

**BEFORE THE UNITED STATES JUDICIAL PANEL ON MULTIDISTRICT
LITIGATION**

IN RE: GOODRX AND PHARMACY
BENEFIT MANAGER ANTITRUST
LITIGATION

MDL No.

**MEMORANDUM IN SUPPORT OF MOTION TO TRANSFER AND
CENTRALIZE RELATED ACTIONS FOR CONSOLIDATED OR
COORDINATED PRETRIAL PROCEEDINGS**

Plaintiffs Old Baltimore Pike Apothecary, Inc., t/a Southern Chester County Pharmacy and Smith's Pharmacy II, Inc., d/b/a Smith's Pharmacy (together "Movants")¹ jointly submit this memorandum of law in support of their Motion to Transfer and Centralize Related Actions for Consolidated or Coordinated Pretrial Proceedings. In addition to Movant's case filed in the District of Rhode Island, three related cases have been filed in the Central District of California.² All four cases allege that Defendants³ conspired to suppress the reimbursements paid to and increase fees paid by U.S. pharmacies for dispensing generic drugs in violation of federal antitrust laws. Transfer to and centralization of the Related Actions in the District of Rhode Island will advance the efficient resolution of this litigation and serve the convenience of the parties and witnesses.

¹ Plaintiffs in *Old Baltimore Pike Apothecary, Inc. et al. v. GoodRx Holdings, Inc. et al.*, No. 1:24-cv-00453 (D.R.I.).

² *Keaveny Drug, Inc. v. GoodRx, Inc. et al.*, No. 2:24-cv-09379 (C.D. Cal.); *Community Care Pharmacy, LLC v. GoodRx, Inc. et al.*, No. 2:24-cv-09490 (C.D. Cal.); and *Grey Dog IV v. GoodRx, Inc. et al.*, No. 2:24-cv-09858 (C.D. Cal.) (together with Movants' action, the "Related Actions").

³ Defendants named in Movants' action include GoodRx Holdings, Inc. ("GoodRx") and four of the largest PBMs in the United States: CVS Caremark Corporation ("Caremark"), Express Scripts Holding Company ("Express Scripts"), MedImpact Healthcare Systems, Inc. ("MedImpact"), and Navitus Health Solutions, LLC ("Navitus") (Caremark, Express Scripts, MedImpact and Navitus are referred to collectively as the "PBM Defendants") (GoodRx and the PBM Defendants are referred to collectively as "Defendants"). All of these entities are named as defendants or referred to as conspirators in each of the Related Actions.

FACTUAL AND PROCEDURAL BACKGROUND

GoodRx launched in 2011 as a prescription discount card aggregator. *Old Baltimore Pike Apothecary, Inc. et al. v. GoodRx Holdings, Inc. et al.*, No. 1:24-cv-00453 (D.R.I.), ECF 1 (“Movant Compl.”) at ¶6. Historically, prescription discount cards provided an option for people without insurance coverage, or whose insurance did not cover a certain prescription, to obtain more affordable prescriptions. *Id.* at ¶5. Many PBMs offered discount cards. *Id.* GoodRx attempted to disrupt the market by developing software to scan pharmacy networks to collect, analyze, and aggregate prices offered by various PBMs under their discount card programs. *Id.* at ¶6. Patients could use GoodRx’s website or app to see if any PBMs offered a discount card with a price lower than the consumer’s out-of-pocket cost under their health insurance. *Id.*

Looking to increase its profits, starting in 2023, GoodRx announced a series of new agreements with each of the PBM Defendants that transformed the role of discount cards in the prescription drug market and drastically increased the number of prescriptions processed through discount cards. *Id.* at ¶7. These agreements created a new process for filling prescriptions that unfolds as follows: upon receiving a prescription for an insured patient (or “plan member”), the patient’s PBM uses GoodRx’s software to determine if another PBM’s discount program offers a lower price than what the patient would otherwise pay out of pocket under their insurance coverage or under the discount card program of the patient’s PBM. *Id.* If so, the patient’s PBM reroutes the transaction to the PBM offering the lowest discounted price and applies that price to the patient’s deductible. *Id.* Thus, the pharmacy is paid less for the transaction. In addition, the pharmacy is charged a fee for the discount card transaction, which is split among the patient’s PBM, the PBM that processed the transaction, and GoodRx. *Id.* This scheme allows Defendants to artificially increase their profits at the expense of pharmacies, which has contributed to the financial distress of numerous independent pharmacies and restrains competition for the

provision of network pharmacy services purchased by PBMs. Movants seek treble damages, injunctive relief, and other remedies for these violations of federal antitrust laws.

Since October 30, 2024, at least four class action complaints have been filed regarding the alleged conspiracy described above:

- *Old Baltimore Pike Apothecary, Inc. et al. v. GoodRx Holdings, Inc. et al.*, No. 1:24-cv-00453 (D.R.I.);
- *Keaveny Drug, Inc. v. GoodRx, Inc. et al.*, No. 2:24-cv-09379 (C.D. Cal.);
- *Community Care Pharmacy, LLC v. GoodRx, Inc. et al.*, No. 2:24-cv-09490 (C.D. Cal.); and
- *Grey Dog IV v. GoodRx, Inc. et al.*, No. 2:24-cv-09858 (C.D. Cal.)

The Related Actions (*see* Schedule of Related Actions submitted herewith) involve overlapping Defendants and each alleges that Defendants' conspiracy has suppressed reimbursements to pharmacies for dispensing prescriptions and/or increased the fees pharmacies pay for filling them. Each of the Related Actions seeks compensatory damages and injunctive relief on behalf of pharmacies in the United States. The Related Actions are also in a similar procedural posture as all are in the very earliest stages of litigation and no dispositive motions have been filed nor has discovery commenced.

ARGUMENT

I. **CENTRALIZATION OF THE RELATED ACTIONS IS WARRANTED UNDER 28 U.S.C. § 1407**

“When civil actions involving one or more common questions of fact are pending in different districts,” this Panel may transfer such actions “to any district for coordinated or consolidated pretrial proceedings,” if transfer would serve “the convenience of parties and witnesses and will promote the just and efficient conduct of such actions.” 28 U.S.C. § 1407(a). Because these requirements are met here, the Panel should transfer the Related

Actions to a single district for coordinated or consolidated pretrial proceedings.

A. The Related Actions Involve Common Questions of Fact

For purposes of Section 1407, common questions of fact exist where multiple actions assert similar “core factual allegations” and “can be expected to focus on a significant number of common events, defendants, and/or witnesses.” *In re Unumprovident Corp. Sec., Derivative & “ERISA” Litig.*, 280 F. Supp. 2d 1377, 1379 (J.P.M.L. 2003).

The Related Actions share one or more common questions of fact and satisfy the requirements of Section 1407(a) because they involve common defendants and overlapping conduct. Further, the Panel routinely finds that centralization is appropriate for cases involving alleged violations of antitrust laws. *See, e.g., In re Qualcomm Antitrust Litig.*, 273 F. Supp. 3d 1373, 1375 (J.P.M.L. 2017) (“Plaintiffs in all the actions listed on Schedule A assert similar claims for violations of federal and state antitrust and consumer protection laws.”); *In re Visa/Mastercard Antitrust Litig.*, 295 F. Supp. 2d 1379, 1380 (J.P.M.L. 2003) (“All six actions share factual questions relating to allegations that Visa and MasterCard’s ‘Honor All Cards’ policy violates the Sherman Antitrust Act.”); *In re Polyester Staple Antitrust Litig.*, 259 F. Supp. 2d 1376, 1377 (J.P.M.L. 2003) (cases arising out of alleged price fixing shared common factual questions); *In re Parcel Tanker Shipping Servs. Antitrust Litig.*, 296 F. Supp. 2d 1370, 1371 (J.P.M.L. 2003) (“All actions share factual questions relating to the existence, scope and effect of an alleged conspiracy to fix the price of international shipments of liquid chemicals in the United States.”).

Here, each Related Action is brought on behalf of a nationwide class of pharmacies that were injured by conduct involving a conspiracy to suppress reimbursements to pharmacies for dispensing prescriptions and/or increase fees pharmacies pay for filling them

and asserts antitrust claims under federal antitrust laws. *See In re Cotton Yarn Antitrust Litig.*, 336 F. Supp. 2d 1383, 1384 (J.P.M.L. 2004) (“All actions share factual questions relating to the existence, scope and effect of an alleged conspiracy to fix the price of cotton yarn in the United States and/or to allocate the U.S. cotton yarn market and customers.”); *In re Domestic Airline Travel Antitrust Litig.*, 140 F. Supp. 3d 1344, 1345 (J.P.M.L. 2015) (“All of the actions assert overlapping putative nationwide classes of direct purchasers of domestic airfare, and all the actions assert antitrust violations of Section 1 of the Sherman Act.”); *In re K-Dur Antitrust Litig.*, 176 F. Supp. 2d 1377, 1378 (J.P.M.L. 2001) (similar).

B. Centralization Would Serve the Convenience of Parties and Witnesses and Promote the Just and Efficient Conduct of The Related Actions

Because the Related Actions’ factual allegations and legal claims largely overlap, transfer would serve “the convenience of parties and witnesses and . . . promote the just and efficient conduct” of the Related Actions. 28 U.S.C. § 1407(a). Given the likelihood that additional cases will be filed, centralization under section 1407 now would be the most efficient means of proceeding. *See, e.g., In re: Edward H. Okun I.R.S. |1031 Tax Deferred Exch. Litig.*, 609 F. Supp. 2d 1380, 1381 (J.P.M.L. 2009) (“[D]enial of either of Wachovia’s transfer motions could engender delay, as the Panel may be asked to revisit the question of Section 1407 centralization. Centralizing these actions now under Section 1407 should streamline resolution of this litigation to the overall benefit of the parties and the judiciary.”); *In re: AndroGel Prod. Liab. Litig.*, 24 F. Supp. 3d 1378, 1379 (J.P.M.L. 2014) (rejecting alternatives to centralization because they “would delay the resolution of the common core issues in this litigation”).

Centralization is also appropriate because the plaintiffs in the Related Actions now pending in two different districts with distinct groups of Plaintiffs’ counsel will

undoubtedly pursue substantially similar testimony, documents, and other evidence from Defendants. Centralizing the Related Actions will have “the salutary effect of placing all actions in this docket before a single judge who can formulate a pretrial program that ensures that pretrial proceedings will be conducted in a manner leading to the just and expeditious resolution of all actions to the overall benefit of the parties.” *In re Cook Med., Inc., Pelvic Repair Sys. Prod. Liab. Litig.*, 949 F. Supp. 2d 1373, 1375 (J.P.M.L. 2013); *In re Auto Body Shop Antitrust Litig.*, 37 F. Supp. 3d 1388, 1390 (J.P.M.L. 2014) (“Transfer under Section 1407 will offer the benefit of placing all related actions before a single judge who can structure pretrial proceedings to accommodate all parties’ legitimate discovery needs while ensuring that common witnesses are not subjected to duplicative discovery demands”).

Moreover, because the Related Actions have many common questions of fact and law, they will also have many overlapping pretrial issues, including the adequacy of the claims and allegations. In addition, because each Related Action is a class action, centralization will eliminate the possibility of inconsistent rulings on class certification from courts in multiple districts. *See, e.g., In re: Zimmer Durom Hip Cup Prod. Liab. Litig.*, 717 F. Supp. 2d 1376, 1377 (J.P.M.L. 2010) (“Centralization under Section 1407 will eliminate duplicative discovery, prevent inconsistent pretrial rulings on discovery and other issues, and conserve the resources of the parties, their counsel and the judiciary.”).

For these reasons, the Panel should centralize the Related Actions in the interests of justice and efficiency.

II. THE PANEL SHOULD TRANSFER THE RELATED ACTIONS TO THE DISTRICT OF RHODE ISLAND

In determining the appropriate transferee district, the Panel considers a variety of

factors, including: (1) whether the district “offers a forum that is both convenient and accessible for the parties and witnesses”; (2) the location of “relevant witnesses and evidence”; (3) the positions of the parties; and (4) the experience of the transferee judge and district in navigating “the nuances of complex and multidistrict litigation.” *In re: Aggrenox Antitrust Litig.*, 11 F. Supp. 3d 1342, 1343 (J.P.M.L. 2014). Based on the consideration of these factors, Movants submit that the District of Rhode Island is the most appropriate district to transfer these cases.

A. The District of Rhode Island is Convenient for the Parties and Witnesses

Because this litigation involves an alleged sprawling conspiracy spanning the United States, the Panel should select a district that is “convenient and accessible for the parties and witnesses.” *In re: Kind LLC (All Nat.) Litig.*, 118 F. Supp. 3d 1380, 1381 (J.P.M.L. 2015); *see also In re: Loestrin 24 Fe Antitrust Litig.*, 978 F. Supp. 2d 1371, 1372 (J.P.M.L. 2013) (transferring cases to District of Rhode Island and noting that “[t]he district is both convenient and accessible.”). The District of Rhode Island is very accessible for parties located outside the State. For instance, the District of Rhode Island courthouse in Providence is located just over 10 miles from Rhode Island T.F. Green International Airport.⁴ With more than 100 daily nonstop flights and hundreds of connecting flight options, the airport is easily accessible from all major cities in the United States.⁵ The courthouse is also within walking distance from the Providence train station, which provides daily Amtrak service.⁶ Additionally, the District of Rhode Island courthouse is located just over 50 miles from Boston Logan International Airport.⁷ Providence offers an abundance of hotels, taxis, and car

⁴ <https://maps.app.goo.gl/LVCHZY9tEGLQvkPL8>

⁵ <https://flyri.com/passengers/where-we-fly/>

⁶ <https://www.amtrak.com/stations/pvd>

⁷ <https://maps.app.goo.gl/ADtBf4FWwEegUgXr5>

rental agencies. These options make the District of Rhode Island particularly accessible and convenient for all parties in the Related Actions, as well as their counsel and witnesses.

B. Relevant Witnesses and Evidence Are Located in the District of Rhode Island

Relevant witnesses and evidence are located in the District of Rhode Island.

Defendant Caremark is headquartered in Rhode Island.⁸ Caremark is the largest PBM in the United States. *See* Movant Compl. at ¶34, Figure 2. Additionally, it owns and operates the largest chain of retail pharmacies in the United States. *Id.* at ¶32. Accordingly, Caremark will be one of the core parties in this action, and it will likely have many important witnesses and relevant documents, many of which will be located in Rhode Island where Caremark is headquartered. *See In re Kugel Mesh Hernia Patch Prod. Liab. Litig.*, 493 F. Supp. 2d 1371, 1373 (J.P.M.L. 2007) (centralizing in Rhode Island where Defendant was headquartered because “witnesses and relevant documents will likely be found there.”).

C. Judge Mary S. McElroy is an Experienced Jurist Who Can Efficiently Manage This Litigation, and the District of Rhode Island is a Favorable Jurisdiction Based on Its Docket Conditions

Judge Mary S. McElroy is currently presiding over Movants’ action.⁹ She has been on the bench for over five years and previously was a public defender. Judge McElroy is a highly capable jurist who has not yet had the opportunity to preside over an MDL proceeding.

Centralizing the Related Actions in the District of Rhode Island will provide Judge McElroy with the opportunity to preside over what will no doubt be a complex and important matter.

See In re Loestrin 24 Fe Antitrust Litig., 978 F. Supp. 2d 1371, 1372 (J.P.M.L. 2013)

⁸ Other Defendants are based across the United States, including in Missouri, Wisconsin and California.

⁹ *Old Baltimore Pike Apothecary, Inc. et al v. GoodRx Holdings, Inc. et al*, Docket No. 1:24-cv-0045 (D.R.I.)

(transferring cases to District of Rhode Island in part because “it allows [the Panel] to assign this litigation to an experienced and capable jurist who has not yet presided over an MDL.”); *see also In re Crop Inputs Antitrust Litig.*, 543 F. Supp. 3d 1381, 1382 (J.P.M.L. 2021) (“[C]entralization in this district allows us to assign these cases to a jurist . . . who has not yet had the opportunity to preside over multidistrict litigation.”); *In re Suboxone (Buprenorphine/Naloxone) Film Mktg., Sales Pracs., & Prod. Liab. Litig.*, 717 F. Supp. 3d 1376, 1377 (J.P.M.L. 2024) (assigning to judge “who has not yet had the opportunity to preside over an MDL.”).

Finally, the District of Rhode Island has favorable docket conditions, which will allow it to better manage the Related Actions compared to Central District of California where the other Related Actions are pending. As of March 2023, the District of Rhode Island had only 623 cases pending, or approximately 208 cases per Article III judge, compared to the Central District of California which had 10,270 or approximately 395 cases per Article III judge.¹⁰ Additionally, as of November 2024, the District of Rhode Island has no pending MDL dockets, while the Central District of California has four.¹¹

The District of Rhode Island is therefore the most suitable transferee district and Judge McElroy, or another judge from the district, will help steer this litigation on a prudent course.

¹⁰Table C—U.S. District Courts—Civil Federal Judicial Caseload Statistics (March 31, 2023), *available at*

<https://www.uscourts.gov/statistics/table/c/federal-judicial-caseload-statistics/2023/03/31>.

¹¹MDL Statistics Report- Distribution of Pending MDL Dockets by District (Nov. 1, 2024), *available at*

https://www.jpml.uscourts.gov/sites/jpml/files/Pending_MDL_Dockets_By_District-November-1-2024.pdf.

CONCLUSION

For the foregoing reasons, Movants respectfully request that the Panel transfer and centralize the Related Actions before the Honorable Mary S. McElroy of the District of Rhode Island or another judge in the district.

Dated: November 26, 2024

Respectfully submitted,

/s/ Gregory S. Ascioffa

Gregory S. Ascioffa
Alexander E. Barnett
Geraldyn J. Trujillo
Jonathan S. Crevier
John M. Shaw
DICELLO LEVITT LLP
485 Lexington Avenue, Suite
1001
New York, New York 10017
(646) 933-1000
gascioffa@dicellolevitt.com
abarnett@dicellolevitt.com
gtrujillo@dicellolevitt.com
jcrevier@dicellolevitt.com
jshaw@dicellolevitt.com

Stephen M. Prignano
MCINTYRE TATE LLP
50 Park Row West Suite 109
Providence, RI 02903
(401) 351-7700
sprignano@mcintyretate.com

Joshua H. Grabar
GRABAR LAW OFFICE
One Liberty Place
1650 Market Street, Suite
3600
Philadelphia, Pennsylvania
19103
(267) 507-6085
jgrabar@grabarlaw.com