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January 30, 2018

VIA ECF

The Honorable Brian R. Martinotti  
United States District Court Judge  
The Honorable Lois H. Goodman  
United States Magistrate Judge  
Clarkson S. Fisher Federal Bldg. & U.S. Courthouse  
402 E. State Street  
Trenton, NJ 08608

***Re: In re Insulin Pricing Litigation,  
Civil Action No. 17-699(BRM)(LHG)***

Dear Judge Martinotti and Judge Goodman:

The firms of Carella, Byrne, Cecchi, Olstein, Brody & Agnello, P.C. ("Carella Byrne") and Hagens Berman Sobol Shapiro LLP ("Hagens Berman") (together, "interim co-lead counsel") have received a copy of Julia Boss's January 26, 2018 letter to the Court. While well-intentioned, Ms. Boss's letter contains a number of errors and misunderstandings.

Before addressing these issues, a brief summary of Julia Boss's and the Type 1 Diabetes Defense Foundation's ("T1DF") involvement in this case is useful.

On February 2, 2017, Carella Byrne and Hagens Berman filed *Insulin Pricing* in the District of New Jersey. On March 17, 2017, Keller Rohrback filed a complaint that relied heavily on the facts and claims alleged in *Insulin Pricing*. This complaint named Julia Boss, Ruth Hart, Ruth Johnson, LeAnn Rice, and Type 1 Diabetes Defense Foundation ("T1DF") as plaintiffs and was docketed as *Julia Boss, et al. v. CVS Health Corp., et al.*, Civil Action No. No. 17-1823 (D.N.J. Mar. 17, 2017).

On September 18, 2017, this Court named Carella Byrne and Hagens Berman interim co-lead counsel.<sup>1</sup>

<sup>1</sup> Opinion, Civil Action. Nos. 17-699, 17-1580, 17-1823, 17-2678 (D.N.J. Sept. 18, 2017), ECF No. 71.

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On December 22, 2017, Keller Rohrback withdrew representation of Ms. Boss and the T1DF.<sup>2</sup>

On December 26, 2017, after consulting with all of the law firms that had filed cases, interim co-lead counsel filed a consolidated amended complaint on behalf of five related actions: Civil Action No. 17-699 (*Insulin Pricing*), Civil Action No. 17-1580 (*Barnett*), Civil Action No. 17-1823 (*Boss*), Civil Action No. 17-2678 (*Christensen*), and Civil Action No. 17-3407 (*Carfagno*).<sup>3</sup> Ms. Boss and T1DF were not named as plaintiffs in this consolidated amended complaint.

On January 3, 2018, this Court consolidated *Carfagno* into *Insulin Pricing*. On January 19, 2018, the Court did the same for *Barnett*, *Boss*, and *Christensen*. Ms. Boss and T1DF were no longer plaintiffs in *Boss* at the time this action was consolidated with *Insulin Pricing*.

They are currently named plaintiffs in separate lawsuits not in this District – *Bewley v. CVS Health Corp., et al.*, No. 2:17-cv-00802 (W.D. Was. May 24, 2017) and *Prescott v. CVS Health Corp., et al.*, No. 2:17-cv-00803 (W.D. Was. May 24, 2017). As we explained in our letter to the Court on December 18, 2017, these cases are distinct from the *Insulin Pricing* and should not be consolidated with *Insulin Pricing*.<sup>4</sup>

Ms. Boss's principal misunderstandings are as follows:

*First*, Ms. Boss and T1DF remain free to retain other counsel. As Ms. Boss acknowledges in her letter, Keller Rohrback terminated its representation of Ms. Boss and T1DF on December 22, 2017. Neither this Court nor any other order prevents these plaintiffs from retaining other counsel. There is no reason for their delay in obtaining other counsel.

*Second*, interim co-lead counsel, in conjunction with all other plaintiffs' counsel in *Insulin Pricing*, have carefully crafted the consolidated amended complaint based on extensive research into the pharmaceutical industry and the insulin manufacturers, interviews with hundreds of individuals living with diabetes, and consultations with endocrinologists and public health advocates in the field. We are confident that the consolidated amended complaint filed on December 26, 2018 best protects the interests of this class. Our expertise and years of experience with similar actions, laid out at length in our application for interim co-lead counsel,<sup>5</sup> have

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<sup>2</sup> Motion to Withdraw as Attorney, *Boss, et al. v. CVS Health, et al.*, Civil Action No. 17-1823 (D.N.J. Dec. 22, 2017), ECF No. 37.

<sup>3</sup> Consolidated Amended Complaint, *In Re Insulin Drug Pricing Litig.*, Civil Action No. 17-699 (D.N.J. Dec. 26, 2017), ECF No. 82.

<sup>4</sup> Letter of Carella Byrne and Hagens Berman (D.N.J. Dec. 18, 2017), ECF No. 81.

<sup>5</sup> Joint Application for Appointment of Steve W. Berman of Hagens Berman Sobol Shapiro LLP and James E. Cecchi of Carella, Byrne, Cecchi, Olstein, Brody, & Agnello, P.C. as Interim

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guided our current approach and our drafting of the consolidated amended complaint. While Ms. Boss and T1DF may disagree with our approach, we have an obligation to act in the best interests of the class as whole. Although we are mindful that the Bosses have a child who lives with diabetes, the opinion of one individual with limited expertise in the pharmaceutical industry and no proffered experience with complex civil litigation should not dictate the litigation strategy for the entire class.

*Third*, our current case management strategy protects and preserves any potential claims that the *Insulin Pricing* plaintiffs may have against CVS Health, Express Scripts, and OptumRx (the pharmacy benefit managers or “PBMs”). The *Insulin Pricing* plaintiffs have entered a tolling agreement with the PBMs, signed on January 29, 2018. This agreement allows *Insulin Pricing* counsel, on the basis of facts or circumstances that they learn after executing the tolling agreement, to include one or more of the PBMs as a party-defendant in *Insulin Pricing*, so long as they do so within 180 days after this Court has adjudicated all motions to dismiss in *Insulin Pricing*. The tolling agreement specifies that it will not prevent the *Insulin Pricing* plaintiffs from seeking discovery under the Federal Rules of Civil Procedure from the PBMs or from any other party. Moreover, the agreement explicitly states that it will only affect *the parties to the agreement* – the *Insulin Pricing* plaintiffs and the PBMs. The agreement is clear: nothing in it will affect the claims or potential claims of other persons, entities, or non-parties, such as Ms. Boss and T1DF. Thus, nothing in this tolling agreement prevents Ms. Boss and T1DF from bringing suit against the PBMs with new counsel, should they retain it.

*Fourth*, and crucially, interim co-lead counsel, along with all other counsel in *Insulin Pricing*, has determined that the addition of the PBMs as defendants at this time runs counter to the interests of the consumer class. We represent a class of consumers who overpaid based on the “rebates” and other price concessions that the defendant drug manufacturers, Novo Nordisk, Eli Lilly, and Sanofi, gave to PBMs and large health plans. Without disclosing in depth our reasons, adding the PBMs as defendants would be detrimental to our overarching legal strategy in this case. We did not do so in the *In re Pharmaceutical Industry Average Wholesale Price Litigation*, MDL No. 1456 (D. Mass.) and *New England Carpenters Health Benefits Fund, et al. v. First DataBank, Inc. and McKesson Corp.*, Civil Action No. 05-cv-11148 (D. Mass.) – list pricing cases where we recovered hundreds of millions against the defendants.

*Fifth*, Keller Rohrbach attempted, for many months, to explain our legal strategy to Ms. Boss and T1DF. We allowed Ms. Boss and T1DF’s intransience to significantly delay this case, to the detriment of the proposed class. However, we could not allow Ms. Boss and T1DF to continue delaying the case based on demands detrimental to the welfare of the class. Accordingly, Keller Rohrbach withdrew representation of Ms. Boss and T1DF. The *Insulin Pricing* plaintiffs seek injunctive and monetary relief. Every further day of delay injures these

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Co-Lead Counsel for the Putative Consumer Class Pursuant to Rule 23(g) (D.N.J. Apr. 28, 2017), ECF No. 49-1.

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plaintiffs. Therefore, we ask the Court to decline Ms. Boss's and T1DF's invitation to stay this case.

Respectfully submitted,

CARELLA, BYRNE, CECCHI,  
OLSTEIN, BRODY & AGNELLO, P.C.

/s/ James E. Cecchi

JAMES E. CECCHI

HAGENS BERMAN SOBOL SHAPIRO LLP

/s/ Steve W. Berman

STEVE W. BERMAN

cc: All Counsel of Record (via ECF)