and continues to suffer, a particular and concrete injury through Walgreens' repeated and continuing invasion of their legally protected common law right to privacy.

78. Plaintiffs and Class Members did not consent to, were unaware of, and had no reason to expect Walgreens' use, dissemination, and/or disclosure of their PII for Walgreens' direct pecuniary benefit outside of those pharmacy activities necessary to specifically adjudicate their individual prescriptions.

79. Walgreens' unlawful use of its pharmacy customers' PII within and through its 340B Complete® process(es) is not limited to customers whose prescriptions contain drugs eligible for 340B pricing; in fact, Walgreens uses the PII of every pharmacy customer within and through its 340B Complete® process(es), including those who do not receive outpatient healthcare services from a 340B covered entity.

80. During the applicable statutory period, Plaintiff J.R. presented multiple prescriptions, which originated from outpatient healthcare services she received from a 340B covered entity, to a Walgreens contract pharmacy located in the State of South Carolina.

81. During the applicable statutory period, Plaintiff J.R. presented multiple prescriptions on behalf of her minor child A.R., which originated from outpatient healthcare services A.R. received from a 340B covered entity, to a Walgreens contract pharmacy located in the State of South Carolina.

82. During the applicable statutory period, Plaintiff J.R. presented multiple

prescriptions on behalf of her minor child H.K., which originated from outpatient healthcare services H.K. received from a 340B covered entity, to a Walgreens contract pharmacy located in the State of South Carolina.

83. During the applicable statutory period, Plaintiff J.H. presented multiple prescriptions, which originated from outpatient healthcare services he received from a 340B covered entity, to a Walgreens contract pharmacy located in the State of South Carolina.

84. During the applicable statutory period, Plaintiff B.Y. presented a prescription, which did not originate from outpatient healthcare services received from a 340B covered entity, to a Walgreens contract pharmacy located in the State of South Carolina.

85. During the applicable statutory period, Plaintiff J.S. presented multiple prescriptions, which did not originate from outpatient healthcare services received from a 340B covered entity, to a Walgreens contract pharmacy located in the State of South Carolina.

86. Each and every Plaintiff described herein provided his or her PII to Walgreens in order to obtain prescription drugs and/or prescription drug-related services from its pharmacy.

87. Unbeknownst to Plaintiffs and Class Members, Walgreens unlawfully and indiscriminately used, disseminated, and/or disclosed their PII, without de-identification, authorization, consent, or permission, in order to realize a financial benefit, without explicitly disclosing this for-profit practice.

88. Plaintiffs and Class Members did not authorize Walgreens to use, disseminate, or disclose their PII through Walgreens' 340B Complete® process(es).

89. Plaintiffs' and Class Members' irreparable injury to their fundamental right to privacy caused by the unlawful use, dissemination, and/or disclosure of their PII will continue as long as Walgreens continues its unauthorized practices, in violation of South Carolina common

law.

**CAUSE OF ACTION I**

**INVASION OF PRIVACY:  
WRONGFUL APPROPRIATION**

90. The allegations set forth in the preceding paragraphs of this Complaint are realleged as if fully set forth below.

91. The Supreme Court of South Carolina recognizes wrongful appropriation as “a tort arising from the right to privacy and is designed to prevent the commercial use of one’s name . . . without consent.” *Gignilliat v. Gignilliat, Savitz & Bettis, L.L.P.*, 385 S.C. 452, 684 S.E.2d 756 (2009). The State of South Carolina’s common law privacy tort of wrongful appropriation protects its constituents from the “intentional, unconsented use of [a] plaintiff’s name . . . or identity by [a] defendant for [the defendant’s] own benefit.” *Id.*

92. Through the acts alleged herein, Walgreens has wrongfully appropriated and exploited, and continues to wrongfully appropriate and exploit, the identities of Plaintiffs and Class Members by intentionally, and without explicit consent, using their PII for Walgreens’ own commercial benefit and/or financial gain.

93. Plaintiffs and Class Members have the right to the exclusive use of their own identity insofar as the use may be of benefit to themselves, individually, or to others.

94. Walgreens’ actions violate, and continue to violate, Plaintiffs’ and Class Members’ exclusive common law right to privacy by commercially benefitting from the unauthorized use, dissemination, and/or disclosure of Plaintiffs’ and Class Members’ names and other aspects of their personal identities, such as their PII, and have caused, and will continue to cause, Plaintiffs and Class Members irreparable injury as long as it continues.

95. Walgreens has, without authorization, commoditized and profited from, and

continues to commoditize and profit from, Plaintiffs' and Class Members' PII by using, disseminating, and/or disclosing their PII within or through, but not limited to, its 340B Complete® process(es), which resulted, and continues to result, in commercial profits for Walgreens with no benefit to Plaintiffs or Class Members.

96. Walgreens knowingly and intentionally used and/or disclosed Plaintiffs' and Class Members' PII for its commercial benefit and/or financial gain without the explicit consent or permission of Plaintiffs or Class Members.

97. As a direct and proximate result of Walgreens' unjustified invasion of Plaintiffs' and Class Members' privacy and the wrongful appropriation of their names and identities, Plaintiffs and Class Members are entitled to monetary and punitive damages, as warranted, as well as equitable and injunctive relief (and all damages incidental therefrom) prohibiting, preventing, and restraining any ongoing and future unauthorized use of their PII by Walgreens.

## **CAUSE OF ACTION II**

### **NEGLIGENCE**

98. The allegations set forth in the preceding paragraphs of this Complaint are realleged as if fully set forth below.

99. Walgreens has a duty of care to Plaintiffs and Class Members to maintain their privacy in connection with any information obtained during the course of its pharmacy-patient relationship and the provision of services related thereto.

100. Plaintiffs and Class Members, who obtained and/or sought to obtain prescription drugs from Walgreens' pharmacies, trusted and relied upon an expectation that their privacy, which is a vital part of the pharmacy-patient relationship, would be maintained with regard to any information they provided to Walgreens, including, but not limited to, their PII.

101. Walgreens understands and uses to its advantage the unique, confidential rapport of trust rooted in, and essential to, the pharmacy-patient relationship with its customers.

102. The unauthorized use, dissemination, and/or disclosure of its customers' PII by Walgreens should be protected without regard to the degree of its offensiveness.

103. Maintaining customers' privacy is a universally recognized and accepted practice and standard of professional care for a pharmacy and is prescribed by the South Carolina Board of Pharmacy and the American Pharmaceutical Association Code of Ethics.

104. Walgreens breached its duty to maintain the privacy of Plaintiffs' and Class Members' PII by using, disseminating, and/or disclosing, without authorization, their PII within or through Walgreens' 340B Complete® process(es) and thereby failing to conform to the privacy practices universally recognized and accepted in the pharmaceutical profession.

105. Walgreens' use, dissemination, and/or disclosure of Plaintiffs' and Class Members' PII within or through its 340B Complete® process(es) benefitted Walgreens financially, and no benefits, financial or otherwise, inured to the public at large or to Plaintiffs or Class Members.

106. Walgreens' breach of its duty to maintain its pharmacy customers' privacy over any information, including PII, obtained during the course of its pharmacy-patient relationship and the provision of services related thereto is the proximate cause of injury to Plaintiffs and Class Members.

107. As a result of Walgreens' negligence in failing to maintain its customers' privacy, Plaintiffs and Class Members suffered, and continue to suffer, damages in an amount to be proven at trial.

**CAUSE OF ACTION III**

**UNJUST ENRICHMENT**

108. The allegations set forth in the preceding paragraphs of this Complaint are realleged as if fully set forth below.

109. Plaintiffs and Class Members conferred a benefit on Walgreens by Walgreens' unauthorized use, dissemination, and/or disclosure of their PII within or through Walgreens' 340B Complete® process(es).

110. Plaintiffs and Class Members were required to provide their PII in order to obtain or seek to obtain prescription drugs and/or prescription drug-related services from Walgreens' pharmacies.

111. In the provision of their PII at Walgreens' request, Plaintiffs and Class Members did not consent to, were unaware of, and had no reason to expect Walgreens' use, dissemination, and/or disclosure of their PII for Walgreens' direct pecuniary benefit outside of those pharmacy activities necessary to specifically dispense and adjudicate their individual prescriptions.

112. Walgreens induced Plaintiffs and Class Members to provide their PII in order to receive their prescription drugs and/or prescription drug-related services and, thus, to confer a benefit on Walgreens in the manner described herein, without conferring any such benefit to Plaintiffs or Class Members.

113. Walgreens has knowledge of such benefits and realized value from the use, dissemination, and/or disclosure of Plaintiffs' and Class Members' PII.

114. Walgreens has been unjustly enriched in retaining the revenues derived from the unauthorized use of Plaintiffs' and Class Members' PII for its own financial gain.

115. Retention of any money received under these circumstances is unjust and

inequitable because Walgreens intentionally, and without the authorization, explicit consent, or permission of Plaintiffs or Class Members, used their PII for financial gain.

116. As a direct and proximate result of Walgreens' unjust enrichment, and because Walgreens' retention of the benefits conferred on it by Plaintiffs and Class Members is inequitable, Walgreens must pay to Plaintiffs and Class Members full restitution of its gross profits acquired as a result of its unlawful actions in an amount to be proven at trial.

#### **CAUSE OF ACTION IV**

#### **NEGLIGENCE *PER SE* BASED ON VIOLATION OF S.C. CODE ANN. § 44-117-350**

117. The allegations set forth in the preceding paragraphs of this Complaint are realleged as if fully set forth below.

118. The South Carolina Prescription Information Privacy Act, S.C. Code Ann. §§ 44-117-10 *et seq.*, prohibits patient prescription drug information from being “transferred or received by a person without the written consent of the patient or a person authorized by law to act on behalf of the patient.” While the Act allows the transfer of information necessary to process health insurance benefits, the recipient of such information can make “no other use or further disclosure of the information.” *Id.* Furthermore, “[a] pharmacy shall provide a mechanism to prevent the disclosure of any information, confidential or otherwise, about patients that was obtained or collected by a pharmacist or pharmacy incidental to the delivery of pharmaceutical care . . . .” S.C. Code Ann. § 44-117-350.

119. The essential purpose of the South Carolina Prescription Information Privacy Act is to protect residents of the State of South Carolina from the specific kind of harm Plaintiffs and Class Members have suffered as a consequence of Walgreens' actions, which is the unauthorized use, dissemination, and/or disclosure of their PII for purposes other than the delivery of their

individual pharmaceutical care (i.e., drug dispensing and/or claims adjudication).

120. In fact, Plaintiffs and Class Members are the specific individuals the South Carolina Prescription Information Privacy Act is intended to protect.

121. The South Carolina Prescription Information Privacy Act focuses entirely on the duties of pharmacies to protect private individuals' PII by prohibiting and preventing the unauthorized use, dissemination, and/or disclosure of such information.

122. Walgreens has a duty to protect Plaintiffs' and Class Members' PII from unauthorized use, dissemination, and/or disclosure pursuant to the South Carolina Prescription Information Privacy Act.

123. Walgreens has acted, and continues to act, in violation of South Carolina's Prescription Information Privacy Act, breaching its duty to Plaintiffs and Class Members by unlawfully, and without their consent, using, disseminating, and/or disclosing their PII through the acts alleged herein for the purpose of Walgreens' own commercial benefit and/or financial gain.

124. Walgreens' violation of the South Carolina Prescription Information Privacy Act proximately caused or contributed to the injuries and harm suffered by Plaintiffs and Class Members, specifically the unauthorized use, dissemination, and/or disclosure of their PII through the acts described herein.

125. Despite knowing the prohibitions included in the South Carolina Prescription Information Privacy Act and its duty to be bound to act accordingly, Walgreens used, disseminated, and/or disclosed Plaintiffs' and Class Members' PII intentionally, with indifference, or with a conscious disregard of the rights of those intended to be safeguarded thereby.

126. Walgreens had actual knowledge of its unauthorized use, dissemination, and/or disclosure of Plaintiffs' and Class Members' PII as prohibited by the South Carolina Prescription Information Privacy Act.

127. As a result of Walgreens' violation of the South Carolina Prescription Information Privacy Act, Plaintiffs and Class Members suffered, and continue to suffer, damages in an amount to be proven at trial.

### **CAUSE OF ACTION V**

#### **NEGLIGENCE**

128. The allegations set forth in the preceding paragraphs of this Complaint are realleged as if fully set forth below.

129. The South Carolina Pharmacy Practice Act, S.C. Code Ann. §§ 40-43-10 *et seq.*, requires pharmacies to maintain a "pharmacy patient record system" that includes the patient's full name, gender, date of birth, address, telephone number, prescription information, and drug history "for patients for whom prescription drug orders are dispensed." Pursuant to the South Carolina Pharmacy Practice Act, such patient records are to be confidentially maintained, privileged, and released only to the patient or other healthcare providers "to protect the patient's health and well-being" and "to other persons or governmental agencies authorized by law to receive such confidential information." S.C. Code Ann. §§ 40-43-30(18), -86(J)(1), -86(O)(3).

130. According to the South Carolina Pharmacy Practice Act, divulging or revealing patient information without the patient's express consent is below the standard of professional care for a pharmacist, permit holder, or owner of a permitted facility. *See* S.C. Code Ann. § 40-43-86(DD).

131. Walgreens has a duty of care to Plaintiffs and Class Members to maintain the

confidentiality of their PII and to protect their PII from unauthorized use, dissemination, and/or disclosure pursuant to the South Carolina Pharmacy Practice Act.

132. Walgreens' unauthorized use, dissemination, and/or disclosure of Plaintiffs' and Class Members' PII within or through its 340B Complete® process(es) is not purposed "to protect the patient's health and well-being," nor is it directed to "persons or governmental agencies authorized by law to receive such confidential information." Walgreens' use, dissemination, and/or disclosure of Plaintiffs' and Class Members' PII is exclusively for its own commercial benefit and/or financial gain.

133. Walgreens breached its duty to Plaintiffs and Class Members by unlawfully using, disseminating, and/or disclosing their PII without authorization, consent, or permission through the acts described herein for the purpose of its own commercial benefit and/or financial gain, violating the South Carolina Pharmacy Practice Act.

134. Walgreens failed to maintain the confidentiality of Plaintiffs' and Class Members' PII and failed to protect their PII from unauthorized use, dissemination, and/or disclosure pursuant to the South Carolina Pharmacy Practice Act by using, disseminating, and/or disclosing their PII through the acts described herein; such failure and resulting breach is the proximate cause of injury to Plaintiffs and Class Members.

135. Despite knowing its duty of care set out in the South Carolina Pharmacy Practice Act, Walgreens unlawfully used, disseminated, and/or disclosed Plaintiffs' and Class Members' PII intentionally, with indifference, or with a conscious disregard of the rights of those intended to be safeguarded thereby.

136. Walgreens had actual knowledge of the unauthorized use, dissemination, and/or disclosure of Plaintiffs' and Class Members' PII as prohibited by the South Carolina Pharmacy

Practice Act.

137. Walgreens' unlawful use, dissemination, and/or disclosure of Plaintiffs' and Class Members' PII without their express consent falls below the standard of professional care for a pharmacy permitted to sell, distribute, possess or dispense prescription drugs pursuant to the South Carolina Pharmacy Practice Act.

138. Plaintiffs and Class Members suffered, and continue to suffer, damages in an amount to be proven at trial as a result of Walgreens' breach of its duty to maintain the confidentiality of Plaintiffs' and Class Members' PII and to protect their PII from unauthorized use, dissemination, and/or disclosure pursuant to the South Carolina Pharmacy Practice Act.

**RELIEF DEMANDED**

WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated, respectfully pray that the Court:

1. Issue a preliminary and/or permanent injunction, in South Carolina and nationwide, prohibiting Walgreens' further use, dissemination, and/or disclosure of Plaintiffs' and Class Members' PII as described herein for its own commercial benefit and/or financial gain;
2. Grant Plaintiffs and Class Members all damages incidental to the injunctive relief they now seek and to which they are entitled;
3. Grant Plaintiffs and Class Members a trial by jury for class action relief and damages;
4. Issue an Order certifying the Class, naming Plaintiffs as representatives of the Class and Plaintiffs' attorneys as Class counsel to represent the Class Members;
5. Order Walgreens to clearly and prominently notify (separate and apart from any

notice of privacy practices) and obtain affirmative express consent from all Class Members of the true nature regarding the use, dissemination, and/or disclosure of their PII when prescription drugs and/or prescription drug related services are obtained or are sought to be obtained from Walgreens;

6. Enter judgment in favor of Plaintiffs and Class Members and against Walgreens on all counts of the Complaint;
7. Award Plaintiffs and Class Members compensatory, exemplary, and punitive damages in amounts to be determined by the Court or jury;
8. Award Plaintiffs and Class Members prejudgment interest on all amounts awarded;
9. Award Plaintiffs and Class Members restitution, disgorgement, and all other forms of equitable monetary relief;
10. Assess Walgreens for Plaintiffs' and Class Members' reasonable attorneys' fees, expenses, and costs of suit; and
11. Grant Plaintiffs and Class Members such other and further relief as is justified by the facts and law that this Court deems just and proper.

Respectfully submitted, this 14<sup>th</sup> day of February, 2019.

/s/ Michael J. Moore

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\* *Pro Hac Vice* Motion anticipated