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10 *Attorneys for Plaintiffs Caremark PHC, LLC; CaremarkPCS
Health, LLC; Caremark, LLC; Caremark RX, LLC;
11 Aetna, Inc.; and Aetna Health, Inc.*

12 **UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

13 CAREMARK, LLC; CAREMARK PHC, LLC;
14 CAREMARKPCS HEALTH, LLC; CAREMARK
15 RX, LLC; AETNA, INC.; AND AETNA HEALTH,
INC.,

16 **Petitioners,**

17
18 **v.**

19 THE CHICKASAW NATION; THE CHICKASAW
20 NATION DEPARTMENT OF HEALTH; THE
ARDMORE HEALTH CLINIC; THE
21 CHICKASAW NATION MEDICAL CENTER;
THE PURCELL HEALTH CLINIC; THE
22 TISHOMINGO HEALTH CLINIC; AND
23 CHICKASAW NATION ONLINE PHARMACY
REFILL CENTER,

24 **Respondents.**

Civil Action No.

25
26
27 **PETITION FOR ORDER TO COMPEL ARBITRATION**
28

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1 Petitioners Caremark, LLC, Caremark PHC, LLC, CaremarkPCS Health, LLC,
2 Caremark Rx, LLC, Aetna, Inc. and Aetna Health, Inc. (collectively, “Petitioners”),
3 hereby petition the Court to compel arbitration under the Federal Arbitration Act, 9
4 U.S.C. § 1, *et seq.* (the “FAA”), and in accordance with certain governing agreements
5 requiring arbitration. In support, Petitioners submit the following:
6

7 **INTRODUCTION**

8 1. Respondent Chickasaw Nation (the “Nation”) owns and operates certain
9 pharmacies, directly or through Respondent Chickasaw Nation Department of Health (the
10 “Department of Health”), a department, division, or agency of the Nation. As relevant
11 here, the Nation’s pharmacies include Respondents Ardmore Health Clinic, The
12 Chickasaw Nation Medical Center, Purcell Health Clinic, Tishomingo Health Clinic and
13 Chickasaw Nation Online Pharmacy Refill Center (f/k/a Carl Albert Hospital)
14 (collectively with the Nation and Department of Health, “Respondents”).
15

16
17 2. The Nation’s pharmacies participate in multiple pharmacy networks
18 operated either by Petitioner Caremark, LLC (“Caremark LLC”) or CaremarkPCS, LLC
19 (“CaremarkPCS” and together with Caremark LLC, “Caremark”). Respondents entered
20 into contracts with Caremark referred to as a “Provider Agreement.”
21

22 3. In the Provider Agreement, Respondents expressly agreed that all disputes
23 “in connection with, arising out of or relating in any way to” the Provider Agreement
24 “will be exclusively settled by arbitration before a single arbitrator in accordance with
25 the rules of the American Arbitration Association.” Respondents likewise agreed to hold
26 any arbitration in Scottsdale, Arizona.
27
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1 ownership and operation by the Nation and its Department of Health, are participants in
2 multiple pharmacy networks administered by Caremark.

3 **JURISDICTION AND VENUE**

4 11. This Court has subject matter jurisdiction over the claims raised herein
5 pursuant to 28 U.S.C. § 1331. The dispute underlying this Petition, i.e., the claims in the
6 Complaint, defined and described *infra*, arises under the laws of the United States.
7 Specifically, Petitioners seek to compel arbitration of the Nation’s claims that Petitioners
8 allegedly violated the Indian Health Care Improvement Act, 25 U.S.C. § 1621e.
9

10 12. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391. The
11 FAA permits a party aggrieved by the failure, neglect, or refusal of another to arbitrate
12 under a written agreement for arbitration to petition a United States District Court for an
13 order directing that such arbitration proceed in the manner provided in such agreement.
14 The Arbitration Provision requires any arbitration to take place in Scottsdale, Arizona,
15 within this Court’s jurisdiction.
16

17 **PARTIES**

18 13. Petitioner Caremark, LLC is a California limited liability company with its
19 headquarters at 2211 Sanders Road, Northbrook, Illinois 60062.
20

21 14. Petitioner Caremark PhC, LLC is a Delaware limited liability company
22 with its headquarters at One CVS Drive, Woonsocket, Rhode Island 02895.
23

24 15. Petitioner CaremarkPCS Health, LLC is a Delaware limited liability
25 company with its headquarters at 750 West John Carpenter Freeway, Irving, Texas
26 75039. CaremarkPCS Health, LLC was formerly known as AdvancePCS Health, L.P.
27

1 (“AdvancePCS”).

2 16. Petitioner Caremark Rx, LLC is a Delaware limited liability company with
3 its headquarters at One CVS Drive, Woonsocket, Rhode Island 02895.

4 17. Petitioner Aetna, Inc. is a Pennsylvania corporation with its headquarters
5 at 151 Farmington Avenue, Hartford, Connecticut 06156.

6 18. Petitioner Aetna Health, Inc. is a Pennsylvania corporation with its
7 headquarters at 1425 Union Meeting Road, Blue Bell, Pennsylvania 19422.

8 19. Respondent Chickasaw Nation is a federally recognized Native American
9 tribal nation headquartered at 520 E. Arlington Street, Ada, Oklahoma 74820. The
10 Nation operates a healthcare system through Respondent Department of Health; the
11 healthcare system includes the Respondent pharmacies, which provide pharmacy
12 services including dispensing prescription medications to members of the Nation.

13 20. Respondent Department of Health is, on information and belief, a division,
14 department and/or an agency of the Nation.

15 21. Each of the Respondent pharmacies is owned and operated by the Nation
16 and/or its Department of Health:

17 (a) Respondent Ardmore Health Clinic is an ITU Pharmacy operated by
18 an Indian tribe or tribal organization as defined under 25 U.S.C. § 1603 (namely,
19 the Nation and its Department of Health), located at 2510 Chickasaw Blvd.,
20 Ardmore, Oklahoma 73401.

21 (b) Respondent Chickasaw Nation Medical Center is an ITU Pharmacy
22 operated by an Indian tribe or tribal organization as defined under 25 U.S.C. §
23
24
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1 1603 (namely, the Nation and its Department of Health), located at 1921
2 Stonecipher Blvd, Ada, Oklahoma 74820.

3 (c) Respondent Purcell Health Clinic is an ITU Pharmacy operated by
4 an Indian tribe or tribal organization as defined under 25 U.S.C. § 1603 (namely,
5 the Nation and its Department of Health), located at 1438 Hardcastle Blvd,
6 Purcell, Oklahoma 73080.

7
8 (d) Respondent Tishomingo Health Clinic is an ITU Pharmacy operated
9 by an Indian tribe or tribal organization as defined under 25 U.S.C. § 1603
10 (namely, the Nation and its Department of Health), located at 817 E. 6th St.,
11 Tishomingo, Oklahoma 73460.

12
13 (e) Respondent Chickasaw Nation Online Pharmacy Refill Center (f/k/a
14 Carl Albert Hospital) is an ITU Pharmacy operated by an Indian tribe or tribal
15 organization as defined under 25 U.S.C. § 1603 (namely, the Nation and its
16 Department of Health), with a business address of 933 N. Country Club Road,
17 Ada, Oklahoma 74820.

18
19 **STATEMENT OF FACTS**

20
21 22. Each of the Nation's pharmacies has a current contract, known as a
22 Provider Agreement, with Caremark, LLC. Each Provider Agreement expressly
23 incorporates the terms of a "Provider Manual."

24
25 23. Since entering into the Provider Agreement, the Respondents have
26 submitted claims for reimbursement pursuant to those agreements' terms. The Nation
27 acknowledges that its relationship with Caremark is governed by the Provider
28

1 Agreement.

2 24. The Nation's pharmacies all also have executed Network Enrollment
3 Forms ("NEFs") with AdvancePCS and Caremark, LLC. The NEFs permit the
4 pharmacies to enroll as participants in specific networks previously administered by
5 AdvancePCS and now administered by Caremark. The NEFs incorporate and reference
6 the terms of the Provider Agreement to the extent they are not in conflict.
7

8 25. The Provider Agreement, Provider Manual and NEFs memorialize the
9 entire contractual relationship Respondents have with Caremark, including by
10 establishing the amounts paid for pharmacy claims to Respondents and the networks in
11 which they participate. The Provider Agreement, Provider Manual and NEFs are referred
12 to collectively as the "Provider Agreement" unless otherwise indicated.
13

14 26. The Provider Agreement contains nonpublic information and proprietary
15 business, technical and financial information that is highly confidential. The disclosure
16 of these documents would negatively affect current and future business dealings and
17 cause serious commercial injury to Petitioners.
18

19 27. The following describes the manner in which each Pharmacy came to be
20 bound by a current Provider Agreement:
21

- 22 a. Respondent Ardmore Health Clinic signed a Provider Agreement
23 with AdvancePCS in July 2003.
- 24 b. Respondent Chickasaw Nation Online Pharmacy Refill Center
25 signed a Provider Agreement with AdvancePCS in July 2003 under
26 the names CNHS Family Practice Clinic and Carl Albert Hospital.
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- c. Respondent Chickasaw Nation Medical Center signed a Provider Agreement with Caremark, LLC and CaremarkPCS, LLC in August 2010.
- d. Respondent Purcell Health Clinic signed a Provider Agreement with Caremark, Inc. (n/k/a Caremark, LLC) in December 2005.
- e. Respondent Tishomingo Health Clinic signed a Provider Agreement with AdvancePCS in July 2003.

28. Each of these pharmacies also entered into NEFs at various dates over the years. As noted, these NEFs contained language stating that the pharmacies acknowledged that the terms and conditions of the Provider Agreement governed their relationship, except to the extent inconsistent with an NEF.

29. In or around April 2004, when Caremark acquired AdvancePCS, those pharmacies that had contracts with AdvancePCS were then notified that the relationship going forward would be with Caremark, and also were notified of changes and amendments to the Provider Agreement. After this, all pharmacies in the Caremark networks were sent the 2004 Provider Manual.

30. From time to time since 2004, both the Provider Agreement and the incorporated Provider Manual have been amended. In 2020, each of the Nation's pharmacies received the most recent version of the Provider Manual.

31. After receipt of the 2020 version of the Provider Manual, Respondents continued to submit pharmacy claims to Caremark for reimbursement. This means, pursuant to the terms of the Provider Manual, that Respondents agreed to and accepted

1 the terms of the 2020 Provider Manual.

2 32. The Provider Agreement provides that Arizona law governs the Provider
3 Agreement.

4 33. As relevant here, the current Provider Manual, incorporated into the
5 Provider Agreement, provides in relevant part with respect to arbitration (the “Arbitration
6 Provision”):
7

8 Any and all disputes between Provider and Caremark *[including*
9 *Caremark’s current, future, or former employees, parents, subsidiaries,*
10 *affiliates, agents and assigns (collectively referred to in this Arbitration*
11 *section as “Caremark”)]*, including but not limited to, disputes in
12 connection with, arising out of, or relating in any way to, the Provider
13 Agreements *or to Provider’s participation in one or more Caremark*
14 *networks or exclusion from any Caremark networks*, will be exclusively
15 settled by arbitration. This arbitration provision applies to any dispute
16 arising from events that occurred before, on or after the effective date of
17 this Provider Manual. Any dispute otherwise arbitrable hereunder shall be
18 deemed waived, and no such dispute shall be made or raised, unless a
19 Dispute Notice has been given to Caremark, or arbitration filed, as provided
20 below. Unless otherwise agreed to in writing by the parties, the arbitration
21 shall be administered by the American Arbitration Association (“AAA”) pursuant to the then applicable AAA Commercial Arbitration Rules and Mediation Procedures including the rule governing Emergency Measures of Protection (available from the AAA). In no event may the arbitrator(s) award indirect, consequential, or special damages of any nature (even if informed of their possibility), lost profits or savings, punitive damages, injury to reputation, or loss of customers or business, except as required by Law.

22 The arbitrator(s) shall have exclusive authority to resolve any dispute
23 relating to the interpretation, applicability, enforceability or formation of
24 the agreement to arbitrate, including but not limited to, any claim that all
25 or part of the agreement to arbitrate is void or voidable for any reason. In
26 the event the arbitrator(s) determine that any provision of this agreement to
27 arbitrate is invalid for any reason, such provision shall be stricken and all
28 remaining provisions will remain in full force and effect. The arbitrator(s) must follow the rule of Law, and the award of the arbitrator(s) will be final and binding on the parties, and judgment upon such award may be entered in any court having jurisdiction thereof. Any such arbitration must be

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1 conducted in Scottsdale, Arizona and Provider agrees to such jurisdiction,
2 unless otherwise agreed to by the parties in writing.

3 34. On December 29, 2020, the Nation sued Petitioners and other defendants
4 in the United States District Court for the Eastern District of Oklahoma, styled *The*
5 *Chickasaw Nation v. CVS Caremark, LLC, et al.*, Case No. 6:20-cv-00488-KEW (filed
6 Dec. 29, 2020) (the “Complaint”), alleging that the defendants have failed to pay the
7 Nation’s claims for prescription drugs submitted by their pharmacies in violation of 25
8 U.S.C. § 1621e (the “Recovery Act”). A copy of the Complaint is annexed as Exhibit 1
9 to this Petition. The Nation previously raised this dispute in two letters, dated April 19,
10 2016 and June 21, 2016, sent by its Legal Department to CVS Health Corporation.
11 Copies of both letters are annexed as Exhibits 2-3 respectively.

12 35. The Nation’s dispute in the Complaint under the Recovery Act is within
13 the scope of the Arbitration Provision because that provision applies to all disputes, “in
14 connection with, arising out of, or relating in any way to, the Provider Agreement or to
15 Provider’s participation in one or more Caremark networks.”

16 36. Notwithstanding the clear terms of the Provider Agreement, the Nation
17 brought its claims against Petitioners in federal district court.

18 37. By letters dated February 10, 2021, Petitioners demanded that the Nation
19 and all Respondents must arbitrate the dispute raised in the Complaint in Scottsdale,
20 Arizona, pursuant to the terms of the Provider Agreement and Arbitration Provision.
21 Copies of these letters are annexed as Exhibit 4.

22 38. The Nation, however, refused to honor Petitioners’ election of arbitration.
23 On February 22, 2021, the Nation notified counsel for Petitioners by letter that it will not
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1 consent to arbitration of its dispute with Petitioners. A copy of this letter is annexed as
2 Exhibit 5.

3 39. Petitioners are therefore filing this action, through the instant Petition,
4 supporting Declaration of Stephanie Harris with accompanying exhibits, and the
5 supporting Memorandum of Law, to enforce the Arbitration Provision in the Provider
6 Agreement, and to prevent Respondents from taking any action contrary to the
7 Arbitration Provision.
8

9 40. Petitioners are also separately seeking a stay of all proceedings involving
10 the Complaint in the District Court for the Eastern District of Oklahoma, by application
11 before that court.
12

13 **CLAIM FOR RELIEF**

14 **COUNT I: ARBITRATION PURSUANT TO**
15 **THE FEDERAL ARBITRATION ACT**

16 41. Petitioners incorporate by reference ¶¶ 1 through 39, above.

17 42. The FAA applies to the Provider Agreement as a matter of law and as
18 expressly provided in the Provider Agreement.
19

20 43. Section 4 of the FAA, 9 U.S.C. § 4, provides Petitioners a cause of action
21 to compel Respondents to resolve the dispute with Petitioners through arbitration. Section
22 4 of the FAA, 9 U.S.C. § 4, provides in relevant part:
23

24 A party aggrieved by the alleged failure, neglect or refusal of
25 another to arbitrate under a written agreement for arbitration
26 may petition any United States district court which, save for
27 such agreement, would have jurisdiction under Title 28, in a
28 civil action or in admiralty of the subject matter of a suit
arising out of the controversy between the parties, for an

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1 order directing that such arbitration proceed in the manner
2 provided for in such agreement.

3 44. Petitioners are parties aggrieved by Respondents' refusal to arbitrate under
4 a written agreement for arbitration and, save for the arbitration agreement, the Court has
5 jurisdiction under Title 28 of the U.S. Code, Section 1331.

6 45. The Arbitration Provision in the Provider Agreement constitutes a written
7 agreement that is valid and enforceable under the FAA. Section 2 of the FAA, 9 U.S.C.
8 § 2, provides in relevant part:
9

10 A ... contract evidencing a transaction involving commerce
11 to settle by arbitration a controversy thereafter arising out of
12 such contract or transaction, or the refusal to perform the
13 whole or any part thereof, or an agreement in writing to
14 submit to arbitration an existing controversy arising out of
15 such a contract, transaction, or refusal, shall be valid,
16 irrevocable, and enforceable, save upon such grounds as exist
17 at law or in equity for the revocation of any contract.

18 46. The Arbitration Provision is a written provision in a contract evidencing a
19 transaction involving commerce to settle by arbitration a controversy thereafter arising
20 under the Provider Agreement.

21 47. The Arbitration Provision is valid, irrevocable, and enforceable.

22 48. The Arbitration Provision applies to all claims asserted by the Nation in the
23 Complaint.

24 49. The Arbitration Provision contractually requires Respondents to submit all
25 disputes, "including but not limited to, disputes in connection with, arising out of, or
26 relating in any way to, the Provider Agreement or to Provider's participation in one or
27 more Caremark networks" to be "exclusively settled by arbitration" in Scottsdale,
28 Arizona under American Arbitration Association rules.

1 50. The claims set out in the Complaint are “in connection with, arising out of,
2 or relat[e] . . . to, the Provider Agreement or to Provider’s participation in one or more
3 Caremark networks” and therefore fall within the scope of the Arbitration Provision in
4 the Provider Agreement.

5 51. Nevertheless, Respondents have disregarded their contractual obligation to
6 arbitrate the claims asserted in the Complaint.

7 52. The Court should enter an Order compelling Respondents to arbitrate all
8 claims raised or that could be raised in the Complaint.

9 53. All Petitioners are entitled to enforce the Arbitration Provision under its
10 terms, as well as under applicable law, even if they may not be signatories to any specific
11 agreement. Furthermore, because the Nation must rely on the terms of the Provider
12 Agreement in asserting its claims against all Petitioners in the Complaint, and because
13 the Nation alleges in the Complaint interdependent and concerted misconduct among all
14 Petitioners, principles of equity and law require that the Nation’s claims against all
15 Petitioners be arbitrated.

16 54. Respondents cannot avoid arbitration by invoking sovereign immunity
17 because Respondents waived any such immunity with respect to the dispute in the
18 Complaint when it entered into the Provider Agreement and accepted and became bound
19 by the Arbitration Provision.

20 WHEREFORE, Petitioners request that the Court order the following relief:

21 1. An Order, pursuant to Section 4 of the FAA, 9 U.S.C. § 4, compelling
22 Respondents to pursue in arbitration any dispute with the Petitioners relating to the claims
23

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1 in the Complaint; and

2 2. any further relief the Court deems necessary.

3
4 Dated this 2nd day of April, 2021

5 Respectfully submitted,

6 **GREENBURG TRAUIG, LLP**

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