UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

MARK CHAMBERS and REBECCA CHAMBERS, Individually and On Behalf of All Others Similarly Situated,

Plaintiffs,

v.

UNITEDHEALTH GROUP INCORPORATED, UNITED HEALTHCARE SERVICES, INC., UNITEDHEALTHCARE INC., OPTUM, INC., and OPTUMRX, INC.,

Defendants.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiffs Mark Chambers and Rebecca Chambers, by and through their undersigned attorneys, bring this action individually and on behalf of all others similarly situated against Defendants UnitedHealth Group Incorporated ("UnitedHealth"), and its subsidiary corporations United HealthCare Services, Inc., ("United HealthCare Services"), UnitedHealthcare, Inc. ("UnitedHealthcare"), Optum, Inc., and OptumRx, Inc. (collectively "Optum"). Except as to the allegations of Plaintiffs' experiences, which are based on their personal knowledge, all other allegations are based on an inquiry reasonable under the circumstances and on information and belief. Such allegations are likely to have evidentiary support after a reasonable opportunity for further investigation and discovery.

I. INTRODUCTION

1. Defendants sell health insurance policies, which include prescription drug benefits, to employers and individuals across the United States, including Plaintiffs.

2. Because the costs of health care, including prescription drugs, are significant, most individuals purchase health insurance policies to limit their exposure to these potentially staggering costs

3. However, Defendants created and implemented a scheme in which Plaintiffs unknowingly paid an amount for prescription drugs that was in excess of the actual price of the medication, and that difference was retained by Defendants.

4. The scheme by which Defendants obtain excess payments from prescription drug transactions is known as a "clawback." "Clawbacks" are the practice of collecting

from the dispensing pharmacy the portion of the patient's required "copayment" ("copay") or "coinsurance" payment that is exceeds the cost of the prescription medication. In other words, the clawback is the difference between the prescription drugs' retail costs, or the price the class member would pay without insurance, and the amount that the class member is required to pay pursuant to his or her insurance policy.

5. Defendants impose clawbacks most frequently on widely used, low-cost drugs, and particularly generic drugs, where the cost of the drug is relatively low. This enables Defendants to impose deductible costs, co-payments and co-insurance costs that are higher than the cost of the drug, thereby insuring for themselves a clawback. These commonly used drugs include, but are not limited to: Alprazolam, Amoxicilin, Bactrim, Buspirone, Ciprofloxacin, Clonazepam, Diazepam, Flonase, Fluoxetine, Fluticasone, Invokamet, Lamotrigine, Lexapro, Lisinopril, Meloxicam, Nitrofurantoin, Oxybutynin Percocet, Sprintec, Tamiflu (Oseltarmivir), Tizanidine, Valsartan, Venlafaxine and Ventolin.

6. Clawbacks are common. A recent survey from the National Community Pharmacists Association ("NCPA") found that the vast majority of pharmacists had observed at least 10 instances of clawbacks in the previous month.[1]

7. Contracts between pharmacies and Defendants exacerbate the situation by

[1] NCPA, *Survey of Community Pharmacies: Impact of direct and indirect remuneration (DIR) fees on pharmacies and PBM-imposed copay clawback fees affecting patients*, (2016), http://www.ncpa.co/pdf/dir_fee_pharamcy_survey_june_2016.pdf (last visited Dec. 9, 2016).

prohibiting pharmacists from discussing clawbacks, steering patients to lower cost alternatives, or disparaging defendants.

8. Plaintiffs bring this action on behalf of themselves and all others similarly situated to recover restitution, monetary damages and/or other available remedies for losses suffered by Plaintiffs and the Class.

II. JURISDICTION AND VENUE

Subject Matter Jurisdiction.

9. This Court has subject matter jurisdiction pursuant 28 U.S.C. § 1331, because Plaintiffs' claim arise under federal law for violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO") 18 U.S.C. § 1961, *et seq.* This Court also has subject matter jurisdiction pursuant to the 18 U.S.C. § 1964(c), the jurisdictional provision of RICO. Finally, this Court has subject matter jurisdiction pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), because at least one class member is of diverse citizenship from one defendant; there are more than 100 class members; the aggregate amount in controversy exceeds $5,000,000; and minimal diversity exists.

10. This Court has supplemental jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367(a).

11. This Court has personal jurisdiction over Defendants because they are authorized to do business, and are conducting business, in this District. Further, Defendants maintain its principal place of business in this District.

12. Venue properly lies in this because a substantial part of the events and omissions giving rise to the claims occurred in this District. Venue is also proper because Defendants reside, are found, and have their principal place of business, and are authorized to conduct business in this District. Further, Defendants have intentionally availed themselves of Minnesota's laws and markets, and are subject to personal jurisdiction in this District.

III. PARTIES

13. Plaintiff Mark Chambers is a resident of White Lake Township, Michigan and was a participant in the Kotz Heating Air Conditioning Choice Plus Plan with Medical and Pharmacy coverage. The Plan is administered by Defendants. From 2014 to 2016, Plaintiff Mark Chambers purchased prescription drugs pursuant to his Plan and was charged a copay in an amount that exceeded the cost of his prescription medications as a result of an unlawful "clawback" fee charged by Defendants, and was injured by paying fraudulent, excessive co-payment for prescription medications affected by Defendants' conduct alleged herein.

14. Plaintiff Rebecca Chambers is a resident of Waterford Township, Michigan and was a participant in the Kotz Heating Air Conditioning Choice Plus Plan with Medical and Pharmacy coverage. The Plan is administered by Defendants. From 2014 to 2016, Plaintiff Rebecca Chambers purchased prescription drugs pursuant to her Plan and was charged a copay in an amount that exceeded the cost of her prescription medications as a result of an unlawful "clawback" fee charged by Defendants, and was injured by

paying fraudulent, excessive co-payment for prescription medications affected by Defendants' conduct alleged herein.

15. Defendant UnitedHealth Group Incorporated ("UnitedHealth") is a Delaware corporation with its principal place of business located at 9900 Bren Road East Minnetonka, Minnesota. UnitedHealth is an American diversified managed healthcare company and the ultimate parent of the subsidiaries identified below. UnitedHealth offers a spectrum of insurance and medical products and services. The company serves approximately 70 million individuals throughout the United States. In 2015, the company reported an operating income of $11 billion. UnitedHealth is the ultimate corporate parent of the other Defendants to this action.

16. Defendant United HealthCare Services, Inc. ("United HealthCare Services") is a wholly-owned subsidiary of UnitedHealth Group Incorporated. It is a corporation organized under the laws of Minnesota with a principal place of business located in Minnetonka, Minnesota. United HealthCare Services provides health insurance plans for employers, individuals and families throughout the United States, and operates, among others, Medicare Advantage plans. On information and belief, United HealthCare Services administers Plaintiffs' health coverage plans. Further, United HealthCare Insurance Company operates as a subsidiary of UHIC Holdings, Inc., which is a subsidiary of UnitedHealthCare Services. United HealthCare Insurance Co. is a corporation organized under the laws of Connecticut with a principal place of business in Hartford, Connecticut. United HealthCare Insurance

Company contracts on behalf of itself and its affiliates for the payment of healthcare services provided to a participating provider's patients. United HealthCare Insurance Company is the primary underwriter of insurance policies provided and administered by United HealthCare Services, Inc. and UnitedHealthcare, Inc.

17. Defendant UnitedHealthcare, Inc. ("UnitedHealthcare"), an operating division of UnitedHealth Group Incorporated, is a Delaware corporation with its principal place of business located at 9900 Bren Road East Minnetonka, Minnesota. UnitedHealthcare is a subsidiary of United HealthCare Services, Inc. and it administers health insurance coverage plans, including Plaintiffs' plan. UnitedHealthcare is registered to do business in Minnesota. Its registered office is located at 100 South 5th Street number 1075, Minneapolis, Minnesota.

18. Defendant Optum, Inc. ("Optum, Inc.") is a Delaware corporation with its principal place of business located at 11000 Optum Circle, Eden Prairie, MN 55344. Optum, Inc. manages the subsidiaries that administer UnitedHealth's pharmacy benefits, including OptumRx, Inc.

19. Defendant OptumRx, Inc. ("OptumRx") is a Delaware corporation with its principal place of business located at 2300 Main Street, Irvine, California. OptumRx operates as a subsidiary of OptumRx Holdings, LLC, which in turn operates as a subsidiary of Optum, Inc. OptumRx serves as the PBM for UnitedHealth Group Incorporated's insurance policies and plans administered by its affiliates. OptumRx is registered to do business in Minnesota and its registered office is located at 100 South

5th Street number 1075, Minneapolis, Minnesota.

IV. FACTUAL ALLEGATIONS

A. Health Insurance and the Prescription Drug Market

20. A consumer purchases health insurance by paying some or all of a premium to a health insurer in exchange for medical and prescription medication benefits. Premiums can be paid by individuals, employees, unions, employers or other institutions.

21. If a health insurance policy covers outpatient prescription drugs, the cost for prescription drugs is often shared between the insured patient and the insurer. Such cost sharing can take the form of co-payments, co-insurance payments and/or deductible payments. In general, co-payments are fixed dollar payments made by an insured patient toward drug costs. Co-insurance requires an insured person to pay a stated percentage of drug costs, often after exhausting the deductible limit. Deductibles are the dollar amounts the insured pays during the benefit period (usually a year) before the insurer starts to make payments for drug costs.

22. The health insurance industry includes complex arrangements between numerous entities, including, but not limited to, drug manufacturers, drug wholesalers, pharmacy benefit managers ("PBMs"), pharmacies, health insurance companies, employers and insureds.

23. On the drug distribution side of the market, the drug manufacturer typically sells drugs to a drug wholesaler, which then in turn sells the drugs to a retail pharmacy.

Payments for the drugs, in turn, go from the retail pharmacy to the wholesaler and to the manufacturer. The retail pharmacy then distributes drugs to insured patients from its inventory. Neither the PBM nor the insurer is involved in the distribution of prescription drugs.

24. The retail payment side of the market for drugs covered by insurance is largely controlled by insurance companies and their contracted or owned PBMs. In most instances where a health insurance policy provides prescription drug benefits, a PBM is the agent of the insurance company hired to administer the prescription drug component of a health insurance policy. Here, for example, Optum acted as the agent of Defendants in administering Defendants' prescription drug plans.

25. Defendant OptumRx is one of the largest PBMs, providing management services for more than 30 million patients and processing more than 600 million claims in 2014.[2]

26. PBMs serve as middlemen between pharmaceutical drug manufacturers and pharmacies. PBMs administer an insurance company's prescription drug program, which entails a number of interrelated functions: PBMs develop the insurance company's drug formulary; negotiate pricing with pharmaceutical manufacturers for the medications on the formulary; and negotiate contracts with pharmacies who provide

[2] U.S. Securities and Exchange Commission Form 10-K, UnitedHealth Group®. For Fiscal year ended Dec. 31, 2014, http://www.unitedhealthgroup.com/investors/~/media/5768123D517245FBB450B54F7 3E5E1CD.ashx.

discounts on the price of medications in exchange for access to the company's formulary.

27. When an insured presents a prescription at a pharmacy that is part of a PBM's network, the pharmacy transmits the insured's information to the PBM via interstate wire. The PBM responds via interstate wire by transmitting information on the insured's eligibility, coverage, and copayment.

28. The insured pays to the pharmacy the amount indicated by the PBM; and receives the drug; the PBM reimburses the pharmacy for the remainder of the negotiated drug price, including the ingredient cost and a dispensing fee less the copayment; and the PBM then bills the insurance company, for those payments, pursuant to the terms of the contractual agreement between the plan and the PBM.

29. The following descriptions represent the various contractual relationships existing between and among the insured patient, the insurer, the PBM and the pharmacy:

(a) **Employer/Individual–Insurer Agreements (*i.e.*, Insurance Policies).** Employers and individuals buy health insurance policies to provide prescription drug benefits. These policies contain uniform provisions regarding the mechanism for and amount of the deductible, co-payment, and/or co-insurance that a patient must pay to obtain prescription drug benefits. Plaintiffs and Class members are intended beneficiaries of such agreements.

(b) **Insurer–PBM Agreements**. Health insurance companies, such as

Defendants, contract with and/or own PBMs, which act as their agents to administer the prescription drug benefits purchased through the health insurance policies that the insurers issue.

(c) **PBM–Pharmacy Agreements**. PBMs in turn, contract with pharmacies, which serve as providers in the insurers' pharmacy network. The pharmacies fill prescriptions that are health benefits covered under the insurers' policies. Pursuant to these agreements, the PBMs set the amount that a pharmacy will collect from an insured patient for a prescription drug, the amount the PBM (and insurer) will pay the pharmacy for filling the patient's prescription, and the amount of the insured's payment that the pharmacy must send to the PBM as a "Clawback." On information and belief, the pharmacy has no role in setting the amount of the patient's payment and thus must accept the "Clawback" amount as determined by the PBM.

30. Pursuant to the health insurance policies, insurers must ensure that, when they contract with a PBM to act as their agent to manage prescription drug benefits under the health insurance policies, the PBM follows the policies' terms, such that subscribers are not overcharged for their prescription drug benefits.

31. To the contrary, PBMs, acting as agents and/or in concert with health insurance companies, routinely charge insureds, such as Plaintiffs and Class Members, substantially higher prices for prescription drugs than are allowed under the health insurance policies.

B. As a Result of Defendants' Actions Defendants' Insured Patients Pay Undisclosed, Excessive Fees for Prescriptions Drugs

32. Defendants have used the industry structure to create the various agreements that underlie their unlawful scheme. Under these agreements, the pharmacy charges the insured patients a prescription drug price that is set by the PBM and/or insurer, which price typically is based on a percentage of the so-called average wholesale price or "AWP" (the "Insureds' Price"). Alternatively, the pharmacy charges the insured patients a co-payment, which also is set by the Defendants and/or their agent PBMs.

33. The amount of money paid by the insured, as a co-payment or co-insurance payment, routinely exceeds the price the PBM pays the pharmacy for providing the drug to the insured.

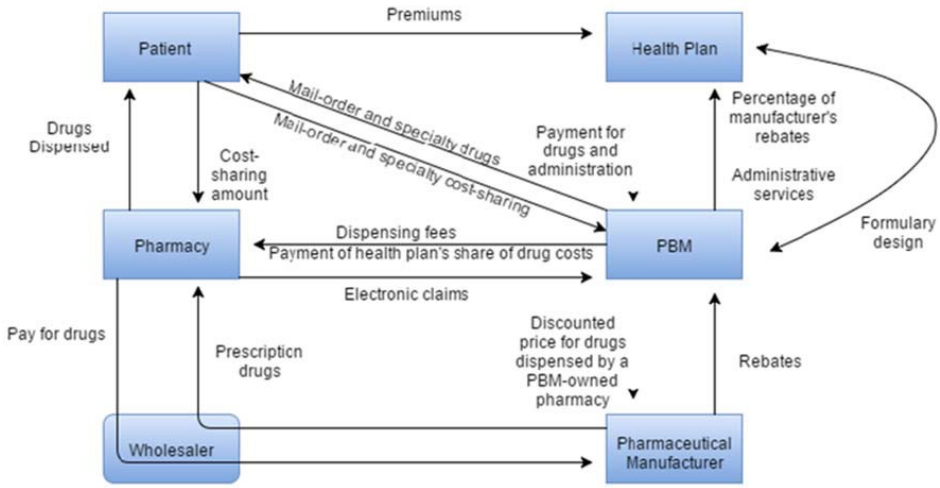
34. Moreover, under the confidentiality provisions of the PBM-Pharmacy Agreements (described in greater detail in Section IV(E), below), pharmacies cannot tell patient insureds that they are being overcharged, much less sell drugs to them at a lower price separate and apart from the insurance policies.

35. Contractually-agreed prices between insurance companies or PBMs and the pharmacies that dispense covered drugs are most commonly expressed as an Average Wholesale Price ("AWP"), or the average price at which drugs are purchased at the wholesale level.

36. Dr. Patricia M. Danzon, in her testimony before the 2014 ERISA Advisory Council gave the following example to illustrate the method of 'spread pricing' employed by PBMs and its relationship to AWP:

> For example, the PBM may reimburse pharmacies for drugs at AWP minus 18% plus a $1 dispensing fee. The PBM contracts for reimbursement from the sponsor at a somewhat smaller discount off AWP, say AWP minus 16% plus a $2 administration fee per script. The difference between the sponsor's payment to the PBM and the PBM's payment to the pharmacy (the "retail spread") is a significant source of PBMs' net revenue.[3]

37. The graphic below, also included in Dr. Danzon's prepared testimony, provides a high level illustration of some of the major players in the prescription drug supply chain:[4]



This chart demonstrates the following:

(a) Pharmaceutical manufacturers negotiate rebates and other concessions with PBMs. They also supply pharmaceutical wholesalers

[3] Patricia M. Danzon PhD, *2014 ERISA Advisory Council PBM Compensation and Fee Disclosure* (2014), https://www.dol.gov/sites/default/files/ebsa/about-ebsa/about- us/erisa-advisory-council/ACDanzon061914.pdf

[4] *Id.* at 3.

with prescription drugs;

(b) PBMs contract with commercial health plans or self-funded insured groups to administer the plan's pharmacy benefit, including development of a formulary and terms for payment and agreements to pass-through manufacturer rebates. PBMs contract with a network of retail and community pharmacies, and also are responsible for setting patient cost-sharing amounts and establishing clinical policies, such as prior authorization requirements.;

(c) Health plans are responsible for paying PBMs for prescription drugs dispensed to plan members and collecting insurance premiums from patients if necessary;

(d) Pharmacies contract with PBMs to dispense prescription drugs to patients. This includes negotiating a payment rate for each prescription, plus a dispensing fee. Pharmacies are also responsible for collecting patient cost-sharing payments and sending those to the PBM or reducing the PBM's share owed by that amount. Separately, pharmacies negotiate with wholesalers to purchase prescription drugs; and

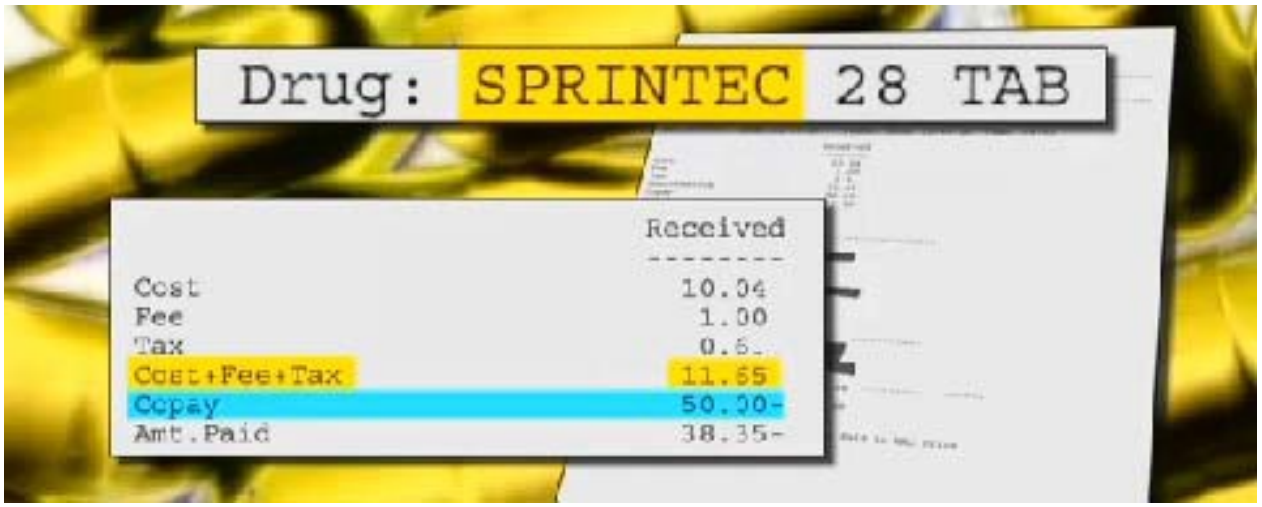
(e) Patients pay cost sharing to the pharmacy.

38. The growing influence of PBMs has generated concern within the insurance industry, not the least of which was the fact that PBMs engage in direct and confidential negotiations with drug manufacturers and pharmacies.

39. In response to the concerns, the ERISA Advisory Council, held a

> hearing in August 2014, where testimony was presented regarding "a new PBM phenomenon, called 'clawback'" which takes advantage of the lack of transparency in the PBM industry and "has the effect of duping average consumers of prescription drugs into unwittingly funding PBM profits." [5]

40. For example, below is a reproduction of a UnitedHealthcare pharmacy invoice for a Sprintec, a drug used to treat severe acne.[6]



41. As indicated above, the cost of this prescription, including fees and taxes, is $11.65, but the copay charged to the patient was $50.00. Thus, less than 25% of the purchaser's co-pay was used to pay for the cost of the prescription, and more than 75% of the co-pay – the clawback – was remitted to the PBM.

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[5] Susan Hayes, Testimony Before the Employee Benefit Security Administration Advisory Council on Employee Welfare and Pension Benefit Plans, U.S. Department of Labor, Hearing on PBM Compensation and Fee Disclosures (Aug. 20, 2014), https://www.dol.gov/sites/default/files/ebsa/about-ebsa/about-us/erisa-advisorycouncil/AChayes082014.pdf, at 7 (last visited Dec. 8, 2016).

[6] Lee Zurik, *Zurik: Copay or you-pay? Prescription drug clawbacks draw fire*, FOX8 (2016), http://www.fox8live.com/clip/12412460/zurik-copay-or-you-pay-prescription-drug-clawbacks-draw-fire (last visited Dec.8 2016).

42. Defendants, through their affiliated PBM OptumRx, have engaged in a scheme to charge Plaintiffs and the putative Class such "clawback" fees, as described below. *Id.* at 7.

C. UnitedHealth's "Clawback Scheme"

43. This action arises from a scheme (the "Clawback Scheme") undertaken by Defendants and pharmacists that have contracted with Defendant OptumRx, to profit from overcharging UnitedHealth's customers for medication. The Clawback Scheme works as follows:

(a) a patient who is insured by United HealthCare Insurance Co. or administered by UnitedHealthcare and/or United HealthCare Services presents a prescription to a pharmacy; the pharmacist sunbmits the patient's pharmaceutical coverage claim to UnitedHealth's PBM, Defendant OptumRx;

(b) OptumRx tells the pharmacists how much to charge each patient for the prescription; this amount, however, is not necessarily related to the cost of the prescription and, instead, can include additional undisclosed amounts;

(c) if the patient's "copay" or "coinsurance" payment amount exceeds the cost of the drug and the fees payable to the pharmacy, OptumRx "claws back" the overage from the pharmacy, profiting itself and its corporate affiliates at the patient's unknowing expense.

44. Patients remain uninformed about the practice because the additional

"clawback" fee is misleadingly listed on their bill as part of a "copay."[7]

45. Moreover, Defendants, including Defendant OptumRx, require pharmacies to enter into a contract that includes "gag clauses." The gag clauses prohibit pharmacies from disclosing the true cost of the drug to patients, describing lower-cost alternatives to their patients, or disparaging the insurance benefits provider or administrator in any way.

46. And, in fact, OptumRx perpetuates patients' ignorance of the Clawback scheme by disingenuously referring to it as the "Overpayment program" as indicated in a below email from OptumRx, reproduced by the NCPA:[8]

From: Stearns, Matthew H
Sent: Thursday, May 05, 2016 8:24 PM
To: Zurik, Lee
Subject: From Optum

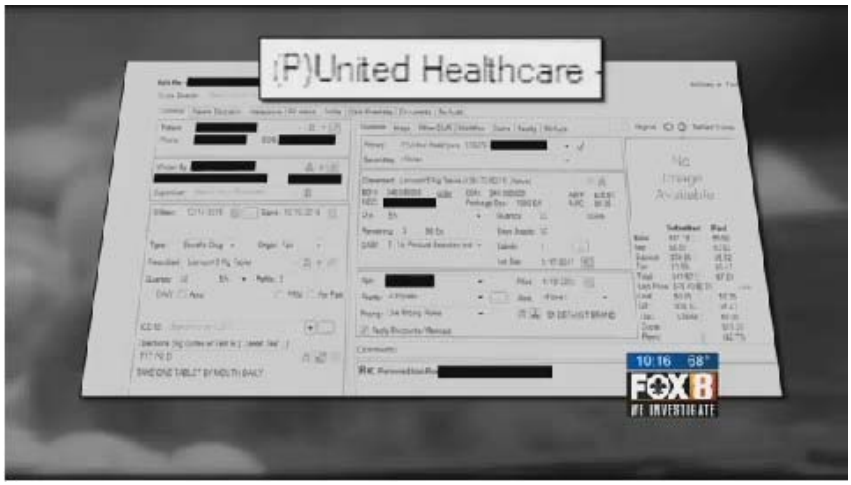
"OptumRx's Pharmacy Reimbursement Overpayment program helps ensure the millions of people we serve have affordable access to the drugs they need by recouping overpayments pharmacies receive for prescription drugs. Those recouped overpayments are returned to the health plan to reduce overall health plan costs."

47. Nonetheless, some pharmacists have spoken out, albeit on a confidential basis. "Whatever the insurance company/PBM tells us to charge as a copay, we have to charge that patient for that." Further, the pharmacist described, "We cannot discount it, we cannot forgive it. Our computer calls their computer. They tell us charge the patient this much money."[9]

48. The New Orleans affiliate of the FOX Network, ("Fox8") aired a feature on

[7] Zurik, *supra* note 1.
[8] Norton, *supra* note 18.
[9] Zurik, *supra* note 1.

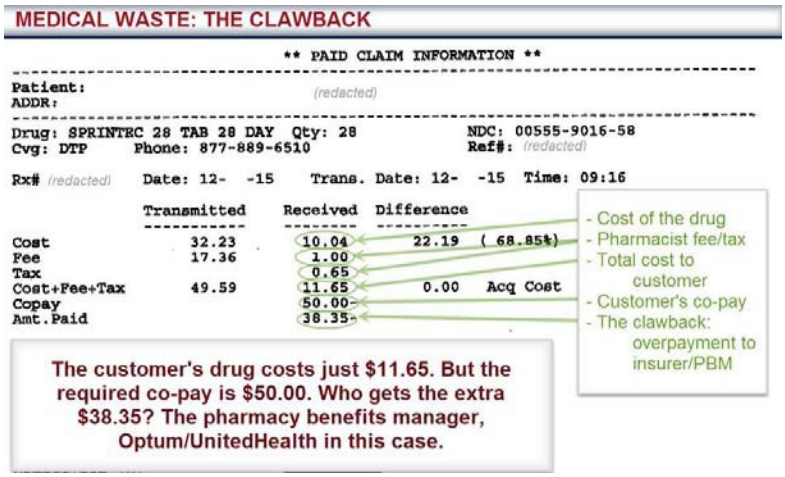
the "clawback" practices described herein. The broadcast displayed some pharmacy invoices—some of which are reproduced below—showing that UnitedHealth, its insurance providers and administrators, and/or its PBM OptumRx, consistently charge their customers "clawback" fees.



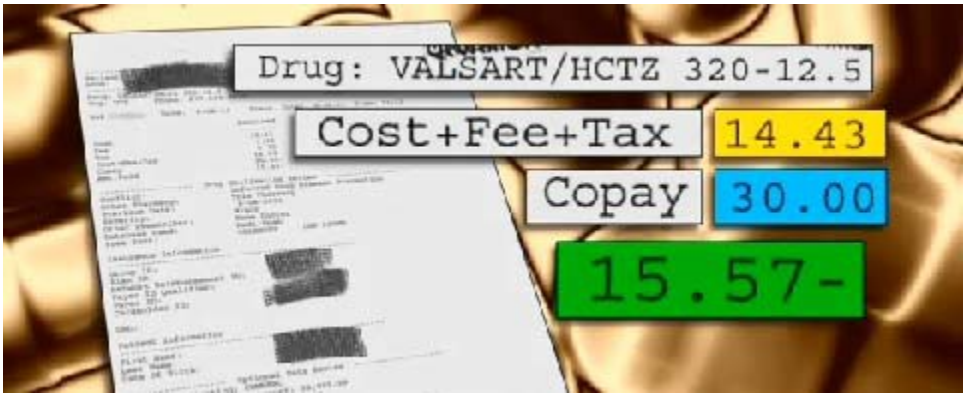
49. For example, UnitedHealth and/or its PBM Optum directed one pharmacist to charge a $50.00 copay for a drug that costs only $11.65.[10] Thus, the insured's "co-pay" paid for the entire cost of the drug, and the remainder – 75% of the co-pay – was given to Defendants.[11]

[10] *Id*.

[11] John Norton, *The Great Big Prescription Drug Clawback*, National Community Pharmacists Association (May 20, 2016), http://www.ncpanet.org/newsroom/ncpa's-blog---the-dose/2016/05/20/the-great-big-prescription-drug-clawback (last visited Dec. 9 2016).



50. The investigation also revealed, a UnitedHealth pharmacy invoice for Valsart as shown below.[12]



51. The cost of the medication was $14.43, but the copay charged to the patient was $30.00. Thus, the majority of the patient's copay—$15.57—was "clawed back" by Defendants, while less than half of the copay was used to pay for the medication.

52. After the investigations conducted by FOX 8, Defendants stated they would "update our plans to ensure UnitedHealth members pay the lowest price at the

[12] Zurik, *supra* note 1.

pharmacy"[13] but did not state that it would discontinue or modify the Clawback scheme.

53. "Clawbacks" were identified in invoices for many other medications, including brand name medications Fluticasone, Invokamet and Diazepam[14], and generic medications including Alcortin A, Alprazolam, Cyclobenzapine, Lisinopril, Meloxicam, Oxybutynin, Oxycodone, Raloxifine Tizanidine, Valsartan HCTZ, Venlafazine, and Zonisamide.

54. Defendants' Clawback Scheme is imposed unfairly on individuals whose prescription benefits are managed and administered by OptumRx, without regard to how the health plan is funded (*i.e.*, by their employer or by an insurance policy purchased from UnitedHealth's corporate family). The Clawback Scheme is imposed in a materially identical way on thousands of plan participants and insureds across the country, regardless of where they work, who sponsors their UnitedHealth plan, or how they obtained health benefit coverage administered and/or insured by Defendants or their affiliates. Thus, as long as OptumRx is involved, Defendants' Clawback Scheme transcends any particular plan or policy, and all members of the Class are similarly situated as victims of Defendants' Clawback Scheme.

[13] Pharmacy News Today, *OptumRx Caught Over Charging Customers* (Aug. 25, 2016), http://www.pharmacynewstoday.com/optumrx-caught-over-charging-customers. (last visited Dec. 8 2016).
[14] *Id*.

D. Plaintiffs' Health Insurance

1. The Terms of Plaintiffs' Health Insurance Plan

55. Plaintiff Mark Chambers was a participant in the Kotz Heating Air Conditioning Choice Plus Plan with Medical and Pharmacy coverage (the "Plan"), which is a health benefit plan offered and administered by UnitedHealthcare and United HealthCare Services Inc.

56. Plaintiff Rebecca Chambers was a participant in the Kotz Heating Air Conditioning Choice Plus Plan with Medical and Pharmacy coverage (the "Plan"), which is a health benefit plan offered and administered by UnitedHealthcare and United HealthCare Services Inc.

57. The Plan is comprised of two components—Medical coverage and Prescription Drug coverage. Prescription Drug coverage is treated as a separate benefit and it is managed and administered by Defendant OptumRx.

58. The material terms of Plaintiffs' insurance policies are largely uniform across the numerous health benefit plans administered and/or the insurance policies offered by Defendants or their affiliates. For this reason, upon information and belief, the contractual rights and plan terms relevant to the claims alleged herein are shared by all members of the Class, regardless of which specific health plan they are enrolled in.

59. Under the uniform terms of these policies, Defendants agree to provide health insurance benefits for "covered health services." In exchange, Plaintiffs and Class

Members agree to pay Defendants a fee known as a "premium."

60. An insured is eligible for benefits under the plan when he or she receives "Covered Health Services" from health care professionals who have contracted with Defendants.

61. "Covered Health Services" includes prescription drugs purchased by Plaintiffs and Class Members, using co-payments, co-insurance or deductibles.

62. A "Copayment" (or "Copay") is typically defined as "the set dollar amount you are required to pay for certain Covered Health Services."

63. When an insured purchases prescription medications from an approved pharmacy, he or she pays the lower of the copay or the pharmacy's Usual and Customary Charge for the prescription drug.

64. "Usual and Customary Charge" is typically defined as the "usual fee that a pharmacy charges individuals for a Prescription Drug without reference to reimbursement to the pharmacy by third parties. The Usual and Customary Charge includes a dispensing fee and any applicable sales tax."

65. Thus, a copay for prescription medications should be the lower of the copay or the amount charged by the pharmacy to individuals without insurance. But, because of the Clawback Scheme, patients are often charged *more* for prescription drugs than those without insurance.

66. "Coinsurance" is typically defined as "the percentage of lowed amount the allowed amount you are required to pay for certain Covered Health Services."

67. An "allowed amount" is the maximum amount that Defendants will pay for covered services. With regard to prescription medications, "allowed amount" is the cost of the prescription medication that Defendants negotiated with the pharmacy.

68. Thus, the amount of co-insurance that an insured should pay is a percentage of the actual cost of the prescription drug paid by Defendants.

69. Typically, Defendants require insureds to "pay all the costs up to the deductible before [the] plan begins to pay for the covered services you use."

70. Thus, under this provision, the amount an insurer should pay for a drug is the "allowed amount." Similarly, the amount that should be applied to the annual deductible is that same "allowed amount."

71. The annual deductible does, and should not, include amounts that exceed the allowed amount.

72. The amount that an insured should pay for prescription medications (which is the amount that should be applied against the deductible) cannot exceed the allowed amount.

73. Therefore, the "allowed amount" is the ceiling on the amount applied against a deductible, and paid by an insured.

74. During the time that Plaintiffs and the Class were covered by Defendants' policies and/or were participants in health coverage plans administered and managed by Defendants, they purchased prescription drugs for which they were required to make copayments, coinsurance, and/or deductible payments. Upon information and belief, and

based on the fact that Plaintiffs purchased drugs for which Defendants overcharge customers, Plaintiffs and the Class were repeatedly charged copayments, coinsurance, and/or deductible fees that were in excess of the actual cost of the drugs.

2. Defendants Breached Their Insurance Policies

75. Defendants breached their insurance policies and legal obligations, and harmed Plaintiffs and the Class by:

(a) Charging unlawful fees and additional premiums for prescription drugs that substantially exceeded the fees paid by Defendants and/or their agent PBMs to the pharmacies for the dispensed drugs.

(b) Charging co-payments which were neither payments for prescription drugs nor payments made in conjunction with Defendants' payment for prescription drugs, as required by the applicable policies.

(c) Overcharging Plaintiffs and Class members for co-insurance payments, in that the coinsurance payments were based on substantially inflated amounts.

(d) Overcharging Plaintiffs and Class members for prescription drugs on copayment plans because they were charged a higher fee than the lesser of the applicable co-payment, the allowed amount, or the usual and customary charge.

(e) Overcharging Plaintiffs and Class members when making payments toward their deductibles, because they were charged fees higher than the lesser of the applicable per occurrence deductible amount or the fee paid to the pharmacy

for the dispensed drug.

(f) Misrepresenting and failing to disclose the manner in which they charged for prescription drugs.

(g) Prohibiting pharmacies from disclosing to insureds the existence or amount of the clawback.

(h) Prohibiting pharmacies from disclosing to insureds that they could purchase drugs at a lower price and from selling drugs to customers at those lower prices.

E "GAG Clauses" in Prevent Pharmacies from Disclosing to Plaintiffs the Actual Price of Medications

76. Defendants' contracts with pharmacies include "gag clauses" that prohibit pharmacists from disclosing the cost of prescription drugs, providing lower-cost alternatives to their patients, or disparaging Defendants in any way. As a result, most pharmacists have compelled to conceal elements of Defendants' Clawback Scheme.

77. Defendant OptumRx issues a "Provider Manual" to pharmacists. Pursuant to this Manual, Optum "shall communicate . . . the Cost-Sharing Amounts . . . e.g. co-payment . . . applicable to Covered Prescription Services [and the]. . Pharmacy shall collect the full Cost-Sharing Amounts" from the insured purchasing his or her prescription drugs."[15]

78. The Manual requires the Pharmacy to charge the Member the Cost- Sharing

[15] OptumRx Provider Manual 15 (1st ed. 2017)

Amount indicated [by OptumRx] . . . and only this amount." Indeed, "[w]aiving the amount associated with the Member Cost-Sharing is strictly prohibited, unless required by law and is considered a material breach of the Agreement."[16]

79. The Manual states that reimbursement pricing information and pricing are confidential information, and cannot be disclosed to patients who are purchasing prescription drugs. Pharmacists and Pharmacies from disclosing to consumers the true price of the drugs these patients are purchasing.[17]

80. The Manual requires that pharmacies "treat as confidential and proprietary" OptumRx's pricing, programs, services, business practices, databases, software, layouts, designs, formats, processes, applications, systems, technology, files, compilations, exhibits, publications, protocols, and information including "the terms of [the Manual]" itself.[18]

81. The Manual defines "non-compliance" as "disclosure of confidential information or data" to covered individuals and "the collection of a patient pay amount that differs from the amount specified in the Claims response," among other things, and imposes penalties.[19] The Manual also contains penalties for violating confidentiality provisions or other forms of noncompliance such as disrupting administrative relationships with OptumRx's clients.[20]

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[16] *Id.* at 57.
[17] *Id.* at 58.
[18] *Id.* at 123.
[19] *Id.* at 106.
[20] *Id.* at 45.

82. OptumRx enforces the Manual's prohibitions. For example, Doug Hoey, an executive with the National Community Pharmacists Association ("NCPA"), received a copy of a letter that OptumRx sent to an alleged non-compliant pharmacist. Hoey stated that the letter "scolded the pharmacist," and stated that OptumRx had "recently discovered that pharmacy advised members that utilizing a cash price for their prescription is a better deal than using their insurance benefits."[21] OptumRx further stated in the letter that "telling customers a cheaper price exists is a 'violation of the agreement,' [with OptumRx], OptumRx 'takes these matters very seriously[,]' and that 'failure to timely comply with this notice could result in further disciplinary action, up to and including termination from all Optum pharmacy networks.'" *Id.*

83. A recent survey by the NCPA confirmed the existence and efficacy of gag clauses. Most pharmacists (59 percent) said they had encountered these restrictions at least 10 times during the past month. [22]

84. Some of the comments received from the pharmacists who responded to the survey included:

> "Got one today. [PBM] charging a patient $125 for a generic drug and take back $65 from the pharmacy. If paid cash the cost to the patient would have been $55."

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[21] *See* Lee Zurik, *As United overcharges customers, execs earn tens of millions in stock*, FOX8LIVE.COM (July 18, 2016, 11:10 PM), http://www.fox8live.com/story/32472327/zurikasunitedoverchargescustomersexecsearntensofmillionsinstock (last visited Dec. 8, 2016)

[22] NCPA, *Survey of Community Pharmacies: Impact of direct and indirect remuneration (DIR) fees on pharmacies and PBM-imposed copay clawback fees affecting patients*, (2016), http://www.ncpa.co/pdf/dir_fee_pharamcy_survey_june_2016.pdf (last visited Dec. 8, 2016).

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> "The ones that make me the most upset is the Champ/VA claims. Seeing our disabled veterans families paying more than they should is horrific. Many times these fees are multiple times our net margin, even a negative reimbursement at times. One recent copay of $30 where we sent $27.55 back to [PLAN] left our margin at $1.58."

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> "Same patient, same day, five prescriptions. … Total copay $146.89. Total claw back $134.49. Total price of the five prescriptions $12.40. Our gross profit on these five drugs $3.79. These are all maintenance medications for this patient."[23]

F. Administrative Remedies or Claims Procedures Do Not Apply to the Claims of Plaintiffs and the Class and/or Would be Futile

85. To the extent that Plaintiffs and members of the Class are generally subject to administrative claims procedures purporting to require them to make claims for reimbursement of out of pocket expenses or for pharmacy benefits before commencing legal action, such requirements do not apply to the claims alleged here and/or would be futile even if they did apply.

86. As described herein, the existence of the Clawback Scheme was masked by the gag clause contained in the contracts between Defendants and providers. Due to Defendants' concealment of the Clawback Scheme, Plaintiffs and the Class did not know and/or did not have reason to know that they were being overcharged for

[23] *See* NCPA, *Community pharmacists describe PBM copay clawbacks on patients*, NCPA.co (2016), http://www.ncpa.co/pdf/06-27-16-copay-clawbacks.pdf (last visited Dec. 8, 2016).

their prescription medications. And, even if Plaintiffs knew or should have known that they were being overcharged, they did not know the exact amount of the overcharge. Thus, Plaintiffs and the Class did not know and did not have reason to know that they could make a claim for reimbursement of part of their copay, much less the specific portion thereof they should request.

87. Defendants' claims procedures would not make adequately compensate Plaintiffs and the Class. Plaintiffs and the Class have made claims entitling them to treble and punitive damages and the other remedies described *infra.*

88. Though the overall damages are significant, each Plaintifff and Class Members' damages are relatively small. Defendants' imposition of a claims procedure likely would prevent Plaintiffs and the Class from obtaining any relief at all. Thus it would be unfairly burdensome and inequitable to limit Plaintiffs and the Class to Defendants' claims procedures.

89. To the extent that Plaintiffs and the Class are subject to contractual requirements to exhaust a claims procedure, such requirements are excused by Defendants' breach of the same contracts, are waived by Defendants' conduct in the Clawback Scheme, and/or are otherwise unenforceable under the circumstances alleged here.

90. Finally, to the extent that Defendants claim that Plaintiffs or the members of the Class should exhaust an administrative claims procedure, and the Court so agrees, Plaintiffs reserve the right to seek a stay of this action while they

engage in that futile exercise.

G. Plaintiffs and the Class Are Entitled to Tolling Due to Fraud or Concealment.

91. By its nature, Defendants' Clawback Scheme has hidden their unlawful conduct from consumers and injured parties.

92. Until recent news revealed Defendants' Clawback Scheme, Defendants' unlawful conduct was concealed from Plaintiffs and the Class, and gag clauses continue to obscure Defendants' unlawful conduct from members of the Class.

93. To the extent that any of Plaintiffs' causes of action are subject to a specific statute of limitations, Defendants' fraud or concealment alleged herein *tolls* those requirements, for a specific amount of time to be determined as the litigation progresses.

V. CLASS ALLEGATIONS

94. Plaintiffs bring this action of behalf of themselves and all other similarly situated persons pursuant to Federal Rules of Civil Procedure Rule 23. The Class is defined as:

> All individuals residing in the United States and its territories who are enrolled in a health benefit plan administered by Defendants or their affiliates or insured under Defendants' or their affiliates' health insurance policies, who purchased prescription drugs pursuant to such plans or policies and paid an amount for such drugs that was set by Defendants (or their agents) that was higher than the amount provided by the health insurance plans or policies (the "Class" or "Nationwide Class").

95. Plaintiffs also bring this action on behalf of a Subclass (the "Subclass" or "Michigan Class") consisting of themselves and all other similarly situated persons pursuant to Federal Rules of Civil Procedure Rule 23. The Subclass is defined as:

> All individuals residing in Michigan who are enrolled in a health benefit plan administered by Defendants or their affiliates or insured under Defendants' or their affiliates' health insurance policies, who purchased prescription drugs pursuant to such plans or policies and paid an amount for such drugs that was set by Defendants (or their agents) that was higher than the amount provided by the health insurance plans or policies

96. Excluded from the Class and Subclass are Defendants, their parent companies, subsidiaries, and/or affiliates, their officers, directors, legal representatives, and employees, any co-conspirators, all governmental entities, and any judge, justice, or judicial officer presiding over this matter.

97. This action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of Fed. R. Civ. P. 23.

98. The number of persons who are members of the Class (and Subclass), as described above, is so numerous that joinder of all members in one action is impracticable. Upon information and belief, the Class includes many thousands of members, located throughout the United States.

99. All actions by Defendants are similarly common. Common questions of law and fact include whether Defendants pursued the alleged course of conduct, whether Defendants' clawback practices violated applicable federal, state and common laws, and the extent and appropriate measure of relief, including damages.

100. The following common class questions arise and predominate over any questions affecting only individual members of the Class. These common legal and factual questions do not vary from Class member to Class member and they may be determined without reference to the individual circumstances of any Class member.

(a) whether Defendants acts and omissions violated RICO, state consumer protection law, and/or state common law; and

(b) whether the practice of "clawbacks" violate RICO, state consumer protection law, and/or state common-law; and

(c) whether Defendants' pricing of the prescription drugs was false and misleading; and

(d) whether Defendants have breached their contracts with Plaintiff and the Class or have been unjustly enriched; and

(e) whether these violations, if proved, justify monetary damages, punitive damages, fees and/or costs.

101. Plaintiffs' claims are typical of the members of the Class. As a result of the conduct alleged herein, Defendants breached statutory and contractual obligations to Plaintiffs and the Class through the common actions and practices described above, including but not limited charging copays or coinsurance in an amount not permitted by law, and Plaintiffs and the Class all relied on Defendants' representations regarding their required portion of the cost of their prescription drugs.

102. Plaintiffs will fully and adequately represent and protect the interests of the Classes because of the common injuries and interests of the members of the Classes and the singular conduct of Defendant that is or was applicable to all members of the Classes. Plaintiffs have retained counsel who are competent and experienced in the

prosecution of class action litigation, including claims under RICO and consumer protection claims. Plaintiffs have no interests that are contrary to or in conflict with those of the Class they seek to represent.

103. A class action is superior to all other available methods for fair and efficient adjudication of this controversy. Plaintiffs know of no difficulty in managing this action that would preclude its maintenance as a class action. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent and varying adjudications concerning the subject of this action, which adjudications could establish incompatible standards of conduct for Defendant under the laws alleged herein. Furthermore, for many, if not most, a class action is the only feasible mechanism that allows an opportunity for legal redress and justice

VI. CLAIMS FOR RELIEF

COUNT I

Violations of the Racketeering Influenced Corrupt Organizations Act (18 U.S.C. §§ 1962(b), 1962(c))

(By Plaintiffs on Behalf of all Members of the Class, Against All Defendants)

A. General RICO Allegations

104. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein and, to the extent necessary, plead this cause of action in the alternative.

105. This claim for relief arises under 18 U.S.C. § 1964(c).

106. Plaintiffs, Class members, and Defendants are "persons" within the meaning of 18 U.S.C. § 1961(3), 1964(c).

107. As set forth in detail above, Defendants engaged in a scheme to obtain money by false pretenses, representations, or promises and a scheme to defraud in order to extract payments from Plaintiffs and Class members in excess of the amount to which they were entitled to collect.

108. In furtherance of their scheme, Defendants charged Plaintiffs and Class members more than they owe for their prescription medications, represented that Defendants and/or the pharmacies are entitled to the amount charged, and failed to disclose that Defendants charge more than permitted under the health plans and insurance policies of Plaintiffs and the Class.

109. Plaintiffs and each Class member relied upon Defendants' representations, both express and implied, that they owe and that Defendants and/or the pharmacies are entitled to collect the amount of coinsurance and/or copayment stated, by paying the amount charged to them at the pharmacy.

110. Had Plaintiffs known that Defendants were charging them excessive copayment amounts at the pharmacy—or that they were "clawing back" some of her copay – they would not have willingly paid these amounts as required or attempted to use her health benefits plan for prescription transactions.

111. Plaintiffs and the Class did not know and had no reason to know that Defendants were collecting or requiring of pharmacies the collection of an additional "clawback" fee or excessive coinsurance and/or copayment amounts for their own benefit.

112. As a result, Plaintiffs and the Class have paid more than they would have otherwise paid for their prescription medications, often paying more than individuals must pay who have no insurance coverage at all.

1. Racketeering Allegations

113. Defendants acquired and maintained control of the Clawback Enterprise (defined below) as it related to the provision of pharmacy benefits to enrollees by providing and/or charging for prescription medications, ostensibly pursuant to or under the provisions of a UnitedHealth-affiliate-administered and/or -insured plan, through a pattern of racketeering activity involving a scheme to obtain money by false pretenses and a scheme to defraud Plaintiffs and Class members, in violation of 18 U.S.C. § 1962(b).

114. The Clawback Enterprise, which consists of UnitedHealth Group Incorporated, United HealthCare Services, Inc., UnitedHealthcare, Inc., Optum, Inc., OptumRx, Inc., and pharmacists or pharmacies that have contracted with one or more Defendants, is an association-in-fact "enterprise" within the meaning of 18 U.S.C. § 1961(4), 18 U.S.C. § 1962(b), and 18 U.S.C. § 1962(c).

115. Alternatively, the Clawback Enterprise is OptumRx, a legal entity enterprise operated and managed by UnitedHealth Group Incorporated, United HealthCare Services, Inc., UnitedHealthcare, Inc., and/or Optum, Inc.

116. Alternatively, the Clawback Enterprise is the individual pharmacies and pharmacists that filled prescriptions for Plaintiffs and the Class, operated and managed

by one or more Defendants.

117. The Clawback Enterprise is distinct from each of its members. The Clawback Enterprise is engaged in the sale and administration of health insurance benefits and products in interstate commerce, including the provision of pharmacy benefit services and prescription drugs, as set forth above. Some activities performed by members of the Clawback Enterprise were legitimate or lawful and are not challenged herein. However, the Clawback Enterprise's structure was used to carry out the Clawback Scheme alleged herein.

118. While each of the Defendants acquired, maintained control of, is associated with, and conducted or participated in the conduct of the Clawback Enterprise's affairs, each of the Defendants has an existence separate and distinct from the Clawback Enterprise.

119. The Clawback Enterprise is separate and distinct from the pattern of racketeering activity. However, the predicate offenses are related to the activities of the Clawback Enterprise. The predicate acts taken in furtherance of the Defendants' Clawback Scheme necessarily relate to the Clawback Enterprise.

120. The activities of the Clawback Enterprise are national in scope and the Clawback Enterprise has a substantial impact upon the economy and upon interstate commerce.

121. Defendants conducted or participated in the conduct of the affairs of the Clawback Enterprise through a pattern of racketeering activity involving a

scheme to obtain money by false pretenses and a scheme to defraud Plaintiffs and Class members, in violation of 18 U.S.C. § 1962(c).

122. Defendants violated federal laws including mail and wire fraud, 18 U.S.C. §§ 1341 and 1343, by utilizing or causing the use of the United States postal service, commercial interstate carrier, wire or other interstate electronic media in furtherance of its scheme to obtain money by false pretenses and its scheme to defraud.

123. These predicate acts of mail and wire fraud were related, had a similar purpose, involved the same or similar participants and method of commission, had similar results and impacted similar victims, including Plaintiffs and members of the Class.

124. The predicate acts of racketeering activity were related to each other in furtherance of the scheme, amount to and pose a threat of continuing racketeering activity and therefore constitute a pattern of racketeering activity through which Defendants violated 18 U.S.C. § 1962(b) and 18 U.S.C. § 1962(c).

2. Predicate Acts

125. Section 1961(1) of RICO provides that "racketeering activity" includes any act indictable under 18 U.S.C. § 1341 or 18 U.S.C. § 1343. As set forth herein, each of the Defendants has engaged and continues to engage in conduct violating each of these laws.

126. To carry out its scheme to obtain money by false pretenses and to defraud, Defendants placed in post offices and/or official depositories of the United States Postal

Service matters and things to be delivered by the Postal Service, caused matters and things to be delivered by commercial interstate carriers or knew that the mail would be used in furtherance of its scheme, in violation of 18 U.S.C. § 1341.

127. Defendants, in order to carry out the Clawback Scheme to obtain money by false pretenses and to defraud, transmitted and received by wire, matters and things or knew that wire would be used in furtherance of its scheme, in violation of 18 U.S.C. § 1343.

128. For those Class members who obtained their prescription medications or health benefits related materials by mail, Defendants sent the prescription medications themselves, as well as sent statements, bills, Explanations of Benefits or invoices, directly to Class members via mail and/or wire.

129. For those Class members who obtained their prescription medications from a pharmacy, Defendants, either directly or indirectly, used various forms of wire communication, including the telephone and Internet through use of its web portal or the electronic sending of billing instructions to pharmacies, regarding the amount of copayments or coinsurance payments to collect from Class members.

130. Finally, Defendants collected monies for insurance payments via mail and/or wire.

131. Defendants knowingly and intentionally made misrepresentations and concealed material facts in furtherance of their Clawback Scheme and for the purpose of obtaining money from Plaintiffs and Class members by false pretenses,

representations or promises and for the purpose of deceiving Plaintiffs and Class members.

132. Defendants either knew or recklessly disregarded the fact that these misrepresentations and omissions were material.

133. Defendants charged Plaintiffs and Class members more than they owed for their prescription medications, represented that Defendants or the pharmacies were entitled to the amounts charged, conditioned receipt for Plaintiffs' and Class members' prescription medications on payment of invoiced copayment or coinsurance amounts, failed to disclose that Defendants charged more than permitted, and acted in violation of numerous laws as set forth herein.

134. Defendants committed a separate violation of 18 U.S.C. § 1341 or 18 U.S.C. § 1343 each time they charged or accepted payment for an amount greater than the amount to which they were entitled in any of the following ways: (1) by submitting an invoice, statement, or Explanation of Benefits via the U.S. mail or wires; (2) by posting an electronic statement online; (3) by instructing a pharmacy or pharmacist to collect an excessive payment via the U.S. mail or wires; and/or (4) by collecting any copayment or coinsurance payment through the U.S. mail or wire.

135. By submitting and receiving hundreds of thousands, if not millions, of such communications over the past several years, Defendants engaged and continue to engage in a scheme to obtain money by false pretenses, representations, or promises and a scheme to defraud that constitutes a pattern of racketeering activity.

136. The intended victims of this pattern of pattern of racketeering activity are UnitedHealth subscribers and participants, including Plaintiffs and members of the Class, whose health coverage plans are administered or managed by Defendants and/or whose health insurance is provided by Defendants or their affiliates.

3. Injury

137. As a result of Defendants' Clawback Scheme to obtain money by false pretenses and scheme to defraud, Plaintiffs and the Class paid the amounts charged as set forth above, thereby paying a higher coinsurance or copayment amount for their prescription medications than they would have otherwise paid. Plaintiffs and Class members reasonably relied on Defendants' representations and omissions in paying the amounts Defendants charged or set for their prescription medications. Defendants have obtained money and property belonging to Plaintiffs and Class members, and Plaintiffs and Class members have been injured in their business or property.

B. Violation of 18 U.S.C. § 1962(b)

138. In violation of 18 U.S.C. § 1962(b), Defendants acquired and maintained control of the Clawback Enterprise as it relates to the provision of prescription medication benefits to enrollees in terms of providing and/or charging for prescription medications pursuant to or under the provisions of a UnitedHealth-affiliate-administered and/or -insured plan, through a pattern of racketeering activity within the meaning of 18 U.S.C. § 1961(1)(B) and (5), that is, by committing predicate acts of mail and wire fraud in violation of 18 U.S.C. § 1341, 18 U.S.C. § 1343, as set forth above.

139. Specifically, Defendants acquired control of the Clawback Enterprise by misrepresenting that Defendants would charge patients only a portion of the cost of prescription medications in the form of a fixed dollar copay or a percentage-based coinsurance payment as provided by the health plan documents or policies of participants and beneficiaries in UnitedHealth-affiliate-administered and/or -insured plans, including Plaintiffs and members of the Class, and have maintained control of the enterprise by ongoing misrepresentations and omissions regarding the payments to which Defendants or the pharmacies are entitled, including the communications to Plaintiffs and Class members in violation of 18 U.S.C. § 1341 and 18 U.S.C. § 1343.

140. Defendants acquired and maintained control of the Clawback Enterprise through a pattern of racketeering activity, that is, mail and wire fraud, as described above.

141. Plaintiffs and Class members have been injured in their business or property as a result of Defendants' control of the Clawback Enterprise in that Plaintiffs and Class members have been charged and paid more than they would have paid for prescription medications absent Defendants' fraudulent scheme.

142. As a result of such conduct, Plaintiffs and Class members are entitled to the payment of actual and treble damages, attorneys' fees and costs and such other relief as the Court determines appropriate for this element of this Cause of Action.

C. Violation of 18 U.S.C. § 1962(c)

143. In violation of 18 U.S.C. § 1962(c), Defendants have associated with the

Clawback Enterprise and have conducted or participated, directly or indirectly, in the conduct of the Clawback Enterprise's affairs, through a pattern of racketeering activity within the meaning of 18 U.S.C. § 1961(1)(B) and (5), that is, mail and wire fraud in violation of 18 U.S.C. § 1341, 18 U.S.C. § 1343, and 18 U.S.C. § 2, as set forth above.

144. Specifically, Defendants are associated with the Clawback Enterprise through Defendants' health plan SPDs, Defendants' Certificate of Coverage, Defendants' Administrative Services Agreements, Defendants' PBM Agreements, Defendants' Provider Manual, and Defendants' contracts with affiliated pharmacies and pharmacists.

145. Defendants' conduct or participation in the conduct of the affairs of the Clawback Enterprise was conducted through a pattern of racketeering activity, that is, mail and wire fraud, as described above.

146. Plaintiffs and Class members have been injured in their business or property as a result of Defendants' conducting or participating in the conduct of the Clawback Enterprise's affairs, in that Plaintiffs and Class members have been charged and paid more for prescription medications than they would have in the absence of Defendants' fraudulent scheme.

147. As a result of such conduct, Plaintiffs and Class members are entitled to the payment of actual and treble damages, attorneys' fees and costs and such other relief as the Court determines appropriate for this element of this Cause of Action.

COUNT II

Violations of the Racketeering Influenced Corrupt Organizations Act
(18 U.S.C. §§ 1962(d))
(By Plaintiffs on Behalf of all Members of the Class, Against All Defendants)

148. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein and, to the extent necessary, plead this cause of action in the alternative.

149. During the Class Period, Defendants conspired with other co-conspirators, which include other unnamed insurance companies who utilize OptumRx to engage in the Clawback Scheme, to conduct or participate, directly or indirectly, in the conduct of the affairs of the Clawback Enterprise (described above) through a pattern of racketeering activity, as described above, in violation of 18 U.S.C. § 1962(d).

150. This conspiracy to violate 18 U.S.C. § 1962(b) and/or § 1962(c) constitutes a violation of 18 U.S.C. § 1962(d).

151. In furtherance of this conspiracy, Defendants and their co-conspirators committed numerous overt acts, as alleged above, in the pattern of racketeering described above, including the adjudication of pharmaceutical benefit determinations and the required collection of inflated copayments or excessive coinsurance.

152. As a direct and proximate result, and by reason of the activities of Defendants and their conduct in violation of 18 U.S.C. § 1962(d), Plaintiffs and the Class have been injured in their business and property within the meaning 18 U.S.C. § 1964(c) and are entitled to recover treble damages, together with the costs of this lawsuit, expenses, and reasonable attorneys' fees.

COUNT III

Violations of the Minnesota Prevention of Consumer Fraud Act
(Minn. Stat. § 325F.68, et seq.)
(By Plaintiffs on Behalf of all Members of the Class,
Against All Defendants)

153. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein and, to the extent necessary, plead this cause of action in the alternative.

154. The Minnesota Prevention of Consumer Fraud Act ("Minnesota CFA") prohibits "[t]he act, use, or employment by any person of any fraud, false pretense, false promise, misrepresentation, misleading statement or deceptive practice, with the intent that others rely thereon in connection with the sale of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby …." Minn. Stat. § 325F.69(1).

155. Defendants' health insurance products and services, as well as prescription medications, constitute "merchandise" within the meaning of Minn. Stat. § 325F.68(2).

156. Defendants engaged in misleading, false, or deceptive acts that violated the Minnesota CFA by failing to disclose and/or actively concealing the "clawback" fee charged to Plaintiffs and the Class as a component of their copay or coinsurance, misrepresenting the true cost of prescription drugs, misrepresenting the true amount of a patient's copayment or coinsurance obligation, and materially omitting that collecting copayments and coinsurance could and would require Plaintiffs and members of the Class to pay more than individuals with no insurance coverage at the pharmacy, while Plaintiffs' and the Class's health benefit plans paid *nothing* toward the cost of their prescription drugs.

157. Defendants intentionally and knowingly misrepresented material facts regarding the cost of Plaintiffs' and Class Members' prescription medications, fees charged to Plaintiffs and Class Members in connection with the purchase of prescription medication, and Plaintiffs' and Class Members' copayment or coinsurance obligations with intent to mislead Plaintiffs and members of the Class.

158. In the course of their business, Defendants concealed and suppressed material facts concerning their insurance products and services. Indeed, Defendants entered into contracts with pharmacists which prohibited pharmacists from disclosing to Plaintiffs and Class the actual cost of their prescription drugs, the true amount of their copayment or coinsurance obligation, or that it would be less expensive for Plaintiffs and Class Members not to use their insurance for purchase of certain prescription medications.

159. Defendants thus violated the Minnesota CFA by, at minimum, employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of their insurance products and services, and prescription medications.

160. Defendants' actions as set forth above occurred in the conduct of trade or commerce.

161. Defendants knew or should have known that their conduct violated the Minnesota CFA.

162. Defendants' misrepresentations and omissions were material to Plaintiffs and the Class.

163. Defendants owed Plaintiffs and the Class members a duty to disclose, truthfully, all the facts concerning the true cost of their prescription medications, the true amount of their copay, and any fees charged to Plaintiffs and the Class.

164. Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive Plaintiffs and Class Members about the true cost of their prescription medications, fees charged in connection with the purchase of prescription medication, and the true amount of their copayment or coinsurance obligations.

165. Defendants' unlawful acts and practices complained of herein affect the public interest.

166. As a direct and proximate result of Defendants' violations of the Minnesota CFA, Plaintiffs and the Class have suffered injury-in-fact and/or actual damage in the form of increased fees payed in connection with their coinsurance and copayment obligations.

167. Pursuant to Minn. Stat. § 8.31(3a), Plaintiffs and the Class seek actual damages, attorneys' fees, and any other just and proper relief available under the Minnesota CFA.

168. Plaintiffs also seeks punitive damages under Minn. Stat. § 549.20(1)(a) given the clear and convincing evidence that Defendants' acts show deliberate disregard for the rights or safety of others.

COUNT IV

Violations of the Minnesota Uniform Deceptive Trade Practices Act (Minn. Stat. § 325D.43-48, et seq.)
(By Plaintiffs on Behalf of the all Members of the Class, Against All Defendants)

169. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein and, to the extent necessary, plead this cause of action in the alternative.

170. The Minnesota Deceptive Trade Practices Act ("Minnesota DTPA") prohibits deceptive trade practices, which occur when a person "(5) represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have;" "(7) represents that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;" "(9) advertises goods or services with intent not to sell them as advertised;" and "(13) engages in any other conduct which similarly creates a likelihood of confusion or of misunderstanding." Minn. Stat. § 325D.44.

171. Plaintiffs and each member of the Class are consumers, purchasers, or other persons entitled to the protection of the consumer protection laws of this State.

172. Defendants' actions, set forth above, occurred in the conduct of trade or commerce.

173. Defendants engaged in misleading, false, or deceptive acts that violated the Minnesota DTPA by failing to disclose and/or actively concealing the "clawback" fee

charged to Plaintiffs and Class Members as a component of their copayment or coinsurance obligation, misrepresenting the true cost of prescription drugs, and misrepresenting the true amount of a patient's copayment or coinsurance obligation.

174. Defendants intentionally and knowingly misrepresented material facts regarding the cost of Plaintiffs' and Class Members' prescription medications and their copayment or coinsurance obligations with intent to mislead Plaintiffs and Class Members.

175. Defendants knew or should have known that their conduct violated the Minnesota DTPA, and Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive Plaintiffs and Class Members.

176. Defendants owed Plaintiffs and the Class Members a duty to disclose, truthfully, all the facts concerning the true cost of their prescription medications, the true amount of their copayment or coinsurance obligations, and any fees charged to Plaintiffs and the Class.

177. Defendants' misrepresentations and omissions were material to Plaintiffs and the Class. Specifically, Defendants misrepresented to Plaintiffs and the Class that they would pay the lesser of the Usual and Customary charge for a prescription drug, the allowed amount and their Copay when, in fact, they were, in many cases, charged a Copay that was greater than both the allowed amount and the Usual and Customary charge as a result of a hidden "clawback" fee.

178. Additionally, Defendants omitted material facts in their dealings with

Plan participants. Specifically, Defendants failed to disclose that a portion of Plaintiffs' and Class Members' copayment would be clawed back to Defendants. Indeed, Defendants contractually prohibited pharmacists from providing consumers with any information regarding the "clawback" fee or the true cost of their prescription medications.

179. Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive and reasonable consumers, including Plaintiffs and members of the Class, about the true cost of their prescription medications, the true amount of their copayment or coinsurance obligations, and/or any fees that they were charged in connection with the purchase of prescription medications. Defendants knew or should have known that their acts and omissions were false, misleading, deceptive, and/or likely to deceive.

180. Defendants used or employed such deceptive and unlawful acts or practices with the intent that Plaintiffs and members of the Class would rely on them, and Plaintiffs and the members of the Class did so rely.

181. Plaintiffs and the members of the Class suffered ascertainable loss and actual damages as a direct and proximate result of Defendants' misrepresentations and their concealment of and failure to disclose material information in the form of increased fees payed in connection with their coinsurance and copayment obligations, which exceeded the true cost of their medications.

182. Plaintiffs and the Class would not have paid as much as they did for

prescription drugs, but for Defendants' deceptions and requirements that pharmacies and pharmacists conceal Defendants' deceptions.

183. Defendants' unlawful acts and practices complained of herein affect the public interest.

184. As a direct and proximate result of Defendants' violations of the Minnesota DTPA, Plaintiffs and the Class have suffered injury-in-fact and/or actual damage in the form of increased fees payed in connection with their coinsurance and copayment obligations.

185. Pursuant to Minn. Stat. § 8.31(3a) Plaintiffs and the Class seek actual damages, attorneys' fees, and any other just and proper relief available under the Minnesota DTPA. This action will achieve a public benefit. The misrepresentations by Defendants were significant and directly contributed to the harm suffered by Plaintiffs and Class Members. Defendants' deceptive trade practices were intended and designed to increase profits at the expense of Plaintiffs and Class Members. Plaintiffs and Class Members seek monetary relief in order to stop further damage Plaintiffs and Class Members.

186. Plaintiffs and the Class also seek punitive damages under Minn. Stat. § 549.20(1)(a) given the clear and convincing evidence that Defendants' acts show deliberate disregard for the rights or safety of others.

COUNT V

Violations of the Michigan Consumer Protection Act (Mich. Comp. Laws § 445.901, *et. seq.)*

(By Plaintiffs on Behalf of the Michigan Subclass, Against All Defendants)

187. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein and, to the extent necessary, plead this cause of action in the alternative.

188. The Michigan Consumer Protection Act ("MCPA"), Mich. Comp. Laws § 445.901, *et. seq.*, is designed to provide a remedy for consumers who are injured by deceptive business practices. The MCPA expressly allows for class actions on behalf of consumers who have suffered a loss as a result of a violation of the act. *See* Mich. Comp. Laws § 445.911(3).

189. Plaintiffs and the Class are persons under the MCPA. Mich. Comp. Laws § 445.902(d).

190. Defendants are engaged in "trade or commerce" within the meaning of Mich. Comp. Laws § 445.902(g).

191. As detailed herein, Defendants engaged in unfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce. Defendant's conduct alleged herein violates the Michigan Consumer Protection Act, including, but not necessarily limited to the following sections:

(a) § 445.903(c), by representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has sponsorship, approval, status, affiliation, or connection that he or she does not have;

(b) § 445.903(e), by representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;

(c) § 445.903(n), by causing a probability of confusion or of misunderstanding as to the legal rights, obligations, or remedies of a party to a transaction;

(d) § 445.903(s), by failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer;

(e) § 445.903(bb), by making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is; and

(f) § 445.903(cc), by failing to reveal facts which are material to the transaction in light of representations of fact made in a positive manner.

192. Defendants engaged in unfair, unconscionable, or deceptive methods, acts, or practices that violated the MCPA by failing to disclose and/or actively concealing the clawback fee charged to Plaintiffs and the Class as a component of their copayment or coinsurance obligation, misrepresenting the true cost of prescription drugs, and misrepresenting the true amount of a patient's copayment or coinsurance obligation.

193. Defendants intentionally and knowingly misrepresented material facts regarding the cost of Plaintiffs' and the Class members' prescription medications, fees

charged to Plaintiffs and the Class as a component of their copayment or coinsurance obligation, and the true amount of a patient's copayment or coinsurance obligation with intent to mislead Plaintiffs and the Class.

194. Defendants knew, or should have known, they were making misrepresentations and/or omitting material facts in violation of the MCPA.

195. Specifically, Defendants misrepresented to Plaintiffs and the Class that they would pay the lesser of the usual and customary charge, the allowed amount and their copay when, in fact, they were often charged a copay that was greater than both the eligible expense and the usual and customary charge due to the hidden clawback fee.

196. Defendants also omitted material facts from their plan participants. Defendants failed to disclose that a portion of their copayment would be clawed back to Defendants. Moreover, Defendants contractually prohibited pharmacists from informing consumers about the clawback fee or the true cost of their prescription medications.

197. Defendants used or employed unfair, unconscionable, or deceptive methods, acts, or practices with the intent that Plaintiffs and members of the Class would rely on them, and Plaintiffs and the members of the Class, as shown through their purchases, did so rely.

198. Because of Defendants' violation of the MCPA, Plaintiffs and the Class suffered damages and/or injury-in-fact in the form of increased fees payed in connection with their coinsurance and copayment obligations.

199. Plaintiffs also seek declaratory relief, attorneys' fees, and any other just and proper relief available under the MCPA.

COUNT VI

Breach of Contract
(By Plaintiffs on Behalf of all Members of the Class,
Against All Defendants)

200. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein and, to the extent necessary, plead this cause of action in the alternative.

201. Plaintiffs and members of the Class entered into uniform contracts with Defendants whereby Defendants agreed to provide health care services, including prescription drug coverage to Plaintiffs and Class Members.

202. Thus, the definitions of the material terms used in these contracts are substantially similar, including "allowed amount," "co-insurance," "co-payment," "covered health services," "deductible' Plaintiffs and members of the Class performed their obligations under their contracts by paying their premiums and copays for covered prescription drugs pursuant to the contractual terms. Despite this, Defendants breached the contract by artificially inflating the price of copayments above the costs described in the plan contracts and by clawing back a portion of the copayments.

203. Plaintiffs and members of the Class have been damaged by Defendants' breach due to their payment of inflated copayments that exceeded the actual cost of the prescription drugs they were paying for.

204. Defendants' Clawback Scheme also constitutes a breach of the

agreements because a participant in plans insured or administered by Defendants should pay, *at most*, the same amount that an uninsured individual would pay at the pharmacy. But under Defendants' Clawback Scheme, patients pay the full amount that an uninsured individual would be charged, plus an additional "clawback" fee.

205. Plaintiffs and members of the Class performed their obligations under the relevant contracts by paying their copayments or coinsurance for medically necessary, covered prescription drugs pursuant to the plan terms. Nevertheless, Defendants unjustifiably breached the contract by artificially inflating the copayments and coinsurance above the costs described in the plan contract and by clawing back, a portion of the copayments or coinsurance.

206. As a direct and proximate result of Defendants' breach of the health plans' and insurance policies' terms and their contractual obligations, Plaintiffs and the Class suffered damages in the form of increased drug prices and the payment of Defendants' "clawback" fee.

207. Defendants are liable to Plaintiffs and Class members for damages in an amount to be proven at trial, including the amounts they paid for unlawfully inflated copayments and coinsurance.

COUNT VII

Common Law Fraud
(By Plaintiffs on Behalf of all Members of the Class,
Against All Defendants)

208. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein and, to the extent necessary, plead this cause of action in the alternative.

209. Under the circumstances of this case, Defendants had a duty to disclose all material facts to Plaintiffs and the Class.

210. Despite their duty, Defendants made false representations of and/or omitted material facts within its knowledge. Specifically, Defendants failed to disclose and/or concealed the clawback fee charged to Plaintiffs and the Class, misrepresented the true cost of prescription drugs, and misrepresented the true amount of a patient's copayment or coinsurance obligation.

211. Defendants affirmatively acted to prevent Plaintiffs and members of the Class from becoming aware of Defendants' clawback fee. Defendants included contractual terms in agreements with pharmacies that prohibited the disclosure of the clawback fee and the fact that Plaintiffs and the Class could pay less for prescription medication if they did not use their health insurance.

212. Defendants intended that Plaintiffs and the Class rely on its omissions and false representations so as to conceal the existence of its clawback fee and protect its ill-gotten gains. Plaintiffs and the Class reasonably relied on Defendants' deceptive acts. Plaintiffs and the Class had no way to know of the existence of the clawback fee or the fact that Defendants were deceiving them.

213. Plaintiffs and the Class would not have purchased prescription drugs using their coinsurance or copays had they known these prices exceed the actual price of their

prescription drugs. Therefore, as a proximate result of Defendants' actions, Plaintiffs and the Class have suffered damages in the form of increased prices and payment of Defendants' clawback fee.

214. Defendants are liable to Plaintiffs and Class members for damages in an amount to be proven at trial.

COUNT VIII

Negligent Misrepresentation
(By Plaintiffs on Behalf of the all Members of the Class,
Against All Defendants)

215. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein and, to the extent necessary, plead this cause of action in the alternative.

216. Defendants owed a duty of care to Plaintiffs and members of the Class to provide the accurate information concerning prescription drug prices.

217. Defendants made misrepresentations and/or concealed the real copay prices of prescription drugs by reporting artificially inflated prices to Plaintiffs and the Class.

218. Defendants had no reasonable grounds for believing the representations that they made were true when they made them, and did not exercise reasonable care. The prices reported by Defendants to Plaintiffs and the Class were significantly higher than the prices paid by consumer paying in cash.

219. Defendants intended to induce Plaintiffs and the Class to rely on their misrepresentations and/or omissions and knew that Plaintiffs and the Class would rely

on them. Defendants further knew this would cause Plaintiffs and the Class to pay copayments higher than the actual price for those prescription drugs.

220. Plaintiffs and members of the Class justifiably relied upon Defendants' misrepresentations and/or omissions. Plaintiffs and the Class would not have paid prices higher than the cash price for prescription drugs had it not been for Defendants' misrepresentations and omissions. Plaintiffs and the Class thus relied on Defendants' representations and/or omissions to their detriment.

221. Defendants' misrepresentations and/or omissions proximately caused damage to Plaintiffs and the Class because they paid copayments for prescription drugs that were greater than they would have paid absent Defendants' misconduct.

222. Therefore, Defendants are liable to Plaintiffs and the Class for the damages they sustained.

COUNT IX

Unjust Enrichment and Common Law Restitution

(By Plaintiffs on Behalf of the all Members of the Class, Against All Defendants)

223. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein and, to the extent necessary, plead this cause of action in the alternative.

224. Plaintiffs and members of the Class suffered a detriment as a result of Defendants' acts, omissions, and/or wrongful and deceptive conduct. Defendants, however, received a benefit as a result of their wrongful conduct. Specifically, Defendants failed to adequately disclose to Plaintiffs and the Class the existence and legality of clawback fee charged to Plaintiffs and the Class that was part of their

copayment or coinsurance obligation.

225. Defendants unjustly and knowingly retained a benefit to the detriment of Plaintiffs and members of the Class. Defendants continue to possess money paid by Plaintiffs and members of the Class to which they are not entitled.

226. Defendants have violated the principles of fairness, justice, and equity by retaining this benefit.

227. As a direct and proximate result of the Defendants' misrepresentations, misconduct and/or omissions Plaintiffs and the Class have suffered damages in an amount to be proven at trial.

VI PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment on behalf of themselves and the Class, as follows:

A. An order declaring that this action may be maintained as a class action pursuant to Fed. R. Civ. Proc. 23, and for an order certifying this case as a class action and appointing Plaintiffs as representatives of the Class and their attorneys as Class Counsel;

B. A declaration that Defendants' actions, as described herein, violate the federal and state laws and legal standards invoked herein;

C. An award to Plaintiffs and the Class of restitution and/or other equitable relief, including, without limitation, disgorgement of all profits and unjust enrichment that Defendants obtained from Plaintiffs and the Class as a result of its

unlawful, unfair and fraudulent business practices described herein;

D. For judgment for Plaintiffs and the Class on their claims in an amount to be proven at trial, for compensatory damages caused by Defendants' practices; along with exemplary and punitive damages to each Class member for each violation;

E. For pre-judgment and post-judgment interest as provided for by law or allowed in equity;

F. For an order awarding Plaintiffs and the Class their attorneys' fees and costs;

G. For an order that Defendants must notify each and every individual who paid a copayment or coinsurance for covered prescription drugs that exceeded the true cost of the drug about the pendency of this action so that they may obtain relief from Defendants for their harm; and

H. Such other and further relief as may appear necessary and appropriate to remedy Defendants' unlawful conduct.

II. DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. Proc. 38(b), Plaintiffs demand a trial by jury on all issues so triable.

RESPECTFULLY SUBMITTED this _9th__ day of December, 2016.

REINHARDT WENDORF BLANCHFIELD

By _*s/Garrett D. Blanchfield*_____
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Attorneys for Plaintiffs

JS 44 (Rev. 08/16)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

Mark Chambers and Rebecca Chambers, Individually and On Behalf of All Others Similarly Situated,

(b) County of Residence of First Listed Plaintiff Oakland Michigan
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Garrett Blanchfield, Brant Penney, Reinhardt, Wendorf and Blanchfield
E1250 First National Bank Bldg.
332 Minnesota St., St. Paul, MN 55101 651-287-2100

DEFENDANTS

UnitedHealth Group Incorporated, United Healthcare Services, Inc., UnitedHealthCare Inc., Optum, Inc. and OptumRx, Inc.

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*
Unknown

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ❒ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question *(U.S. Government Not a Party)*
- ❒ 2 U.S. Government Defendant
- ❒ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*

(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	❒ 1	❒ 1	Incorporated *or* Principal Place of Business In This State	❒ 4	❒ 4
Citizen of Another State	❒ 2	❒ 2	Incorporated *and* Principal Place of Business In Another State	❒ 5	❒ 5
Citizen or Subject of a Foreign Country	❒ 3	❒ 3	Foreign Nation	❒ 6	❒ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
❒ 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	❒ 625 Drug Related Seizure of Property 21 USC 881	❒ 422 Appeal 28 USC 158	❒ 375 False Claims Act
❒ 120 Marine	❒ 310 Airplane	❒ 365 Personal Injury - Product Liability	❒ 690 Other	❒ 423 Withdrawal 28 USC 157	❒ 376 Qui Tam (31 USC 3729(a))
❒ 130 Miller Act	❒ 315 Airplane Product Liability	❒ 367 Health Care/ Pharmaceutical Personal Injury Product Liability		PROPERTY RIGHTS	❒ 400 State Reapportionment
❒ 140 Negotiable Instrument	❒ 320 Assault, Libel & Slander	❒ 368 Asbestos Personal Injury Product Liability		❒ 820 Copyrights	❒ 410 Antitrust
❒ 150 Recovery of Overpayment & Enforcement of Judgment	❒ 330 Federal Employers' Liability	PERSONAL PROPERTY		❒ 830 Patent	❒ 430 Banks and Banking
❒ 151 Medicare Act	❒ 340 Marine	❒ 370 Other Fraud		❒ 840 Trademark	❒ 450 Commerce
❒ 152 Recovery of Defaulted Student Loans (Excludes Veterans)	❒ 345 Marine Product Liability	❒ 371 Truth in Lending	LABOR	SOCIAL SECURITY	❒ 460 Deportation
❒ 153 Recovery of Overpayment of Veteran's Benefits	❒ 350 Motor Vehicle	❒ 380 Other Personal Property Damage	❒ 710 Fair Labor Standards Act	❒ 861 HIA (1395ff)	☒ 470 Racketeer Influenced and Corrupt Organizations
❒ 160 Stockholders' Suits	❒ 355 Motor Vehicle Product Liability	❒ 385 Property Damage Product Liability	❒ 720 Labor/Management Relations	❒ 862 Black Lung (923)	❒ 480 Consumer Credit
❒ 190 Other Contract	❒ 360 Other Personal Injury		❒ 740 Railway Labor Act	❒ 863 DIWC/DIWW (405(g))	❒ 490 Cable/Sat TV
❒ 195 Contract Product Liability	❒ 362 Personal Injury - Medical Malpractice		❒ 751 Family and Medical Leave Act	❒ 864 SSID Title XVI	❒ 850 Securities/Commodities/ Exchange
❒ 196 Franchise			❒ 790 Other Labor Litigation	❒ 865 RSI (405(g))	❒ 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	❒ 791 Employee Retirement Income Security Act	FEDERAL TAX SUITS	❒ 891 Agricultural Acts
❒ 210 Land Condemnation	❒ 440 Other Civil Rights	Habeas Corpus:		❒ 870 Taxes (U.S. Plaintiff or Defendant)	❒ 893 Environmental Matters
❒ 220 Foreclosure	❒ 441 Voting	❒ 463 Alien Detainee	IMMIGRATION	❒ 871 IRS—Third Party 26 USC 7609	❒ 895 Freedom of Information Act
❒ 230 Rent Lease & Ejectment	❒ 442 Employment	❒ 510 Motions to Vacate Sentence	❒ 462 Naturalization Application		❒ 896 Arbitration
❒ 240 Torts to Land	❒ 443 Housing/ Accommodations	❒ 530 General	❒ 465 Other Immigration Actions		❒ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
❒ 245 Tort Product Liability	❒ 445 Amer. w/Disabilities - Employment	❒ 535 Death Penalty			❒ 950 Constitutionality of State Statutes
❒ 290 All Other Real Property	❒ 446 Amer. w/Disabilities - Other	Other:			
	❒ 448 Education	❒ 540 Mandamus & Other			
		❒ 550 Civil Rights			
		❒ 555 Prison Condition			
		❒ 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ❒ 2 Removed from State Court ❒ 3 Remanded from Appellate Court ❒ 4 Reinstated or Reopened ❒ 5 Transferred from Another District *(specify)* ❒ 6 Multidistrict Litigation - Transfer ❒ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity)***:
18 U.S.C. § 1961 et seq.

Brief description of cause:
Violations of RICO, Unfair Trade Practice Acts, Breach of Contract, Negligence, and Unjust Enrichment

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ❒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE Joan N. Ericksen DOCKET NUMBER 16-cv-3352, 16-cv-3496,

DATE 12/09/2016

SIGNATURE OF ATTORNEY OF RECORD s/Garrett D. Blanchfield

16-cv-3914, 16-cv-3996, 16-cv-4119

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

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INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I.(a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below**; NOTE: federal question actions take precedence over diversity cases.**)

III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: Nature of Suit Code Descriptions.

V. **Origin.** Place an "X" in one of the seven boxes.
Original Proceedings. (1) Cases which originate in the United States district courts.
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statue.

VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service

VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.