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PLEASE RESPOND TO: Grand Rapids

July 9, 2009

VIA OVERNIGHT MAIL

Clerk of the Court
49th Circuit Court
Mecosta County Courthouse
400 Elm St.
Big Rapids, MI 49307

Re: Change to Win v. Ferris State University
Case No. 09-19001-CZ

Dear Clerk:

Please find enclosed for filing the following documents:

1. An original and Judge's Copy of Plaintiff Change to Win's Motion for Protective Order;
2. An original and Judge's Copy of Plaintiff Change to Win's Brief in Support of Motion for Protective Order;
3. An original and Judge's Copy of Notice of Hearing;
4. Proof of Service;
5. $20 motion fee.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,

KALNIZ, IORIO & FELDSTEIN CO., L.P.A.

By: Krista Durchik

KD/sm
Enclosures
cc: Margaret Kwoka
Jeffrey Kopp
Eric Williams

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MECOSTA

CHANGE TO WIN,

Plaintiff,

v.

FERRIS STATE UNIVERSITY,

Defendant,

v.

CAREMARKPCS HEALTH, L.L.C.,

Intervenor.

Case No. 09-19001-CZ

Hon. Ronald C. Nichols
Circuit Court Judge

Margaret Kwoka
(admitted pro hac vice)
PUBLIC CITIZEN LITIGATION GROUP
1600 20th Street NW
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Attorney for CaremarkPCS Health, LLC

PLAINTIFF CHANGE TO WIN'S MOTION FOR PROTECTIVE ORDER

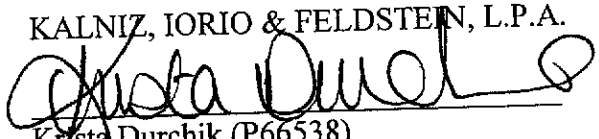
NOW COMES the Plaintiff, Change to Win, by and through its attorneys, PUBLIC CITIZEN LITIGATION GROUP and the law offices of KALNIZ, IORIO & FELDSTEIN CO., and hereby moves for a protective order pursuant to MCR 2.302(C)

for all of the reasons stated in Plaintiffs' Brief in Support of Its Motion for Protective Order.

Respectfully submitted,

PUBLIC CITIZEN LITIGATION GROUP
Margaret B. Kwoka

KALNIZ, IORIO & FELDSTEIN, L.P.A.



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Dated: July 9, 2009

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MECOSTA

CHANGE TO WIN,

Plaintiff,

v.

FERRIS STATE UNIVERSITY,

Defendant,

v.

CAREMARKPCS HEALTH, L.L.C.,

Intervenor.

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PLAINTIFF CHANGE TO WIN'S BRIEF IN SUPPORT OF MOTION FOR PROTECTIVE ORDER

FACTS

On August 12, 2008, Change to Win submitted a request to Ferris State University ("Ferris State") under the Michigan Freedom of Information Act ("FOIA") for, in pertinent part, the contract between Ferris State University and its pharmacy benefits manager, CaremarkPCS Health LLC ("Caremark"), and any marketing materials submitted to Ferris State by Caremark. By letter dated September 11, 2008, Ferris State responded with copies of those materials, but with extensive redactions taken purportedly pursuant to the trade secrets/confidential commercial information exemption of the Michigan FOIA. On March 3, 2009, Change to Win filed this lawsuit against Ferris State alleging that the withholdings violated the Michigan FOIA. On May 7, 2009, Change to Win filed a Motion for Summary Disposition.

On May 22, 2009, Caremark filed a Motion to Intervene, to which Change to Win consented despite its stated concerns about delay and potential abusive discovery. On June 4, 2009, Caremark served its first set of Interrogatories and Requests for Production on Change to Win. On July 2, 2009, Change to Win served its responses to those discovery requests on Caremark. On July 2, 2009, Caremark served two notices of depositions on Change to Win, scheduling a deposition of a "representative of Change to Win" for July 14, 2009, to which it attached a schedule of twelve broad categories that were the subject matter of the deposition, and a deposition of Casey Cabalquinto for July 15, 2009. *See* Attachment A. The far-ranging topics on which Caremark seeks discovery include "CTW's efforts to obtain (through public records laws or any other means) any information belonging to any pharmacy benefit managers other than Intervenor," "[p]olicies, procedures, plans and practices regarding Change to Win's efforts to obtain information belonging to or about Intervenor," and similar topics. *Id.* On July 8, 2009, Change to Win alerted Caremark of its intention to file a motion for a protective order and the

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deponents' intention not to appear at the noticed depositions pending resolution of that motion. Change to Win now seeks a protective order from this Court pursuant to MCR 2.302(C) and MCR 2.306(D)(4) to bar Caremark's taking of the noticed depositions.

ARGUMENT

Michigan Court Rule 2.302 sets forth the general rules governing discovery. Michigan Courts have recognized that the court rules implement "an open, broad discovery policy . . ." *Reed Dairy Farm v. Consumers Powers Co.*, 227 Mich. App. 614, 616 (1998). Rule 2.302 permits parties to obtain discovery "regarding any matter, not privileged, which is *relevant to the subject matter involved in the pending action*, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of another party." M.C.R. 2.302(B)(1) (emphasis added).

Michigan courts recognize, however, that "[w]hile Michigan is strongly committed to open and far-reaching discovery, a trial court must also protect the interests of the party opposing discovery so as not to subject that party to excessive, abusive or irrelevant discovery requests." *In re Hammond Estate*, 215 Mich. App. 379, 386 (1996) (internal citations omitted); *see also Cabrera v. Ekema*, 265 Mich. App. 402, 407 (2005) (reversing motion to compel discovery where subject matter not relevant); *Charter Twp. v. Oakland County Clerk*, 253 Mich. App. 1, 35-39 (2002) (affirming trial court's issuance of a protective order where the discovery request had "taken on the appearance of a fishing expedition"). In this regard, Michigan Court Rule 2.302(C) permits courts to limit discovery through the issuance of protective orders. MCR 2.302(C) provides in pertinent part:

> On motion by a party or by the person from whom discovery is sought, and on reasonable notice and for good cause shown, the court in which the action is pending may issue any order that

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> justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following orders:
>
> (1) that the discovery not be had;
>
> (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place;
>
> (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;
>
> (4) that certain matters not be inquired into, or that the scope of discovery be limited to certain matters
>
> . . . .

Furthermore, Michigan Court Rule 2.306(D)(4) requires a party who knows that the subject matter of a noticed deposition is privileged to assert that privilege prior to the deposition or be subjected to incurring the costs of the deposition.

In this case, a protective order barring the noticed depositions is warranted both to protect Change to Win from oppression, annoyance, and undue burden and expense in responding to discovery requests for irrelevant material and material not likely to lead to the discovery of relevant evidence, and because the topics of the depositions cover privileged matters.

The legal issue in this case is whether the information contained in the redacted portions of the Ferris State-Caremark contract and related marketing materials is exempt from disclosure as trade secret or confidential commercial information under the Michigan FOIA. A FOIA exemption is raised as an affirmative defense to withholding records. *Messenger v. Consumer & Industry Servs*, 238 Mich. App. 524, 536 (1999). The defendant therefore bears the burden of proof, and "[t]he burden of producing evidence and establishing [the relevant] facts rests upon the defendant." *Id.*, *quoting Detroit News, Inc. v. Detroit*, 185 Mich. App. 296, 300 (1990). As such, it is highly unusual for a defendant in a FOIA case – or in this case an Intervenor standing in the

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shoes of the defendant – to take discovery of the FOIA requester. *See Weisberg v. Webster*, 749 F.2d 864, 868 (D.C. Cir. 1984) ("Discovery must be relevant to the subject matter involved in the pending action, and in the usual FOIA case, the government will be in possession of all such evidence. For that reason, in the context of FOIA litigation courts will guard against the use of discovery as an instrument of abuse. . . .").

A claim of exemption based on trade secrets involves, first, a showing that the records are the type of records that can be covered by the exemption as a matter of law and, second, that the information contained in the records, if released to the public at large, would cause substantial competitive harm and is kept confidential by the party who submitted the information to the government. *See* M.C.L. § 15.243(1)(f). As Caremark itself said in its Motion to Intervene, "CaremarkPCS is in the best position to put forward facts demonstrating that the information at issue is a trade secret whose disclosure would cause CaremarkPCS substantial harm . . . because Caremark has knowledge of [the] relevant facts and circumstances . . . ." Mot. to Intervene at 5. The Michigan Supreme Court has recognized the inherent difficulty in FOIA cases where "one party is cognizant of the subject matter of litigation and the other is not." *Evening News Ass'n v. City of Troy*, 417 Mich. 481, 514 (1983). That is, the *requester* is at the informational disadvantage, not the government or, in this case, Caremark. *See id.*

The proper procedure in a FOIA case, outlined by the Michigan Supreme Court in *Evening News*, is first to require a detailed affidavit from the government as to what type of information is being withheld and a detailed non-conclusory explanation for the basis for withholding. Then, if the case cannot be resolved, the Court is to examine the documents in camera. And finally, if questions remain, the Court should provide an attorneys' eyes only copy of the withheld materials to the requester. *Id.* at 503, 516. This procedure, at each point trying to even the playing field

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between the requester who lacks relevant information and the withholding party, underscores the irrelevancy of Caremark's discovery requests.

Although Caremark and Ferris State bear the burden of proof in this case, and although they have possession of all of the relevant evidence, Change to Win has already been more than accommodating in responding, over objection, to Interrogatories and Requests for Production that are irrelevant, overly broad, and unduly burdensome. Further discovery by way of deposition(s) on twelve expansive topics and a separate deposition of a named individual at Change to Win is harassing and improper.

I. Caremark is Improperly Seeking Depositions to Discover Change to Win's Purpose in Making This and Other FOIA Requests.

It is well-settled that a FOIA requester's motivation for seeking the release of documents is irrelevant to the question of whether the records are subject to release under FOIA. "[A] rule which would permit denial of a request for information on grounds that the requester is 'idly or maliciously curious' is repugnant to the act. A person seeking information under the act is generally not required to divulge the reason for the request." *Cashel v. Smith*, 117 Mich. App. 405, 410 (1982); *see also National Archives and Records Admin. v. Favish*, 541 U.S. 157, 172 (2004) ("[A]s a general rule, when documents are within FOIA's disclosure provisions, citizens should not be required to explain why they seek the information."); *U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 772 (1989) (holding that whether disclosure is required under federal FOIA "turn[s] on the nature of the requested document and its relationship to the basic purpose of the Freedom of Information Act to open agency action to the light of public scrutiny, rather than on the particular purpose for which the document is being requested" (internal quotation and citation omitted)); *Abraham & Rose, P.L.C. v. U.S.*, 138 F.3d

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1075, 1079 (6th Cir. 1998) ("[T]he requester's intended use [for the documents] is also irrelevant in a FOIA action."); *Whitehouse v. U.S. Dep't of Labor*, 997 F. Supp. 172, 174 n.8 (D. Mass. 1998) (holding that in the FOIA context, "the motivation of the requestor is irrelevant"); *Union Leader Corp. v. City of Nashua*, 686 A.2d 310, 313 (N.H. 1996) ("In Right-to-Know Law cases, the plaintiff's motives for seeking disclosure are irrelevant."); *Assoc. Tax Serv., Inc. v. Fitzpatrick*, 372 S.E.2d 625, 629 (Va. 1988) ("We conclude in light of the statutory language that the purpose or motivation behind a request is irrelevant to a citizen's entitlement to requested information.").

In *Cashel v. Smith*, the Michigan Court of Appeals reversed the trial court's allowance of a deposition of a FOIA plaintiff because any inquiry into the plaintiff's motive was irrelevant to whether the documents were exempt from disclosure under the Act. 117 Mich. App. at 410. While *Cashel* did not bar depositions in FOIA cases per se, it did suggest that depositions should rarely be allowed, and that the rare instance when a requester's purpose is legally relevant is when the exemption itself calls for a public interest balancing, as with the privacy exemption. *See id.*; *Kestenbaum v. Michigan State University*, 97 Mich. App. 5, 20 (1980). No such balancing is conducted with respect to a claim of trade secrets. *See Blue Cross and Blue Shield of Michigan v. Insurance Bureau Hearing Officer*, 104 Mich. App. 113, 128-29 (1981).

In another case concerning requester motive, the Michigan Court of Appeals overturned a trial court's conclusion that the plaintiff had abused her rights under the Michigan FOIA by making a large number of requests and that such abuse could be considered in entering summary disposition against her. *See Kendall v. Paw Paw Tp.*, unpublished opinion per curium of the Court of Appeals, issued Dec. 28, 2006, Docket No. 270115 (2006 WL 3826757). The Court of

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Appeals concluded that the Michigan FOIA "does not authorize the public body to deny otherwise valid requests simply because it questions the requester's motives." *Id.*

Many of the topics Caremark proposes to address in its deposition of a Change to Win representative can only be construed as seeking discovery of Change to Win's purpose in making the FOIA request at issue in this case. Not only this, Caremark seeks to learn details about and the purpose of other FOIA requests made by Change to Win both related to Caremark and *not* related to Caremark. *See* Attachment A. The topics include what use Change to Win has made of information it has received as a result of this and other FOIA requests, Change to Win's "[p]olicies, procedures, plans and practices regarding Change to Win's efforts to obtain information belonging to or about Intervenor," Change to Win's efforts to reform health care, Change to Win's efforts to obtain information about entities *other than* Caremark, and Change to Win's use of public information laws generally. *Id.* None of these topics, apparently designed to discover the purpose of the request, is relevant to the question of whether the redacted portions of the Ferris State-Caremark contract contain information exempt from disclosure as trade secret or confidential commercial information under the Michigan FOIA.

II. Caremark is Engaged in a Baseless Fishing Expedition.

Caremark has asserted a need for discovery because, it claims, there is some issue as to whether Change to Win obtained the Caremark contracts attached as exhibits to the Cabalquinto Affidavit legitimately. No such issue exists.

Change to Win submitted the contracts for the simple purpose of establishing what information is already in the public domain and no longer secret. The legal issue in this case, if the Court rules that the documents are of the type contemplated by the trade secrets exemption as a matter of law and therefore reaches it, is whether the release of the Ferris State-Caremark

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contract's terms, similar to information already publicly available, would cause Caremark competitive harm. In addition to the contracts themselves, Change to Win submitted, as exhibits to the Cabalquinto Affidavit and in conjunction with each contract, and in response to Caremark's written discovery requests, a record of the written communications with each public entity documenting each public information request or FOIA request that led to the release of each contract about which Caremark now claims there is some issue. These materials clearly establish that Change to Win obtained the contracts via public information requests, and the materials constitute Change to Win's complete written record of correspondence with the public agencies from which it obtained the contracts.

It appears now, judging from Caremark's schedule of deposition topics, that Caremark would like to argue that it received inadequate notice from the public entities that released the contracts or that it opposed the release of documents that were ultimately released to Change to Win, and that Change to Win knew of Caremark's objections, which renders Change to Win's acquisition of the contracts illegitimate. *See* Attachment A. For instance, the schedule of topics for the deposition includes Change to Win's *knowledge* or lack thereof about whether any public entity has "an obligation or attempt[ed] to give Intervenor notice" of any FOIA requests, Change to Win's *knowledge* or lack thereof about Caremark's *belief* about the exempt or non-exempt status of any documents, and Change to Win's *belief* about any potential harm to Caremark that would result from the documents' release. *Id.*

Change to Win's "state of mind," however, simply is not at issue in this case. There is no rule that a FOIA request is invalid or improper if the requester is *aware* that someone else objects to the release of responsive documents. Indeed, many requests for public information are made knowing that someone else might object. The issue in this case is whether Caremark would be

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harmed by release of the documents to the public, not whether Change to Win *believed* Caremark would be harmed or whether Change to Win *knew* Caremark objected.

Any argument that Caremark was inadequately notified, regardless of Change to Win's knowledge thereof, is also irrelevant, as it may demonstrate improper governmental conduct that could be the subject of another lawsuit, but not any illegitimacy in the way that Change to Win obtained the contracts. Nor would such a claim remove the contracts from the public domain, or go to the question of whether the Ferris State contract at issue in this case is exempt or if release of the documents would cause Caremark competitive harm. In any event, Caremark would have the facts relevant to such a claim in its own possession – whether or not it was properly notified and whether or not it opposed release – not Change to Win. Caremark therefore seeks discovery of information that it already has and in any case is irrelevant.

Furthermore, a third party's objection or failure to get proper notice and opportunity to object to the release does not necessarily mean that the records are exempt, and that the notice would have therefore kept the documents from the public domain. Public information laws differ greatly between jurisdictions, including notification procedures, and questions of exemption are hardly well-settled. *Compare, e.g.*, 65 PA. STAT. ANN. §§ 67.708(b)(11), (c); MO. ANN. STAT. § 610.021(15); and N.H. REV. STAT. ANN. § 91-A:5(IV). Even if Caremark asserted at some time that one or more of the contracts attached to the Cabalquinto affidavit was exempt from disclosure, most jurisdictions do not defer to, or consider themselves bound by, a private party's assertion of what is confidential or exempt under the law. *See, e.g.*, LA. REV. STAT. ANN. § 44:3.2(B)(2); CAL. GOV. CODE § 6254.2; FLA. STAT. § 624.4213; *see also Theragenics Corp. v. Dep't of Natural Res.*, 536 S.E.2d 613, 616 (Ga. App. 2000) ("[E]ven if the state agency is notified that it is receiving trade secret or other information allegedly exempt from disclosure, it is

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nevertheless incumbent upon the state agency to verify a filing entity's designation before refusing to disclose the information."). It is thus doubly absurd to argue that if Change to Win *knew* of Caremark's objections to the release of the contracts that Change to Win's FOIA requests were improper, since Caremark's objections do not necessarily mean that the documents are exempt. As none of these questions goes to any improper method of obtaining the documents, they equally do not bear on the relevant legal issue of what information is in the public domain.

The topics of the proposed depositions, which are irrelevant peripheral issues, reveal there is no dispute that Change to Win obtained the contracts by making public information and FOIA requests. Whatever remaining question could have existed about how Change to Win obtained these contracts was the subject of discovery by Caremark in the form of Interrogatories and Requests for Production. In response to those earlier discovery requests, and over relevancy and other objections, Change to Win submitted a record of every other written communication not already provided with each public entity that released one of those contracts, including communications as to trivial things, such as payment of processing fees, and communications that occurred after the release of the contracts. Caremark does not seem to challenge the authenticity of the documentation submitted by Change to Win. Any further inquiry into this topic is an obvious fishing expedition designed to harass and burden Change to Win, and deter it from exercising its rights to request public information. Moreover, all questions regarding Change to Win's use of lawfully obtained documents are irrelevant and Change to Win's speech concerning lawfully obtained information – even if the government has released that information in error – is protected by the First Amendment. *See Florida Star v. B.J.F.*, 491 U.S. 524, 533 (1989).

The Michigan Court of Appeals has firmly rejected discovery requests such as Caremark's, stating that "Michigan's commitment to open and far-reaching discovery does not

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encompass 'fishing expeditions.'" *See Vanvorous v. Burmeister*, 262 Mich. App. 467, 477 (2004). Caremark has not and cannot point to any *relevant* facts that are "likely to be uncovered by further discovery." *Id.* Caremark's deposition topics reveal that Caremark intends to harass and burden Change to Win, attack Change to Win's efforts to increase accountability in the pharmacy benefit manager industry, and chill Change to Win's exercise of its rights under FOIA and under the First Amendment. Caremark should not be permitted to depose Change to Win on the twelve expansive categories listed in the attachment to the notice, or separately to depose Casey Cabalquinto.

III. Caremark's Proposed Topics for the Depositions Directly Call for Discovery of Privileged Materials.

As Change to Win believes that the heart of the subject matter of Caremark's noticed depositions will be privileged, it is required under MCR 2.306(D)(4) to assert these claims of privilege in advance so as not to cause Caremark to incur the costs of the deposition at which Change to Win's deponents will not be able to be responsive.

Caremark's schedule of discovery topics attached to its notice of the deposition of a "representative of Change to Win" reveals that Caremark is seeking extensive discovery on matters subject to Change to Win's attorney-client privilege and the work-product doctrine. A full half of the numbered topics focus on "internal communications" about Change to Win's various activities, most of which were the subject of extensive consultation between Change to Win and its in-house counsel. *See Grubbs v. K Mart Corp.*, 161 Mich. App. 584, 589 (1987) (attorney-client privilege applies "to [confidential] communications made by a client to the attorney acting as a legal adviser and made for the purpose of obtaining legal advice on some right

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or privilege"). Some of the requests also encompass communications between Change to Win and its lawyers in this or other litigation or legal matters.

Many of the numbered items on the schedule provided by Caremark also seek information subject to the work-product doctrine. "Under the work-product doctrine, any notes, working papers, memoranda or similar materials, prepared by an attorney in anticipation of litigation, are protected from discovery." *Leibel v. General Motors Corp.*, 250 Mich. App. 229, 244 (2002) (internal citations and quotations omitted). The work-product doctrine involves a two-tiered inquiry; any strategy, deliberation, opinion, and thought-process is protected absolutely, whereas factual information may be discoverable if the requesting party demonstrates a substantial need and undue hardship to obtain the same material by other means. *Id.*

Here, as Change to Win is engaged in an extensive effort to increase accountability in the pharmacy benefit management industry, it has examined a number of legal issues pertaining to openness or accountability in that industry. Accordingly, legal strategies and evaluation of legal options would likely be responsive to Caremark's topic seeking "[p]olicies, procedures, plans and practices regarding Change to Win's efforts to obtain information belonging to or about Intervenor." However, these types of materials are privileged. Further, any factual material contained therein is not discoverable because Caremark cannot demonstrate a substantial need for this information: most or all of the information Caremark seeks from Change to Win is irrelevant to this FOIA case, and the relevant evidence in this case is in the hands of Caremark and Ferris State. Thus, Caremark cannot demonstrate a substantial need for any factual information subject to the work-product doctrine. Caremark is not entitled to discovery on the topics that cover Change to Win's privileged information.

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CONCLUSION

The legal issue in this case is whether the redacted portion of the contract between Ferris State and Caremark and the marketing materials submitted by Caremark in pursuit of that contract constitute exempt trade secret or confidential commercial information under the Michigan FOIA. The proposed depositions do not seek information that is relevant to that legal question or likely to lead to the discovery of relevant or admissible evidence. Moreover, the proposed depositions seek duplicative, harassing, and burdensome discovery. Finally, the heart of the matters that Caremark apparently wants to address in these depositions is privileged information. Change to Win respectfully requests that this Court issue a protective order that the noticed depositions not be had.

Respectfully submitted,

PUBLIC CITIZEN LITIGATION GROUP
Margaret B. Kwoka

KALNIZ, IORIO & FELDSTEIN, L.P.A.

Dated: July 9, 2009

Krista Durchik (P66538)
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Attorneys for Plaintiffs

SCHEDULE A

1. Change to Win's efforts to obtain Intervenor's bids, contracts and other documents relating to Intervenor in the possession of government entities, including without limitation any communications within Change to Win and/or with third parties on that topic.

2. Change to Win's efforts to use public information laws to obtain information relating to other pharmacy benefit management companies, including without limitation any communications within Change to Win and/or with third parties on that topic.

3. Communications within Change to Win and/or with third parties regarding the subject matter of this lawsuit.

4. Communications within Change to Win and/or with third parties regarding Change to Win's efforts to disseminate publicly and/or publish publicly information belonging to Intervenor, including, without limitation, information contained in contracts and bids.

5. Communications within Change to Win and/or with third parties regarding the confidentiality, trade secret status and/or proprietary status of any information contained in-documents relating to Intervenor.

6. Any and all documents attached as exhibits to and/or referenced in Change to Win's Motion for Summary Disposition (the "Motion") filed in this lawsuit, and in the Affidavit of Casey Cabalquinto attached to the Motion at Exhibit A, including but not limited to: (i) the dates on which those documents were obtained; and (ii) all communications (both internal and external, and both oral and written) relating to Change to Win's obtaining of

those documents.

7. Policies, procedures, plans and practices regarding Change to Win's efforts to obtain information belonging to or about Intervenor, including without limitation Intervenor's contracts with government entities.

8. Policies, procedures, plans, and practices regarding Change to Win's efforts to disseminate information belonging to or about Intervenor, including without limitation Intervenor's contracts with government entities.

9. CTW's knowledge, or efforts (if any) to obtain knowledge, regarding any public entity's obligation or attempt to give Intervenor notice of CTW's request for information belonging to Intervenor and contained in Intervenor's contracts and/or bids pursuant to government information disclosure laws.

10. CTW's efforts to reform health care, including but not limited to CTW's efforts to increase accountability and lower costs in healthcare-related industries.

11. CTW's efforts to obtain (through public records laws or any other means) any information belonging to any pharmacy benefit managers other than Intervenor.

12. CTW's knowledge or belief of any potential harm to Intervenor should Intervenor's competitors receive the information at issue in this lawsuit.

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MECOSTA

CHANGE TO WIN,

Plaintiff,

v.

FERRIS STATE UNIVERSITY,

Defendant,

v.

CAREMARKPCS HEALTH, L.L.C.,

Intervenor.

Case No. 09-19001-CZ

Hon. Ronald C. Nichols
Circuit Court Judge

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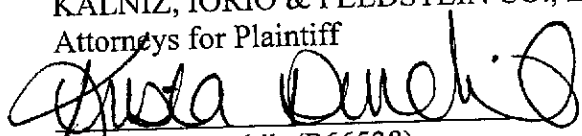
Attorney for CaremarkPCS Health, LLC

NOTICE OF HEARING

PLEASE BE ADVISED that a hearing will be held on Plaintiff's Change to Win's Motion for Protective Order in the above referenced matter. The hearing will take place before the Honorable Ronald C. Nichols at the Mecosta County Circuit Court, 400 Elm Street,

Big Rapids, Michigan on Monday, August 10, 2009 at 3:00 p.m., or as soon thereafter as counsel may be heard.

Respectfully submitted,
KALNIZ, IORIO & FELDSTEIN CO., L.P.A.
Attorneys for Plaintiff



Dated: July 9, 2009

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STATE OF MICHIGAN

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PROOF OF SERVICE

NOW COMES Sheila Meeusen, legal assistant at the law firm of KALNIZ, IORIO & FELDSTEIN, L.P.A., and says she did serve a copy of ***Plaintiff Change to Win's Motion for***

Protective Order, Plaintiff Change to Win's Brief in Support of Motion for Protective Order, and Notice of Hearing in the above matter on Eric Williams, 524 N. State Street, Big Rapids, Michigan 49307 and on Jeffrey Kopp, Foley & Lardner, LLP, One Detroit Center, 500 Woodward Avenue, Suite 2700, Detroit, MI 48226 via U.S. Mail with first-class postage fully paid on the 9th day of July, 2009.

Dated: July 9, 2009

Sheila Meeusen

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